

Wisconsin's Social Host Law Summary: Sanctioning Adults who Allow Underage Drinking on Property They Control

By Julia Sherman and Sarah Davis, JD, December 2017

Revised by Felice F. Borisy-Rudin, JD, PhD, March 2023

Wisconsin law prohibits adults from providing a location for underage drinking. This document summarizes the provisions of Wisconsin Social Host Law, local implementation, and how community groups can include it in their plans to prevent and reduce underage drinking. Understanding the specifics of Wisconsin's Social Host Law is helpful, since the term "social host" may be used differently in other states.

Wisconsin's Social Host Law makes it illegal to provide a location for underage drinking. Wis. Stat. sec. 125.07(1)(a)3 states:

"No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on property, including any premises, owned and occupied by the adult or occupied by the adult and under the adult's control.

This subdivision applies at a lodging establishment, as defined in s. 106.52 (1) (d), only if the adult has furnished payment or security for lodging.

This subdivision does not apply to alcohol beverages used exclusively as part of a religious service."

It sanctions:

Adults who "knowingly permit" or "fail to take action to prevent" illegal underage drinking

- On property the adult owns and occupies *OR*
- On property "occupied by the adult and under the adult's control," such as rental property
- It applies to lodgings, such as hotel/motel rooms, bed & breakfasts, cabins/cottages or campsites, but only if an adult has paid for the lodging and/or provided a security deposit for the lodging.

Note: to be prosecuted under this law, the person acting as social host would have to be at least 17 years old. Wisconsin law currently allows people who are 17 and older to be prosecuted as adults. Case law has established that this section does not apply to a

person who is 16 years old or younger. The social host law may apply to a person who is 17 years old. However, for a person to be prosecuted under this section, that person must own or control real estate (such as owning or renting a home, business location, or temporary lodging). Usually, but not always, that level of ownership or control would require the person to be at least 18 years old.

It carries serious consequences, that are described in Wis. Stat. sec. 125.07(1)(b):

- The first offense of providing a location for underage drinking is a municipal violation, not a crime, and can carry a forfeiture of up to \$500.
- Separate citations may be issued for multiple violations that occur at the same time, each carrying its own forfeiture, that can add up. However, only one penalty may be imposed for each underage person provided alcohol in the incident. For example, if 6 underage persons were drinking at a party on the social host's property, the social host could receive 6 citations for that party.
- A second offense that occurs 30 months or more after the first offense is also a municipal violation, not a crime, and can carry a forfeiture of up to \$500.
- However, if a person violates any of the provisions of Wis. Stat. sec. 125.07(1) (which includes the Social Host Law, as well as provisions prohibiting providing, procuring, or serving alcohol to underage people who are not accompanied by their parent, guardian, or spouse of legal drinking age, or even intentionally encouraging underage people to violate the Minimum Legal Drinking Age Law) within 30 months of the first offense, subsequent offenses are crimes:
 - A second offense within 30 months after the first offense is a misdemeanor that carries a fine of up to \$500, up to 30 days in jail, or both.
 - A third offense within 30 months after the first offense is a misdemeanor that carries a fine of up to \$1000, up to 90 days in jail, or both.
 - A fourth offense (or more) within 30 months after the first offense is a misdemeanor that carries a fine of up to \$10,000, up to 9 months in jail, or both.

In Wisconsin, underage drinking is not illegal when:

- The alcohol is only used as part of a religious service; or
- The underage person is accompanied by their parent, guardian, or spouse of legal

drinking age. Case law sets a narrow standard for what it means to be “**accompanied**.” To accompany, the parent (or guardian or spouse) must be in the same room as the underage person and directly supervising that person during the drinking and during the time that the alcohol is being digested and metabolized.

Enforcement May Differ Between Jurisdictions:

Even when laws and ordinances are identical, the interpretation may vary between jurisdictions. Some jurisdictions may provide guidance to their law enforcement agencies on how to interpret specific laws and potential violations to meet the circumstances of the community. Interpretations can change over time as situations faced by law enforcement change. And municipal judges have discretion over how to interpret both the law and the facts of the situation if the matter comes to trial.

For example, how municipalities determine whether an adult “**failed to take action to prevent**” underage drinking could differ. Some communities may decide that failing to secure alcohol already on the property is failing to prevent underage drinking, while other municipalities may adopt a different standard. The phrase “**knowingly permit**” is also open to interpretation.

In some parts of Wisconsin, the terms “**occupy**” and “**control**” could suggest the adult must be in the structure where underage drinking occurs, while in rural portions of the state, outbuildings, barns, or even docks could be considered under the adult’s control. The police and local prosecutors may consider these issues when they apply.

How the State Law Works Locally:

Most Wisconsin municipalities have adopted Wisconsin State Statutes, Chapter 125 (the portion of state law regulating alcohol) into their local ordinances, a step permitted so that offenses can be prosecuted as ordinance violations in municipal court. This step has no impact on the legality or illegality of any act—when the state government makes something illegal, it is illegal throughout the state. What changes is whether the violation is charged as a state violation in Circuit (County) Court or as an ordinance violation that can be decided in the local municipal court.

Many—but not all—municipalities adopted Chapter 125 in a way that assures that changes made at the state level are automatically adopted by the municipality. Some municipalities instead adopt each change in state-level alcohol policy only through subsequent ordinances. The municipal clerk knows if this step is necessary in your municipality. In those cities, villages and towns, failure to adopt the new language **does not** make it legal to provide a location for underage drinking; it simply requires any citation to be written as a violation of

state law until the change is adopted locally.

Role for Community Coalitions:

Community coalitions working with local police and schools can support enforcement of this law by making it clear that the community does not condone illegal underage drinking anywhere and looks unfavorably upon adults who allow such drinking in their homes or other property under their control. Successful police enforcement depends on community support; it is essential for community coalitions to be vocal advocates for enforcing the Social Host Law. This is especially important where not all members of the community agree about the need to enforce the Social Host Law. In fact, some parents may be downright hostile to it. For this reason, coalition advocacy can help to encourage enforcement. Coalitions can also educate the local government, police department, and municipal judge about the value of enforcing this law. Some community groups or coalitions have called local alders or trustees to support police efforts to reduce locations where youth can drink illegally.

The message is simple: **it is illegal for any adult to provide a location for underage drinking anywhere in Wisconsin.** This message helps reduce youth access to alcohol—the most effective way to prevent underage drinking.

Resource

Please feel welcome to contact the Wisconsin Alcohol Policy Project if you have any technical questions about the Social Host Law and its implementation.

Wisconsin Alcohol Policy Project

Comprehensive Injury Center, Medical College of Wisconsin
Please contact us for questions, technical assistance, or training.

Maureen Busalacchi, Director, mbusalacchi@mcw.edu

Felice Borisy-Rudin, Policy Analyst, fborisyrudin@mcw.edu

<https://www.mcw.edu/wisapp>

WARNING AND DISCLAIMER: THE WISCONSIN ALCOHOL POLICY PROJECT PROVIDES TECHNICAL ASSISTANCE, TOOLS, AND TRAININGS. THE WISCONSIN ALCOHOL POLICY PROJECT DOES NOT PROVIDE LEGAL ADVICE, LEGAL COUNSEL, OR LEGAL REPRESENTATION. READING THE CONTENT PROVIDED BY THE WISCONSIN ALCOHOL POLICY PROJECT DOES NOT ESTABLISH AN ATTORNEY-CLIENT RELATIONSHIP. CONTACTING THE WISCONSIN ALCOHOL POLICY PROJECT OR PROVIDING IT OR ITS STAFF WITH INFORMATION DOES NOT ESTABLISH AN ATTORNEY-CLIENT RELATIONSHIP. IF YOU NEED LEGAL REPRESENTATION, YOU SHOULD CONSULT WITH YOUR OWN ATTORNEY.

