

BUI AFFIDAVIT-BLOOD

CASE# _____

NOW COMES _____, affiant, being duly sworn and on oath, deposes and states that I have probable cause to believe that _____, hereinafter referred to as operator and defendant, committed the offense of Boating While Intoxicated in violation of 23 V.S.A. § 3323. In support of this charge the affiant states:

- 1. I am a law enforcement officer certified by the Vermont Criminal Justice Training Council.
- 2. On _____ at _____ hours, the defendant was operating/attempting to operate/in actual physical control, of a vessel (year/make/model) _____, registration _____ on a public body of water known as _____ in the town/city of _____ in the county of _____ in the State of Vermont.

- 3. A. I made the following observations of defendant's operation that resulted in my making this stop:
(IF ADDITIONAL SPACE IS NEEDED, ATTACH A DESCRIPTION OF THE FACTS AS PAGE 1-A)

OR B. Although I did not observe operation in this case, I was able to determine that the defendant operated said vessel at _____ hours based upon the evidence described on PAGE 1-A of this affidavit. (If officer did **NOT** observe the operation, submit with case statements from witnesses establishing that this accused operated the vessel, the approximate TIME, and the public body of water.)

4. OBSERVATION OF OPERATOR

- Odor of intoxicants** Strong Moderate Faint None
- Eyes** Watery Bloodshot Normal
- Speech** Unintelligible Mumbled Slurred Confused Normal

- 1. Have you consumed any alcoholic beverages?
 No Yes: How many ? _____

IF OFFICER DID NOT OBSERVE THE OPERATION (whether accident or not) ASK: Did you drink any alcoholic beverage after operation? No / Yes: How many?

- 2. How long ago was your first drink? _____
- 3. How long ago was your last drink? _____

4. How much, if anything, have you had to drink in the last 30 minutes? _____

5. Have you consumed any drugs or medications? No Yes: What? _____

6. Other observations (e.g. alphabet, counting, etc.): _____

7. Difficulty getting off of vessel? No Yes: Describe: _____

Standing Falling Extreme Sway Slight Sway Unsteady Steady

Walking Falling Stumbling Unsteady Steady

Alcoholic containers on vessel? No Yes # _____ Types: _____ Full Empty None

5a. Standardized Field Sobriety Tests (*For Seated Battery trained police officers, use page 3*)

Is there any reason that the subject cannot perform these tests? No Yes Explanation: _____

	L. EYE	R. EYE	
HGN	<input type="checkbox"/> Lack of smooth pursuit	<input type="checkbox"/>	Total Clues (decision point-4 clues)
	<input type="checkbox"/> Distinct jerkiness at maximum deviation	<input type="checkbox"/>	
	<input type="checkbox"/> Onset of distinct jerkiness prior to 45°	<input type="checkbox"/>	
Walk & Turn	<input type="checkbox"/> Can't balance during instructions	<input type="checkbox"/> Starts before instructed	Total Clues (decision point-2 clues)
	<input type="checkbox"/> Stops walking to steady self	<input type="checkbox"/> Does not touch heel to toe	
	<input type="checkbox"/> Loses balance/steps off line	<input type="checkbox"/> Uses arms for balance	
	<input type="checkbox"/> Loses balance while turning/turns incorrectly		
One Leg Stand	<input type="checkbox"/> Sways while balancing	<input type="checkbox"/> Hopping	Total Clues (decision point-2 clues)
	<input type="checkbox"/> Cannot do exercise (puts foot down 3 times)	<input type="checkbox"/> Puts foot down	

Comments :

5b. **Seated Battery Field Sobriety Test Performance Report** (To be completed by Seated Battery trained officers)

<p>PRE-TEST QUESTIONS</p> <p>Do you have any physical defects or disabilities? Y N</p> <p>Do you have any defects with your eyes? Y N</p> <p>Are you sick or injured? Y N</p> <p>Are you under the care of a doctor or dentist? Y N</p> <p>Are you taking any medication or drugs? Y N</p>	<p>Notes:</p>	<p>GENERAL INSTRUCTIONS:</p> <p>Please sit straight at the front edge of your seat. Put your arms down at your sides. Place your feet shoulder-width apart so you are comfortable and stable. Are you stable? (Response) Do not move your feet until the tests are over. Stay in this position and do not do anything else until I tell you to do so. Do you understand? (Response)</p>
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<p>HORIZONTAL GAZE NYSTAGMUS</p> <p>Have the subject remove their eyeglasses, if worn.</p> <p>Are you wearing contact lenses? ___ Yes ___ No</p> <p>I am going to check your eyes. Hold your head still and follow the stimulus with your eyes only. Do you understand? (Response)</p> <p>Elevate the stimulus about 12-15" from the subject's nose. Check for equal pupil size, resting nystagmus and equal tracking.</p>	<p>Clues</p> <p>Lack of smooth pursuit</p> <p>Distinct & sustained nystagmus at max. deviation</p> <p>Onset of nystagmus prior to 45-degrees</p>	<p>Left</p>	<p>Right</p>	<p>Total Clues</p> <p>Vertical nystagmus: Yes___ No___</p> <p>Evaluation Criteria: 4 or more clues</p>
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FINGER TO NOSE

- Make a fist with both hands, extend your index fingers and turn your palms forward. Remain in this position while I explain the test. (Demonstrate) Do you understand? (Response)
- When I say begin, tilt your head back to about a 45° angle and close your eyes. (Demonstrate)
- When I tell you to, touch the tip of your nose with the tip of your index finger and immediately return it to your side. (Demonstrate and explain the fingertip, pad and side of fingers and demonstrate touching tip of the nose)
- When I say right, you must touch your right index finger to your nose; when I say left, you must touch your left index finger to your nose. Do you understand? (Response)
- Begin. (After head tilt...) Left...Right...Left...Right...Right...Left (After performance...) Open your eyes and straighten your head.

Instruction Stage	Performance Stage		Left	Right	Left	Right	Right	Left	
Unable to follow instructions	Did not close eyes	Wrong hand							Wrong hand
	Did not tilt head back	Wrong finger							Wrong finger
Started at wrong time	Opened eyes during test	Hesitated							Hesitated
		Searched							Searched
	Moved head during test (1"+)	Not fingertip							Not fingertip
		Missed tip of nose							Missed tip of nose
		Did not bring down							Did not bring down
Total Clues									
Evaluation Criteria: 9 or more clues									

<p>PALM PAT</p> <ul style="list-style-type: none"> ● Place your hands palm to palm with one hand up and one hand down, like this. (Demonstrate) Remain in this position while I explain the test. Do you understand? (Response) ● When I tell you to begin, turn the top hand over and count out loud "one," then turn the hand back over and count out loud "two," counting only when the hands make contact, like this. (Demonstrate at least two sets) ● Repeat this, speed up as you go, and do not stop until told. Make sure to keep your hands and fingers parallel during each pat, like this. (Demonstrate) ● Do you understand? (Response) Begin. (If necessary, tell to speed up) 	<p>Instruction Stage</p> <p>Unable to follow instructions</p> <p>Started at wrong time</p> <p>Performance Stage</p> <p>Did not count as instructed</p> <p>Rolled hands</p> <p>Double pat</p> <p>Chopped pat</p> <p>Other improper pat (document)</p> <p>Did not increase speed</p> <p>Rotated hands</p> <p>Stopped before told</p> <p>Total Clues</p> <p>Evaluation Criteria: 2 or more clues</p>	<p>HAND COORDINATION</p> <ul style="list-style-type: none"> ● Make fists with both hands, place your left fist at the center of your chest and your right fist against your left fist, like this. (Demonstrate) ● Remain in this position while I explain the test. Do you understand? (Response) ● When I say begin, you must perform four tasks. ● The <u>first</u> task is to count out loud from one to four while you move your fists in a step-like fashion, making contact between your fists at each step. (Demonstrate while counting out loud 1, 2, 3, 4) ● The <u>second</u> task is to memorize the position of your fists after you have counted to four, clap your hands three times and return your fists to the memorized position. (Demonstrate) ● The <u>third</u> task is to move your fists in a step-like fashion in reverse order; counting out loud from five to eight and returning your left fist to your chest. (Demonstrate while counting out loud 5, 6, 7, 8) ● The <u>fourth</u> task is to open your hands with palms down and place them in your lap. (Demonstrate) ● Do you understand? (Response) Begin. 	<p>Instruction Stage</p> <p>Unable to follow instructions</p> <p>Started at wrong time</p> <p>Performance Stage</p> <p>Task 1 – Forward Steps</p> <p>Improper count</p> <p>Improper touch</p> <p>Did not perform</p> <p>Task 2 – Hand Clapping</p> <p>Improper count</p> <p>Improper touch</p> <p>Improper return</p> <p>Did not perform</p> <p>Task 3 – Return Steps</p> <p>Improper count</p> <p>Improper touch</p> <p>Did not return left fist to chest</p> <p>Did not perform</p> <p>Task 4 – End Position</p> <p>Improper position</p> <p>Did not perform</p> <p>Total Clues</p> <p>Evaluation Criteria: 3 or more clues</p>
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TIME OBSERVATION OF OPERATOR STARTED: _____ Hrs. Timepiece used: _____

6. BEFORE WE GO ANY FURTHER I WANT TO EXPLAIN THESE RIGHTS TO YOU: (Check as read.)

- 6. BEFORE WE GO ANY FURTHER I WANT TO EXPLAIN THESE RIGHTS TO YOU: (Check as read.)
[] You have the right to remain silent.
[] Anything you say can and will be used against you in a court of law.
[] You have the right to talk to a lawyer before questioning and to have a lawyer present with you during questioning.
[] If you cannot afford to hire a lawyer, one will be appointed to represent you at public expense, before any questioning, if you wish. In Vermont, that is called a public defender.
[] If you decide to answer questions, you may stop the questioning at any time.
[] Do you understand each of these rights I have explained to you? Reply: [] Yes [] No
[] Do you want to talk to me now? Reply: [] Yes [] No

If answer is "NO," OFFICER SHOULD STOP, and say the following:

[] "There will be no questions. I will now go to the subject of evidentiary testing." (OFFICER SHOULD GO IMMEDIATELY TO No. 8 "IMPLIED CONSENT" on page 3).

If answer is "YES," OFFICER SHOULD READ THE WAIVER to defendant and ask if she/he wishes to sign, as follows: WAIVER

[] I have been advised that I have the right to remain silent, to be represented by a lawyer, to talk with one prior to questioning and to have one present during questioning. Knowing my rights, I agree to waive them and talk to you now. No threats or promises have been made to me.

Date/Time (Specify timepiece used)
Comments:

Operator's Signature (or time of taping)

If defendant declines the waiver or requests a lawyer, OFFICER SHOULD STOP, and say the following:

[] "In that event, you are hereby notified that I will not ask you any questions. We will now go to the subject of evidentiary testing. After that, you will have an opportunity to talk with a lawyer before making your decision whether to take or refuse the test." (OFFICER SHOULD GO IMMEDIATELY TO No. 8. "IMPLIED CONSENT" on page 3).

7. INTERVIEW

On this trip, where were you operating the boat to? _____

On this trip, where were you operating the boat from? _____

How long ago did you start operating the boat from that location? _____

What food have you eaten in the last six hours? _____ How long ago did you eat that? _____

What have you been drinking?

[] Beer [] Liquor [] Wine - Specific type (brand/name of drink) _____

How many drinks of each kind did you have? _____

How long ago did you start drinking? _____ How long ago did you stop drinking? _____

How much if anything did you drink in the 30 minutes before you were stopped? _____

Who were you drinking with? (obtain names) _____

Where (specific location) were you drinking? _____

How much do you weigh? _____

Are you tired? [] No [] Yes - Are you ill? [] No [] Yes, if so describe: _____

Do you have any physical handicaps? [] No [] Yes, if so describe: _____

Do you limp? [] No [] Yes Do you have diabetes? [] No [] Yes Taking insulin? [] No [] Yes

Do you have epilepsy? [] No [] Yes

Have you been injured lately? [] No [] Yes, if so describe: _____

Do you wear glasses? [] No [] Yes Do you wear contact lenses? [] No [] Yes

In the last 24 hours have you taken any medications or drugs? [] No [] Yes

Were the drugs/medications affecting your operation? [] No [] Slightly [] Moderately [] Substantially

Please describe what drug/medication and the dosage/amount consumed? _____

Are you under the influence of drugs right now? [] No [] Slightly [] Moderately [] Substantially

Are you under the influence of alcohol now? [] No [] Slightly [] Moderately [] Substantially

Were you under the influence of drugs while operating the boat? [] No [] Slightly [] Moderately [] Substantially

Were you under the influence of alcohol while operating the boat? [] No [] Slightly [] Moderately [] Substantially

Were you feeling the effects of the alcohol while operating the boat? [] No [] Slightly [] Moderately [] Substantially

Have you been convicted of Boating While Intoxicated? [] No [] Yes

Are you currently on Probation? [] No [] Yes Are you currently on Conditions of Release? [] No [] Yes

OTHER QUESTIONS/ANSWERS (Re: BUI or any OTHER OFFENSES involved) use supplemental page.

8. IMPLIED CONSENT (Check as read).

- I am a law enforcement officer of the State of Vermont.
- I have grounds to believe that you have operated, attempted to operate, or been in actual physical control of a vessel on the waters of this state while under the influence of intoxicating liquor, or drugs, or both.

(FATAL/SERIOUS INJURY ONLY) I have probable cause to believe that you are the surviving operator of a motor vehicle involved in an accident or collision resulting in death or serious bodily injury to another person. I have reasonable grounds to believe that you have some amount of alcohol or other drug in your system.

OR

IN OTHER CIRCUMSTANCES INDICATED BELOW:

- Breath testing equipment is not reasonably available.
- I have reason to believe you are unable to provide a sufficient sample of breath for testing.
- I have reasonable grounds to believe you were operating under the influence of any other drug or under the combined influence of alcohol and any other drug.
- You are incapable of decision.
- You are unconscious.

- Vermont law authorizes me, as a law enforcement officer, to request an evidentiary test to determine whether you are under the influence of alcohol or other drugs. Before you decide, I will explain your rights.
- If you consent to an evidentiary test, part of the sample will be held by the Vermont Department of Public Safety. Within the next 45 days you may make arrangements for an independent analysis of the sample. The results of the independent analysis will be sent only to you or your lawyer. At this time, I am also providing you with a list of facilities in this area that are available to you for drawing a sample of your blood.
- If the results of the evidentiary test indicate that you are under the influence of alcohol or other drug, you will be subject to criminal charges and your license or privilege to operate a vessel will be suspended for at least one year.
- If you do not request a hearing by the court, or if you do request a hearing and the court finds that my request for an evidentiary test was reasonable, and you refused to take the test, your privilege to operate a vessel, except a non-motorized canoe and a non-motorized rowboat, shall be suspended for at least one year. Further, your refusal may be introduced as evidence against you at trial.
- Under all of the above identified circumstances, the court may issue a search warrant and order you to submit to a blood test. The results of any blood test ordered by the court may be offered into evidence against you at trial.
- You have the right to talk with a lawyer before deciding whether or not to submit to an evidentiary test. If you want a lawyer, a Public Defender will be contacted for you at the state's expense, regardless of your income, or an attempt will be made to contact an attorney of your choice at your expense.
- You must decide whether or not to submit to the evidentiary test within a reasonable amount of time and no later than 30 minutes from the time of the initial attempt to contact an attorney, regardless of whether a consultation takes place.
- Do you understand each of these rights? Yes No
- Do you want to talk to a lawyer before deciding whether or not to submit to a test?
- Yes Time of first attempt: _____ (per timepiece) # of attempts _____
Lawyer contacted: _____ Time Started: _____ Time Finished: _____
- No

Operator's Signature

Witness

*(If operator refuses to sign you **MUST** contact an attorney unless a recorded waiver is obtained.)*

- I believe that I have probable cause to obtain an evidentiary blood sample. I will be attempting to obtain a search warrant from a judge. You may choose to allow me to obtain a sample of your blood or you may require that I attempt to obtain a search warrant from a judge. The choice is yours.
- Operator: I, freely and voluntarily, give my consent to submit to an evidentiary blood test. I understand that I do not have to allow this and I can require you to obtain a search warrant from a judge. No threats or promises have been made by you to force me to give my consent to provide a sample of my blood for evidentiary testing.

Will you give a sample of your blood as evidence Yes No.

Operator's Signature: _____ Witness (if available): _____

Date and time: _____

(IF "No," and officer has probable cause to apply for a search warrant OFFICER SHOULD apply for a search warrant.)

9. READ THE APPROPRIATE ALTERNATIVE TO OPERATOR

- A. Since you are being released, if you wish additional tests, to be paid for at your own expense, you will have to make your own arrangements. Do you intend to obtain additional tests? Yes No
Test Kit Provided Yes No

If, at the completion of processing, the operator, after reasonable efforts, is unable to arrange transportation necessary to obtain an additional test and the operator wants a test, the officer must arrange to provide transportation to a facility that will administer the test.

- B. Because you are being detained for a short period prior to being released, I will make arrangements for you to have an additional test, at your expense, if you so desire.
Do you want me to transport you to obtain an additional test? Yes No
Test Kit Provided Yes No Arrangements: _____
- C. Because you are being lodged, you must tell me now if you want an additional test, at your expense, so that I can make the arrangements. Do you want me to transport you to obtain an additional test? Yes No

10. STATUS OF OPERATOR:

Inquired as to the operator’s current address and informed subject that information is required for future mailings
Mailing Address _____ Residence _____
Town _____ Town _____

Is operator on active duty, or scheduled to go on active duty, in the Armed Forces? Yes No – If yes, Command Unit, Service Branch, and Service # _____

Operator identified by License _____ Other I.D. _____ Picture I.D. _____
 Citation Lodged Released without Citation Complaint # _____ Other _____

11. DISCLOSURE OF EVIDENCE:

A. OFFICER’S OBSERVATIONS OF OPERATOR

Attitude Excited Talkative Indifferent Profane Combative
 Insulting Cocky Cooperative Polite Mood Swings
Other: _____
Unusual Actions Hiccuping Belching Vomiting Fighting Laughing

B. PRIOR BUI CONVICTIONS

No Yes: dates of prior BWI conviction(s): _____

C. RECORDING: Is there a separate audiotape? Yes No

Video: Cruiser Yes No DUI Processing Room Yes No Other: _____

D. WITNESSES (Passengers / other persons)

Name _____ Address _____
Phone #: _____ Passenger Other Describe Condition: _____
Statement obtained: Yes No
 Other witnesses listed on separate page

12. DISPOSITION:

Operator released/taken to: Name/Address: _____ Phone #: _____; or

Operator taken to: _____ Phone #: _____

Acknowledged operator is impaired No Yes: Slight Extreme Other _____

Signature: _____

Date & Time processing completed: ___/___/___ _____ per timepiece.

Disposition of operator’s vessel: _____ Condition of operator’s vessel _____

VIN of operator’s vessel _____

Name of Registered Owner(s) _____ Address _____

Being duly sworn and on oath, I hereby certify that the information contained in this form has been accurately recorded and accurately describes my observations of the actions and statements of the operator identified on page one.

Affiant Date

Subscribed and sworn before me this _____ day of _____

Notary Public