

CHAPTER 10
BOATING UNDER THE INFLUENCE
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CHAPTER 10

BOATING UNDER THE INFLUENCE

1. GENERAL. Section 655 of the Harbors and Navigation Code (HNC) permits a peace officer to make a warrantless misdemeanor arrest for violations of intoxicated operation of any mechanically propelled vessel. Additionally, probable cause to arrest may be based solely upon information obtained from a commissioned, warrant, or petty officer of the United States Coast Guard (USCG) who directly observed the offense (Section 655[g] HNC). Normally, the local law enforcement agency having jurisdiction will respond to USCG's requests; however, a CHP officer may occasionally be requested to conclude the investigation.

2. POLICY.
 - a. Upon request from the USCG, officers shall investigate all possible violations of Section 655 HNC, subsections (b), (c), (d), (e), and (f) - Boating Under the Influence (BUI) - and shall physically arrest all persons in violation as prescribed by law and in accordance with this manual.

 - b. Upon request from local law enforcement, CHP officers may investigate all possible violations of Section 655 HNC, subsections (b), (c), (d), (e), and (f) in accordance with this manual and local agreements (e.g., memorandum of understanding).

 - c. When an arrest is made, officers shall document the arrest investigation by completing a CHP 202, Driving Under the Influence Arrest-Investigation Report, in accordance with this manual and General Order 100.39, CHP 202, Driving Under the Influence Arrest-Investigation Report, and CHP 216, Arrest-Investigation Report.

 - d. Officers shall request lawfully arrested offenders submit to a chemical test to determine their blood alcohol concentration (BAC) and admonish the offenders as required by Section 655.1 HNC. (Refer to Annex A.)

 - e. Where applicable, departmental policies and procedures relating to driving under the influence (DUI) investigations should be followed (e.g., field sobriety tests, chemical test administration, booking process).

 - f. Pursuant to Section 663.1 HNC, officers may, without a warrant, arrest a person involved in a boating crash when they have reasonable cause to believe the person was operating a vessel while under the influence.

g. Boating under the influence arrest procedures for private person arrests, BUI violations occurring in the presence of the officer, and felony BUI offenses should be managed similarly to a DUI investigation.

3. SCOPE.

a. Section 655 Harbors and Navigation Code. Section 655 HNC prohibits reckless and/or intoxicated operation of a vessel (refer to Annex B for details). For misdemeanor BUI-related violations, Section 655(g) HNC indicates that information (verbal or otherwise) obtained from a commissioned, warrant, or petty officer of the USCG who directly observed the offense may provide the sole basis for establishing the necessary reasonable cause to make an arrest pursuant to Section 836 of the California Penal Code. Therefore, officers may make a BUI arrest when the misdemeanor conduct occurred in the presence of specified members of the USCG.

b. Section 655(f) Harbors and Navigation Code. Section 655(f) HNC is a felony and should be managed similar to a felony DUI arrest. As such, Section 655(f) HNC does not require the direct observation of a USCG officer, but rather may be effected upon sufficient probable cause.

c. Section 655(a) Harbors and Navigation Code. Although Section 655(a) HNC prohibits reckless/negligent vessel operation, a misdemeanor arrest for an offense not occurring in the presence of a peace officer is authorized only for the BUI violations (Section 655 [b], [c], [d], and [e] HNC). Officers may not effect arrest for reckless/negligent vessel operation based upon USCG information (Section 655[a] HNC).

d. Informants/Witnesses. Officers may make a BUI arrest based upon information obtained from a commissioned, warrant, or petty officer of the USCG who directly observed the violation. Third-hand information is not sufficient for an arrest. For instance, a USCG officer relating the observations of another USCG officer and/or information received from a civilian USCG employee would be insufficient. However, since Section 655 HNC provides the information may be verbal or otherwise, a written report from an officer who directly observed the violation would be sufficient.

e. Jurisdiction. Section 655 HNC is applicable to all navigable waters within the jurisdiction of the state, including privately owned and/or artificially created lakes. Notwithstanding, generally the USCG operates upon federally navigable waters (i.e., having access to international waters).

f. Vessels. Section 655 HNC applies to those persons operating a vessel or manipulating water skis, an aquaplane, or a similar device.

(1) Section 651 HNC defines a vessel as including every description of watercraft used or capable of being used as a means of transportation on water not including a seaplane or watercraft on a permanently fixed course.

g. Commercial Versus Recreational Vessel Operators. Section 655 HNC establishes different presumptive BAC for recreation vessel operators and other than recreational (commercial) vessel operators. The presumptive limit for recreational vessel operators is 0.08 percent BAC, while commercial operators have a 0.04 percent BAC limit. Regardless of BAC or vessel type, offenders determined to be under the influence are subject to arrest (refer to Annex B).

h. Boating Crashes. Similar to Section 40300.5(a) of the California Vehicle Code (CVC), Section 663.1 HNC authorizes a warrantless arrest of a person involved in a boating accident where there is reasonable cause to believe the person was operating a vessel while under the influence.

i. Juveniles. It is an infraction for a person under age 21 to operate a motorized vessel or manipulate water skis, etc., with a BAC of 0.01 percent or greater (Section 655.6 HNC). A person under the age of 21 may be found in violation of operating a motorized vessel while under the influence of, or affected by, an alcoholic beverage, regardless of whether a chemical test was made to determine the person's BAC. A chemical test pursuant to Section 655.1 HNC may be requested.

j. Chemical Testing. Section 655.1 HNC provides a framework for BUI chemical testing, similar to the implied consent process found in Section 23612 CVC. Specifically, Section 655.1 HNC allows an officer to request a sample of a person's breath, blood, or urine for chemical testing when they are arrested for a violation of Section 655 HNC. The sample will be used to determine the alcohol and/or drug content of the person's blood. Officers shall advise a person arrested for Section 655 HNC of the provisions of Section 655.1 HNC. Refer to Annex A for additional information regarding the chemical testing admonition.

(1) Scope. Section 655.1 HNC applies to the operation of a mechanically propelled vessel. A mechanically propelled vessel is defined as "any vessel actively propelled by machinery, whether or not the machinery is the principal source of propulsion."

(a) Since rowboats, paddleboats, canoes, etc., are not mechanically propelled, the enhanced penalties of Section 655.1 HNC may not be applicable. This section does not prohibit officers from requesting offenders to submit to a chemical test, rather it restricts the subsequent

evidential use of a refusal. Therefore, officers should request all BUI offenders submit to a chemical test.

(2) Boating Under the Influence Involving Drugs. Section 655.1(e) HNC provides that if the officer reasonably believes the offense involved any drug, or combination of alcohol and/or drugs, and has a clear indication that a blood or urine test will reveal evidence thereof, the officer may request the offender submit to a blood or urine test (in addition to the breath test). The officer shall document in their report the facts and circumstance which led to this decision.

(3) Unconscious Persons. Officers may occasionally encounter a BUI suspect who is unconscious or in a condition rendering them incapable of consenting to a BAC chemical test.

(a) Section 655.1(h) HNC provides that a person who is unconscious or otherwise in a condition rendering them incapable of refusal, may be subjected to chemical testing of their blood, breath, or urine for the purpose of determining the drug or alcohol content of the blood, whether or not the person is advised of their right to refuse chemical testing.

(b) Section 655.1(b)(2)(C) HNC allows an officer to seek a search warrant to obtain a blood sample from a BUI suspect after they have been arrested pursuant to Section 1524(a)(16) of the Penal Code (PC).

(c) Officers shall only take blood from an unconscious BUI offender after they secure a valid search warrant in accordance with local procedures.

(4) Blood Test Exemptions. Hemophiliacs and persons using an anticoagulant under the direction of a licensed physician are exempt from taking a blood test (Section 655.1[i] and [j] HNC).

(5) Offender's Request for Chemical Test. As mandated in Section 655.1 HNC, officers shall provide chemical testing when requested by an offender.

(6) Refusals. A person arrested for Section 655 HNC, Subsections (b), (c), (d), (e), and (f) has the right to refuse chemical testing (Section 655.1[b][2][B] HNC). However, an officer may seek a search warrant to obtain a blood sample for chemical testing pursuant to Section 1524(a)(16) PC. Officers seeking to compel a chemical test using a search warrant shall follow the nonconsensual chemical testing procedures found in Chapter 5, Chemical Tests – Implied Consent Law, of this manual.

k. Out of Service Orders. Pursuant to Section 655.05(a) HNC, an operator of a vessel, other than a recreational vessel, may be placed out of service for a period of 24 hours if that person is found to have a BAC of 0.01 percent or more.

l. Cite and Release. If the Area Standard Operating Procedures (SOP) allow for the cite and release of misdemeanor DUI arrestees, arrests made for misdemeanor BUI offenses may also be cited and released using the same procedures. For additional information related to cite and release, refer to Chapter 4, Driving Under the Influence Policy and Procedures, of this manual.

m. Vessel Disposition.

(1) When making an arrest for BUI, officers should attempt to identify a sober person who can take possession of the vessel with the operator's permission.

(2) In the event a sober party is unavailable to take possession of the vessel, the officer may safely secure the vessel at a dock, if appropriate.

(3) Officers should note the disposition of the vessel in their report.

NOTE: Areas should contact their local sheriff's department and/or other appropriate local allied agency to develop plans for the securement of vessels and the investigation of BUI-related crimes. Areas should consider including these procedures in their SOP.

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ANNEX A

SECTION 655.1 HARBORS AND NAVIGATION CODE ADMONISHMENTS

Persons arrested for any violation of Section 655 HNC, subsection (b), (c), (d), (e), or (f), shall be advised of the following:

- Basic Admonition.

1. A criminal complaint may be filed against you for operating a mechanically propelled vessel, or manipulating any water skis, aquaplane or similar device, under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug.

2. I am requesting you submit to a chemical test to determine the alcohol and/or drug content of your blood.

3. **If Alcohol Only:** You have a choice of taking a blood or breath test. **If Drug or Combination of Alcohol/Drug Influence:** You have a choice of taking a blood, breath, or urine test.

4. If you cannot, or state you cannot, complete the test chosen, you may choose and complete a remaining test.

5. You have the right to refuse chemical testing. However, if you refuse, as an officer, I have the authority to seek a search warrant compelling you to submit a blood sample as described in paragraph (16) of subdivision (a) of Penal Code Section 1524.

6. **When Applicable:** Since you need medical treatment, your choice is limited to _____(type) of test(s), the only test(s) available at _____(name of facility).

7. **When Applicable:** Because I believe you are under the influence of drugs or the combination of drugs and alcohol, you have the choice of submitting to a blood or urine test.

8. You do not have the right to talk to an attorney or have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test.

ANNEX B

HARBORS AND NAVIGATION CODE SECTIONS (*continued*)

- Additional Breath Test Admonition. Additionally, before or after the breath test, the officer shall provide the following admonition:
 1. The breath-testing equipment does not retain any sample of the breath, and no breath sample will be available after the breath test which could be analyzed later by you or any other person.
 2. Because no breath sample is retained, you will be given an opportunity to provide a blood or urine sample that will be retained at no cost to you.
 3. This blood or urine sample may be tested by either party in any criminal prosecution.

ANNEX B

HARBORS AND NAVIGATION CODE SECTIONS

Section 651 Harbors and Navigation Code. Section 651 HNC defines a recreational vessel as a vessel which is being used only for pleasure. A commercial vessel is not defined. Rather, such vessels are categorized (in Section 655[d] HNC) as other than recreational. Accordingly, vessels not being used for pleasure are other than recreational (e.g., commercial fishing boat, tugboat).

Section 655 Harbors and Navigation Code. Section 655 HNC prohibits intoxicated and/or reckless operation of a vessel as follows:

1. Subsection (a). MISDEMEANOR. Prohibits persons from operating any vessel, water skis, aquaplane, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person. Officers may not enforce this section unless the offense occurs in their immediate presence.
2. Subsection (b). MISDEMEANOR. Prohibits persons from operating any vessel, water skis, aquaplane, or similar device while under the influence of an alcoholic beverage, any drug, or the combination of alcohol and/or drugs.
3. Subsection (c). MISDEMEANOR. Prohibits persons from operating any recreational vessel, water skis, aquaplane, or similar device while having a BAC of 0.08 percent or more.
4. Subsection (d). MISDEMEANOR. Prohibits persons from operating any vessel other than a recreational vessel if the person has a BAC of 0.04 percent or more.
5. Subsection (e). MISDEMEANOR. Prohibits persons from operating any vessel, water skis, aquaplane or similar device who is addicted to the use of any drug.
6. Subsection (f). FELONY. Prohibits persons from operating any vessel, water skis, aquaplane, or similar device while under the influence and while so operating, do any act forbidden by law, or neglect any duty imposed by law in the use of the vessel, which act or neglect proximately causes bodily injury to any person other than themselves.
7. Subsection (g). Indicates that information (verbal or otherwise) obtained from a commissioned, warrant, or petty officer of the United States Coast Guard who directly observed the offense may provide the sole basis for establishing the necessary reasonable cause to make an arrest (pursuant to Section 836 PC) for BUI-related violations of Section 655 HNC (subsections [b], [c], [d], and [e]). Notably, the scope of Section 655(g) HNC does not include reckless/negligent vessel operation.

ANNEX B

HARBORS AND NAVIGATION CODE SECTIONS (*continued*)

8. Subsection (j). Identifies presumptive alcohol limits and aligns them with current law provided in Section 23610 CVC.

Section 655.1 Harbors and Navigation Code. Provides that a peace officer, having reasonable cause to believe that any person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage or any drug, or under the combined influence of drugs and/or alcohol, who lawfully arrests the person for any violation of Section 655 (b), (c), (d), (e), or (f) HNC, may request the person submit to chemical testing of their blood, breath, or urine to determine their BAC. Further, this section mandates the officer advise suspects of Section 655.1 HNC provisions (refer to Annex A).

Section 655.6 Harbors and Navigation Code. Provides that it is an infraction for a person under age 21 to operate any motorized vessel or manipulate water skis, an aquaplane, or a similar device if they have a BAC of 0.01 percent or more. A person under age 21 may be found in violation if they were operating a motorized vessel, etc., and under the influence of, or affected by, an alcoholic beverage, regardless of whether a chemical test was made to determine the person's blood-alcohol concentration. Section 655.1 HNC, request for chemical test, is applicable.

Section 663.1 Harbors and Navigation Code. Provides that a peace officer may, without a warrant, arrest a person who is involved in an accident in the waters of this state involving a vessel when the officer has reasonable cause to believe the person had been operating the vessel while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug.