

**SUPREME COURT LIVE**

February 26, 2019  
West High School, Anchorage

**ORAL ARGUMENT CASE SUMMARY**

***Alaska Public Defender Agency,***

*Petitioner,*

v.

***Superior Court,***

*Respondent.*

Supreme Court Case No. S-16983

***Disclaimer:*** *This summary of the case highlights the major issues raised but is not intended to be comprehensive. It has been prepared for educational purposes only by the Supreme Court LIVE program staff and does not reflect the input or views of any member of the court.*

**OVERVIEW OF THE CASE**

Who should pay for transporting an indigent juvenile defendant and his parent to the juvenile’s criminal adjudication trial? In this case two state agencies are asking the Alaska Supreme Court to decide. The case arises from a juvenile delinquency petition filed against a minor who lives in Marshall, a village on the lower Yukon River. Trial is scheduled to be held in Bethel, on the Kuskokwim River. Neither location is on the road system, so the juvenile and his parent most likely would need to fly to Bethel for the trial. The trial court and the Alaska Court of Appeals both decided that the Public Defender Agency — the state agency that provides legal representation to indigent criminal defendants — should pay transportation costs, but the Public Defender Agency is asking the Supreme Court to decide that the Division of Juvenile Justice — the state agency that files juvenile delinquency proceedings — should pay.

**ATTORNEYS**

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*Attorney for Intervenor, State of Alaska, Department of Health and Social Services, Division of Juvenile Justice:*

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*Notice of Non-Participation by Respondent, Alaska Court System.*

### **QUESTIONS PRESENTED FOR REVIEW**

1. Is the Public Defender Agency required by statute to pay the travel expenses for indigent juveniles who cannot afford to travel to the site of their adjudication hearings?
2. Is the Division of Juvenile Justice required by statute to pay the travel expenses for indigent juveniles who cannot afford to travel to the site of their adjudication hearings?

### **MAJOR AUTHORITIES TO CONSIDER**

- **U.S. Constitution, Amendment V**, Right to Due Process.
- **U.S. Constitution, Amendment VI**, Trial Rights in Criminal Prosecutions
- **U.S. Constitution, Amendment XIV**, No Abridgment of Rights by States
- **Alaska Constitution, Article 1, § 1**, Equal Treatment Guarantee
- **Alaska Constitution, Article 1, § 7**, Right to Due Process
- **Alaska Constitution, Article 1, § 11**, Rights of Accused in Criminal Cases
- **Alaska Statutes 18.85.010-180**, Public Defender Agency
- **Alaska Statutes 47.12.010-.980**, Delinquent Minors.

### **United States Supreme Court Case Law**

- *In re Gault*, 387 U.S. 1 (1967) (U.S. constitutional rights of juveniles charged with crimes).
- *Gideon v. Wainwright*, 372 U.S. 335 (1963) (right to counsel for indigent defendants).
- *United States v. Gagnon*, 470 U.S. 522 (1985) (right to be present at trial).

### **Alaska Rules of Court**

- **Alaska Delinquency Rule 3**, Hearings.
- **Alaska Criminal Rule 18**, Venue
- **Alaska Criminal Rule 39**, Appointment of Counsel

## Alaska Supreme Court Case Law

- ***R.L.R. v. State***, 487 P.2d 27 (Alaska 1971) (Constitutional rights of juveniles charged with crimes).

## Alaska Court of Appeals Case Law

- ***Alaska Public Defender Agency v. Superior Court***, 413 P.3d 1221 (Alaska App. 2018) (Public Defender Agency required to pay transportation costs of juvenile).
- ***Alaska Public Defender Agency v. Superior Court***, 343 P.3d 914 (Alaska App. 2015) (Public Defender Agency not authorized to provide stand-by counsel).
- ***Flood v. State***, 304 P.3d 1083 (Alaska App. 2013) (defendant does not have absolute right to waive presence at trial).

## SUMMARY OF THE CASE

J.B., a juvenile, was charged with Assault in the Third Degree, a class C felony, in 2016. He was not **detained** in a juvenile facility but was released after entering into a **conduct agreement** with the State, Department of Health & Social Services, Division of Juvenile Justice (**DJJ**). At the time, he lived in Marshall, a village on the Yukon River. **Venue**, the location where state court proceedings for Marshall residents take place, is in Bethel, on the Kuskokwim River.<sup>1</sup>

J.B. and his family are **indigent**, so the Public Defender Agency (**Agency**) was appointed to represent J.B. in his **delinquency** proceeding. In preparation for his **adjudication trial** in Bethel, the Agency, on behalf of J.B., asked the **superior court** to order DJJ or the court system to pay transportation expenses for J.B. and one parent so that they could attend the trial in Bethel. J.B. argued that because he has a **constitutional right** to be present at his trial and because his family could not afford to pay transportation, DJJ or the court should pay these costs. DJJ agreed that J.B. had a right to attend his trial in person and had a right to state funding for the transportation. But DJJ argued that neither the court system nor DJJ should have to pay these costs because the costs were part of his representation by the Agency. Because the Agency's **authorizing statute** says an indigent defendant is entitled to "necessary services and facilities" of the representation provided by the Agency, DJJ maintained that the Agency should pay the transportation costs.

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<sup>1</sup> Following are links to the court system's 2015 venue map and a current community chart. <https://public.courts.alaska.gov/web/rules/docs/venuemap.pdf> and <https://public.courts.alaska.gov/web/sco/docs/sco1933a.pdf>.

The superior court agreed with DJJ and denied J.B.'s request that either DJJ or the court system pay for transportation to Bethel for the adjudication trial. The Agency asked the Alaska Court of Appeals to review the superior court's order using a process called an **original application**. The court of appeals has **discretionary review** over original applications; this means the court was not required to accept the case. J.B.'s case is the third time this issue has come to the court of appeals in less than five years, and the court of appeals agreed to decide this case so the parties would have an answer.

## **DECISION BELOW**

The Alaska Court of Appeals issued a decision interpreting the Agency's authorizing statute. The Alaska Court System participated in the court of appeals proceeding because the Agency was asking that the court system pay the transportation costs if the Alaska Court of Appeals decided DJJ did not have to pay them.

In a published opinion, the court of appeals decided that when the Agency represents an indigent juvenile defendant who is not **in custody** and cannot afford to travel to the trial location, the Agency is responsible for paying necessary transportation costs. The court of appeals looked at the wording of the **statute** that says what the Agency must do as well as other documents in reaching its decision. The court of appeals considered the question to be primarily one related to "budgeting and finance" and thought "this is a situation where *having* an answer is arguably more important than the specific content of the answer." And while the court of appeals recognized that its decision might "have significant financial consequences" for the Agency, the court of appeals said "it is the legislature's task to adjust the agencies' budgets to accommodate these expenses."

The Agency then filed a **petition for hearing**, another type of discretionary review, with the Alaska Supreme Court. The Alaska Supreme Court agreed to hear arguments on two questions only: whether the Agency is required by statute to pay the travel expenses for indigent juveniles who cannot afford to travel to the site of their adjudication hearings and whether DJJ is required by statute to pay the travel expenses for indigent juveniles who cannot afford to travel to the site of their adjudication hearings. The Alaska Supreme Court's order said that the Alaska Court System did not need to participate in the proceedings before the supreme court, and the Alaska Court System filed a notice that it would not participate.

## **LEGAL ISSUES GENERALLY**

Even though this case is about what certain statutes mean, the underlying issues are related to the **constitutions** of the United States and Alaska. **Constitutions** are the foundational documents in our governmental system. The United States Constitution

sets out the form of the federal government and the powers that each branch of the federal government has. Alaska has its own state constitution that sets out the structure of the state government.

The United States Constitution originally did not have guarantees of individual freedoms, so it was **amended** very shortly after it was adopted. The first ten **amendments** to the U.S. Constitution are called collectively the **Bill of Rights** because they set out **individual rights** that people in the United States have. The amendments that make up the Bill of Rights were all ratified on December 15, 1791. In contrast to the U.S. Constitution, individual rights were included as part of the original Alaska Constitution: Article I, the first part of the Alaska Constitution, is titled **Declaration of Rights**. Many of the individual rights in Alaska's constitution are similar to those in the Bill of Rights, but the Alaska Constitution has some rights, such as an explicit right of privacy, that are not set out in amendments to the U.S. Constitution.

The Bill of Rights has several protections specifically for people accused of crimes. The main protections related to **criminal trials** are in the Fifth and Sixth Amendments and include the right to assistance of an attorney and the right to have a jury trial. The issue presented in this case is related the right of a **criminal defendant** to attend his trial in person. This right is based mainly in the defendant's right "to be confronted with the witnesses against him" in the Sixth Amendment (also called the confrontation clause). But the defendant's right to attend his trial is also related to the Fifth Amendment guarantee that a person may not be "deprived of life, liberty, or property without **due process of law**." **Due process**, which applies in criminal cases because the government is trying to take away the defendant's liberty, requires fundamental fairness. A citizen's right to due process under the U.S. Constitution applies to state courts because of the Fourteenth Amendment to the U.S. Constitution.

In addition to the due process rights associated with the U.S. Constitution, **article I, section 7** of the Alaska Constitution provides, "No person shall be deprived of life, liberty, or property without due process of law." **Article 1, section 11** of the Alaska Constitution gives someone accused of a crime the right "to be confronted with the witnesses against him." And **article I, section 1** of the Alaska Constitution says that "all persons are equal and entitled to equal rights, opportunities, and protection under the law." The Alaska Supreme Court has decided that the right to be present at trial is founded in the due process and confrontation rights in the Alaska Constitution.

How does a an indigent criminal defendant — someone too poor to afford an attorney — exercise these constitutional rights? The U.S. Supreme Court decided that states must provide an attorney to indigent criminal defendants. In Alaska the **legislature** created the **Public Defender Agency** to provide legal representation in criminal cases to indigents. The Agency can only provide representation if the case is a type of case set out in Alaska Statute 18.85.100, the **statute** that says what the Agency does. For example, the Agency cannot represent anyone in a divorce case because that type of

case is not designated in the statute. When the Agency cannot represent someone who is entitled to appointed counsel because it has a conflict of interest, the **Office of Public Advocacy (OPA)**, an administrative office of the state, provides representation.

Criminal prosecutions of juveniles — people under the age of 18 — use a different process than adult criminal prosecutions. Juvenile court records are not public in the same way adult court records are because society recognizes that juveniles may act immaturely and hopes to protect minors from that immaturity. Although the juvenile justice system must consider public safety and must hold juveniles accountable for their actions, juvenile proceedings have the goal of helping juveniles become productive citizens. *In re Gault*, a United States Supreme Court case, has a short history of juvenile justice in the United States for those who are interested.

The Division of Juvenile Justice (DJJ) is part of the Department of Health & Social Services. DJJ is the state entity that investigates juveniles accused of criminal activity. DJJ can decide to take no action against a juvenile after an investigation. If DJJ decides to begin a criminal case against a juvenile, it files a **delinquency action** instead of a criminal prosecution.<sup>2</sup> The court can allow a juvenile to remain in his home while a delinquency case is pending, as happened in this case; this is similar to an adult being released before trial. If the juvenile is allowed to remain at home, he can be required to follow certain rules while he is waiting for his trial; the rules he has to follow are in a **conduct agreement**. The court can also place the juvenile **in detention** before a trial is held on the criminal charges, and the court can order detention if the juvenile does not follow the conduct agreement. But juveniles are supposed to be in the least restrictive placement appropriate for them, meaning that detention should not be ordered routinely.

Before the trial on the charges, detention can be ordered for up to 30 days at a time, with the court reviewing the detention at least every 30 days. If the juvenile wants to contest the charges against him, the court must hold an **adjudication trial**, which is similar to a criminal trial in adult court. If the juvenile is in detention, DJJ will pay to transport him to the adjudication trial. This case is about who should pay for transportation when the juvenile is not in pretrial detention.

If a juvenile is adjudicated delinquent — that is, if he is convicted of a crime — the court can order the juvenile released to his parents or can order the juvenile to be placed in DJJ's care. In some cases DJJ takes on parental responsibilities, such as deciding

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<sup>2</sup> A juvenile does not have a constitutional right to be tried in juvenile court. See *W.M.F. v. State*, 723 P.2d 1298 (Alaska App. 1986). Juveniles can be charged and tried as adults in some circumstances. See AS 47.12.030 (identifying when a juvenile must be charged as an adult) and AS 47.12.100 (allowing a juvenile to be tried as an adult in some circumstances).

where the juvenile will live. A juvenile who has been found delinquent can be a **ward** of the state. When a juvenile is a ward of the state, his parents only have limited legal rights over him.

The United States Supreme Court has decided that juvenile criminal defendants have many of the same constitutional rights that adult criminal defendants have, and the Alaska Supreme Court has decided that criminal defendants have a right to be present at their trials. Both the Agency and DJJ agree in this case that J.B. has a right to be present at his adjudication trial. Because J.B.'s family cannot afford to pay the cost of flying J.B. or his parent from Marshall to Bethel, the Agency and DJJ also agree that the State of Alaska should pay for the transportation. The question is which agency will bear the cost?

To give some perspective about costs in criminal cases, Alaska Criminal Rule 39 has a schedule of fees that a court can order a criminal defendant to pay to the Agency for its representation if the defendant is convicted. The fees range from \$5,000 for a murder trial to \$500 for a misdemeanor trial. The fees have flat rates; they do not vary depending on whether the case requires expert witnesses or travel. Another court rule estimates that the cost to hire a private attorney is \$20,000 for serious felonies and \$2,000 for a misdemeanor.

According to the DJJ website, about 1,700 juveniles had charges filed against them in fiscal year 2018. (July 1, 2017 to June 30, 2018 is fiscal year 2018 for the state.) Almost 800 felony charges were brought against juveniles, and 543 individuals were admitted to detention during that time.<sup>3</sup>

### **The Agency's Statute**

The statute that governs the Agency says an indigent criminal is entitled to be represented "by an attorney to the same extent as a person **retaining** an attorney is entitled" (emphasis added) and is entitled "to be provided with the necessary services and facilities of this representation."

The court of appeals decided that "the necessary services and facilities" of representation could include paying for transportation costs of a juvenile and a parent (if needed) to attend an adjudication trial.

***The Agency's Position:*** Services and facilities of representation should only include payment for things within an attorney's discretion, such as

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<sup>3</sup> The DJJ website has statistical information from the last ten years. <http://dhss.alaska.gov/djj/Pages/GeneralInfo/Stats.aspx>.

whether to have expert witnesses. Because an attorney must abide by the decision the client makes with respect to whether to go to trial and whether the client wants to attend the trial, paying transportation costs goes beyond the statutory language. Also, because the court of appeals has said that a criminal defendant does not have an absolute right to waive his appearance at trial, it is unfair to expect the Agency to pay travel costs. Making the Agency pay transportation costs injects the possibility of a conflict of interest between the Agency and its clients because the Agency would have to monitor client finances and might have to ration travel among its clients. The legislature has not historically budgeted money for the Agency to fund client travel; instead the legislature has only provided money for attorney representation. This shows that the legislature did not intend for the Agency to pay this cost.

***DJJ's Position:*** A criminal defendant's presence at trial is a part of the Agency's representation of him. The right to be present at the trial is associated with the defendant's right to have an attorney; the defendant's presence permits better communication with the attorney during trial, so travel to attend a trial should be considered a cost of representation that comes within the Agency's obligations. Making the Agency pay for transportation will not create conflicts between the Agency and its clients because the Agency already has some responsibility to make sure its clients continue to be eligible. Not all cases will require travel, just as not all cases need expert witnesses, so travel expenses are no different from other types of costs that the Agency has to pay as part of its representation. The Agency can recover costs from its clients if the court orders it, so it is more appropriate for the Agency to pay travel expenses.

### **DJJ's Statute**

The statute dealing with the juvenile justice system identifies one purpose of this system as providing due process and ensuring that constitutional rights are "recognized and enforced." DJJ's statute requires it to pay "all court costs incurred in all proceedings in connection with the adjudication of delinquency."

***The Agency's Position:*** As soon as DJJ brings a delinquency petition, DJJ has some type of supervisory or quasi-parental control over the juvenile. This relationship means that DJJ should pay for transportation costs. Because juveniles are supposed to be placed in the least restrictive placement possible, that placement is usually the home. DJJ pays transportation costs for juveniles in custody, so to meet its obligations to provide due process and place the juvenile in the least restrictive placement, the court costs mentioned in DJJ's statute should include transportation costs to the adjudication trial for a juvenile and one



parent when the family is too poor to pay transportation costs. DJJ said in an earlier case that it sometimes pays transportation costs. If it pays some transportation costs, it should pay all costs because otherwise it does not treat all juveniles the same.

***DJJ's Position:*** The statute only requires DJJ to pay court costs, and court costs do not include paying transportation costs for juvenile defendants. When the legislature wrote the statute, it deliberately decided not to include broad language that might have covered this type of expense, so the legislature did not intend that DJJ pay this cost. DJJ does not have a quasi-parental relationship with juvenile defendants unless a court orders the juvenile into custody. The conduct agreement lets the juvenile live with his parents, and the parents retain all of their parental rights.

### **QUESTIONS FOR STUDENTS TO CONSIDER**

1. Alaska has a large area and a small population, and much of the state is not on the road system, making delivery of court services to many areas expensive. This case presents one aspect of this issue in the context of a juvenile trial. Following is a link to an article about a different case involving who serves on juries in rural Alaska. Can you think of other ways the area and population density of rural Alaska might impact the justice system in addition to juries and defendant travel?  
<https://www.adn.com/alaska-news/rural-alaska/2017/07/14/with-more-than-150-alaska-communities-excluded-from-jury-service-can-village-residents-get-a-fair-trial/>
2. Look at the court's venue map and community chart using the links in footnote 1. How many villages have Bethel as the trial site for either district court or superior court cases? (Misdemeanors are heard in district court, felonies in superior court.) Find Bethel and Marshall on the venue map. Using the internet, try to find out how much it costs to fly between Bethel and Marshall. (If you are interested, you can also see how much it might cost to travel from Lime Village or McGrath, two other villages with superior court venue in Bethel, to Bethel.)
3. Under Criminal Rule 39 a determination that a criminal defendant is indigent is based in part on the federal poverty guidelines and in part on the cost of hiring a private attorney. The 2019 federal poverty guidelines for Alaska set the poverty line for a household of 4 at \$32,190. Using the information you were able to find about the cost of airfare between Bethel and Marshall, do you think it would be fair to make a family of four living in Marshall pay the cost of transportation to a child's trial in Bethel? Why or why not?

4. The Agency's statute, AS 18.85.100, says that an indigent person is entitled to be represented to the same extent as a person retaining an attorney is entitled and is entitled to necessary services, including investigation and other preparation. What do you think should be included in the services provided by the Agency? Who should decide what services are included? How do you think the State should pay for those services?
5. The Bethel court is the designated superior court for a large area of the state with a number of villages. Marshall is in the Kusilvak census area, the poorest region in the state. The U.S. Census Bureau estimated that about 37.5% of the Kusilvak census area population is in poverty, with a median household income in 2017 of \$36,468. How do you think the region's overall poverty rate affects the Agency's ability to pay for transportation services?
6. The court is the branch of government that has interpreted the Constitution and the rights it gives to individuals, including deciding in a specific case whether a government action or law violates an individual's rights. Should costs be a consideration when courts decide either whether a constitutional right exists or what the extent of a constitutional right is? Why or why not?
7. The Alaska Court of Appeals recognized that its decision might "have significant financial consequences" for the Agency and OPA. What financial consequences do you think the Agency would have and how do you think it could deal with them?
8. The court of appeals' opinion says "it is the legislature's task to adjust the agencies' budgets to accommodate these expenses." Does the legislature have to adjust the Agency's budget and give it money for client travel? Why or why not? What happens if the legislature does not adjust the budget?
9. The questions the Agency and DJJ have to address are only related to statutes. If the court were to decide that neither agency's statute requires the agencies to pay, who should pay? Explain your answer. In deciding who should pay, does it matter whether the juvenile is acquitted or convicted?
10. DJJ will pay transportation costs if the juvenile is in pretrial detention. The Agency argues that a juvenile might would choose detention so that DJJ would pay transportation costs.<sup>4</sup> Do you think this is something the court should

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<sup>4</sup> According to an online source, in 2007, it cost \$252 a day to keep a juvenile in detention in Alaska. Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Policies Make Good Fiscal Sense*, at 4 (May 2009).

(continued...)

consider in deciding who should pay?

11. Alaska is not the only state that has had to deal with the interplay of constitutional rights and costs. The U.S. Supreme Court has held that prisoners have some right to medical care. There has been some press coverage of the costs of providing medical care to prisoners, especially as prisons have more older inmates. Here is a link to an article about this issue.  
<https://www.usatoday.com/story/news/nation/2013/03/31/health-care-costs-for-older-inmates-skyrocket/2038633/>.

What do you think is the best way for society to deal with this type of issue, where the courts have decided there is a constitutional right but implementing that decision can be expensive? Explain your answer.

12. What do you think is the Agency's strongest argument on appeal? What do you think is its weakest argument? Explain.
13. What do you think DJJ's strongest argument is? What do you think is its weakest argument? Explain.
14. If you were a justice on the Alaska Supreme Court, how would you decide this case? Explain.

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<sup>4</sup> (...continued)

[http://www.justicepolicy.org/images/upload/09\\_05\\_rep\\_costsofconfinement\\_jj\\_ps.pdf](http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf)