

SB

154

SENATE COMMITTEE REPORT

DATE: 4/8/05

FURTHER: Rules

DATE TURNED
IN TO OFFICE: 4/18/05

Judiciary Committee considered SENATE BILL NO. 154

SB 154 JUVENILE DELINQUENCY PROCEEDINGS

"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."

and recommends:

- be replaced with _____ CS SB 154 (JUD)
- adopt previous _____ CS CS Forthcoming (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ e

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
S. JUD	4/18			✓	4

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	4/6			✓	2
HSS	4/5			✓	3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
French				X	
Guess				X	
Therriault		X			
Higgins		X			
CHAIR		✓			
Seekins					

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.

CS FOR SENATE BILL NO. 154(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/8/05
Referred: Judiciary

Sponsor(s): SENATOR THERRIAULT

A BILL
FOR AN ACT ENTITLED

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

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 47.12.020 is amended by adding a new subsection to read:

7 (b) Except as otherwise provided in this chapter, proceedings relating to a
8 person who is 18 years of age or over are governed by this chapter if the person is
9 alleged to have committed a violation of the criminal law of the state or a municipality
10 of the state, the violation occurred when the person was under 18 years of age, and the
11 period of limitation under AS 12.10 has not expired.

12 * **Sec. 2.** AS 47.12 is amended by adding new sections to read:

13 **Sec. 47.12.022. Applicability; inclusion of certain persons as minors.**
14 Except as provided in AS 47.12.025, the provisions of this chapter apply to a person

1 who is 18 years of age or older and who is subject to the jurisdiction of this chapter
 2 due solely to AS 47.12.020(b). To implement AS 47.12.020(b) and this section, the
 3 term "minor" as used in this chapter includes a person described in this section.

4 **Sec. 47.12.025. Special provisions for certain persons considered to be**
 5 **minors.** (a) Notwithstanding any other provision of law, the following special
 6 provisions apply to a person who is subject to the jurisdiction of this chapter due
 7 solely to AS 47.12.020(b):

8 (1) a petition filed under AS 47.12.040(b) must be styled as follows:
 9 "In the matter of, a person under the jurisdiction of this
 10 chapter under AS 47.12.020(b)"; the petition may not state the name of a parent,
 11 guardian, or other person;

12 (2) notice of an investigation, adjustment, hearing, or other procedure
 13 under this chapter to a parent, guardian, or foster parent is not required;

14 (3) participation by a parent, guardian, or foster parent in any part of
 15 the investigation, adjustment, hearing, or other procedure under this chapter is not
 16 required;

17 (4) agreement or consent by a parent or guardian to the terms and
 18 conditions of an informal adjustment under AS 47.12.060 is not required;

19 (5) an opportunity for a foster parent to be heard before informal
 20 adjustment under AS 47.12.060 is not required;

21 (6) the presence of a parent or guardian is not required, and the person
 22 does not have a right to have a parent or guardian present at an interview conducted
 23 during an investigation under this chapter;

24 (7) after a petition is filed and after further investigation that the court
 25 directs, if the person has not appeared voluntarily for proceedings under this chapter,
 26 the court may issue a summons or an arrest warrant for the person;

27 (8) a person who is taken into custody under this chapter may, in the
 28 discretion of the court and upon written promise to appear in court at the time
 29 specified by the court, be released; if not released, the person shall be detained under
 30 the provisions of (b) of this section;

31 (9) consent of a parent or guardian to waiver of the right to appointed

1 counsel or a guardian ad litem under AS 47.12.090 is not required;

2 (10) the appointment of a guardian ad litem under AS 47.12.090 is not
3 required; the court may appoint a guardian ad litem under AS 47.12.090 only if special
4 circumstances exist concerning the mental or physical capacity of the person who is
5 named in the petition under (1) of this section;

6 (11) an order under AS 47.12.120(b) to release the person to a parent,
7 guardian, or other person must be with the consent of the parent, guardian, or other
8 person; a parent, guardian, or other person who consents does not assume any of the
9 responsibilities described in AS 47.12.150 or retain any residual rights or
10 responsibilities described in AS 47.12.150;

11 (12) a person released under AS 47.12.120(c) shall be released without
12 conditions;

13 (13) a parent, guardian, or custodian may not apply for a review under
14 AS 47.12.120(d); notice to a parent, guardian, custodian, or foster parent of a review
15 under AS 47.12.120(a) is not required; a parent, guardian, custodian, or foster parent
16 does not have a right to be heard at the review under AS 47.12.120(d);

17 (14) the person's parent or guardian may not file an appeal under
18 AS 47.12.120(f);

19 (15) notice of the predisposition report under AS 47.12.130(b) to the
20 person's parent or guardian is not required;

21 (16) unless part of a conditional release plan agreed to by a parent or
22 guardian, a parent or guardian of the person may not be ordered to participate in or pay
23 for treatment under AS 47.12.155(b)(1), (c), or (d) or to notify the department if the
24 person violates a term or condition of a court order under AS 47.12.155(b)(2);

25 (17) an application to extend jurisdiction under AS 47.12.160(a) may
26 not be made by a parent or guardian;

27 (18) the court may not order the parent of the person to pay for
28 maintenance or care of the person under AS 47.12.230;

29 (19) the name of a parent or guardian of the person is not required to
30 be disclosed in connection with the filing of a petition or informal adjustment under
31 AS 47.12.315.

1 (b) At a hearing under AS 47.12.250(c) regarding a person who is subject to
 2 the jurisdiction of this chapter due solely to AS 47.12.020(b), if the court finds that
 3 probable cause exists, the court shall determine whether the person should be detained
 4 pending the hearing on the petition or released. The court may either order the person
 5 detained as provided in (c) of this section or released under the provisions of AS 12.30
 6 as if the provisions of AS 12.30 were to apply to proceedings under this chapter. If the
 7 court finds no probable cause, the court shall order the person released and close the
 8 proceeding.

9 (c) If a person who is subject to the jurisdiction of this chapter due solely to
 10 AS 47.12.020(b) has been arrested by a peace officer or a probation officer under
 11 AS 47.12.245, detained under AS 47.12.250, or committed to the custody or
 12 supervision of the department under AS 47.12.120(b) or 47.12.240, the department,
 13 after consulting the peace officer or probation officer if appropriate, shall make
 14 arrangements for the detention, placement, or supervision of the person. In the
 15 discretion of the department, the person may be detained or placed in a juvenile
 16 facility or in an adult correctional facility.

17 * Sec. 3. AS 47.12.065(a) is amended to read:

18 (a) The department or the entity selected by it may refer to the appropriate
 19 district attorney the circumstances involving a minor who is subject to the provisions
 20 of this section because the minor is alleged to have violated a criminal law of the state.
 21 Except as provided in (d) of this section, the [THE] department or the entity selected
 22 by it may make the referral if the minor was 16 years of age or older at the time of the
 23 offense, and the offense is

24 (1) a felony that is a crime against a person and the minor has
 25 previously been adjudicated a delinquent under the laws of this state or substantially
 26 similar laws of another jurisdiction for a felony offense that is a crime against a
 27 person; or

28 (2) sexual abuse of a minor in the second degree.

29 * Sec. 4. AS 47.12.065 is amended by adding a new subsection to read:

30 (d) The department or the entity selected by it may refer to the appropriate
 31 district attorney a person who is subject to the jurisdiction of this chapter under

1 AS 47.12.020(b) and who is alleged to have committed a felony or other offense. If
 2 the district attorney elects to seek imposition of a dual sentence in the matter, the
 3 district attorney shall file notice of that election. If the alleged crime is a
 4 misdemeanor, the district attorney shall file a delinquency petition. If the alleged
 5 crime is a felony, the district attorney shall follow the procedure set out in (b) of this
 6 section.

7 * Sec. 5. AS 47.12.160(a) is amended to read:

8 (a) Except as provided in (g) of this section, the [THE] court retains
 9 jurisdiction over the case and may at any time stay execution, modify, set aside,
 10 revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its
 11 power of protection over the minor and for the minor's best interest, for a period of
 12 time not to exceed the maximum period otherwise permitted by law or in any event
 13 extend past the day the minor becomes 19, unless sooner discharged by the court,
 14 except that the department may apply for and the court may grant an additional one-
 15 year [ONE- YEAR] period of supervision past age 19 if continued supervision is in
 16 the best interests of the person and the person consents to it. An application for any of
 17 these purposes may be made by the parent, guardian, or custodian acting in behalf of
 18 the minor, or the court may, on its own motion, and after reasonable notice to
 19 interested parties and the appropriate department, take action that it considers
 20 appropriate.

21 * Sec. 6. AS 47.12.160(d) is amended to read:

22 (d) The department, or the district attorney in a matter subject to the
 23 jurisdiction of this chapter under AS 47.12.020(b), may petition the court for
 24 imposition of sentence pronounced under AS 47.12.120(j)(2) if the offender is still
 25 subject to the jurisdiction of the court and if the offender, after pronouncement of
 26 sentence under AS 47.12.120(j)(2),

27 (1) commits a subsequent felony offense;

28 (2) commits a subsequent offense against a person that is a
 29 misdemeanor and involves injury to a person or the use of a deadly weapon;

30 (3) fails to comply with the terms of a restitution order;

31 (4) fails to engage in or satisfactorily complete a rehabilitation

1 program ordered by a court or required by a facility or juvenile probation officer; or

2 (5) escapes from a juvenile or other correctional facility.

3 * Sec. 7. AS 47.12.160 is amended by adding a new subsection to read:

4 (g) If the department has filed a delinquency petition under AS 47.12.020 and
5 47.12.040 regarding a minor who is 18 years of age or older, the court has jurisdiction
6 to adjudicate and dispose of the matter as provided in this chapter.

7 * Sec. 8. AS 47.14 is amended by adding a new section to read:

8 **Sec. 47.14.025. Applicability; inclusions of certain persons as minors.** The
9 provisions of AS 47.14.010 - 47.14.050 apply to a person who is 18 years of age or
10 older and who is subject to the jurisdiction of AS 47.12 due solely to AS 47.12.020(b).
11 To implement this section, the term "minor" as used in AS 47.14.010 - 47.14.050
12 includes a person described in this section.

13 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 DIRECT COURT RULE AMENDMENT. Rule 3(e), Alaska Delinquency
16 Rules, is amended to read:

17 (e) **Telephonic and Televised Participation.**

18 (1) The juvenile has the right to be physically present in court for
19 arraignment, adjudication, disposition, probation revocation, extension of
20 jurisdiction, and waiver of jurisdiction hearings; however, the juvenile may
21 waive the right to be present. At all other hearings the court, upon application of
22 any party, may allow telephonic participation by the juvenile if the juvenile's
23 personal appearance is not essential to the fair disposition of the matter. The [
24 HOWEVER, THE] court has discretion to allow telephonic participation by other
25 parties. The juvenile's waiver of the right to be physically present may be obtained
26 orally on the record or in writing.

27 (2) The court may allow telephonic participation of witnesses only
28 upon stipulation of the juvenile and the Department, except that the court may allow
29 telephonic participation of witnesses without the consent of the parties at disposition,
30 disposition review or temporary detention hearings.

31 (3) In those court locations in which a television system has been

1 approved by the supreme court and has been installed, juveniles in custody may
 2 appear by way of television with the consent of the juvenile and with the approval of
 3 the court for hearings in which the juvenile has a right to be physically present
 4 under (1) of this section. If the court has allowed telephonic participation by the
 5 juvenile in a hearing, participation may also be by television. Appearance by
 6 television shall not be allowed at adjudication trials or at any hearings in which sworn
 7 testimony is to be presented.

8 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
 9 read:

10 **INDIRECT COURT RULE CHANGE.** The changes made by secs. 1 - 8 of this Act
 11 have the effect of amending the following Alaska Delinquency Rules by requiring the court to
 12 conform the rules to the statutory changes to acknowledge the inclusion of certain persons 18
 13 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special
 14 statutory provisions contained in secs. 1 - 8 of this Act applicable to those persons:

- 15 (1) Rule 2(n), Alaska Delinquency Rules;
- 16 (2) Rule 3(b), Alaska Delinquency Rules;
- 17 (3) Rule 3(c), Alaska Delinquency Rules;
- 18 (4) Rule 4(f)(3), Alaska Delinquency Rules;
- 19 (5) Rule 8(b), Alaska Delinquency Rules;
- 20 (6) Rule 8(c), Alaska Delinquency Rules;
- 21 (7) Rule 12(b), Alaska Delinquency Rules;
- 22 (8) Rule 12(c), Alaska Delinquency Rules;
- 23 (9) Rule 12(d), Alaska Delinquency Rules;
- 24 (10) Rule 12(e), Alaska Delinquency Rules;
- 25 (11) Rule 13, Alaska Delinquency Rules;
- 26 (12) Rule 14(b), Alaska Delinquency Rules;
- 27 (13) Rule 15(a), Alaska Delinquency Rules;
- 28 (14) Rule 16(a), Alaska Delinquency Rules;
- 29 (15) Rule 16(b), Alaska Delinquency Rules;
- 30 (16) Rule 21(g), Alaska Delinquency Rules;
- 31 (17) Rule 22(c), Alaska Delinquency Rules;

- 1 (18) Rule 23(b), Alaska Delinquency Rules;
2 (19) Rule 24.1(d), Alaska Delinquency Rules;
3 (20) Rule 25(b), Alaska Delinquency Rules;
4 (21) Rule 25(c)(4), Alaska Delinquency Rules.

5 * Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 APPLICABILITY. (a) Sections 1 - 8 of this Act apply to offenses committed on or
8 after the effective date of this Act.

9 (b) Section 9 of this Act applies to telephonic and televised participation for court
10 proceedings conducted on or after the effective date of this Act regardless of whether the
11 offense occurred before, on, or after the effective date of this Act.

12 * Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 CONDITIONAL EFFECT. Sections 1 - 8 of this Act take effect only if sec. 10 of this
15 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
16 Constitution of the State of Alaska.

17 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 CONDITIONAL EFFECT. Section 9 of this Act takes effect only if sec. 9 of this Act
20 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
21 of the State of Alaska.

22 * Sec. 14. If, under secs. 12 and 13 of this Act, this Act takes effect, it takes effect July 1,
23 2005.

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						
TOTAL OPERATING	*	*	*	*	*	*

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	*	*	*	*	*	*

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						
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 - Regulatory Cost Charge						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 Daughhete, Director Phone: 465-3673
 Division: Administrative Services Division Date/Time: 4/6/05 2:40 PM
 Approved by: Kathryn Daughhete for David Marquez, Attorney General Date: 4/6/2005
 Agency: Department of Law

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 THERRIAULT
 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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: Joel 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.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Gene Theriault
Current Version: CSSB 154 (STA)
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."

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

██████ 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 18th birthday, the court may retain jurisdiction over the minor after the minor's 18th 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 19th 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:

¹ 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 that 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).² For this reason, the court concludes that since the Petition for Adjudication of Delinquency was filed after [REDACTED] 20th 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.³ 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

² 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.

³ 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 18th (or 19th) 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

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 19th 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 ██████████, Alaska this 15 day of September, 2003.

COO
██████████
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:

██████████ DJS, a/d - faxed
Guardian-Mail
Date: 9/15/03 Clerk: PAZ

John D. Royak

THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT [REDACTED]

RECEIVED
AUG 18 2004
DEPT. OF JUSTICE
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 19th 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

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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

ORDER

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

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██████████ 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 19th 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 15th 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], N.T.S., Hankins/Reo,
Parent

Date: 8/17/04 Clerk: P. Bute