

Law Enforcement

Meeting the Technical Challenges of Enforcing Boating Under the Influence Laws

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Abstract: While national boating accident statistics readily identify the abuse of alcoholic beverages as a contributing factor in a large number of our nation's boating accidents, the challenges of formulating and implementing effective methods of reducing the abuse of alcoholic beverages on our nation's waterways are often overwhelming. One challenge hinges on the fact that the consumption of alcoholic beverages while boating meets with both legal and societal approval. Another is due primarily to our society's perception of what the stereotypical "drunk" person looks, smells, and acts like. The final issue to be discussed, and perhaps the most difficult to overcome from any level of law enforcement, is that associated with the technical aspects of recognizing potential suspects, building a case primarily with non-tangible evidence, and being prepared to effect an arrest based solely on "probable cause" rather than "beyond a reasonable doubt." When these difficulties are combined with the need to prepare in-depth arrest reports and the likelihood of substantial scrutiny in the courtroom, it becomes easy for enforcement officers to develop routines that minimize their effectiveness at enforcing the boating under the influence laws in other than the most severe cases. Boating Under the Influence (BUI) enforcement challenges can be overcome when law enforcement managers recognize that impaired boaters are a problem, understand the technical hurdles associated with identifying and arresting impaired suspects, develop a common sense philosophy that motivates their officers to make the cases, and implement highly-effective boating under the influence training courses for their law enforcement officers.

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Most conservation law enforcement officers made a determined choice for this vocation and gladly sacrificed through the months of required training. We recited our Oath of Office and affirmed our solemn commitment to uphold our duties courageously, faithfully, diligently, and honestly. We stood tall and proud on graduation day, fully convinced that our natural resources would ultimately be better off because of the personal journey we had just begun.

As the months and years progressed, many of us found ourselves questioning if, in fact, we had made any real difference to this point in our career. Our culture had changed around us, generally placing increased demands on our professional lives and re-prioritizing our activities. We had become masters at the art of doing more with

less. Vacant positions remained unfilled (or eliminated altogether), patrol vehicles were expected to last long after the odometer rolled over 100,000 miles, and we still searched for distressed boaters in the very worst of conditions using patrol boats that had performed this task far too many times. Sometimes it seemed that bubble gum and band-aids were all that kept our equipment, and our agency budgets, together.

Regardless of the strains in our professional lives, there remains the foundational desire to see that our natural resources are protected for future generations to enjoy and to make sure that those who recreate in our woods and on our waters can do so safely. This is our mission. This is what drew us to this profession in the first place. This is where our focus should remain.

Officers have perhaps the greatest opportunity to make a difference when they place specific emphasis on the enforcement of the laws prohibiting operating a watercraft while under the influence of alcohol or other drugs. Beverage alcohol is considered to be the most abused drug in the United States (National Highway Traffic Safety Administration 1995). National boating accident statistics repeatedly verify that the abuse of alcoholic beverages is a major contributing factor in reportable boating accidents (U.S. Coast Guard 2001). People who have consumed alcoholic beverages while boating are ten times more likely to be involved in a boating accident than are non-drinking boaters (U.S. Coast Guard 2001). And recreational boating safety remains on the National Transportation Safety Board's (NTSB) "Most Wanted List" (National Transportation Safety Board 2001) since it remains the second leading cause of transportation-related fatalities in the United States. When officers become effective at taking impaired boat operators off of our waterways, they are quite effectively saving lives.

Is Drinking and Boating Really Acceptable?

Trying to change the attitudes of our culture with regards to drinking while boating remains quite a challenge. Our laws allow both the operator and passengers of recreational boats to consume alcoholic beverages while on the water. The alcoholic beverage industry encourages it. Officers report that a cooler full of beer is considered by many boaters to be "required equipment," ranking close to the need for life jackets, a fire extinguisher, and a whistle. These attitudes have led many boaters to consider drinking while boating to be a "right," nearly equal to our inalienable rights to "life, liberty, and the pursuit of happiness," as declared by Congress on July 4, 1776.

Most boat operators do not know, however, the negative aspects of consuming alcoholic beverages while on the water. They do not know of or understand the effects of "boater's fatigue" or "boater's hypnosis." Mere exposure to the wind, wave action, heat, sun, engine noise, and vibration during a day on the water causes fatigue in even a sober operator. When beverage alcohol, a central nervous system depressant, is added into the mix, the result is an enhanced impairment that often comes at a lower blood alcohol concentrations (BAC).

Perhaps even worse is the general lack of knowledge among both the driving and boating public about how much alcohol one can consume and still safely operate a

vessel or vehicle. Very few people have been educated about the physiology of alcohol or understand how it affects their body. Yet our laws expect someone to “know when to say when” and make a conscious decision to have a sober person take the helm if they have had too much. This is to be performed while the person’s judgment, which is processed by one of the first areas of the brain to be affected by alcohol, is impaired.

“Impaired” or “Drunk?”

When you ask people to describe a person who is “drunk,” there are several frequent responses. A “drunk” person is supposed to have bloodshot and watery eyes, a flushed red face, talk as if their tongue is at least twice its normal size, smell like a brewery, and should barely be able to stand up, much less walk in any sort of coordinated fashion. Most people have encountered someone meeting this description and would readily identify this person as “drunk.” We are confident that this person has no business driving a car or operating a boat . . . ever.

The average person’s understanding of the laws pertaining to boating under the influence (BUI) or driving under the influence (DUI) leads them to believe we are referring to a “drunk” person. While our laws reinforce the fact that a “drunk” person may not operate a vehicle or vessel, what most people do not realize is that our laws do not stop by addressing only the stereotypical “drunk” operator. Few individuals grasp the concept of “impairment,” which is the level prohibited in our driving and boating laws. These prohibited impairment levels generally occur in individuals well before the attributes of the stereotypical “drunk” person will be demonstrated.

Consider common organizations and phrases: Mothers Against *Drunk* Driving, Students Against *Drunk* Driving, “Friends Don’t Let Friends Drive *Drunk*,” “Arrest *Drunk* Driving.” While tremendous strides have been made to improve national awareness of the drinking and driving issue, a misconception continues to fester within our culture. We must diligently address the concept of “impairment” through our public awareness and law enforcement efforts if we are to see public attitude elevated to the next level.

Challenges to Law Enforcement

Public attitude toward drinking and boating may never change. Likewise, people may never be able to identify an impaired person as anything but a “drunk.” Perhaps the only piece of this equation that we can impact is how much emphasis we place on addressing the BUI problem. To accomplish this, we must first agree that the impaired operator problem really exists. On far too many occasions we fail to recognize a problem until it becomes so overwhelming or personal that it can no longer be ignored. Officers have been overheard stating that they do not have a BUI problem in their area of concern. Hopefully, it will not take a serious alcohol-involved boating accident to make these officers recognize that no one is immune to this problem.

Once we recognize that BUI is a problem and agree that it cannot be tolerated,

the real challenges begin. A BUI case is likely to be the most technical case an officer will ever make. First, there generally are no traffic lanes in which a boat operator must navigate, so the typical driving patterns we associate with DUI cases (such as weaving from lane to lane) will not be seen. Officers must be taught to look for very subtle signs of impairment with each boat operator stopped and should develop specific techniques for inspecting a vessel. Operators allowed to remain seated in their boat while passengers retrieve safety equipment, for example, may never be given the opportunity to demonstrate their inability to maneuver throughout the boat and retrieve items. Distance and wind direction may make it difficult to identify an odor of alcoholic beverage coming from the operator. Overall, clues of impairment will become much more evident to officers once they begin to employ specific techniques to identify clues.

Conservation officers are most adept at building a case based on personal knowledge and physical evidence. We may watch a light shine from a vehicle, hear a gunshot, then stop the vehicle and find a loaded firearm and an illegally-taken deer. Or we may watch a person fishing and, while checking their catch, find an undersized or out-of-season fish. Most of our cases involve a combination of tangible evidence and personal observation. These “beyond a reasonable doubt” cases are relatively easy to make, and the chance of successful processing through the courts is high. On the other hand, a BUI case generates very little in the form of tangible evidence. An officer cannot base the decision to arrest for BUI on having an illegal fish in hand, but must gather a substantial amount of non-tangible evidence and develop “probable cause.” For those officers who have little experience at making true “probable cause” cases, this may be an uncomfortable case to make.

After making the arrest, officers are faced with the requirement to prepare an in-depth arrest report in order to improve the likelihood of successful prosecution of the offender. BUI arrest reports must be thorough and use the appropriate terms to adequately describe all of the arresting officer’s observations. Omissions or otherwise insufficient information in the arrest report will often convince a defense attorney to carry a BUI case to trial, and the defense questioning in BUI cases tends to be intimidating and quite technical. Officers who enter the courtroom unprepared are likely to leave feeling “beat up” by the defense and may tend to become less proactive toward enforcing the BUI laws.

Overcoming the BUI Challenges

Law enforcement managers tend to set the tone for their subordinate officers. In order for a conservation law enforcement agency to become effective at reducing alcohol-related boating accidents and improving overall safety on their waterways, managers must recognize the BUI problem and take a strong stand against allowing impaired boat operators to continue their destructive behavior. Officers need to know that BUI enforcement is a priority and that they will have the support of all levels of management to address these violations.

Although critical, merely having support from management is not enough to

make an appreciable difference. The skills required to make solid BUI cases require practice, and regular refresher training is critical to ensure that the skills are maintained. Officers should be offered up-to-date training on the enforcement of BUI laws, with the understanding that one-time training will never suffice. Officers need to be adequately prepared to face the technical difficulties surrounding any BUI case, which include; initial identification of the impaired operator, evidence gathering, processing the suspect, preparing the report, preparing for courtroom testimony, and a wide variety of logistical problems.

Even when our officers have the required “head knowledge” to make BUI cases, that training will most likely be in vain without a substantial motivational aspect. We all tend to gravitate toward the tasks that we enjoy doing or have a certain heart-felt desire to do, and BUI enforcement is no different. Most officers who are very proficient at detecting and apprehending impaired operators share patrol areas with other officers who are not likewise proficient. The vast majority of this difference is due to individual motivation to make the cases. A successful BUI training program will provide the appropriate tools of the BUI enforcement trade, while having a strong reliance on techniques that motivate officers to commit to the mission.

With strong encouragement from all supervisory levels within an agency, many officers will accept the challenges of BUI enforcement and find themselves once again fulfilling their need to make a difference in their chosen profession. Some lives will be spared as a result. Some individuals will be able to break their addiction to alcohol. Some families will avoid the tragic loss of a loved one. In the end, each of us who recreate on our nation’s waterways will benefit.

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