

SB

154

Alaska State Legislature

SENATOR
GENE THERRIAULT

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Senate

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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.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB154-DHSS-DJJ-04-05-05

Revision Date/Time (Note if correction): _____

() Publish Date: _____

Title JUVENILE DELINQUENCY PROCEEDINGS

Dept. Affected: Health & Social Services

RDU Juvenile Justice

Component McLaughlin Youth Center

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 proceedings 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

Phone 465-1618

Division: Office of the Commissioner

Date/Time 04/05/2005

Approved by: Joel S. Gilbertson, Commissioner

Date 04/04/2005

Agency: Department of Health and Social Services

**FISCAL NOTE
FN #**

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. SB154-DHSS-DJJ-04-05-05

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: _____
 Bill Version: SB154-LAW-CDCO-4-6-I
 () Publish Date: _____

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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: _____
 Bill Version: SB 154
 () Publish Date: _____

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 Thernault
 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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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: 00

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

JUVENILE JUSTICE JURISDICTION LEGISLATION
Sectional Analysis

Section 1 adds to the jurisdiction of juvenile court persons over 18 years of age who are alleged to have committed crimes when they were under 18 years of age, if the statute of limitations under AS 12.10.010 – 12 10.040 has not expired.

Section 2 provides that, except as otherwise provided in the bill, the provisions of AS 47.12 (delinquency statutes) apply to persons 18 years of age and older who are subject to the expanded jurisdiction of juvenile court.

Section 2 also describes the provisions in AS 47.12 that do not apply to persons over 18 years of age who are under the expanded jurisdiction of juvenile court. These are set forth in proposed AS 47.12.025(a) and provide that:

- (1) A delinquency petition may not state the name of a parent, guardian, or other person;
- (2) Notice of an investigation, adjustment, hearing, or other procedure is not required to be made to the person's parent, guardian, or foster parent;
- (3) There is no requirement that a parent, guardian, or foster parent participate in an investigation, adjustment, hearing, or other procedure;
- (4) There is no requirement that a parent or guardian agree to the terms and conditions of an informal adjustment under AS 47.12.060;
- (5) There is no requirement that a foster parent be given an opportunity to be heard before an informal adjustment;
- (6) At an interview of the person during an investigation, the parent or guardian need not be present;
- (7) If a person does not appear voluntarily in court after a petition is filed, the court may issue a summons or an arrest warrant for the person;
- (8) A court may order a person taken into custody released upon the person's own promise to appear, rather than to the custody of the person's parent or guardian;
- (9) A parent or guardian need not consent to a person's waiver of the right to appointed counsel or to a guardian ad litem;

- (10) There is no requirement that a guardian ad litem be appointed; the court may appoint a guardian ad litem if special circumstances exist concerning the physical or mental condition of the person;
- (11) A court order that releases a person to the custody of a parent, guardian, or other person must be with the consent of the parent, guardian, or other person; further, the parent, guardian, or other person does not, by consenting to custody, assume other statutory responsibilities or retain any residual rights regarding the person;
- (12) If the court finds the person was not delinquent, the person will be released without conditions;
- (13) There is no requirement that a parent, guardian, custodian, or foster parent participate in the annual review of the juvenile court order; notice to the parent, guardian, custodian, or foster parent of the review is not required, nor may a parent, guardian, or custodian apply for a review;
- (14) A parent or guardian may not file an appeal of the court's disposition;
- (15) Notice to the parent or guardian of the predisposition report is not required;
- (16) A parent or guardian may not be required to participate in or pay for treatment of the person, or to notify the department if the person violates a condition imposed on the person, unless the participation and notification is part of a conditional release plan that the parent or guardian has agreed to;
- (17) A parent or guardian may not apply to extend the jurisdiction of the court;
- (18) The court may not order a parent or guardian to pay for maintenance and care for the person; and
- (19) Disclosure of the name of a parent or guardian is not required when a delinquency petition is filed or a matter is informally adjusted.

Section 2 also provides that at a detention hearing, the court may, after finding probable cause that the person has committed a crime, either release the person under the provisions of AS 12.30, or have the person released as arranged by the department.

Section 2 also provides that a person arrested, detained, or committed to the custody of the department shall be held, detained, or committed to placement at the direction of the department.

Sections 3 and 4 provide that the department may refer a person 18 years of age or older, who is alleged to have committed (while under 18) a crime, either a felony or a misdemeanor, to the district attorney for consideration of requesting imposition of a dual sentence.

Sections 5 and 7 are conforming amendments for retention of jurisdiction over persons subject to the expanded juvenile jurisdiction.

Section 6 provides that for a person subject to the expanded jurisdiction of juvenile court, the district attorney, in addition to the department, may request the court to impose the adult portion of a dual sentence if any of the conditions for imposition of the adult sentence are present. It also adds an additional condition for imposition of the adult sentence: if the person has escaped from an adult correctional facility.

Section 8 provides that the powers and duties of the department for operation of facilities, care of minors placed in the department's custody, and other duties apply to persons 18 years of age and older.

Section 9 allows the court to order telephonic participation in delinquency proceedings at the request of either party if personal appearance by the juvenile is not essential to the fair disposition of the matter. **Section 9** also allows televised participation by a juvenile if the juvenile is in custody and agrees to the procedure, for the hearings at which the juvenile has a right to be present. In any case where telephonic participation is allowed, televised participation may also be used.

Section 10 enumerates the Alaska Delinquency Rules that are affected by the provisions in the bill that expand the jurisdiction of juvenile court.

Section 11 provides for applicability dates for the provisions in the bill.

Sections 12 and 13 provides that the bill is not effective unless the applicable court rule change is adopted by the requisite vote of the legislature.

Section 14 adopts a July 1, 2005 effective date.

**Juvenile Justice Bill Regarding:
Jurisdiction of Juvenile Court and
Telephonic Participation by Juveniles in Court Hearings**

The goals of Alaska's juvenile justice system are to address juvenile crime by promoting accountability, public safety, and skill development.

This bill has two aims: to improve the state's ability to hold juvenile offenders accountable for their actions and to ensure that juvenile cases are being managed cost-effectively.

1. The bill addresses a serious gap in the Alaska statutes that is allowing young offenders to avoid prosecution if their role in an offense hasn't been determined until after they turn 18.
 - Currently, when individuals under 18 commit an offense in Alaska they are processed through the juvenile justice system; when individuals over 18 commit an offense they are processed through Alaska's adult criminal justice system.
 - However, when individuals under 18 commit offenses but the matter is not brought before the court until after they turn 18, neither the juvenile justice system nor the adult justice system has jurisdiction.
 - The importance of fixing this problem is illustrated by a recent, real-life 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, writing, "there is nothing in the statutes that suggests the legislature contemplated adjudication trials for adults who committed crimes as juveniles."
 - Without this change the State has no ability to hold such offenders accountable for their behavior, provide restitution or other redress for victims, and provide offenders with services that can prevent continued offensive behavior.
 - The key change to statute can be found in the new section (b) of A.S. 47.12.020, which states: "Except as otherwise provided in this chapter, proceedings relating to a person 18 years of age or over are governed by this chapter if the person is alleged to have committed a violation of the criminal law of the state or municipality of the state, the violation occurred when the person was under 18 years of age, and the period of limitation under A.S. 12.10 has not expired."

2. The second aspect of this bill that requires your attention is an amendment to Alaska's Delinquency Rules of Court that will enable Alaskans to cost-effectively manage juvenile offenders while continuing to ensure that their rights to fair hearings and due process are being maintained.
- This proposal would allow certain juvenile court hearings to be conducted through telephonic participation of the juvenile, enabling the state to realize significant savings in terms of transportation, staff time, and other costs.
 - Currently, Alaska's Delinquency Rules of Court state that juveniles have the right to be physically present in court for all hearings, even hearings that are very brief and there is agreement by all parties on the course of action.
 - The Division of Juvenile Justice spends an estimated \$208,000 in plane fare (for both juveniles and escorts), other transportation costs, staff overtime pay, and escort services to transfer juveniles to court hearings.
 - The proposed change to the Delinquency Rules of Court would allow the court to consider allowing telephonic participation by the juvenile for certain hearings, when requested by any party.
 - For example, when the Department of Health and Social Services has custody of a youth in its Nome Youth Facility and the youth has a hearing on his case's status in Kotzebue, the Department could request that the youth attend telephonically. If the judge agrees, the youth would be able to attend by phone from the youth facility and no travel to Kotzebue would be necessary.
 - Hearings that would typically be considered for telephonic participation by the juvenile, include:
 - Arrestment: The initial hearing on the delinquency charge, when juveniles are advised of their rights and asked to enter a plea.
 - Detention review hearings: Held at 30-day intervals for youth remaining in detention pending adjudication on a charge
 - Status hearings: In which the dispositions of adjudicated youths are reviewed.
 - The right of juveniles to be physically present in court for hearings that are critical in determining a changed status for juveniles will remain unchanged. These hearings include adjudication, disposition, probation revocation, extension of jurisdiction, and waiver of jurisdiction hearings.

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.

[Handwritten Signature]

██████████
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:

██████████, DJJ, ago - faxed
Guardian-Mail

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

To
John D. Royak

RECEIVED
AUG 18 2004

THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT [REDACTED]

LETICIA M. WILKINSON
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

10522

beverages. M.Y. drank what [REDACTED] offered, became very intoxicated, and [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 18, 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 [REDACTED] 6, 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 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. HUGUELST
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], D.T.S., Hawkins/REG,
Parent

Date: 8/17/04 Clerk: PK Butte