

HB

405



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

SPONSOR STATEMENT

HB 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.”

House Bill 405 gives the State jurisdiction over state owned watercraft including watercraft that is outside state waters.

Last year a young woman was sexually assaulted on a state ferry while it was traveling from Bellingham to Ketchikan. The assault occurred while the ferry was in Canadian waters. Under federal maritime law, the United States government has jurisdiction over crimes committed on United States vessels in Canadian waters.

The jurisdiction to prosecute the crime by the federal government is not exclusive. The State of Alaska may also prosecute the offense, as long as the state shows a sufficient connection between the offense and a valid state interest, and the federal government has not indicated intent to exercise exclusive authority over the offense.

In this particular situation, the District Attorney in Ketchikan presented the case to a grand jury and the grand jury indicted the man on two counts of felony sexual assault and four counts misdemeanor assault. However, the Superior Court dismissed the indictment, finding that without a statute specifically authorizing the state to prosecute under these circumstances, Alaska had no jurisdiction. The State is appealing that ruling.

The dismissal by the court is a concern because the crime is unlikely to be prosecuted by the federal government or the Canadian government. The federal government does not generally prosecute offenses such as sexual assault, and the Canadian government has little interest in pursuing charges involving an Alaska victim on an Alaska ferry.

HB 405 will eliminate the loophole that prevents the State from prosecuting such crimes in the future.

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Inlandboatmen's Union of the Pacific

MARINE DIVISION — INTERNATIONAL LONGSHORE & WAREHOUSE UNION
 NATIONAL OFFICE • 1711 W. NICKERSON ST. STE. D • SEATTLE, WA 98119 • (206) 234-6001 • FAX: (206) 234-5043



8/8/01

LOCAL COURT RULES STATE FERRIES AREN'T UNDER STATE JURISDICTION, IMPERILS CREW and PASSENGERS

In a stunning decision by Superior Court Judge Larry Weeks, the crews and passengers on the A.M.H.S. vessels have been threatened with both possible criminal acts and civil actions. They've been left with no one to enforce order or law, and placed in a bizarre situation of being sued by criminals in civil court if the crew acts to protect crew or passengers. The court decision in the Vernon Jack case* appears to apply just to Canadian Waters, but has implications any time a ferry is not tied to a dock anywhere except possible in Washington.

The US legal system and Common Sense have failed again. Other countries have "Admiralty Courts" staffed with people who know Maritime Law. The United States, and the state of Alaska, appoints Maritime cases to judges who are not experts in Maritime Law and then appoints DAs with far less (or no) experience and knowledge. I am told Judge Weeks is fair and extremely conscientious, but he apparently had limited resources presented to him. Now we are left with the following absurd and dangerous situation:

In a typical case of avoiding responsibility, all the involved bureaucracies refuse to act.

- 1) The U.S. Coast Guard won't enforce "crimes" unless it is a crewmember committing the act, and then only for certain defined acts. They won't enforce if the crime is against crew by passengers/non-crew unless it is certain defined and extreme acts, or passenger against passenger. They dump that on the FBI or, previously, on the State.
- 2) The Canadians won't enforce and arguably do not have jurisdiction. The State (and maritime law) has always argued that is correct — the Canadians don't have jurisdiction.
- 3) The Feds won't enforce criminal statute except possibly specified crimes like terrorism or mass murder. It is apparently a matter of budget and "importance".
- 4) The AK Div. of Retirement & Benefits tried to argue a ferry deck is not Alaskan soil for purposes of Residency. They lost that. Then the Alaska Permanent Fund Corporation argued our decks aren't Alaskan soil south of the Dixon Entrance A-B Line even on the Rupert run. They lost that only when we got help from the Legislature.

We note that there are laws available, but apparently not the will or budget. Just as examples, under Federal laws, 18 USC 2244 gives the Feds jurisdiction over sexual crimes at sea, and 18 USC 13a allows the Feds to take on State laws under the Assimilative Crimes Act. But why should we have to resort to the Feds at all?

- 5) Now a judge who is seemingly unfamiliar with Maritime law and wasn't brought up to speed by the prosecutor declares crime committed on a ferry in Canadian waters is not in Alaska State jurisdiction. Is he aware the entire Inside Passage is "International Waters"? What about the Tustumena and Kennicott when in the Gulf of Alaska — International waters and "beyond the boundary line"?
- 6) After this decision, what use is a Trooper or Police Office riding in uniform except as a scarecrow? Judge Weeks has just had to tell criminals they can disregard uniformed Alaska Peace Officers and the ferry crews. Our uniformed officers have been invaluable up until now. I guess they are at least trained in how to restrain violent people, but this seemingly opens them up to civil penalties.

REGIONAL OFFICES

PUGET SOUND
 1711 W. Nickerson, Ste. D
 Seattle, WA 98119
 (206) 234-6040
 FAX: (206) 234-6043

REGION 37
 1711 W. Nickerson, Ste. D
 Seattle, WA 98119
 (206) 234-6321
 FAX: (206) 234-5043

COLUMBIA RIVER
 2436 NW Front Ave.
 Portland, OR 97203
 (503) 528-0000
 FAX: (503) 223-2556

SAN FRANCISCO
 480 Harrison Street
 San Francisco, CA 94103
 (415) 776-1234
 FAX: (415) 898-1226

HAWAII
 1001 Dillingham Blvd., Rm. 217
 Honolulu, HI 96817
 (808) 847-0411
 FAX: (808) 647-8051

SOUTHERN CALIFORNIA
 1911 N. Galley, Ste. A-6
 San Pedro, CA 90731
 (310) 831-0005
 FAX: (310) 527-0094

ALASKA
 Post Office Box 6300
 Kenai, AK 99501
 (907) 225-6000
 FAX: (907) 225-2465

JUNEAU
 70 Egan Drive, Ste 30
 Juneau, AK 99801
 (907) 585-8220
 FAX: (907) 585-8222

Alleged crime aboard Alaska ferry in

By ISILA KHEIRY
Daily News Staff Writer

A man accused of rape on board a state ferry might not be prosecuted if the Alaska Court of Appeals upholds a recent Superior Court judge's decision.

On July 12, Superior Court Judge Larry Weeks of Juneau dismissed a Ketchikan grand jury's indictment against Vernon Jack, 29, of Boise, Idaho, who is accused of sexually

assaulting a 16-year-old girl. The alleged assault took place on board the Alaska Marine Highway Ferry M/V Matanuska while the ship was in Canadian waters. The dismissal is based on Jack's claim that Alaska does not have jurisdiction.

Weeks, presiding judge for the First Judicial District which includes Ketchikan and Juneau, wrote in his dismissal order that "there is no question that this offense was com-

mitted outside the State of Alaska if it was committed."

He cited a statute that allows the state to prosecute crimes committed outside of Alaska only if the crime is completed within the state.

"That, and the lack of any explicit statutory authority allowing for prosecutions on an Alaskan ferry in Canadian waters causes this court to find that it does not have jurisdiction in the case," Weeks wrote.

Canadian waters raises jurisdiction issue

State prosecutors appealed Weeks' decision on July 17, claiming that Alaska does have jurisdiction over crimes committed on an Alaska vessel. The Matanuska is an American-flagged ship, and is owned and operated by the State of Alaska, said Ketchikan Assistant District Attorney Dan Schally in a Wednesday telephone interview.

Before Weeks' decision, the local prosecutor's office had cited a previ-

ous Ketchikan case in which a man allegedly assaulted a crew member aboard the same ship while it was in Canadian waters. That man was prosecuted, pleaded guilty to the charges and was sentenced to 60 days in jail.

Prosecutors also cited U.S. foreign relations laws to support its jurisdiction claim.

Responding to the prosecutor's opposition, defense attorney Barb

Kissner wrote that her client does not necessarily question the United States' jurisdiction in the matter.

"The issue before this court is whether the State of Alaska has jurisdiction over this case," she wrote.

The Alaska Legislature has "expressly limited its jurisdictional boundaries" in its statute, wrote Kissner, who was unavailable for an

See, 'Crime jurisdiction,' page 3

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interview Wednesday.

Unless the Legislature drafts a broader jurisdiction statute, cases where criminal conduct occurs outside of Alaska's boundaries should not be prosecuted in Alaskan courts, she argued.

"In the instant case, it would ... violate jurisdictional due process for this court to exercise jurisdiction simply because the United States may have jurisdiction," Kissner wrote.

The problem, said Schally, is that if Alaska does not prosecute the case, Jack likely will not be prosecuted at all.

Federal prosecutors do not try "ordinary" criminal cases, he said; most criminal prosecutions in the United States occur at the state or local level.

"Pedestrian or ordinary crimes, even serious ones .. the feds are just not involved in that," Schally said.

Canada could possibly prosecute Jack, said Schally, but is unlikely to do so.

"It has nothing to do with them other than the fact that it happened off their coast," he said. "Their interest in getting involved in that probably would be low."

Therefore, he said, the State of Alaska is responsible for prosecuting crimes committed on its ferries, even when they are in Canadian water.

The prosecution also claims that Alaska has a vital interest in this case.

Its written opposition to the dismissal motion states, "If people believe that crimes can be committed on ferries to Alaska without any real risk of being prosecuted, then this could have a harmful effect on the welfare of Alaska's community, particularly tourism."

According to a clerk at the state Court of Appeals office in Anchorage, paperwork on the case could take up to six months, which means the court might not see the case until January. Schally said the court could choose to act quickly in this case after that, partly because the defendant is still in jail, but that the appeals process can take more than a year.

In the meantime, Jack is being held at the Ketchikan Correctional Center on \$3,000 bail. According to Alaska statutes, if the state appeals a dismissal, the court will set bail as if a trial was going to take place.

Thursday, Aug. 2, 2001
KETCHIKAN DAILY NEWS

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 405
 (H) Publish Date: 2/20/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Crimes committed on state BRU Alaska Court System
watercraft Component Trial Courts
 Sponsor Representative Meyer
 Requester House Transportation Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 The court system does not anticipate any fiscal impact from the passage of HB 405.

Prepared by: Douglas Wooliver Phone 463-4750
 Division Alaska Court System Date/Time 2/20/02 9:24 AM
 Approved by: Stephanie Cole Date 2/20/02
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 405
 (H) Publish Date: 2/20/02

Corrected Version

Revision Date/Time (Note if correction): 2/19/02 8:27 AM Dept. Affected: Law
 Title "...prosecution of criminal offenses committed BRU Criminal
on or against ferries and other watercraft..." Component All
 Sponsor Representative Meyer
 Requester House Transportation Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will allow the state to prosecute offenses committed on, or against, ferries and other state-owned or -operated vessels. Recently, a superior court judge dismissed a prosecution for rape that occurred on an Alaska ferry while in Canadian water. The court found that there was no statutory authority for the State of Alaska to prosecute the crime, even though the victim was an Alaskan, and the ferry was an Alaskan ferry. This bill will clarify that the state has that statutory authority.

Crimes of this nature are relatively rare, and passage of this legislation is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 2/19/02 8:27 AM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/19/2002
 Agency: Department of Law