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LIABILITY FOR SERVING ALCOHOL TO MINORS

By: George Coppolo, Chief Attorney

You asked what criminal and civil liability adults face for serving alcohol to minors. Our office is not authorized to give legal opinions and this report should not be considered one.

SUMMARY

An adult may be criminally and civilly liable for providing alcohol to a minor. Under CGS § 30-86, a person may be fined up to \$1,500, imprisoned up to 18 months, or both, for giving alcohol to someone under 21 years of age. The prohibition does not apply to deliveries made to the minor by his parent, guardian, or spouse who is at least 21 years old, if the parent, guardian, or spouse accompanies the minor while he possesses the alcohol. (For purposes of this law, a minor is someone under 21 years of age.)

An adult may also be charged with the crime of risk of injury to a minor for serving alcohol to a child under age 16 under certain circumstances (CGS § 53-21). This offense is a class C felony, which carries a prison term of up to 10 years, or a fine of up to \$10,000, or both.

Under case law, an adult who serves alcohol to someone under 21 years of age may be civilly liable in negligence if he or a third party is injured and the court or jury finds a proximate cause relationship between the service of alcohol and the injuries. The person also may be liable for negligence per se, if he violated CGS § 30-86 and the court determines the injured person was among the class of people the statute was intended to protect, and the harm was of the type the statute was intended to address. Finally, depending on the facts at hand, the person may also be liable for injuries caused by his wanton and reckless conduct in furnishing the alcohol.

CRIMINAL LIABILITY

CGS § 30-86 Providing Alcohol to a Minor

The only statutory provision that appears to explicitly deal with such liability is CGS

§ 30-86. The primary focus of this provision is alcohol sales and deliveries by permittees to minors, intoxicated people, and habitual drunkards; the first sentence prohibits permittees from selling or delivering alcohol to minors, intoxicated people, and habitual drunkards. The next sentence, however, specifies that "[a]ny person who sells, ships, delivers or gives any such liquors to such minor, by any means, including, but not limited to, the Internet or any other on-line computer network, except on the order of a practicing physician, shall be fined not more than one thousand five hundred dollars or imprisoned not more than eighteen months, or both." Finally, the provision establishes several exceptions, including for deliveries made to a minor by his parent, guardian, or spouse who is at least 21 years old, if the minor possesses the alcohol while accompanied by the parent, guardian, or spouse.

In *State v. Hughes*, 3 Conn. Cir. 181, certification denied, 152 Conn. 745 (1965) the court concluded that the prohibition applied to non-commercial transactions within a private residential setting. In *Ely v. Murphy*, 207 Conn. 88, 93 (1988), the Connecticut Supreme Court noted that with limited exceptions, the provision makes a social host criminally liable for delivering alcohol to a minor.

CSG § 53-21 Risk of Injury to a Minor

Adults who give alcohol to children under age 16 may also be guilty of the crime of risk of injury to a minor. Someone commits this crime if he either (1) willfully or unlawfully causes or permits any child under 16 years of age to be placed in a situation that his life or limb is endangered, his health is likely to be injured, or his morals are likely to be impaired, or (2) does any act likely to impair the child's health or morals. Thus, this law proscribes two general types of behavior likely to injure physically or to impair the morals of a minor under 16 years of age: (1) deliberate indifference to, acquiescence in, or the creation of situations inimical to the minor's moral or physical welfare, and (2) acts directly perpetrated on the person of the minor and injurious to his moral or physical well-being (*State v. Dennis*, 150 Conn. 245, (1963); *State v. James*, 211 Conn. 555 (1989)).

Our courts have held that an adult who gives alcohol to a minor may be guilty of either or both of these types of behavior (*State v. Ostolaza*, 20 Conn. App. 40; *State v. Mancinone*, 15 Conn. App. 251, cert. denied, 209 Conn. 818, cert denied, 489 US 1017 (1989); *State v. March*, 39 Conn. App. 267, (1995)).

Someone who commits this offense is subject to up to a \$10,000 fine, or a prison term of up to 10 years, or both.

CIVIL LIABILITY

Negligence

The Connecticut Supreme Court has repeatedly refused to recognize a common-law action in negligence against someone who provides, by sale or gift, alcohol to an adult who becomes intoxicated and consequently suffers an injury or injures someone else (see, e.g., *Kowal v. Hofher*, 181 Conn. 355, 357 (1980)). The reason for this rule, according to the Court, is that the proximate cause of the intoxication was not the furnishing of the alcohol, but the donee's consumption of it.

In *Ely v. Murphy*, 207 Conn. 88 (1988), however, the Court ruled that an injured party could bring a cause of action against the server for the negligent service of alcohol to a minor. In that case a parent hosted a high school graduation party, purchasing twelve half kegs of beer for the event. One of the guests became very drunk, staggered into his vehicle, and drove into another guest, fatally injuring him. The Connecticut Supreme Court overruled its prior decisions to the extent they applied to the service of alcohol to minors, reasoning that in view of various legislative determinations "that minors are incompetent to assimilate responsibly the effects of alcohol, their consumption of alcohol does not, as a matter of law, constitute the intervening act necessary to break the chain of proximate causation and does not, as a matter of law, insulate one who provides alcohol to minors from liability for ensuing injury" (id. at 95).

According to the Court, its ruling does not make a social host absolutely liable to the minor served or innocent third parties thereafter injured. Rather, it requires the court or jury, as the case may be, to determine as a factual issue the matter of proximate cause of the injury. A social host is liable to the minor served or to innocent third parties who are injured, if the court or jury finds, as a matter of fact, a proximate cause relationship between the service of alcohol and the damages following the minor's consumption of it (*Bohan v. Last*, 236 Conn. 670, 677 (1996)).

Negligence Per Se

Under state common law, the unexcused violation of a criminal statute, ordinance, or administrative regulation is negligence per se, or negligence as a matter of law. For a statutory violation to be negligence per se, the plaintiff must be within the class of people whom the statute is intended to protect, and the harm must be of the type the statute was intended to prevent (see Douglass B. Wright, John R. Fitzgerald, William L. Ankerman, Connecticut Law of Torts § 38 (1991 rev.)). Thus, the furnishing of alcohol to a minor in violation of CGS § 30-86 might be grounds for a legal claim against the provider based on negligence per se, if the minor injures himself or others as a result of his intoxication.

Reckless and Wanton Conduct

Beginning with its 1980 *Kowal* decision, the Connecticut Supreme Court has recognized a cause of action based on wanton and reckless conduct in furnishing alcohol. Although the Court in *Kowal* refused to recognize a cause of action based on negligence, it reasoned that "one ought to be required, as a matter of policy, to bear a greater responsibility for consequences resulting from his act when his conduct is reckless or wanton than when his conduct is merely negligent." The Court cited in support a Kentucky wrongful death case in which the vendor knew when he sold alcohol to an intoxicated person that he intended to drink all of it without ceasing, and that the vendor could reasonably foresee that death might result. The Kentucky court held that the unlawful sale, rather than the consumption of the alcohol, was the proximate cause of death (id. At 361 [citation omitted]).

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