

## BOATING UNDER THE INFLUENCE Policy Scan

# State Laws on Boating Under the Influence

## Boating Under the Influence as a Public Health Problem


Recreational boating is a popular summer activity throughout the United States. Yet, the combination of boating with alcohol and drugs, or “boating under the influence (BUI)”, has serious public health, legal, and economic ramifications for both boat operators and passengers. According to numerous studies, alcohol use may actually be more hazardous on the water than on dry land. Being out on the water forces the brain to work overtime at adapting the body’s equilibrium. The addition of alcohol, drugs, and other intoxicants challenges the body’s sensory perception abilities. Sun, wind, noise, vibration, and motion can intensify the effects of alcohol and drugs, thereby drastically reducing an operator’s vision, balance, coordination, judgment, and reaction time. Consequently, intoxication increases the risk of accidents and death while boating. Alcohol is the most prominent contributing factor to fatal boating accidents. Moreover, alcohol is the fifth most cited contributing factor for all boating accidents. In nearly 35% of boating accident fatalities, alcohol was the primary contributing factor. In 2017 alone (the most recent year for which such statistic are available), 102 deaths resulted from alcohol related boating accidents, with an additional 10 deaths from other intoxicating drugs. Local, state, and federal law enforcement agencies around the United States made 494 BUI arrests during a three-day weekend in 2018.

## State BUI Laws

All 50 states and the District of Columbia prohibit the operation of a boat while intoxicated. However, state laws differ as to the applicability of BUI laws in certain scenarios, the requirements for intoxication testing, as well as the type of penalties they assess.

## Definition of Vessel

Every year across the country, water enthusiasts engage in boating (both sail and motorized), canoeing, water skiing, jet-skiing, surfboarding, and inner tubing on waterways. By contrast, public roadways only allow use by a small number of different vehicle types. The diversity of vessels using waterways has created a challenge for states to establish what exactly constitutes a vessel that is subject to BUI laws.



Some states have chosen to be extremely inclusive and applied their laws to everything from large charter boats to surfboards. For instance, New Hampshire's BUI law applies not only to motorboats, but also to any type of watercraft used or capable of being used as a means of transportation on water.<sup>1</sup> Other states have a far more lax application of the law. For example, Delaware exempts any vessels moved by human power (e.g., canoes, kayaks, surfboards, and free floating inner tubes).<sup>2</sup>

## Applicability to Alcohol, Drugs, and Other Substances

The definition of "under the influence" also varies by state; many states choose to define it broadly. All 50 states and the District of Columbia prohibit boating while under the influence of alcohol and controlled substances.<sup>3</sup> Notably, as some states have legalized the use of marijuana for medicinal purposes, six states specifically prohibit the operation of a boat while under the influence of marijuana. In addition to alcohol and drugs, some states include other "intoxicating substances" that may impair a person's ability to safely operate a boat, such as general over-the-counter or prescription medications that affect one's physical and mental faculties.<sup>4</sup> A few states specifically prohibit operating a vessel while under the influence of inhalants, such as glue, aerosols, or other toxic vapors.<sup>5</sup> For example, Rhode Island defines intoxication as being under the influence of liquor, drugs, toluene (paint thinners), or any controlled substance.<sup>6</sup>

## Blood Alcohol Content Levels

Blood alcohol content is the percentage of ethanol found in the blood system and has been used to measure intoxication for decades.<sup>7</sup> At a 0.08% BAC, an individual can expect to experience inhibiting effects on his or her reflexes, depth perception, concentration, and reaction time.<sup>8</sup> For this reason, all states in the US have made it an offense to drive a motor vehicle with a 0.08% BAC or above.<sup>9</sup> Nearly all states set the same standard for operating a boat or water vessel, with two notable exceptions; North Dakota and Wyoming set the threshold at 0.10%.<sup>10</sup> However, as of July 2019, Wyoming will join the remaining states in decreasing its BAC level to 0.08%.<sup>11</sup> Moreover, 18 states have an alternative threshold for an operator under the age of 21.<sup>12</sup> For example, Michigan holds an under-21 operator with a BAC of 0.02% or greater in violation of BUI laws.<sup>13</sup> Maine is even stricter, holding an operator under the age of 21 who has any amount of alcohol in their system in violation of the law.<sup>14</sup>

## Testing & Mandatory Consent

In 45 states, any person who operates a boat in the state's jurisdiction is deemed to have consented to testing for alcohol concentration or drug content.<sup>15</sup> In these states, there are penalties for refusing to submit to testing.<sup>16</sup> For example, in New Hampshire, refusal to submit to testing results in suspension of boating privileges for 180 days.<sup>17</sup> A few states do not presume mandatory consent but, for example, in Montana the operator's refusal to submit to testing may be used as evidence against the operator in a criminal proceeding.<sup>18</sup>

There are a variety of tests that can be done to determine a person's level of intoxication. Alabama and Ohio include field testing as a valid assessment of intoxication; Alabama permits field breathalyzer testing, while Ohio permits field sobriety tests.<sup>19</sup> However, boating complicates the validity of field test results because the body struggles to maintain equilibrium while on watercraft, commonly known as "sea legs."<sup>20</sup>

Testing done after an arrest generally includes a chemical test of the operator's blood, breath, urine, or saliva. Testing a person's blood is generally a more invasive test, but it is the most accurate analysis of a person's alcohol concentration and drug content.<sup>21</sup> While most states permit chemical testing of an operator's blood or breath, some states do not expressly provide for urine, saliva, or other bodily substance testing.<sup>22</sup>



## Penalties

### *Base Penalties*

A first BUI offense is generally classed as some form of misdemeanor and includes punishments of a small fine, a short jail sentence, probation, suspended boating privileges, and/or enrollment in a boating safety course. For a first offense in Pennsylvania, a violator will face six months of probation, a fine of \$300, and must enroll in an approved boater safety course.<sup>23</sup> Some states have stricter first offender penalties; Iowa requires jail time for at least 48 hours and submission for substance abuse treatment and evaluation in addition to fines and probation.<sup>24</sup> For operators under 21 years of age, states generally impose lesser penalties. Arkansas, for example, lowers fine amounts and imposes community service combined with both boating and driving safety education courses in lieu of jail time.<sup>25</sup> In order to finance enforcement efforts, some states prescribe additional civil penalties that go directly to funding a law enforcement and boating safety fund, as in Arizona.<sup>26</sup>

### *Penalty Escalation for Repeat Offenders*

Most states have a framework in place to enhance the severity of punishments for repeat offenders. A few state laws expressly note that other alcohol-related offenses, including driving a car under the influence, is a prior offense.<sup>27</sup> These punishments are more severe and often constitute felonies. For instance, in Texas, such a conviction can rise to the level of a third degree felony, punishable by a minimum of 2 years up to 10 years imprisonment, with a fine of up to \$10,000.<sup>28</sup>

### *Penalty Escalation for BAC Levels*

In addition to enhanced penalties for repeat offenders, four jurisdictions increase penalties for offenders with high BACs, indicating an extreme level of impairment.<sup>29</sup> For example, New Mexico classifies any offense with a BAC of 0.16% (twice the legal limit) or higher as an “aggravated” BUI.<sup>30</sup> Aggravated BUIs require at least 48 hours of jail time and a fine of \$750, as opposed to parole or community service levied for non-aggravated BUIs.<sup>31</sup> In New Jersey, a BAC over 0.10% results in a greatly increased fine.<sup>32</sup>

### *Penalty Escalation for Endangering Minors*


Certain states prescribe additional penalties if a minor is aboard. For example, in West Virginia, if a minor aged 16 years or younger is aboard, then the mandatory minimum penalties for BUI increases from one day to two days in jail and from \$100 to \$200 in fines.<sup>33</sup> In New Hampshire, if convicted of a BUI while transporting a person under the age of 16, the operator’s boating privileges will be suspended until he/she submits to a substance use disorder evaluation and completes the prescribed program.<sup>34</sup>

### *Penalty Escalation for Injuries or Death*

All states provide for increased penalties if serious bodily harm or death results from a person operating a boat while under the influence.<sup>35</sup> While Idaho does not increase penalties for prior BUI offenses, if another person is injured in connection with a BUI incident, the operator is guilty of a felony and the penalties increase from up to six months of imprisonment, a \$1,000 fine, and mandatory participation in a safe boating course to up to 5 years of imprisonment, a \$5,000 fine, and revocation of boating privileges for one to two years.<sup>36</sup>

## **Jurisdiction and Enforcement Challenges**

Due to the complex nature of American waterways, territorial limits and jurisdictional boundaries can often be nebulous and ill defined, making enforcement and prosecution of BUI offenses a challenge. Most state BUI statutes describe the proscribed behavior (operating a vessel under the influence) but do not describe where



boats may not be operated under the influence (perhaps intentionally). Some states refer to “waters of this state,” but do not provide a definition. Other states exempt certain privately owned waterways from the definition, and consequently, BUI laws are not applicable. Oklahoma, for example, specifically notes that its BUI laws do not apply to private waterways.<sup>37</sup>

To combat the challenge of ill-defined territorial borders, some states have entered into reciprocity and dual enforcement agreements with neighboring states. Oregon has a compact with neighboring jurisdictions that provides, “[i]f conduct is prohibited by two adjoining party states, courts and law enforcement officers in either state who have jurisdiction over boating offenses committed where waters form a common inter-state boundary have concurrent jurisdiction to arrest, prosecute and try offenders for the prohibited conduct committed anywhere on the boundary water between the two states.”<sup>38</sup>

Laws governing federal waters can pose an additional challenge to BUI enforcement. Federal authorities have jurisdiction over three nautical miles off the coast of a state, nine nautical miles off the coast of Texas and Gulf Coast of Florida, and over waterways that pass through state boundaries.<sup>39</sup> Under 46 U.S.C. § 2302, federal law has its own provision prohibiting the operation of any boat or vessel while under the influence of alcohol (0.08% BAC) or drugs.<sup>40</sup> This applies to any vessel, from canoes to large shipping vessels, owned in the United States and to any foreign-owned vessel on any waters subject to the United States’ jurisdiction. The U.S. Coast Guard enforces federal BUI laws, but to combat potential jurisdictional problems with states and to increase the availability of officers able to detect BUI violators, the U.S. Coast Guard works closely with state law enforcement agencies and regulatory bodies. Federal regulations, as well as 46 U.S.C. §13102 and §13109, encourage cooperation between federal and state law enforcement in enforcing BUI laws and state recreational boating safety programs.<sup>41</sup> Accordingly, there are various memorandums of understanding (MOUs) between state agencies and the U.S. Coast Guard, which permit the U.S. Coast Guard to detect impaired boat operators and administer field sobriety tests where concurrent jurisdiction exists.<sup>42</sup>

In addition to jurisdictional challenges, waterways impose logistical complications for law enforcement. Law enforcement must decide how to handle removing a vessel from the water once a BUI arrest is made. In Virginia, for example, when the operator is arrested the arresting officer may designate another person to operate the boat to a place designated by the arrested operator. If no one aboard is suitable to operate the boat, the arresting officer may “cause the boat to be taken to the nearest appropriate place for safekeeping.”<sup>43</sup>

## **Conclusion**

Boating under the influence can have deadly ramifications for both the boat operator and passengers. The unique nature of waterways presents not only an increased danger for those consuming alcohol, but also creates significant challenges and barriers for enforcement. States have implemented a variety of solutions to these challenges from enforcement compacts with other jurisdictions to advanced penalty schemes designed to punish more severely those who ignore the law. However, boating under the influence still remains a significant issue responsible for thousands of accidents and hundreds of deaths every year. There is a dearth of literature on best practices for reducing BUIs; more research is necessary to fully understand the impact of BUI legislation on this public health problem. Nevertheless, states can strive to increase public awareness through boater education campaigns, as well as ensure that law enforcement has the necessary resources and ability to maintain cooperative relationships with other state and federal agencies.<sup>44</sup>

## SUPPORTERS



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<sup>1</sup> [N.H. REV. STAT. ANN. § 265-A:1 \(2019\).](#)

<sup>2</sup> [DEL. CODE ANN. tit. 23, § 2301 \(2019\).](#)

<sup>3</sup> Douglas Elliott, Gabrielle Shirley, and Kerri Lowrey, *Summary of State Laws Addressing Boating Under the Influence*, The Network for Public Health Law (as of April 30, 2019),

[https://www.networkforphl.org/resources\\_collection/2019/06/27/828/summary\\_of\\_state\\_laws\\_addressing\\_boating\\_under\\_the\\_influence](https://www.networkforphl.org/resources_collection/2019/06/27/828/summary_of_state_laws_addressing_boating_under_the_influence)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> [46 R.I. GEN. LAWS ANN. § 46-22.2-3 \(2019\).](#)

<sup>7</sup> Marowitz, L. (1998). Predicting DUI recidivism: Blood alcohol concentration and driver record factors. *Accident Analysis & Prevention*, 30(4), 545-554.

<sup>8</sup> Centers for Disease Control and Prevention. (2019). BAC Effects: What Are the Effects of Blood Alcohol Concentration (BAC)? *Impaired Driving: Get the Facts*. Retrieved from [http://www.cdc.gov/motorvehiclesafety/impaired\\_driving/impaired-driv\\_factsheet.html](http://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired-driv_factsheet.html)

<sup>9</sup> Douglas Elliott, Gabrielle Shirley, and Kerri Lowrey, *Summary of State Laws Addressing Boating Under the Influence*, The Network for Public Health Law (as of April 30, 2019),

[https://www.networkforphl.org/resources\\_collection/2019/06/27/828/summary\\_of\\_state\\_laws\\_addressing\\_boating\\_under\\_the\\_influence](https://www.networkforphl.org/resources_collection/2019/06/27/828/summary_of_state_laws_addressing_boating_under_the_influence)

<sup>10</sup> [N.D. CENT. CODE ANN. § 20.1-13-07 \(2019\);](#) [WYO. STAT. ANN. § 41-13-206 \(2017\).](#)

<sup>11</sup> 2019 Wyoming Laws Ch. 152 (S.F. 40) available at <https://www.wyoleg.gov/Legislation/2019/SF0040>

<sup>12</sup> Douglas Elliott, Gabrielle Shirley, and Kerri Lowrey, *Summary of State Laws Addressing Boating Under the Influence*, The Network for Public Health Law (as of April 30, 2019),

[https://www.networkforphl.org/resources\\_collection/2019/06/27/828/summary\\_of\\_state\\_laws\\_addressing\\_boating\\_under\\_the\\_influence](https://www.networkforphl.org/resources_collection/2019/06/27/828/summary_of_state_laws_addressing_boating_under_the_influence)

<sup>13</sup> [MICH. COMP. LAWS § 324.80176 \(2019\).](#)

<sup>14</sup> [ME. STAT. tit. 12, § 10701 \(2019\).](#)

<sup>15</sup> Douglas Elliott, Gabrielle Shirley, and Kerri Lowrey, *Summary of State Laws Addressing Boating Under the Influence*, The Network for Public Health Law (as of April 30, 2019),

[https://www.networkforphl.org/resources\\_collection/2019/06/27/828/summary\\_of\\_state\\_laws\\_addressing\\_boating\\_under\\_the\\_influence](https://www.networkforphl.org/resources_collection/2019/06/27/828/summary_of_state_laws_addressing_boating_under_the_influence)

<sup>16</sup> *Id.*

<sup>17</sup> [N.H. REV. STAT. ANN. §265-A:14 \(2019\).](#)

<sup>18</sup> [MONT. CODE ANN. § 23-2-523 \(2017\).](#)

<sup>19</sup> [ALA. CODE § 32-5A-191.3\(b\) \(2019\);](#) [OHIO REV. CODE ANN. §1547.11 \(West 2019\).](#)

<sup>20</sup> Fiorentino, D. D. (2011). Validation of Sobriety Tests for the Marine Environment. *Accident Analysis & Prevention* 43(3), 870-877. Retrieved from

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<sup>21</sup> Vukovic, J., Modun, D., Markovic, D., Sutlovic, D. (2015). Comparison of Breath and Blood Alcohol Concentrations in a Controlled Drinking Study. *Journal of Substance Abuse and Alcoholism* 3(2), 1029-1034. Retrieved from

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<sup>22</sup> Douglas Elliott, Gabrielle Shirley, and Kerri Lowrey, *Summary of State Laws Addressing Boating Under the Influence*, The Network for Public Health Law (as of April 30, 2019),

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<sup>23</sup> [30 PA. CONS. STAT. § 5502 \(2019\).](#)

<sup>24</sup> [IOWA CODE § 462A.14 \(2019\).](#)

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- 26 [ARIZ. REV. STAT. ANN. § 5-395.01 \(2017\).](#)
- 27 [HAW. REV. STAT. § 291E-61 \(2019\); MO. REV. STAT. §577.014 \(2018\); MO. REV. STAT. §577.001 \(2018\); and TEX. PENAL CODE §49.09.](#)
- 28 [TEX. PENAL CODE ANN. §§49.09 and 12.34.](#)
- 29 Douglas Elliott, Gabrielle Shirley, and Kerri Lowrey, *Summary of State Laws Addressing Boating Under the Influence*, The Network for Public Health Law (as of April 30, 2019), [https://www.networkforphl.org/resources\\_collection/2019/06/27/828/summary\\_of\\_state\\_laws\\_addressing\\_boating\\_under\\_the\\_influence](https://www.networkforphl.org/resources_collection/2019/06/27/828/summary_of_state_laws_addressing_boating_under_the_influence)
- 30 [N.M. STAT. ANN. § 66-13-3 \(2017\).](#)
- 31 *Id.*
- 32 [N.J. Stat. Ann. § 12:7-46 \(2018\).](#)
- 33 [W. VA. CODE § 20-7-18b \(2017\).](#)
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