

**BUI AFFIDAVIT-INFRARED**

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. I am trained and certified by the Vermont Criminal Justice Training Council to operate the DataMaster infrared breath-testing instrument.
- 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	
<b>HGN</b>	<input type="checkbox"/> Lack of smooth pursuit	<input type="checkbox"/>	
	<input type="checkbox"/> Distinct jerkiness at maximum deviation	<input type="checkbox"/>	
	<input type="checkbox"/> Onset of distinct jerkiness prior to 45°	<input type="checkbox"/>	<b>Total Clues</b> (decision point-4 clues)
<b>Walk &amp; Turn</b>	<input type="checkbox"/> Can't balance during instructions	<input type="checkbox"/> Starts before instructed	<input type="checkbox"/> Incorrect number of steps
	<input type="checkbox"/> Stops walking to steady self	<input type="checkbox"/> Does not touch heel to toe	<input type="checkbox"/> Cannot do exercise
	<input type="checkbox"/> Loses balance/steps off line	<input type="checkbox"/> Uses arms for balance	(steps off line 3 times)
	<input type="checkbox"/> Loses balance while turning/turns incorrectly		<b>Total Clues</b> (decision point-2 clues)
<b>One Leg Stand</b>	<input type="checkbox"/> Sways while balancing	<input type="checkbox"/> Hopping	
	<input type="checkbox"/> Cannot do exercise (puts foot down 3 times)	<input type="checkbox"/> Puts foot down	
	<input type="checkbox"/> Uses arms to balance (raises arms more than 6 inches)		<b>Total Clues</b> (decision point-2 clues)

**Comments :**

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

<p><b>PRE-TEST QUESTIONS</b></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><b>GENERAL INSTRUCTIONS:</b></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><b>HORIZONTAL GAZE NYSTAGMUS</b></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><b>Clues</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:60%;">Lack of smooth pursuit</td> <td style="width:20%;">Left</td> <td style="width:20%;">Right</td> </tr> <tr> <td>Distinct &amp; sustained nystagmus at max. deviation</td> <td></td> <td></td> </tr> <tr> <td>Onset of nystagmus prior to 45-degrees</td> <td></td> <td></td> </tr> </table> <p><b>Total Clues</b></p> <p>Vertical nystagmus: Yes___ No___</p>	Lack of smooth pursuit	Left	Right	Distinct & sustained nystagmus at max. deviation			Onset of nystagmus prior to 45-degrees			<p><b>Evaluation Criteria: 4 or more clues</b></p>
Lack of smooth pursuit	Left	Right									
Distinct & sustained nystagmus at max. deviation											
Onset of nystagmus prior to 45-degrees											

**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
<b>Total Clues</b>									
<b>Evaluation Criteria: 9 or more clues</b>									

<p><b>PALM PAT</b></p> <ul style="list-style-type: none"> <li>● 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)</li> <li>● 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)</li> <li>● 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)</li> <li>● Do you understand? (Response) Begin. (If necessary, tell to speed up)</li> </ul>	<p><b>Instruction Stage</b></p> <p>Unable to follow instructions</p> <p>Started at wrong time</p> <p><b>Performance Stage</b></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><b>Total Clues</b></p> <p><b>Evaluation Criteria: 2 or more clues</b></p>	<p><b>HAND COORDINATION</b></p> <ul style="list-style-type: none"> <li>● 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)</li> <li>● Remain in this position while I explain the test. Do you understand? (Response)</li> <li>● When I say begin, you must perform four tasks.</li> <li>● 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)</li> <li>● 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)</li> <li>● 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)</li> <li>● The <u>fourth</u> task is to open your hands with palms down and place them in your lap. (Demonstrate)</li> <li>● Do you understand? (Response) Begin.</li> </ul>	<p><b>Instruction Stage</b></p> <p>Unable to follow instructions</p> <p>Started at wrong time</p> <p><b>Performance Stage</b></p> <p><b>Task 1 – Forward Steps</b></p> <p>Improper count</p> <p>Improper touch</p> <p>Did not perform</p> <p><b>Task 2 – Hand Clapping</b></p> <p>Improper count</p> <p>Improper touch</p> <p>Improper return</p> <p>Did not perform</p> <p><b>Task 3 – Return Steps</b></p> <p>Improper count</p> <p>Improper touch</p> <p>Did not return left fist to chest</p> <p>Did not perform</p> <p><b>Task 4 – End Position</b></p> <p>Improper position</p> <p>Did not perform</p> <p><b>Total Clues</b></p> <p><b>Evaluation Criteria: 3 or more clues</b></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.)

- 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)

\_\_\_\_\_  
Operator’s Signature (or time of taping)

Comments:

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.
- 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 submit to an evidentiary test, you have the right to have additional tests administered at your own expense by someone of your own choosing. The results 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.
- In addition, if you submit to an evidentiary test administered with an infrared device, following your receipt of the results of that test, you have a right to a second evidentiary test administered by me using the infrared device.
- If the results of the evidentiary test indicate that you are under the influence of alcohol, you will be subject to criminal charges and your 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.
- 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.)

- Will you give a sample of your breath as evidence  Yes  No. (IF “No,” OFFICER SHOULD GO TO Sec. 10)  
**IF YES, 15 Min OBSERVATION PERIOD started at:** \_\_\_\_\_ hours Timepiece used: \_\_\_\_\_
- The operator has been observed for **15 uninterrupted minutes** during which he/she did not burp, belch, or vomit.
- Have you burped, belched, or vomited within the last 15 minutes?**  Yes  No  
If Yes, **restart** 15 min. observation. **Restarted at:** \_\_\_\_\_ hrs. (per timepiece)
- Your result is \_\_\_\_\_% at \_\_\_\_\_ **per DM clock AND** \_\_\_\_\_ (per timepiece)  
date \_\_\_\_\_.

**If result is “INVALID”, officer should rerun evidentiary test by replacing mouthpiece, then RE-STARTING NEW 15 MIN. OBSERVATION period. Restarted at:** \_\_\_\_\_ hrs. (per DM Clock)

- Your result is \_\_\_\_\_% at \_\_\_\_\_ **per DM clock AND** \_\_\_\_\_ (per timepiece)  
date \_\_\_\_\_.
- Do you want a second infrared test NOW?  Yes  No
- I administered the operator’s DataMaster breath test in accordance with my training and certification.

The evidentiary ticket(s) is (are) incorporated by reference into this affidavit.

9. READ THE APPROPRIATE ALTERNATIVE TO OPERATOR

- A. If operator is being released on their own or to a sober adult: 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. If operator is being taken to detox or held for an extended period of time: 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. If operator is being lodged: 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 him/her that information is required for future mailings  
 Mailing Address \_\_\_\_\_ Residential Address \_\_\_\_\_

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 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 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