

PA10-124

SB272

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
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rgd/md/gbr
HOUSE OF REPRESENTATIVES

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Thank you, Mr. Speaker. I move for the immediate transmittal of all items acted upon which require further action in the Senate, thank you.

DEPUTY SPEAKER GODFREY:

Without objection, they are transmitted.

Mr. Clerk, please call Calendar 489.

THE CLERK:

On page 25, Calendar 489, Senate Bill Number 272,
AN ACT CONCERNING DRUNK BOATING, favorable report, the
Committee on Public Safety.

DEPUTY SPEAKER GODFREY:

Representative Roy.

REP. ROY (119th):

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER GODFREY:

Question is on passage.

Representative Roy.

REP. ROY (119th):

Thank you, Mr. Speaker. We have an amendment, LCO 4189, designated Senate "A." I ask that it be called and I be allowed to summarize.

DEPUTY SPEAKER GODFREY:

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Clerk is in possession of LCO Number 4189,
previously designated as Senate Amendment Schedule
"A." Will the Clerk please call.

THE CLERK:

LCO Number 4189, Senate "A." offered by Senator
Stillman and Representative Ritter.

DEPUTY SPEAKER GODFREY:

Representative Roy.

REP. ROY (119th):

Thank you, Mr. Speaker. Mr. Speaker, this
enables that people who have gotten their US Coast
Guard charter boat registration issued by the
Commissioner seek it for two years and continue using.
I move adoption.

DEPUTY SPEAKER GODFREY:

Question is on adoption. Remark further on
Senate Amendment Schedule "A?"

If not, let me try your minds. All those in
favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, nay. The ayes have it. The amendment
is adopted.

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Representative Roy.

REP. ROY (119th):

Mr. Speaker, without objection, can I move this to consent?

DEPUTY SPEAKER GODFREY:

Without objection, this item is moved to the consent calendar.

Ladies and gentlemen, I'm going to call on Representative Olson to call today's consent calendar.

Representative Olson.

REP. OLSON (46th):

Thank you, Mr. Speaker. We are about to vote on SB108 SB302 today's lengthy consent calendar. The items we have SB250 HB5398 moved to consent are: SB153 SB175

Calendar Numbers 499, 487, 180, 507, 430, 396, SB412 SB428 535, 497, 522, 517, 510, 155, 466 and 489. Thank you, SB121 SB427 Mr. Speaker. SB370 HB5420 SB354 SB272

DEPUTY SPEAKER GODFREY:

Thank you, madam. And as soon as we get this up on the board.

Representative Olson.

REP. OLSON (46th):

Thank you, Mr. Speaker. Actually, we have already voted on item 430. I want to thank

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Representative Hamzy for being so diligent and
watching the calendar. I make a motion to remove Item
4370 from the consent calendar. Thank you, Mr. SB153

Speaker.

DEPUTY SPEAKER GODFREY:

I believe we have corrected the error.

As you can see, the consent calendar is on the
board. Representative Olson has moved passage of the
bills on the consent calendar.

Staff and guests, please come to the well of the
house. Members, take your seats, the machine will be
opened.

THE CLERK:

The House of Representatives is voting by roll
call. Members to the Chamber. The House is voting
today's consent calendar by roll call. Members to the
Chamber.

SPEAKER DONOVAN:

Have all the members voted? Have all the members
voted? Please check the roll call board and make sure
your votes were properly cast. If all the members
have voted, the machine will be locked. Clerk,
please announce the tally. Clerk, please announce the
tally.

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THE CLERK:

On today's consent calendar.

Total Number Voting	150
Necessary for Adoption	76
Those voting Yea	150
Those voting Nay	0
Those absent and not voting	1

SPEAKER DONOVAN:

The consent calendar passes.

Representative Olson.

REP. OLSON (46th):

Thank you, Mr. Speaker. I move to -- I move for the immediate transmission of all times acted upon that require further action in the Senate. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Motion for immediate transmittal to the Senate of all items acted upon needing further action. Any objection? Hearing none, the bills and items are immediately transmitted.

Will the Clerk please call Calendar 430 --

Will the Clerk please call Calendar 422.

THE CLERK:

On page 19, Calendar 422, Senate Bill Number 430,

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1, 2010; matters returned from committee, calendar page 38, matter marked order of the day, Calendar number 349, File Number 524, Senate Bill 272, AN ACT CONCERNING DRUNK BOATING, Favorable Reports, Committees on Environment and Judiciary and Public Safety.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Good afternoon, Mr. President. I move acceptance of the Joint Committee's Favorable Report and passage of this bill, please.

THE CHAIR:

Acting on approval and passage, sir, would you like to remark further?

SENATOR MEYER:

I would, briefly. Colleagues, about two years ago, Susan Brandes and her husband were on their boat on the Connecticut River when a drunken boat driver hit the Brandes' boat, killed Mrs. Brandes and took off a hand of Mr. Brandes as he drove in a very drunk fashion. The perpetrator was given a sobriety test two hours and ten minutes after the incident and that

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sobriety test was rejected by the Superior Court because the law in Connecticut is that no sobriety test will be admitted in evidence unless it's given within two hours of the incident in question.

The fact is the science supports the validity and authenticity of a sobriety test more than two hours. So what this simple bill does is permits the taking of a sobriety test more than two hours upon a showing that -- a scientific showing that the test has validity, scientific validity. So that is the bill in question and I urge your support.

We do have an amendment. And may I kindly ask the Clerk to call LCO 4189, which I will then refer.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 4189, which will be designated Senate Amendment Schedule A and is offered by Senator Stillman of the 20th District.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Mr. President, I move this amendment and seek

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leave to refer to Senator Stillman -- yield to Senator Stillman.

THE CHAIR:

There's a motion on the amendment. Without objection, Senator Stillman, do you accept the yield, ma'am?

SENATOR STILLMAN:

Yes, I do, sir. I do accept the yield, thank you.

THE CHAIR:

Please proceed.

SENATOR STILLMAN:

If I may, the amendment's been called. I would like to summarize the amendment. What this amendment does is it permits certain passenger for hire licensees to continue operating recreational charter fishing guide vessels. There are a number of folks who've been sort of caught up in this -- a concern that's been raised by the DEP and the DEP does support this amendment, to give people who meet the parameters of this amendment two years to rectify the situation, and I urge its adoption. Thank you.

THE CHAIR:

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There's a motion -- I'm sorry. Will you remark further on Senate A? Remark further on Senate A. If not, let me try your minds.

All those in favor, please signify by saying aye.

SENATE:

Aye.

THE CHAIR:

Opposed, nay. The ayes have it. Senate A is adopted.

Will you remark further on the bill as amended by Senate A?

Senator Prague.

SENATOR PRAGUE:

Thank you, Mr. President. For many years of my political career, I have spent a great deal of energy fighting drunk drivers. Drunk boaters are just as dangerous on the water as drunk drivers on the road. I fully support this piece of legislation and I certainly hope the rest of the Chamber will support it. Drunk boating, drunk driving threatens lives and we certainly want people to be more responsible and concerned about what they could do to others. Thank you.

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THE CHAIR:

Thank you, Senator Prague.

Will you remark further on the bill as amended?

Senator Stillman.

SENATOR STILLMAN:

Thank you, sir, yes. On -- in support of the bill that is in front of us, the underlying bill. This bill came through the Public Safety and Security Committee as well. It was a horrific accident which occurred in Old Saybrook. And there are many more accidents out there that happen because people are out on the water drinking and believing that they're not endangering anyone. This bill goes a long way towards rectifying this situation and making sure that people are aware of what they're doing and not putting other people in danger. And with that I do support the bill. Thank you.

THE CHAIR:

Thank you, ma'am.

Will you remark further?

Senator Meyer.

SENATOR MEYER:

Thank you, Mr. President. Mr. President, I

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believe that this bill can go by consent and I so
move.

THE CHAIR:

Thank you, sir. Will you remark further on
Senate Bill 272 as amended by A?

SENATOR MEYER:

Mr. President, I believe I'm asking that this
bill go by consent, please.

THE CHAIR:

There is a motion on the floor to place this item
on consent. Seeing no objection, so ordered.

Mr. Clerk, will you please call the second order
of the day?

THE CLERK:

Calendar page 14, under Favorable Reports,
Calendar number 471, matter marked second order of the
day, File Number 560, substitute for House Bill 5339,
AN ACT CONCERNING NOTIFICATION OF PEACE OFFICERS WHO
HAVE BEEN ASSAULTED PRIOR TO THE COURT SENTENCING OR
ACCEPTING A PLEA AGREEMENT OF THE DEFENDANT, Favorably
Reported, the Committee of Public Safety and
Judiciary.

THE CHAIR:

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THE CHAIR:

Is there objection? Is there objection? Seeing
none, so ordered. 1/5/10

Mr. Clerk.

THE CLERK:

Calendar page 31.

SENATOR LOONEY:

Mr. President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, we'd
call for a vote on the consent calendar at this time.

THE CHAIR:

Would the clerk please call the consent calendar
and make the appropriate announcement.

THE CLERK:

An immediate roll call has been ordered in the
Senate on the consent calendar. Will all Senators
please return to the chamber? An immediate roll call
has been ordered in the Senate on the consent
calendar. Will all Senators please return to the
chamber?

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Mr. President, the items placed on the first consent calendar beginning on calendar page 7, Calendar Number 348, Senate Bill 250. Calendar page 14, Calendar 471, substitute for House Bill 5339.

Calendar page 23, Calendar number 77, Senate Bill 262.

Calendar page 28, Calendar 189, substitute for Senate Bill 248. And Calendar page 38, Calendar number 349, Senate Bill 272.

Mr. President, that completes the items placed on the first consent calendar.

THE CHAIR:

The machine is open.

THE CLERK:

The Senate is voting by roll on the consent calendar. Will all Senators please return to the chamber? The Senate is voting by roll on the consent calendar. Will all Senators please return to the chamber?

THE CHAIR:

Would all Senators please check the roll call board to make certain that your vote has been properly recorded.

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If all Senators have voted and all votes are properly recorded, the machine will be locked and would the clerk please announce the tally.

THE CLERK:

The motion is on adoption of Consent Calendar Number 1.

Total number Voting	34
Those voting Yea	34
Those voting Nay	0
Those absent and not voting	2

THE CHAIR:

Consent calendar 1 is adopted.

Mr. Clerk. Senator Looney.

SENATOR LOONEY:

Yes, Mr. President, if the clerk would continue with the call of the calendar. I believe calendar page 31, Calendar 219.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar page 31, Calendar 219, File Number 304, Substitute for senate Bill 402, AN ACT CONCERNING THE BEHAVIORAL HEALTH PARTNERSHIP,

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KARL WAGENER: Thank you.

REP. ROY: Sarah Steeve?

SARAH STEERE: Good morning. My name is Sarah Steere. It's an honor to be here. Fifty years ago, I was the Clerk of this Committee, so I know firsthand how tough and important your job is. Currently, I'm a Senior State's Attorney, Assistant State's Attorney down in GA-10 in New London, and I'm here before you today to ask for your support on Senate Bill 272.

This bill will modify the artificial limits that we have on allowing chemical testing for boating under the influence cases. Currently now, if someone is stopped and then tested outside of the two-hour limit, then that evidence is not admissible in criminal prosecution, and usually the situations where that occurs are in horrific accidents, boating accidents, that have catastrophic results.

We had a recent case, it was 2007, in the Connecticut River, where a boat -- an out-of-control motorboat where a person fell off a motorboat, and the motor boat subsequently ran over a tiny sailboat, killing one of the passengers on board as well as injuring the three others, and the chemical test of the Defendant in that case was outside the two-hour limit by ten minutes.

That evidence was excluded for prosecution of the boating statute, and that's a situation that basically leaves the victim without justice and allows the Defendant to get rewarded for essentially beating the clock.

This legislation would modify that two-hour

limit to allow the State to bring in expert testimony to show that testing done beyond that artificial two-hour limit is still good, so that the evidence would go to the weight, not admissibility.

It's an important statute. We don't have the situation often where that two-hour limit gets exceeded, but you can understand, particularly on the water, where we might not be able to get law enforcement in to shore on time. The incident we had on the Connecticut River involves, as I said, a death, and we had two Lifestar helicopters, an ambulance, a moving crime scene, and it was amazing that the officers were even able to get that urine test at the time that they did.

I have with me today the daughter of one of the surviving victims on the boat crash and the step-daughter of the deceased victim, and she has a statement from her Dad she'd like to read.

DANA BRANDEIS: Hello, Mr. Chairman, Senator Meyer and Members of the Environment Committee. My name is Dana Brandeis, daughter of Leland Brandeis, formerly of South Windsor, Connecticut, and I want to speak about Bill Number 272, an act concerning drunk boating, to extend the period of time that a blood alcohol test for boating under the influence may be administered if expert testimony establishes the reliability of such a test.

I'm speaking for my father who cannot be here today. For the record, we both completely support this bill.

On July 8, 2007, approximately 3:40 p.m. -- this is him speaking -- my wife, Susan, and I along with two friends were in our sailboat

returning from a day's outing on Long Island Sound. Our destination was the Old Saybrook boat ramp on the Connecticut River. We were sailing up the river toward the railroad bridge that spans the Connecticut River. The bridge was in the lowered position due to railroad traffic. We along with other boaters were waiting for the bridge to be raised. We saw a speedboat going in large circles at a high rate of speed. The speedboat came so close to us that he nearly swamped us as he slashed us with his wake. I was about to call the police when he came around again. There was no way to get out of his way. He hit us at 3:50 p.m. at a speed of about 45 miles an hour, causing massive injuries and bloodshed. My wife, Susan, was on the bow of our boat and was killed instantly. His boat went over our starboard side, snapping the mast and injuring a passenger with broken clavicle and ribs. I thought I saw my wife in the water and dived in to assist her. As I reached for her, what I grabbed was the speedboat's spinning propeller. The propeller severed my right hand between my ring finger and middle finger halfway up to my elbow, almost a complete amputation. Ultimately, my ring finger was amputated. I have very little use of my right hand today. The boater it turns out was not even in the boat, having been thrown out a while earlier. When he was fished out of the water, he was taken to the dock where he was held until the police could arrive at the dock. The police and others meantime were recovering all of us in the water, trying to stop the runaway boat, and render medical assistance. When the case came to trial, the blood alcohol test which had been administered was thrown out due to the timing of the test, two hours and ten minutes after. In my opinion, I am glad that the police and other rescuers were saving my life and attending to

the others rather than worrying about the clock. Bill 272 should be passed immediately so that in the future tragedies like this might be avoided. Drinking and boating just don't mix.

Thank you.

REP. ROY: Thank you very much. Any questions or comments from Members of the Committee? Senator Meyer?

SENATOR MEYER: Ms. Steere, thank you for your testimony. Thank you for your testimony about the tragic, tragic story. Talk to the Committee a little bit about the reliability of an alcohol test after two hours. There is a lot of expert information with respect to how the blood alcohol level diminishes hour by hour. What information do you have that will show that it will still have some degree of reliability if we take the test after two hours?

SARAH STEERE: In general, from my experience, I always call on the state toxicologist or somebody from his office to testify in either a drunk driving case or a drunk boating case, and he can extrapolate back or she can extrapolate back even hours after the incident and be fairly accurate. It also depends on the type of drug if there were drugs involved, how far out the limit is or how high the reading is, but in general, we can get pretty accurate and, again, it would go to the weight, not the admissibility, and the jury would decide.

REP. ROY: Thank you. Any other questions or comments? Thank you very much.

I open the second hearing in a row. We have

finished the public portion in less than an hour. Congratulations, Committee. Now, at the risk of being accused of censorship, I'm going to ask Committee Members not to make a bunch of statements in agreement with or in opposition to what the public testifies to. We are here to hear that testimony, and then we'll act on it, and then we can talk all we want in Committee meetings or in our separate caucuses.

We have a lot of people here; we know we're going to be late; but, let's not make it later, and let's get all of these people home in time for dinner. Ha-ha.

Having said that, if you need questions, need clarification or feel you need additional information, certainly ask the questions and keep them as succinct as possible, and we'll get through this in good order, and I appreciate all of your cooperations, and as more Members show up later, we'll make the statement again.

With that, through the public portion -- oh, we do have Representative Themis Klarides who has not arrived yet, and when she does, we will accommodate her.

Now we'll go to the public portion. The first speaker is Leah Schmalz followed by Nancy Alderman.

LEAH SCHMALZ: Senator Meyer, Representative Roy and Members of the Environment Committee. My name is Leah Schmalz, and I am the Director of Legislative and Legal Affairs for Save the Sound which is a program of Connecticut Fund for the Environment. Today I am testifying on behalf of Save the Sound and Audubon Connecticut in opposition to Raised Bill 273.

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**ENVIRONMENT
PART 4
996 – 1345**

2010

REP. KLARIDES: Thank goodness.

REP. LAMBERT: In your expanding a list of mandatory recyclables, I'm so happy to hear you say that because that's one of the key elements, as you said, of reducing our solid waste. So, once we get a handle on that and we really become active, every community, in getting that recycling way up on the percentages that we're expecting from the DEP's goal, I think we would have to look to send our garbage out. I think we can start controlling it by controlling our recycling.

And, I thank you for your testimony, and I'm in full agreement with you.

REP. KLARIDES: Thank you, Representative, and that was one of the first issues I mentioned as you said. You know, we really need to get our recycling up as high as possible, and if that's the case, if that does lower them, then we have two problems solved at once. Thank you.

REP. LAMBERT: Thank you, Mr. Chairman.

REP. ROY: Thank you. Any other questions or comments from members of the Committee? Seeing none, thank you.

REP. KLARIDES: Thank you very much.

REP. ROY: Kelley Moore followed by Carlo Guerra.

KELLEY M. MOORE: Good afternoon, and thank you, SB272
Senator Meyer, Representative Roy, Honorable Members of the Environment Committee, for this opportunity for listening to my testimony.

I am here with representatives from MADD and

would ask that they join me in order to be able to answer any questions that I may not be able to speak to.

My name is Kelley M. Moore, and I am a resident of Meriden, Connecticut, as well as a power boat owner who resides for most of the summer at Pilot's Point Marina in Westbrook, Connecticut. Today I am asking the Committee to take action on House Bill 272, an act concerning drunk boating.

In June of 2009, I became a boat owner. I made a responsible choice to complete the one-day, eight-hour course and successfully receive the boater's license. Simply put, stated on page 50 of the 2009 Connecticut Boaters Guide that is distributed and sponsored by the state of Connecticut Department of Environmental Protection, under "Boating Regulations, slash, Boating Under the Influence," it clearly states: "No person is to operate a boat while under the influence of alcohol or drugs. The penalties for operating a vessel under the influence of alcohol or drugs in Connecticut have increased," and, "The laws for boating under the influence have been amended to mirror motor vehicle law."

Please take action to the contradictory minimal limitation to the two-hour window to ~~test for~~ blood alcohol levels in individuals who have chosen not only to put my family at risk, but to ignore that very demand put into print. If amending laws to mirror motor vehicle law, the length of travel time in a boat compared to a car has got to be taken into consideration. Leaving my home in Meriden to travel to Westbrook can be anywhere from 45 to 55 minutes by car. Leaving from Portland, Connecticut, to travel to Westbrook could take me approximately four hours by

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boat.

Breaking the law by using any substance or alcohol while operating any water craft should be enough to prosecute anyone. Expanding the minimal two-hour limit for blood alcohol testing would ensure proper accountability. Please stay consistent. Please send one vital message: Boaters will be held accountable when they ignore boating regulations.

I've heard it said at drug and alcohol prevention forums that it's alcohol's job to mess up your head. If that is true, by all behavioral choices made that result in tragedy, let it be your job, as the power that you hold, to make each person accountable within the maximum amount of time for the poor and sometimes unfortunate choice that a boater makes to allow any substance, drug or alcohol, to mess up their head. Please choose to keep my family safe.

Thank you very much.

REP. ROY: Who is --

JOHANNA KREBS: I'm Johanna Krebs, and you have written testimony, also. We're trying to save (inaudible).

REP. ROY: The bell just rang.

JOHANNA KREBS: I will be very brief. I'm speaking on -- I'm a Court Monitor and Specialist and a victim advocate for Mothers Against Drunk Driving. My name is Johanna Krebs, and I just ask that you support this law.

I'm here representing a family that we worked with that lost somebody as a result of a crash that took place on the Connecticut River. His

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blood alcohol content was taken two hours and ten minutes after the crime happened and the crash. It was ten minutes after the allotted time. Therefore, the Prosecutors were unable to use that evidence in prosecuting the Defendant, so I ask for the support (inaudible).

REP. ROY: Thank you.

JOHANNA KREBS: Thank you.

REP. ROY: Any questions or comments from members of the Committee? Seeing none, thank you both very much.

JOHANNA KREBS: Thank you very much.

KELLEY M. MOORE: Thank you.

REP. ROY: All right. Carlo Guerra followed by Wayne Budney.

CARLO GUERRA: Good afternoon, Senator Meyer, Co-Chairman Roy and Members of the Committee. I am here to oppose Bill 126 for outdoor wood-burning furnaces.

I've been using one for almost three years now. I got mine from Scott. He informed me about the does and don'ts. He educated me. I had never burned-wood in my life before. This is a whole new experience.

This device is about 75 feet from my own house. I pulled a permit. I had it inspected. I placed this device in accordance to the regulations that are on the books, and I don't have any complaints from my neighbors.

I don't understand why law enforcement is having such a difficult taking actions. There

is the bill on buffer zones for wetlands and river courses, and -- watercourses. We didn't get it through last year. I hope you and other parts of the environmental community will really give it your all this year as you meet with Legislators.

I'm not sure we can -- what we can do to find a compromise that will work. We tried for hours and hours last year with the building industry and didn't work anything out, so any ideas you have in that regard would be very helpful, and your advocacy with Legislators again would be so helpful. I've so often said that the quality of life in Connecticut is made, you know, by our rivers, our streams, and our wetlands. It adds a special quality, and once we build right up to the banks of those rivers, streams and wetlands, we take away from that quality, so --

DAVID SUTHERLAND: We do, indeed, and thank you for your advocacy. I'd be happy to --

SENATOR MEYER: You're very welcome.

DAVID SUTHERLAND: Thank you.

REP. ROY: Any other questions or comments? Dave, thank you.

DAVID SUTHERLAND: Thank you.

REP. ROY: Grant Westerson followed by Jack Balint.

GRANT W. WESTERSON: Mr. Chairman, Mr. Chairman, and distinguished Members, thank you for the opportunity to comment. I'm Grant Westerson, Connecticut Marine Trades Association. It's nice to see you again. It's a little late in the day, and I admire your perseverance. I hope I don't draw a three-digit number again.

SB 273
SB 272
SB 123

I have submitted testimony on three bills, 273, 272 and 123, and I'd like to make just some short comments about all three of those.

I ask for your support for 273, the pressure washing bill. It's fairly narrowly focused. It is beneficial for a very few marinas, those that are generally not using biocides. In other words, copper or zinc or whatever in their bottom paint. It may be of great value to a rack stack facility that is storing boats on a rack that don't have bottom paint on the bottom. It would give them an opportunity to hose the scum off the boats when they put them away without bringing any biocides down into the drain water.

We did suggest some additional language to that bill as we spoke to the Chairman a couple of weeks ago about additional language, trying to tie in 228430 with some federal guidelines. The language we gave you on the written testimony may very well do it. I don't know the exact position of DEP on it, but it would take a lot of the discrepancy in the individual ideas out if we can tie right in with whatever the federal guidelines are. It would make it then pretty much universal.

272 would eliminate the two-hour mandatory window for DWI tests on the water. As you know, this arises out of an incident that happened about two years ago on the Connecticut River, and because when you're dealing with issues on the river, there is a lot of time that lapses between trying to get to the embankments, trying to get the equipment that you need, trying to gather all the personnel together and the appropriately certified people so the two-hour window really doesn't work too well on the water.

I think operatively in the statute you've written in that to extend that two hours must be scientifically proved, and I think that adequately takes care of any questions that the court might have down the line.

As you know, the sobriety test was thrown out in that particular case. There was a hearing, and the judge dismissed it because of the two-hour rule. Ultimately, the accused did take a plea and is now enjoying a cell by himself, hopefully, for the next four years.

And then on 123, the vegetation along the river, Senator, I know that's a pet bill of yours. I just think because so many of us are along the waterfront that to require a municipal board to prohibit is pretty strong language, and it comes pretty close to a taking.

I think giving the municipal board the option is always good, but to require them is pretty strong language, and I remind you, at least, history tells me that Connecticut has been clear-cut three or four times in the last couple of hundred years, so we really don't have too much true virgin territory out there, and so I totally agree with you trying to keep the waterways clean. Those waterways are in our backyard. We certainly do put those on our forefront, but if you have any questions, I'd be more than happy to answer them.

REP. ROY: Thank you. The science has also improved on that alcohol-related issue in that they can take a sample four hours afterwards and be able to look back a couple of hours before that and determine the amount of alcohol that the person had at an earlier point.

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10:30 A.M.

GRANT W. WESTERSON: Absolutely. I think law enforcement needs that discretion, and the courts need to support them on that.

REP. ROY: Yes. Thank you. Senator Meyer?

SENATOR MEYER: Grant, let me chat with you just for a moment about the buffer bill that you're concerned about, the vegetation bill. Do you have it in front of you?

SB123

GRANT W. WESTERSON: I do; yes, sir.

SENATOR MEYER: Would you look with me at the bottom of page 5 starting with line 133? You have a larger sheet.

GRANT W. WESTERSON: Yes. I don't have a -- mine is not line numbers.

SENATOR MEYER: Okay. It's Section 3, sub-paragraph B.

GRANT W. WESTERSON: Three B; yes, sir.

SENATOR MEYER: Now, this language really takes away that mandate that you are concerned about because what Section B says is that a wetlands agency can permit the removal of natural vegetation if the applicant can demonstrate that the removal will have no likely impact or effect on the physical characteristics of the wetlands or watercourse, and it gives another exception right after that.

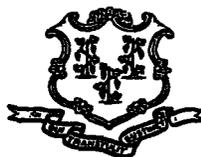
So, that type of language was intended to give some balance and set up a presumption concept rather than an unqualified mandate. Do you follow that?

GRANT W. WESTERSON: I do, but when you preface it

**JOINT
STANDING
COMMITTEE
HEARINGS**

**ENVIRONMENT
PART 5
1346 – 1678**

2010



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Deborah Del Prete Sullivan,
Legal Counsel/Executive Assistant Public Defender
Office of Chief Public Defender

Committee on the Environment
March 8, 2010 Public Hearing

Raised House Bill No. 272, An Act Concerning Drunk Boating

This office does not support this legislation. The legislation would allow a chemical test (breath, blood, urine) to be admissible evidence based upon expert testimony presented by the prosecution at an evidentiary hearing.

This legislation, if adopted, will permit noncompliance with the current statutory 2 hour requirement by allowing for the chemical test to be taken beyond the 2 hour time period. Current law requires that the chemical test be taken within 2 hours of the defendant's operation of a motor vehicle.

Cases that might have been resolved by utilizing the Alcohol Education Program or through a plea bargain could now require new evidentiary hearings before the court at which the reliability of the test will be litigated. In essence, these evidentiary hearings will become a battle of the experts.

This agency would be required to retain expert witnesses to refute the reliability of the test in order to comply with the constitutional obligation to provide effective assistance of counsel. As a result of an increased need for expert witnesses, the legislation could impact upon the financial resources of this agency. As a result, this office does not support passage of this bill.



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

In Support of:

HB 5155

S.B. No. 272 (RAISED) An Act Concerning Drunk Boating

Joint Committee on Environment
March 8, 2010

The Division of Criminal Justice respectfully recommends and requests the Committee's Joint Favorable Report for S.B. No. 272, An Act Concerning Drunk Boating. This legislation is designed to address an infrequent but recurring problem with the prosecution of drunken boating offenses, that being the prolonged period of time that can elapse from the time law enforcement becomes involved in an incident and blood-alcohol content (BAC) can be tested.

This bill would amend subsections (c) and (g) of section 15-140q and subsection (a) of section 15-140r of the General Statutes to revise the current requirement that tests to determine the BAC of an individual suspected of operating a boat under the influence of intoxicating liquor or drugs, or both, be conducted within two hours of the time the individual was operating the vessel in order for those tests to be admissible as evidence in a criminal proceeding. The amendment would waive the two-hour requirement and deem admissible the results of tests taken after the two-hour window but only when expert testimony is provided to establish the reliability of the test.

This change is necessary to provide for the effective prosecution of boating while intoxicated cases where the two-hour limit can be particularly impractical and in some instances impossible to meet. By the very nature of boating, it can take time to secure the vessel of an individual suspected of drunken boating and then to safely get the vessel to shore and docked. The situation becomes even more difficult in cases involving accident and injuries. One recent incident is particularly illustrative of the problem. In this case on the Connecticut River between Old Saybrook and Old Lyme, four individuals were seriously injured by a man suspected of boating while intoxicated. One of those individuals was pronounced dead at the scene. Two others were airlifted by medical helicopter and the fourth was taken to the hospital by ambulance. For an hour or so, the man suspected of boating while intoxicated and causing this horrific accident was safely in a boat operated by a Good Samaritan who had pulled the suspect from the water after he fell overboard. We have attached an email communication addressed to the Committee from Joan Spector, a survivor of that incident who supports S.B. No. 272 but was unable to attend today.

Law enforcement will not choose between attending to the immediate medical needs of victims and processing a suspect. The first priority is and must remain saving lives, not collecting evidence. At the same time, the innocent victims of such a terrible incident should not suffer nor should they be denied justice nor should public safety be jeopardized because emergency personnel must attend to immediate needs first. S.B. No. 272 would remove the artificial two-hour limit and allow for the admissibility of tests conducted beyond the two-hour period but only when expert testimony was provided to establish the reliability of that test.

The Division would call the Committee's attention to a companion bill, H.B. No. 5155, An Act Concerning the Timing of Testing for Blood Alcohol Levels in Operating Under the Influence Cases. This bill would make similar revisions to the statutes governing the admissibility of BAC tests in driving under the influence (DUI) cases. The Division would further note for the Committee's information that we have submitted substitute language for H.B. No. 5155 to the Joint Committee on Judiciary to resolve a concern raised by the Department of Motor Vehicles. The DMV concerns apply only to cases involving the operation of a motor vehicle while intoxicated and not to drunken boating incidents.

In conclusion, the Division of Criminal Justice would respectfully request the Committee's Joint Favorable Report for S.B. No. 272. This bill recognizes the need for emergency personnel to focus first on protecting the public health and safety while allowing for the effective prosecution and administrative disposition of drunken boating violations while providing adequate safeguards for the rights of the accused. Thank you for your consideration of this bill. Please do not hesitate to contact the Division of Criminal Justice if you require additional information or have any questions regarding this issue.

Respectfully submitted,

Kevin T. Kane
Chief State's Attorney

Peter A. McShane
Supervisory Assistant State's Attorney
Geographical Area No. 10, New London

Sarah E. Steere
Senior Assistant State's Attorney
Geographical Area No. 10, New London

Attachment



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing – March 8, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environmental Protection

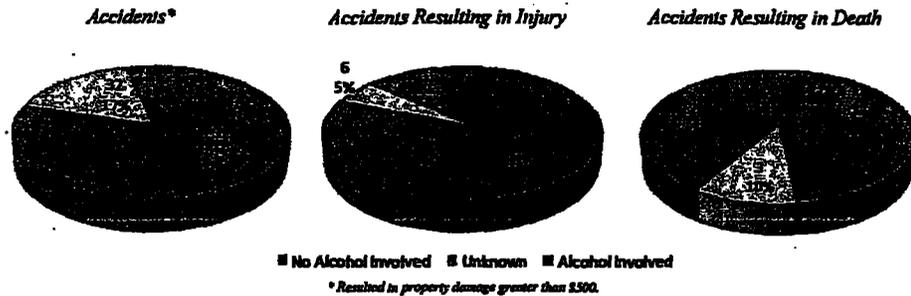
Senate Bill No. 272 (Raised) - AN ACT CONCERNING DRUNK BOATING

Thank you for the opportunity to present testimony regarding Senate Bill No. 272 (Raised), AN ACT CONCERNING DRUNK BOATING. The Department of Environmental Protection (Department) supports this bill that would put boating law in line with proposed changes to the Connecticut Driving Under the Influence (DUI) law. Under current law, chemical tests of a person's blood, breath or urine are administered to determine if the person operating a vessel upon the waters of this state was under the influence of intoxicating liquor, or drugs or both. These tests are only admissible as evidence in Boating Under the Influence (BUI) cases if the blood, breath, or urine samples are taken within two hours of an incident.

The proposed bill introduces needed flexibility into this law by allowing such tests to be used as evidence for an alleged offense when administered outside the current two hour window for: 1) the administrative *per se* hearing process, and 2) with supporting expert testimony to establish the validity of the tests in the criminal proceeding. The Department welcomes the opportunity to work with the Environment Committee and proponents of the bill to improve the language of the bill.

The current two hour time limit to test an alleged drunken boater is too restrictive given the unique demands placed on the officer in processing incidents on the water. Marine police officers must engage the accused, make a preliminary assessment of the condition of the accused, secure the scene on the water, safely move the accused and all vessels to the shore and at times remove the vessel from the water, secure the scene at the shore, allow the accused a rest period, re-assess the accused with field sobriety tests, and failing those tests, collect evidence, collect statements, and transport the accused to the nearest certified breathalyzer instrument to apply a breathalyzer test.

Boating under the influence of alcohol is a major contributor to boating fatalities in Connecticut and is a growing problem. Boating accident data from 2004 – 2008 demonstrate that as the severity of the boating accident increases, the number of boating accidents that involve alcohol increases. While the proportion of boating accidents involving alcohol is small for accidents involving property damage, that number increases with those involving injuries and deaths, with alcohol being involved in forty-two percent (42%) of the deaths.



Additionally, when we look at the number of people who died in those boating accidents, 29% of the people between 2003 and 2007 died in a boating accident where alcohol was involved. However, in 2008 and 2009, sixty-three (63%) of the deaths each year involved alcohol. That is to say that in 2008, 7 of 11 people died in boating accidents that involved alcohol and in 2009, 5 of 8 people died in boating accidents where alcohol was involved. The Department is concerned by this trend.

The goal of the administrative suspension program is to ensure the safety of other boaters by temporarily removing boaters that are arrested for BUI from boating on Connecticut waters by suspending the person's boating certificate or privilege to operate. However, the Department witnesses more and more attempts to use the two hour time limit as a tool to overturn the suspension, even where other ample evidence of intoxication exists. Lowering, but not eliminating the bar on one of the four criteria required to be proven to suspend the boating certificate or privilege to operate a boat of someone arrested for BUI will ensure that the process remains fair for both sides, as intended.

Testing protocols still require the officers to act within a reasonable time limit to ensure that after they have established probable cause, the suspect's blood alcohol content (BAC) does not fall below the legally defined "elevated" level. The proposed law ensures that law enforcement officers can process the scene in a methodical way that insures the safety of all involved, and allows the Department to keep unsafe boaters temporarily off the waters with an efficient administrative process and, in criminal proceedings, requires that tests taken outside the two hour window be substantiated by accompanying expert testimony.

The ultimate goal is to save lives by reducing boating fatalities attributed to alcohol use. It may be of interest to note that prior to 2003 when the law was changed to mirror Department of Motor Vehicle (DMV) law there was no two hour window for BUI.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at 424-3401 or Robert.LaFrance@CT.gov.

**MADD**

Activism | Victim Services | Education™

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Testimony of Johanna Krebs

**Before the Environment Committee
On Senate Bill 272
“An Act Concerning Drunk Boating”
March 8, 2010**

Thank you Co-Chairman Ed Meyers, Co-Chairman Richard Roy and members of the Environment Committee for holding this important hearing and for the opportunity to submit testimony to you today in support of Senate Bill 272. I am Johanna Krebs, Victim Advocate and Court Monitoring Specialist for Mothers Against Drunk Driving in Connecticut.

In Connecticut, despite the efforts of law enforcement agencies, public policy makers, community leaders, the criminal justice system and MADD advocates, DUI state law for boating operators is quite in-adequate. On July 8, 2007 Gregory Seige's 20-foot motorboat was circling full-throttle at 38 mph, when it collided with the 14-foot sailboat carrying two couples. Susan Brandes, 52, a chemical engineer at United Technologies Corp., sustained fatal traumatic injuries, including a severed arm. This was witnessed by her husband Leland and the Spector couple who also sustained serious injuries. The drunk boater plead no contest to second-degree manslaughter. Herein lies the problem – Seige's blood -alcohol content was 0.17 percent two hours and 10 minutes after the crash. DEP officials missed the two-hour time limit for administering the urine test to Seige by 10 minutes. A judge ruled that the results of the urinalysis could not be used to prosecute Seige for boating under the influence.

MADD respectfully requests that the Environment Committee support SB 272 by allowing an extension of time over the current two hour limit to test suspected boating DUI operators. The difficulty of delivering that suspected drunk driving boater to land/dock for testing may be delayed due to water conditions, falling overboard, waiting for Sea Tow, engine failure etc. On behalf of Susan Brandes, her surviving husband Leland and the Spectors it is the least that the Connecticut Legislature can do.

Thank you.

Written testimony of Kelley M. Moore of 280 High Hill Road Meriden, CT. 06450, Before the Connecticut General assembly Environment Committee, March 8, 2010.

Testimony to take action on:

SB 272-An Act Concerning Drunk Boating.

Dear Senator Meyer, Representative Roy and honorable members of the Environment Committee,

My name is Kelley M. Moore and I am a resident of Meriden CT as well as a motor boat owner, who resides for most of the summer at Pilots Point Marina in Westbrook CT. Today I am asking the committee to take action on House Bill 272.

In June of 2009, I became a boat owner. I made a responsible choice to complete the one day, 8 hour course and successfully receive the boaters' license. Simply put: Stated on page 50 of the 2009 CT Boaters Guide that is distributed and sponsored by the State of CT Department of Environmental Protection, under Boating Regulations/Boating Under the Influence it clearly states: **"No person is to operate a boat while under the influence of alcohol or drugs. The penalties for operating a vessel under the influence of alcohol or drugs in CT have increased. The laws for boating under the influence have been amended to mirror motor vehicle law."**

Please take action to the contradictory minimal limitation to the 2 hour window to test for blood alcohol levels in individuals who have chosen not only to put my family at risk but to ignore that very demand put into print. If amending laws to mirror motor vehicle law, the length of travel time in a boat compared to a car has got to be taken into consideration. Leaving my home in Meriden to travel to Westbrook can be a 55 minute ride by car. Leaving from Portland CT to travel to Westbrook took us approximately 4 hours by boat.

Breaking the law by using any substance or alcohol while operating any water craft should be enough to prosecute anyone. Expanding the minimal 2 hour limit for blood alcohol testing would ensure proper accountability. Please stay consistent. Please send one vital message. Boaters will be held accountable when they ignore boating regulations.

I've heard it said at drug and alcohol prevention forums that "it's alcohol's job to mess up your head". If that it is true, by all behavioral choices made that result in tragedy, let it be your job, as the power you hold, to make each person accountable within the maximum amount of time for the poor and sometimes, unfortunate ***choice*** a boater makes to allow any substance, drugs or alcohol, to "mess up their head." Please choose to keep my family safe.

Thank you.

Kelley M. Moore

Madam Chair or Mr. Chairman, and members of the committee. My name is Leland Brandes, formerly of South Windsor, CT, and I want to speak about Bill number 272, AN ACT CONCERNING DRUNK BOATING. To extend the period of time that a blood alcohol test for boating under the influence may be administered if expert testimony establishes the reliability of such test.

For the record, I completely support this bill.

On July 8, 2007, at approximately 3:40 PM, my wife Susan, and I, along with 2 friends, were in our sailboat, returning from a day's outing on Long Island Sound. Our destination was the Old Saybrook boat ramp on the Connecticut River.

We were sailing up the river toward the railroad bridge that spans the Connecticut River. The bridge was in the lowered position due to railroad traffic. We, along with other boaters, were waiting for the bridge to be raised.

We saw a speedboat going in large circles at a high rate of speed. The speedboat came so close to us that he nearly swamped us, as he splashed us with his wake.

I was about to call the police when he came around again. There was no way to get out of his way.

He hit us at 3:50PM at a speed of about 45 mph causing massive injuries and bloodshed. My wife Susan was on the bow of our boat and was killed instantly. His boat went over our starboard side, snapping the mast, and injuring a passenger (broken clavicle and ribs). I thought I saw my wife in the water and dived in to assist her. As I reached for her, what I grabbed was the speedboaters spinning propeller. The propeller severed my right hand between my ring finger and middle finger halfway up to my elbow. Almost a complete amputation. Ultimately my ring finger was amputated. I have very little use of my right hand today.

The boater it turns out was not even in his boat, having been thrown out a while earlier. When he was fished out of the water, he was taken to the dock, where he was held until the police could arrive at the dock.

The police, and others, meantime were recovering all of us in the water, trying to stop the runaway boat and render medical assistance.

When the case came to trial, The blood alcohol test which had been administered, was thrown out due to the timing of the test. Two hours and ten minutes after.

In my opinion I am glad that the police and other rescuers were saving my life and tending to the others rather than worrying about the clock.

Bill 272 should be passed immediately, so that in the future, tragedies like this might be avoided.

Drinking and boating just don't mix!

Leland Brandes

CONNECTICUT MARINE TRADES ASSOCIATION

20 Plains Road
Essex, CT 06475-1501

(860) 767-2645 • Fax (860) 767-3559 • e-mail cmta@snet.net

March 8, 2010

Environment Committee
Legislative Office Building
Hartford, CT 06106

Re: **R.B. No. 272 An Act Concerning Drunk Boating.**

Chairmen Meyer and Roy;

Distinguished Chairmen and Members of the Environment Committee, the Connecticut Marine Trades Association (CMTA) and their membership urge you to support **R.B. No. 272 An Act Concerning Drunk Boating**. This bill would remove the time limitation between an incident and when a sobriety test may no longer be conducted. It would extend the period of time that a test for boating under the influence may be administered if expert testimony establishes the reliability of a test commenced beyond two hours of operation of the vessel. This is an appropriate change and we hope you can support its passage and implementation.

Practical application of the testing regimen when apprehending someone that appears drunk or has caused an accident on the waterways is often difficult because it is a confusing time and the clock is running. Previously a two hour window was all law enforcement had to administer an initial sobriety test. Because the location of an event may not be on the shore or a dock but in the middle of a waterway and because testing equipment may have to be called to the scene, additional time is frequently necessary to complete the procedures. If the reliability of such testing is confirmed then the additional time necessary should be considered.

We urge you to support this initiative, **R.B. No.272 An Act Concerning Drunk Boating**. It is a step in the right direction to modify the strict requirements on law enforcement, recognizing the difficulties they encounter when making the waterways safer for everyone. We would be pleased to discuss this at any time. Thank you for the opportunity to comment on this issue.

Sincerely,

John S. Johnson
Legislative Chair

Grant W. Westerson
President

**JOINT
STANDING
COMMITTEE
HEARINGS**

**PUBLIC
SAFETY AND
SECURITY**

**PART 1
1 - 287**

2010

SENATOR STILLMAN: Will you please identify yourself for the record?

SUSAN NAID: My name is Susan Naid, I'm a senior assistant state's attorney. I'm here in support of House Bill Number 5155, AN ACT CONCERNING THE TIMING OF TESTING FOR BLOOD ALCOHOL LEVELS IN OPERATION UNDER THE INFLUENCE CASES.

(SB 272)

The Division of Criminal Justice respectfully requests the committee's joint favorable report for House Bill 5155. This legislation would amend Connecticut General Statute, Section 14, 227a of the General Statutes to revise the current requirement that tests to determine the blood alcohol content of an individual suspected of operating under the influence be conducted within two hours of the time the individual was operating the vehicle, in order for those tests to be admissible as evidence in criminal or administrative proceedings.

The amendment would waive the two hour requirement and deem admissible the results of tests taken after the two-hour window, but only when expert testimony is provided to establish the reliability of the test. This change is necessary to provide for the effective prosecution of DUI cases and the adjudication of administrative per se cases in the small number of instances where testing cannot be completed within two hours of operation or initiated within two hours of operation.

The reason this may occur is simple. Emergency personnel are focused on saving lives, not collecting evidence. In attending to the seriously injured the emphasis must first be on emergency medical care and protecting public safety, which may prevent personnel from

conducting blood alcohol testing. Again, tests conducted beyond the two-hour period would only be admissible when expert testimony was provided to establish the reliability of the test. The Division would call the committee's attention to companion legislation being considered by the Joint Committee on the Environment with regard to operating a boat or other vessel under the influence. The proposal mirrors 5155 with regard to section 15-140q of the General Statutes.

(SB272)

The two-hour limit may be even less practical in a boating situation since a considerable amount of time may be required to safely dock the vessel before blood alcohol testing is possible. Again, the legislation recommended by the Division would provide for the admissibility of tests taken, initiated beyond the two hour limit, but only when expert testimony is provided to establish the reliability.

In conclusion, the Division of Criminal Justice respectfully requests the committee's joint favorable Report on House Bill 5155. This bill recognizes the need for emergency personnel to focus first on protecting the public health and safety while allowing for the effective prosecution and administrative disposition of DUI violations while providing adequate safeguards for the rights of the accused.

Thank you for the consideration of Bill 5155. I will be happy to answer any questions or -- prior to or after Mr. McShane presents.

SENATOR STILLMAN: Representative Dargan.

REP. DARGAN: I have a question. Let me just throw this scenario out to you referencing the per se and (inaudible) from the state's attorney