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KILLER PARTY: PROPOSING CIVIL LIABILITY FOR SOCIAL HOSTS WHO SERVE ALCOHOL TO MINORS

MATTHEW C. HOUCHENS*

INTRODUCTION

Lynn Sue Charles died abruptly in the early hours of February 16, 1991. Just sixteen years old, she had consumed alcohol to the point of extreme intoxication,¹ fully three times the adult legal limit.² Had Lynn Sue Charles purchased the alcohol from a commercial vendor, her parents could have brought an action against that vendor.³ Illinois provides a cause of action under its Dram Shop Act which, although limited, might have offered some recovery.⁴ Unfortunately, Lynn Sue Charles obtained the alcohol from

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1. *Charles v. Seigfried*, 623 N.E.2d 1021, 1022 (Ill. App. Ct. 1993). In *Charles*, the Illinois Appellate Court reversed the trial court and recognized a common law negligence action for automobile accident injuries caused by intoxicated minor driver, where the host has knowingly both (1) provided minors with alcohol to the point of intoxication and (2) allowed minors to leave premises in motor vehicle. *Id.* at 1025.

2. *Charles v. Seigfried*, 651 N.E.2d 154, 158 (Ill. 1995). At the time of her death, the decedent's blood-alcohol content was 0.299. *Id.* at 156. The legal limit in Illinois for adults operating a motor vehicle is 0.100. 625 ILCS 5/11-501 (1994).

3. 235 ILCS 5/6-21(a) (1992) provides that when a commercial vendor "causes the intoxication" of a patron, he risks strict liability in tort should that patron harm another. The relevant part of this section reads:

[e]very person who is injured within this State, in person or property, by any intoxicated person has a right of action in his or her own name, severally or jointly, against any person, licensed under the laws of this State or of any other state to sell alcoholic liquor, who, by selling or giving alcoholic liquor, within or without the territorial limits of this State, causes the intoxication of such person.

Id.

4. *Id.* The statute reads in relevant part:

[f]or all causes of action involving persons injured, killed, or incurring property damage after September 12, 1985, in no event shall the judgment or recovery for injury to the person or property of any person exceed \$30,000 for each person incurring damages, and recovery under this Act for loss of means of support resulting from the death or injury of any person shall not exceed \$40,000. Nothing in this Section bars

the adult host at a friend's party.⁵ Therefore, Illinois law barred her parents from recovery. This is the approach which the Illinois Supreme Court upheld in *Charles v. Seigfried*.⁶

Gary Robertson died in the late evening of October 29, 1989. This eighteen year-old was given beer and straight grain alcohol⁷ at a party attended in part by underage drinkers.⁸ He drank until he passed out, a condition doctors call alcoholic coma.⁹ Gary's friends hauled his unconscious body from the party to his apartment and placed him in his bed.¹⁰ Gary never woke up on October 30, because he choked to death on his vomit.¹¹ The court in *Robertson v. Okraj* denied Gary's parents recovery against the social

any person from making separate claims which, in the aggregate, exceed any one limit where such person incurs more than one type of compensable damage, including personal injury, property damage, and loss to means of support.

Id.

The Dram Shop Act imposes liability without fault (i.e., strict liability) and so is partly penal in character. *De Lude v. Rimek*, 115 N.E.2d 561, 564 (Ill. App. Ct. 1953). A plaintiff has a cause of action under the Dram Shop Act for a direct injury inflicted by an intoxicated person, or for an injury suffered in consequence of a person's intoxication. *Cope v. Gepford*, 61 N.E.2d 394, 396 (Ill. App. Ct. 1945).

5. *Charles*, 651 N.E.2d at 155-56.

6. *Id.* at 157.

7. *Robertson v. Okraj*, 620 N.E.2d 612, 613-14 (Ill. App. Ct. 1993). The grain alcohol is commonly called "Ever Clear," and is sold with several warning labels on its packaging which indicate its great flammability and toxicity (information on file with author). The liquor is 190 proof, or 95% alcohol by volume. *Id.* Two small warning labels read as follows: first, "CAUTION: Extremely flammable, handle with care;" and second, "WARNING: Overconsumption may endanger your health." *Id.* A third very prominent warning is more comprehensive, stating: "CAUTION: Do not apply to open flame. Keep away from fire, heat, and open flame - contents may ignite or explode. Do not consume in excessive quantities. Not intended for consumption unless mixed with non-alcoholic beverages." *Id.* The facts of the case are silent as to whether Gary, the decedent, was aware of these warnings. Regardless, he was drinking the alcohol unmixed, along with beer. *Robertson*, 620 N.E.2d at 614. This is a highly dangerous substance for anyone, let alone a minor who is, by necessity due to his young age, somewhat inexperienced at consuming alcohol. Typical straight vodka is mild by comparison, only 80 proof, or 40% alcohol by volume. Smirnoff® vodka presents only the standard warning on its label: "GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."

8. *Robertson*, 620 N.E.2d at 614.

9. *Id.*

10. *Id.* at 613-14.

11. *Id.* at 614. The court chose a more sanitized phrase to describe the cause of death: aspiration of gastric contents. *Id.* The two phrases are synonyms, however.

hosts for the same asserted public policy reasons as in *Charles v. Siegfried*.¹²

These two tragic cases represent a regrettable gap in current Illinois tort law. Both of these minors bore the full consequences of their inexperience in dealing with alcohol - they died. In a forum which generally recognizes the minor's incapability to cope with certain adult responsibilities, the current bar on civil action against social hosts in Illinois seems anomalous and untenable.

In 1889, Illinois adopted the common law view that providing alcohol to a strong and able-bodied man who subsequently injured himself was not negligence.¹³ Although attitudes about alcohol have changed dramatically over the past century, this basic precept remains constant.¹⁴ Illinois still fails to recognize a negligence action for injuries which arise when a social host furnishes guests with alcohol to the point of intoxication.¹⁵

Surprisingly, even minors do not present an exception to this rule.¹⁶ Generally, minors are a protected class in criminal and civil substantive law actions, subjected to different rules and held to less demanding standards of behavior.¹⁷ When a minor drinks and becomes intoxicated at a private party, however, he alone is re-

12. See *infra* note 30 for a description of the traditional reasons for rejecting social host liability, on which the courts in both *Robertson* and *Charles* relied.

13. *Cruse v. Aden*, 20 N.E. 73, 74 (Ill. 1889).

14. See, e.g., *Charles*, 651 N.E.2d at 165.

15. *Id.*

16. *Id.*; see also *Estate of Ritchie v. Farrell*, 572 N.E.2d 367, 369 (Ill. App. Ct. 1991) (holding no negligence action where social host furnished alcohol to minor); *Flory v. Weaver*, 553 N.E.2d 105, 107 (Ill. App. Ct. 1990) (limiting liability to furnishing alcohol to the Dram Shop Act); *Martin v. Palazzolo Produce Co.*, 497 N.E.2d 881, 883 (Ill. App. Ct. 1986) (holding no negligence for giving a courtesy drink); *Zamiar v. Linderman*, 478 N.E.2d 534, 535 (Ill. App. Ct. 1985) (stating no negligence when "social host" supplies liquor); *Heldt v. Brei*, 455 N.E.2d 842, 844 (Ill. App. Ct. 1983) (holding no negligence action where social hosts permitted minor son to serve alcohol to minor friends).

17. At common law, a child of under seven years was entitled to an irrebuttable presumption of criminal incapacity, i.e., the inability to understand the consequences of his actions in an adult fashion. BOYCE AND PERKINS, *CASES AND MATERIALS ON CRIMINAL LAW AND PROCEDURE* 589 (7th ed., 1989). Over age 14, minors were presumed to have criminal capacity. *Id.* Children between ages seven and 14 had a rebuttable presumption of incapacity. *Id.* In Illinois, 720 ILCS 5/6-1, entitled "Infancy," provides that "no person shall be convicted of any [criminal] offense unless he had attained his 13th birthday at the time the offense was committed." 720 ILCS 5/6-1 (1994).

In negligence actions, a majority of jurisdictions hold a child to a standard of care which is "that of a reasonable person of like age, intelligence, and experience under like circumstances" i.e., a peer standard. RESTATEMENT (SECOND) OF TORTS § 283A (1965).

sponsible for his actions under Illinois law.¹⁸

The Illinois legislature created a cause of action against licensed commercial vendors who cause the intoxication of a patron who subsequently causes injury.¹⁹ Vendors are strictly liable for such injuries, but recovery caps limit the damage awards.²⁰ This liability never existed at common law,²¹ and does not purport to extend beyond those in the business of selling alcohol.²² Thus, since dram shop legislation expresses no opinion about social host liability, it should not pre-empt recovery against social hosts under common law negligence theory.

Actionable negligence arises from the breach of a duty which proximately causes harm.²³ Violation of a statute can demonstrate carelessness, or behavior which creates an unreasonable risk of harm to others.²⁴ A social host violates a criminal statute when he

18. See *Charles*, 651 N.E.2d at 158-59 (stating that a social host is not liable under the Dram Shop Act).

19. See *supra* note 3 for the relevant language of 235 ILCS 5/6-21 (1992), the 'Dram Shop Act.'

20. See *supra* note 4 for the relevant language of 235 ILCS 5/6-21 (1992).

21. *Charles*, 651 N.E.2d at 157-58; see also *Fitzpatrick v. Carde Lounge, Ltd.*, 602 N.E.2d 19, 21 (Ill. App. Ct. 1992) (holding that commercial vendor has no common law negligence liability for sale of liquor to minor).

22. See *supra* note 3 for text of 235 ILCS 5/6-21 ("any person, licensed . . . to sell alcoholic liquor").

23. RESTATEMENT (SECOND) OF TORTS § 291. (1965). Another common definition of negligence is "conduct which falls below the standard of care established by law for the protection of others against unreasonable risk of harm." W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS, § 31, at 169 (5th ed., 1984). The RESTATEMENT (SECOND) OF TORTS § 318 (1965) provides:

[I]f the actor permits a third person to use land . . . he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him . . . from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor (a) knows or has reason to know that he has the ability to control the third person, and (b) knows or should know of the necessity and opportunity for exercising such control.

Id.

Illinois follows this precept, and some of these common law negligence concepts have been codified. For example, the Illinois Premises Liability Act establishes a duty that hosts exercise "reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them." 740 ILCS 130/2 (1994) (amended by Pub.Act 89-7, eff. Mar. 9, 1995).

24. RESTATEMENT (SECOND) OF TORTS § 285(a) (1965), which reads: "[t]he standard of conduct of a reasonable man may be (a) established by a legislative enactment or administrative regulation which so provides. . . ." This rule applies so long as the harm inflicted is of the type anticipated by the statute, and the plaintiff is among the class intended to be protected by the statute. See also RESTATEMENT (SECOND) OF TORTS § 286 (1965) (stating when stan-

knowingly serves alcohol to a minor at his residence.²⁵ Such a social host should be liable for negligence.

Statistics show that minors are drinking in alarming numbers despite legislation aimed at curtailing such behavior. In 1994, 156 Illinois drivers under the age of twenty-one died in traffic accidents.²⁶ Thirty-five percent had been drinking, and twenty-nine percent were legally drunk.²⁷ DUI arrests in 1994 of drivers under age twenty decreased less than one percent from 1993.²⁸ Illinois must continue its efforts to further reduce the number of underage alcohol-related traffic fatalities. One method is to cut off the supply of alcohol to minors at private parties. Tort liability against

dard of conduct defined by legislation or regulation will be adopted).

25. 235 ILCS 5/6-16 (1994). Section 6-16(b) of the Liquor Control Act prohibits a minor's consumption of alcohol at a social gathering, and its violation constitutes a Class A misdemeanor. Section 6-16(c) reads:

Any person shall be guilty of a Class A misdemeanor where he or she knowingly permits a gathering at a residence which he or she occupies of two or more persons where any one or more of the persons is under 21 years of age and the following factors also apply: (1) the person occupying the residence knows that any such person under the age of 21 is in possession of or is consuming any alcoholic beverage; and (2) the possession or consumption of the alcohol by the person under 21 is not otherwise permitted by this Act; and (3) the person occupying the residence knows that the person under the age of 21 leaves the residence in an intoxicated condition.

Id. Thus, throughout this Comment, the term "minor" means a person under 21 years of age, unless otherwise indicated.

26. Telephone Interview with Greg Killion, Data Analyst, Illinois Department of Transportation (Oct. 31, 1995) [hereinafter "Killion"].

27. DIVISION OF TRAFFIC SAFETY, ILLINOIS DEPARTMENT OF TRANSPORTATION ("IDOT"), DRUNK DRIVING FACT SHEET [hereinafter "IDOT FACT SHEET"] (1995); *see also* Killion, *supra* note 26. The National Safety Council recently reported that the number of underage drivers killed nationally has decreased between 1983 and 1993, perhaps as a result of increasingly severe DUI laws. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS, 1995 EDITION 86 (1995). Between 1983 and 1993, alcohol-related traffic crashes resulting in driver fatalities, with drivers aged 16 to 20, decreased from 29.7% of all fatalities to 16.2%, a relative decrease of 45%. *Id.* This decrease is much more dramatic than the overall decrease for all age groups, which was 28%. *Id.*

In Illinois, the percentage of traffic fatalities involving alcohol has also declined in recent years. The following statistics are the number of alcohol-related traffic fatalities, expressed as a percentage of all traffic fatalities, by year. The numbers in parentheses represent drivers of all ages, and the numbers without parentheses represent drivers under legal drinking age, 21: 1990 = 38% (42%); 1991 = 32% (43%); 1992 = 27% (38%); 1993 = 27% (37%); 1994 = 29% (37%). Killion, *supra* note 26. Note that while Illinois numbers for all drivers have tracked the national numbers almost perfectly, the numbers for underage drinkers in Illinois have been slightly higher than the national average, and was still quite high in 1994, at 29%. *Id.*

28. DUI 1994 FACT BOOK, ILLINOIS SECRETARY OF STATE GEORGE H. RYAN, 1 (1995) [hereinafter "DUI FACT BOOK"].

the social hosts who provide the alcohol will help deter this activity.

Part I of this Comment traces the role of minors in the history of alcohol-related liability in Illinois, and provides background for related topics in common law negligence. Part II discusses the shortcomings of Illinois' present rule which completely bars civil recovery, and provides an analysis of legal bases for allowing liability. Part III surveys the solutions of other states that have adopted some form of social host liability. Finally, Part IV offers a proposal for reforming the rule in Illinois.

I. A HISTORY OF MINORS AND ALCOHOL-RELATED NEGLIGENCE

When a social host provides alcohol to a minor who becomes intoxicated and subsequently causes injury, Illinois does not recognize a negligence cause of action against the host.²⁹ This modern rule finds its origin in an 1889 case, *Cruse v. Aden*.³⁰ In *Cruse*, the plaintiff's husband accepted two drinks of liquor from a friend, Aden.³¹ Mr. Cruse allegedly became intoxicated, and while riding home, his horse threw him and he died.³² The Illinois Supreme Court refused to allow this cause of action for two reasons: first, at common law, no liability arose from offering liquor to a strong and able-bodied man;³³ and second, the court construed the Dram Shop Act to be the exclusive remedy in alcohol-related liability cases.³⁴

Primarily, courts have embraced the notion that an adult's choice to consume the alcohol was the proximate cause of any harm resulting from intoxication.³⁵ Since adults are deemed responsible for their own actions, courts perceived the host's act of merely providing the alcohol as too remote.³⁶ However, the same notions of personal responsibility did not, and do not, apply to minors. Although the *Cruse* court decided against social host liabil-

29. *Charles v. Seigfried*, 651 N.E.2d 154, 158 (Ill. 1995) (holding decisively that there is no cause of action against social hosts who provide alcoholic beverages to another person, even if person is underage or is a minor).

30. 20 N.E. 73 (Ill. 1889). The *Cruse* court held that offering liquor to 'strong and able-bodied man' was not negligence because: (1) the choice to consume—not the offering—was the proximate cause of harm resulting from intoxication, and (2) Dram Shop Act was exclusive remedy for alcohol-related liability. *Id.* at 74.

31. *Id.*

32. *Id.* at 73.

33. *Id.* at 74.

34. *Id.* at 74-75.

35. See *Cunningham v. Brown*, 174 N.E.2d 153, 157 (Ill. 1961) (holding that the drinking—not the furnishing—of the intoxicant was the proximate cause of the intoxication and the resulting injury).

36. *Id.*

ity, it never squarely faced the problem raised in *Charles*.³⁷ Arguably, courts have improperly extended the rule stemming from *Cruse* and its progeny to include minors, because *Cruse* only dealt with *adults* and alcohol consumption.

A. *History of Illinois Policy Toward Minors and Alcohol*

When the court rendered the *Cruse* decision, it applied the then current Dram Shop Act, enacted in 1874.³⁸ The sixth section of that Act imposed a penalty against "whoever shall sell or give intoxicating liquor to any minor."³⁹ Over a century ago, Illinois drew a distinction between minors and adults where consumption of alcoholic beverages was concerned.⁴⁰ Since then, popular sentiment has prompted even stricter legislative measures aimed at reducing the harmful effects arising from minors' use of alcohol.

In 1934, the Illinois General Assembly passed the Liquor Control Act ("Liquor Act") which contained a section prohibiting distribution of alcohol to certain protected classes.⁴¹ As originally en-

37. See *Charles*, 651 N.E.2d at 155-56 (involving a plaintiff seeking relief against social host who caused her deceased *minor* daughter's intoxication which resulted in her death).

38. *Cruse*, 20 N.E. at 75.

39. *Id.*

40. *Id.*

[According to assertions of appellant's counsel,] the plain intention of section 6 [of the Dram Shop Act] is to protect minors, intoxicated persons, and habitual drunkards from either sales or gifts of intoxicating liquors, not on the ground that the giver is a dram-shop keeper, but for the protection of the minor, intoxicated person, and drunkard, and family; and that section 9 is intended to provide a remedy for those who are injured in person, property, or means of support by the conduct of others, be they dram-shop keepers or other persons. (emphasis added).

Id. An even earlier case discussing these matters is *Johnson v. People*, 83 Ill. 431 (1876). The *Johnson* court held that whether a person is, or is not, the keeper of a dram-shop, he cannot sell intoxicating liquors to minors without incurring the penalties prescribed by section 6 of the statute; and further held that a person employed in making change for parties engaged in unlawfully selling intoxicating liquors to minors may be convicted on indictment for selling it, on the ground he aided, abetted, and assisted in such sales. *Id.* at 436. The *Johnson* court stated: "[i]t is not necessary to now determine whether a person would incur the penalty of this section by giving liquors as an act of hospitality at his house, as that question is not before the court." *Id.* at 434. Thus, although the Illinois Supreme Court passed judgment as to social gifts of alcohol to able-bodied adults, *even if already intoxicated*, it did not rule as to minors.

41. 1933-34 Ill. Laws, 2nd Sp. Sess., p. 57, art. VI, § 12 (eff. Jan. 31, 1934), amended by 1951 Ill. Laws, p. 1557, § 1 (eff. July 16, 1951) (modifying § 12); 1953 Ill. Laws, p. 1182, § 1 (eff. July 13, 1953) (adding specific penalties); 1961 Ill. Laws, p. 2479, § 1 (eff. Aug. 1, 1961) (changing "minor" to "under the age of 21 years"); 1963 Ill. Laws, p. 2529, § 1 (eff. Aug. 7, 1963) (extending criminal

acted, this section read: "[n]o licensee shall sell, give or deliver alcoholic liquor to any minor, or to any intoxicated person or to any person known to him to be an habitual drunkard, spendthrift or insane, feeble-minded or distracted person."⁴²

The 1961 amendment to the Liquor Act raised the legal drinking age to twenty-one years by substituting the phrase "person under the age of 21 years" for "minor" in the statute.⁴³ Illinois backpedaled in 1973, lowering the age for legal sale, gift or delivery of beer and wine to nineteen years.⁴⁴ In addition, in order to conform with new criminal penalties imposed under the Unified Code of Corrections, the legislature declared that violation of the Liquor Act was a Class B misdemeanor.⁴⁵ The reduced drinking age did not last, however, when the legislature reverted it back to twenty-one in 1980.⁴⁶ In 1986, violation of the Liquor Act became a Class A misdemeanor.⁴⁷ Lastly, in 1990, Illinois allowed an affirmative defense to the charge of providing liquor to a minor; a vendor may reasonably rely on adequate written evidence of age and identity.⁴⁸

The 1990 amendment aside, the legislature has increased penalties for offenses involving alcohol and minors. Recent stiff penalties allow the suspension of driving privileges without a preliminary hearing when police catch minors in possession of alcohol

liability to those persons who lawfully obtain liquor then deliver it to a person under age 21); 1972 Ill. Laws, p. 1398, § 1 (eff. Jan. 1, 1973) (removing specific criminal penalties); 1973 Ill. Laws, p. 85, art. VI, § 1 (eff. Oct. 1, 1973) (lowering legal age for beer and wine to 19); 1973 Ill. Laws, p. 1871, § 1 (eff. Oct. 1, 1973) (same, enforcement provision); 1974 Ill. Laws, p. 1501, § 15 (eff. March 4, 1975) (non-substantive revisions to resolve differences among various sections amended by more than one act of 78th Gen. Ass'y); 1979 Ill. Laws, p. 1139, § 1 (eff. Jan. 1, 1980) (raising legal age for beer and wine back to 21); *renumbered* (as § 6-16) *and amended by* 1982 Ill. Laws, p. 603, Art. VI, § 2 (eff. July 13, 1982); *amended by* 1983 Ill. Laws, p. 4519, § 26 (eff. Sept. 23, 1983) (updating language from "known by him to be an habitual drunkard, spendthrift, insane, mentally ill, mentally deficient . . ." to "known by him or her to be under legal disability"); 1983 Ill. Laws, p. 5444, § 1 (eff. July 1, 1984); 1984 Ill. Laws, p. 1808, § 54 (eff. Sept. 11, 1984); 1985 Ill. Laws, p. 2407, § 1 (eff. Jan. 1, 1986); 1986 Ill. Laws, p. 3137, § 1 (eff. Jan. 1, 1987) (amending § 6-16 to add hotel proprietors); 1990 Ill. Laws, p. 1831, § 1 (eff. Aug. 29, 1990) (adding affirmative defense of 'reasonable reliance' on false identification).

42. 1933-34 Ill. Laws 2d Spec. Sess., p. 57, art. VI, § 12.

43. 1961 Ill. Laws, p. 2479, § 1.

44. 1973 Ill. Laws, p. 85, art. VI, § 1.

45. 1972 Ill. Laws, p. 1398, § 1.

46. 1979 Ill. Laws, p. 1139, § 1.

47. 1985 Ill. Laws, p. 2407, § 1.

48. 1990 Ill. Laws, p. 1831, § 1.

while driving.⁴⁹ Meanwhile, some authorities suggest that remedies under the dram shop laws regarding intoxicated adults have decreased significantly.⁵⁰ Thus, the legislature clearly intends to distinguish minors from adults regarding the procurement and consumption of alcohol.

B. Rationale for Distinguishing Minors in Alcohol Statutes

Legislatures have long distinguished minors from adults when drafting statutes. Every state in the union, as well as the District of Columbia, has imposed "ages of consent" for at least one of a variety of activities which include: engaging in sexual intercourse; using contraception; marrying with and without parental consent; driving an automobile; voting; purchasing or possessing tobacco or alcohol, etc.⁵¹

During the 1960's, young people aged eighteen to twenty-one protested angrily for the right to vote, since males of that group were being drafted in great numbers to serve in the Vietnam conflict. In 1971, they got their wish.⁵² The next logical complaint was that these young soldiers could be sent off to die for their

49. 625 ILCS 5/11-502(f) (1994). This section reads:

[a]ny driver, who is less than 21 years of age at the date of the offense and who is convicted of violating subsection (a) of this Section or a similar provision of a local ordinance, shall be subject to the loss of driving privileges as provided in paragraph 13 of subsection (a) of Section 6-205 of this Code and paragraph 33 of subsection (a) of Section 6-206 of this Code.

Id.

The relevant cross-referenced section of 625 ILCS 5/6-205(a) (1992) reads:

[t]he Secretary of State shall immediately revoke the license or permit of any driver upon receiving a report of the driver's conviction of any of the following offenses: . . . (13) [v]iolation of paragraph (a) of Section 11-502 of this Code or a similar provision of a local ordinance if the driver has been previously convicted of a violation of that Section or a similar provision of a local ordinance and the driver was less than 21 years of age at the time of the offense.

Id.

The relevant cross-referenced section of 625 ILCS 5/6-206(a) (1992) reads:

[t]he Secretary of State is authorized to suspend or revoke the driving privileges of any person without preliminary hearing upon a showing of the person's records or other sufficient evidence that the person: . . . (33) [h]as as a driver, who was less than 21 years of age on the date of the offense, been convicted a first time of a violation of paragraph (a) of Section 11-502 of this Code or a similar provision of a local ordinance.

Id.

50. See, e.g., Jeffrey W. Allen, Note, *Illinois Dram Shop Reform: The Need for a Sword, Not a Shield*, 28 J. MARSHALL L. REV. 215 (1994).

51. MINIMUM-DRINKING-AGE LAWS 5-6 (Henry Wechsler ed., 1980).

52. See U.S. CONST. amend. XXVI.

country, but could not legally step up to the bar for a drink. In response to this apparent hypocrisy, twenty-nine states reduced the minimum drinking age between 1970 and 1975.⁵³ The tide of popular sentiment quickly turned, however, and by 1979 eight states raised their legal drinking ages.⁵⁴

The inchoate effects of alcohol consumption, with its attendant problems on minors, are difficult to isolate and examine. More objective criteria, such as increases in alcohol-related traffic accidents and fatalities, tend to show that a lower legal drinking age is undesirable.⁵⁵ Scientific studies of these variables led state legislatures to examine, and ultimately reverse, their decisions to lower their legal drinking ages.

For example, two social scientists studied the effects of Michigan's choice to lower its drinking age from twenty-one to eighteen years old in 1972.⁵⁶ The study estimated an additional 4600 alcohol-related accidents between 1972 and 1975.⁵⁷ More alarming, at least eighty-nine of these accidents resulted in the death of at least one person.⁵⁸

Another national study examined the relationship between adolescent drinking behavior and drinking-age laws.⁵⁹ The responses of a wide cross-section of youths, mostly ages fifteen to eighteen, showed a consistent correlation.⁶⁰ High school sophomores, juniors and seniors in states with a legal drinking age of twenty-one were more likely to report that they abstained from alcohol use than their counterparts in states with lower legal drinking ages. If and when they did use alcohol, they were less likely to be heavy drinkers.⁶¹ Furthermore, the data showed that higher drinking-age laws corresponded with lower degrees of peer approval of drinking, less perceived peer drinking, less accessibility to alcohol and less frequent intoxication.⁶²

The necessity of prohibiting minors from certain 'adult freedoms' is certainly subject to reasonable debate. Likewise, opinions vary about the effectiveness of minimum-drinking-age laws on reducing alcoholism among America's youth. Nevertheless, objective evidence tends to show that laws prohibiting minors from the pur-

53. MINIMUM-DRINKING-AGE LAWS, *supra* note 51, at 2.

54. *Id.*

55. *Id.* at 179.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 155.

60. *Id.* at 161-63.

61. *Id.* at 174.

62. *Id.*

chase, possession and use of alcohol have a deterrent effect on harmful behaviors such as juvenile drunk driving.⁶³ This alone is a strong justification for maintaining minors' protected class status regarding alcoholic beverages. As a protected class, minors should not be held to an adult standard of responsibility when drinking in social situations.

II. ANALYSIS OF THE CURRENT RULE IN ILLINOIS

Section A discusses the recent Illinois developments in social host liability relating to minors. Section B first outlines the severity of drinking and driving in America. Section B next details the positive effects of minimum drinking age laws in various jurisdictions. Section C enumerates the possible legal bases for social host liability relating to minors.

A. Discussion of the Rule of Non-liability

In 1991, the Illinois Appellate Court abandoned the traditional approach and allowed a civil action against a social host in *Cravens v. Inman*.⁶⁴ *Cravens* caused a rift in the Illinois appellate jurisdictions on the subject of social host liability. Justice McMorrow rejected the traditional reasons for disallowing a common law negligence claim for social host liability where a minor's intoxication caused injury: lack of proximate cause; and pre-emption by legislative enactment.⁶⁵ Her opinion established liability in the limited factual setting where a social host both knowingly provides alcohol to a minor to the point of intoxication, and allows the inebriated minor to leave the premises in a motor vehicle.⁶⁶ The Illinois Supreme Court had not yet ruled on the question of whether social host liability is precluded under these facts, but it soon would.⁶⁷

On March 30, 1995, Chief Justice Bilandic delivered the *Charles* opinion which resolved the split among the appellate jurisdictions.⁶⁸ Loyal following a long line of ancestral case law, the Illi-

63. *Id.*

64. 586 N.E.2d 367 (Ill. App. Ct. 1991).

65. *Charles v. Seigfried*, 651 N.E.2d 154, 157-59 (Ill. 1995) (stating that the rationale underlying the common law rule is lack of proximate cause and also discussing the Dram Shop Act). *Charles* is the most recent Illinois Supreme Court decision considering this problem (and perhaps the first to answer it conclusively) and renews these traditional arguments.

66. *Cravens*, 586 N.E.2d at 377-78.

67. See *supra* note 29 and accompanying text for a discussion of the *Charles* holding which squarely addressed social host liability for the tortious acts of intoxicated minor guests.

68. See *Charles*, 651 N.E.2d at 158 (holding that no liability for the sale or

nois Supreme Court held that the General Assembly had "preempted the entire field of alcohol-related liability through its passage and continual amendment" of the dram shop statutes.⁶⁹ Therefore, the court would not recognize a cause of action against social hosts whose intoxicated guests commit tortious acts, regardless of the age of such guests.⁷⁰ Thus, had Lynn Sue Charles managed to fool a bartender or other liquor salesman, her parents could have brought suit against that vendor.⁷¹ Unfortunately, her tragic loss will go completely uncompensated for the sole reason that Illinois will not recognize an action for the same intoxication when a social host provides the liquor to a minor.⁷²

The court envisioned a Pandora's Box lurking beneath this cause of action.⁷³ Critics fear that the many permutations which could follow are all difficult to resolve.⁷⁴ While these are reason-

gift of alcoholic beverages exists outside the Dram Shop Act).

69. *Id.* at 159.

70. *Id.*

71. See *supra* note 3 discussing the relevant text of 235 ILCS 5/6-21(a).

72. This significant "loophole" sends a mixed signal to potential underage drinkers. Illinois laws discourage minors from purchasing alcohol commercially, and possessing or transporting it. Yet by allowing minors to obtain alcohol with impunity in social settings, Illinois laws seem to encourage them to drink there. Large parties at private residences would likely require many of the guests to leave by automobile afterwards, since sleeping area is limited; arguably, this policy particularly induces underage drunk driving.

73. *Charles*, 651 N.E.2d at 164. Pandora's box is defined as a "prolific source of troubles." WEBSTER'S 9TH NEW COLLEGIATE DICTIONARY 850 (9th ed. 1983). Pandora was the central character of a tale in Greek mythology who guarded a box which she was forbidden to open. When curiosity overcame her and she opened it, she unleashed a swarm of evils upon mankind.

74. *Id.* at 160-61. The court expressed various concerns about the potential scope of liability, and reservations about opening the floodgates of litigation in this genre. The legislature may be best equipped to answer questions such as:

[s]hould only injured third parties have a cause of action against a social host, or should the intoxicated person have one too? Should an exception be created only for minors? If so, should we treat persons under the legal drinking age of 21 as minors, or only those under the age of 18? Should minor or underage social hosts be liable for serving liquor to their similarly situated friends? Should a social host be held liable only when he or she knows that the intoxicated person will drink and drive, or should the host be held liable for all types of alcohol-induced injuries? What actions must a social host take to avoid liability where an intoxicated guest insists on driving home? Is calling a cab sufficient, or must the police be notified?

Id. at 160.

Nonetheless, the Illinois Supreme Court is empowered to make such decisions which are not contradictory to the Illinois and U.S. Constitutions. See *infra* note 76, discussing the *Alvis* holding. Rather than allow an inequitable result, the court should fashion an appropriate remedy for the facts at hand. The court need not consider all these hypothetical situations; although they

able concerns, they should not prevent the court from making a just ruling based on the facts before it. Perhaps the legislature is, as some argue, the proper arena for far-reaching policy decisions. Nonetheless, when fairness and equity require an affirmative change in the law, the court has been prepared to make it on equally thorny issues.⁷⁵ The court must work in tandem with the General Assembly, at times examining judicial trends in other states to arrive at a just and appropriate rule which will advance the "health, safety and welfare of Illinois citizens."⁷⁶

B. *The Need for a Rule Adopting Liability*

Drinking and driving is a severe problem in America, causing massive death tolls and huge economic costs each year. Young people, aged fifteen to twenty, are consistently over-represented both in alcohol-related fatalities, and as drivers in alcohol-related fatal crashes compared to older population groups. While minimum-drinking age laws (MDA's) have helped to lower the overall numbers of alcohol-related fatalities, American youths continue to die in droves on our highways. Because the current scheme is lacking, Illinois must combat minors' illegal consumption of alcohol and its devastating effects through new and different measures.

represent valid concerns, the court has correctly stated that they are for the legislature to consider.

75. *Charles*, 651 N.E.2d at 169 (McMorrow, J., dissenting). The Justice recalls instances in which the court has pioneered new legal direction where the legislature was moving too slowly, notably *Alvis v. Ribar*, 421 N.E.2d 886 (Ill. 1981) (holding that comparative negligence should replace contributory negligence bar to plaintiff's recovery). McMorrow noted the following rationale of *Alvis*:

The rule of stare decisis is not 'so static that it deprives the court of all power to develop the law. The maintenance of stability in our legal concepts does not and should not occupy a preeminent position over the judiciary's obligation to reconsider legal rules that have become inequitable in light of the changing needs of our society.'

Charles, 651 N.E.2d at 196 (McMorrow, J., dissenting).

76. 235 ILCS 5/1-2 (1992), which reads:

This Act shall be liberally construed, to the end that the health, safety and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted by sound and careful control and regulation of the manufacture, sale and distribution of alcoholic liquors.

1. *Severity of Drinking and Driving Problem in America*⁷⁷

Statistics show that traffic crashes are the greatest single cause of death for every age between five and thirty-three,⁷⁸ with almost half of these fatalities are alcohol-related.⁷⁹ In 1994, 16,589 people died in alcohol-related traffic crashes.⁸⁰ Although this is one of the lowest recorded numbers in years, it still represents an average of one alcohol-related traffic fatality every thirty-two minutes.⁸¹ About one million people in the United States suffered injuries in an alcohol-related crash in 1994: approximately one injury every thirty-three seconds.⁸² About two in five Americans will be involved in an alcohol-related crash at some time in their lives.⁸³ The National Highway and Traffic Safety Administration estimated that these accidents cost America twelve billion dollars annually.⁸⁴

More than forty percent of all fifteen to twenty year-old deaths result from motor vehicle crashes, with forty percent of those alcohol-related.⁸⁵ This amounted to an estimated 2639 deaths in 1992 alone.⁸⁶ Despite a downward trend in alcohol-

77. Illinois statistics are comparable. In 1994, 44% of tested deceased drivers had a blood alcohol content (BAC) level which indicated that they had been drinking. Killion, *supra* note 26. Thirty-seven percent had a BAC of 0.10 or above (legally intoxicated levels). Killion, *supra* note 26. In 1994, 46% (423 people) of all drivers who were involved in fatal crashes and tested for BAC levels (911 drivers total) had been drinking, and 81% of that number (approximately 38% of overall number, or 344 people) were legally intoxicated, with a BAC of 0.10 or greater. *Id.*; see also IDOT FACT SHEET, *supra* note 27 for similar numbers. Although 16 to 24 year olds comprise only 16% of the licensed drivers in the state, they are involved in 33% of all fatal alcohol-related crashes. IDOT FACT SHEET, *supra* note 27. Of the 358 drivers who were involved in fatal crashes in 1994 and found to be legally intoxicated, 27% were age 24 and under. *Id.* Over 35% of the fatally-injured drivers under age 21 who were tested for BAC were drinking prior to their crash. Twenty-nine percent were legally intoxicated, with BAC levels at 0.10 or greater. *Id.* Overall, an estimated 629 people were killed in alcohol-related crashes in Illinois in 1994, accounting for 45.2 percent of all traffic fatalities. DUI FACT BOOK, *supra* note 28, at 1.

78. DUI FACT BOOK, *supra* note 28, at 1.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*; see also IDOT FACT SHEET, *supra* note 27.

84. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION ("NHTSA"), HIGHWAY SAFETY REPORT 23 (1990).

85. DUI FACT BOOK, *supra* note 28, at 1.

86. NHTSA, ALCOHOL INVOLVEMENT IN TRAFFIC FATALITIES: 1992 5 (1994). In 1993, 2571 persons aged 15 to 20 died in alcohol-related traffic crashes. NHTSA, ALCOHOL INVOLVEMENT IN TRAFFIC FATALITIES: 1993 3 (1995). One

related crashes among young people, this age group continues to be over-represented in fatalities, and as drivers in fatal crashes where alcohol was a factor.⁸⁷ Specifically, seventy-eight young drivers out of 100,000 young licensed drivers died in crashes in 1988, with twenty-five alcohol-related fatalities.⁸⁸ In the same year, thirty-three drivers over twenty years of age out of 100,000 died in crashes, with eleven alcohol-related fatalities.⁸⁹ Thus, well over twice as many young drivers than older drivers die in both alcohol - and non-alcohol - related crashes.⁹⁰

Congress recognized this problem and recently took action to address it. In July 1995, Congress approved statutes designed to effectively establish a national minimum drinking age of twenty-one years.⁹¹ These statutes penalize any state which fails to adopt the uniform minimum drinking age by reducing its federal funding

thousand seven hundred and seventy four of those persons, or 24.9% of all traffic fatalities aged 15 to 20, had BAC of 0.10 or greater, and thus were legally intoxicated. *Id.* In 1994, the numbers decreased slightly: 2574 persons aged 15 to 20 died in alcohol related crashes; 1,728 (22.7% of fatalities aged 15 to 20) had BAC of 0.10 or greater. NHTSA, ALCOHOL INVOLVEMENT IN TRAFFIC FATALITIES: 1994 3 (1996). While relative percentages have decreased slightly, it should be noted that actual numbers of deaths have remained virtually the same.

One other statistic bears mentioning: fatal crash driver BAC distribution by age group. *See id.* at 12. Overall, age-alcohol pattern is characterized by "a rapid increase to a peak in the 21-24 age group, followed by a slower decrease," steadily declining to its lowest point for drivers aged 65 or older. *Id.* at 11. Because drivers of age 15-20 can no longer legally purchase alcohol in any state, statistics regarding that age group illustrate the effectiveness of this deterrent. *See infra* note 92 and accompanying text for a discussion of the federal statutes which established the national minimum drinking age. Still, of 7957 total fatal crashes with drivers aged 15-20, 22.3% (1774) of these drivers had consumed some alcohol, and 13.9% (1106) had BAC of 0.10 or greater. *Id.* at 12.

While decreasing percentages of alcohol involvement are always encouraging, this number could still be improved. Any measures which help to further restrict alcohol access to minors, without undue societal burden, should be considered.

87. Brief for MADD, Amicus Curiae at appendix, *Cravens v. Inman*, 586 N.E.2d 367 (Ill. App. Ct. 1991) (No. 90-1124).

88. *Id.*

89. *Id.*

90. *Id.* Precisely 2.36 youthful drivers die (under 20) for every 1.00 older than 20, with 2.27 youthful alcohol-related fatalities to every 1.00 older death. *Id.*

91. *See* 23 U.S.C. § 158 (1995) (establishing 21 as national minimum drinking age, and penalizing states which fail to comply by passing appropriate legislation); 23 U.S.C. § 408 (1995) (listing criteria for discretionary fund allocation to alcohol-related traffic safety programs, one of which viewed favorably is a minimum drinking age of 21).

for highway maintenance or traffic safety programs.⁹² Currently, all states and the District of Columbia enforce a minimum drinking age of twenty-one.⁹³

2. *Positive Effects of Minimum Drinking Age Laws*

In an effort to address the tragic loss of life, legislatures have enacted minimum drinking age laws, or MDA's. In Illinois — and in every state in the Union, plus Washington, D.C.⁹⁴ — no person may legally drink before the age of twenty-one.⁹⁵ Nationally, these laws have had a very positive effect: MDA's reduced traffic fatalities involving drivers in affected age groups by thirteen percent.⁹⁶ The National Highway Traffic Safety Administration (NHTSA) estimates that these laws saved nearly 11,400 lives between 1975 and 1990, with over 1000 lives in each year since 1987.⁹⁷

While these laws make it more difficult to purchase alcohol from commercial vendors, they are powerless against private persons over age twenty-one who choose to provide alcohol to minors. Therefore, legislatures also passed criminal statutes which make the act of providing alcohol to minors a misdemeanor.⁹⁸ This apparently has not been much of a deterrent. According to a recent study, adolescent drug use occurs primarily in three locations: at home, in a friend's home, or in a car.⁹⁹

MDA laws successfully reduced the number of alcohol-related deaths among youth in America.¹⁰⁰ Perhaps in response to these tougher laws, young people have taken to consuming alcohol in their homes and their friends' homes. Social hosts, who can legally purchase alcohol and then provide it to their minor guests, risk

92. See *supra* note 92 for a discussion of the penalties for non-compliance with the national minimum drinking age, 21 years.

93. DUI FACT BOOK, *supra* note 28, at 1.

94. See *supra* note 92, describing the statutes enacted on July 7, 1995, which effectively establish a national minimum drinking age of 21 years; see also DUI FACT BOOK, *supra* note 28, at 1.

95. 1985 Ill. Laws, p. 2407, § 1. This is a recent update to § 6-21 Illinois Liquor Control Act of 1934, which originally considered minors part of a protected class, set apart from competent adults. The statute prohibited sale of alcohol to minors, feeble-minded persons, spendthrifts, and habitual drunkards. See *supra* note 41 and accompanying text for a more detailed legislative history of the act.

96. Brief for MADD, Amicus Curiae at appendix, *Cravens v. Inman*, 586 N.E.2d 367 (Ill. App. Ct. 1991) (No. 90-1124).

97. *Id.*

98. See *supra* note 25 for the relevant language of the Illinois Liquor Control Act.

99. Brief for MADD, Amicus Curiae at appendix, *Cravens v. Inman*, 586 N.E.2d 367 (Ill. App. Ct. 1991) (No. 90-1124).

100. See generally MINIMUM-DRINKING-AGE LAWS, *supra* note 51.

only a misdemeanor charge if caught.¹⁰¹ Either the Illinois General Assembly or the Illinois Supreme Court should adopt a rule for civil liability in tort for these social hosts to cut off this alcohol supply line to minors.

Since the adoption of MDA laws, the number of alcohol-related traffic fatalities in Illinois has decreased because the laws make it more difficult for minors to obtain alcohol. If Illinois adopts a rule of liability for social hosts who serve minors, that rule would further deter such behavior and make it more difficult for minors to obtain alcohol. The Illinois General Assembly or the Illinois Supreme Court should adopt a rule because social host liability will decrease the number of alcohol-related traffic fatalities among minors.¹⁰²

C. *Legal Bases for Social Host Liability*

Negligence can be shown in several ways. First, violation of a statute is evidence of negligence in Illinois under certain conditions. An Illinois criminal statute prohibits the furnishing of alcohol to minors. Another statute creates a duty of care in premises owners/occupiers for their guests in Illinois. Second, when one's actions are unacceptably careless and result in harm, he is negligent. When applying any of these standards, one can conclude that a social host is negligent if he provides alcohol to minors who subsequently become intoxicated and cause harm to themselves or others.

1. *Statutory Duty*

A person is negligent if he breaches a duty of care and proximately causes harm.¹⁰³ The law requires every person to act with a certain minimum standard of care and failure to do so constitutes

101. See *supra* note 25 for the relevant statutory language of 235 ILCS 5/6-16.

102. Of course, alcohol-related traffic accidents are not the only harmful activities which flow from the mixing of alcohol and minors. This contention is vividly demonstrated in one of the two cases listed in this Comment's introduction: the decedent in *Robertson* choked on his own vomit when he overconsumed alcohol. *Robertson v. Okraj*, 620 N.E.2d 612, 614 (Ill. App. Ct. 1993). A rule for social host liability should not be limited to cases involving intoxicated minors operating motor vehicles because there are many other significant ways in which minors can be harmed by alcohol consumption. The minimum drinking age law is intended to protect minors from all the harms which can result from intoxication caused by irresponsible consumption of alcohol, by simply cutting off their supply.

103. RESTATEMENT (SECOND) OF TORTS § 281 (1965).

negligence.¹⁰⁴ This minimum standard of care is measured objectively, adjudged against an imaginary reasonable person of ordinary prudence under similar circumstances.¹⁰⁵ In addition, one who violates a statute is deemed to be acting contrary to the state's expression of a minimum standard of care. Illinois courts will accept the violation of a statute as evidence of negligence under certain circumstances. Furthermore, a civil plaintiff may prove negligence by showing that the defendant violated a statute¹⁰⁶ which resulted in injury¹⁰⁷ to a member of the class of persons intended to

104. *Id.*; see *supra* note 23 for a description of a common law negligence action based on breach of landowner's duty to exercise reasonable control over other's conduct on his property.

105. RESTATEMENT (SECOND) OF TORTS § 283 (1965). The "man of ordinary prudence" was perhaps first set as the standard in ordinary negligence actions in *Vaughan v. Menlove*, 132 Eng. Rep. 490 (1837), according to Prosser. KEETON ET AL., *supra* note 23, at 174. This is an objective standard which requires the actor to "do what such an ideal individual would be supposed to do in his place." *Id.*

106. See *supra* note 24 for the relevant text of RESTATEMENT (SECOND) OF TORTS § 285(a) (1965). Dean Prosser explains: [w]hen a statute provides that under certain circumstances certain acts must be done or omitted, it may be interpreted as fixing a standard for all members of the community, from which it is negligence to deviate. KEETON ET AL., *supra* note 23, at 220. "All that the statute does is to establish a fixed standard by which the fact of negligence may be determined." *Osborne v. McMasters*, 41 N.W. 543, 544 (Minn. 1889).

If an Illinois court finds that a violation of a statute is applicable, then such violation is evidence of negligence. Illinois is thus a "mere inference" state. Other jurisdictions accept applicable statute violations on stronger standards such as rebuttable presumption of negligence or modified negligence per se.

107. In order to prevail, a plaintiff must establish that the defendant's negligence was the proximate cause of the injury. This concept has been in a state of continual debate since the 1928 case of *Palsgraf v. Long Island R.R.*, 162 N.E. 99 (N.Y. 1928). *Palsgraf* presented an unusual situation of an unforeseeable plaintiff. A passenger was running to catch defendant's train, and when defendant's servant tried to assist the passenger aboard, defendant's servant dislodged a nondescript package from beneath the passenger's arm, which subsequently fell on the rails. *Id.* at 99. The package contained fireworks, and it exploded violently. *Id.* The concussion in some manner caused some scales, situated many feet away, to fall and injure the plaintiff. *Id.* Thus, although the defendant agent's clumsiness could foreseeably harm the boarding passenger or the package, plaintiff's injuries were unforeseeable in the extreme. *Id.*

Two preeminent judges delivered different opinions, which have led to some complexity and confusion in the law of negligence. Judge Cardozo wrote the majority opinion, which held that negligence was premised on a relationship between the parties, that of foreseeability of harm to the party injured in fact. *Id.* at 100-01. Therefore, while the defendant's act might have been negligence toward the boarding passenger, it was no breach of a duty to the

be protected by the statute¹⁰⁸ and the harm is of the kind which the legislature intended to prevent.¹⁰⁹

When a social host provides alcohol to minors on premises which he occupies, he violates two statutes in Illinois. First, the Illinois Liquor Control Act prohibits social hosts from knowingly permitting a minor's consumption of alcohol on his premises.¹¹⁰ Violation of this Act is a class A misdemeanor.¹¹¹ Second, the Illinois Premises Liability Act essentially codifies the common law, creating a duty that hosts exercise "reasonable care under the circumstances regarding . . . acts done or omitted on [the premises]."¹¹²

a. Criminal Penalty for Providing Alcohol to Minors

The Illinois General Assembly has spoken on the subject of minors and alcohol through its Liquor Control Act, which obligates social hosts to refrain from serving or even permitting the consumption of alcohol by minors.¹¹³ Thus, social hosts have a statutorily defined duty, the breach of which *ought to constitute negligence*. Many areas of the law treat minors as a protected class, deemed incapable of mature responsibility.¹¹⁴ One such area is the

unforeseeably injured plaintiff. *Id.* at 101. Judge Andrews espoused a broader standard, contending that "[e]very one owes to the world at large a duty of refraining from those acts that may unreasonably threaten the safety of others." *Id.* at 103 (Andrews, J. dissenting). Thus, when one acts carelessly, he takes a risk that someone will be proximately harmed; Andrews would call this a viable plaintiff. *Id.* Andrews' bare proximate cause standard has proved too problematic to be workable. Nonetheless, courts have permitted recovery when the concept of duty is stretched to near its breaking point.

In all, the *Palsgraf* analysis here is fairly straightforward. The intoxication of minors can be reasonably expected to cause harm, and common law principles impose a duty of care for landowners not to allow their guests to harm persons off the premises. Therefore, third persons are viable plaintiffs to whom the host owes a duty if they are injured off the host's land as a result of careless behavior of the host's guests.

108. See *supra* note 41 for citations to the early dram shop provisions. They prohibited selling or providing alcohol to minors, a protected class.

109. RESTATEMENT (SECOND) OF TORTS § 286 (1965), which states that a standard of conduct as defined by legislation or regulation will be adopted when it's purpose was to protect "that interest against the kind of harm which has resulted, and . . . against the particular hazard from which the harm results." *Id.*

110. 235 ILCS 5/6-16(c) (1994).

111. *Id.*

112. 740 ILCS 130/2 (1994).

113. 235 ILCS 5/6-16 (1994).

114. See *supra* note 17 for a description of the special treatment afforded to minors charged with offenses at common law; and see *supra* note 51 and accompanying text for a discussion of the choices which minors are deemed at law too immature to make on their own, such as marriage, voting, and the

decision to consume alcohol. Illinois has MDA laws which revoke the minor's discretion.¹¹⁵ Thus, the legislature clearly intended to protect minors as a specific class of persons who need protecting from the dangers of alcohol consumption.

The typical fact pattern in these cases involves an intoxicated minor who crashes his car, killing himself, a passenger, another driver or a pedestrian.¹¹⁶ With its increasingly strict DUI laws, the Illinois legislature clearly desires a reduction in alcohol-related traffic fatalities.¹¹⁷ However, by passing MDA laws, legislators seem to desire an even broader protection for minors.¹¹⁸ Thus, if a minor is injured or injures another as a proximate result of intoxication, the minor caused the type of harm which Illinois legislators wished to prevent.

Therefore, Illinois had a good opportunity in *Charles* to allow a negligence action based on violation of a statute.¹¹⁹ There, a social host fed Lynn Sue Charles drinks until she became extremely intoxicated, and she died trying to drive home in her toxic stupor.¹²⁰ Lynn Sue Charles was sixteen at the time,¹²¹ and thus a member of the class the Liquor Control Act intended to protect.¹²² She died in an alcohol-related traffic accident, which is clearly a type of harm the statute intended to prevent.¹²³ The social host

purchase of tobacco.

115. See *supra* note 46 for the modern Illinois statute which prohibits minors from consuming alcohol. The Liquor Control Act of 1934, as amended by P.A. 81-212, established a uniform minimum drinking age of 21 in Illinois for all alcoholic beverages.

116. See, e.g., *Charles v. Seigfried*, 651 N.E.2d 154, 155-56 (Ill. 1995) (sixteen year old girl died in car accident while intoxicated well in excess of the legal limit).

117. See *supra* note 49 for the text of one such DUI statute and related provisions, which seek to reduce the number of alcohol-related traffic crashes.

118. See *supra* note 49 for some indication of the broad reach of MDA laws. The minimum-drinking-age provision itself is silent as to the specific harms it seeks to prevent.

119. *Charles v. Seigfried*, 623 N.E.2d 1021 (Ill. App. Ct. 1993); see *supra* note 24 for the Restatement rule regarding violation of statute as evidence of negligence.

120. See *supra* note 25 which demonstrates that this social host's serving alcohol to a minor was a violation of the Liquor Control Act.

121. Minors in Illinois are those persons who have not yet had their 18th birthday. 755 ILCS 5/11-1 (1992). *But see supra* note 25, defining and explaining "minor" as used in this Comment.

122. See *supra* note 25 for the excerpted text of the Illinois Liquor Control Act.

123. See *supra* note 25 for the excerpted text of the Illinois Liquor Control Act, particularly section 6-16(c)(3). This section criminalizes the act of allowing minors to consume alcohol at one's residence, provided that the occupant knows that the minor will leave in an intoxicated situation. *Id.* This implies legislative concern over the acts of these intoxicated minors, once they leave

who provided the alcohol in violation of the statute clearly caused Lynn Sue Charles' intoxication, which in turn caused the accident.¹²⁴ These are the elements of a negligence action in Illinois based on a statutory violation.

b. Premises Liability

The social host's status as a landowner gives rise to the second statutory duty to refrain from serving alcohol to minors. The privilege of landowners to use their land as they see fit is far from absolute, and judges have limited landowners' rights when their use of the land affects the interests of others.¹²⁵ Dean Prosser explained that a landowner's "possession and control of his land gives him a power of control over the conduct of those whom he allows to enter [upon] it, which he is required to exercise for the protection of those outside."¹²⁶

Illinois essentially codified this rule in its Premises Liability Act, which places a duty upon hosts to exercise reasonable care regarding acts done on their land.¹²⁷ The General Assembly left no doubt about its intention to create a duty; they explicitly used the word duty in the statute.¹²⁸ The scope of this duty appears very broad, since it simply requires the reasonable care standard of common law negligence.

Therefore, when a social host permits minors to consume alcohol on his property, he creates an unreasonable risk that such minors will become intoxicated and cause injury to those outside the premises. This is the type of harm the statute anticipates by the statute (injury arising from negligent lack of control over one's land),¹²⁹ and affects the persons intended to be protected by the

the premises. Since one very common method of leaving such premises is driving, and other Illinois statutes have imposed such heavy penalties on DUI violations by minors, it seems clear that Illinois wants to prevent this behavior.

124. *Charles*, 651 N.E.2d at 155-56.

125. The clearest example in tort law is nuisance. One is subject to liability for a private nuisance if:

his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either (a) intentional and unreasonable, or (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

RESTATEMENT (SECOND) OF TORTS § 822 (1965).

126. PROSSER, HANDBOOK OF THE LAW OF TORTS 356 (4th Ed. 1971).

127. See *supra* note 23 describing the statutory duty created by Illinois' Premises Liability Act.

128. 740 ILCS 130/2 (1994).

129. *Id.*

statute (those persons outside the land).¹³⁰ When a social host permits minors to consume alcohol on his property, he violates the Premises Liability Act by creating unreasonable risk of harm to those outside the premises. Violation of this statute is, again, evidence of negligence.¹³¹

2. Common Law Negligence

The Illinois majority view that common law negligence will not support a cause of action against social hosts who serve minors is unsupported. Subsection a explains that the Dram Shop Act does not pre-empt such a cause of action. Subsection b demonstrates that common law negligence is a proper vehicle for such a legal action.

a. Pre-emption by Dram Shop Act is Untenable

Since a plaintiff can maintain a valid negligence action under a violation of either statute above, statutory pre-emption by the Dram Shop Act is the only legal justification for not allowing liability. In the absence of the Dram Shop Act and the "seemingly misplaced construction given to it by our courts,"¹³² Illinois would recognize social host liability for harm resulting from the illegal service of alcohol to minors.¹³³ Thus, the current Illinois rule barring civil liability is valid only if dram shop laws truly pre-empt

130. See *supra* note 23 describing the statutory duty, over both one's land, and persons outside one's property, created by Illinois' Premises Liability Act.

131. See *supra* note 24 describing the relevant Restatement (2d) sections which describe the function of legislation or regulation as a standard of conduct upon which negligence can be determined.

132. Brief for MADD, Amicus Curiae at 10, *Cravens v. Inman*, 586 N.E.2d 367 (Ill. App. Ct. 1991) (No. 90-1124). *Cunningham v. Brown*, 174 N.E.2d 153 (Ill. 1961), and the subsequent line of appellate cases gives a history of Illinois courts' construction of the dram shop laws. The misconception to which Mr. Mallen appears to be referring is that of statutory preemption. See Brief for MADD, *supra*, at 10. Since the Dram Shop Act in no way purports to apply to non-licensed private servers of alcohol, the only way to find a preemption in this area is by negative implication. The line of argument becomes: Illinois provided a statutory cause of action against dram shop owners/operators when their customers become intoxicated and harmed third parties; generally, at common law there was no such liability for the actions of others; therefore, only by positive law can Illinois create such a cause of action against social hosts (which the dram shop laws do not). Thus, no such cause of action exists. This argument, like the argument for a dormant commerce clause in the U.S. Constitution, requires rather twisted logic to accept. In any event, the argument fails unless the presumption is true that no such liability can be found at common law.

133. See, e.g., *Waynick v. Chicago's Last Dep't Store*, 269 F.2d 322 (7th Cir. 1959); *Colligan v. Cousar*, 187 N.E.2d 292 (Ill. App. Ct. 1963)

such liability.

Illinois appellate courts came to an opposite conclusion on an analogous area of law. In 1954, the First District, in *Semeniuk v. Chentis*,¹³⁴ ruled that a city ordinance which prohibited the commercial selling of firearms to minors did not pre-empt liability for negligent sales of firearms to minors.¹³⁵ The *Semeniuk* court explicitly held that no cause existed under the city ordinance, but nevertheless, the seller could be liable for negligence.¹³⁶ The *Semeniuk* court looked to the RESTATEMENT (SECOND) OF TORTS, which provided that one acts negligently when he permits a third person to use a thing or engage in an activity which is likely to cause harm, if such thing or activity is within one's control.¹³⁷ The most obvious application of the rule, as stated in the comments, is where "the third person is a member of a class which is notoriously likely to misuse the thing which the actor permits him to use,"¹³⁸ as

134. 117 N.E.2d 883 (Ill. App. Ct. 1954). The Chicago city ordinance discussed by both parties in *Semeniuk*, reads as follows:

§ 883. Firearms—Minors.—No person shall sell, loan or furnish to any minor any gun, pistol or other firearm, or any toy gun, toy pistol or other toy firearm in which any explosive substance can be used, within the city, under a penalty of the more than \$100 for each offense: Provided, that minors may be permitted, with consent of their parents or guardians, to use firearms on the premises of a duly licensed shooting gallery, gun club or rifle club, or to secure a permit to shoot game birds in accordance with the provisions of section 1486 of chapter 39 of this ordinance.

Hartnett v. Boston Store of Chicago, 106 N.E. 837, 838 (Ill. 1914).

135. *Semeniuk*, 117 N.E.2d at 886. Although *Semeniuk* has been distinguished by two modern cases, it remains good law. The cases — *Linton v. Smith & Wesson*, 469 N.E.2d 339, 340 (Ill. App. 1984) and *Riordan v. International Armament Corp.*, 477 N.E.2d 1293, 1295 (Ill. App. 1985) — merely limit the holding to cases in which the misuse of the product is foreseeable. In *Semeniuk*, this was the standard as well, but was obviously met because the seller gave a firearm and ammunition to a seven-year-old child, who was obviously likely to misuse them. *Semeniuk*, 117 N.E.2d at 884.

136. *Semeniuk*, 117 N.E.2d at 886.

137. RESTATEMENT (SECOND) OF TORTS § 308 (1965). The authors state that:

[i]t is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

Id. at cmt. b.

138. *Id.* The authors state that:

[t]he rule stated in this Section has its most frequent application where the third person is a member of a class which is notoriously likely to misuse the thing which the actor permits him to use. Thus, it is negligent to place loaded firearms or poisons within reach of young children

when an actor places firearms or poison within reach of a child or feeble-minded adult.¹³⁹

The Illinois legislature has explicitly recognized that minors are "member[s] of a class which is notoriously likely to misuse the thing which the actor permits him to use,"¹⁴⁰ where the 'thing' is alcohol, and the 'actor' is a social host in its Liquor Control Act. In the *Semeniuk* case, the statute completely addressed the facts before the court, and the court still allowed an additional co-extensive negligence action.¹⁴¹ The dram shop acts only apply to commercial sellers, and the facts before the court will involve a private server of alcohol.¹⁴² Here, there is a true gap in relief if the courts do not allow a negligence remedy. Thus, there is a 'wrong' without a 'right.'¹⁴³ For these reasons, the argument stemming from *Cunningham* that the Dram Shop Act pre-empts a negligence action against social hosts who serve alcohol to minors is untenable and should be abandoned.¹⁴⁴ Therefore, plaintiffs should be allowed to prove up negligence actions either by violation of statute as evidence of negligence, or general common law negligence theory.

b. Action Against Social Hosts is Valid Under Common Law Negligence

Action against social hosts for the injuries caused by the in-

or feeble-minded adults.

Id.

139. See *supra* note 139 for the full text of the RESTATEMENT (SECOND) OF TORTS § 308 cmt. b (1965). Comment b identifies the acts of placing firearms or poison within reach of a child or feeble-minded adult as specific instances of negligence, as defined by § 308. *Id.*

140. See RESTATEMENT (SECOND) OF TORTS § 308 (1965). See *supra* note 46 and accompanying text for a discussion of the 1980 amendment to the Liquor Control Act. This raised the minimum drinking age to 21 for all alcoholic beverages.

141. *Semeniuk*, 117 N.E.2d at 886.

142. This strengthens the argument that Illinois should adopt a negligence cause of action against social hosts, since the dram shop law is not really applicable to non-licensed private persons who provide alcohol to minors.

143. The Illinois Constitution purports to afford a remedy to every wrong in § 12 of the Bill of Rights, and reads: "[e]very person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." ILL. CONST. art. I, § 12.

144. See *supra* note 35 for a discussion of the *Cunningham* holding. *Cunningham* first established a firm rule against social host liability on the basis that the drinker's consumption was the cause of the intoxication, not the host's serving of the alcohol. *Cunningham*, 174 N.E.2d at 157. As discussed, this rule seems less applicable where the drinker is a minor, deemed at law incapable of mature discretion regarding the consumption of alcohol.

toxication of their minor guests is valid under principles of common law negligence. A reasonable person of ordinary prudence knows, or should know, that minors lack the judgment or discretion and knowledge or appreciation of the dangerous consequences which can flow from the consumption of alcohol. This knowledge is requisite to the mature evaluation process when one decides to take a drink. Since minors lack this capacity, social hosts have a duty to refrain from providing them with alcohol.

Obviously, when a social host serves alcohol to minors he breaches this duty. A reasonable social host knows, or should know, that the serving of alcohol to minors could result in intoxication. Intoxication, in turn, is likely to cause very serious harm to the minor or third persons. Therefore, a social host should reasonably foresee that serious harm may result from providing alcohol to minors, and should refrain from doing so. Failure to observe these minimum standards of reasonable behavior in a civilized society is negligence.

The eminent Learned Hand proposed a somewhat different test involving, essentially, cost-benefit analysis.¹⁴⁵ Judge Hand suggested a sliding scale measure of negligence based on three factors surrounding any activity: the probability of injury arising from the activity; the extent or severity of the injury, should it occur; and the burden of avoiding the activity.¹⁴⁶ If the burden imposed by avoiding the activity (i.e. the benefit derived from the activity) exceeded the probability and extent of harm (i.e. the potential costs to society of maintaining the activity), then it was not negligent to continue the activity.¹⁴⁷ This test is particularly useful because it not only provides a negligence measuring stick, but suggests that the level of precautions required in a given activity be proportional to the level of risk involved in such activity.¹⁴⁸

Judge Learned Hand's analysis suggests that our social hosts

145. *United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947).

146. *Id.*

147. *Id.* Expressed as a formula: let burden = B; probability of injury = P; and extent of harm/liability = L. If $B > PL$ (that is, B exceeds P multiplied by L), then the actor is not liable for continuing the potentially dangerous activity. *Id.* This is so because the burden of avoiding the activity exceeds the risk in continuing. Likewise, if $B < PL$, the actor would be negligent to pursue such an activity. *Id.* This is another way of defining reasonable behavior. *Id.* One problem inherent in this approach is the lack of data on probability and extent of harm before the fact, when they are helpful to an actor's decision to cease or continue a potentially risky activity.

148. For example, the burden involved in avoiding certain risks in airline travel has been drastically reduced in the past 50 years. Safety precautions or devices which were either non-existent or prohibitively expensive then are probably required by statute today.

are negligent. The probability of injuries arising from the intoxication of minors is great, as demonstrated by the statistics earlier.¹⁴⁹ Furthermore, the severity of injury tends to be great: grave bodily injury or death, in many cases.¹⁵⁰ The burden on the host consists merely of making reasonable inquiries into the age of guests if alcohol is available. This burden is very slight when compared to the gravity and frequency of injury arising from this activity. Thus, a social host's failure to make reasonable inquiries into the age of his guests when alcohol is available is actionable negligence.

Many other jurisdictions have examined this problem, and concluded that a cause of action was essential to justice. Illinois should reconsider its policy in light of modern realities, and consider the solutions applied in these jurisdictions.

III. RECENT SOLUTIONS EMPLOYED IN OTHER STATES

At the time the Illinois Supreme Court decided *Charles*, twenty-seven states had adopted some form of social host liability, either by statute,¹⁵¹ judicial decisions,¹⁵² or both. Thus, the recog-

149. See *supra* note 78 for a summary of Illinois drunk driving statistics. The national counterparts are presented in the main text.

150. See *Charles v. Seigfried*, 651 N.E.2d 154, 155 (Ill. 1995) (involving an intoxicated minor who was killed in an auto accident after leaving a party where a host provided alcohol).

151. See COLO. REV. STAT. § 12-47-128.5 (1994); GA. CODE ANN. § 51-1-40 (1994); IDAHO CODE § 23-808 (1995); ME. REV. STAT. ANN. tit. 28-A, § 2501 (West 1988); MINN. STAT. § 340A.801 (1990) (abrogating *Holmquist v. Miller*, 367 N.W.2d 468 (Minn.1985)); MONT. CODE ANN. §§ 16-6-305 (1995), 27-1-710 (1994); N.M. STAT. ANN. § 41-11-1 (Michie 1994); N.Y. GEN. OBLIG. LAW § 11-100 (McKinney 1989); OR. REV. STAT. § 30.950 (1988); UTAH CODE ANN. § 32A-14-101 (1996); VT. STAT. ANN. tit. 7, § 501 (1994).

152. *Charles*, 651 N.E.2d at 173. See, e.g., *Martin v. Watts*, 513 So. 2d 958 (Ala. 1987); *Estate of Hernandez v. Arizona Bd. of Regents*, 866 P.2d 1330 (Ariz. 1994); *Ely v. Murphy*, 540 A.2d 54 (Conn. 1988); *DiOssi v. Maroney*, 548 A.2d 1361 (Del. 1988); *Sutter v. Hutchings*, 327 S.E.2d 716 (Ga. 1985); *Slade v. Smith's Management Corp.*, 808 P.2d 401 (Idaho 1991); *Alegria v. Payonk*, 619 P.2d 135 (Idaho 1980), *superseded by* IDAHO CODE § 23-808 (1995); *Brattain v. Herron*, 309 N.E.2d 150 (Ind. Ct. App. 1974); *Bauer v. Dann*, 428 N.W.2d 658 (Iowa 1988); *Gresham v. Davenport*, 537 So. 2d 1144 (La. 1989); *McGuiggan v. New England Tel. & Tel. Co.*, 496 N.E.2d 141 (Mass. 1986); *Longstreth v. Gensel*, 377 N.W.2d 804 (Mich. 1985); *Nehring v. LaCounte*, 712 P.2d 1329 (Mont. 1986); *Hickingbotham v. Burke*, 662 A.2d 297 (N.H. 1995); *Kelly v. Gwinnell*, 476 A.2d 1219 (N.J. 1984), *limited by* N.J. REV. STAT. § 2A:15-5.7 (1987); *Batten v. Bobo*, 528 A.2d 572 (N.J. Super. Ct. 1986); *Walker v. Key*, 686 P.2d 973 (N.M. Ct. App. 1984); *Montgomery v. Orr*, 498 N.Y.S.2d 968 (N.Y. Sup. Ct. 1986); *Hart v. Ivey*, 420 S.E.2d 174 (N.C. 1992); *Mitseff v. Wheeler*, 526 N.E.2d 798 (Ohio 1988); *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 485 P.2d 18 (Or. 1971); *Congini v. Portersville Valve*

nition of a cause of action brought by third persons against social hosts was then a majority position among the several states. These states discovered this cause of action under a handful of legal theories:¹⁵³ first, explicit language in the state's dram shop acts or liquor control legislation;¹⁵⁴ second, a lack of any bar or preemption by such legislation to a negligence action;¹⁵⁵ third, viola-

Co., 470 A.2d 515 (Pa. 1983); *Langle v. Kurkul*, 510 A.2d 1301 (Vt. 1986); *Hansen v. Friend*, 824 P.2d 483 (Wash. 1992); *Koback v. Crook*, 366 N.W.2d 857 (Wis. 1985), *superseded by* WIS. STAT. § 125.035 (1985) (providing that "[a] person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person" unless such person knowingly furnished alcohol to a minor).

153. Some of these categories are not legally distinct. The distinctions are drawn only to help clarify the approaches adopted in each state's leading opinions. The differences may be purely linguistic, but since the opinions are in many cases very new, their ultimate significance is largely unknown.

154. See UTAH CODE ANN. § 32A-14-101 (1994); COLO. REV. STAT. ANN. §§ 12-46-112.5, 12-47-128.5 (West 1991); *Martin v. Watts*, 513 So. 2d 958, 963 (Ala. 1987) (holding that Dram Shop Act creates a civil remedy against those who provide another person with alcoholic beverages, causing intoxication injuring the plaintiff); *Sutter v. Hutchings*, 327 S.E.2d 716 (Ga. 1985) (holding that social hostess who furnished alcohol to noticeably intoxicated person under legal drinking age, knowing that such person would soon be driving his car, could be liable in tort to a third person injured by negligence of intoxicated driver); *Forrest v. Lorrigan*, 833 P.2d 873 (Colo. Ct. App. 1992) (holding that social host is not liable for injury to third person because of intoxication of guest except when social host "willfully and knowingly served" alcohol to guest who was under age of 21 years). In *Martin v. Watts*, the providing of alcoholic beverages to minors was prohibited by law, and therefore the statute applied. *Martin*, 513 So. 2d at 963. The *Forrest* rule is stated in the negative and appears to allow liability only under very limited circumstances. The *Forrest* court held that providing premises for minors to consume alcohol is not enough unless the host purchased or otherwise furnished the alcohol (i.e., knowledge alone insufficient). *Id.*

155. See MINN. STAT. § 340A.801 (1990) (stating that nothing in dram shop laws prohibits a common law negligence claim against social hosts (over age 21) who knowingly provide or furnish alcoholic beverages to persons under age 21). This abrogates *Holmquist v. Miller*, 367 N.W.2d 468 (Minn. 1985), which stated unequivocally that no common-law cause of action can be brought against a social host for negligently serving alcohol to a guest who subsequently injures a third party. See also *Hickingbotham v. Burke*, 662 A.2d 297, 301 (N.H. 1995) (holding that New Hampshire's Dram Shop Act did not grant statutory cause of action against social host, but did not bar or preempt personal injury action based on host's recklessness); *Hernandez v. Arizona Bd. of Regents*, 866 P.2d 1330, 1338 (Ariz. 1994) (holding that although statute immunized from liability those social hosts (not licensed by state as dram shops) who furnish or serve alcohol to person of legal drinking age, granted no such immunity when non-licensee furnishes liquor to underage person); *Slade v. Smith's Management Corp.*, 808 P.2d 401, 414 (Idaho 1991) (holding that statute which limited dram shop and social host liability did not curtail right to file action for furnishing alcoholic beverages to underage person where such consumption caused harm), *superseded by* IDAHO CODE § 23-

808 (1995); *Bauer v. Dann*, 428 N.W.2d 658, 660 (Iowa 1988) (holding that amendment to liquor statute which clarified that consumption of alcohol rather than serving was proximate cause of injury inflicted on another by intoxicated person did not apply to statute prohibiting furnishing alcohol to minor); *Langle v. Kurkul*, 510 A.2d 1301, 1303 (Vt. 1986) (holding that Dram Shop Act, which provided cause of action and strict liability to third persons injured by inebriates, did not pre-empt remedy under common law for social guest himself injured on third party's premises after becoming intoxicated); *Hopkins v. Sovereign Fire & Cas. Ins. Co.*, 626 So. 2d 880 (La. Ct. App. 1993) (holding that dramshop law providing that consumption of alcohol, rather than sale or serving of alcohol, is proximate cause of any injury occurring off premises does not relieve [alcohol provider] of liability to minors and third parties injured by minors resulting from minor's intoxicated acts); *Walker v. Key*, 686 P.2d 973, 976-77 (N.M. Ct. App. 1984) (holding that dram shop statute does not bar claim of third parties harmed by conduct of minor where hosts of party allegedly furnished alcoholic beverages to such minor).

New Hampshire went on in *Hickingbotham* to require that the social host be reckless before assessing liability. *Hickingbotham*, 662 A.2d. at 301. The *Hickingbotham* court stated that a host's service would be reckless if the host consciously disregarded a substantial and unjustifiable risk of a high degree of danger. *Id.* at 301. The risk which "the host disregards must be of such a nature and degree that, considering the nature and purpose of host's conduct and the circumstances known to [the actor] its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actors's situation." *Id.* at 301. A simple summary of Arizona's rule in *Hernandez* is that a plaintiff can maintain action for damages against non-licensee who negligently furnishes alcohol to those under the legal drinking age when that act is the proximate cause of injury to a third person (plaintiff). *Hernandez*, 866 P.2d at 1342.

Iowa explicitly held that its Dramshop Act does not pre-empt common-law action against defendant unless particular defendant is one covered by dramshop statute as licensee or permittee; thus, the act does not pre-empt common-law claim against social hosts. *Bauer*, 428 N.W.2d at 660-61. Also, an Iowa statute providing that no person shall "sell, give, or otherwise supply" liquor or beer to person under legal age applied to social hosts supplying alcohol to minor in home. *Id.* at 661.

In an earlier case, the Idaho Supreme Court held that the sale of alcoholic beverages by licensed vendor of such beverages to "actually, apparently and obviously intoxicated" person known to be minor can be the proximate cause of damage resulting to third person from subsequent negligent operation of automobile by such intoxicated minor. *Alegria v. Payonk*, 619 P.2d 135, 139 (Idaho 1980), *superseded by* IDAHO CODE § 23-808 (1995) (providing that "it is not the furnishing of alcoholic beverages that is the proximate cause of injuries inflicted by intoxicated persons" and limiting dram shop and social host liability, with some exceptions, notably where alcohol is knowingly provided to minor). In the *Langle* case, Vermont's Supreme Court explicitly acknowledged that it disagreed with the leading case opposing social host liability in Illinois, *Cunningham v. Brown*, 174 N.E.2d 153 (Ill. 1961). The *Cunningham* court held that a legal duty of care in furnishing alcoholic beverages is not imposed on social host, *absent situation* in which social host furnishes alcoholic beverages to one visibly intoxicated and it is foreseeable to host that guest will thereafter drive automobile, or *in which social host furnishes alcoholic beverages to minor* [emphasis added].

tion of statutes as evidence of negligence (either per se,¹⁵⁶ prima facie,¹⁵⁷ or mere circumstantial evidence¹⁵⁸); and fourth, common

Louisiana went on to hold in *Hopkins* that a minor's purchase of alcohol and subsequent transfer of that alcohol to other minors, who were involved in automobile accident, did not immunize liquor store owners, under dram shop law, from liability for that accident. *Hopkins*, 626 So. 2d at 885. Furthermore, given the volume and variety of alcohol purchased, cold and ready to drink, by minor in a short period of time, accompanied by other minors, the owners could not claim to lack knowledge. *Hopkins*, 626 So. 2d at 885-86. See also LA. REV. STAT. ANN. § 9:2800.1.B (1991 & Supp. 1993) (dram shop law).

156. See *Slade*, 808 P.2d at 408 (holding that violation of statute in Idaho is negligence per se, conclusively establishing duty and breach, leaving just plaintiff's requirement to show proximate cause to establish liability, per IDAHO CODE § 23-808 (1986)); *Koback v. Crook*, 366 N.W.2d 857, 865 (Wis. 1985) (holding that statutory prohibitions against selling to minors also apply to allow finding of negligence per se in respect to furnishing of fermented malt beverages and intoxicating liquors to a minor by social hosts; social host who negligently serves or furnishes intoxicating beverages to minor guest, and intoxicants cause minor to be intoxicated or cause minor's driving ability to be impaired, shall be liable to third persons in proportion that negligence in furnishing beverage to minor was a substantial factor in causing accident or injuries), accord WIS. STAT. § 125.035 (1985); *Congini*, 470 A.2d 515, 518 (Penn. 1983) (holding that host was negligent per se in serving alcohol to point of intoxication to person less than 21 years of age and could be held liable for injuries proximately resulting from underaged's intoxication); *Brattain*, 309 N.E.2d 150, 156 (Ind. Ct. App. 1974) (holding that any person, including social provider, who violates statute prohibiting giving liquor to minor can be liable for negligence; violation of statute is negligence per se).

157. See *Longstreth v. Gensel*, 377 N.W.2d 804, 808-09 (Mich. 1985) (construing the statute, MICH. COMP. LAWS ANN. § 436.33 (West 1978), amended by P.A. 122, § 1 (1995)). The *Longstreth* court stated that the statute which prohibits a person from furnishing liquor to person under 21 years of age was not intended to apply only to licensed commercial sellers, but was intended to govern entire regulation of liquor within Michigan, was penal in nature, and was prima facie evidence of negligence if violated). *Longstreth*, 377 N.W.2d at 808. The dram shop provision of the Liquor Control Act, MICH. COMP. LAWS ANN. § 436.22, was not the exclusive remedy against social hosts for death of a minor allegedly caused by the hosts' furnishing liquor to the minor in violation of § 436.33. *Id.* at 809. This was because the dram shop provision—§ 436.22—applies to licensees, but § 436.33 is not restricted to regulation of licensees. *Id.*

In *Longstreth*, the minor who allegedly received liquor from social hosts of wedding reception and who subsequently died in an automobile accident was the type of person intended to be protected by, and suffered the kind of harm meant to be protected against § 436.33 of the Liquor Control Act. *Longstreth*, 377 N.W.2d at 812-13. This section prohibits furnishing liquor to minors, and thus, survivors of minors could maintain a negligence action against social hosts based its violation. *Id.* at 813. See *infra* note 188 demonstrating that Illinois views violation of statute in the same manner under similar circumstances. A Michigan appellate court has questioned *Longstreth's* validity, since the provision which *Longstreth* construed has been amended. *Arbelius v. Poletti*, 469 N.W.2d 436 (Mich. Ct. App. 1991).

law duty analysis.¹⁵⁹

158. See *Hickingbotham*, 662 A.2d at 302 (holding that in context of action against social host based on reckless service of alcohol, minority of drinking guest is merely factor to be considered by finder of fact when it determines whether host's conduct was reckless, although fact that statute makes it crime to serve alcohol to minors is relevant to such determination); *Hansen v. Friend*, 824 P.2d 483 (Wash. 1992) (holding that statute making a criminal act of "any person" to furnish liquor to a minor imposes duty of care on social hosts not to serve liquor to minors, and that if social host breaches such duty, trier of fact may consider breach as evidence of negligence, rather than as negligence per se); *Nehring v. LaCounte*, 712 P.2d 1329, 1333-35 (Mont. 1985) (holding that violation of statute is evidence of negligence, and that person's consumption of liquor, operation of a vehicle, and collision with third person, are foreseeable intervening acts, which do not relieve the provider of the liquor of liability for his negligence in serving the liquor); *Montgomery v. Orr*, 498 N.Y.S.2d 968, 973 (Sup. Ct. N.Y. 1986) (holding that violation of statute is some evidence of negligence, but not negligence as a matter of law ('per se'), and that minor by reason of his or her immaturity is not "able-bodied" within meaning of general rule at common law excluding liability for procurement of intoxicating liquor for ordinary "able-bodied" people).

When one reads Montana's *Nehring* opinion together with MONT. CODE ANN. § 16-6-305 (1995), one can surmise Montana's social host rule. The relevant text of the statute reads:

(b) [a] parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age. (c) For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic beverage that is sufficient to produce: (i) a blood, breath, or urine alcohol concentration in excess of 0.05; or (ii) substantial or visible mental or physical impairment. (2) Any person is guilty of a misdemeanor who: (a) invites a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for the person; (b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or purchase alcoholic beverages for him; or (c) holds out the person to be 21 years of age or older to the owner of the establishment or his or her employee or employees.

Id. New York's lower court went on to summarize its rule on social hosts in *Montgomery* stating that: an injured third party can bring action in common-law negligence for injuries shown to be causally connected to breach of statute which criminalizes giving alcohol to person under 21 years old. *Montgomery*, 498 N.Y.S.2d at 973-74 (referring to N.Y. PENAL LAW § 260.20(4) (McKinney 1989 & Supp. 1992)).

159. See *Hart v. Ivey*, 420 S.E.2d 174, 177-78 (N.C. 1992) (holding that statute forbidding sales or gifts of alcohol to those under 21 years of age is not "public safety statute" and, therefore, violation of statute is not negligence per se; statute was intended to stop underage persons from drinking alcoholic beverages, not to protect driving public but automobile accident victim stated cognizable common-law negligence claim against social hosts for serving alcoholic beverages to person whom they knew or should have known was under the influence of alcohol and who would shortly thereafter drive automobile; persons of ordinary prudence would have known that injury was reasonably foreseeable result of negligent conduct); *DiOssi v. Maroney*, 548 A.2d 1361, 1367 (Del. 1988) (holding that social hosts' failure to take reasonable steps to

A. Statutory Cause of Action

Some state supreme courts examined their liquor control legislation and found a viable cause of action from the language.¹⁶⁰ Alabama's Supreme Court, for example, joined what it deemed a trend in recent decisions of other jurisdictions by discovering a

safeguard against indulgence by minors in alcoholic beverages and operation of motor vehicles by such minors in impaired condition would be actionable negligence; voluntary consumption by minors not sufficient intervening cause; duty of property owners to business visitor was heightened by known risk of underage drinking on premises); *Misteff v. Wheeler*, 526 N.E.2d 798, 802 (Ohio 1988) (holding that social host has duty to refrain from furnishing alcohol to minor and may be civilly liable for damages to third person injured in automobile accident involving minor if such duty is violated); *McGuiggan v. New England Tel. & Tel. Co.*, 496 N.E.2d 141, 146 (Mass. 1986) (holding that social host who knows or should know that guest is drunk and nonetheless serves or permits guest to take alcoholic drink would be liable to persons injured by that guest's negligent operation of motor vehicle); *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 485 P.2d 18, 22-23 (Or. 1971) (holding that circumstances may exist under which person could be held liable for allowing another to become dangerously intoxicated, i.e. complaint stated cause of action against fraternity for injuries suffered by passenger in accident while automobile was being driven by minor on theory that the fraternity ought to have known that driver, a guest at fraternity's party, was a minor and that he would be driving after the party so that its serving alcohol to the driver was unreasonable, per OR. REV. STAT. § 471.410(2) (19??)); *Kelly v. Gwinnell*, 476 A.2d 1219, 1224 (N.J. 1984) (holding that host who serves liquor to an adult social guest, knowing both that the guest is intoxicated and will thereafter be operating a motor vehicle, is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by the adult guest if the negligence is caused by the intoxication); *Batten v. Bobo*, 528 A.2d 572, 573 (N.J. Super. Ct. 1986) (holding intoxicated minor guest can maintain cause of action against social host who provided cause of intoxication).

The *Kelly* holding is quite broad in scope, and was very controversial. See, e.g., *Harriman v. Smith*, 697 S.W.2d 219 (Mo. Ct. App. 1985) (disagreeing with reasoning); *Kuykendall v. Top Notch Laminates, Inc.*, 520 A.2d 1115 (Md. Ct. App. 1987) (declining to follow); *Bankston v. Brennan*, 507 So. 2d 1385 (Fla. 1987) (same); *Gariup Const. Co., Inc. v. Foster*, 519 N.E.2d 1224 (Ind. 1988) (same); *Overbaugh v. McCutcheon*, 396 S.E.2d 153 (W. Va. 1990) (same); *Graff v. Beard*, 858 S.W.2d 918 (Tex. 1993) (same). The N.J. REV. STAT. § 2A:15-5.7 (1987) limited the broad duty which *Kelly* imposed on social hosts. Now, a social host "could only be liable to intoxicated guests who were minors or third persons who were injured in automobile accident with an intoxicated guest." See *Componile v. Maybee*, 641 A.2d 1143 (N.J. Super. Ct. Law Div. 1994) (construing N.J. REV. STAT. § 2A:15-5.7, which reads: "[n]o social host shall be held liable to a person who has attained the legal age to purchase and consume alcoholic beverages for damages suffered as a result of the social host's negligent provision of alcoholic beverages to that person.")

160. See *supra* note 156 for a list of states who found civil causes of action from the statutory language itself, and summarizing their holdings.

civil action against those who provide alcohol to minors.¹⁶¹ Alabama's dram shop law establishes liability against "any person who shall be selling, giving, or otherwise disposing of to another, contrary to the provision of law, any liquors or beverages, causing the intoxication of such person for all damages actually sustained, as well as exemplary damages."¹⁶² Since furnishing liquor to minors is unlawful in Alabama¹⁶³ – indeed, as it is in all states – plaintiffs suing under the dram shop law have a valid cause of action against social hosts who furnish liquor to minors, explicitly granted in the statutory language.

Maine also adopted an unambiguous statute requiring little construction which provides a cause of action against social hosts.¹⁶⁴ The relevant provisions make *anyone* who negligently or recklessly serves liquor to a minor liable for damages proximately caused by that minor's consumption of the liquor.¹⁶⁵ Such simple, categorical language prevents ambiguity and confusion regarding an available civil remedy or duty owed. Thus, judicial debate over application of this statute should focus on which facts show negligence or recklessness, rather than on confusion as to its scope.

Georgia codified its supreme court holding in *Sutter v. Hutchings*,¹⁶⁶ in which the court recognized social host liability. The court stated that any social host who furnished alcohol to a noticeably intoxicated person under legal drinking age, knowing that such person would soon be driving his car, could be liable in tort to a third person injured by the negligence of the intoxicated driver.¹⁶⁷ In all, four states discovered a civil cause of action under the language of their liquor control statutes. Illinois, however, could not adopt social host liability by direct statutory authority since the language of the Illinois Dram Shop Act addresses only commercial, licensed sellers of alcoholic beverages.¹⁶⁸

B. No Bar or Pre-emption by Dram Shop Laws

Some courts could find no explicit civil remedy authorized by

161. *Martin v. Watts*, 513 So. 2d 958, 963 (Ala. 1987).

162. AL. CODE, § 6-5-71(a) (1975).

163. AL. CODE, § 28-3A-2(18) (1975), *repealed by* Acts 1986, No. 86-212.

164. ME. REV. STAT. ANN. tit. 28-A, § 2501 (West 1994).

165. ME. REV. STAT. ANN. tit. 28-A, §§ 2506(1), 2507(1) (West 1994).

166. 327 S.E.2d 716 (Ga. 1985). *Sutter* held that a social hostess who furnished alcohol to noticeably intoxicated underage person knowing that he would soon be driving could be liable. *Id.* at 719. GA. CODE ANN. § 51-1-40(b) (1988) codified the *Sutter* holding.

167. *Sutter*, 327 S.E.2d at 719.

168. See *supra* note 3 for the relevant text of Illinois' Dram Shop Act, 235 ILCS 5/6-21(a).

their dram shop or liquor control laws, but saw no reason why such laws should bar or pre-empt a negligence action against social hosts.¹⁶⁹ Iowa is a good example. That state supreme court, in *Bauer v. Dann*, held that Iowa's Dram Shop Act does not pre-empt common law action unless the statute specifically covers the particular defendant.¹⁷⁰ Thus, a statute directed toward licensed commercial sellers of alcohol did not cover social hosts.¹⁷¹ Further, the court held that another statute which provides that no person shall "sell, give, or otherwise supply" liquor or beer to any person under legal drinking age *did* apply to social hosts.¹⁷²

Arizona, Idaho, Louisiana, Minnesota, New Hampshire, New Mexico, and Vermont also adopted this position—eight states in all.¹⁷³ Illinois' Dram Shop Act reads much like Iowa's; it addresses licensed commercial sellers of alcohol.¹⁷⁴ Illinois should join these eight states and recognize social host civil liability since the language of Illinois' Dram Shop Act does not bar or pre-empt such an action.

C. Violation of Statute as Evidence of Negligence

Other states view violations of statutes which prohibit furnishing alcohol to minors as evidence of negligence.¹⁷⁵ The relative weight of this evidence varies from mere circumstantial evidence¹⁷⁶ to per se negligence,¹⁷⁷ requiring only a showing of proximate cause to establish liability.¹⁷⁸ This relative weight is simply the weight

169. See *supra* note 158 for a list of a states who found civil causes of action as exceptions from the statutory language (not barred or pre-empted), and summarizing their holdings.

170. *Bauer v. Dann*, 428 N.W.2d 658, 661 (Iowa 1988).

171. *Id.*

172. *Id.*

173. See *supra* note 157 for the citations of the leading cases from each of the eight states which held that dram shop statutes did not bar or pre-empt common law civil action.

174. See *supra* note 3 for the relevant text of Illinois' dram shop statute.

175. These states are: Indiana, Pennsylvania, Wisconsin, Michigan, Montana, New Hampshire, New York, and Washington. See *supra* note 158 for "per se" jurisdiction citations. See *supra* note 159 for Indiana's leading case, holding that violation of statute is prima facie evidence of negligence. See *supra* note 160 for "mere circumstantial evidence" jurisdiction citations.

176. See *supra* note 160 for a discussion of the leading cases from these "mere circumstantial evidence" states.

177. See *supra* note 158 for a discussion of the leading cases from these "per se" states.

178. The three relative weights to which courts attribute evidence of statutory violations when determining negligence actions are: mere evidence, prima facie evidence, and per se evidence. In mere evidence jurisdictions, violation of statute is just one piece of evidence for the trier of fact to consider

that each state assigns to violation of statute in assessing negligence generally.

Three states — Indiana, Pennsylvania, and Wisconsin — view violation of statutes which prohibit furnishing alcohol to minors as per se negligence.¹⁷⁹ In *Brattain v. Hermon.*, the Indiana Appellate Court held that any person, including a social provider, who violates a statute which prohibits giving liquor to minors can be civilly liable for negligence.¹⁸⁰ Pennsylvania's and Wisconsin's rulings were substantially the same.

Michigan's Supreme Court considers violation of its liquor control act prima facie evidence of negligence. In *Longstreth v. Gensel*, the court construed the section which prohibited any person from furnishing liquor to underage persons to apply not only to licensed sellers but to all persons.¹⁸¹ Four states — Montana, New Hampshire, New York, and Washington — view violation of liquor control statutes as mere evidence of negligence, to be considered along with all other evidence.¹⁸² Thus, in a common law action for negligence, a defendant's violation of a statute which prohibits giving alcohol to minors is evidence that such defendant failed to act as a reasonable person of ordinary prudence would have under the same circumstances.

In *Hansen v. Friend*,¹⁸³ the Supreme Court of Washington held that a criminal penalty in a liquor control statute imposes a duty of care on social hosts to refrain from serving alcohol to minors.¹⁸⁴ The statute penalized "any person" who furnished alcohol to minors.¹⁸⁵ New York took the same position in *Montgomery v. Orr*, specifically holding that minors, by reason of their immaturity, are not "able-bodied" within the meaning of the general rule at common law excluding liability for furnishing of intoxicating liquor to able-bodied individuals.¹⁸⁶ Illinois generally views violation of a statute as evidence of negligence.¹⁸⁷ It should cease viewing the

in a negligence action. In a prima facie jurisdiction, this statutory violation would constitute competent evidence of carelessness. In a per se jurisdiction, the plaintiff need only show proximate causation to establish liability.

179. See *supra* note 158 for summaries of the holdings of the leading cases in these three states.

180. 309 N.E.2d 150 (Ind. Ct. App. 1974).

181. See *supra* note 159 for a discussion of the *Longstreth* case.

182. See *supra* note 160 for a discussion of the holdings of the leading cases in these four "mere evidence" states.

183. 824 P.2d 483 (Wash. 1992).

184. *Id.* at 486.

185. *Id.*

186. See *supra* note 160 for a discussion of the *Montgomery* holding.

187. See, e.g., *Kalata v. Anheuser-Busch Companies, Inc.*, 581 N.E.2d 656 (Ill. 1991); *Batteast v. Wyeth Lab., Inc.*, 560 N.E.2d 315 (Ill. 1990); *Barthel v. Illinois Central Gulf R.R.*, 384 N.E.2d 323 (Ill. 1978); *Ney v. Yellow Cab Co.*,

Liquor Control Act as an exception to this rule. Further, Illinois should recognize, as New York explicitly did, that minors are not the same as "able-bodied" adults in most areas of the law, and alcohol-related liability should be treated no differently.

D. Common Law Negligence Action

Finally, some states view the furnishing of alcohol to minors as just another incidence of common law negligence.¹⁸⁸ The reasonable social host of ordinary prudence knows, or should know, that harm is likely to result from serving alcohol to minors, these state supreme courts contend.

Ohio's rule could scarcely be simpler: a social host has a duty to refrain from serving alcohol to a minor and may be civilly liable for damages to third persons injured in an automobile accident involving such minor if that duty is violated.¹⁸⁹ Delaware concurs with this holding, but states the duty in a slightly more affirmative manner: a social host's failure to take reasonable steps to safeguard against indulgence by minors in alcoholic beverages and operation of motor vehicles by such minors in impaired condition is actionable negligence.¹⁹⁰ Two states went much further and extended the scope of liability for social hosts to harm resulting from any guest which the host should reasonably have known was intoxicated.¹⁹¹ This rule puts social hosts on equal footing with dram shops, with the exception that all dram shops will be held to a certain level of expertise, by law, based on their licensing requirements.

New Jersey social hosts who know or should know that the guest is both intoxicated and that he will thereafter be operating a motor vehicle must refrain from serving such guest.¹⁹² Otherwise, the host will be liable for injuries inflicted on a third party as a re-

117 N.E.2d 74 (Ill. 1954); *Martin v. Ortho Pharm.*, 645 N.E.2d 431 (Ill. App. Ct. 1994) *rev'd on other grounds in* 661 N.E.2d 352 (Ill. 1996); *Blankenship v. Peoria Park Dist.*, 647 N.E.2d 287 (Ill. App. Ct. 1994); *Filipetto v. Village of Wilmette*, 627 N.E.2d 60 (Ill. App. Ct. 1993). Each of these courts held that violation of a statute, ordinance, or regulation designed for protection of life or property is prima facie evidence of negligence, and that a party injured by such violation has a cause of action, provided that he or she falls within class intended to be protected, and injury suffered is a direct and proximate result of violation.

188. See *supra* note 161 summarizing the holdings of cases in the six states which view furnishing alcohol to minors as negligence at common law.

189. *Misteff v. Wheeler*, 526 N.E.2d 798, 800 (Ohio 1988).

190. *DiOssi v. Maroney*, 548 A.2d 1361, 1367 (Del. 1988).

191. *McGuiggan v. New England Tel. & Tel. Co.*, 496 N.E.2d 141 (Mass. 1986); *Kelly v. Gwinnell*, 476 A.2d 1219 (N.J. 1984).

192. *Kelly*, 476 A.2d at 1224.

sult of the negligent operation of a motor vehicle if the negligence is caused by the intoxication.¹⁹³ The rule in Massachusetts is similar, but slightly broader yet since the social host need not know that the guest will thereafter be driving. Simply permitting a guest to take a drink when the host knows or should reasonably know that such guest is drunk triggers liability to persons injured by that guest's negligent operation of a motor vehicle.¹⁹⁴

As previously discussed, furnishing alcohol to a minor with the knowledge that such minor will soon operate a motor vehicle is negligence under any conventional test.¹⁹⁵ Thus, under a common law negligence analysis, Illinois should recognize social host liability for the harm resulting from the acts of intoxicated minor guests. Consumption of alcohol does not break the chain of proximate causation from the provider of the alcohol, when the one who consumes it is not deemed responsible for his actions. Minors are one such protected class in Illinois, and should be recognized as such.

These twenty-seven states have traveled four paths of legal analysis to arrive at the same destination: social hosts should be liable for the tortious acts of minor guests when the hosts provide the alcohol which leads to such minors' intoxication. Justice McMorrow followed three of these paths in *Cravens v. Inman*, and demonstrated the validity of this cause of action under Illinois law.¹⁹⁶ The Illinois Supreme Court ignored what a majority of these United States then recognized when it blocked off the paths to justice in *Charles v. Seigfried*.¹⁹⁷

193. *Id.*

194. *McGuiggan*, 496 N.E.2d at 146.

195. See *supra* notes 134-52 and accompanying text for a discussion of the bases for liability under a common law negligence analysis. See *Cravens v. Inman*, 586 N.E.2d 367 (Ill. App. Ct. 1991).

196. *Id.* at 376-80.

197. *Charles v. Seigfried*, 623 N.E.2d 1021, 1024 (Ill. App. Ct. 1993). On October 18, 1995, a Texas appellate court came down with essentially the same holding on essentially the same facts as the court in *Cravens v. Inman*, 586 N.E.2d 367. Texas thus now faces the same situation that Illinois faced in *Charles*. In *Ryan v. Friesenhahn*, 911 S.W.2d 113 (Tex. Ct. App. 1995), a 17 year old girl died in a single car crash as a result of her intoxication. She received her alcohol from a social host at a party. The Texas court held that the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § 106.06 (West 1995), which prohibits furnishing alcohol to minors, applied to social hosts, and was evidence of negligence per se. It also held that a common law negligence action was appropriate under the circumstances, following the same train of argument as this Comment. *Id.*

IV. RECOMMENDATION

Illinois should adopt social host liability upon limited facts. Where a social host knowingly or recklessly serves alcoholic beverages to a minor who as a result becomes intoxicated, that social host should be liable for any harm caused as a result of the minor's intoxication.

General social host liability which parallels that of dram shops is too broad. It relieves adult drinkers of the responsibility for their actions, and requires social hosts to police their parties as professional establishments do. No tenable legal argument, however, supports this total ban against social host liability where minors are served to the point of intoxication and they subsequently cause harm as a result of such intoxication. The choice to drink alcohol is not one Illinois law permits minors to make; thus, it is not their choice, but the choice of the social host. A minor's act of drinking, or even drinking and driving and crashing, does not break the chain of proximate causation because such acts are foreseeable by a reasonable social host.

Social hosts have a duty, at either common law or defined by statute, to refrain from serving alcohol to minors. If a social host breaches that duty and harm results proximately from such breach, that host should be liable.

