

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

April 7, 2005

3:42 p.m.

**MEMBERS PRESENT**

Senator Gene Therriault, Chair  
Senator Thomas Wagoner, Vice Chair  
Senator Bettye Davis

**MEMBERS ABSENT**

Senator Charlie Huggins  
Senator Kim Elton

**COMMITTEE CALENDAR**

SENATE BILL NO. 154

"An Act relating to the jurisdiction for proceedings relating to delinquent minors and to telephonic and televised participation in those proceedings; amending Rules 2, 3, 4, 8, 12, 13, 14, 15, 16, 21, 22, 23, 24.1, and 25, Alaska Delinquency Rules; and providing for an effective date."

MOVED CSSB 154(STA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 154

SHORT TITLE: JUVENILE DELINQUENCY PROCEEDINGS

SPONSOR(S): SENATOR(S) THERRIAULT

03/29/05	(S)	READ THE FIRST TIME - REFERRALS
03/29/05	(S)	STA, JUD
04/07/05	(S)	STA AT 3:30 PM BELTZ 211

**WITNESS REGISTER**

Heather Brakes  
Staff to Senator Gene Therriault  
Alaska State Capitol  
Juneau, AK

**POSITION STATEMENT:** Introduced SB 154 for the sponsor

Patty Ware, Director  
Division of Juvenile Justice

Department of Health & Social Services  
PO Box 110601  
Juneau, AK 99801-0601  
**POSITION STATEMENT:** Supported SB 154

Tony Newman, Program Director  
Division of Juvenile Justice  
Department of Health & Social Services  
PO Box 110601  
Juneau, AK 99801-0601  
**POSITION STATEMENT:** Supported SB 154

Anne Carpeneti  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Answered questions on SB 154

**ACTION NARRATIVE**

**CHAIR GENE THERRIAULT** called the Senate State Affairs Standing Committee meeting to order at [3:42:17 PM](#). Present were Senators Davis, Wagoner and Therriault. The committee took up SB 154.

**SB 154- JUVENILE DELINQUENCY PROCEEDINGS**

[3:42:53 PM](#)

MS. HEATHER BRAKES, Staff to Senator Gene Therriault, sponsor, told members SB 154 addresses two concerns related to Alaska's juvenile justice system. First, SB 154 would improve the state's ability to hold juvenile offenders accountable for their conduct; second, it would increase the efficiency of the juvenile justice system by allowing telephonic hearings when a personal appearance is unnecessary for a fair determination.

MS. BRAKES said SB 154 corrects a serious gap in Alaska statute. Currently, when a person under 18 commits a delinquent act, the juvenile justice system is responsible for the matter. When a person over 18 commits a crime, the adult criminal system prosecutes. Recent court decisions have determined that when a youth commits a delinquent act that either goes undiscovered or for which proceedings are not filed until after the offender reaches the age of 18, neither the adult nor the juvenile system has clear jurisdiction under Alaska statute.

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MS. BRAKES referred to information in members' packets that shows the statutory language the court has found to be unclear. She said SB 154 fills the jurisdictional gap by providing that delinquent minor statutes apply to a person who commits a violation of criminal law of the state or a municipality while under 18 if the period of limitation under AS 12.10 has not expired. AS 12.10 lays out the different crimes and the statute of limitations under which charges can be brought.

SB 154 also amends Alaska's delinquency rules to allow for telephonic participation by juvenile offenders in certain proceedings. It would still require juvenile offenders to be present for all hearings when necessary for a fair determination. The change would apply to court appearances such as status hearings, where telephonic participation is adequate for a fair decision. This would avoid expensive travel costs.

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CHAIR THERRIAULT informed members the court's written decision says the court cannot correct the problem; the legislature must clarify the statutory language.

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MS. PATTY WARE, Director of the Division of Juvenile Justice, Department of Health and Social Services (DHSS), said she would give a brief summary of the legislation and Mr. Newman would discuss some sample cases to illustrate the problem.

MS. WARE explained that a few cases in the Kenai area brought the seriousness of the situation to DHSS's attention and prompted it to look at a statutory change. She said the most important parts of the bill are Sections 1 and 7. In the two legal cases in members' packets, the court determined DHSS had no legal jurisdiction because the offenses were alleged to have been committed while the minor was still a juvenile. Section 1 creates a new section of statute that says DHSS has legal authority when these types of cases occur.

MS. WARE said Section 7 of the bill closes the other loophole. It allows DHSS to adjudicate these cases in court in the same manner that it does for juvenile offenders under the age of 18. She indicated that Section 2 is primarily cleanup language to incorporate this special population. For example, many sections of Title 47 deal with minors and parents, such as parental

rights to receive notice. None of those sections are relevant when an offender is over 18.

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CHAIR THERRIAULT asked if those sections are new sections of statute.

MS. WARE affirmed they are. She explained that Sections 3 through 6 make changes to the dual sentencing provisions and delinquency statutes. Under current law, if a person 16 or older commits a serious offense, the district attorney can file a petition requesting both a juvenile and adult sentence. If the person does not follow through with the conditions of the juvenile sentence, the adult sentence would be imposed. Sections 3 through 6 provide tools for specific circumstances when a person is perhaps 19 or 20 and the juvenile sentencing provisions might be effective.

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MR. TONY NEWMAN, Program Officer, Division of Juvenile Justice, DHSS, referred to a chart and told members when a youth under 18 commits almost any offense, he or she is subject to juvenile justice jurisdiction. If a person is close to age 18 and commits an offense, the judge can commit the offender to a period of probation or treatment at a youth facility until he or she reaches 20 years of age, but the offender would have to consent.

MR. NEWMAN said a juvenile can be dealt with as an adult in the Alaska Court System in a few ways. The Legislature has decided that 16 and 17 year olds who commit specific offenses will automatically be waived into the adult system. Second, DHSS can get a discretionary waiver if it can demonstrate that a juvenile is not amenable to treatment. The third method is to impose dual sentencing provisions - a sentence in both the juvenile and adult systems for certain serious offenses. If the offender does not successfully comply with the conditions imposed by the juvenile system, the adult sentence is applied.

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MR. NEWMAN said the court has advised that if a 15 year old commits murder but is not arrested until age 19, no one has jurisdiction of the case. If the murder was committed at 16 or 17, the auto-waiver would kick in and adult court would have jurisdiction. However, if a 16 or 17 year old committed a lesser

offense that was not discovered for several years, no jurisdiction would apply. Under this bill, the juvenile justice staff could take a petition forward and get adjudication or a discretionary waiver if the offender was no longer amenable to treatment as a juvenile.

If a 17-year-old juvenile committed sexual abuse of a minor in the second degree and was not arrested until age 18, DHSS could petition the offense to the court. If adjudicated as a delinquent, at DHSS's discretion that person could be remanded to probation supervision, a juvenile facility or to an adult correctional facility. DHSS could also request dual sentencing.

3:58:30 PM

CHAIR THERRIAULT asked if this problem has just recently come to light.

MS. WARE said although these cases are uncommon and DHSS does not anticipate many, the two Kenai cases prompted DHSS to address the situation and fix the "hole" in the statute. It is not just for serious offenses; it's to make these people accountable and provide restitution when appropriate.

MS. WARE referenced page 6, section 9 and said she would like to speak to the proposal for telephonic hearings. Delinquency rules require that juveniles have the right to appear in person for a range of hearings. For certain types of hearings, DHSS could request permission from the court for the juvenile to participate telephonically or via video. DHSS would like to add arraignment hearings to the new language on line 17. She explained that detention reviews and status hearings are short and transporting juveniles to court can be costly.

CHAIR THERRIAULT asked if this language mirrors the language that allows telephonic appearances in the adult system.

MS. WARE deferred to Ms. Carpeneti but said the McLaughlin Youth Center had technology that allowed juveniles to appear via a video link but that equipment quit working several years ago and has not been fixed. She said she does not know how this language compares to what is allowed in the adult system.

4:04:10 PM

SENATOR THOMAS WAGONER said he is appalled to hear that the equipment at McLaughlin has not been fixed.

MS. WARE said she didn't have the details regarding what happened but the equipment broke many years ago and it is possible the equipment is now outdated. She noted when the video link was initiated 8-10 years ago, there was a positive response from judges in Anchorage.

SENATOR WAGONER said he had a similar discussion with Portia Parker of the Department of Corrections about prisoners using a video link instead of transporting them to courtrooms.

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CHAIR THERRIAULT called Ms. Carpeneti forward to testify.

[4:06:05 PM](#)

MS. ANNE CARPENETI, Assistant Attorney General, said she did not draft the bill but the Department of Law (DOL) supports it. She offered to answer questions.

CHAIR THERRIAULT asked why the Governor didn't introduce legislation to address this concern.

MS. CARPENETI said DOL did not draft a bill because of time constraints.

[4:07:12 PM](#)

CHAIR THERRIAULT took teleconference testimony.

[4:07:25 PM](#)

MR. BOB FRALEY, Superintendent of the Nome Youth Facility, told members he was at the McLaughlin Youth Center when the video link was used for uncontested hearings. That equipment was very effective and saved transportation and staff time. The breakdown was not in the equipment but in the line between McLaughlin and the courthouse and the cost of replacement was prohibitive.

He said each year about 50 youths are transported to Kotzebue from Nome for court hearings. Besides the expense of transporting a juvenile and staff member, the travel time takes all day for a 5 to 10 minute hearing and removes a staff person from an already limited staff situation.

[4:10:40 PM](#)

CHAIR THERRIAULT asked Ms. Carpeneti about Ms. Ware's proposed amendment.

MS. CARPENETI suggested the following language:

On page 4, line 11, following "custody," insert "or supervision"

On page 4, line 12, following "under" insert "AS 47.12.120(b) or"

On page 4, line 13, delete "or placement" and insert ", placement, or supervision"

[4:12:52 PM](#)

CHAIR THERRIAULT asked what the upshot of those changes would be.

[4:13:01 PM](#)

MR. NEWMAN said adding custody or supervision encompasses juveniles in custody or under the division's supervision, such as those on probation. The statutory reference to AS 47.12.120(b) encompasses individuals who are adjudicated and either sentenced to probation or to a term in a detention facility.

[4:14:19 PM](#)

CHAIR THERRIAULT moved to adopt Ms. Carpeneti's suggested language as a conceptual amendment [Amendment 1]. Without objection, the motion carried.

CHAIR THERRIAULT asked if DHSS wanted to add arraignments to the list of hearings that juveniles could participate in telephonically (page 6, line 17).

MS. CARPENETI suggested placing the word "arraignment" after the word "for" on page 6, line 17.

CHAIR THERRIAULT asked if arraignments were intentionally left out of the statute.

MR. NEWMAN explained that arraignments are often uncontested and brief. DHSS staff thought offenders could easily participate

telephonically. On the other hand, an arraignment is the individual's first dealing with the justice system so it could be critical. This amendment would give DHSS the discretion to decide.

CHAIR THERRIAULT asked if no one has to appear if an arraignment is uncontested.

MR. NEWMAN said that is correct.

CHAIR THERRIAULT asked if not contesting is different than waiving an appearance.

MS. CARPENETI said they are a bit different. A person is advised of his or her rights at an arraignment. A person can waive his or her right to participate in person and choose to participate telephonically.

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CHAIR THERRIAULT motioned to adopt conceptual Amendment 2. There being no objection, it was so ordered. He asked if any other areas of the bill needed change.

[4:16:56 PM](#)

MS. CARPENETI said on page 6, line 10, the statute reference should be AS 47.14.010 - 47.14.050 rather than AS 47.14.010 - 47.14.130.

CHAIR THERRIAULT moved that citation change as Amendment 3. There being no objection, the motion carried.

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CHAIR THERRIAULT noted the bill has a Senate Judiciary Committee referral and asked members if they were comfortable moving the bill out of committee.

SENATOR DAVIS said she had no objection to moving the bill.

SENATOR WAGONER concurred.

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CHAIR THERRIAULT indicated the bill has three fiscal notes and said he would ask the Senate Judiciary chair to have the public

defender appear to justify the agency's indeterminate fiscal note because it might trigger a Senate Finance Committee referral.

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SENATOR WAGONER motioned to report CSSB 154(STA) and its three attached fiscal notes from committee with individual recommendations. There being no objection, the motion carried. There being no further business to come before the committee, Chair Therriault adjourned the meeting at 4:19:23 PM.