

Summer Cocktails? Texas Hosts Rarely Liable for Guests' DWI Accidents, But That May Be Changing

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By Scott Callahan

It's a scary statistic. The rate of DWI-related deaths in Harris County is often the highest among the nation's most populated counties.

That gives you something to think about if you're planning to throw a party or entertain with alcohol.

If someone leaves your house after drinking too much and then causes an accident, what's your "social host liability?"

Should you keep tabs on how much your guests are drinking? Ask for everyone's car keys? Insist on designated drivers? Call cabs? Buy a Breathalyzer?

For homeowners, those steps are not required. For many years, Texas has had a long-standing rule: Social hosts who serve alcohol to intoxicated guests (18 or older) are not liable if their guests injure themselves or others after leaving.

Did you notice I said age 18? Oddly, Texas courts and the Texas Alcoholic Beverage Code statute (known as the Dram Shop Act) have used that age as the cutoff for liability – even though the legal drinking age in Texas is 21. Why?

Unfortunately, some say that during the legislative process, the lower age was used to protect fraternities and sororities from liability when serving 18- to 20-year-olds.

Remember though, social hosts *can be liable* if guests under 18 drink at their house and cause an accident. In 2005, the Texas Legislature amended the Dram Shop Act to hold an adult host (21 or older) liable if the adult knowingly provides *or* allows a minor to have alcohol on the premises.

Everyone should also be aware that the rules may be starting to shift. Texas courts recently have held that even though a host has no duty to prevent intoxicated guests from driving, once a host voluntarily provides alcohol and takes steps toward providing for guests' care, a duty could arise.

In recent Texas cases, courts have allowed lawsuits against hosts in these situations:

The host encouraged a guest to drink more and promised a ride home, then failed to follow through; the guest tried to drive and caused an accident with injury.



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The host required guests who were still drinking at midnight to spend the night, but then did not confiscate car keys or take other actions to enforce the rule; a guest left and caused an accident with injury.

While not a Texas case, an example from another state involved a host negligently trying to care for an intoxicated guest without calling for medical help, and the guest later died from intoxication.

It's important to remember that every situation is different, and yes, the law does change. And sometimes there are other factors that may affect the outcome.

Also, bear in mind that bar, restaurant, and club owners are not considered social hosts and have significantly more liability under the Dram Shop Act. They have a duty not to negligently serve obviously intoxicated customers.

So, whether you are a host or a guest, be safe, plan ahead, and serve and drink responsibly.

The information in this column is not intended as legal advice, but to provide a general understanding of the law. Readers with legal issues, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.

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