

## **Boating While Under the Influence**

By Scott R. Mergenthaler

Operating a vehicle while under the influence of alcohol or drugs (OVI) pertains to the operation of vehicles on land. Similarly, persons are prohibited from operating watercraft while under the influence of alcohol and drugs upon the waterways of this State (BUI). The framework for a BUI charge is similar to an OVI charge as far as prohibited alcohol and drug levels are concerned.

One of the elements of a BUI charge is that the watercraft was being operated. "Operation" requires that the watercraft must be underway and/or in the process of navigation. The definition of operation does not, however, include vessels that are affixed to a dock or to the shore, or to vessels anchored in a designated anchorage area. The type of watercraft that are involved in this offense include motorized boats, sailboats, inflatable manually propelled boats bearing US Coast Guard hull identification numbers, canoes and rowboats. A person could also be charged with BUI while "manipulating" water skis and aquaplanes while under the influence.

Like motorists on land, operators of watercraft are statutorily deemed to consent to testing of their blood, breath or urine. Refusing to submit to such testing results in a mandatory one year prohibition against operating a watercraft and/or registering a vessel. This refusal suspension remains despite the ultimate disposition of the BUI charge. Persons having prior convictions for BUI who refuse testing can be forcibly compelled to give a blood sample without the issuance of a warrant. In such instances, officers are permitted to use whatever reasonable means are available to obtain a blood sample.

A conviction for the offense of BUI is a misdemeanor of the first degree. It carries potential maximum penalties of 6 months in jail and a \$1,000 fine. It also requires a minimum jail sentence of 3 consecutive days or participation in a 72-hour State-certified drug and alcohol program. There is also a minimum mandatory fine of \$150. While penalties are enhanced for subsequent BUI convictions within a 6-year period, there are no increased penalties for high prohibited alcohol levels. Also, a BUI conviction does not result in suspension of a person's driver's license. Rather, the Division of Watercraft may suspend a person's right to operate watercraft or register watercraft for designated periods of time.

For more information about the defense of BUI or OVI charges, please contact Scott R. Mergenthaler at (614) 228-6135.