

**SB**

**154**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 154(STA)  
(S) Publish Date: 4/8/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An act relating to the jurisdiction RDU Legal and Advocacy Services  
of delinquency proceedings... Component Public Defender Agency  
Sponsor Senator Therriault  
Requester Senate State Affairs Component No. 1631

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</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>	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
This bill amends the juvenile delinquency statutes to broaden its jurisdiction to reach persons who are over 18 and no longer minors, but who are alleged to have committed a criminal offense or violation while a minor. The Public Defender Agency's operations will be fiscally impacted because it will increase its caseload with offenses that are currently not prosecuted. It is not possible to predict with any accuracy, however, the number of new cases that would be assigned to the Agency, that will be generated as a result of this broadened jurisdiction. This bill also provides for a Delinquency Rule change to allow the court, upon the application of any party, to allow telephonic or televised participation of the minor at certain court hearings. This will also have a fiscal impact on PD operations because it will require the minor's appointed attorney to take additional time to travel to the minor to be present with the minor for these permitted telephonic proceedings to facilitate adequate representation of the minor. For all of the above reasons an indeterminate note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416  
Division Public Defender Agency Date/Time 4/4/05 8:54 AM  
Approved by: Mike Tibbles, Deputy Commissioner Date 4/4/2005  
Agency Department of Administration

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSB 154(STA)  
(S) Publish Date: 4/8/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to the jurisdiction for RDU CRIMINAL  
proceedings relating to delinquent minors and to telephonic..." Component Criminal Justice Litigation  
Sponsor Senator Therriault  
Requester Senate State Affairs Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 Mat'l						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - Regulatory Cost Charge						
<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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends AS 47.12 (Delinquent Minors) by expanding jurisdiction of the juvenile court to allow prosecution of people who commit crimes as juveniles but it is not discovered until they are adults, or the state is unable to file a petition case before the person turns 18. There are not many cases that will fall into this group. The bill also expands the use of telephonic hearings in juvenile cases. Currently a minor has the right to be present at almost every stage of the proceeding. The bill would expand those hearings (such as regular status hearings) where telephonic participation is allowed.

Passage of this legislation will have no fiscal impact on the Department of Law aside from some minor savings in the cost of transportation.

Prepared by: Kathryn Daughheteo, Director  
Division: Administrative Services Division  
Approved by: Kathryn Daughheteo for David Márquez, Attorney General  
Agency: Department of Law

Phone 465-3673  
Date/Time 4/6/05 2:40 PM  
Date 4/6/2005

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3  
 Bill Version: CSSB 154(STA)  
 ( S ) Publish Date: 4/8/05  
 Dept. Affected: Health & Social Services  
 RDU Juvenile Justice  
 Component McLaughlin Youth Center

Revision Date/Time (Note if correction):

Title JUVENILE DELINQUENCY PROCEEDINGS

Sponsor TERRIAULT

Requester SENATE (STA)

Component No. 264

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
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 (FY2005) cost:

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This fiscal note captures two different aspects of the bill. The first is related to juvenile jurisdiction. The bill would change the statute to allow for juvenile pro-ceedings for individuals over 18 years of age when the person is alleged to have committed a violation of the criminal law of the state, the violation occurred when the person was under 18 years of age, and the statute of limitations for the offense has not expired. Currently, there is no jurisdiction for this if the matter is not brought before the court before they turn 18. The second aspect of the bill is related to court appearances by juveniles. The bill would allow certain juvenile court hearings to be conducted through telephonic or televised participation of the juvenile.

The Division has determined that the fiscal impact of this bill will be zero. The potential savings in court appearances will be offset by the cost to the division to process additional referrals or offenders who fall under

Prepared by: Sherry Hill, Special Assistant  
 Division: Office of the Commissioner  
 Approved by: Jnel S. Gilbertson, Commissioner  
 Agency: Department of Health and Social Services

Phone 465-1618  
 Date/Time 04/05/2005  
 Date 04/04/2005

FISCAL NOTE

FN # 3

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. CSSB 154(STA)

ANALYSIS CONTINUATION

the jurisdictional provisions of the bill.

THERE IS ZERO FISCAL IMPACT ON ANY OF THE YOUTH FACILITIES OPERATED BY THE DIVISION. THIS FISCAL NOTE FOR MCLAUGHLIN YOUTH CENTER SERVES AS A PROXY FOR THE OTHER FACILITIES AS WELL.

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5  
Bill Version: HCS CSSB 154(JUD)  
(H) Publish Date: 5/4/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title: An act relating to the jurisdiction of delinquency proceedings... RDU: Legal and Advocacy Services  
Sponsor: Senator Theriault Component: Office of Public Advocacy  
Requester: Senate State Affairs Component No.: 43

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel						
Contractual	*	*	*	*	*	*
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<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>	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
This bill amends the juvenile delinquency statutes to broaden its jurisdiction to reach persons who are over 18 and no longer minors, but who are alleged to have committed a criminal offense or violation while a minor. This will impact the Office of Public Advocacy's criminal sections in that heretofore such individuals could not be prosecuted and under this legislation they can. Some cases would inevitably involve conduct that is years old and such cases would require heightened investigation. While this would impact staff and contract attorney resources, it is not possible to predict with any accuracy the number or cost of these new cases that would be generated as a result of this broadened jurisdiction. This bill also provides for Delinquency Rule changes to allow telephonic or televised participation of the minor at certain court hearings. This will also have a fiscal impact on OPA operations as it will require the minor's appointed attorney to take additional time to travel to the minor to be present with the minor for those permitted telephonic proceedings to facilitate adequate representation of the minor. For all of the above reasons an indeterminate note is submitted.

Prepared by: Joshua P. Fink, Director Phone: (907) 269-3500  
Division: Office of Public Advocacy Date/Time: 4/12/05 9:36 AM  
Approved by: Mike Tibbles, Deputy Commissioner Date: 4/12/2005  
Agency: Department of Administration

# Alaska State Legislature

SENATOR  
GENE THERRIAULT

Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 488-0857  
Fax: (907) 488-4271



Senate

While in session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797  
Fax: (907) 465-3884  
SENATE DISTRICT F

## SPONSOR STATEMENT SENATE BILL 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."*

Senate Bill 154 addresses two concerns of juvenile justice in Alaska: first, improving the state's ability to hold juvenile offenders accountable for their conduct; and second, increasing the efficiency of the juvenile justice system by allowing telephonic hearings where personal appearance is not necessary for the fair determination of an issue.

Senate Bill 154 fills a serious gap in Alaska's statutes that allows young offenders to avoid prosecution if their role in a crime is not discovered until after the offender becomes 18 years of age, or if charges are not filed before the offender turns 18.

- 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 is responsible for prosecution;
- Recent court decisions have highlighted a loophole in the law: that is where a youth commits a delinquent act while under 18 years of age, but is not discovered or proceedings aren't filed until the person reaches 18. Neither the adult or juvenile system has clear jurisdiction.
- This gap is illustrated by a recent case that arose in Kenai: The State filed a Petition for Adjudication of Delinquency on a 19-year-old who was alleged to have committed a sexual assault when he was 17 years old. The Superior Court dismissed the petition, holding "there

is nothing in the statutes that suggests the legislature contemplated adjudication trials for adults who committed crimes as juveniles."

- Senate Bill 154 will fill this gap in jurisdiction by holding the juvenile accountable. The key change is found in proposed AS 47.12.020(b); it provides that the delinquent minor statutes (AS 47.12) apply to a person who commits a violation of the criminal law of the state or a municipality while under 18 years of age, if the period of limitation under AS 12.10 has not expired.

Senate Bill 154 also amends Alaska's Delinquency Rules to allow for telephonic participation by juvenile offenders in certain proceedings. The law would still require a juvenile offender to be present for all hearings where personal presence is necessary for a fair determination of the issue. However, it would avoid expensive travel, where juveniles are transported to court appearances such as status hearings, when telephonic or televised appearance is adequate for the matter to be fairly decided.



# Alaska State Legislature

Senate Majority Web: [www.akrepublicans.org](http://www.akrepublicans.org)

Sponsor: Senator Gene Therriault  
Current Version: CSSB 154 (JUD)  
Contact: Heather Brakes, 465-4522

## Fact Sheet for: Senate Bill 154

Short Title: JUVENILE DELINQUENCY PROCEEDINGS

### Summary:

- Applies the State's juvenile delinquency laws to a person 18 years or older if the person is alleged to have committed a violation of criminal law that occurred when the person was under 18, and the period of limitation has not expired.
- Amends Court Rule 3(e), Alaska Delinquency Rules, to allow juvenile offenders to participate telephonically in certain proceedings in which personal appearance is not essential to the fair disposition of the matter. Court Rule changes require two-thirds vote of the legislature.
- Specifies that a juvenile has the right, and the ability to waive the right, to be physically present in court for: arraignment, adjudication, disposition, probation revocation, extension of jurisdiction and waiver of jurisdiction hearings.

### Benefits:

- Improves the State's ability to hold juvenile offenders accountable for their conduct.
- Allowing juveniles to appear telephonically increases the efficiency of the juvenile justice system and avoids expensive and time-consuming travel.

### Background:

- SB 154 fills a serious gap in Alaska statutes that allows young offenders to avoid prosecution if their role in a crime is not discovered or charges are not filed until after the offender becomes 18 years of age. Under current law, the juvenile justice system is responsible when a person under 18 commits a delinquent act, and the adult system is responsible when a person over 18 commits a crime. However, recent court decisions have exposed a loophole that gives neither the adult nor juvenile system clear jurisdiction when a minor commits a crime but it is not discovered, or proceedings are not filed, until the person reaches 18. In a recent case in Kenai, the State filed a Petition for Adjudication of Delinquency on a 19-year-old who was alleged to have committed a sexual assault when he was 17. The Superior Court dismissed the petition, holding "there is nothing in the statutes that suggests the legislature contemplated adjudication trials for adults who committed crimes as juveniles."

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES



Jurisdiction. The court heard oral argument on the motion to dismiss on September 2, 2003, and the matter is now ripe for decision.<sup>1</sup>

██████ alleges that since he was 20 years old at the time of the filing of the Petition for Adjudication of Delinquency, this court cannot obtain juvenile jurisdiction over him. ██████ relies on AS 47.12.160 which reads in part:

(a) The court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for the minor's best interest, for a period of time not to exceed the maximum period otherwise permitted by law or in any event extend past the day the minor becomes 19. . . .

(c) If a minor is adjudicated a delinquent before the minor's 18<sup>th</sup> birthday, the court may retain jurisdiction over the minor after the minor's 18<sup>th</sup> birthday for the purpose of supervising the minor's rehabilitation, but the court's jurisdiction over the minor under this chapter never extends beyond the minor's 19<sup>th</sup> birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. . . .

AS 47.12.020 provides that proceedings involving a minor under 18 years of age are governed by AS 47.12, Delinquent Minors. The Alaska Supreme Court stated In the Matter of P.H. v. State of Alaska, 504 P. 2d 837 (Alaska 1972) that the age of 18 established by the statute refers to the age of the accused at the time of the alleged offense. Since ██████ was under the age of 18 at the time of the offenses alleged in the Petition for Adjudication of Delinquency, the provisions of AS 47.12, including AS 47.12.020, apply. That statute reads:

<sup>1</sup> In his original Motion to Dismiss ██████ claimed that the court lacked jurisdiction due to invalid service of process. Subsequent to that time ██████ was personally served with process. At the September 2, 2003 hearing the court allowed ██████ 5 days to file any challenge to service. None was filed. Accordingly, the court considers this issue to be moot.

Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor is alleged to be or may be determined by a court to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state.

The specific wording of AS 27.12.020 makes AS 47.12.160 applicable to this case. By its specific wording, AS 47.12.160(a) terminates juvenile jurisdiction "the day the minor turns 19 . . ." Juvenile jurisdiction can extend past the age of 19 for an additional one year period only upon the minor's consent. AS 47.12.160 (c).<sup>2</sup> For this reason, the court concludes that since the Petition for Adjudication of Delinquency was filed after [REDACTED] 20<sup>th</sup> birthday, there is no juvenile jurisdiction. Since there is no juvenile jurisdiction, the court cannot waive jurisdiction under AS 47.12.100. The court cannot waive jurisdiction which it did not acquire.

The charge in Count V of the Petition must be analyzed differently. AS 47.12.030 makes the provisions of AS 47.12 inapplicable in some cases with respect to minors who were 16 years or older at the time of the alleged offense. As to certain offenses listed in AS 47.12.030, such minors shall be charged, sentenced and incarcerated as an adult. AS 47.12.030 (a) (1) (2) (3). None of the listed offenses include the charge contained in Count V of the Petition.<sup>3</sup> Since [REDACTED] is not charged with any of the offenses listed in AS 47.12.030 (a), the provisions of AS 47.12 apply to the charge in Count V of the Petition, including AS 47.12.160. Thus, by the same reasoning applicable to Counts I-IV

<sup>2</sup> AS 47.12.030 cannot apply to the first four counts of the Petition for Adjudication of Delinquency since [REDACTED] was under 16 years of age at the time of the alleged offenses.

<sup>3</sup> AS 47.12.030 (a) provides that if "the minor is convicted of an offense other than an offense specified" in subsection (a) (1), (2), (3), the minor may attempt to prove that the minor is amenable to treatment under AS 47.12.

of the Petition, Count V is not within the jurisdiction of the juvenile court. This conclusion is consistent with State v. T.M. 860 P. 2d 1286 (Alaska App. 1993). In that case the superior court set aside a juvenile adjudication after the court's jurisdiction had expired. Addressing the predecessor of AS 47.12.160, the Court of Appeals stated:

Under AS 47.10.100 (a), the superior court "retains jurisdiction over [a delinquent juvenile's] case . . . in any event [not to] extend past the day the minor becomes 19, unless sooner discharged by the court . . ."

Because T.M. and J.B. filed their motions after this time limitation on the court's jurisdiction had expired, the superior court based its action, not on AS 47.10.100 (a), but on the court's "inherent" power to vacate any delinquency adjudication it had previously entered—even an adjudication it had previously entered—. . . We conclude that the superior court does not possess this kind of inherent authority.

In T.M. the Court of Appeals recognized that the court's jurisdiction had expired under the time limit of AS 47.10.100 (a). Moreover, the court had no inherent authority to exceed that time limit. The same reasoning applies to this case.

The court recognizes the state's concern that this interpretation can allow juvenile criminal activity to go unpunished if the crime did not come to light until after the juvenile's 18<sup>th</sup> (or 19<sup>th</sup>) birthday. This court shares Judge Coat's concern in State v. Jack, 67 P. 3d 673 (Alaska App. 2003):

This case [is] very difficult for me because it seems obvious that the State should have jurisdiction. Id. at 677.

This result is not of the court's making. For whatever reason, the legislature has mandated that juvenile jurisdiction in all cases comes to an end at the time of the

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This provision applies only if the defendant is convicted of a lesser offense included within the charged offense. Wilson v. State, 967 P. 2d 98 (Alaska App. 1998).

juvenile's 19<sup>th</sup> birthday unless the juvenile consents to a longer period. The resolution of this problem rests, not with the court, but the legislature.

For the foregoing reasons the Petition for Adjudication of Delinquency filed in this case is DISMISSED.

Dated at [redacted], Alaska this 15 day of September, 2003.

*[Handwritten Signature]*  
[redacted]  
SUPERIOR COURT JUDGE

I certify that a copy of the foregoing was mailed/faxed/placed in box in the Clerk's Office to the following at their addresses of record:

memo [redacted] NIS; afo - faxed

Guardian-mail

Date: 9/15/03 Clerk: [Signature]

To  
John D. or  
Royak

THE SUPERIOR COURT FOR THE STATE OF ALASKA AUG 18 2004

THIRD JUDICIAL DISTRICT AT [REDACTED]

RECEIVED

OFFICE OF ATTORNEY GENERAL  
3RD JUDICIAL DISTRICT  
ANCHORAGE, ALASKA

In the Matter of:

[REDACTED]  
A Minor Under the Age  
of Eighteen (18) Years.  
Date of Birth: [REDACTED]

Case No. [REDACTED] CP.

ORDER

[REDACTED] filed a Motion to Dismiss Petition for Adjudication of Delinquency on June 9, 2004. The Motion states that [REDACTED] turned 19 years of age on [REDACTED] 2004, and argues that AS 47.12.160 does not permit the court to retain jurisdiction beyond a juvenile offender's 19<sup>th</sup> birthday. The state has opposed the Motion and argues that AS 47.12.160 applies to the disposition phase of juvenile cases. The state suggests that although [REDACTED] is no longer subject to disposition because of his age, the law still requires [REDACTED] to appear at an adjudication trial. The state's position is not supported by the applicable statutes, and the Petition for Adjudication of Delinquency is dismissed.

CHRONOLOGY

The state alleges that on the late evening of July 1, 2002, [REDACTED] (17 years old at the time) arrived at M.Y.'s Seward residence with a backpack full of alcoholic

16522

beverages. M.Y. drank what [REDACTED] offered, became very intoxicated, and [REDACTED] [REDACTED] digitally penetrated her vagina and anus.

[REDACTED] is from Wisconsin and was spending the summer with an uncle at the time of the alleged assault. When summer ended [REDACTED] returned to Wisconsin. The Division of Juvenile Justice filed a Petition for Adjudication of Delinquency based on the July 2002 events on January 14, 2003. [REDACTED] was apprehended and placed in the [REDACTED] County, Wisconsin jail on June 23, 2003 pending extradition. [REDACTED] was 18 when he was apprehended. The [REDACTED] court released [REDACTED] to his parents pending trial on July 10, 2003.

At the October 2, 2003, omnibus hearing, [REDACTED] attorney, [REDACTED], stated that he did not have discovery. According to [REDACTED], Chris Evenson from the Division of Juvenile Justice had been contacted and had promised to mail discovery.

At trial call on November 6th [REDACTED] stated he received a copy of a police report, but had not received copies of interview tapes. Chris Evenson said that he thought the Seward Police Department was going to send [REDACTED] a copy of the tapes when they sent the tapes to him. Mr. Evenson said that he would make copies of the tapes and get them to Mr. Montague. The trial was continued until January.

At the January 9, 2004, trial call, [REDACTED] stated that he had received the tapes from Mr. Evenson on December 4, 2004, but did not have the photographs taken by the nurse during the victim's Sexual Assault Response Team Examination. Assistant Attorney General John Darnell, appearing for the Division of Juvenile Justice, asked for a continuance. Mr. Darnell stated that the Division was having trouble getting the S.A.R.T.

ORDER

ITMO: T. T. CASE NO [REDACTED] CP

Page 2 of 5

photographs because they were in the custody of the Central Peninsula General Hospital. Mr. Darnall stated that he thought the Division would need an order to get the photographs. Trial was continued until March.

No motion for release of records was filed, and at the March 4, 2004, trial call, the S.A.R.T. photographs were still not in the Division of Juvenile Justice's hands. Aaron Poland, appearing for the Division, stated that he had talked to someone from Central Peninsula General Hospital that morning and he expected to have the S.A.R.T. photographs within one month. Trial call was continued until May.

On March 10, 2004, the Division submitted and the court signed orders requiring the hospital to produce the victim's S.A.R.T. records. At the May 6, 2004, trial call, [REDACTED] stated that he still did not have the photographs. Aaron Poland said that he had some difficulty getting the photographs from Central Peninsula General Hospital, but did get them in late April and had sent the photos to Copy Cats Printing to be copied, and the photos should be there for [REDACTED].

The trial was continued until June. At the June 9, 2004, trial call, [REDACTED] stated that he still had not received the S.A.R.T. photographs that the Division of Juvenile Justice said were available at Copy Cats. [REDACTED] also filed a Motion to Dismiss, based upon the fact that his client had turned 19 on May 16, 2004. Assistant Attorney General Karen Hawkins objected to the motion as untimely and objected to continuing the trial. On June 14, 2004, Ms. Hawkins filed a Notice of Expert.

#### DISCUSSION

██████████ argues that AS 47.12.020 gives the court jurisdiction over minors under 18 years of age, and Alaska Statute 47.12.160 allows the court to retain jurisdiction until the minor's 19<sup>th</sup> birthday. Since he turned 19 before he was brought to trial, ██████████ argues that the petition filed against him should be dismissed.

The state argues that AS 47.12.160 applies to disposition orders and has no effect until a juvenile has been adjudicated a delinquent. The state is asking the court to allow ██████████'s trial so that if the jury finds he has committed the delinquent acts alleged in the petition, a record will exist to be considered if ██████████ commits a crime as an adult.

The state's position is not supported by the statutes governing juvenile delinquents. There is nothing in the statutes that suggests the legislature contemplated adjudication trials for adults who committed crimes as juveniles. Moreover, there is nothing in the statutes that suggests the legislature has authorized adjudication trials when the court has no jurisdiction to enter a disposition order. It may even be prejudicial to hold an adjudication trial when the court lacks authority to modify the judgment as soon as it is entered because of the age of the defendant. See AS 47.12.160; State v. T.M., 860 P.2d 1286 (Alaska App. 1993).

For the above-stated reasons, the Petition for Adjudication of Delinquency is dismissed.

Dated at Kenai, Alaska this 15<sup>th</sup> day of August, 2004.



CHARLES T. HUGUELET  
SUPERIOR COURT JUDGE

I certify that a copy of the foregoing was mailed/faxed/placed in box in the Clerk's Office to the following at their addresses of record:

[Redacted], DTS, Houkmo/REG,  
Parent

Date: 8/17/04 Clerk: [Signature]