

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

February 12, 1991Hearing Room 357 1:00 p.m.Tapes 18 - 21

MEMBERS PRESENT:Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Tom Brian Rep. Rod Johnson Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

VISITING MEMBER:Rep. Kelly Clark

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant

MEASURES CONSIDERED: HB 2450 PH (Criminal Liability) HB 2451 PH (Modifies term) HB 2156 PH (Boaters) HB 2495 PH (Boaters) HB 2504 PH (Defines Public Place) HB 2505 PH (Indecent Exposure)

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TAPE 18, SIDE A

001 REPRESENTATIVE MILLER, CHAIR: Calls the meeting to order at 1:02 p.m.

PUBLIC HEARING ON HB 2504 Witnesses: Rep. Burton, Rep. Barnes, Debra J. Darco (Exhibit A), Stan Robson, Kristi Gustafson

005 REP. MICHAEL BURTON, DISTRICT 17: Offers testimony in favor of HB 2504 and HB 250 5. HB 2504 expands the definition of public place regarding indecent exposure. HB 2504 and 250 5 are companion bills. HB 2504 defines public place to include work place. Discussion of amendments which narrow definition for purpose of HB 2505 which makes exposure a crime no matter where it happens.

052 DEBRA J. DARCO, CITIZEN: (EXHIBIT A) Testifies in favor of HB 2504 and HB 2505. Discusses personal incident with indecent exposure. There are no laws to protect in work place from perverse behavior. Comments on statement from her doctor describing counseling. These bills will lend a hand in dealing with this type of behavior. Victims need help in this.

091 REP. BARNES, DISTRICT 52: Comments on how this problem was brought to attention. Discusses there are no laws for this matter. Multnomah County DA hands were tied because there was no law to deal with this. As a modern progressive state, we should have some laws to deal with this. Urges a positive vote on these.

109 REP. SUNSERI: Long overdue for a bill like this. There has been a

lot of change in the definition of public place mostly due to the smoking issues. Is there any effect here for employers that would relate to smoking places, or ramifications that were not thought about?

118 REP. BURTON: The amendments in 2504 were written after drafting. Was concerned with the broad definition for work place. Urges the committee to consider amendments. These would restrict the definition of work place for the purpose of the indecent exposure act only.

126 REP. JOHNSON: HB 2505 uses the words "exposes the genitals". Not sure of scientific meaning. Does it apply on to a man, limiting it to a crime only a man can commit.

132 REP. BURTON: Certain under the law that either gender would be committing a crime if they did this.

REP. JOHNSON: HB 2505 addresses this particular problem in and of its self. Don't need to redefine public place in any other manner. If HB 2505 passes it would make it a crime any place. Is that correct?

139 REP. BURTON: No. HB 2504 is necessary for the intent of 2505. It is an illegal act if it takes place only in a public place and a work place is not defined as a public place. Need to redefine to include work place, because some work places are not accessible to the public. Need both.

158 REP. JOHNSON: Understands intent but confused because 2505 nowhere uses the phrase "public place" or makes reference to a requirement that it is an element of the crime.

REP. BURTON: HB 2505 adds to the statutes under the penal code essentially as a new crime.

168 REP. JOHNSON: Understands but nowhere in there does it say it has to occur in a public place for it to be a crime.

REP. BURTON: Refers to the Public Indecency statutes. Needs to have conformance with the penal code. Not sure it does but needs to conform the aspect of public place. HB 2504 adds new language.

174 REP. JOHNSON: HB 2504 does.

REP. BURTON: Need to expand the purposes of what the definition of public place is to refer back to HB 2504.

179 REP. JOHNSON: Does not understand. This statute does not refer to this language being put in any section of the penal code that covers only public places. Should address the connection. Criminal statutes need to be specific on all the elements.

REP. BURTON: Assumption is you're looking to amend the ORS relationship and that is not what is happening. This is adding to rather than amending. HB 2504 amends an existing statute. HB 2505 is added to the statute and must conform to all other statutes.

207 REP. JOHNSON: The point is HB 2505 makes it a crime to do this act no matter where. If that is the case, don't need to worry about definitions of public place.

211 REP. BURTON: Appreciates concern. Agrees with intent and could be

worked out in work session.

215 KRISTI GUSTAFSON, MULTNOMAH COUNTY DEPUTY SHERIFF: Offers testimony in support of HB 2504. Gives examples of cases appropriate to this issue. The problem is the definition of public place because the same indecent act in different locations with the victim experiencing the same trauma does not constitute a crime. Discusses the differences between places such as day care center, manufacturing plant, office, or private business where it is not a crime as in a park or parking lot. There were over 1,100 indecency crimes reported in 1989. For the first 9 months in 1990 it increased 6.8%. There is a gap in the code that needs to be remedied.

282 STAN ROBSON, CHIEF GENERAL DEPUTY, BENTON COUNTY SHERIFF'S OFFICE: One of the areas that needs to be discussed is indecent exposure is the beginning for sex offenders. It is a starting point for their offense career. Discusses the I-5 bandit case with regard to the bill.

308 REP. BAUMAN: There is similarity between the crimes described and crimes of sex abuse 1 and 2. Comments on incidents discussed.

318 KRISTI GUSTAFSON: Discusses a case that was lost because it could not be shown the person was unsupervised.

REP. BAUMAN: Wonders if there should be some effort to include this into the sex abuse statutes because that is really what it is. Another similarity is the element of arousal which is another difficult element in sex abuse case.

342 STAN ROBSON: It would be fine where ever it is placed, it is a void in the statutes that needs to be addressed.

348 REP. PARKS: Draws a correlation between freedom of speech with regard to topless and bottomless bars. It may be too broad and effect those areas and be constitutionally challenged.

363 KRISTI GUSTAFSON: Not sure it would be an issue until challenged. Don't see police officers using this law in bar situations.

REP. PARKS: Believes American Civil Liberties Union and people interested in those issues would challenge up front.

KRISTI GUSTAFSON: The current statute would make that sort of lounge a public place.

379 REP. PARKS: One bill deals with issue of work place, not a problem. The other addresses one issue and it creates a crime.

384 KRISTI GUSTAFSON: Does not believe second bill would be necessary if the first one were implemented.

390 CHAIR MILLER: Close hearing on HB 2504 and HB 2505.

(Tape 18, Side A) PUBLIC HEARING ON HB 2450 Witnesses: James McIntyre (Exhibit B), Ross Shepard

409 HOLLY ROBINSON: Gives brief introduction of the bill. It was brought to the committee at the request of the Multnomah County DA's office. This provision extends liability for dependent persons to those who care for them.

TAPE 19, SIDE A

013 JAMES J. MCINTYRE, MULTNOMAH COUNTY DA'S OFFICE, SENIOR DEPUTY DA: (EXHIBIT B) Offers testimony in favor of the bill. Discusses minor amendment in line 15 (see Exhibit, page 2). This bill will hold a person responsible for the care and custody of the dependent person, for situation where they are physically present and observe an assault or negligent care. If serious physical injury or death results and they did not take any reasonable steps to stop the assault or negligent conduct, this will hold them criminally liable along the lines of an aider and abeter. It is different because their mere presence and failure to act would bring them within the criminal statutes.

050 REP. BAUMAN: Is this to address a specific situation?

JAMES MCINTYRE: Don't expect, state wide, a great number of situations this may specifically address. Looking at incidents dealing with severely battered children, or neglected elderly where people have continually allowed the conduct to continue.

059 ROSS SHEPARD, OCDLA: Concerned this would extend criminal liability to a mother who is a battered wife because the husband is beating up both of them. If she does not report it as she probably would not do, she would find herself being a criminal defendant and a victim of her co-defendant. She could go to trial to raise the defense of mental disease because of the battery. Suggest this women should not be drawn into the status of a criminal defendant.

075 REP. PARKS: How would you address that concern but preserve the intent of the bill/amendment?

ROSS SHEPARD: Not sure could answer today, need to give it thought.

078 JAMES MCINTYRE: Line 18 discusses a "person did not take reasonable steps". This would be in addition within the criminal statute. The defense of duress under the justifiable conduct statutes would still be applicable.

087 REP. PARKS: Is the criteria read together or are they separate?

JAMES MCINTYRE: Should be read together. All would be elements of the crime. On line 16 there should be an "and".

096 REP. MASON: 161.270, the duress statute. Needs to disclaim subparagraph 2 of the duress statute. It reads "Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one would be subjected to duress." For the record, would like the witness say the remaining in the house, a battered wife is not intentionally placing herself in that situation.

107 JAMES MCINTYRE: Not sure if the door can be closed. Initial inclination is to agree except in cases of prostitution where this is seen most of the time. Discusses these cases.

118 REP. MASON: Wants the door closed. It is important.

JAMES MCINTYRE: That we close the door so paragraph 2 would not apply?

REP. MASON: Yes. To the battered wife situation.

JAMES MCINTYRE: Not sure you can use battered wife situation, it is too broad. The problem is the committee cannot adopt battered women syndrome and therefore remove that person as a statement of law. It is a far more complex issue than saying this person is a battered women and they are back in the home so therefore duress does not apply.

137 REP. MASON: Won't concede that point.

JAMES MCINTYRE: Not based on the testimony so far. How will you define a battered women syndrome?

145 REP. MASON: Mr Shepard raised a legitimate point and you stated the defense of duress would be available. Like that defense to be available but you don't seem to really want to make it available because leaving sub 2 in there.

JAMES MCINTYRE: Does not agree sub 2 negates duress. Many battered women are incapable of forming intent.

157 REP. MASON: Draws back to the words in the statute. Wants witness to say a women remaining in the home is not intentionally placing herself in that situation. Sub 2 does negate the defense of duress.

166 JAMES MCINTYRE: The women solely remaining in the home is not going to negate the duress.

168 REP. BAUMAN: Looking at the situation after the fact of a tragedy. Discusses the purpose of the bill. Who is this looking at picking up?

202 JAMES MCINTYRE: Looking picking up caregiving people, holding them to a standard of care and responsibility they have set for themselves by becoming a parent or guardian.

222 REP. BAUMAN: Comments the language used to describe this is the language of negligence. It is civil law language.

227 JAMES MCINTYRE: Discusses line 15. Discusses standard of care.

246 REP. BAUM: Under the duress statute, subparagraph 3, it states it is not a defense if a spouse acted on the command of another spouse unless the spouse acted under such coercion as would establish a defense under subsection 1. How do you read those paragraphs and the way they mix?

252 JAMES MCINTYRE: Paragraph 3 was inserted based upon some ancient common law. Reading this statute against the bill, would present the defense of person who says what happened was not criminal. The fact a person remains in a home may not necessarily eliminate the defense of duress because there is a definite psychological make up. Point was the defense of duress is broad enough.

REP. BAUM: So in battered spouse situation, paragraph 2 might not come into play.

JAMES MCINTYRE: Correct.

284 REP. MASON: "Might not" forces it to a factual determination, correct? Wanting it to allow a question of law not fact.

294 JAMES MCINTYRE: Understands, in agreement with direction heading but difficulty is not sure how to say, as a matter of law, a victim of battered wife syndrome should be precluded from having the section apply.

307 REP. MASON: Don't want sub 2 to apply. Afraid of charging her for staying in the home and waiving defense. Asking that sub 2 not apply in that situation.

314 JAMES MCINTYRE: Grasping for a position that can come to terms with what you are saying. Agrees in circumstances where wife is victim. Should not necessary preclude her from the duress defense. Hesitant to give carte blanche to anyone who raises the defense of battered wife.

343 REP. MASON: Believe in the bill?

JAMES MCINTYRE: Yes.

354 CHAIR MILLER: Closes hearing HB 2450.

(Tape 19, Side A) PUBLIC HEARING ON HB 2541 Witnesses: Leslie Kay (Exhibit C), James McIntyre, William McCullic, Jane McCullic

360 HOLLY ROBINSON: Discusses the bill. It removes 5 year limitation. Only change is page 2, line 2, deleting 7 words.

388 JAMES MCINTYRE: Offers testimony in favor of the bill. Discusses case in Multnomah County. Discusses the statute. This will assure the protection of the community.

TAPE 18, SIDE B

018 JAMES MCINTYRE: Continues testimony. Urges the adoption of this statute to allow the sentence language to stand and allow the Mental Health Division to maintain the review of these people committed for the duration of what would be the criminal term.

035 REP. MASON: Gov Goldschmidt is an endorser of the concept of this bill. This is a tragic situation and believes it is something that needs to be taken care of.

042 LESLIE KAY, OREGON ADVOCACY CENTER: (EXHIBIT C) Offers testimony against HB 245 1. The principal problem is that it is probably unconstitutional under a case decided in 1972 Jackson v. Indiana. Discusses the case. The purpose of the commitment under the statute is no for punishment but for treatment. Civil statutes adequately address the issues being raised. The other problem has to do with the vast majority of people who are being committed under the statute and those are developmentally disable and have mental retardation.

084 REP. JOHNSON: What safeguard are made to be sure these accused mental deficient defendants are reasonably certain that they have committed the crime charged?

LESLIE KAY: Understands there is referral to Oregon State Hospital for evaluation to determine capacity.

100 REP. JOHNSON: At that point, what level of inquiry is there of actual guilt?

LESLIE KAY: None.

108 REP. JOHNSON: Appreciates the restrictions on not trying incompetent people. People are being put in a jail, in essence, where they cannot be freed. There is not a high degree of, for example, in camera scrutiny as to whether the person committed the crime.

113 JAMES MCINTYRE: The defendant is arraigned. There is some indication at that time there may be a problem. There is a two or three week period for pre trial negotiations or certifications and during this time they find there is a mental problem. They are not denied any of the other rights a criminal defendant has. They get them inherently in the criminal justice system. This is separate and apart from that. There is a review and determination by a court as to whether they should be held in custody. Once the aid and assist issue is raised, the court will review it and make a determination on treatment.

144 REP. BRIAN: What kind of court action must occur before a person would enter a program that would hospitalize them for up to five years? Is there a finding of guilt?

148 JAMES MCINTYRE: Discusses the procedures.

167 LESLIE KAY: This bill would essentially remove the 5 year maximum. A person could be committed for life with no automatic review to see if they have regained capacity.

184 CHAIR MILLER: Discusses written testimony submitted.

REP. MASON: Lack of review is a problem, what if it were available when the defendant wanted it. The time committed for would be a maximum and when they are deemed competent they could get out.

205 LESLIE KAY: The problem under Jackson is linking the term of commitment to a probable guilty sentence. The issue is the period of time necessary to resort that person to capacity. If unable to restore within a reasonable period of time, cannot under due process, commit that person. Linking it to the parol sentence is unconstitutional.

220 REP. MASON: Per say?

LESLIE KAY: Believes that would be the probable ruling of a court.

REP. MASON: Have to disagree.

227 REP. PARKS: On page 1, would like comments regarding lines 26 to 30 on the language in the bill.

233 LESLIE KAY: The issue of whether criminal charges are dropped or not is separate from the purpose of this commitment. The only purpose of the commitment is restoring the person to capacity.

241 JAMES MCINTYRE: It does provide a mechanism for court to act.

262 WILLIAM MCCULLIC, DOCTOR: What ever law is passed, interested in keeping someone dangerous to the public off the street. Discusses brother's case.

296 JANE MCCULLIC, WIDOW: Consider safety of the public and the patient. Consider the civil commitment system. Discusses huSB and's

case.

320 CHAIR MILLER: Closes hearing on HB 2451. Recesses at 2:25 p.m.
Reconvenes 2:30 p.m.

(Tape 19, Side B) PUBLIC HEARING ON HB 2495 Witnesses:Rep. Peter
Courtney (Exhibit D)

354 REPRESENTATIVE PETER COURTNEY, DISTRICT 33, MINORITY LEADER OF
HOUSE: (EXHIBIT D). Discusses drinking and driving and fact there are
no rules for drinking and operating a boat. Comments on the Oregon
Standard Boating Safety manual. Asks the committee to consider that
operating a boat is more difficult than a car. Boating is recreational
and there are too many distractions. Boat traffic has dramatically
increased on the waterways. There is a lack of respect for water and the
dangers that can come with it. Boating requires good vision and alcohol
can seriously restrict vision. Comments on personal observations of
living on the Willamette River. Discusses rescues made each summer
because of drunk boaters.

TAPE 19, SIDE B

008 REP. COURTNEY: Discusses boating manuals and comments on written
testimony. Please consider a boat can't respond as easily as an auto.
Most believe they can operate the boat like a car but boating is
recreational with many distractions. Best way to stop drinking on the
highways is to stop it on the waterways.

135 REP. PARKS: This bill addresses an open container and all testimony
talks about operation of the boat by a drunk person. Agrees that a
drunk has less physical agility. The bill is broadly drawn it would
cover a rowboat. Is that the intention?

REP. COURTNEY: Yes.

REP. PARKS: What about houseboats?

REP. COURTNEY: A boathouse that is permanently moored or docked is one
thing. Speaking to the particular boating situation where it is mobile
or moving.

167 REP. JOHNSON: Drunk drivers kill people. Many of the situations
described in testimony included times where the boat operator was a
danger to himself because he was drunk. Relatively speaking in boating
situations there is a higher percentage of people at risk. Will the
drunk person hurt themselves more as opposed to them hurting someone
else?

174 REP. COURTNEY: Trouble following the question. Someone other than
operating the boat?

REP. JOHNSON: Discusses the main reason for the drunk driving laws. In
boating there are fewer situations where the drunk operator of a boat is
injuring someone else as opposed to self than a drunk auto driver.

188 REP. COURTNEY: Concerned about the operator and the others in the
boat equally. Comments on rescues made.

209 REP. JOHNSON: On the .08 blood alcohol level in the bill, is it an
appropriate level?

REP. COURTNEY: That is in another bill. Discusses the two bills.

238 REP. BRIAN: Was on river patrol. Making a parallel to the open container law for driving and operating a boat is very close. The danger is greater in boating. The reason for the open container law is so the driver does not have immediate access to a drink. This is a serious matter.

261 REP. COURTNEY: Have discussed this with the state police. Told me it was a public policy issue but the magnitude of this is tremendous because of the amount of noncompliance is extraordinary. Not just crying wolf on this, there is drinking going on in boats.

281 CHAIR MILLER: Discusses appreciation for nature. The current law with respect to drinking at someone home, there is a social host situation where someone leaves drunk, the host is held somewhat responsible. Is there something to be said for the boat operator who supplies the alcohol who would be held responsible for injuries to others.

REP. COURTNEY: Don't know the answer.

300 CHAIR MILLER: Recesses hearing on HB 2495.

(Tape 19, Side B) PUBLIC HEARING ON HB 2156 Witnesses: Jim Burnett, Bill Brooks, Jill Vosper, Irwin House, Bob Skipper, Theodore Nutting, Randall Cummings, Jim Schuntter, Paul Donheffner, Anthony Taylorm Grant Griffin

301 BILL BROOKS, CLACKAMAS COUNTY SHERIFF, OREGON STATE SHERIFF'S ASSOCIATION: (EXHIBIT E) Offers testimony in favor of HB 2156. The Sheriffs of Oregon are the primary law enforcement agency engaged in the enforcement of boating in Oregon. The bill will strengthen public safety in boating. They require operators to submit to alcohol and drug testing whenever the operator is suspected of being under the influence. The Oregon State Sheriffs support the sanctions authorized by the bill as they reflect the seriousness of safe boating.

348 REP. PARKS: Written testimony states this includes boat owner authorizing or permitting the boat to be operated by a person under the influence. What is the sanction?

BILL BROOKS: The statute is several pages long.

CHAIR MILLER: It is in packets.

361 JIM BURNETT, NATIONAL TRANSPORTATION SAFETY BOARD: (EXHIBIT F) Offers testimony on the bill. The Board does not endorse any specific legislation but this contains concepts the Board wants adopted. Discusses the National Transportation Board. There are a large number of recreational boating accidents. More people are killed in boating than in plane, rail or commercial marine activities. Alcohol is involved in an unacceptably high portion of these accidents and death. Comments on a study done in 1983.

TAPE 20, SIDE A

006 JIM BARNETT: Continues testimony. Discusses incidents in other states. The role of alcohol in boating accidents is underrated. There

are no uniform reporting requirements for this. There is little or no information available for boaters on how alcohol affects their ability to operate a boat safely. The Board found most state laws make it illegal to operate a boat while intoxicated, few states provide adequate legal tools for enforcement of the law. There is no defined level for intoxication such as for drunk drivers. The marine police have to charge a drunk boating operator with reckless boat operations or some other offense. Oregon is the only state west of the Rockies without a effective laws on this. The Board recommends that Oregon adopt legislation to allow chemical testing of blood, breath or urine if a recreational boating operator is suspected of being intoxicated and toxicological tests in the event of a recreational boating accident fatality. Also for the adoption of legislation that clearly defines the level of legal intoxication of recreational boat operators. This will provide the tools to implement an effective program for curbing alcohol use on the water. The use of an objective definition of intoxication such as a specific "BAC" level will simplify the enforcement of these statutes. Discusses how this has helped reduce boating accidents in other states that have implemented a BAC level in their statutes.

101 REP. BRIAN: Asks Mr. Burnett to be present during discussions on HB 249 5.

CHAIR MILLER: We will come back to it after HB 2156.

JAMES BURNETT: Can be available but the Board does not have any position on the issue of that bill.

REP. BRIAN: The Board does not make an official comment on HB 2495.

(3:10 Rep. Clark comes in)

139 REP. JOHNSON: Sixty-two percent in the Boat US survey on page 7 of written testimony "acknowledged drinking at least occasionally when operating their boat". How can over- controlling recreational capacity in their boats be controlled?

156 JAMES BURNETT: There is a comprehensive study mentioned in written testimony. Comments on study done in California wheret most of people in boating fatalities were passengers or swimmers. There is an issue of endangering lives of other people in recreational boating. The BAC standard proposed is generous.

178 REP. MASON: Impression is these accidents more often than not have to do with power boats. Could one differentiate between power boats and nonpower boats?

JAMES BURNETT: Have not made it. Most accidents are in fact power boats. There have been incidents with nonpower boats.

209 REP. MASON: Do you have any sense between sailing and motor boats?

JAMES BURNETT: A problem is the increasing amount of power on power boats. Will not advocate a different standard. Understands what you are saying.

225 PAUL DONHEFFNER, MARINE BOARD, STATE MARINE DIRECTOR: (EXHIBITS G and H) Offers testimony in favor of HB 2156. The present statute simply prohibits the operation of a boat by someone under the influence. It is a Class A Misdemeanor with a fine and/or jail time. HB 2156 will

establish a BAC level of .08, provide implied consent to field sobriety tests; and establish enhanced penalties. The present statute is vague and antiquated and is confusing to explain to people. The public believes that intoxicated boaters on the waterways are a problem. Boat owners want stricter regulations that are aggressively enforced. The boating community supports this bill.

333 JILL VOSPER, GRANTS MANAGER FOR DUII PROGRAMS, OREGON TRAFFIC SAFETY COMMISSION: (EXHIBIT I). Offers testimony in support of HB 2156. Discusses with the Governor's Advisory Committee on DUII.

378 IRWIN HOUSE, PRIVATE CITIZEN: (EXHIBIT J) Offers testimony in favor of HB 2156. Urges passage of this bill.

TAPE 21, SIDE A

011 REP. JOHNSON: Appreciates distinction drew between power boats and sail boats. Where would you draw the line between power boats and row boats? How would you make a distinction?

015 IRWIN HOUSE: The law states a boater is are responsible for their wake.

020 REP. JOHNSON: How big of an engine does it take, if we were going to craft into this law a distinction, where would you draw the line between horse power?

024 IRWIN HOUSE: Can't limit it by horse power. It is a matter of knowing what the boat is capable of.

032 THEODORE M. NUTTING, CAPTAIN, CHIEF OF BOATING SAFETY DIVISION OF 13TH DISTRICT, US COAST GUARD: Offers testimony in favor of the bill. Particularly the portion setting a blood alcohol level standard and implied consent. The BAC will make the state's boating law much more effective. There has been a decline in boating fatality in states that have implemented a BAC standard compared to those without. Federal law concerning boating while intoxicated was passed in 1984 and it imposes civil and criminal penalties. It provides standards by administrative regulations but the Congressional committee on this stated the responsibility for enforcing laws on intoxicated boating operating lies with the state and local officials not with the Coast Guard. The Coast Guard came up with a rule that defines boating while intoxicated that recognized the State has primary responsibility and not cause confusion. The rule defines .10% as the BAC level which makes a person intoxicated. This standard only applies in areas where a state has not set own standard. The state's standard takes priority over this. The Coast Guard believes that .08% is quite reasonable and support this measure.

097 JIM SCHUITTER, COLUMBIA RIVER YACHTING ASSOCIATION, VP: Offers testimony

in favor of HB 2156. The law enforcement agencies need this to make rivers safe. By passage of this law it will force people to become more aware of state boating laws themselves. There are over 170,000 boats registered in the state putting in 3.4 million boating days.

117 ANTHONY TAYLOR, PRIVATE CITIZEN: (EXHIBIT K) Offers testimony on HB 215 6. It does not seem that any reduction in the instances involving boats operated under the influence will be accomplished by enhancing the

penalty for refusing to submit to a field sobriety test, etc. Offers suggested amendment. Discusses procedure for obtaining sobriety tests. There is no provision for diversion in the bill. Suggests that there ought to be.

187 REP. JOHNSON: If trying to draw a line between row boats and speedboats, can you think of a way to draw that line on where a boat is a lethal instrument?

ANTHONY TAYLOR: Would draw the line between a 5 horse power motor and others. Would make some provision for those operating unmotorized boats. Understands concern between distinction but still concerned about alcohol and water.

215 REP. JOHNSON: Not sure if it is our duty to protect people from themselves.

226 GRANT GRIFFIN, NORTHWEST MARINE TRADE ASSOCIATION: Offers testimony in support of the bill. Discusses the Association. The Association feels this bill has sufficient strength to accomplish making boating a safer sport. Statistically there are fewer boating accidents and fewer fatal accidents related alcohol and boating. Touches on the economics of boating which is a huge business in the northwest.

275 BOB SKIPPER, MULTNOMAH COUNTY SHERIFF: Offers testimony on HB 2156 and HB 249 5. Supports Sheriff Brooks' comments on HB 2156. A drunk driver on the river is every bit as dangerous as a drunk driver on the road. Anything with an engine could turn into the path of an oncoming boat. Believes the distinction should be made between a rowboat and a canoe and anything with a motor.

REP. MASON: What about sailboats?

BOB SKIPPER: It depending on the speed. Anything that can travel fast enough. Discusses definition of "operator". On HB 2495 offers testimony against the bill. It is unworkable and overly broad. Emphasis is on person operating the boat and not having them be a hazard.

322 REP. BAUMAN: Interested in tracking the discussion differentiating between power and nonpower boats. Wonder if you see any benefit to the committee drawing a distinction between power boats and nonpower boats.

328 BOB SKIPPER: The distinction is mobility, the ability to get into someone's way, to be going the wrong way, to turn in front of someone. A rowboat does not move very fast but a motor boat or sailboat moves fast.

353 REP. BAUMAN: Points to putting sailboats and power boats in the same class of more danger to others when operated by someone under the influence.

BOB SKIPPER: Yes. The operator is dangerous to everyone in boat and on the water way.

366 REP. BAUMAN: Another area of concern is with a drawing proximity of alcohol and the water. Questions the Sandy River Bridge.

401 BOB SKIPPER: People decide to jump off of it. People who are creating a hazard on the water way are able to be legislated.

TAPE 20, SIDE B

010 REP. MASON: Other nonpower boat with great potential for accidents is white water rafting which involves high speed and catamarans that move real fast.

018 REP. BAUM: Comments on kayakers being cautious.

031 BOB SKIPPER: Another point is most people leave the boat set for months before using. They are then unfamiliar with it.

040 RANDALL CUMMINGS, PRESIDENT, OREGON FEDERATION OF BOATERS, INC.: Offers testimony in favor of the bill. (EXHIBIT L). Comments on gray of difference between motorized and nonmotorized boaters. It is difficult to differentiate and write a law that addresses on type of operator and not another. The majority of fatalities have been with nonmotorized boaters. Discusses on the Federation. Both boaters and law enforcement officers can support HB 215 6.

073 WAYNE SMITH, GOVERNOR'S ADVISORY COMMITTEE ON DUI: (EXHIBIT M) Offers testimony in support of HB 2156 and encourages passage. This bill would align issues surrounding operating motor vehicles and boat under the influence as well as make the legal consequences of both behaviors more consistent. Discusses observations of various boating areas in the state. Comments on when a person is effected by alcohol which is right at a .03 to .06%. Takes a limited amount of alcohol to affect functions. Comments on advising people of implied consent and Maranda rights.

118 REP. JOHNSON: Aren't there some boats like inner tubes that don't have to be licensed?

WAYNE SMITH: Correct.

REP. JOHNSON: Is there already a distinction that divides all classes of water vehicles in to those that have to be registered and those that don't

WAYNE SMITH: Not in a position to answer that question. Someone from the Marine Board should.

130 REP. BAUM: Try to get a handle on what is a boat. Don't we want to tag licensed boats?

WAYNE SMITH: Believes someone from the Marine Board should answer.

142 PAUL DONHEFFNER: Have definition of boat in the small water craft statute that indicates what talking about. ORS 830.005 states: "Boat means every description of water craft used or capable of being used as a means of transportation on the water but does not include aircraft equipped to land on the water, boathouse, floating homes, air mattresses, beach and water toys or single inner tubes."

149 REP. BAUM: What is actually licensed? Where does the sanction apply?

PAUL DONHEFFNER: Presently all motor boats and sailboats 12 feet and over are licensed. Nonpowered boats that fit the definition are not under the revocation provision of the bill. It is intent in putting bill forward to make it encompassing to include all types of boats.

REP. BAUM: Does law enforcement realize they will be doing all of this?

WAYNE SMITH: Yes.

183 REP. PARKS: What do you really want, what is the real paramount danger trying to cure?

PAUL DONHEFFNER: The current law applies to all boats. Not trying to aim on single inner tubes, etc. It is consistent with present statute because it is not creating a new crime just taking the current statute and trying to improve on it. This would be a tool.

208 REP. PARKS: It is all or nothing.

PAUL DONHEFFNER: Not trying to narrow the definition of boats. Not expanding the scope or application. Just asking to keep it the same.

222 REP. BAUMAN: On page 5, lines 4 and 5 discussing the duration of the suspension of eligibility to apply for any certificate, of title, etc. necessary to lawfully operate a boat. It is a cancellation for at least a year and could be more. On line 5 eligibility to apply shall be substantially longer if person refuses the test. Never seen that much discretion for an agency on a punitive measure.

243 PAUL DONHEFFNER: Referring to Section 10 of the bill. If refer to page 2 where it provides cancellation where it will be at least one year in case of taking the test unless refuses, can be up to for 3 years.

266 REP. MASON: Closes hearing on HB 2156.

(Tape 20, Side B) PUBLIC HEARING ON HB 2495 Witnesses: (Note: all witnesses listed here are against the bill) Irwin House (Exhibit Q), Jim Schwitter, Grant Griffin, Randall Cummings (Exhibit P), Allan Consor

277 REP. MASON: Question for all witnesses is on line 17 of the bill it says that it does not apply if the alcohol bottle is in some area of the boat not normally occupied by the person who is operating, propelling, or in physical control of the boat. That seems to make it more palatable. Please comment.

288 GRANT GRIFFIN: In a small boat the operator is only an arm reach from parts of the boats. Most boats are small trailerable boats where the operator will be in close proximity to open containers. It is too broad.

302 ALLAN CONSOR, COLUMBIA RIVER YACHT ASSOCIATION: If there can be no open containers on a boat, might as well leave litter on beach. Cheaper to have a Class C than a Class B if picked up because empty can and bottles are in boat. People can drink in a charter boat. It is the skipper that we are after not the passengers. Guests should have the right to have beer on the back deck of the boat. This is a gray area.

325 RANDALL CUMMINGS: (EXHIBIT P) It is very easy to draw comparison between vehicles in traffic and boats on the water. Believes this bill is too broadly written. Discusses Section 2, paragraph 2. HB 2156 better accomplishes reaching the drunken operator of the boat. Objects to a law that sweeping makes criminals out of otherwise law abiding people. Not able to enforce that kind of a law.

362 IRWIN HOUSE: (EXHIBIT Q) Feels that this bill is redundant. HB 2156 is more comprehensive.

382 JAMES SCHWITTER: Representing pleasure boaters. Believes this would cut down everybody to get at a few. Would like to see HB 2156 put in effect and tried. If it does not handle the problem then look at this.

TAPE 21, SIDE B

016 JAMES SCHWITTER: Continues testimony. Comments on younger crowd of boaters. Bulk of boaters are responsible. Trying to target into those who are new and young and aggressive, trying to calm them down. A blanket law such as this will not eliminate the problem.

018 CHAIR MILLER: Closes hearing on HB 2495. Adjourns hearing at 4:30 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Testimony on HB 2504 - Debra Darco - 2 pages
B - Testimony on HB 2450 - James McIntyre - 4 pages
C - Testimony on HB 2451 - Leslie Kay - 2 pages D-Testimony on HB
2495 - Rep. Courtney - 7 pages E- Testimony on HB 2156 - Bill
Brooks - 1 page F - Testimony on HB 2156 - Jim Burnett - 9 pages
G - Testimony on HB 2156 - Paul Donheffner - 2 pages
H - Testimony on HB 2156 - Paul Donheffner - 10 pages
I - Testimony on HB 2156 - Jill Vosper - 1 page
J - Testimony on HB 2156 - Irwin House - 1 page
K - Testimony on HB 2156 - Anthony Taylor - 3 pages
L - Testimony on HB 2156 - Randall Cummings - 1 page
M - Testimony on HB 2156 - Wayne Smith - 1 page
N - Testimony on HB 2156 - Jim Sauve - 5 pages O - Testimony
on HB 2156 - Don T. Fredericks - 1 page P - Testimony on HB 2495 -
Randall Cummings - 1 page Q - Testimony on HB 2495 - Irwin House -
1 page