

Marine Law Enforcement Bulletin

2013 Updates to Washington's Boating Safety Laws

SENATE BILL 5437
 WAS SIGNED BY THE
 GOVERNOR ON MAY
 16. IT WILL TAKE
 EFFECT ON JULY 28,
 2013.

THIS LEGISLATION
 STRENGTHENS
 ENFORCEMENT
 PRACTICES IN THREE
 AREAS:

1. BOATING UNDER THE INFLUENCE
2. RENTAL BOAT RESPONSIBILITY
3. RULES OF THE ROAD VIOLATIONS

Boat Operation Under the Influence - [RCW 79A.60.040](#)

1. **Increased penalty:** The penalty for operating a boat under the influence will change from a misdemeanor to a gross misdemeanor with a penalty up to \$5,000 and 1 year in jail.
2. **Breath testing:** Any person who operates a vessel is deemed to have given consent for breath testing for alcohol concentration when a law enforcement officer has reasonable grounds to believe the person is operating a boat while under the influence (BUI).
3. **Test refusal is a civil infraction:** When an officer has reasonable grounds to believe the person is operating a boat under the influence (BUI), the officer may request the operator to submit to a breath test to determine alcohol content levels in their blood. The officer shall warn the operator that if he or she refuses to take the test, they will be issued a Class 1 Civil Infraction with a maximum penalty of \$1,000. (NOTE: The total maximum fine can be up to \$2,050 because RCW 3.62.090 Public safety and education assessment adds 105%.)
4. **Admissibility of test refusal:** The statute makes it clear that a boat operator's refusal to submit to a breath test cannot be used in any subsequent criminal trial. However, the refusal can be considered if the operator contests the civil penalty.
5. **Testing language consistent with DUI:** The statute was updated so that it references the breath testing procedures used in DUI cases which have been thoroughly tested in court.
6. **Marijuana references added:** The statute was updated with marijuana references that mirror what was passed with Initiative 502 - the legal limit for BUI of marijuana is 5.0 ng.
7. **Warrant/Blood testing:** SB 5437 creates implied consent for blood draws however, per a recent U.S. Supreme Court case, *Missouri v. McNeely*, officers must obtain a warrant, based on probable cause, to obtain a blood draw, unless 'exigent circumstances' exist. (See **Special Advisory** below.) 'Exigent circumstances' exist when an officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence.'" *Id.*, at 770 (quoting [Preston v. United States, 376 U. S. 364, 367 \(1964\)](#)).

The Attorney General's Office and WA Association of Prosecuting Attorneys are developing procedures to send to agencies prior to the effective date of July 28, 2013. An officer who has reasonable suspicion to believe a person is operating a vessel under the influence of marijuana or drugs should:

- a. Work with your agency Drug Recognition Expert (DRE) for assistance;
 - b. Always plan to use a search warrant for any blood draw; and
 - c. Work with the DRE and medical facility where blood was drawn to obtain evidence for court.
8. **Updated BUI arrest form:** This form is being updated to reflect the changes in law and will be emailed directly to law enforcement agencies the week of July 21.
 9. **Zero tolerance policy:** State Parks promotes statewide enforcement of BUI using a 'zero tolerance' policy by agencies receiving *FY 2013 Federal Assistance Grant* funding.



SPECIAL ADVISORY: Due to a supreme court decision made on April 17, 2013 (*Missouri vs. McNeely*), warrantless blood draws may be unconstitutional. State Parks, Dept. of Fish and Wildlife, Attorney General's Office, and the Washington Association of Prosecuting Attorneys are developing a standardized procedure and forms to obtain a search warrant for blood draw.

Other changes in the law

Making boat rental laws clear - [RCW 79A.60](#)

- **Making current requirements clear:** The bill did not create any new requirements for boat rentals - it made the current requirements explicit. The law now clearly states every requirement that every rented vessel must meet & includes a reference to each statute. Officers may cite the owner of a rental vessel, the operator of the rented boat, or both for violations of this section. This update to the law is designed to ensure that a rental boat is properly equipped & that a boat rental company does not require the renter to pay separately for legally required safety equipment.

Authority to cite for vessel accidents- [RCW 10.31.100](#)

- **Arrest authority for accidents when the operator violated a boating safety law:** An officer may arrest a boater for a criminal violation of [79A.60 RCW](#) that results in an accident that the officer did not witness if the officer has probable cause to believe the operator committed the violation.
- **Authority to issue citations for accidents when the operator commits an infraction:** An officer can issue an infraction for a violation of [79A.60 RCW](#) & [WAC 352-60](#) that results in an accident (even though violation was not witnessed) if the officer has probable cause to believe the operator committed a violation in connection with the accident.

Talking points about the changes

Boat operation under the influence:

- The legislation did not change the legal limit of .08 for BUI. The legal limit for operating under the influence of alcohol on our waterways and our roadways remains the same.
- Increasing the penalty to a gross misdemeanor is intended to deter boat operation under the influence.
- The legislation includes 'implied consent'. An officer can request a boat operator take a breathalyzer test when there are reasonable grounds to suspect the operator is under the influence. If the operator refuses, they could face a Class 1 Civil penalty and a fine of up to \$2,050.
- Officers with reasonable grounds to believe a boat operator is impaired may administer field sobriety tests when circumstances permit.

Boat rentals:

- All recreational vessels on Washington's waterways are required to carry certain safety equipment. The changes in the law make it clear that all boat rental businesses must provide all the required safety equipment, properly register the vessel when required, & enable the rental operator to meet all recreational boating requirements.
- State Parks is actively seeking contact information for Boat Rental businesses. All Boat Rental business locations submitted to State Parks will receive a letter informing them of changes in the law by June 28.

Authority to cite for vessel accidents- [RCW 10.31.100](#)

- More than 50% of reported accidents in Washington State resulted from violations of vessel rules of the road (WAC 352.60.070). Over the past few years there has been a steady increase in these accidents.
- The previous law did not permit issuing a citation or an arrest unless the officer witnessed the accident.
- The change in the law allows an officer investigating an accident to arrest the operator or issue a citation if a violation resulted in the accident.