

**HB**

**405**

# 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. 788

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 on or against ferries and other watercraft..." BRU Criminal  
 Sponsor Representative Meyer Component All  
 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
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

## MEMORANDUM

**DATE:** April 11, 2002

**TO:** Senator Robin Taylor  
Chair, Senate Judiciary Committee

**FROM:** Representative Kevin Meyer *Kevin*

**RE:** Scheduling of HB 405 Crimes Committed on State Watercraft

At your earliest convenience please schedule HB 405 Crimes Committed on State Watercraft for a hearing in your committee.

HB 405 gives the State jurisdiction on state owned watercraft even if the watercraft is outside state waters.

Attachments.



# 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 and defendant on an Alaska ferry.

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

2/20/02

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page 1.

# Alleged crime aboard Alaska ferry in

By LEILA 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 Eurb

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 statutes, wrote Kissner, who was unavailable for an interview. 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

INFORMATION  
STATEMENT



Discussion

The defendant bases the motion to dismiss on AS 12.05.010.<sup>1</sup> There is no question that this offense was committed outside the state of Alaska if it was committed.

The State cites Corbin v. State,<sup>2</sup> for the proposition that the jurisdiction of the criminal law of Alaska extends beyond the Alaska three mile limit normally associated with territorial jurisdiction. Corbin, however, does not deal directly with the issue in this case. Corbin was convicted of theft on a crab boat in the Bering Sea. He did not contest that state statutes on jurisdiction authorize a prosecution for an offense outside the three mile limit.<sup>3</sup> This defendant does contest that. The Corbin court was dealing with U.S. waters, even if it was not State of Alaska territorial water. The Corbin court cited AS 44.03.110 to explain how the criminal law of

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<sup>1</sup> That statute provides:

Crime commenced outside state but consummated inside.

When the commission of a crime commenced outside the state is consummated inside the state, the defendant is liable to punishment in this state even though out of the state at the time of the commission of the crime charged, if the defendant consummated the crime through the intervention of an innocent or guilty agent, or by other means proceeding directly from the defendant.

<sup>2</sup> 672 P.2d 156 (Alaska App. 1983)

<sup>3</sup> Ibid, Page 156

Alaska might extend into U.S. water.<sup>4</sup> The Alaska ferry only goes through Canadian waters in getting to Alaska after leaving Bellingham and Washington waters. Absent treaty or usage and custom unknown to this court the statute cited in Corbin would not apply in Canadian waters.

The Alaska legislature has made clear that the only criminal offenses in Alaska are those defined by statute.<sup>5</sup> The courts have said that there are no common-law crimes in Alaska.<sup>6</sup>

The appellate court decisions are replete with avowals that the

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<sup>4</sup> AS 11.03.010. provides:  
Offshore water and land.

The jurisdiction of the state extends to water offshore from the coast of the state as follows:

(1) the marginal sea to its outermost limits as those limits are from time to time defined or recognized by the United States of America by international treaty or otherwise;

(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;

(3) submerged land including the subsurface of submerged land, lying under the water mentioned in this section.

<sup>5</sup> AS 11.81.220. provides:

No conduct constitutes an offense unless it is made an offense

(1) by this title;

(2) by a statute outside this title; or

(3) by a regulation authorized by and lawfully adopted under a statute.

<sup>6</sup> Old v. State. 738 P.2d 1117 (Alaska App. 1987)

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only criminal sanctions are those allowed by statute.<sup>7</sup> Numerous citations on the limitations of the court's power are given in R.I.<sup>8</sup> Other cases say the court's powers are defined by statute.<sup>9</sup>

The negative implication of AS 12.05.010 is that the only punishable crimes committed outside the state are those consummated

<sup>7</sup> R.I. v. State, 894 P.2d 683 (Alaska App. 1995).

<sup>8</sup> The legislature sets the maximum, minimum, and presumptive terms of imprisonment for crimes. Nell v. State, 642 P.2d 1361, 1368 (Alaska App. 1982). The legislature decides whether a defendant's sentence may be suspended in whole or in part. Fete v. State, 379 P.2d 625, 626 (Alaska 1963) (a court has no inherent power to suspend a sentence of imprisonment and place a defendant on probation; such authority must be granted by the legislature). The legislature determines what length of probation may be imposed. Gonzalez v. State, 608 P.2d 23, 25-26 (Alaska 1980); Jackson v. State, 541 P.2d 23, 25 (Alaska 1975) (when a defendant's sentence of imprisonment is suspended and the defendant is placed on probation, the defendant's total period of probation may not exceed the period specified in statute; Friedman v. State, 576 P.2d 114, 116 n. 11 (Alaska 1978)). And, while a court has wide discretion in setting the conditions of a defendant's probation, a court must have legislative authorization before imposing conditions that fundamentally alter a defendant's status as a "probationer" (that is, someone who is released from custody upon his or her promise to abide by certain conditions). Whittlesey v. State, 626 P.2d 1066, 1067 (Alaska 1980); Bovyn v. State, 586 P.2d 1250, 1251 (Alaska 1978) (absent explicit legislative authorization, a court may not impose imprisonment as a condition of probation). See Brown v. State, 559 P.2d 107, 110 (Alaska 1977) (because a statute authorizes a court to impose a fine as a condition of probation, a sentencing court can order a defendant to pay a fine as a condition of probation even when the underlying crime is punishable by imprisonment only)."

...  
"The Superior Court's authority to impose particular types of disposition in a juvenile case is granted by and governed by legislation. In re E.M.D., 490 P.2d 658 (Alaska 1971)."

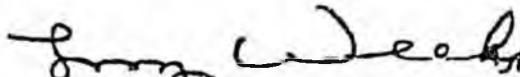
<sup>9</sup> State v. T.M. & J.B., 860 P.2d 1286 (Alaska App. 1993) and Davenport v. State, 543 P.2d 1204, at 1211 (Alaska 1975)

inside 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.

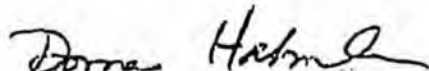
Conclusion

The indictment is dismissed. The State has seven days to apply to the appellate courts for relief from this order. Bail shall continue at the present state for seven days.<sup>10</sup> Unless a stay of the order is entered by the appellate court before that time the defendant shall be released.

Dated July 12, 2001

  
Larry Weeks  
Superior Court Judge

I certify that I served Daniel Schally and Barbara Kissner the above pleading on this 12<sup>th</sup> day of July 2001 by faxing it to them.

  
Donna Hahnlen  
Professional Assistant

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<sup>10</sup> A.S. 12.25.030

SEP 04 2001

CRIMINAL DIVISION

\* Bellingham-Ketchikan  
on the ferry  
(Same for all counts) JS

THE GRAND JURY CHARGES:

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COUNT I

That on or about the 12th day of May, 2001, aboard the M/V Matanuska at or near Ketchikan,\* in the First Judicial District, State of Alaska, VERNON G. JACK, V, did unlawfully and knowingly engage in sexual contact with S.N.F, without the consent of S.N.F., and recklessly disregard that lack of consent.

All of which is a Class B felony offense being contrary to and in violation of AS 11.41.420(a)(1), and against the peace and dignity of the State of Alaska.

COUNT II

That on or about the 12th day of May, 2001, aboard the M/V Matanuska at or near Ketchikan,\* in the First Judicial District, State of Alaska, VERNON G. JACK, V did unlawfully and knowingly engage in sexual penetration with S.N.F., without the consent of S.N.F., and recklessly disregarded that lack of consent.

All of which is an unclassified felony offense being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

INDICTMENT - Page 2 of 5

State of Alaska vs. VERNON G. JACK, V  
Case No. 1KE-S01-551 CR

Office of the District Attorney  
415 Main Street, Room 304  
Ketchikan, Alaska 99901  
(907) 225-6126 FAX (907) 225-3917

COUNT III

1 That on or about the 12th day of May, 2001, aboard the  
 2 M/V Matanuska at or near Ketchikan, in the First Judicial  
 3 District, State of Alaska, VERNON G. JACK, V did unlawfully and  
 4 recklessly cause physical injury to S.N.F.  
 5

6 All of which is a Class A misdemeanor offense being  
 7 contrary to and in violation of AS 11.41.230(a)(1), and against  
 8 the peace and dignity of the State of Alaska.  
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COUNT IV

10 That on or about the 12th day of May, 2001, aboard the  
 11 M/V Matanuska at or near Ketchikan, in the First Judicial  
 12 District, State of Alaska, VERNON G. JACK, V did unlawfully and  
 13 recklessly cause physical injury to S.N.F.  
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16 All of which is a Class A misdemeanor offense being  
 17 contrary to and in violation of AS 11.41.230(a)(1), and against  
 18 the peace and dignity of the State of Alaska.  
 19

COUNT V

20 That on or about the 12th day of May, 2001, aboard the  
 21 M/V Matanuska at or near Ketchikan, in the First Judicial  
 22 District, State of Alaska, VERNON G. JACK, V did unlawfully, by  
 23 words or other conduct did recklessly place S.N.F. in fear of  
 24 imminent physical injury.  
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26 INDICTMENT - Page 3 of 5

State of Alaska vs. VERNON G. JACK, V  
Case No. 1KF-S01-551 CR

Office of the District Attorney  
 416 Main Street, Room 304  
 Ketchikan, Alaska 99901  
 (907) 225-6128 FAX (907) 225-3917

All of which is a Class A misdemeanor offense being  
contrary to and in violation of AS 11.41.230(a)(3), and against  
the peace and dignity of the State of Alaska.

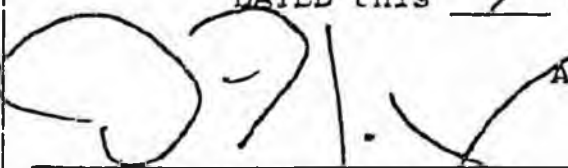
COUNT VI


That on or about the 12th day of May, 2001, aboard the  
M/V Matanuska at or near Ketchikan\* in the First Judicial  
District, State of Alaska, VERNON G. JACK, V did unlawfully, by  
words or other conduct did recklessly place S.N.F. in fear of  
imminent physical injury.

All of which is a Class A misdemeanor offense being  
contrary to and in violation of AS 11.41.230(a)(3), and against  
the peace and dignity of the State of Alaska.

DATED this 12th day of June, 2001.

A TRUE BILL

  
DANIEL J.M. SCHALLY  
ASSISTANT DISTRICT ATTORNEY  
Alaska Bar No. 9711075

  
GRAND JURY FOREPERSON

Witnesses: *trooper*  
~~Officer Marvin Randall~~  
S.N.F. *DS*  
Malika Farham  
Sandra Thompson  
Cheryl Fisher  
Yvette Fountain

NOTE: The full name of the victim is located within the  
Ketchikan District Attorneys' Office.

INDICTMENT - Page 4 of 5

State of Alaska vs. VERNON G. JACK, V  
Case No. 1KF-S01-551 CR

STATE OF ALASKA DEPARTMENT OF LAW  
Office of the District Attorney  
415 Main Street, Room 304  
Ketchikan, Alaska 99901  
(907) 225-6128 FAX (907) 225-3917