KNOW YOUR LEGAL RIGHTS

**Alcohol on board: smooth sailing or serious legal trouble?**



By Alexis Garuz, Garuz Legal Group LLC, Waukesha

*Know Your Legal Rights* is a bi-monthly column distributed by the State Bar of Wisconsin. It is written by members of the*State Bar of Wisconsin’s Lawyer Referral Service (LRS), which connects Wisconsinites with lawyers throughout the state. Learn more at*[wislaw.org](http://www.wislaw.org/)*.*

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By Atty. Alexis Garuz

For many people, summer in Wisconsin goes hand in hand with being out on the water, and alcohol is often involved. Even though relaxing on a boat with a drink might sound like the perfect way to stay cool, you could find yourself taking the heat for breaking the law if you’re not responsible. Here’s what recreational boaters need to know:

**OWI vs. BWI**

Intoxicated boating laws are very similar to the laws that govern operating a motor vehicle while intoxicated on land. A person is in violation of Wisconsin’s intoxicated boating law if they are operating a motorized boat, and their blood alcohol concentration is at or above 0.08%, or they are under the influence of any drug or combination of alcohol and drugs that makes them incapable of operating a boat safely. If you’re under 21 years old, it is illegal to have any amount of alcohol in your system while operating a boat, just like it would be driving a car.

Commercial boat operators are subject to a 0.04% alcohol concentration limit. Unlike an OWI conviction, a conviction for intoxicated boating will not impact your driver’s license in most circumstances.

**Law Enforcement on the Lookout**

Alcohol, restricted controlled substances, and other drugs can impact a person’s motor skills, reaction time, thinking, and coordination, all of which are essential to operating a boat safely. Department of Natural Resources conservation wardens and other law enforcement agencies regularly patrol the water for boaters impaired by alcohol or drugs. Enforcement ramps up especially during Operation Dry Water, a nationwide annual collaborative law enforcement campaign that takes place over the Fourth of July weekend aimed at curbing intoxicated boating and educating the public on safe boating practices.

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If law enforcement suspects a boat operator of being under the influence of alcohol or drugs, they will typically have the operator perform modified field sobriety tests that can be completed on a boat rather than dry land. By operating a motorized boat on Wisconsin waters, you agree, by implied consent, to provide an evidentiary chemical test of your blood or breath if you are arrested for violating intoxicated boating law. If you refuse to submit to evidentiary chemical testing upon request, you may be subject to additional penalties.

**Potential Consequences**

While a conviction for boating while intoxicated normally won’t result in the loss of driving privileges, the penalties are still significant. Just like in operating a motor vehicle while intoxicated cases, the severity of the penalties for boating while intoxicated (BWI) depend on whether you have previous convictions, and they increase based on the number of those convictions.

Typical first-offense BWI cases are not criminal – meaning they do not carry the possibility of incarceration upon conviction, however, if someone is injured or killed, you will be facing jail or even prison time. That doesn’t include other potential criminal charges based on the seriousness and circumstances of each case. Penalties for BWI include:

* First-offense: Fine of $150 to $300;
* Second-offense (if within 5 years of prior conviction): Fine of $300 to $1,000; Minimum of five days to six months in jail;
* Third-offense (if within 5 years of prior convictions): Fine of $600 to $2,000; Minimum of 30 days to one year in jail;
* BWI causing injury: Fine of $300 to $2,000; Minimum 30 days to one year in jail;
* Homicide by intoxicated use of motor vehicle: Class D felony; Up to 15 years initial confinement and 10 years extended supervision for a total of 25 years prison, and/or up to $100,000 fine.

In addition to fines and/or jail time all BWI convictions require completion of court-ordered alcohol and drug assessment and follow-through with any recommended treatment as well as successful completion of a state-approved boater safety course. If you have a valid boater safety certificate at the time of conviction, the certificate will be revoked, and you will need to retake the course.

Bottom line, whether you’re out fishing, partying at a local “tie-up,” or sightseeing on one of Wisconsin’s 15,000 lakes, the smartest thing you can do is stay sober if you’re operating a boat. It’s just not worth the risk.

*Alexis Garuz is a criminal defense attorney in the Waukesha-based Garuz Legal Group LLC.* *To find an attorney near you, visit*[*wislaw.org*](http://www.wislaw.org/)*.*