

General Law Enforcement Session

Enforcement of Alcohol and Drug Laws on Natural Resource Users in Georgia

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Abstract: Conservation rangers are increasingly coming into contact with violations involving alcohol and drugs. Arrests for hunting or operating a vessel while under the influence of alcohol and/or drugs have become priorities for enforcement efforts. Arrests are also being made for other alcohol and drug violations on Department-controlled properties such as parks, public fishing areas and wildlife management areas as well as other properties. Increased training to detect these activities has produced very good results.

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The early 1980s saw a change in society's acceptance of driving while under the influence of alcohol and/or drugs. Fueled by the increasing number of accidents as well as the number of injuries and deaths that resulted from these alcohol/drug related incidents, grass root groups such as Mothers Against Drunk Driving began lobbying to enact stricter laws, stiffer penalties, and zero tolerance for impaired drivers.

As awareness of the impaired driver's impact on the public's safety expanded, the Georgia Department of Natural Resources Law Enforcement Section (DNR-LE) began a staff review to determine what impact alcohol had on boating. Several factors were discovered: 1) Only 52 arrests were made during 1985 for operating a vessel while under the influence. 2) Rangers reported observing alcohol aboard a high percentage of vessels while checking for safety equipment. 3) Statistics from the U.S. Coast Guard indicated that alcohol was a major factor in over 75% of all boating accidents and in 69% of all drownings. 4) During 1985, DNR-LE investigated 148 boat accidents that resulted in 32 fatalities and 81 injuries; because only 9 accidents were determined to be alcohol related, it was believed that enforcement officers were not properly identifying impaired operators. The review panel recommended that change was needed in our approach to the impaired operation of vessels.

A panel was established and charged with developing an understanding of what changes DNR-LE would need to implement in its approach to the problem. Three conclusions were reached. First, the existing law prohibiting impaired vessel operation

would need revision. Secondly, improved training in detecting impaired vessel operators would have to be provided to Rangers. And finally, the tolerant attitude of the courts, the public, and the Rangers would have to change.

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The Change in Law

A staff committee was appointed to develop a bill that would revise the existing law. Informal surveys of Rangers indicated that the existing law encountered objections from the judicial system in 2 areas: the lack of an implied consent directed towards vessel operators and the failure to establish impairment as measured by stated blood alcohol concentration (BAC) levels.

Rangers had been enforcing the boating while under the influence (BUI) law as directed by the Boating Safety Act by following the procedures established within the Motor Vehicle Code. The wording within the implied consent warning contained in the Motor Vehicle Code used language that stated that the failure of the operator to submit to testing would result in the subject's driver's license being suspended. The courts ruled that this language, when applied to vessel operators, was coercive.

Utilizing these rulings and other case law, the committee labored to draft a bill with language that would preclude challenges to its various provisions. Subsequent decisions by the courts regarding the Motor Vehicle Code's implied consent have invalidated its wording several times, but the implied consent within the Boating Safety Act has withstood the court's scrutiny.

Levels of impairment established by BAC levels as measured according to methods approved by the Division of Forensic Science of the Georgia Bureau of Investigation were established within the bill. The BAC levels paralleled those in the Motor Vehicle Code and have been updated to reflect the lower BAC levels enacted in later years.

These BAC levels currently state that a BAC of less than 0.05 grams per 100 milliliters of blood or 210 liters of breath carries no presumption of impairment. There is not a presumption of impairment when a BAC reading of 0.05–0.08 grams is obtained but it may be considered with other competent evidence to determine impairment. If the BAC measures 0.08 grams, there is a presumption of intoxication while a BAC of 0.10 is a per se violation of the act, as would be any measured amount of marijuana or other controlled substance in the subject's blood or urine.

The draft was sponsored by the Department in 1986 and enacted by the General Assembly.

The media was blitzed with news articles, interviews, and public service announcements on radio and television. Rangers spoke as often as possible to civic

groups and sportsmen's organizations to educate the public of the dangers associated with impaired operation of vessels. Vessel operators were informed of the law and the possible legal sanctions that could be imposed for violations.

Implementation

Phase One: Initial Training

There was a 3-month window between the law's passage and its effective date. This period of time allowed the Department to develop training in the detection of impaired operators. Procedural policies and management's philosophy regarding the enforcement of the law were explained to the Rangers.

Training was given to all Rangers in the proper use of alco-sensors. Due to their expense, only a limited number of the hand-held tools were distributed to the districts that first year. Additional units have been purchased with the goal of providing a unit to each officer in the future.

Procedural guidelines were explained during the training. It was explained to Rangers that the evidence gathered during the detection process is vital to establish the elements of the violation and that the evidence is observational in nature and therefore is extremely short-lived. Good note-taking during the process would be extremely important to support prosecution of the offense.

A philosophy was promoted that Rangers would have to make numerous arrests on a frequent basis to convince the boating public that they would be caught, sooner or later, if they continued to operate a boat while impaired by alcohol and/or drugs. If the boating public fears getting caught, they will stop operating a vessel while under the influence, at least some of the time. Rangers have to believe that deterrence through fear of arrest really does work. To emphasize the philosophy, advanced training avenues and techniques were researched.

Phase Two: Advanced Training

A recommendation was approved for the adoption of the field sobriety tests endorsed by the U.S. Department of Transportation and the National Highway Traffic Safety Administration. The tests had already faced court scrutiny and had been found acceptable.

Rangers who were to become the department's instructors in the program received the necessary training and began documenting the effectiveness of the techniques. During this period, additional quality control standards were developed in the form of a pre-arrest screening report to be used for procedural guidelines, note-taking, and documenting arrests.

The pre-arrest screening report provides for recording pre-test questions, the field sobriety test results, the implied consent warning, and any additional tests. The reverse side of the report is used to record charges, vessel information and the Ranger's narrative statement.

In 1992, all Rangers received advanced training in field sobriety testing techniques. The tests consisted of horizontal gaze nystagmus (HGN) and psychophysical tests, commonly referred to as divided attention tests, that assess a subject's men-

tal and/or physical impairment. When available, an alco-sensor screening was also administered.

The divided attention tests taught were the walk and turn, 1-leg stand, number count, alphabet recitation, finger dexterity, and hand pat. Even though the walk and turn and 1-leg stand are impractical on the water, they are taught in order to conform training to National Highway Traffic Safety Administration standards. The Department's program is recognized by that agency.

In practice, Rangers routinely use the HGN test as the preliminary screening test. If the Ranger determines that further testing is indicated, the suspect is asked to perform the number count, alphabet recitation, finger dexterity, and hand pat field tests. The final test, utilizing the alco-sensor, is then given. The courtroom experiences of other agencies have shown that defense attorneys will move to suppress the admission of alco-sensor field sobriety tests as evidence claiming they are improperly administered. Failing to observe the suspect and preventing the suspect from eating, drinking, or smoking for at least 15 minutes before testing is the most common error. Since the BAC reading indicated on the alco-sensor is not admissible as evidence in Georgia, only a pass/fail notation is recorded when the BAC surpasses 0.08 grams on the alco-sensor.

Phase Three: Expanded Training

In 1991, Sergeant John Pettis, Macon Law Enforcement District, and Wildlife Technician Harry Luke, B.F. Grant Wildlife Management Area, began to develop a safety program to detect/apprehend violators of the Georgia Controlled Substances Act (VGCSA). By combining the use of various body language observation techniques (neurolinguistics and kenesics) with interviewing practices, officers had arrested subjects for misdemeanor and felony drug violations as well as for hunting while under the influence of drugs. These same techniques were then applied to boat operation and other situations where drugs are suspected to be a factor.

The safety program is simply a technique of continuing an interview after a subject has been checked for appropriate licenses or equipment. Usually, a reasonable suspicion has been formed from plain-view observations of drug-related paraphernalia (rolling papers, pipes, "roaches" in ashtray, etc.) in a vehicle/vessel or on the subject's person (rolling papers in the wallet is common). After concluding the license/equipment inspection and returning all inspected items, the subject is asked if the Ranger "might have a few minutes to talk about safety?" The subject must feel free to leave and end the contact. The Ranger must be able to demonstrate to the court that from the moment the license/equipment was returned that the subject's subsequent contact with the Ranger was voluntary.

Usually, subjects will remain to talk. During the initial conversation, topics such as tree-stand safety, safe firearms practices, or safe boat operations are discussed as the Ranger mentally catalogs body language clues for patterns and truthfulness.

The Ranger will guide the conversation to a discussion of the dangers associated in combining whatever recreational activity is being pursued with drug use. The Ranger must develop a rapport with the individual. Various clues, detected from both verbal "hints" and body language, are developed during the conversation. When the

Ranger feels that sufficient rapport has been developed, the Ranger will simply ask, "Do you have any type of controlled substance on your person or in your vehicle/vessel?" It is amazing how often the subject will say "yes." The Ranger then asks the subject to surrender the controlled substance.

If the subject says no and the Ranger feels certain, based on his observations of physical and non-verbal clues, that controlled substances are present, the Ranger will ask for consent to search the subject and the vehicle/vessel. Rangers have repeatedly found controlled substances in the first place they search.

Rangers are trained to suspect poly drug abuse whenever a suspect has been drinking but does not register a failure on an alco-sensor while exhibiting signs of impairment. Alcohol is often used to mask or "explain" impaired mental/physical coordination. In 1990, Sergeant Howard Hensley, Thompson Law Enforcement District, obtained urine samples from 27 subjects who had been arrested for BUI based on a "breath test." The samples, when analyzed by the crime lab, showed that 75% of the subjects had also used controlled substances.

In addition to training in body language interview techniques, officers must be thoroughly trained in search and seizure laws. A complete understanding of these complicated laws and principles is necessary before attempting this "program" to prevent suppression of evidence and to protect against agency/officer liability.

Phase Four: Refresher Training

In 1994, it was decided that Sergeant Ashley Darley, one of the 2 original instructors in the field sobriety test techniques, would travel to the districts to provide refresher training to all Rangers. In addition to again explaining the test techniques, he also emphasized that the detection of impaired operators consisted of 3 steps: observation of the vessel in motion, personal contact with and observation of the operator, and pre-arrest screening consisting of field sobriety testing.

During this training phase, the pre-arrest form was discussed and several suggestions were incorporated into its design. The major change was to put the area where the Ranger would list what charges were made and the written narrative on the reverse of the form. Too often, Rangers had attempted to write a statement that fit in the previously small amount of space on the form. The larger statement area encouraged Rangers to write a more complete statement that detailed all elements of the violations.

Results

By increasing officer awareness, interview skills, and pre-arrest screening techniques, Rangers have been able to deter alcohol/drug activity among natural resources users with successful interdictions. Activity as measured by arrest figures has increased with each exposure to training.

It is obvious to the Rangers who patrol Lake Worth, located adjacent to the city of Albany, that there is a co-relationship between reducing boat accidents and aggressive alcohol/drug impaired operation enforcement. From July 1991 to June 1995, only 5 boat accidents occurred compared to 117 arrests for BUI. Alcohol was

Table 1. Arrests for alcohol and drug violations by Georgia Rangers from fiscal year 1986 to fiscal year 1997.

| Violation | Arrests | | | | | | | | |
|------------------|---------|------|------|------|------|------|------------------|------|------------------|
| | FY86 | FY90 | FY91 | FY92 | FY93 | FY94 | FY95 | FY96 | FY97 |
| BUI ^a | 85 | 28 | 337 | 404 | 404 | 450 | 351 ^b | 419 | 242 ^c |
| HUI | 14 | 14 | 47 | 62 | 70 | 102 | 137 | 77 | 87 |
| DUI | N/A | 33 | 69 | 70 | 70 | 140 | 160 | 167 | 81 |
| VGCSA | N/A | 129 | 65 | 89 | 157 | 409 | 668 | 663 | 537 |
| Other alcohol | N/A | 238 | 200 | 283 | 260 | 644 | 616 | 712 | 399 |

a. BUI = boating under the influence; HUI = hunting under the influence; DUI = driving under the influence; VGCSA = violations of the Georgia Controlled Substances Act.

b. The flood of 1994 (July–August) had a significant impact on the number of BUIs in FY1995.

c. The 1996 Olympics (July–August) impacted BUI arrests in FY1997.

present in only 1 of the accidents but was not a contributing factor. The Rangers feel that they can either work BUI's or they can investigate boat accidents.

The courts have been supportive, especially for BUI cases. Defense attorneys have been successful in attacking hunting while under the influence (HUI) cases by the same method employed against BUI cases prior to 1986: the lack of a specific implied consent. Legislation was enacted in 1996 to create a hunting while under the influence law that matches the BUI law with respect to implied consent and BAC levels.

From fiscal year 1990 to fiscal year 1995, the Albany L.E. District obtained a 95% conviction rate against BUI offenders (193 convictions, 10 nolle pross/dismissals, 49 outstanding cases). Fines averaged \$422. A conviction rate of 85% occurred for HUI cases (50 convictions, 9 nolle pross/dismissals, 23 outstanding cases). Fines averaged \$400.

Statewide arrests have increased as laws were amended, as Rangers received training and as officers developed experience. The relationship between training and productivity cannot be over-emphasized: good training equals good results.

Arrests increased in 1990 and 1992, years that training was received. The additional drug training “safety program” was instituted in 1993. The Parks Division received alcohol training in 1993 that accounts for many of the “other alcohol” arrests such as possession/consumption of alcohol on state parks, open container violations, and alcohol violations involving minors.

Conclusions

Increased training equals increased enforcement. Increased enforcement equals increased safety for natural resource consumers and the general public. You can work accidents or you can work alcohol/drug enforcement.

Strict enforcement of the laws upon impaired users of the natural resources will increase support from the public for law enforcement and the department. Safety in natural resource environments will possibly attract new customers.

Our mission in law enforcement is to protect and serve; with strict enforcement of alcohol/drug laws against natural resource violators, we do both.