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What You Should Know about Boating While Intoxicated in Ohio

Q: *Do I need a license to operate a boat?*

A: If you are operating a boat for commercial purposes, you would need a license. “Commercial purposes” include transporting persons or cargo for hire, commercial towing operations, etc., and there are extensive laws and regulations to govern those activities, including operator licensing requirements.

If you’re operating a recreational watercraft on Ohio waters, there is no license requirement, nor even a license option, although there are certain educational requirements for persons born on or after January 1, 1982. If you fall under this category, you may not operate a vessel powered with a motor greater than 10 horsepower unless you have successfully completed an approved safe boating course or a proficiency examination. If this law applies to you, you must present your certificate of course or exam completion to a law enforcement officer on demand (or submit proof within 72 hours of the stop that indicates you were in compliance when stopped).

Q: *What are some basic differences between the laws that apply to those who operate a boat while intoxicated, and the OVI laws that apply to those who operate other vehicles while intoxicated?*

A: Because of safety issues that are unique to operating a boat, federal (e.g., Coast Guard) and state watercraft officers may randomly stop your boat without a warrant and perform a safety inspection, even without any suspicion that you’ve violated any law. During the safety inspection, officers may expand the inspection to include a sobriety check, if they have a reasonable suspicion that the vessel operator is intoxicated. However, this authority only extends to Coast Guard and state watercraft officers, and not to county or city marine patrol officers.

Also, there is no automatic license suspension component in the laws that cover boating while intoxicated (BWI). This means that, even if you are found guilty of BWI, you cannot lose a boating license, since none is required for non-commercial uses in Ohio waters. Further, you also will not automatically lose your automobile driving privileges. However, if you refuse to submit to a chemical test to determine if you’re intoxicated, the Ohio Department of Natural Resources may prohibit you from operating or registering a watercraft for 12 months.

If you are successfully prosecuted by the state (after arrest by local marine police patrol, state watercraft officers, etc.), the BWI penalties are very similar to other “driving while intoxicated” penalties.

You will be fined and receive a jail term, with the same court options to attend a certified driver intervention program as a substitute for the minimum three-day jail term. However, if the Coast Guard issues you a notice of violation, your case may be heard in a civil penalty proceeding, without the protections normally afforded to criminal defendants. The maximum penalty you may receive in a federal civil proceeding for BWI is \$5,000. Also, the Coast Guard may transfer you to the custody of state watercraft officers for state prosecution.

Q: *Can't I just take my boat offshore on Lake Erie where there are no other boats, drop my anchor and a fishing line, and have a few beers without bothering anyone?*

A: Sorry, the "this is a free country" argument doesn't hold water. Boating accident statistics show that alcohol and/or drug use are significant contributing factors to accidents, including drowning, collisions between boats and with fixed objects. Furthermore, it can take rescuers a long time to locate and assist boaters in trouble. While there are many safety equipment requirements for the operation of recreational vessels, including life jackets, fire extinguishers, and signaling equipment, this equipment may not help you if you're too impaired to use it.

The BWI law would apply to you if you were the operator of the vessel, that is, the person who is navigating the vessel while it is not secured to the shore or a dock, or at anchor in a designated anchorage area. Merely dropping your anchor outside a navigation channel or offshore on Lake Erie does not place you in a "designated anchorage area." You must look at the chart and navigation aids to determine the location of a designated anchorage area. Even though you may be anchored for an afternoon of fishing, you still may be considered to be operating the vessel for purposes of the law.

The law does not prohibit the consumption of beer while operating a boat; rather, it prohibits the operation of a vessel while under the influence of alcohol, a drug of abuse, or a combination of them. The standards used to determine whether you're under the influence parallel those used to determine whether you're under the influence for driving a motor vehicle on land.

This "Law You Can Use" column was provided by the Ohio State Bar Association. It was prepared by attorney and retired Coast Guard Lieutenant Commander Thomas E. Cafferty, of the Law Office of Thom Cafferty in Toledo. The column offers general information about the law. Seek an attorney's advice before applying this information to a legal problem.