

# Social Host Liability



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*It is clear from the Legislature's recent amendments to the criminal Social Host Laws and the Supreme Court's holdings in Martin and Willis that both the Rhode Island Legislature and Judiciary are seriously considering the issues relating to social host criminal and civil liability.*

Tragedies and near tragedies, involving alcohol, occurring throughout Rhode Island, led to the adoption of the State's Social Host Laws. The term, social host liability, refers to both criminal liability, which is a statutory prohibition enforced by the State that may lead to criminal penalties such as fines and imprisonment, and civil liability, referring to an action, by a private party against a host, seeking monetary damages for injuries and damages.

## 2006 Criminal Social Host Laws

In 2006, the Rhode Island Legislature revised the statutes prohibiting the furnishing or procurement of alcoholic beverages for underage persons,<sup>1</sup> by expanding the definitions of furnishing or procurement to include the permitting of "consumption of alcohol by underage persons in his or her residence."<sup>2</sup> Prior to this revision, police departments found it difficult to charge adults who allowed underage alcohol consumption in their residence unless it could be proven the adults purchased the alcohol for underage persons.

The 2006 version of R.I. Gen. Laws 3-8-11.1 (furnishing or procurement of alcoholic beverages for underage persons) states that "it is unlawful for any person twenty-one (21) years of age or older to purchase, to furnish, to procure, and/or to otherwise permit the consumption of alcohol by underage persons in his or her residence.... Any adult person who violates this section will be subject to the penalties provided in R.I. Gen. Laws 3-8-11.2.<sup>3</sup> The statute further states, "[t]his section does not apply to use, consumption or possession of alcoholic beverages by a minor for religious purposes; or to a parent or legal guardian procuring or furnishing alcohol to, or permitting the consumption of alcohol by, his or her minor child or ward."<sup>4</sup>

The 2006 version of R.I. Gen. Laws 3-8-11.2 states the penalties for a violation of R.I. Gen. Laws 3-8-11.1 are as follows:

**First Offense:** Any adult person who violates R.I. Gen. Laws 3-8-11.1 for a first misdemeanor violation shall be punished by a fine of not less than three hundred and fifty dollars (\$350) nor

more than one thousand dollars (\$1,000) and/or imprisoned for a period not exceeding six (6) months, or both;

**Second Offense:** Any person who violates R.I. Gen. Laws 3-8-11.1 for a second misdemeanor violation shall be punished by a fine of not less than seven hundred and fifty dollars (\$750) nor more than one thousand dollars (\$1,000) and/or imprisoned for a period not exceeding six (6) months, or both; and

**Third or Subsequent Offense:** Any person who violates R.I. Gen. Laws 3-8-11.1 for a third or subsequent offense shall be guilty of a felony and shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500.00) and/or imprisoned for a period not exceeding one (1) year. Any person convicted of a second or subsequent offense under this section shall not have any fines suspended.<sup>5</sup>

The 2006 version of R.I. Gen. Laws 3-8-10 (possession of beverage by underage persons) states the following:

Any person who has not reached his or her twenty-first (21st) birthday and has in his or her possession any beverage as defined in this title shall be fined one hundred and fifty dollars (\$150) to seven hundred and fifty dollars (\$750) for the first offense, three hundred dollars (\$300) to seven hundred and fifty dollars (\$750) for the second offense, and four hundred fifty dollars (\$450) to seven hundred and fifty dollars (\$750) for the third or subsequent offense. In addition, any person who violates this section may be required to perform community service and shall be subject to a minimum sixty (60) day suspension of his or her driver's license, and upon a second offense may be ordered to undergo a substance abuse assessment by a licensed substance abuse professional.<sup>6</sup>

A summary of cases in which the Social Host Laws were enforced since 2006 follows:

- On August 9, 2006, the Portsmouth Police responded to a reported underage drinking party at Black Point Lane. The homeowner was charged with procuring alcohol for a minor, and on April 19, 2007, the District Court Judge filed the case for one year.
- On December 1, 2006, the Lincoln Police

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charged a homeowner after discovering a drinking party at her William Street residence. On March 2, 2007 she was fined three hundred and fifty dollars and the case was filed for one year.

- On December 31, 2006, the Barrington Police arrested a homeowner after discovering a party at her Country Road residence. On February 28, 2007, she was fined three hundred and fifty dollars and placed on probation for six months.
- On June 10, 2008, a homeowner admitted to a procuring alcohol for minors charge brought by the North Kingston Police Department. The homeowner received a sentence including a five hundred dollar fine, fifty hours of community service, three months probation and court costs.
- On January 23, 2008, a Barrington couple who allowed their daughter and her friends to consume alcohol at their residence at a New Year's Eve party pled in the District Court to the charges that they illegally provided alcohol to minors. Both parents were placed on six months probation, ordered to perform one hundred hours of community service, to make a three hundred and fifty dollar contribution to the VCIF and to pay court costs. The Barrington Police became aware of the party after pictures of the party depicting underage persons playing a drinking game were posted on Facebook.com.
- On July 11, 2008, the charge of procuring alcohol for minors brought against a homeowner by the Westerly Police was dismissed. The homeowner denied providing alcohol to the underage persons and was not at home at the time of the incident.
- On May 6, 2008, a West Warwick homeowner was charged with procuring alcohol for minors after a juvenile left the house and collided with another vehicle which resulted in the death of the other operator. On May 14, 2008, the case was transferred to the Superior Court.<sup>7</sup>

### 2008 Criminal Social Host Laws

In July 2008, Rhode Island Governor Carcieri signed revisions to the Social Host Laws increasing the penalties and closing a perceived loophole. The 2006 version of R.I. Gen. Laws 3-8-11.1 prohibited any person twenty-one years of

age or older from permitting "the consumption of alcohol by underage persons in his or her residence."<sup>8</sup> The 2008 version of the statute adds, "or on his or her real property,"<sup>9</sup> thereby prohibiting the consumption of alcohol by underage persons anywhere on the homeowner's property. This particular revision of the Social Host Laws was triggered by an outdoor beer keg party, discovered by the Barrington Police, who were unable to charge the homeowner because the alleged underage drinking was not committed within "his or her residence." These latest revisions do not affect social hosts who are under twenty-one years of age.

The current penalties for a violation of the statutes prohibiting the furnishing or procurement of alcoholic beverages for underage persons<sup>10</sup> increases the potential term of imprisonment for second and subsequent offenses and includes the following:

**First Offense:** is a misdemeanor violation punishable by a three hundred and fifty dollar (\$350) to one thousand dollar (\$1,000) fine, and/or imprisonment for a period not exceeding six (6) months, or both;

**Second Offense:** is a misdemeanor violation punishable by a seven hundred and fifty dollar (\$750) to one thousand dollar (\$1,000) fine, and/or imprisonment for a period not exceeding one (1) year, or both; and

**Third/Subsequent Offense:** is a felony punishable by a one thousand dollar (\$1,000) to two thousand five hundred dollar (\$2,500) fine, and/or imprisonment for a period not exceeding (3) years.<sup>11</sup>

Additionally, regarding the possession of alcoholic beverages by underage persons, R.I. Gen. Laws 3-8-10 was revised to read "any person who violates this section shall be required to perform thirty (30) hours of community service and shall be subject to a minimum sixty (60) day suspension of his or her driver's license,..." The revision has changed the operative word from "may" to "shall." The penalties for a violation of this statute include the following:

**First Offense:** One hundred and fifty dollar (\$150) to seven hundred and fifty dollar (\$750) fine;

**Second Offense:** Three hundred dollar (\$300) to seven hundred and fifty dollar (\$750) fine;

**Third/Subsequent Offense:** Four hundred and fifty (\$450) to nine hundred



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and fifty dollar (\$950) fine; and

Any person who violates this statute, shall be required to perform thirty (30) hours of community service and shall be subject to a minimum sixty (60) day license suspension. Upon a second offense, the violator may be ordered to undergo a substance abuse assessment.<sup>12</sup>

The revised legislation also includes increased penalties for unlawful drinking and misrepresentation by underage persons (identification cards) and transportation of alcoholic beverages by underage persons.<sup>13</sup>

#### Civil Social Host Liability

In *Gerstenblatt v. Nordic Lodge, Inc.*,<sup>14</sup> the Superior Court Judge, relying on *Ferreira v. Strack*,<sup>15</sup> held the "R.I. Supreme Court 'has never adopted the principal that a social host owes a duty to a third person injured by an intoxicated person who has obtained intoxicating liquor at his or her home.' Furthermore, the Supreme Court ruled that 'the creation of new causes of action should be left to the Legislature.'"<sup>16</sup>

In *Volpe v. Gallagher*,<sup>17</sup> the Court, relying on *Ferreira*, noted "[t]his Court has long held that the creation of new causes of action should be left to the Legislature. In declining to create social host tort liability, this Court in *Ferreira* noted that '[t]he majority of courts in other jurisdictions faced with the question of extending common-law tort liability...have deferred to the Legislature. The reasoning for this deferral is their consideration that the question raised is one of broad public policy rather than an interpretation of the common law.' Moreover, '[t]he imposition of liability upon social hosts...has such serious implications that any action taken should be taken by the Legislature after careful investigation, scrutiny, and debate. It is abundantly clear that greater legislative resources and the opportunity for broad public input would more readily enable the Legislature to fashion an appropriate remedy to deal with the scope and severity of the problem.'"<sup>18</sup>

However, in *Martin v. Marciano*,<sup>19</sup> the Supreme Court clarified that if a "defendant provided alcoholic beverages to underage partygoers as the plaintiff alleges, or had actual knowledge of the presence and consumption of alcohol by underage drinkers on her property, then defendant was duty-bound to exercise reasonable care to protect plaintiff from

physical assault by persons expected to be in attendance or those acting at their behest.”<sup>20</sup>

In *Martin*, the Defendant hosted a high school graduation party with forty to seventy guests with most being between seventeen and twenty years of age. Two kegs of beer were available plus other alcohol supplied by other guests. During the party, the Plaintiff had an altercation with another guest, Defendant (Marciano), who left the party but returned with the third Defendant (Okere). The Defendant (Okere) struck the Plaintiff in the head with a baseball bat causing brain damage.<sup>21</sup>

In its analysis, the Supreme Court held, “[a]s a general rule, a landowner has no duty to protect another from harm caused by the dangerous or illegal acts of a third party. An exception to this rule exists, however, when a plaintiff and a defendant bear a special relationship to each other.”<sup>22</sup> The Court further stated, “[a]s a party host who is alleged to have made alcohol illegally available to underage guests, defendant owed plaintiff ‘the duty of exercising reasonable care to protect [him] from harm and criminal attack at the hands of fellow [guests] or other third persons.’ Although this duty most often has been extended to tavern and barroom operators, there is no valid justification for absolving an adult parent of this higher standard of care when she knowingly provides alcohol, or is aware that it is available, to underage individuals, for consumption on her property.”<sup>23</sup>

The Court further held the following: We conclude that burdening parent-hosts who provide alcohol to underage guests with a duty to take reasonable steps to protect their guests from injury is in accordance with the clear public policy of this state. The General Assembly has devoted considerable attention to the issue of underage drinking and has prohibited individuals under the age of twenty-one from purchasing, Gen. Laws 1956 § 3-8-6(a)(1); consuming, § 3-8-6(a)(2); possessing, § 3-8-10; and transporting alcohol, § 3-8-9. Individuals under the age of eighteen are prohibited from acting as bartenders. Section 3-8-2. Adults are prohibited from purchasing or procuring alcohol for people under the age of twenty-one. Section 3-8-11.1. These statutes demonstrate an overriding policy against not only underage drinking, but also an adult’s provision

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of alcohol to minors, who, by virtue of their tender age and inexperience, are presumed less capable of handling the deleterious effects of alcohol consumption. The imposition of a higher standard of care in this case may provide a valuable disincentive for adults who might otherwise be willing to provide alcohol to minors, or to turn a blind eye to its consumption on their premises.<sup>24</sup>

From the Courts holding in *Martin*, it is clear that only when a special relationship exists will the Court consider the imposition of Social Host Liability. In its recent holding in *Willis v. Omar*,<sup>25</sup> the

Court reasserted its long standing precedent of refusing to adopt Social Host Liability in most circumstances.

“[W]e decline the invitation to overturn our well-settled precedent,”<sup>26</sup> was the response of the Court to the Plaintiff’s argument in *Willis* that the Court should “create a new cause of action – one that imposes a duty on a social host to protect a person from injury resulting from alcohol consumption by either a guest or a drunk driver who leaves the party and is involved in an accident that causes injury or death. Although plaintiff acknowledges that this Court never has recognized social-host liability, she implores us to

look to the Restatement (Second) of *Torts* and what she characterizes as sound public policy to ‘creat[e] a new frontier that will better today’s society and provide a remedy for a victim’ in circumstances in which the social host’s hospitality leads to ‘an atmosphere of reckless driving and drinking.’<sup>27</sup>

In *Willis*, the Plaintiff (Serapiglia) and her boyfriend (Grise) engaged in a “Friday night of drinking”<sup>28</sup> with the Defendants (Maurice Omar and Barbara Omar) first at a restaurant and then at the Defendants’ home. At the Defendants’ home, “Maurice produced two pitchers of Long Island Iced Tea – a concoction composed of vodka, tequila, rum, gin, and crème de menthe. He fortified the beverages with Cabo Wabo Tequila and began pouring. The record before us discloses that defendants served these drinks to plaintiff and Grise ‘non-stop’ for more than three hours. The plaintiff contends that Maurice encouraged her to continue drinking, telling her: ‘You’re Irish. You can do better than that.’”<sup>29</sup> Later in the evening, “a visibly intoxicated plaintiff”<sup>30</sup> with “the inebriated Grise at the wheel”<sup>31</sup> drove a short distance before “Grise crashed his vehicle into a utility pole”<sup>32</sup> which severely injured the plaintiff and resulted “in the amputation of her left leg.”<sup>33</sup>

As a result of the accident, Grise entered into a plea agreement to both charges of operating a vehicle under the influence, resulting in serious bodily injury,<sup>34</sup> and driving to endanger, resulting in serious bodily injury<sup>35</sup> and “was sentenced to ten years at the Adult Correctional Institution, with two years to serve and the rest suspended, with probation.”<sup>36</sup> In addition, “Plaintiff settled a personal-injury claim against Grise for \$300,000.”<sup>37</sup>

In affirming the Superior Court trial justice’s granting of summary judgment for the Defendants, the Court held the following:

[w]e consistently have refused to adopt the principal that a social host owes a duty to a third party for injuries suffered by an intoxicated guest who was imbibing at his or her home, and we have only imposed such a duty where a special relationship exists. Although we have recognized social-host liability in limited circumstances, we have done so when alcohol was illegally provided to minors and

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injuries resulted. Such a special relationship is not present in the case on appeal.

This Court recently set forth the elements defining a special relationship in *Martin*, in which the plaintiff was a guest at a high school graduation party at which alcoholic beverages, including keg-beer, were readily available to numerous underage partygoers. An altercation arose, fueled by alcohol, during which the plaintiff was struck in the head by a party-crasher wielding a baseball bat. We held that a party host who makes alcohol available to an underage guest owes a duty of reasonable care to protect the guest from harm, including a criminal assault. Such a duty exists as a matter of law between the host and her underage guests because allowing underage drinking gives rise to a special duty, based on both public policy and foreseeability grounds. "To avoid assuming a duty of protection, the adult property owner must simply comply with existing law and refuse to provide alcohol or condone underage drinking on his or her property." Although supplying underage people with alcohol at a high school graduation party may trigger a special relationship, serving alcohol to an adult guest does not. Furthermore, we have held that even if minors unlawfully are furnished with alcoholic beverages, this act alone is insufficient to trigger a special relationship, if the resultant risk of injury is not foreseeable. See *Selwyn*, 879 A.2d at 888-89 (in which this Court reasoned that, even though a vendor illegally sold alcohol to minors, the seller was not liable because the alcohol was used in an unforeseeable manner when another minor deliberately ignited it).<sup>38</sup>

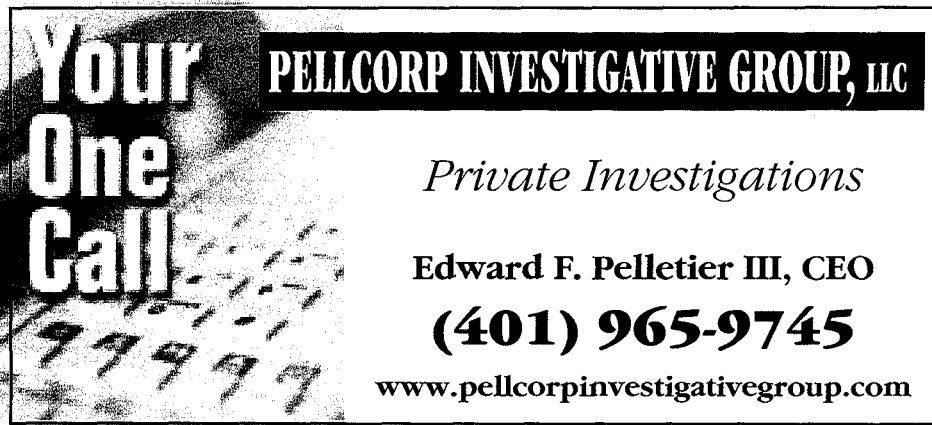
In declining to overturn the Court's well-settled precedent, because "no special duty-triggering relationship"<sup>39</sup> existed between the hosts and the guests in this case, the Court found that the issue of liability "for social hosts whose guests cause harm is a matter that belongs in the Legislature."<sup>40</sup> The Court in noting the "public policy concerns surrounding drunk driving and the resulting carnage on our highways,"<sup>41</sup> deferred to the legislative function of the General Assembly. The reason for this deferral is that the question raised is one of broad public

policy. "The imposition of liability upon social hosts... has such serious implications that any action taken should be taken by the Legislature after careful investigation, scrutiny, and debate."<sup>42</sup>

It is clear from the Legislature's recent amendments to the criminal Social Host Laws and the Supreme Court's holdings in *Martin* and *Willis* that both the Rhode Island Legislature and Judiciary are seriously considering the issues relating to social host criminal and civil liability. Hopefully this article will be of assistance to practitioners involved in this ever evolving area of the law.<sup>43</sup>

#### ENDNOTES

- 1 R.I. Gen. Laws § 3-8-11.1 and § 3-8-11.2.
- 2 R.I. Gen. Laws § 3-8-11.1(b)(5) (2006 version).
- 3 R.I. Gen. Laws § 3-8-11.1 (b) and (d) (2006 version).
- 4 R.I. Gen. Laws § 3-8-11.1 (c) (2006 version).
- 5 R.I. Gen. Laws § 3-8-11.2 (a), (b) and (c) (2006 version).
- 6 R.I. Gen. Laws § 3-8-10 (2006 version).
- 7 Information regarding the seven (7) listed cases was obtained, in part, from the Providence Journal and the R.I. District Court section of the Judiciary of Rhode Island website.
- 8 R.I. Gen. Laws § 3-8-11.1 (b)(5) (2006 version).
- 9 R.I. Gen. Laws § 3-8-11.1 (b)(5) (2008 version).
- 10 R.I. Gen. Laws § 3-8-11.1 and §3-8-11.2 (2008 version).
- 11 R.I. Gen. Laws § 3-8-11.2 (a), (b), and (c) (2008 version).



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- 12 *R.I. Gen. Laws* § 3-8-10 (2008 version).
- 13 *R.I. Gen. Laws* § 3-8-6 and § 3-8-9.
- 14 *Gernstenblatt v. Nordic Lodge, Inc.* (J. Pfeiffer), No. K.C.01-0225.
- 15 *Ferreira v. Strack*, 652 A.2d 965 (R.I. 1995).
- 16 *Gerstenblatt at 4* (internal citations omitted).
- 17 *Volpe v. Gallagher*, 821 A.2d 699 (R.I. 2003).
- 18 *Id. at 720* (internal citations omitted).
- 19 *Martin v. Marciano*, 871 A.2d 911 (R.I. 2005).
- 20 *Id. at 913*.
- 21 *Id. at 914*.
- 22 *Id. at 915*. (internal citations omitted).
- 23 *Id. at 915*. (internal citations omitted).
- 24 *Id. at 916*.
- 25 *Willis v. Omar*, 954 A.2d 126 (R.I. 2008)
- 26 *Id. at 129*.
- 27 *Id.*
- 28 *Id. at 127*.
- 29 *Id. at 128*.
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*
- 34 *R.I. Gen. Laws* § 31-27-2.6.
- 35 *R.I. Gen. Laws* § 31-27-1.1.
- 36 *Willis at 128*.
- 37 *Id.*
- 38 *Id. at 130* (internal citations omitted).
- 39 *Id. at 131*.
- 40 *Id.*
- 41 *DiSalvo v. Williamson*, 106 R.I. 303, 305-06, 259 A.2d 671, 673 (1969).
- 42 *Volpe at 720*.
- 43 *The author wishes to express his deep appreciation for the assistance of Kathleen Child and Jodi Van Sprang in the preparation of this article.* ❖

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