

Open Water Drowning Prevention Policy Strategy: Boating Under the Influence (BUI) and Open Water Enforcement

BACKGROUND

- Open water safety, like road safety, is a priority for Washington State.
- Prior to 2013, Washington State was the only state in the western region (comprised of 11 states) to not include implied consent in its boating under the influence (BUI) law.¹ Implied consent allows law enforcement officers to test for alcohol and drugs, and to penalize those who refuse the test.
- Alcohol use plays a significant role in boating-related injuries and fatalities:
 - In 2011, alcohol was a contributing factor in 39% of all U.S. boating-related fatalities and 13% of boating-related injuries.²
 - Alcohol was a contributing factor in almost 30% of boating fatalities and 18% of boating injuries from 2005 to 2011 in Washington State for cases where alcohol use was known.³
 - Alcohol use on the water may also be related to alcohol use off the water. Each year, an average of 45% to 50% of boaters arrested for BUI at the annual Seattle Seafair event have a record of prior alcohol convictions.⁴

STRATEGIES/OBJECTIVES

- Strengthen Washington State's BUI law by including implied consent in the law and increasing penalties.
- Promote water and boating safety training locally and statewide for marine patrol and rangers at state parks.
- Improve marine patrol staffing through boating registration fees. *NOTE: No action was taken on this strategy.*

SUMMARY OF ACTIVITIES

- Worked with policymakers and stakeholders to develop a new BUI law.
- After the new BUI law passed, Seattle Children's, the Washington State Department of Health and the Washington State Parks and Recreation Boating Program developed and performed a policy evaluation to test the implementation of the revised law.⁵

¹ Public Health Law Network. Boating Under the Influence in Western Region States Table 2011: <https://www.networkforphl.org/asset/s8m532/Western-Region-boating-under-the-influence.pdf>

² U.S Coast Guard Recreational Boating Statistics 2011: http://uscgboating.org/statistics/accident_statistics.php

³ Washington BARD Fatality Tracking

⁴ Washington State Patrol Impaired Driving Section

⁵ WA State Parks Boating Program, Boating under the Influence Policy Change Report from the Evaluation Team, December 2016

SUMMARY OF ACTIVITIES CONTINUED

- Determine the short-term impact of the law and set up a system for a long-term impact evaluation. The evaluation identified and described:
 - The adoption and implementation of BUI implied consent and its penalties.
 - Facilitators and barriers to implementing the revised BUI law.
 - The effectiveness of implied consent and its penalties through an initial assessment (pilot test).

IMPACT

- On July 28, 2013, a boating safety omnibus bill became law in Washington State which added implied consent and changed BUI convictions from misdemeanors to gross misdemeanors and a new boating safety law went into effect.

Old BUI Law	New BUI Law (After July 28, 2013)
<ul style="list-style-type: none">• Misdemeanor• Up to \$1,000 fine and/or 90 days in jail• No implied consent• No penalty for refusing voluntary implied consent• Did not include marijuana	<ul style="list-style-type: none">• Gross misdemeanor• Up to \$5,000 fine and/or one year in jail• Implied consent• Civil infraction (up to \$2,050 fine) for refusing breath test• Penalties for marijuana use

POLICY EVALUATION

The following factors may impact the enforcement of the revised BUI law:

- Law enforcement officers' knowledge of the law and level of comfort enforcing the law.
- Varying amounts of resources necessary to implement the law across the state, such as breath test analyzers and adequate marine patrol staffing.
- Perceived importance enforcing the law since some county officials may think BUI is important to enforce while other county officials may not.
- No authority to impound a boat, which may be a deterrent to enforcing the law, although vessel towing is available (NOTE: Boat impoundment legislation is being considered for 2017).
- The length of time officers are taken off the water to enforce the BUI law may be a disincentive.
- Not all officers are trained and certified in BUI detection and prosecuting.

POLICY EVALUATION CONTINUED

- A lack of prosecutions after BUI arrests and taking time to testify at a trial may be disincentives to enforcing the law. These prosecution issues include:
 - Differences in how BUIs are prosecuted across the state
 - Low number of cases that go to court
 - Lack of experience prosecuting and sentencing for BUI
 - BUI convictions pled down to lesser charges
 - BUI penalties may differ across the state and within different jurisdictions
 - Uncertainties about how BUI defense lawyers respond to the law and how they're advertising to potential clients
 - Perceived seriousness of BUI by prosecutors and judges
 - Unforeseen loopholes may exist
 - BUI stays on record as a prior offense and can be used to determine DUI penalty
 - Blood testing warrant now required (electronic warranting)

PARTNERS

- Northwest Marine Trade Association
- Recreational Boating Association of Washington
- U.S. Coast Guard's 13th District
- Washington Association of Sheriffs and Police Chiefs
- Washington Recreation and Park Association
- Washington State Department of Natural Resources
- Washington State Parks and Recreation Boating Program
- Washington State Parks and Recreation Commission

DISSEMINATION

- **Presentations included:**
 - 2015 Washington State Marine Law Enforcement Conference, Spokane, WA: "BUI law evaluation: Interim results and next steps."
 - 2015 Washington State Public Health Association meeting, Yakima WA: "Using boating under the influence policy evaluation to improve health."
 - 2015 Northwest Public Health Institute, Seattle, WA: "Boating under the influence."

LESSONS LEARNED

Several factors played a role in successfully passing the BUI bill, including strong initial support from key partners and the timing of soliciting support from other important partners.

One successful strategy in developing support was holding exploratory meetings with potential key partners — including the Northwest Marine Trade Association, the Recreational Boating Association and the Drowning Prevention Network — to identify common interests before drafting the legislation. These common interests included the reduction of property damage due to intoxicated operators and the ability of police to enforce the laws.

A comparison of Washington State’s pre-existing BUI law with other western states facilitated revision of the penalty and acceptance of the proposed changes.

NEXT STEPS

- Provide more training and resources for prosecutors, including the “Judge’s BUI Bench Book” (in progress) and the “Standardized Seated Field Sobriety Tests.”
- Provide additional training for marine law enforcement, including BUI detection and enforcement training (with refresher trainings).
- Determine the type of evidence and reports prosecutors need.
- Consider the vessel impound law.
- Make refusing breath test admissible in court.
- Suspend boat registration and boater education card based on BUI offenses.
- Improve marine patrol staffing through boating registration fees.

EVALUATION SUPPLEMENT

Logic Model used to guide the work:

POLICY INTENTION	INPUTS	ACTIVITIES	OUTPUTS	OUTCOMES		
				Short-term	Mid-term	Long-term
<p>Deter alcohol use among boat operators (SB 5437) by:</p> <ul style="list-style-type: none"> Increasing BUI penalty from misdemeanor to gross misdemeanor (up to \$5,000 and 1yr in jail) Adding implied consent (operator consent to alcohol breath test) Adding penalty for refusing implied consent (class 1 civil infraction – \$1,000 max penalty, but can be up to \$2,050 per RCW 3.62.090) <p>The law also includes the following:</p> <ul style="list-style-type: none"> Test refusal is not admissible in criminal trial, but can be used if operator contests the civil penalty Breath test procedures language is consistent with DUI Reference to marijuana legal limit Warrant for blood draw <p>These additional features of the law will not be included in this evaluation plan.</p>	<ul style="list-style-type: none"> Funding Staff Policy implementation plan Stakeholder support and engagement Collaboration with multiple agencies Revised materials <ul style="list-style-type: none"> LE training materials BUI arrest form Prosecution manual (Judge’s bench book) Communication materials about law change <ul style="list-style-type: none"> LE Prosecutor / courts LE training (Basic Marine Law Enforcement Academy and BUI detection & arrest trainings) Equipment for breathalyzer test Boater knowledge 	<p>Training / Awareness</p> <ul style="list-style-type: none"> Distribute revised LE training materials Distribute Boating Bench Book to prosecutors and judges Train LE on law change through BUI course Increase # of BUI-certified MLEs Inform LE, courts, and prosecutors about law change <p>Implementation of Law</p> <ul style="list-style-type: none"> Distribute revised BUI arrest form LE has breathalyzer equipment and seated battery test LE use revised BUI arrest form LE give citations for BUI / implied consent refusal Prosecutors bring charges for BUI citations according to law Courts prosecute BUI citations according to law <p>Boater Knowledge</p> <ul style="list-style-type: none"> Survey boaters on awareness of BUI law BUI media campaign 	<p>Training Law enforcement, court, and prosecuting agencies have training and materials</p> <p>Law Enforcement MLEs are BUI-certified and will enforce the law with properly documented BUI case files</p> <p>Courts and Prosecutors Courts and prosecutors are aware of the law and prosecute operators according to the law</p> <p>Boaters Boaters are aware of the BUI law</p> <p>Operators comply with implied consent</p>	<p>Training / Awareness</p> <ul style="list-style-type: none"> All LE trained in the law change All prosecutors receive info on new law <p>Implementation of Law</p> <ul style="list-style-type: none"> Implementation strengths and challenges for law enforcement and prosecutors are identified Recommendations developed to address challenges Data on BUI citations, breathalyzer tests, citations and prosecutions are analyzed to understand how law is being implemented <p>Boaters</p> <ul style="list-style-type: none"> Boaters aware of the BUI law 	<p>Implementation of Law</p> <ul style="list-style-type: none"> Increase # of BUI citations Increase # of breathalyzer tests Decrease # of breathalyzer test refusals <p>Courts and Prosecutors</p> <ul style="list-style-type: none"> Increase % BUI cases prosecuted as a gross misdemeanor Decrease % of cases amended to another charge <p>Surveillance</p> <ul style="list-style-type: none"> Adapt SECTOR (Statewide Electronic Collision & Ticket Online Records) for boating infractions 	<p>Decrease the rate BUI-related boating fatalities. Source: BAIR (Boating Accident Investigation Report)</p> <p>Decrease BUI-related crashes.</p> <p>Decrease # boating-related drownings. Source: BAIR</p>

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