



Substitute Senate Bill No. 832

Public Act No. 09-140

AN ACT CONCERNING BOATING SAFETY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2009*) (a) A person is guilty of manslaughter in the second degree with a vessel when, while operating a vessel upon the waters of this state under the influence of intoxicating liquor or any drug, or both, such person causes the death of another person as a consequence of the effect of such liquor or drug.

(b) Manslaughter in the second degree with a vessel is a class C felony and the court shall suspend the safe boating certificate for operation or certificate of personal watercraft operation for one year for any person found guilty under this section.

Sec. 2. Section 15-140l of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) A person commits the offense of reckless operation of a vessel in the first degree while under the influence when, while under the influence of intoxicating liquor or any drug, or both, or while such person has an elevated blood alcohol level content, such person operates a vessel at such speed or maneuvers a vessel in such a manner as to result in (1) [death or] serious physical injury to another person,

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or (2) damage to property in excess of two thousand dollars.

(b) Any person guilty of reckless operation of a vessel in the first degree while under the influence shall be fined not less than two thousand five hundred dollars or more than five thousand dollars or imprisoned not more than two years, or both.

Sec. 3. Section 14-227f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Any person whose motor vehicle operator's license or nonresident operating privilege is suspended under subsection (g) of section 14-227a for a conviction of a violation of subsection (a) of said section or under section 14-227b for a second or subsequent time shall participate in a treatment program which includes an assessment of the degree of alcohol abuse and treatment, as appropriate, approved by the Commissioner of Motor Vehicles. The commissioner shall not reinstate the operator's license or nonresident operating privilege of any such person until such person submits evidence to the commissioner that such person has satisfactorily completed the treatment program. Any person whose certificate is suspended or revoked pursuant to section 15-133, as amended by this act, 15-140l, [or] as amended by this act, 15-140n or section 1 of this act shall participate in such treatment program.

(b) The treatment program shall be designed by the commissioner, with the advice and assistance of the Motor Vehicle Operator's License Medical Advisory Board established pursuant to section 14-46b, any state agency or any other public or private entity engaged in the provision of responsible services for the treatment of alcohol and drug addiction as the commissioner may request. The program shall consist of intensive treatment and a phase of continuing aftercare supervision and monitoring on an individual basis. The program may be provided by one or more private organizations approved by the commissioner

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which meet qualifications established by him, provided the entire costs of the program shall be paid from fees charged to the participants, the amounts of which shall be subject to the approval of the commissioner.

(c) Upon receipt of notification from the commissioner of the requirement to participate in the program, such person may, within thirty days, petition the commissioner in writing for a waiver of such requirement on the following grounds: (1) The petitioner is presently undergoing a substantial treatment program for alcohol or drug addiction, or has completed such a program subsequent to his most recent arrest, either as a result of an order of the Superior Court or on a voluntary basis, and (2) the petitioner does not, in the opinion of a licensed physician based upon a personal examination, have a current addiction problem which affects his ability to operate a motor vehicle in a safe manner or pose a significant risk of having such a problem in the foreseeable future. In reviewing and determining whether to grant any such petition, the commissioner shall request and give due consideration to the advice of the Motor Vehicle Operator's License Medical Advisory Board. Any person aggrieved by the decision of the commissioner may appeal such decision in accordance with the provisions of chapter 54.

(d) The commissioner shall adopt regulations in accordance with chapter 54 to implement the provisions of this section.

Sec. 4. Subsection (d) of section 15-133 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(d) No person shall operate a vessel: (1) While under the influence of intoxicating liquor or any drug, or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section and sections 15-140l, as amended by this act and 15-140n, "elevated blood alcohol content" means: (A) A ratio of alcohol in the blood of such

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person that is eight-hundredths of one per cent or more of alcohol, by weight, or (B) if such person is under twenty-one years of age, a ratio of alcohol in the blood of such person that is two-hundredths of one per cent or more of alcohol, by weight. For the purposes of this section and sections 15-140l, as amended by this act, 15-140n, 15-140o, [and] as amended by this act, 15-140q, as amended by this act, and section 1 of this act, "operate" means that the vessel is underway or aground and not moored, anchored or docked.

Sec. 5. Subsection (b) of section 15-133c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(b) The clerk of the court in which a conviction for a violation of section 15-133, as amended by this act, 15-134, 15-140l, [or] as amended by this act, 15-140n or section 1 of this act is rendered shall cause notice of such conviction to be given to the Commissioner of Environmental Protection not later than thirty days after such conviction.

Sec. 6. Subsection (a) of section 15-140e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) No resident of the state, person owning real property in the state or person owning a vessel in the state shall operate on the waters of the state a vessel which is required to be registered or numbered pursuant to this chapter unless such person has a valid vessel operator license issued by the United States Coast Guard or has obtained a safe boating certificate issued by the Commissioner of Environmental Protection. No owner of a vessel shall knowingly authorize or permit a person who is less than sixteen years of age who is required by this section to obtain a safe boating certificate issued by the Commissioner of Environmental Protection to operate such vessel on the waters of the state without a safe boating certificate, unless such person is under the

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direct onboard supervision of a person who is at least eighteen years of age who has been issued a safe boating certificate and who has held such certificate for at least two years. A safe boating certificate may be suspended or revoked, pursuant to section 15-133, as amended by this act, 15-140l, [or] as amended by this act, 15-140n or section 1 of this act, and shall be valid for the life of the person to whom it is issued unless otherwise suspended or revoked.

Sec. 7. Subsection (l) of section 15-140j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(l) A certificate of personal watercraft operation may be suspended or revoked in accordance with the provisions of section 15-133, as amended by this act, 15-140l, [or] as amended by this act, 15-140n or section 1 of this act.

Sec. 8. Section 15-140o of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Any peace officer authorized to enforce the provisions of sections 15-129, 15-133, as amended by this act, 15-133b, 15-133c, as amended by this act, 15-140e to 15-140u, inclusive, as amended by this act, 15-154, as amended by this act, and 15-156, as amended by this act, who arrests an operator for a violation of subsection (d) of section 15-133, as amended by this act, or section 15-140k, 15-140l, as amended by this act, 15-140m, [or] 15-140n or section 1 of this act may take the vessel operated in such violation into such peace officer's custody and shall cause the [same] vessel to be taken to and stored in a suitable place. There shall be no liability attached to such peace officer for any damages to such vessel while in such peace officer's custody. All charges necessarily incurred by such peace officer in the performance of such duty shall be a lien upon such vessel. The owner or keeper of any marina or other place where such vessel is stored shall have a lien

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upon the [same] vessel for the storage charges and if such vessel has been stored for a period of not less than sixty days, such owner or keeper may sell the [same] vessel for storage charges owed thereon, provided a notice of intent to sell shall be sent to the Commissioner of Environmental Protection, the Commissioner of Motor Vehicles, and the owner of such vessel, if known, five days before the sale of such vessel. If the owner is unknown, such sale shall be advertised by such marina owner or keeper in a newspaper published or having a circulation in the town where such marina or other place is located three times, commencing at least five days before the sale. The proceeds of such sale, after deducting the amount due such marina owner or keeper and all expenses of the peace officer who placed such vessel in storage, shall be paid to the owner of such vessel or such owner's legal representatives, if claimed by such owner or owners at any time within one year from the date of such sale. If such balance is not claimed within said period, it shall escheat to the state.

(b) Any vessel that is operated by a person who is arrested for a violation of section 15-140n, in connection with such operation, or for a violation of section 15-140l, as amended by this act, or section 1 of this act, after being involved in a boating accident, may be impounded for a minimum of forty-eight hours after the arrest. Any vessel involved in a boating accident that results in death, serious physical injury, a missing person or property damage in excess of two thousand dollars may be seized for the collection of evidence and held until the investigation of the boating accident or any related court proceedings are concluded. Any trailer utilized by the operator to transport such vessel may also be impounded to facilitate transport and handling of such vessel.

Sec. 9. Section 15-140p of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

Any fine imposed for a violation of subdivision (1) of subsection (a)

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of section 15-140k, [or] subdivision (1) of subsection (a) of section 15-140l, as amended by this act, or section 1 of this act shall be deposited in the Criminal Injuries Compensation Fund established pursuant to section 54-215.

Sec. 10. Subsection (j) of section 15-140q of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(j) Notwithstanding the provisions of subsections (b) to (i), inclusive, of this section, any peace officer who obtains the results of a chemical analysis of a blood sample taken from an operator of a vessel involved in an accident who suffered or allegedly suffered physical injury in such accident shall notify the commissioner and submit to the commissioner a written report if such results indicate that at the time of the alleged offense such person had an elevated blood alcohol content, and if such person was arrested for a violation of subsection (d) of section 15-133, as amended by this act, or section 15-140l, [or] as amended by this act, 15-140n or section 1 of this act in connection with such accident. The report shall be made on a form approved by the commissioner containing such information as the commissioner prescribes and shall be subscribed and sworn under penalty of false statement, as provided in section 53a-157b, by the peace officer. The commissioner shall, after notice and an opportunity for hearing, which shall be conducted in accordance with chapter 54, suspend the safe boating certificate, right to operate a vessel that requires a safe boating certificate for operation or certificate of personal watercraft operation of such person for a period of up to ninety days, or, if such person has previously had such person's operating privilege suspended under this section, for a period up to one year. Each hearing conducted under this section shall be limited to a determination of the following issues: (1) Whether the peace officer had probable cause to arrest the person for operating a vessel while under the influence of intoxicating liquor or

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drugs, or both, or while such person has an elevated blood alcohol content; (2) whether such person was placed under arrest; (3) whether such person was operating the vessel; (4) whether the results of the analysis of the blood of such person indicate that such person had an elevated blood alcohol content; and (5) whether the blood sample was obtained in accordance with conditions for admissibility as set forth in subsection (b) of section 15-140r, as amended by this act. If, after such hearing, the commissioner finds on any issue in the negative, the commissioner shall not impose a suspension. The fees of any witness summoned to appear at the hearing shall be the same as provided by the general statutes for witnesses in criminal cases.

Sec. 11. Section 15-140r of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Except as provided in subsection (d) of this section, in any criminal prosecution for the violation of subsection (d) of section 15-133, as amended by this act, [sections] section 15-140l, [and] as amended by this act, 15-140n, [and] or section 1 of this act or subsection (b) of section 53-206d, evidence respecting the amount of alcohol or drug in the defendant's blood or urine at the time of the alleged offense, as shown by a chemical analysis of the defendant's breath, blood or urine shall be admissible and competent provided: (1) The defendant was afforded a reasonable opportunity to telephone an attorney prior to the performance of the test and consented to the taking of the test upon which such analysis is made; (2) a true copy of the report of the test result was mailed to or personally delivered to the defendant within twenty-four hours or by the end of the next regular business day, after such result was known, whichever is later; (3) the test was performed by or at the direction of a certified law enforcement officer according to methods and with equipment approved by the Department of Public Safety, [If] and if a blood test [is taken, it shall be] was performed, it was performed on a blood sample taken by a

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person licensed to practice medicine and surgery in this state, a qualified laboratory technician, an emergency medical technician II or a registered nurse in accordance with the regulations adopted under subsection (b) of this section; (4) the device used for such test was checked for accuracy in accordance with the regulations adopted under subsection (b) of this section; (5) an additional chemical test of the same type was performed at least thirty minutes after the initial test was performed or, if requested by the peace officer for reasonable cause, an additional chemical test of a different type was performed to detect the presence of a drug or drugs other than or in addition to alcohol, [provided] except that the results of the initial test shall not be inadmissible under this subsection if reasonable efforts were made to have such additional test performed in accordance with the conditions set forth in this subsection and such additional test was not performed or was not performed within a reasonable time, or the results of such additional test are not admissible for failure to meet a condition set forth in this subsection; and (6) evidence is presented that the test was commenced within two hours of operation of the vessel. In any prosecution under this section it shall be a rebuttable presumption that the results of such chemical analysis establish the ratio of alcohol in the blood of the defendant at the time of the alleged offense, except that if the results of the additional test indicate that the ratio of alcohol in the blood of such defendant is ten-hundredths of one per cent or less of alcohol, by weight, and is higher than the results of the first test, evidence shall be presented that demonstrates that the test results and the analysis thereof accurately indicate the blood alcohol content at the time of the alleged offense.

(b) The Commissioner of Public Safety shall ascertain the reliability of each method and type of device offered for chemical testing and analysis of blood, of breath and of urine and certify those methods and types which [said commissioner] the Commissioner of Public Safety finds suitable for use in testing and analysis of blood, breath and urine,

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respectively, in this state. The Commissioner of Public Safety, after consultation with the Commissioner of Public Health, shall adopt regulations, in accordance with chapter 54, governing the conduct of chemical tests, the operation and use of chemical test devices and the training and certification of operators of such devices and the drawing or obtaining of blood, breath or urine samples as [said commissioner] the Commissioner of Public Safety finds necessary to protect the health and safety of persons who submit to chemical tests and to insure reasonable accuracy in testing results. Such regulations shall not require recertification of a peace officer solely because such officer terminates such officer's employment with the law enforcement agency for which certification was originally issued and commences employment with another such agency.

(c) If a person is charged with a violation of subsection (d) of section 15-133, as amended by this act, the charge may not be reduced, nolle or dismissed unless the prosecuting authority states in open court such prosecutor's reasons for the reduction, nolle or dismissal.

(d) In any criminal prosecution for a violation of subsection (d) of section 15-133, as amended by this act, or section 15-140l, [or] as amended by this act, 15-140n or section 1 of this act, evidence that the defendant refused to submit to a blood, breath or urine test requested in accordance with section 15-140q, as amended by this act, shall be admissible provided the requirements of subsection (a) of said section have been satisfied. If a case involving a violation of subsection (d) of section 15-133, as amended by this act, or section 15-140l, [or] as amended by this act, 15-140n or section 1 of this act is tried to a jury, the court shall instruct the jury as to any inference that may or may not be drawn from the defendant's refusal to submit to a blood, breath or urine test.

Sec. 12. Subsections (a) and (b) of section 15-154 of the general statutes are repealed and the following is substituted in lieu thereof

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(Effective July 1, 2009):

(a) Any harbor master, deputy harbor master, conservation officer, special conservation officer or state police officer and any municipal police officer, any special police officer appointed under sections 29-18 and 29-19, any town marine officers appointed under section 15-154a and certified by the commissioner for marine police duty and any lake patrolman appointed under section 7-151b may enforce the provisions of this chapter and chapter 446k, except that only peace officers shall enforce the provisions of subsection (d) of section 15-133, as amended by this act, and sections 15-140l, [and] as amended by this act, 15-140n and section 1 of this act. In the enforcement of this chapter, such officer may arrest, without previous complaint and warrant, any person who fails to comply with the provisions of this chapter. Failure to appear in court pursuant to such arrest, unless excused by the court or the state's attorney or assistant state's attorney, shall constitute sufficient cause for the suspension by the Commissioner of Motor Vehicles of the boat registration of the boat involved for not more than thirty days or until the matter is resolved by the court, whichever is sooner.

(b) When engaged in the enforcement of this chapter and chapter 446k, such officer shall have the authority to stop and board any vessel which is under way or which is moored on the waters of this state for the purposes of (1) examining decals, certificates and other documents, (2) inspecting safety equipment and waste disposal systems, (3) determining if the operation of such vessel exceeds the noise levels established in subsection (b) of section 15-129, (4) searching when such officer has probable cause to believe that any provision of any law of this state or any rule or regulation of the Department of Environmental Protection relating to boating or water pollution has been violated, (5) determining compliance with sections 15-140l, [and] as amended by this act, 15-140n, and section 1 of this act and subsections (d) and (e) of section 15-133, as amended by this act, when such authorized officer

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has probable cause to believe said section or subsection has been violated, and (6) making arrests.

Sec. 13. Subsections (d) and (e) of section 15-156 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(d) (1) Any person who operates any vessel during the period such person's certificate or right to operate a vessel in this state is under suspension or revocation on account of a violation of subsection (d) of section 15-133, as amended by this act, or subsection (c) of section 15-154 shall be fined not less than five hundred dollars or more than one thousand dollars and imprisoned not more than one year. In the absence of any mitigating circumstances, as determined by the court, thirty consecutive days of the sentence imposed may not be suspended or reduced in any manner. The court shall specifically state, in writing, for the record [the] any mitigating circumstances, or the absence thereof.

(2) Any person convicted of reckless operation of a vessel in the first or second degree while under the influence of intoxicating liquor or any drug, or both, in violation of section 15-140l, as amended by this act, or 15-140n, or of manslaughter in the second degree with a vessel, in violation of section 1 of this act, who operates a vessel during the period such person's certificate or right to operate a vessel in this state is under suspension or revocation, in addition to any penalties imposed in accordance with said sections or section 15-140o, as amended by this act, shall be fined not less than five hundred dollars or more than one thousand dollars and imprisoned not more than one year. In the absence of any mitigating circumstances as determined by the court, thirty consecutive days of the sentence imposed may not be suspended or reduced in any manner. The court shall specifically state, in writing, for the record any mitigating circumstances, or the absence thereof.

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(3) A court having jurisdiction of a violation of subdivision (1) or (2) of this subsection may prohibit such person from operating any vessel on any waters of this state for a period of not more than two years. Notice of such suspension shall be transmitted forthwith by the court to the Commissioner of Environmental Protection and the Commissioner of Motor Vehicles.

(e) Any person who has had a safe boating certificate or certificate of personal watercraft operation suspended or revoked under subsection (d) of section 15-133, as amended by this act, or section 15-140l, as amended by this act, 15-140n, [or] 15-154, as amended by this act, or section 1 of this act shall, not later than two business days after the suspension or revocation takes effect, return the certificate to the commissioner. If such person fails to return the certificate to the commissioner, the commissioner shall direct a conservation law enforcement officer to secure possession thereof and to return the certificate to the office of the commissioner. Failure of such person to return the certificate shall be an infraction.

Sec. 14. Subsections (a) and (b) of section 54-56g of the general statutes are repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) There shall be a pretrial alcohol education system for persons charged with a violation of section 14-227a, 14-227g, 15-133, as amended by this act, 15-140l, [or] as amended by this act, 15-140n or section 1 of this act. Upon application by any such person for participation in such system and payment to the court of an application fee of fifty dollars and a nonrefundable evaluation fee of one hundred dollars, the court shall, but only as to the public, order the court file sealed, provided such person states under oath, in open court or before any person designated by the clerk and duly authorized to administer oaths, under penalties of perjury that: (1) If such person is charged with a violation of section 14-227a, such person

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has not had such system invoked in such person's behalf within the preceding ten years for a violation of section 14-227a, (2) if such person is charged with a violation of section 14-227g, such person has never had such system invoked in such person's behalf for a violation of section 14-227a or 14-227g, (3) such person has not been convicted of a violation of section 53a-56b or 53a-60d, a violation of subsection (a) of section 14-227a before or after October 1, 1981, or a violation of subdivision (1) or (2) of subsection (a) of section 14-227a on or after October 1, 1985, and (4) such person has not been convicted in any other state at any time of an offense the essential elements of which are substantially the same as section 53a-56b or 53a-60d or subdivision (1) or (2) of subsection (a) of section 14-227a. Unless good cause is shown, a person shall be ineligible for participation in such pretrial alcohol education system if such person's alleged violation of section 14-227a or 14-227g caused the serious physical injury, as defined in section 53a-3, of another person. The application fee imposed by this subsection shall be credited to the Criminal Injuries Compensation Fund established by section 54-215.

(b) The court, after consideration of the recommendation of the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case, may, in its discretion, grant such application. If the court grants such application, [it] the court shall refer such person to the Court Support Services Division for assessment and confirmation of the eligibility of the applicant and to the Department of Mental Health and Addiction Services for evaluation. The Court Support Services Division, in making its assessment and confirmation, may rely on the representations made by the applicant under oath in open court with respect to convictions in other states of offenses specified in subsection (a) of this section. Upon confirmation of eligibility and receipt of the evaluation report, the defendant shall be referred to the Department of Mental Health and Addiction Services by the Court Support Services Division for

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placement in an appropriate alcohol intervention program for one year, or be placed in a state-licensed substance abuse treatment program. Any person who enters the system shall agree: (1) To the tolling of the statute of limitations with respect to such crime, (2) to a waiver of such person's right to a speedy trial, (3) to complete ten or fifteen counseling sessions in an alcohol intervention program or successfully complete a substance abuse treatment program of not less than twelve sessions pursuant to this section dependent upon the evaluation report and the court order, (4) upon completion of participation in the alcohol intervention program, to accept placement in a treatment program upon recommendation of a provider under contract with the Department of Mental Health and Addiction Services pursuant to subsection (d) of this section or placement in a state-licensed treatment program which meets standards established by the Department of Mental Health and Addiction Services, if the Court Support Services Division deems it appropriate, and (5) if ordered by the court, to participate in at least one victim impact panel. The suspension of the motor vehicle operator's license of any such person pursuant to section 14-227b shall be effective during the period such person is participating in such program, provided such person shall have the option of not commencing the participation in such program until the period of such suspension is completed. If the Court Support Services Division informs the court that the defendant is ineligible for the system and the court makes a determination of ineligibility or if the program provider certifies to the court that the defendant did not successfully complete the assigned program or is no longer amenable to treatment, the court shall order the court file to be unsealed, enter a plea of not guilty for such defendant and immediately place the case on the trial list. If such defendant satisfactorily completes the assigned program, such defendant may apply for dismissal of the charges against such defendant and the court, on reviewing the record of the defendant's participation in such program submitted by the Court Support Services Division and on finding such satisfactory completion,

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shall dismiss the charges. If the defendant does not apply for dismissal of the charges against such defendant after satisfactorily completing the assigned program the court, upon receipt of the record of the defendant's participation in such program submitted by the Court Support Services Division, may on its own motion make a finding of such satisfactory completion and dismiss the charges. Upon motion of the defendant and a showing of good cause, the court may extend the one-year placement period for a reasonable period for the defendant to complete the assigned program. A record of participation in such program shall be retained by the Court Support Services Division for a period of seven years from the date of application. The Court Support Services Division shall transmit to the Department of Motor Vehicles a record of participation in such program for each person who satisfactorily completes such program. The Department of Motor Vehicles shall maintain for a period of seven years the record of a person's participation in such program as part of such person's driving record. The Court Support Services Division shall transmit to the Department of Environmental Protection the record of participation of any person who satisfactorily completes such program who has been charged with a violation of the provisions of section 15-133, as amended by this act, 15-140l, [or] as amended by this act, 15-140n or section 1 of this act. The Department of Environmental Protection shall maintain for a period of seven years the record of a person's participation in such program as a part of such person's boater certification record.

Approved June 25, 2009