

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 25, 2002

1:10 p.m.

MEMBERS PRESENT

Representative Scott Ogan, Vice Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Norman Rokeberg, Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 405

"An Act relating to the prosecution of criminal offenses committed on or against ferries and other watercraft owned or operated by the state; and providing for an effective date."

- MOVED HB 405 OUT OF COMMITTEE

HOUSE BILL NO. 348

"An Act relating to violations of domestic violence protective orders."

- MOVED HB 348 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 405

SHORT TITLE: CRIMES COMMITTED ON STATE WATERCRAFT

SPONSOR(S): REPRESENTATIVE(S) MEYER

Jrn-Date	Jrn-Page		Action
02/11/02	2206	(H)	READ THE FIRST TIME - REFERRALS
02/11/02	2206	(H)	JUD
02/11/02	2207	(H)	TRA REFERRAL ADDED BEFORE JUD
02/13/02	2258	(H)	COSPONSOR(S): DYSON
02/19/02		(H)	TRA AT 1:15 PM CAPITOL 17
02/19/02		(H)	Moved Out of Committee --

			Time Change --
02/19/02		(H)	MINUTE(TRA)
02/20/02	2336	(H)	TRA RPT 4DP 2NR
02/20/02	2336	(H)	DP: SCALZI, WILSON, KOOKESH, KOHRING;
02/20/02	2336	(H)	NR: MASEK, OGAN
02/20/02	2336	(H)	FN1: ZERO(CRT)
02/20/02	2336	(H)	FN2: ZERO(LAW)
02/25/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 348

SHORT TITLE:VIOLATION OF A DOMESTIC VIOLENCE ORDER

SPONSOR(S): REPRESENTATIVE(S)CROFT

Jrn-Date	Jrn-Page		Action
01/22/02	2029	(H)	READ THE FIRST TIME - REFERRALS
01/22/02	2029	(H)	JUD
01/28/02	2087	(H)	COSPONSOR(S): GUESS
01/30/02	2101	(H)	COSPONSOR(S): DYSON
02/25/02		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

ANNE CARPENETI, Assistant Attorney General

Legal Services Section-Juneau

Criminal Division

Department of Law (DOL)

PO Box 110300

Juneau, Alaska 99811-0300

POSITION STATEMENT: Responded to questions regarding HB 405 and
HB 348.

REPRESENTATIVE ERIC CROFT

Alaska State Legislature

Capitol Building, Room 400

Juneau, Alaska 99801

POSITION STATEMENT: Asked questions in regard to HB 405.
Testified as the sponsor HB 348.

CAPTAIN GEORGE CAPACCI, General Manager

Alaska Marine Highway System

Department of Transportation & Public Facilities

3132 Channel Drive

Juneau, Alaska 998901-7898

POSITION STATEMENT: Responded to questions regarding HB 405.

JERRY LUCKHAUPT, Attorney
Legislative Counsel
Legal and Research Services Division
Legislative Affairs Agency
Terry Miller Building, Room 329
Juneau, Alaska 99801

POSITION STATEMENT: Spoke as the drafter of HB 405 and responded to questions.

LAUREE HUGONIN, Executive Director
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
130 Seward Street, Room 209
Juneau, Alaska 99801

POSITION STATEMENT: Provided information regarding protective orders and testified in support of HB 348.

MARLA NELSON, Program Director
Abused Women's Aid in Crisis (AWAIC)
100 W 13th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: Testified in support of HB 348.

ACTION NARRATIVE

TAPE 02-23, SIDE A
Number 0001

VICE CHAIR OGAN called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives Ogan, James, Coghill, Meyer, Berkowitz, and Kookesh were present at the call to order.

HB 405 - CRIMES COMMITTED ON STATE WATERCRAFT

Number 0131

VICE CHAIR OGAN announced that the first order of business would be HOUSE BILL NO. 405, "An Act relating to the prosecution of criminal offenses committed on or against ferries and other watercraft owned or operated by the state; and providing for an effective date."

Number 0161

REPRESENTATIVE MEYER, speaking as the sponsor, said that HB 405 would give the state jurisdiction over state-owned watercraft,

even when that watercraft is outside state waters. He informed the committee of the following:

Recently a superior court judge dismissed a prosecution for a sexual assault that occurred on an Alaskan ferry while in Canadian waters. The court found that there was no statutory authority for the State of Alaska to prosecute the crime even though the defendant and the victim were both Alaskans. Under the federal maritime law, the United States government has jurisdiction over crimes committed on United States vessels in Canadian waters.

REPRESENTATIVE MEYER said that the court's dismissal is of concern because neither the federal government nor the Canadian government is likely to prosecute the crime. Generally, the federal government doesn't prosecute offenses such as sexual assault. Furthermore, the Canadian government has little interest in pursuing charges involving Alaskan victims on Alaskan state-owned ferries. Therefore, Representative Meyer said he felt it prudent to pass a state law that specifically provides the state the power to prosecute cases such as this, and to protect and defend passengers on state-owned vessels. "House Bill 405 will eliminate the loophole that prevents the state from prosecuting such crimes in the future," he said.

REPRESENTATIVE MEYER noted that this loophole was brought to his attention by the Department of Law. This legislation would have helped with a recent situation in which a 16-year-old girl was sexually assaulted on a state-owned ferry while in Canadian waters en route from Seattle to Ketchikan. The young woman reported the crime to the police authorities in Ketchikan. The Ketchikan district attorney presented the case to the grand jury in Ketchikan, which returned an indictment for one count of sexual assault in the first degree, one count of sexual assault in the second degree, and four counts of misdemeanor assault. However, the [Alaska] Superior Court dismissed the indictment due to Alaska's lack of a statute that authorized the state to prosecute under these circumstances.

Number 0310

REPRESENTATIVE MEYER recalled Representative Kookesh's comments in the House Transportation Standing Committee hearing, which he paraphrased as follows: "If the Canadians won't take action and the feds don't want to take action, then we should at least have

the right to take action to protect Alaskans and others from any criminal activity that occurs on our state-owned vessels."

Number 0348

REPRESENTATIVE BERKOWITZ remarked that [HB 405 is well intentioned]. However, he predicted that there will be many questions regarding the state's ability to assert [statutory] jurisdiction in conflict with either federal statutes or international treaties. Representative Berkowitz expressed his desire to ensure that whatever [the legislature does] works. Representative Berkowitz expressed concern with the tendency to jump before the supreme court has the final word. That seems problematic in regard to separation of powers.

VICE CHAIR OGAN noted that he shared those concerns as well. He also noted that HB 405 was passed from the House Transportation Standing Committee with the hopes that the jurisdictional concerns would be addressed in this committee.

REPRESENTATIVE MEYER acknowledged that he knew that was a concern for Vice Chair Ogan.

VICE CHAIR OGAN said he applauded what Representative Meyer is trying to do [with HB 405]. He informed the committee that his staff had discussed this with Tamara Cook, Legislative Legal and Research Services, Legislative Affairs Agency, who believes this will require some serious legal research. He related his understanding that [HB 405] is saying that [the ferries] are a sovereign piece of Alaska that moves through international waters and waters of other states and thus there are probably federal laws and maritime laws that might play into this.

Number 0532

REPRESENTATIVE KOOKESH remarked that although there is a question of jurisdiction, the thrust of [HB 405] is to [allow Alaska] that option of doing something if no one else does. Otherwise, a crime would go unpunished and [the victim] would have no recourse.

REPRESENTATIVE JAMES related her thought that if [HB 405] isn't passed, then the minute one is outside of Alaska waters all hope is gone.

VICE CHAIR OGAN clarified that he wanted something to be done in these situations. However, he said he didn't want to merely

pass a bill that doesn't work; thus the jurisdictional questions need to be resolved.

REPRESENTATIVE KOOKESH reiterated that it's not a question of jurisdiction but rather of moving through the jurisdictional search and discovering that no one wants to do anything. Therefore, the State of Alaska needs to be there when no one else [does anything].

REPRESENTATIVE MEYER agreed with Representative Kookesh.

VICE CHAIR OGAN inquired as to whether this crime was reported to the Canadian government while the ferry was in Canada.

Number 0824

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), informed the committee that AS 12.20.010 prohibits the State of Alaska from prosecuting any case where another case has already been prosecuted, regardless of whether the case resulted in a conviction or an acquittal. Furthermore, Ms. Carpeneti recalled that the state has prosecuted cases on ferries before [the recent case] arose. She knew that [the state] has prosecuted cases outside the jurisdictional limit before and the issue hasn't been raised. She noted that the state's jurisdiction has been upheld in instances pertaining to private trawling boats far outside the state's waters; therefore, the concept of the state exercising jurisdiction under these circumstances isn't unusual.

MS. CARPENETI turned to the recent case and informed the committee that the defense attorney's brief cited [AS 12.20.010] and the other statutory basis for jurisdiction. Although the state statute authorizes jurisdiction to prosecute crimes committed outside Alaska's territory when the harm occurs within Alaska's territory, the statute didn't seem to be broad enough. The Superior Court judge agreed. Furthermore, she suggested that the Superior Court judge felt that since Alaska's jurisdictional law is so tied to the statute, a statute was necessary; thus the case was dismissed.

MS. CARPENETI agreed that other jurisdictions would have an interest in a crime committed on an Alaskan ferry in Canadian waters. One such jurisdiction is the federal government, which hasn't stepped forward to prosecute. She assumed that the Canadian law would allow Canada to prosecute this recent

offense, but they haven't done so either. Ms. Carpeneti informed the committee that in this recent case, the ferry didn't stop and return to a Canadian port. Instead, the ferry continued to its next port, which is the procedure the ferries follow. Ms. Carpeneti noted that there are no legal barriers to [continue to the next port] as long as there is a statute giving the state authority to take jurisdiction. Furthermore, of the three jurisdictions, Alaska probably has the most connection and interest in protecting this victim and others.

Number 1107

MS. CARPENETI remarked, "Now that the issue has been raised, it's not going to go away." For example, in December an intoxicated woman was hitting one of the crewmembers over the head with a Vodka bottle. The crewmembers have a right to protect themselves, as do the ferries themselves, and Alaska is probably the most interested in protecting its ferries. Ms. Carpeneti noted that as far as she and her [staff] knew, there are no international treaties that would forbid the state's exercise of this jurisdiction. She said that "the Geneva Convention Treaty on the Flagship from 1954," 18 USC 7, gives the United States authority over U.S.-flagged vessels. "The United States has never preempted this field ... and excluded ... concurrent state jurisdiction," she pointed out. Moreover, concurrent state jurisdiction has been allowed far into international waters. Therefore, she didn't believe that there is a concern that the proposed statute is going to violate international treaties. Ms. Carpeneti said that she and [her staff] have concluded that as long as the connections to the state are close enough to satisfy due process, then the state can do so [with] a statute.

Number 1235

REPRESENTATIVE BERKOWITZ related his understanding that ferries [sail] four waters: state waters, federal waters, foreign waters, and high seas. There are different jurisdictional issues attached to each type of water. Representative Berkowitz said that if a crime occurred on a ferry within Alaskan waters, there is no question [of jurisdiction]. If there is a crime that occurs on a cruise ship within Alaskan waters, where would the jurisdiction lay, he inquired.

MS. CARPENETI answered that she believes Alaska or the flagship could take jurisdiction.

REPRESENTATIVE BERKOWITZ posed a situation in which a crime occurred on a ferry in international waters. Representative Berkowitz expressed the need to distinguish between high seas, foreign seas, and Canadian seas. If something occurs on a ferry in the high seas, who has jurisdiction, he asked.

MS. CARPENETI answered that if it were an Alaskan ferry, then she thought that Alaska could take jurisdiction. The court of appeals has approved Alaska's prosecution pertaining to theft crab pots from a privately owned vessel on the high seas.

REPRESENTATIVE BERKOWITZ related his understanding, then, that this comes down to the site of the crime, which was Canadian waters in this case.

MS. CARPENETI remarked that she believes that, in any event, it would be best to have a statute such as proposed here because this issue will be litigated on fishing boats.

REPRESENTATIVE BERKOWITZ asked if the state would be able to assert jurisdiction for a crime against an Alaskan that occurred while the Alaskan was standing on Canadian soil.

MS. CARPENETI answered that she didn't believe so, although she wasn't sure. "We're not worried about those situations," she said.

REPRESENTATIVE BERKOWITZ posed a situation in which a crime had occurred aboard an [Alaskan] ferry that was tied up at Prince Rupert, Canada.

MS. CARPENETI replied, "I think there would [be] three jurisdictions, as there are now, that could have an interest and would have due process rights ... and that would be Canada, ... the United States ..., and if this statute passed, Alaska."

Number 1399

REPRESENTATIVE BERKOWITZ related his understanding, then, that HB 405 would create a sort of cascading jurisdiction.

MS. CARPENETI said that she considered the jurisdiction to be concurrent. However, she acknowledged that if Canada exercised jurisdiction first, [then Alaska would be barred]. She also acknowledged that the federal government doesn't have a statute similar to AS 12.20.020; however, she didn't imagine that the

federal government would [exercise its jurisdiction if, under Alaska statutes, Alaska exercises jurisdiction first].

REPRESENTATIVE BERKOWITZ asked if Alaska would have to allow Canada the first chance at prosecution in a [similar] case.

MS. CARPENETI answered that she didn't believe so. She pointed out that Canada hasn't exercised any jurisdiction at all [in the aforementioned case]. She continued, "And when you think about it, why should they; it's an Alaska boat, an Alaska victim, an Alaska problem."

REPRESENTATIVE BERKOWITZ remarked that if he were Canadian, he would charge that the crime occurred on Canadian waters and Canada has the responsibility of ensuring safe passage of travelers on their waters. He inquired as to who would [have jurisdiction] if there was an assault aboard a fishing vessel [crossing] Canadian waters.

MS. CARPENETI responded that it would depend upon the circumstances.

Number 1470

REPRESENTATIVE BERKOWITZ commented, "So, what we're trying to do, then, is extend the reach of our jurisdiction as far as we can to protect Alaskan citizens."

MS. CARPENETI clarified, "We're trying to extend the jurisdiction as far as it's fair to do so."

REPRESENTATIVE BERKOWITZ inquired as to why this is being restricted to Title 12 when Title 22 discusses extensive jurisdiction and says "that civil jurisdiction and criminal jurisdiction of the district court of the State of Alaska extend over the entire state."

MS. CARPENETI said that the intent was to be precise in order to avoid concerns of overreaching.

REPRESENTATIVE BERKOWITZ mentioned that there is much criminal activity that occurs when people are in the air; therefore, he pondered whether that activity could be reached.

MS. CARPENETI related her belief that [the state] can [reach] such activity. She highlighted the fact that the last sentence in the proposed statute was added at the insistence of Jerry Luckhaupt, Attorney, Legislative Legal and Research Services,

Legislative Affairs Agency, in order to clarify that this proposed statute wouldn't limit [the state's] jurisdiction in any other way. Ms. Carpeneti noted that the intent was to ensure safe ferries for tourists, trade, and Alaska's citizens.

REPRESENTATIVE BERKOWITZ posed a situation in which a crime occurs on a flight between Anchorage and Juneau. He asked who would have jurisdiction.

MS. CARPENETI answered, "I think Alaska does because it would happen in Alaska territory." She noted that perhaps the federal government would have jurisdiction because the carrier was an interstate carrier.

Number 1565

REPRESENTATIVE BERKOWITZ asked, "Aren't the state's interests served if we can make sure that our citizens are protected whether they're aboard state-owned ferries, or private vessels, or aircraft, whether state or privately owned." He asked whether any future problems could be preempted by broadening [the language].

MS. CARPENETI said that broadening [the language] could be considered. She emphasized that the purpose of HB 405 is to address a specific problem although it could also be applied to other means of transportation if the committee chose.

REPRESENTATIVE BERKOWITZ commented, "Generally speaking, we encounter problems with the law when we try and craft law ... to respond to an anecdotal situation, as opposed to applying general principles across the board." He pointed out that [HB 405] provides an opportunity to apply principles that would protect Alaskans in the air and on the water, regardless of whether they were on state or private vessels. He expressed the need to take advantage of such an opportunity.

MS. CARPENETI said that she understood Representative Berkowitz's point.

Number 1635

REPRESENTATIVE KOOKESH highlighted the fact that the State of Alaska doesn't own an airline. He related his belief that if there is a problem in the air, the federal government would be there immediately, wanting jurisdiction. Representative Kookesh said he also felt that there is a large void, and if not filled,

Alaskans won't have any access to a court. He noted he had difficulty seeing [Representative Berkowitz'] rationale, and suggested that perhaps any specific language or statute recommendations pertaining to aircraft could be looked at via a different [bill]. He remarked that there is currently a specific void that HB 405 is addressing. After acknowledging that [HB 405] isn't going to help the young woman who was assaulted on the ferry, Representative Kookesh said it could help someone in a similar situation in the future.

Number 1710

REPRESENTATIVE CROFT inquired as to whether there is a "criminal long-arm statute" in which [the state] asserts jurisdiction generally.

MS. CARPENETI said that AS 12.05.010 is considered Alaska's criminal long-arm statute when acts committed outside the state have a harmful effect inside the state. That [statute] has been interpreted to apply [in child custody cases].

REPRESENTATIVE CROFT remarked, "That doesn't begin to cover the sort of variety of situations." He pointed out that there is no statement, such as in civil law, regarding [usurpation] of [the state's] jurisdiction to the maximum extent of due process.

MS. CARPENETI agreed, but pointed out that there is a statute in Title 44 that discusses jurisdiction, adding that [that title] has been argued in similar cases. She also pointed out that jurisdiction has been upheld for private vessels. There is no [statute] that speaks to exercising jurisdiction as far as due process or fairness.

REPRESENTATIVE CROFT asked whether that is unusual. Do other states have criminal long-arm statutes, he asked.

MS. CARPENETI answered that some states do have criminal long-arm statutes. Generally, state [statutes] discuss harm in the state. She recalled a case in New York in which the court upheld jurisdiction in Queens, New York, for an airplane crime that was committed over the Atlantic Ocean. In that case, the court found, under a statute similar but a bit broader than Alaska's, that it was fair for New York to exercise jurisdiction because if people felt unsafe landing in New York, then it would impact the state economically.

Number 1872

VICE CHAIR OGAN echoed an earlier question regarding whether the Canadian authorities were notified of this crime, which was committed in their waters.

MS. CARPENETI replied that she wasn't sure but would investigate that matter. She mentioned that Captain Capacci, General Manager, Marine Highway System, Department of Transportation & Public Facilities (DOT&PF) may be able to address this question. She said that as far as she knew, the crime occurred and the vessel proceeded to Ketchikan. In further response to Vice Chair Ogan, Ms. Carpeneti noted that the federal authorities were notified [of the crime]. And although the federal government acknowledged jurisdiction, nothing has been done to pursue that jurisdiction. Ms. Carpeneti said she didn't believe the witnesses and victims were ever interviewed by federal authorities. "The case was investigated by the state troopers in Ketchikan," she stated.

VICE CHAIR OGAN inquired as to what would happen if a serious crime was committed on a Canadian fishing vessel in Alaskan waters.

MS. CARPENETI answered that she believes that it would depend upon the circumstances. In the case of a Canadian victim in which the Canadians exercised jurisdiction, Alaska state law [AS 12.20.010] prohibits having a second investigation and prosecution. However, that doesn't mean that the state couldn't [exercise jurisdiction] because if [the crime was committed] in Alaskan waters, the state could prosecute.

Number 1963

REPRESENTATIVE COGHILL inquired as to whether the fact that there are only U.S. and Alaskan ports of call would shore up the case on the international waters issue.

MS. CARPENETI recalled that the ferry stops at Prince Rupert, Canada, in one direction.

CAPTAIN GEORGE CAPACCI, General Manager, Alaska Marine Highway System (AMHS), Department of Transportation & Public Facilities, answered that last year [the ferry stopped at Prince Rupert, Canada]; however, that won't be scheduled for this year.

REPRESENTATIVE COGHILL commented that the Washington State [and] Canadian ferry systems probably have similar issues, and asked whether [Washington State] has faced similar statutory problems.

MS. CARPENETI answered that she wasn't sure, but noted that the federal law applies to Washington State, as it does to Alaska; thus the [federal government] can exercise jurisdiction on an American flagship vessel, regardless of what state it is from. She said she assumes that Washington State has concurrent jurisdiction, as other states would, if the vessel was in its waters. Ms. Carpeneti relayed, "I would imagine ... that the federal government is not necessarily that much more interested in prosecuting sexual assaults on Washington ferries than they are on Alaska State ferries."

REPRESENTATIVE COGHILL remarked that he found some comfort in that. He expressed interest in information [on the Washington State ferries] and whether there has been case law that has proceeded to the higher courts.

MS. CARPENETI offered to look into that.

VICE CHAIR OGAN remarked that this can't be the first time that this has happened. There must be other cases that can be reviewed.

MS. CARPENETI agreed that there are other cases. For example, in People v. Corsino, the New York court upheld New York's exercise of jurisdiction regarding an incident that occurred on an airplane while it was flying over the Atlantic Ocean and subsequently landed in Queens, New York, due to the connection to state interests. Furthermore, in an incident involving a fishing vessel outside territorial waters, Alaska's jurisdiction regarding prosecution under Alaska's theft statutes has been upheld.

VICE CHAIR OGAN posed a hypothetical situation in which Ms. Carpeneti was an attorney representing the defendant, and asked if she would make jurisdictional arguments.

MS. CARPENETI replied, "No, not if we had a statute." In further response to Vice Chair Ogan, Ms. Carpeneti related her belief that if Alaska had a [jurisdictional] statute, then it would be covered.

Number 2159

REPRESENTATIVE BERKOWITZ returned to the notion of expanding this to include aircraft. He asserted that the Corsino case seems to suggest that aircraft should be included in [HB 405] because without a statute addressing a Corsino-type problem in Alaska, the question of jurisdiction aboard an aircraft could raise the defense that there is no statute.

MS. CARPENETI expressed agreement with Representative Kookesh's earlier comment that Alaska doesn't have state-owned aircraft.

REPRESENTATIVE BERKOWITZ related his understanding that the aircraft in the Corsino case was [commercially-owned].

MS. CARPENETI said Representative Berkowitz was correct. However, [the aircraft issue] doesn't seem to be as pressing a problem, she noted, since the federal government is more apt to prosecute [crimes committed] on aircraft.

REPRESENTATIVE BERKOWITZ pointed out that Alaska has one of the largest cargo airports in the country. He reiterated that [HB 405] provides an opportunity to address this problem before it happens, and that it should be utilized.

MS. CARPENETI reiterated that in the Corsino case, the aircraft wasn't owned by the State of New York. She said that she wouldn't have any objection to including state-owned aircraft.

REPRESENTATIVE MEYER said that he wouldn't object to including state-owned aircraft either.

REPRESENTATIVE BERKOWITZ stated that he wasn't talking about that specifically. The Corsino case was about commercial aircraft. If there is the potential for a commercial aircraft problem, then [the state] should be able to fix it, he opined.

Number 2236

REPRESENTATIVE KOOKESH identified the question as being who has jurisdiction. In the case of airlines, there is no question that the Federal Aviation Administration (FAA) would be there [asserting jurisdiction]. Someone will take jurisdiction with airlines. In the case of the crime committed on the Alaskan ferry, no one took jurisdiction; thus the desire [with HB 405] is to fashion language that specifies that when no one else exercises jurisdiction, the state wants to have that opportunity. There is no FAA for the AMHS, he noted.

VICE CHAIR OGAN asked what the AMHS's policy is if a murder occurred on a ferry [in international waters].

CAPTAIN CAPACCI answered that the captain of the vessel would secure the situation and contact the leadership of AMHS who would then contact the authorities.

VICE CHAIR OGAN asked what authorities would be contacted. He pointed out that in the situation that happened, the ferry was in Canadian waters. Furthermore, he said he felt that rape is a serious felony, and asked what happened in the case of this rape.

CAPTAIN CAPACCI explained that the [leadership of AMHS] was contacted and the decision was made to proceed to the nearest [U.S.] port, which was Ketchikan. He noted that the captain of a vessel has absolute power. He said that although he didn't believe the Canadian authorities were contacted, he wasn't sure, so he would check on that matter.

VICE CHAIR OGAN asked if the suspect was placed in custody.

CAPTAIN CAPACCI said that he couldn't answer that question now [because] he hasn't researched this case. In further response to Vice Chair Ogan, Captain Capacci confirmed that [the captain] has the authority to place people in custody.

Number 2450

REPRESENTATIVE COGHILL posed a hypothetical situation in which there was a citizen from another country involved in felonious behavior. He asked if the jurisdictional problem would surface to a greater degree.

MS. CARPENETI related her belief that it would be the same situation [that HB 405 attempts to address]. If this statute were passed, the state would have jurisdiction and the [other country] would also have jurisdiction.

REPRESENTATIVE MEYER surmised that the captain probably viewed moving to the next U.S. port as the best option.

TAPE 02-23, SIDE B
Number 2505

REPRESENTATIVE MEYER agreed with Representative Kookesh's point that had the incident on the ferry occurred on an aircraft, the

federal government would've been involved. If later it is found that incidents on aircrafts are [not] being prosecuted by the federal government, then that could be addressed at that time, he suggested. He expressed his desire to limit HB 405 to [ferries and other state-owned watercraft].

REPRESENTATIVE BERKOWITZ turned to State v. Stepanski, a Florida case that references the reinstatement of foreign relations. Representative Berkowitz said that [this Florida case] says, generally:

A state has jurisdiction of prescribed law with respect to conduct that wholly, or in substantial part takes place within its territory with respect to the status of persons or interests in things present within its territory, or see conduct outside its territory that has or is intended to have substantial effect within a territory ... the activities' interest, status, or relations of its nationals outside as well as within its territory.

REPRESENTATIVE BERKOWITZ said, therefore, that he felt that in asserting jurisdiction that relates to the activities, interests, status, or relations of Alaskans, the state would be within [its rights]. He reiterated that [HB 405] provides an opportunity to do something of general applicability, which he felt might protect the state's interests, in ways that can't be fathomed now, while responding to the issues raised this incident.

REPRESENTATIVE MEYER remarked that the government [often] is criticized for overextending itself, and he wasn't sure that there is a problem with aircraft yet. Furthermore, he opined that if the Department of Law felt that there is a problem with aircraft, then that issue would have been brought forward also. Therefore, although he was open to expanding [HB 405] if the Department of Law felt it necessary, he preferred to limit [HB 405] to [ferries and other state-owned watercraft]. The AMHS is unique to Alaska and needs additional protection, which, he said, he didn't believe was necessary for aircraft.

REPRESENTATIVE BERKOWITZ posed a hypothetical situation in which there was a sexual assault on a privately owned Alaskan-flagged vessel transiting Canadian waters. He asked whether Alaska would be able to assert jurisdiction in such a case if HB 405 became law.

Number 2376

MS. CARPENETI clarified that although [HB 405] wouldn't exclude jurisdiction, it wouldn't provide for it either; HB 405 specifies, "This jurisdiction is in addition to that provided by AS 44.03 and any other jurisdictional basis expressed or implied in law."

REPRESENTATIVE BERKOWITZ surmised, then, that if there was a problem on a fishing vessel and [HB 405] only addresses [ferries and other state-owned watercraft], then the problem would continue for fishing vessels.

MS. CARPENETI remarked that in the [department's] opinion, [HB 405] is a specific clarification of jurisdiction. Ms. Carpeneti noted her respect for Representative Berkowitz' approach, but acknowledged that it's difficult, politically, to make a far-reaching jurisdictional statement that both bodies would adopt.

REPRESENTATIVE BERKOWITZ pointed out that other states extend their citizens these type protections and, thus, he questioned why Alaskans are less protected than the citizens of other states. He said he was willing to place that issue before the Senate.

MS. CARPENETI mentioned that Alaskans aren't protected per the ruling of the [Alaska] Superior Court judge [in the case].

REPRESENTATIVE BERKOWITZ turned to the issue of the federal government exercising jurisdiction, and pointed out that there may be instances when the federal laws aren't as friendly as state laws with regard to prosecution and pursuit of a civil action. Therefore, he felt that "we" should preserve the right to Alaska jurisdiction whenever possible.

MS. CARPENETI remarked that international water doesn't pose nearly the problem. Alaska has had its jurisdiction upheld in international waters. Therefore, she isn't as concerned about the Stepanski situation as much as with the Alaska situation because the court has upheld Alaska's exercise of state prosecution of the state's criminal laws - state theft statutes - in international waters.

Number 2255

REPRESENTATIVE MEYER related his belief that HB 405 is merely filling a loophole, adding that if Representative Berkowitz

wants to bring forth legislation that is broader in scope, he would be willing to work with him.

VICE CHAIR OGAN pointed out that the personal bill deadline has already passed and since Representative Berkowitz doesn't chair a committee, he can't introduce a committee bill.

REPRESENTATIVE JAMES interjected that [jurisdiction on ferries] is a critical issue today, whereas [jurisdiction on other transportation modes] isn't.

Number 2181

JERRY LUCKHAUPT, Attorney, Legislative Counsel, Legal and Research Services Division, Legislative Affairs Agency, informed the committee that when this bill was being drafted he had discussions with Ms. Carpeneti. He explained that he took an approach similar to that put forth by Representative Berkowitz. Usually, the desire is to be as broad as possible. He pointed out that Alaska has a bit more protection due to the double jeopardy provision that specifies that Alaska can't prosecute if someone else has. Basically, Alaska is the only state with such a provision. He indicated that the lack of such a statute in other states has resulted in situations such as Terry Nichols being prosecuted by the State of Oklahoma even though the federal government had already convicted him.

MR. LUCKHAUPT informed the committee that the federal government's jurisdiction has been recognized to include maritime jurisdiction over any U.S.-flagged vessel anywhere in the world, at any time, for any offense. He said that the first U.S. Supreme Court case on this issue occurred in 1893; that case involved a felony that occurred on a U.S.-flagged vessel in Canadian waters and the U.S. had jurisdiction over the offense because it was committed on a U.S.-flagged vessel. Since that time, the [federal] maritime jurisdiction statute has been amended to include aircraft and spacecraft. The U.S. government has expanded the criminal statutes to include offenses committed against any U.S. citizens anywhere in the world; furthermore, an offense committed by a U.S. citizen anywhere in the world raises a jurisdictional [issue].

MR. LUCKHAUPT noted that various states have taken [the federal government's] lead, and opined that the State of Alaska would have criminal jurisdiction [in the aforementioned case as well]. Although the trial court didn't agree, Title 44 includes a provision that says the state has jurisdiction any time the

federal government says it has jurisdiction. "If they have jurisdiction, we have jurisdiction, and that should be enough," he said.

Number 1982

MR. LUCKHAUPT clarified that [the section he was referring to is AS 44.030.010(2)] which reads as follows:

(2) the high seas to the extent that jurisdiction is claimed by the United States of America, or to the extent recognized by the usages and customs of international law or by agreement to which the United States of America or the state is a party....

He interpreted that paragraph to mean that Alaska has jurisdiction because the federal government has jurisdiction, by both international law and federal statute. But "we didn't win on that" issue, he acknowledged. Mr. Luckhaupt pointed out that there have been a number of sexual assaults by crewmembers on cruise ships in Florida and California, and that there were problems regarding who would prosecute in those instances.

MR. LUCKHAUPT explained that currently, Florida has the longest long-arm criminal statute in the United States and has a provision that if half of the people either get on board or disembark at a Florida port, then Florida has jurisdiction. He added that that provision covers the Stepanski case, in which the Florida Supreme Court affirmed Florida's jurisdictional statute.

Number 1798

REPRESENTATIVE MEYER related his understanding that Title 44 refers to the high seas, and that the incident on the Alaskan ferry didn't occur on the high seas. He asked whether [the aforementioned] provision in Title 44 would apply.

MR. LUCKHAUPT noted that when the legislation was brought to him, he was not told whether the incident occurred on the high seas or in Canadian waters, though clearly the incident didn't occur in port. Mr. Luckhaupt said that until a final determination has been made, he is not ready to give up on the issue of Alaska's jurisdiction. Furthermore, if a jurisdictional basis is asserted, then it doesn't matter whether the vessel is in port or not; for example, the federal government has jurisdiction over any U.S.-flagged vessels,

regardless of whether it's in port or in anyone else's waters. Mr. Luckhaupt said, "Usually you don't go wrong with going broader in these situations."

REPRESENTATIVE MEYER highlighted the fact that the Department of Law views it differently than Mr. Luckhaupt. Therefore, he offered to meet with Ms. Carpeneti and Mr. Luckhaupt in order to discuss this. In response to Vice Chair Ogan, Representative Meyer noted his preference to move HB 405.

Number 1673

REPRESENTATIVE JAMES moved to report HB 405 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE BERKOWITZ announced that before the bill reaches the House floor, he would be requesting an amendment from the drafter to offer on the House floor. He specified that the amendment would be to extend jurisdiction as far as possible in order to assert jurisdiction over Alaskan citizens [and] to protect Alaskan victims wherever they might be.

REPRESENTATIVE MEYER suggested that perhaps "the three of us" could meet to discuss what the amendment would do to the bill.

VICE CHAIR OGAN remarked that he believes the appropriate place to offer a substantive amendment is in the committee.

REPRESENTATIVE BERKOWITZ said that he is just announcing what he is going to do. "If we leave Alaskans unprotected, the shame is on us," he charged.

Number 1619

VICE CHAIR OGAN asked if there is any objection to the motion. There being no objection, HB 405 was reported from the House Judiciary Standing Committee.

HB 348 - VIOLATION OF A DOMESTIC VIOLENCE ORDER

Number 1601

VICE CHAIR OGAN announced that the next order of business would be HOUSE BILL NO. 348, "An Act relating to violations of domestic violence protective orders."

REPRESENTATIVE ERIC CROFT, Alaska State Legislature, testifying as the sponsor of HB 348, informed the committee that HB 348 reacts to the [Alaska Court Of Appeals] decision in the Strane v. State case. This legislation addresses the standard for a violation of a domestic violence restraining order. [In the Strane case] the prosecution and the defense argue two extreme positions. He referred the committee to page 2 of the Strane case, which is included in the committee packet, and paraphrased from the following:

Strane and the State approach this statute from radically different perspectives. Strane argues that the legislature used the word "knowingly" to convey the notion that the crime is committed only if the defendant understood the provision(s) of the protective order and was aware that, by their conduct, they were violating the protective order. The State argues the polar opposite. The State contends that, just as ignorance of the law does not excuse a person's violation of a criminal statute, so too ignorance or misunderstanding of the provisions of a protective order does not excuse a person's violation of that order. The State argues that a person who violates the provisions of a protective order is guilty of a crime under AS 11.56.740(a) even if they acted with no culpable mental state -- i.e., acted with absolutely no awareness that their conduct might violate the provisions of the order.

The rule at common law -- that is, the rule that would prevail in the absence of a statute -- lies in between the positions staked out by Strane and the State. Violation of a domestic violence protective order is but one specific, codified instance of the more general crime of contempt of court. In previous cases dealing with contempt of court, this court has held (1) that the applicable culpable mental state is "recklessness" (i.e., the government must prove that the defendant recklessly disregarded the possibility that their conduct violated an order of the court), and (2) that a person charged with contempt can defend by asserting that they made a reasonable mistake concerning the terms or the effect of the court order.

REPRESENTATIVE CROFT related his interpretation that in this case, the court mentions that there is a middle ground that allows a defense. However, [the defense] must be reasonable and the jury would decide what is reasonable. In Strane, the court ultimately sided with the defendant's extreme position due to the inexact nature of the language of the statute. This legislation, HB 348, establishes this middle ground position as the [appropriate] standard. He noted that the committee packet includes a jury instruction that he assumes will have to be provided if the Strane case is upheld.

REPRESENTATIVE CROFT related his understanding that the Strane case is now before the Alaska Supreme Court. The last sentence of the jury instruction reads "His [The defendant's] belief that his conduct did not violate the order need not be objectively reasonable." That language is "the rub," he noted; "That is, under the Strane decision, it doesn't matter how 'out to lunch' you were with interpretation." "If you honestly believed it, you will get off," he said, adding that the judge no longer has the ability to disallow it as a defense.

Number 1367

REPRESENTATIVE CROFT related that the main objection he has heard to HB 348 isn't the proposed standard, but rather that the court should be allowed reach a final decision; in other words, there is some resistance to establishing a standard in the middle of a court proceeding. Representative Croft announced his belief that it's [the legislature's] job to establish the appropriate standard. Regardless of the determination of the Supreme Court in this individual case, the correct standard should be established for future cases, he said.

VICE CHAIR OGAN posed a hypothetical situation in which a person with a restraining order against him/her is in a grocery store and comes around the aisle and finds the person that he/she is not supposed to within 250 feet of. Would the person be in violation of the restraining order, he asked.

REPRESENTATIVE CROFT related his understanding that due to that potential problem, these orders list the locations where the person is prohibited. Rarely do these orders specify the proximity. Representative Croft explained that under one extreme, such as in Vice Chair Ogan's example, if the person knowingly "walked," then the person knowingly committed an act that violated the order. Therefore, the person is guilty without any culpable mental state, which concerns Representative

Croft. He indicated that the opposite case is of concern as well. Representative Croft indicated that it seems appropriate to get to some middle ground that asks how reasonable was the action taken, so that if the act was reasonable, the person wouldn't be prosecuted.

VICE CHAIR OGAN asked if HB 348 strikes a balance between a strict liability and a culpable mental state.

REPRESENTATIVE CROFT replied yes.

Number 1146

REPRESENTATIVE BERKOWITZ said that notwithstanding his philosophical objection to moving bills that the court is hearing, HB 348 is an accurate standard of where the law should be. Furthermore, it is a standard that is easy for the prosecution and defense to understand and, thus, leads to greater security for all parties.

VICE CHAIR OGAN asked if HB 348 would impact the current case.

REPRESENTATIVE CROFT related his belief that HB 348 can't be retroactive, mentioning the possibility of constitutional problems.

VICE CHAIR OGAN related his concern that restraining orders are given out almost too freely. He expressed concern that there isn't always probable cause other than a person's perception of being in danger. He mentioned that the Division of Family & Youth Services (DFYS) and restraining orders are [misused] to build evidence in custody disputes.

REPRESENTATIVE CROFT agreed that [child custody cases] are volatile and emotionally taxing. Representative Croft explained that HB 348 is an attempt to fix an ambiguity in a narrow area of the law. Although he acknowledged that there are many things that could be addressed in this area, he expressed his hope that the committee wouldn't try to solve all [the other problems] via HB 348.

Number 0900

REPRESENTATIVE COGHILL said:

So, certainly somebody is ordered to do something, and under this standard would have to do a reckless-

disregard violation. How about the other side? Is the standard, then, going to [apply] if somebody ... who has a protective order to protect themselves and they, with reckless disregard, push somebody into that [violation]? ... Is this standard going both ways?

REPRESENTATIVE CROFT answered that when the orders are reciprocal, then [HB 348] would be the standard for both parties.

REPRESENTATIVE COGHILL clarified that he isn't referring to reciprocal orders. He informed the committee that it has been brought to his attention that when someone is under a restraining order, the person to be protected violated the space with recklessly disregard in order to place the other person in trouble. Such a situation seems grossly unfair. Therefore, he reiterated his question as to whether [HB 348] "cuts both ways."

REPRESENTATIVE CROFT said that when one is under an order, [HB 348] would be the standard. However, he wasn't sure of the standard when a person isn't under an order.

REPRESENTATIVE JAMES asked whether the person under the restraining order is always served and will know what is included in the order.

REPRESENTATIVE CROFT related his understanding that an order can be obtained for a very short period of time without any notice to the parties. However, it will dissolve fairly quickly [and will remain] dissolved until the other party has a chance to tell his/her side. Representative Croft said he thinks such would be an ex parte order.

Number 0723

LAUREE HUGONIN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), in an effort to alleviate some concern, provided the committee with a copy of a court order for a regular protective order. Although she recognized that anything can be misused, she said that wouldn't be the case with the majority of circumstances. Ms. Hugonin reviewed the various aspects of the order. She pointed out that there are 16 different provisions for which one can request protection, seven of which would fall under the scope of class A misdemeanor convictions. The seven provisions that fall under the scope of class A misdemeanor convictions per the protective order are on page 2, items a-e, and page 3, items i and j.

MS. HUGONIN pointed out that the language in the protective order is fairly clear and there is space for the judge to include comments to provide further clarification. For example, in item c there is space for the judge to specify the distance the respondent has to be away from the petitioner's residence. Moreover, item d lists the prohibited locations, and there could be exceptions. Therefore, the order is fairly detailed and clear. Ms. Hugonin noted that the orders cannot be enforced until the person has received the order, and that ex parte orders [are in effect] for 20 days. The order has to be served and the person has to know [the details of the order] before that person can be convicted of violating the order. Ms. Hugonin informed the committee that as of today, there are 692 regular protective orders, 281 ex parte orders, and only 2 emergency orders. She noted, however, that those numbers fluctuate daily.

MS. HUGONIN suggested that in looking at the order, the committee could see that it isn't that easy to obtain. She further explained that a six-page petition has to be completed and forwarded to the judge who has to find by a preponderance of evidence that the crime has been committed, and that the judge then has a great deal of discretion and authority in crafting the order. Ms. Hugonin expressed her hope that the committee would support HB 348.

Number 0369

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), announced that she would explain some of the court procedure that led to this decision. She noted that she worked on the original 1996 Domestic Violence Protection Act, and indicated that during that time, the dynamics of domestic violence were reviewed and it was decided that a person ordered to not have contact with another should follow that order.

MS. CARPENETI said that in order to accomplish this, the legislature adopted AS 18.66.130(a) that in part specifies: "an invitation by the petitioner to communicate, enter the residence or vehicle, or have other prohibited contact with the petitioner does not waive or nullify any provision in a protective order." Furthermore, the statute required that each protective order specify [the above] in bold face. The [Act] also enacted [AS] 11.57.740, which changed the law to say that it's a misdemeanor to knowingly commit an act that violates a protective order.

She added that, apparently, that wasn't clear enough, at least, as Ms. Hugonin said, as it pertained to AS 18.66.100(c)(1)-(7).

Number 0238

MS. CARPENETI turned to the Strane case. She explained that in this case, Patrick Strane was served with a protective order by a law enforcement officer who read the order to him. The order forbade Mr. Strane from contacting the victim. She interrupted her explanation of the Strane case to mention that in the aforementioned hypothetical situation of encountering [the petitioner/victim] in the grocery store, the respondent would have to take steps to leave. In the Strane case, she continued, the petitioner telephoned the respondent - Mr. Strane - for a ride, and the respondent obliged. She recounted that Mr. Strane said he didn't realize his actions in picking up the victim violated the protective order. Mr. Strane was convicted on stipulated facts in Superior Court. However, the court of appeal reversed the conviction based on its interpretation that the state is required to prove, beyond a reasonable doubt, that the defendant knew his/her action was violating the protective order.

MS. CARPENETI said, "As a result of this decision, we are really unable to prosecute the majority of violation/cases under this statute because we have been unable to prove that knowledge, that the act violated the protective order." She agreed with Representative Croft that HB 348 is a good compromise. She pointed out that AS 11.81.610 provides that if criminal statutes don't state a culpable mental state for circumstances, then the court should read in a reckless standard. She stated that HB 348 specifically provides for a reckless culpable mental state for the circumstances, that the conduct was prohibited by the protective order. She indicated that [under HB 348], the state [might have] been able to successfully prosecute the Strane case.

TAPE 02-24, SIDE A
Number 0039

REPRESENTATIVE JAMES remarked that the circumstances in the Strane case bother her. Moreover, she indicated the unfairness in that the petitioner should've known that she was requesting the respondent to violate the order.

MS. CARPENETI commented, "That's the dynamics of domestic violence." She explained that the court orders the respondent

to not contact the petitioner and thus the respondent has to abide by the order. In the Strane case, the petitioner wasn't under any order of the court.

REPRESENTATIVE JAMES reiterated that it doesn't meet her fairness test. She posited that such situations happen a lot.

Number 0236

MARLA NELSON, Program Director, Abused Women's Aid in Crisis (AWAIC), testified via teleconference in support of HB 348, which [AWAIC] believes would strengthen the justice system's ability to enforce protective orders and prosecute violations. More importantly, [HB 348] would ensure the safety of the women and children who are victims of - or who are at risk of being victims of - domestic violence. Ms. Nelson said, "Successful prosecution of protective orders would further hold perpetrators accountable and send a message that protective orders must be taken seriously." She informed the committee that [AWAIC] works with victims that don't believe a protective order will further ensure their safety, and this belief keeps people from applying for the order. There is the fear that applying for an order would actually escalate the perpetrator's abusive behavior. Ms. Nelson commented on the difficulty in understanding the psyche of a victim of a domestic abuse.

Number 0452

REPRESENTATIVE MEYER moved to report HB 348 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HB 348 was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0465

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:45 p.m.