

# DEFENDING BOATING WHILE INTOXICATED CASES

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# *Preface*

## DEFENDING BOATING WHILE INTOXICATED CASES

This publication originally appeared as a chapter in the MoBarCLE deskbook, *Missouri DWI Law and Practice*. In an effort to make the information on this important topic more widely available, MoBarCLE is publishing this stand-alone book. This book is part of a new product line of guidebooks. These books will be smaller, more focused, and more easily updated than traditional MoBarCLE deskbooks. Some of these guidebooks will follow deskbooks that cover a broad perspective of a related area of the law; some of these guidebooks will precede those deskbooks. And some of the guidebooks will be conceived and published as stand-alone publications.

The Missouri Bar is grateful to the volunteer author, Erik A. Bergmanis. Mr. Bergmanis received a B.A., 1982, from Drury College and a J.D., 1985, from the University of Missouri-Columbia. He is the managing member of Bergmanis Law Firm, L.L.C., in Camdenton. Mr. Bergmanis is a member of the Board of Governors of The Missouri Bar, a past chair of the Young Lawyers' Section Council, and a member of the Missouri Association of Criminal Defense Lawyers, the Missouri Association of Trial Attorneys, and the American Trial Lawyers Association.

The Missouri Bar thanks all of the volunteer authors and reviewers whose work made this publication possible.

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Jefferson City, Missouri  
July 2011



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## Chapter 1

# INTRODUCTION TO LAWS RELATING TO BOATING WHILE INTOXICATED

- A. (§2) Operating a Vessel While Intoxicated
- B. (§3) Operating a Vessel With Excessive Blood Alcohol Content
- C. (§4) Reckless and Drunken Operation or Use of Boats or Skis

### (§1) Introduction to Laws Relating to Boating While Intoxicated

Missouri has three separate statutes that can be used by the state to prosecute persons who operate vessels and watercraft while under the influence of alcohol or with a blood-alcohol level in excess of 0.08%. It is interesting to note that virtually every statute pertaining to BWI (boating while intoxicated) under [Chapter 306](#), RSMo, has language that it is to be used for the purposes of “[sections 306.111 to 306.119](#).” Accordingly, much of what appears in [Chapter 306](#) does not pertain to violations charged under the older BWI statute, [§ 306.110](#), RSMo 2000, discussed in [§4](#) below.

#### A. (§2) Operating a Vessel While Intoxicated

[Section 306.111](#), RSMo Supp. 2010, is the statute most frequently used by the state in prosecuting alcohol-related boating offenses. It states that “a person commits the crime of operating a vessel while intoxicated if he or she operates a vessel on the Mississippi River, Missouri River or the lakes of this state while in an intoxicated condition.” [Section 306.111.2](#).

“Vessel” is defined in § 306.010(8), RSMo Supp. 2010, as a motor boat or watercraft more than 12 feet in length powered by a sail, machinery, or both. This statute does not appear to include paddle boats, canoes, or sailboats without motors or sails, and it may not include some personal watercraft (e.g., wave runners, sea doos) that are less than 12 feet in length.

Section 306.111.5 states that intoxicated means “under the influence of alcohol, a controlled substance or drug, or any combination thereof.” In this author’s opinion, the words “controlled substance or drug” may be unconstitutionally vague in that they make no distinction between controlled substances that affect a person’s ability to operate machinery and controlled substances that do not affect a person’s ability to operate machinery.

#### **B. (§3) Operating a Vessel With Excessive Blood Alcohol Content**

Section 306.112, RSMo Supp. 2010, is the statute available to charge persons with operating a vessel with an illegal BAC (blood alcohol content)—0.08% or above. Section 306.112.1 states that “[a] person commits the crime of operating a vessel with excessive blood alcohol content if such person operates a vessel on the Mississippi River, Missouri River or the lakes of this state with eight-hundredths of one percent or more by weight of alcohol in such person’s blood.” This statute appears to exclude other rivers and ponds. Section 306.112 is, in essence, the counterpart of and similar to § 577.012, RSMo Supp. 2010, which addresses driving an automobile with an illegal BAC.

#### **C. (§4) Reckless and Drunken Operation or Use of Boats or Skis**

The third statute relating to BWI is § 306.110, RSMo 2000. It is the oldest of the three statutes and is captioned “Reckless and drunken operation or use of boats or skis prohibited.” Section 306.110 was originally enacted in 1959 and has not been repealed. It was last amended in April 1985. Section 306.110.2 states that “[n]o person shall operate any motor boat or watercraft, or manipulate any water skis, surfboard or other waterborne device while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.” This statute does not seem to limit in any way the type of water on which the operation or manipulation occurs. It arguably defines and provides better notice of what type of drugs a person cannot be under the influence of while operating than that given in the newer BWI statute, § 306.111.5, RSMo Supp. 2010.

Section 306.010(10), RSMo Supp. 2010, defines watercraft as “any boat or craft, including a vessel, used or capable of being used as a means of transport on waters.” This definition can be construed to include paddle boats, canoes, and personal watercraft.

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## Chapter 2

# 2

### OBSERVATIONS

#### (§5) Observations

In reviewing a BWI (boating-while-intoxicated) charge, counsel should first determine what statute is being used by the state to prosecute the defendant. The newer and more frequently used [§ 306.111.2](#), RSMo Supp. 2010, appears to be inapplicable to watercraft and vessels being operated on float streams and ponds, and it appears to be inapplicable to operators of paddle boats, canoes without motors, and sailboats that are under 12 feet in length. The older statute, [§ 306.110.2](#), RSMo 2000, has, on occasion, been implemented by the state to address cases in which the alcohol-related offense is alleged to have occurred in a paddle boat, canoe, or personal watercraft and, potentially, could be used when the alcohol-related offense is alleged to have occurred on some body of water other than the Mississippi River, Missouri River, or lakes of Missouri.



## Chapter 3

# PUNISHMENT FOR ALCOHOL-RELATED BOATING VIOLATIONS

# 3

### (§6) Punishment for Alcohol-Related Boating Violations

Section 306.110, RSMo 2000, the old BWI (boating-while-intoxicated) statute, § 306.111, RSMo Supp. 2010, the new BWI statute, and § 306.112, RSMo Supp. 2010, the boating BAC (blood-alcohol-content) statute (0.08% BAC) have the following ranges of punishments:

- A first offense is a class B misdemeanor.
- A offense for a second offense that occurs within five years of a plea of guilty or conviction for a first offense is a class A misdemeanor.
- A third offense is a class D felony.
- A fourth offense is a class C felony.
- A fifth offense is a class B felony.

Before August 28, 2008, a suspended imposition of sentence could not be used for enhancement, and the highest classification of offense for a BWI charge was a class D felony. When § 306.118, RSMo Supp. 2010, was enacted, effective August 28, 2008, the enhancement provisions for BWI offenses for repeat offenders became, in essence, the same as those provisions that apply to driving an automobile while intoxicated under § 577.023, RSMo Supp. 2010.

With the 2008 amendment, repeat BWI and BAC offenders are classified as prior, persistent, aggravated, or chronic offenders. It is important for counsel to carefully read § 306.118 when representing a defendant who is charged with a BWI offense and who has a prior manslaughter or intoxicated-related assault offense in either a boat or an automobile because the prior offense could result in additional enhanced punishment of any

### Chapter 3 PUNISHMENT FOR ALCOHOL-RELATED BOATING VIOLATIONS

BWI or boating BAC offense. It appears that it is now possible to be convicted of a class A felony and receive a life sentence on a BWI charge if a defendant is charged as a chronic offender and has two prior felony convictions of any type, including, but not limited to, nonalcohol-related offenses such as felony bad check or felony failing to pay child support. Each manslaughter or intoxication-related vessel/vehicular assault case enhances a new BWI offense by two levels. For example, it appears that a first BWI offense could be charged as a class D felony if a person had a prior manslaughter or intoxication-related assault case in either a boat or an automobile.



## Chapter 4

# PRESUMPTION OF INTOXICATION

### (§7) Presumption of Intoxication

4

[Section 306.117](#), RSMo Supp. 2010, is like the old version of the driving-while-intoxicated presumption statute, [§ 577.037](#), now RSMo Supp. 2010, that was in effect until its amendment in 1983. [Section 306.117](#) provides that alcohol test results of 0.05% and lower create a presumption that the operator is not intoxicated. Alcohol test results in excess of 0.05% but less than 0.08% create no presumption concerning the operator's level of intoxication, and alcohol test results of 0.08% and above "shall be prima facie evidence that the person was intoxicated at the time the specimen was taken." [Section 306.117.1\(3\)](#). Counsel should note that the statute does not say "at the time of operation."



## Chapter 5

# ADMISSIBILITY OF BLOOD- ALCOHOL CONTENT TEST RESULTS

### (§8) Admissibility of Blood-Alcohol Content Test Results

5

The BWI (boating-while-intoxicated) statute, § 306.114.2, RSMo Supp. 2010, is similar to the driving-while-intoxicated statute, § 577.026.1, RSMo 2000. Both of these statutes require that, for a chemical test to be considered valid and admissible, the test must have been performed according to the methods and devices approved by the Missouri Department of Health. But the admissibility of tests performed under § 306.114.2 only pertain to charges filed under §§ 306.111–306.119, RSMo 2000 and Supp. 2010. Again, offenses charged under the old BWI statute, § 306.110, RSMo 2000, are not covered by this section. Accordingly, it appears that there is no statutory method for placing a breathalyzer or blood test result into evidence when the old BWI statute is used to prosecute an alleged intoxicated operator of a motor boat, watercraft, or waterborne device.



## Chapter 6

# BOATING WHILE INTOXICATED OPERATION

### (§9) Boating While Intoxicated Operation

Section 306.113.1, RSMo 2000 (emphasis added), states that “*operate*” means to physically control the movement of a vessel in motion under mechanical or sail power in water.” This may mean that an individual behind the wheel of a boat that has the ignition turned on, with a hand on the throttle, may not be operating while intoxicated if the vessel is not “in motion.”

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## Chapter 7

# IMPLIED CONSENT AND REFUSAL

- A. (§10) Implied Consent
- B. (§11) Refusal

### A. (§10) Implied Consent

Section 306.116, RSMo Supp. 2010, relating to BWI (boating while intoxicated), is similar to § 577.020, RSMo Supp. 2010, relating to DWI (driving while intoxicated), in that it is the implied consent section of the BWI law. It states that implied consent is “limited to not more than two such tests.” Section 306.116.2. But § 306.116 does not provide 20 minutes to call a lawyer and, accordingly, differs from the DWI statute, § 577.020, in that way. See § 577.041.1, RSMo Supp. 2010 (20-minute rule).



### B. (§11) Refusal

Section 306.119.1, RSMo 2000, is the right-to-refuse statute for BWI. It is similar to the DWI statute, § 577.041, RSMo Supp. 2010. The arresting officer is required to advise the arrestee:

- of the reason for requesting the test;
- of the right to refuse the test; and
- that, if the arrestee refuses, the refusal can be used against the arrestee at a trial.

Section 306.119.

Section 306.119 appears to have no effect on BWI cases filed under § 306.110, RSMo 2000. In other words, it appears, for example, that the operator of a paddle boat, canoe, or sailboat that is less than 12 feet

in length could refuse to submit to a breathalyzer test at the request of a water patrol officer and that there would be no statutory method available to use evidence of that fact against the operator in a court of law.

*State v. Jenkins*, 946 S.W.2d 12 (Mo. App. S.D. 1997), not only requires that a water patrol officer advise the arrestee that the arrestee's failure to submit to testing can be used against the arrestee at a trial but also further reinforces the additional requirements of § 306.119.1 that the officer must state the reasons for the request and the arrestee's right to refuse the test.



## Chapter 8

# PROBABLE CAUSE TO STOP OPERATORS

### (§12) Probable Cause to Stop Operators

Some of the following are the more frequent reasons given by water patrol officers for stopping operators:

- *Wake violations.* There are to be no wakes within the shoreline side of “no-wake” buoys. [Section 306.125.3](#), RSMo Supp. 2010, states that there are to be no wakes within 100 feet of docks and anchored boats.
- *Lighting violations.* [Section 306.100.2](#), RSMo Supp. 2010, states that lights are required between sunset and sunrise.
- *Passenger violations.* [Section 306.126.1](#), RSMo 2000, states that it is illegal for a person to ride on the gunwale (gunnels), bow, seat back, or back of a motor boat unless that person is inboard of adequate guards or railings to prevent the person from being lost overboard.
- *Night speed limit violations.* [Section 306.125.2](#) provides that exceeding the nighttime speed limit of 30 miles per hour between the time of one-half hour after sunset and one hour before sunrise is illegal.



## Chapter 9

# FIELD SOBRIETY TESTING AND REPORTS

- A. (§14) Testing
- B. (§15) Notes
- C. (§16) Portable Breath Test

### (§13) Field Sobriety Testing and Reports

It is often difficult for water patrol officers to comply with the NHTSA (National Highway Traffic Safety Administration) Standards for Sobriety Testing. NHTSA tests are to be conducted outside of the vehicle in an area that is well lighted. This does not work well for the walk-and-turn test or the one-leg stand test when a person has been stopped in a boat on the water. It is often difficult for a water patrol officer to properly conduct the HGN (horizontal gaze nystagmus) test, which requires that a person's head be kept still. Further, the HGN test should be performed with the subject standing in a well-lighted area.

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#### A. (§14) Testing

Water patrol officers typically request an alphabet test, a counting-backwards test, and, occasionally, a finger-dexterity test. See §26 in Chapter 16 for an example of a BWI (boating-while-intoxicated) AIR (Alcohol Influence Report). None of these tests are NHTSA approved. Further, most water patrol officers do not have any training or experience in administering the alphabet test, the counting-backwards test, or the finger-dexterity test on people that have consumed alcohol. Generally, water patrol officers have no ability to testify about the scientific reliability of the alphabet test, the counting-backwards test, or the finger-dexterity test, and generally, water patrol officers have no ability to testify about the percentage of accuracy attributed to the alphabet test, the counting-backwards test, or the finger-dexterity test if administered accurately. Finally, water patrol officers are generally

unable to establish that the HGN test was conducted in accordance with the NHTSA standards (outside of vehicle, in well-lighted area, with the operator's head in a still position) because the tests are typically conducted at night with the boat rocking and moving up and down.

#### **B. (§15) Notes**

Many water patrol officers take notes in one form or another when conducting field sobriety tests. Later, these notes are often transferred to a tape-recorded statement or written statement that is later transcribed by a third person. It is often beneficial for counsel to ask for the notes in the discovery or deposition process to see if they match what ended up in the AIR and to see if the notes even still exist.

#### **C. (§16) Portable Breath Test**

Section 577.021, RSMo Supp. 2010, allows “[a]ny state, county or municipal law enforcement officer who has the power of arrest for violations of section 577.010 or 577.012,” RSMo Supp. 2010, and who suspects a person of operating a motor vehicle in violation of § 577.010 or § 577.012 to use a portable breathalyzer machine to establish probable cause to arrest someone for driving while intoxicated. This statute appears to only apply to automobile violations and does not appear to allow a portable breath test to be used to establish probable cause in a BWI case. It appears that water patrol officers are unable to use the results from portable breath tests as evidence to establish probable cause to request an operator to submit to blood-alcohol testing.

## Chapter 10

# ATTACKING FIELD SOBRIETY TESTS USING MISSOURI WATERCRAFT MANUAL

- A. (§18) Boating Stressors
- B. (§19) Blood-Alcohol-Content Chart
- C. (§20) Attacking Field Sobriety Test Results

### (§17) Attacking Field Sobriety Tests Using Missouri Watercraft Manual

The Handbook of Missouri Boating Laws and Responsibilities (Boat Ed. 2010) (hereinafter referred to as the Handbook) can be obtained for free at license bureaus. A PDF format is available at:

[www.boat-ed.com/mo/handbook/index.htm](http://www.boat-ed.com/mo/handbook/index.htm)

#### A. (§18) Boating Stressors

The 1998 edition of the Missouri Watercraft Manual, A Guide to Safety, published by the Missouri Department of Public Safety, discusses the phenomenon of boater fatigue. Boater fatigue is said to be caused by boating stressors. Boating stressors are described as long-term exposure to wind, sun, glare on the water, and the rocking of the boat. The Missouri Watercraft Manual states, “Everyone is influenced by boater fatigue.” It further states that persons suffering from boater fatigue could very well fail the same coordination and motor skill tests that are part of the standard sobriety testing. *See* §27 in Chapter 16.

#### B. (§19) Blood-Alcohol-Content Chart

The Missouri Watercraft Manual, A Guide to Safety (Mo. Dep’t of Pub. Safety 1998), in use for many years, contains the chart depicted in §28 in Chapter 16. The chart demonstrates that a person weighing 200 pounds

should not be intoxicated after consuming six beers over a two-hour period of time. This chart was published for a number of years by the State of Missouri but was removed from the Handbook in 2002. Many boat operators have had an opportunity over the past years to read and rely on the information provided in the Missouri Watercraft Manual.

### C. (§20) Attacking Field Sobriety Test Results

Use of the Handbook referenced in §17 above and its previous editions can be helpful in attacking the results of field sobriety testing. One method of use would be to ask the water patrol officer if the officer is familiar with the current and past editions of the Handbook, its contents, and, specifically, the sections relating to boating stressors and boater fatigue. Counsel should read the portions of the Handbook that are pertinent and ask the water patrol officer if the officer agrees with what has been published by the state of Missouri in the Handbook.

If counsel wishes to use the NHTSA (National Highway Traffic Safety Administration) Standards for Sobriety Testing to demonstrate that the field sobriety testing was not conducted in accordance with government standards, counsel should have a recent copy of those standards and be familiar with the admissibility of government standards into evidence under *Rodriguez v. Suzuki Motor Corp.*, 996 S.W.2d 47, 55 (Mo. banc 1999). It may be helpful, although *Rodriguez* does not appear to require it, to have certified copies of the current NHTSA standards to overcome any objection as to authenticity. *See id.*

## Chapter 11

# OBJECTION TO ADMISSION OF BLOOD-ALCOHOL TEST RESULTS FOR FAILURE TO COMPLY WITH MISSOURI DEPARTMENT OF HEALTH REGULATIONS

### (§21) Objection to Admission of Blood-Alcohol Test Results for Failure to Comply With Missouri Department of Health Regulations

[Section 306.114](#), RSMo Supp. 2010, which became law in 1993, requires that, before blood-alcohol chemical test results can be admitted into evidence, the test must be performed in accordance with the methods and devices approved by the MDH (Missouri Department of Health). But before 2001, there were no rules and regulations that applied to [Chapter 306](#), RSMo. This was brought to MDH's attention in 2001 as a result of a suppression hearing in *State v. Piatt*, No. CR200-4408M (Camden County Assoc. Ct. 2000), at the Lake of the Ozarks after the test results were suppressed by the trial judge. Thereafter, the rules and regulations pertaining to the administration of breathalyzer tests were amended to include testing. Again, the old boating-while-intoxicated statute, [§ 306.110](#), RSMo 2000, which would affect the operators of canoes, paddle boats, and sailboats less than 12 feet in length, was not included. There still are no rules and regulations promulgated by MDH that specifically apply to cases brought under [§ 306.110](#).





## Chapter 12

# MAINTENANCE REPORTS ON BREATHALYZER MACHINES

### (§22) Maintenance Reports on Breathalyzer Machines

Breathalyzer machines that are used in connection with BWI (boating-while-intoxicated) cases are quite frequently transported from place to place and are housed in a BAT (blood-alcohol-test) van. Every time a breathalyzer machine is moved, maintenance is required to ensure that the machine is functioning properly and to determine whether the machine needs to be recalibrated under Missouri Department of Health regulations under [19 CSR 25-30.011–25-30.080](#). If the defense of a BWI case rests on the admissibility of the BAT results, it would be prudent for counsel to obtain all of the maintenance reports available for the machine in question for two or three months before and two or three months after the date of the arrest.



## Chapter 13

# USE OF EXPERTS

### (§23) Use of Experts

Attorneys defending boating-while-intoxicated cases may want to consider the use of experts in the areas of:

- toxicology;
- breathalyzer machines;
- sobriety testing; and
- boater fatigue.

These experts can be used effectively to challenge breathalyzer test results and field sobriety test results. Toxicologists can be used to estimate blood alcohol content when times, quantity of alcohol consumed, and quality of alcohol consumed can be established, coupled with consumption of food and the weight of the defendant. Experts are available to testify about:

- how breathalyzer machines work, how they should be maintained, and how they fail; and
- how certain individuals with health problems (e.g., hiatal hernias) can be susceptible to higher test results that are not accurate.

Finally, experts are available in the performance of field sobriety testing and boater fatigue that can help when a water patrol officer is expected to testify that a defendant failed field sobriety tests and appeared intoxicated.



## Chapter 14

# MOTIONS TO SUPPRESS AND MOTIONS *IN LIMINE*

### (§24) Motions to Suppress and Motions *in Limine*

A defense attorney preparing to try a BWI (boating-while-intoxicated) case should consider filing motions *in limine* or motions to suppress in the following areas, if warranted:

- A motion *in limine* to prevent the admission of portable breath testing and, specifically, portable breath test results.
- A motion *in limine* to prevent alphabet tests, counting-backwards tests, and finger-dexterity tests because there is no scientific proof that the tests are reliable and, further, the officer has no way to interpret the tests and does not know the percentage of accuracy of the tests. This is generally most effective after establishing these points in a deposition. Defense counsel may also attempt to suppress the alphabet test and counting-backwards test because these tests require verbal responses that violate a defendant's Fifth Amendment privilege against self-incrimination in that the responses are testimonial in nature and generally occur before *Miranda* warnings, *Miranda v. Ariz.*, 384 U.S. 436 (1966), and are designed to elicit incriminating admissions that are not related to routine booking questions. Four cases supporting these arguments are:
  - *Pa. v. Muniz*, 496 U.S. 582 (1990)
  - *Allred v. State*, 622 So.2d 984 (Fla. 1993)
  - *State v. Fish*, 893 P.2d 1023 (Or. 1995)
  - *Commonwealth v. McGrail*, 647 N.E.2d 712 (Mass. 1995)
- A motion *in limine* regarding an illegal stop. There may be no proper basis for a speeding stop if the officer did not properly calibrate the radar gun before use. If there is an issue as to lighting, defense counsel should refer to *State v. Warren*, 78 S.W.3d 797 (Mo. App. S.D. 2002).

- A motion *in limine* to prevent the admission of a breathalyzer test result for failure to provide proof of proper maintenance on the breathalyzer machine.
- A motion *in limine* to prevent mentioning prior arrests, prior charges, or prior pleas of guilty to driving while intoxicated or BWI if the defendant is not going to testify.
- A motion *in limine* to prevent the admission of a breathalyzer test result because the Missouri Department of Health has failed to promulgate rules and regulations relating to chemical tests for BWI in cases filed under § 306.110, RSMo 2000.
- A motion to suppress evidence illegally obtained from sobriety checkpoints if the checkpoint violates the standards set forth in *State v. Damask*, 936 S.W.2d 565, 571 (Mo. banc 1996).
- A motion to suppress the mention of certain locations on a particular river or waterway, such as “Party Cove” at the Lake of the Ozarks, or the identification of specific areas of a stop by a bar on the water.

## Chapter 15

# CONCLUSION

### (§25) Conclusion

BWI (boating-while-intoxicated) cases, although similar to driving-while-intoxicated cases, often pose a unique set of proof problems for the prosecution. There are no lanes of traffic on the water to provide a basis for testimony that the operator was weaving. Most water patrol officers do not have much experience testifying in court. This is probably because most defendants are happy to resolve their cases through negotiated plea agreements that do not affect their driving record, license, or insurance. Conducting meaningful field sobriety testing is, arguably, much more challenging for water patrol officers, and boating stressors can cause a sober person to appear intoxicated. Accordingly, there appear to be more defense strategies available in a BWI case than in the highway counterpart.





## Chapter 16

16

### EXHIBITS

- A. (§26) Alcohol Influence Report
- B. (§27) Boating Stressors
- C. (§28) Blood-Alcohol-Content Chart

### XVI. Exhibits

#### A. (§26) Alcohol Influence Report

MISSOURI DEPARTMENT OF REVENUE  
DRIVER LICENSE BUREAU  
PO BOX 3700  
JEFFERSON CITY, MO 65105-3700  
ALCOHOL INFLUENCE REPORT

1 OF 4  
REPORT NUMBER

REASON FOR INITIAL CONTACT:  BOATING  ACCIDENT  NON-BOATING  OTHER  
ARRESTING OFFICER: Cpl. DSN: 1260 DATE: 9:15 PM CITATION NUMBER:  
LOCATION OF ARREST: Anderson Cove COUNTY: Camden 015 OFFENSE(S) (F/T/OT/E/S): 306.111.2 / BWI

IDENTIFICATION OF ARRESTED PERSON  
DEFENDANT (LAST NAME, FIRST NAME, MI): ADDRESS (STREET, CITY, STATE, ZIP):

X M W: RACE: HEIGHT: 604 WEIGHT: 225 EYES: Blu HAIR: Brn DOB: IDENTIFYING MARKS: None  
SOCIAL SECURITY NUMBER: DRIVERS LICENSE NUMBER: STATE ISSUED: Mo DL STATUS: Valid  
PLACE OF BIRTH: AK ALIAS(ES): n/a VE-ICLE LICENSE NUMBER:  
FIN NUMBER: FBI NUMBER: PHOTOS TAKEN: Yes FINGERPRINTS TAKEN: Yes  
OCCUPATION: Carpenter EMPLOYER / ADDRESS: Self  
OTHER DESCRIPTION: Khaki shorts

VESSEL DESCRIPTION  
V NUMBER: MANUFACTURER: Sea Ray TYPE: Cruiser LENGTH: 23 COLOR: White POWERED BY: Merc / 260 HIN: # ON BOARD:  
OWNER: name ADDRESS: BOAT DISPOSITION: Released to sober passenger  
INVESTIGATOR(S) OR ASSISTING OFFICERS:

OBSERVATION  
BREATH:  ODOR OF ALCOHOLIC LIQUOR:  FAINT  MODERATE  STRONG  
EYES:  NORMAL  WATERY  BLOODSHOT  GLASSY  STARING  
PUPILS:  NORMAL  DILATED  CONTRACTED  POOR REACTION TO LIGHT  
BALANCE:  SURE  FAIR  SWAYING  WOBBLING  SAGGING KNEES  FALLING  OTHER  
WALKING:  SURE  FAIR  SWAYING  STUMBLING  STAGGERING  FALLING  OTHER  
TURNING:  SURE  FAIR  SWAYING  UNCERTAIN  STAGGERING  FALLING  OTHER  
SPEECH:  COHERENT  SLURRED  CONFUSED  INCOHERENT  STUTTERING  MUMBLING  OTHER  
CLOTHING:  NEAT  MUSSED  OTHER  
SOILED BY:  DIRT  URINE  VOMIT  SALIVA  OTHER  
ATTITUDE:  POLITE  EXCITED  HILARIOUS  TALKATIVE  CAREFREE  COOPERATIVE  SLEEPY  
UNUSUAL ACTIONS:  INDIFFERANT  ANTAGONISTIC  COCKY  COMBATIVE  INSULTING  UNCOOP.  OTHER  
ABILITY TO FOLLOW INST.:  POOR  GOOD

SOBRIETY TESTS (Check test(s) administered, if any. Add any pertinent remarks.)  
ALPHABET: DO YOU KNOW THE ALPHABET?  YES  NO  
RECITE ALPHABET BEGINNING WITH F AND ENDING WITH S: TEST 1: A B C D E F G H I J K L M N O P Q R S X X V W X Y Z (PLACE 'X' OVER LETTERS MISSED)  
TEST 2: A B C D E F G H I J K L M N O P Q R S T U V W X Y Z (PLACE 'X' OVER LETTERS MISSED)  
REMARKS: Passed second test  
COUNTING TEST: DO YOU KNOW HOW TO COUNT?  YES  NO  
COUNT BACKWARD BEGINNING WITH 98 AND ENDING WITH 79: PERFORMANCE: I stopped subject at 75  
GAZE NYSTAGMUS: LEFT: No smooth pursuit, Distinct Nystagmus, Onset before 45; RIGHT: I, I, I  
PBT - 107%  
ADDITIONAL TEST: Finger Dexterity  
PERFORMANCE: Miscounted - did not touch finger tips  
INVESTIGATOR OFFICER SIGNATURE AND DSN: RECEIVED CRIMINAL EXHIBIT A

B. (§27) Boating Stressors

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NOTE - Everyone is influenced by "Boater's Fatigue." Always give yourself periodic breaks to minimize its' effects by drinking plenty of liquids and getting out of the sun when possible.

ALCOHOL AND BOATING

Over 700 people die in boating related accidents each year. Over 50% of those fatalities are alcohol related. 90% of the alcohol related fatalities are from drowning.

The effects of alcohol on a person while boating can be devastating. Alcohol affects your balance, vision, judgement and coordination. Research has shown that alcohol, combined with boating stressors, can impair a person three times faster than alcohol consumption on land. The combination of boating stressors (which fatigue the body) and body dehydration, combine with the debilitating effect of alcohol to neutralize learned body functions. Alcohol severely diminishes your ability to react to several different signals from the brain at one time (learned functions). With the first drink, alcohol is absorbed into your bloodstream and your brain functions are suppressed. It starts taking longer for information to be processed by the brain and the longer it takes for what you see, hear, smell and feel to register with any meaning.

Alcohol isn't the sport...Boating is! Limit your alcohol consumption to one drink or less per hour. Always eat before you drink and sip your drinks instead of gulping them. Remember that boating stressors alone can kill. Alcohol only speeds up the process.



fatigue, nausea, dizziness, irregular breathing, mental confusion, unconsciousness, and ultimately death. If you have heart disease, CO may aggravate your condition. Ingestion of barbiturates and alcohol may increase the gas' health effects. Further, smokers will have higher carboxyhemoglobin than non-smokers, and therefore face higher risk from carbon monoxide exposure.

Carbon monoxide (CO) can overcome a person very quickly, and in high concentrations, it can be fatal in just minutes. The most prevalent source of CO is exhaust from engines and generators. These fumes reach boaters either from a leak in the exhaust system, fumes that are sucked back into the boat through intake vents, from exhaust that lingers outside the boat while the boat is moored in a boat house or marina with a motor left running, or from other boats. Because carbon monoxide is not humanly detectable, the installation of CO detectors aboard all recreational boats is recommended. Remember, make sure that your boat is well ventilated.

NOTE - If you suspect CO, get out of the area and into the open fresh air. Remove anyone overcome by the gas immediately and give the person artificial respiration. Prompt action can make the difference between life and death.

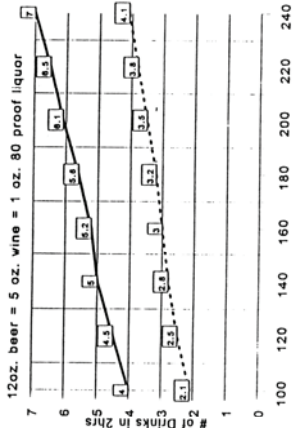
BOATING STRESSORS

The term "boating stressors" commonly refers to the effects of the environment upon the human body. Long term exposure to the wind, sun, glare on the water and the rocking of the boat can have a decidedly adverse effect on a boater. When out on the water, your body is constantly trying to combat the effects of exposure to the environment. In essence, this struggle between your body and the environment leads to "Boater's Fatigue." In advanced stages this fatigue can cause confusion, slowed reflexes, blurred vision and loss of coordination. A person suffering from Boater's Fatigue could very well fail the same coordination and motor skill tests that are a part of standard sobriety testing.

"Boater's Fatigue" can progress into a state referred to as "Boater's Hypnosis." A person suffering from extreme boater's fatigue can appear to be intoxicated. In this condition, the boater loses the ability to divide his/her attention while operating the vessel. Operators become focused on one aspect of boat operation and can fail to see hazards that are literally right in front of them. Experienced boaters will not show the effects of boater's fatigue as quickly as non-frequent boaters. The more you boat the less boater's fatigue seems to affect you. This apparent immunity is nothing more than a good example of the body's ability to "compensate for" or "adjust" to external stressors. Regardless of how well you seem to handle these stressors, please exercise caution.

C. (§28) Blood-Alcohol-Content Chart

Blood Alcohol Content



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the boat motor, and all the gear and fuel that will be in the boat. Equal distribution of items in the boat is also important for the trailer to pull properly.

Before you start your trip, make sure you do a quick inspection of the boat trailer. A "walk around" will usually be adequate in checking the vital points of the trailer. On your check:

- 1) Be sure that the boat is secured properly on the trailer.
- 2) Inspect all lines, tie-downs, and the winch. Tighten as necessary and replace any that show signs of fraying or separation.
- 3) Check that all trailer lights are working properly.
- 4) Check and test the trailer brakes (if so equipped).
- 5) Make sure the trailer hitch and safety chains are fastened.
- 6) Check tire pressure, lug bolts and grease hubs.
- 7) Tilt and secure the motor or lower unit to increase road clearance.

**BOATER'S FLOAT PLAN**

A boater's float plan can help assist in locating you in the event of an emergency. If contacting you is necessary, or you are overdue from your trip, the float plan information will list your expected agenda for the trip. It is a good idea to leave the float plan with a friend or family member. If you are unfamiliar with the area (and alone) you can leave the plan at a local marina. Just make sure you cancel this float plan at the end of your trip, or if anything changes your travel plans or destination.

**BOATING SAFETY COURSES**

The Missouri State Water Patrol offers a Water Safety Course during the winter months. This course targets the secondary and high school education systems to teach boating and water safety to future boaters. The course is recognized by the U.S. Coast Guard and the National Association of State Boating Law Administrators. A certificate of completion is issued to any student making a passing grade on the final exam.

Because of numerous requests by adults for water safety education, the Missouri State Water Patrol, in cooperation with the Boat US foundation provides an on-line boating course at [www.boatus.com](http://www.boatus.com) (also approved by NASBLA and the USCG). Persons without Internet access can receive a "Home Study" course that can be requested by mail. The course is completed and mailed in for grading and a certificate of completion will be mailed back to anyone obtaining a passing grade. The Water Patrol also has a Home Page on the Internet at <http://www.dps.state.mo.us/dps/mswp>. The home page provides statistical information, coordinating activities and the updated watercraft manual.

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NOTE - For every 18 degree increase in air temperature (above room temperature) the body's absorption rate for alcohol doubles.

**THINGS TO CONSIDER**

**TRAILERS**

Your boat trailer is an important part of your boating equipment. All too often the trailer does not receive the attention it deserves and/or demands. Continual maintenance and care are necessary to keep your trailer in proper working condition. When towing a neglected trailer you may be endangering your boat, car and your life.

A trailer must be strong enough to carry the weight that will be placed on it. A load capacity is listed on the trailer and should never be exceeded for any reason. Remember, "load" placed on a trailer refers to the weight of the boat,

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# DEFENDING BOATING WHILE INTOXICATED CASES

**I**  
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