IN THE SUPREME COURT OF THE STATE OF ALASKA

Alaska Public Defender Agency, Petitioner, v. Superior Court, Respondent.	)	Supreme Court No.: **S-16983**

Court of Appeals No. A-12814
Trial Court Case No. 4SM-16-00002DL

PETITION FOR HEARING FROM THE COURT OF APPEALS
FOURTH JUDICIAL DISTRICT AT BETHEL
HONORABLE DWAYNE W. MCCONNELL, JUDGE

BRIEF OF INTERVENOR STATE OF ALASKA, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF JUVENILE JUSTICE

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Filed in the Supreme Court of the State of Alaska, this _____ day of _____, 2018.

MARILYN MAY, CLERK

By:_____
Deputy Clerk

VRA and App. R. 513.5 Certification
I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

State Statutes

Territorial Statutes

State Regulations

Court and Ethics Rules

Attorney General Opinions

Other Authorities

AUTHORITIES PRINCIPALLY RELIED ON

ALASKA STATUTES:

AS 18.85.010. ***Public defender agency established.***
There is created in the Department of Administration a Public Defender Agency to serve the needs of indigent defendants.

AS 18.85.100. ***Right to representation, services, and facilities.***

(a) An indigent person who is under formal charge of having committed a serious crime and the crime has been the subject of an initial appearance or subsequent proceeding, or is being detained under a conviction of a serious crime, or is on probation or parole, or is entitled to representation under the Supreme Court Delinquency or Child in Need of Aid Rules, or is isolated, quarantined, or required to be tested under an order issued under AS 18.15.355 18.15.395, or against whom commitment proceedings for mental illness have been initiated, is entitled

(1) to be represented, in connection with the crime or proceeding, by an attorney to the same extent as a person retaining an attorney is entitled; and

(2) to be provided with the necessary services and facilities of this representation, including investigation and other preparation.

(b) Subject to the provisions of AS 18.85.155, the attorney services and facilities and the court costs shall be provided at public expense to the extent that the person, at the time the court determines indigency, is unable to provide for payment without undue hardship. Appointment of any guardian ad litem or attorney shall be made under the terms of AS 25.24.310, to the extent that that section is not inconsistent with the requirements of this chapter

AS 18.85.150. ***Recovery from defendant.***

(a) A person who has received assistance under this chapter shall pay the state for the assistance if the person was not entitled to it at the time indigency was determined.

(b) The attorney general may bring an action on behalf of the state to recover payment from a person described in (a) of this section who refuses to make the payment. The action shall be brought within six years after the conclusion of the proceeding for which the assistance was provided.

(c) [Repealed, § 5 ch 16 SLA 1974.]

(d) Amounts recovered under this section shall be paid into the state general fund.

AS 18.85.170. ***Definitions.***

(3) expenses, when used with reference to representation under this chapter, includes an expense of investigation, other preparation, and trial;

(4) indigent person means a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or the party's dependents of food, clothing, or shelter and who has not disposed of any assets since the commission of the offense with the intent or for the purpose of establishing eligibility for assistance under this chapter;

AS 47.12.010. ***Goal and purposes of chapter.***

(a) The goal of this chapter is to promote a balanced juvenile justice system in the state to protect the community, impose accountability for violations of law, and equip juvenile offenders with the skills needed to live responsibly and productively.

(b) The purposes of this chapter are to

(1) respond to a juvenile offenders needs in a manner that is consistent with

(A) prevention of repeated criminal behavior;

(B) restoration of the community and victim;

(C) protection of the public; and

(D) development of the juvenile into a productive citizen;

(2) protect citizens from juvenile crime;

(3) hold each juvenile offender directly accountable for the offenders conduct;

(4) provide swift and consistent consequences for crimes committed by juveniles;

(5) make the juvenile justice system more open, accessible, and accountable to the public;

(6) require parental or guardian participation in the juvenile justice process;

(7) create an expectation that parents will be held responsible for the conduct and needs of their children;

(8) ensure that victims, witnesses, parents, foster parents, guardians, juvenile offenders, and all other interested parties are treated with dignity, respect, courtesy, and

sensitivity throughout all legal proceedings;

(9) provide due process through which juvenile offenders, victims, parents, and guardians are assured fair legal proceedings during which constitutional and other legal rights are recognized and enforced;

(10) divert juveniles from the formal juvenile justice process through early intervention as warranted when consistent with the protection of the public;

(11) provide an early, individualized assessment and action plan for each juvenile offender in order to prevent further criminal behavior through the development of appropriate skills in the juvenile offender so that the juvenile is more capable of living productively and responsibly in the community;

(12) ensure that victims and witnesses of crimes committed by juveniles are afforded the same rights as victims and witnesses of crimes committed by adults;

(13) encourage and provide opportunities for local communities and groups to play an active role in the juvenile justice process in ways that are culturally relevant; and

(14) review and evaluate regularly and independently the effectiveness of programs and services under this chapter.

AS 47.12.120. ***Judgments and orders.***

(a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent.

(b) If the minor is not subject to (j) of this section and the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) 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; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the custody of the department and placed on probation, to be supervised by the department and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as with a relative or in a foster home or residential child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, the minor's foster parent, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the courts order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the

restitution;

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, runaway or missing minor means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent; and

(C) at the request of the department, the Department of Law, the victims advocate, or on its own motion, the court shall, at any time, order the minor and the minor's parent, if applicable, to submit financial information on a form approved by the Alaska Court System to the court, the department, and the Department of Law for the purpose of establishing the amount of restitution or enforcing an order of restitution under AS 47.12.170; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification in the second degree under AS 11.56.210;

(5) order the minor committed to the department for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed;

(6) in addition to an order under (1)(5) of this subsection, order the minor to perform community service; for purposes of this paragraph, community service includes work

(A) on a project identified in AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled; or

(7) in addition to an order under (1)(6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1).

(c) If the court finds that the minor is not delinquent, it shall immediately order the minor released from the departments custody and returned to the minor's parents, guardian, or custodian, and dismiss the case.

(d) A minor found to be delinquent is a ward of the state while committed to the department or while the department has the power to supervise the minor's actions. The

court shall review an order made under (b) of this section annually and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. The department, the minor, and the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel and the minor's foster parent reasonable notice in advance of the review and hold a hearing where these parties and their counsel and the minor's foster parent shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

(e) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings that result in the release of the minor.

AS 47.12.150. ***Legal custody, guardianship, and residual parental rights and responsibilities.***

(a) When a minor is committed under AS 47.12.120(b)(1) or (3) to the department or released under AS 47.12.120(b)(2) to the minor's parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person the responsibility of physical care and control of the minor, the determination of where and with whom the minor shall live, the right and duty to protect, train, and discipline the minor, and the duty of providing the minor with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When a minor is committed to the department and the department places the minor with the minor's parent, the parent has the responsibility to provide and pay for food, shelter, education, and medical care for the minor. When parental rights have been terminated, or there are no living parents and a guardian has not been appointed, the responsibilities of legal custody include those in (b) and (c) of this section. The department or person having legal custody of the minor may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter, a person in charge of a placement setting is an agent of the department.

AS 47.12.155. ***Parental or guardian accountability and participation.***

(a) The parent or guardian of a minor who is alleged to be a delinquent under AS 47.12.020 or found to be a delinquent under AS 47.12.120 shall attend each hearing held during the delinquency proceedings unless the court excuses the parent or guardian from attendance for good cause.

(b) If a minor is found to be a delinquent under AS 47.12.120, the court may order

that the minor's parent or guardian

(1) personally participate in treatment reasonably available in the parent's or guardian's location as specified in a plan set out in the court order;

(2) notify the department if the minor violates a term or condition of the court order; and

(3) comply with any other conditions set out in the court order, including a condition in an order requiring a parent to pay restitution ordered on behalf of a victim of a delinquent act.

(c) If a court orders a minor's parent or guardian to participate in treatment under (b) of this section, the court also shall order the parent or guardian to use any available insurance or another resource to cover the treatment, or to pay for the treatment if other coverage is unavailable. If the court determines that the parent or guardian is unable to pay for the treatment due to indigence and the department pays for the treatment, the department may seek reimbursement only from the indigent parent's or guardian's permanent fund dividend.

(d) The permanent fund dividend of an indigent parent or guardian participating in treatment ordered under (b) of this section may be taken under AS 43.23.065(b)(6) and 43.23.066 to satisfy the balance due on a reimbursement claim by the department under (c) of this section.

(e) If a parent or guardian fails to attend a hearing as required in (a) of this section, the court shall hold the hearing without the attendance of the parent or guardian.

TERRITORIAL STATUTES:

Section 51-3-19, 1949 Compiled Laws of Alaska. ***Payment of costs.***

To carry this Act into effect, the proper and necessary costs of the court and witnesses and other expenses necessarily incurred in enforcement of this chapter shall be borne by the Department of Public Welfare from funds made available to it under the provisions of this Act.

Section 51-3-30(2), 1957 Compiled Laws of Alaska. ***Judgements and Orders.***

The court, upon the conclusion of the hearing, shall make a determination and enter a judgment either finding that the minor does not fall within the purview of this Act [this chapter], or that he falls within a provision or provisions of section 4 of this Article [§ 51-3-24 herein]. If the minor is found not to fall with on the purview of this Act [this chapter], the court shall forthwith order his release from its custody and his return to his parents, guardian or custodian, and the case shall thereafter be closed by the court. If the

court shall find that the minor falls within the purview of this Act, the court may enter any one of the following orders:

> (a) If the child is found by the court to be a "delinquent minor" as defined in section 1(d) of this Article [§ 51-3-21 (d) herein], the court may commit the minor to custody of the Department of Juvenile Institutions for a specified period, not to exceed three years, and direct his detention facility as the Department may designate.
>
> (b) If the child is found by the court to be a "dependent minor" as defined in section 1 (e) of this Article [§ 51-3-21 (e) herein], the court may commit the child to the Department of Public Welfare for a specified period not exceeding three years.
>
> (c) In every case where the minor is found either delinquent or dependent, as defined in this Article, the court may release the minor to the custody of his parents, guardian or and other suitable person. A delinquent minor so released shall be subject to the general supervision of the Department of Juvenile Institutions, and a dependent child so released shall be subject to the general supervision of the Department of Public Welfare.

Upon entering an order of commitment, the court shall transmit a copy of its information and findings, together with the order of commitment, to the appropriate Territorial department. A report as to the disposition and progress of the case shall be made to the court commiting [committing] the minor by the agency or person to whom the minor is committed, at such times as the court may require. Either Department may petition the court for final release of a minor from its custody.

No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge, nor shall any minor be thereafter deemed a criminal by such adjudication, nor shall such adjudication be thereafter deemed a conviction, nor shall any minor be charged with or convicted of a crime in any court, except as provided in this Act [this chapter]. The commitment and placement of a child or any evidence given in the court shall not be admissible as evidence against the minor in any subsequent case or proceedings in any other court, nor shall such commitment and placement or evidence operate to disqualify a minor in any future civil service examination or appointment in the Territory.

The Department of Juvenile Institutions shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this Act [this chapter], including hearings which result in the release of the minor.

Section 51-3-64, 1957 Compiled Laws of Alaska *Payment of costs.*

To carry this Act [this chapter] into effect, the proper and necessary costs of the court and witnesses and other expenses necessarily incurred in enforcement of this article [§§ 51-3-61 – 51-3-64 herein] shall be borne by the Department of Public Welfare from funds made available to it under the provisions of this Act.

ALASKA REGULATIONS:

2 AAC 60.040. *Extraordinary expenses*

Extraordinary expenses for appointed attorneys will be reimbursed only if prior authority has been obtained from the public advocate. In this section, "extraordinary expenses" are limited to expenses for:

(1) investigation;

(2) expert witnesses; and

(3) necessary travel and per diem by the defendant, appointed counsel, and witnesses, which may not exceed the rate authorized for state employees.

PARTIES

The petitioner is the Alaska Public Defender Agency, who seeks review from a decision of the Court of Appeals on an original application. The respondent is the Alaska Court System, who has been excused from participation by an order of this Court.[1] The State of Alaska, Department of Health and Social Services, Division of Juvenile Justice was granted leave to participate before the Court of Appeals and continues as an intervenor.[2]

ISSUES PRESENTED

This Court ordered briefing on two issues:

1. Is the Public Defender Agency required by statute to pay the travel expenses for indigent juveniles who are unable to 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 are unable to afford to travel to the site of their adjudication hearings?

INTRODUCTION

Under AS 18.85.100, the Public Defender Agency must provide indigent minors in delinquency proceedings with representation by an attorney and "the necessary services and facilities of this representation." The Agency must also pay for "the attorney services

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[1] Order, *Public Defender Agency v. Superior Court*, S-16983 (Alaska, May 8, 2018).

[2] Order, *Public Defender Agency v. Superior Court*, A-12814 (Alaska App. Apr. 3, 2017)

and facilities and the court costs . . . to the extent that the [indigent minor] . . . is unable to provide for payment without undue hardship." The Court of Appeals concluded that these duties under AS 18.85.100 include paying to transport indigent out-of-custody minors to their delinquency trials. That interpretation makes sense: attending the adjudication in person furthers the juvenile's participation in his or her defense and ensures unfettered access to counsel. Just like any other aspect of the indigent juvenile's defense it must be funded by the agency providing representation.

In contrast to the extensive statutory obligations AS 18.85.100 assigns to the Public Defender Agency, AS 47.12.120(e) assigns to the Department of Health and Social Services—home of the Division of Juvenile Justice—only the obligation to pay "court costs." The legislative history of this section indicates that the legislature rejected broader language that would have required the Department to also pay "witnesses and other expenses necessarily incurred." In context, AS 47.12.120(e)'s "court costs" requirement does not include an out-of-custody indigent juvenile's transportation to the delinquency adjudication. The delinquency statutes do not require the Division of Juvenile Justice to pay for an out-of-custody juvenile's travel expenses.

The Court of Appeals' ruling was correct, and this Court should affirm.

STATEMENT OF THE CASE

I. The history of the interagency dispute over transportation costs

The Public Defender Agency has raised the issue of what agency must pay the cost of transporting out-of-custody juveniles to their adjudication hearings in two other

cases—*In re M.T.*[3] and *In re I.M.*[4] Those cases laid the groundwork for the superior court's ruling and the Court of Appeals' affirmance in this matter. Of those two earlier cases, only one was reviewed by the Court of Appeals, which concluded that a delinquency statute[5] did not require the Division of Juvenile Justice to pay the transportation costs.[6]

In the 2013 case *In re M.T.*, the Public Defender Agency represented an indigent juvenile from Hooper Bay who faced delinquency charges scheduled for adjudication in Bethel. [*See* Exc. 1] The Agency filed a motion in the Bethel Superior Court requesting an order that the Division of Juvenile Justice must fund M.T.'s and his father's travel to Bethel. [Exc. 1] While the superior court declined to order payment for the father's costs, it ordered the Division of Juvenile Justice to pay M.T.'s. [Exc. 1] The court reasoned that the juvenile's travel expenses were a "court cost" under AS 47.12.120(e), a statute requiring the Department of Health and Social Services to pay "all court costs incurred in all proceedings in connection with the adjudication of delinquency."[7] The Division of Juvenile Justice petitioned for review to the Court of Appeals. [Exc. 5]

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3 *See* Order, *State v. M.T.*, A-11042/11961, at *4 (Alaska App., July 24, 2014). [Exc. 1-5]

4 Order on Transportation and *Per Diem* Expenses, *In re I.M.*, 4SM-16-01DL/4S-15-03DL (Alaska Super., Aug. 30, 2016). [Exc. 25-26]

5 AS 47.12.120(e).

6 Order, *State v. M.T.*, A-11042/11961, at *4 (Alaska App., July 24, 2014) (granting petition for review and reversing superior court). [Exc. 4]

7 AS 47.12.120(e) ("The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings that result in the release of the minor.").

The Court of Appeals reversed the superior court in an unpublished order and rejected the argument that AS 47.12.120(e)'s requirement to pay "court costs" included the cost of transporting the juvenile to adjudication. [Exc. 4-5] The Court of Appeals traced that statute to its pre-statehood predecessor, which required the agency to pay "costs of the court and witnesses and other expenses necessarily incurred." [Exc. 2] At the time, the statute governed both dependency (now child-in-need-of-aid) and delinquency proceedings. [Exc. 2] But when the legislature later separated the dependency and delinquency statutes, it retained the language requiring "witnesses and other expenses" only in the dependency section—it left it out in delinquency. [Exc. 2-3] The Court of Appeals reasoned that the legislature thus intended court costs "to be distinct from the additional 'costs of witnesses and other expenses necessarily incurred [in the litigation],' " and thus the legislature had declined to impose broad costs, including out-of-custody juvenile transportation, on the Division of Juvenile Justice. [*See* Exc. 3-4]

Two years later, the issue came up again in the Bethel Superior Court in *In re I.M.* [Exc. 100] Superior Court Judge Charles W. Ray, Jr. (who appears to have also been the judge in *M.T.*[8]) sent a letter to the Division of Juvenile Justice, and to several non-parties, to "invite [them] to submit a brief setting out [their] agency's position." [Exc. 100]

Briefs were submitted by the Division of Juvenile Justice, the Department of Law, and the Public Defender Agency, and (as amici curiae) the Office of Public Advocacy

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[8] *See* Exc. 5 (copying Judge Ray on distribution of court of appeals' order in *M.T.*).

and the Alaska Court System. [*See* Exc. 9; Pet'n. Att. C, E, F, G[9]] Judge Ray ruled that the Division of Juvenile Justice must pay the cost of transporting an out-of-custody juvenile and a parent. [Exc. 26] Judge Ray reasoned that the Public Defender Agency's and Office of Public Advocacy's enabling statutes do not authorize those agencies to fund a minor's or parent's transportation unless the minor or parent is called as a witness. [Exc. 25-26] Disagreeing with the Court of Appeals' analysis in *M.T.*, Judge Ray concluded that the statute requiring the Department of Health and Social Services to pay "court costs" in delinquency matters,[10] coupled with the delinquency statutes' purpose of ensuring due process and fair legal proceedings,[11] obligated the Division of Juvenile Justice to pay transportation costs. [Exc. 26] In rejecting the Court of Appeals' statutory analysis in *M.T.*, Judge Ray opined that the Court of Appeals "unnecessarily examined legislative history from decades ago." [Exc. 26] The Court of Appeals declined to review the decision on a petition for review. [Exc. 27]

II. Proceedings in this matter

This petition arises from the 2016 juvenile delinquency case *In re J.B.* There, the Public Defender Agency represented a juvenile not detained in Division of Juvenile Justice custody. [*See* Exc. 34] The Public Defender Agency moved the superior court for an order requiring the Division of Juvenile Justice, or in the alternative the Alaska Court

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9 For ease of reference, the Division of Juvenile Justice follows the Public Defender Agency's style of citing attachments to the briefing on the petition for hearing where the referenced documents are not included in the parties' excerpts because there is not a consecutively numbered record. [*See* Pet. Br. 3 n.6]

10 AS 47.12.120(e).

11 *See* AS 47.12.010(b)(9).

System, to pay to transport the minor and one of his parents from Marshall to Bethel for his adjudication trial. [Exc. 32]

In support of its motion, the Public Defender Agency attached a copy of an affidavit from a different case by the Division of Juvenile Justice's Northern Region Chief Probation Officer, Walter Evans. [Exc. 53] There, Evans explained that the Division generally only "pays travel costs for [juveniles] to appear in court if they are in the custody" of the Division. [Exc. 53] Custody includes detention or a long-term custody order following disposition of the case. [Exc. 53] In contrast, Evans explained that the "Division does not normally pay transportation costs for out-of-custody [juveniles] to return to a trial site." [Exc. 54] When a juvenile is not in the Division's custody, the Division "does not have the same responsibility to care and provide for [the juvenile]," and "the Division is not equipped to pay for the travel costs of all out-of-custody [juveniles]." [Exc. 54] However, Evans explained that in "extremely rare" circumstances the Division has opted to pay transportation costs for out-of-custody juveniles. [Exc. 54] Whether the Division has done so has depended on several factors, including: Division funds; a parent's ability to pay most of the costs; a parent's inability to provide transportation because of sickness, injury, or other extenuating circumstances; an independent Division need to interact with the juvenile in person; whether parents can identify alternative sources of funding; and any alternatives to participating in-person or other ways to save costs. [Exc. 54-55]

Superior Court Judge Dwayne W. McConnell ruled that the Public Defender Agency must pay. [Exc. 98] Judge McConnell highlighted that the Public Defender Act

entitles the indigent defendant to "the necessary services and facilities of [the] representation, including investigation and other preparation"[12] and explained that the Public Defender Agency "is required to pay the cost of representation, whatever that may be." [Exc. 96] Judge McConnell also noted that an Office of Public Advocacy regulation implementing a statute that incorporates that same section of the Public Defender Act[13] authorizes the Office of Public Advocacy to reimburse appointed attorneys for the cost of their client's travel.[14] And Judge McConnell rejected the Public Defender Agency's due process and equal protection arguments, reasoning that due process does not "include the right to have another executive branch agency to pay for him to get to his trial," and that "[t]here is no current evidence that DJJ is treating out-of-custody minors differently" based on the proximity of their residence to a trial site. [Exc. 97-98]

The Public Defender Agency filed an original application in the Court of Appeals naming the superior court as the respondent and asking the Court of Appeals to reverse the superior court's order in *J.B.* [Exc. 101-20] The Division of Juvenile Justice was granted permission to intervene. [Exc. 136-39]

The Court of Appeals agreed with the superior court and held that the Public Defender Agency must pay for its client's transportation to trial when the minor is not in Division of Juvenile Justice custody and is unable to afford the cost of travel. [Exc. 146]

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12 AS 18.85.100(a)(2).

13 *See* AS 44.21.410(a)(5) ("The office of public advocacy shall . . . provide legal representation . . . in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interest . . . .").

14 2 AAC 60.040.

The court emphasized that all the parties (the Public Defender Agency, the Court System, and the Division of Juvenile Justice) agreed that some state agency should fund the minor's transportation—the question was just which agency must pay. [Exc. 145] Examining the requirement in AS 18.85.100(a) that the Public Defender Agency must provide indigent minors with "the necessary services and facilities of [their] representation," the court noted that this plausibly encompasses transportation costs. [Exc. 143] The court found that such an interpretation was bolstered by a pair of attorney general opinions that concluded that when the Public Defender Agency represents an out-of-custody individual the Agency should pay "any necessary transportation expenses that may properly be authorized at public expense."[15] [Exc. 144] The court also highlighted the Office of Public Advocacy regulation that allows that agency to pay for its client's transportation and cites, as its authority, a statute that requires the Office to provide the same representation as the Public Defender Agency.[16] [Exc. 144-45] Giving deference to those interpretations, the Court of Appeals concluded that the Public Defender Agency must fund the transportation of its indigent, out-of-custody minor clients. [Exc. 145-46]

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15 1977 Op. Alaska Att'y Gen. (Oct. 7), 1977 WL 22018, at *3; *see also* 1978 Op. Alaska Att'y Gen. (Sept. 25), 1978 WL 18588, at *1 (applying Oct. 7, 1977 opinion to juvenile context).

16 *See* 2 AAC 60.040; AS 44.21.410(a)(5).

STANDARDS OF REVIEW

This Court exercises its independent judgment when reviewing the Court of Appeals' decision on a petition for hearing[17] and when addressing the legal question of statutory interpretation.[18]

ARGUMENT

I. The Public Defender Act requires the Public Defender Agency to pay for an out-of-custody, indigent juvenile's transportation to adjudication.

A. The plain language of the Public Defender Act requires the Agency to provide necessary services and facilities of representation, which should include the cost of transportation to adjudication.

The legislature created the Public Defender Agency to "serve the needs of indigent defendants."[19] The Agency accomplishes this by providing not only an attorney, but also assistance with the necessary expenses of defending a case. Under AS 18.85.100(a) an indigent defendant "is entitled . . . (1) to be represented . . . and (2) to be provided with the necessary services and facilities of this representation, including investigation and other preparation." And under AS 18.85.100(b), the "attorney services and facilities and the court costs shall be provided at public expense to the extent that the person . . . is unable to provide for payment without undue hardship." The Court should interpret the plain language of the Public Defender Act to require the Agency to pay to transport out-of-custody juvenile clients to their trial when the client, or client's parents, cannot afford to do so independently.

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17 *Estrada v. State*, 362 P.3d 1021, 1023 (Alaska 2015).

18 *Hendricks-Pearce v. State, Dep't of Corr.*, 323 P.3d 30, 35 (Alaska 2014).

19 AS 18.85.010.

A juvenile's attendance at adjudication is a necessary service and facility of his or her representation.[20] Just as with any other right associated with a juvenile's defense, a juvenile may—in consultation with counsel—altogether waive his or her right to attend the adjudication.[21] The reason a juvenile has a right to attend a delinquency adjudication is to facilitate access to counsel and engagement in defense. Physical attendance allows a juvenile to observe the factfinder's demeanor and to watch the interplay between the judge, counsel, and witnesses.[22] It gives the juvenile the opportunity "to react to testimony, reports or colloquy, [and] to be available to testify."[23] And it gives a juvenile "a full opportunity to maintain unrestricted communication with [his or her] counsel."[24] Likewise, in circumstances where a juvenile must be accompanied by a parent to safely travel to the court site, that parent's accompaniment is also a necessary service and facility of representation: it may help the juvenile participate in his or her defense and communicate with counsel.[25]

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20 *See* AS 18.85.100(a)(2).

21 Alaska Delinq. R. 3(b)(1).

22 *See In re Borden*, 546 A.2d 123, 125 (Pa. Super. 1988) (reversing a delinquency adjudication where the juvenile was removed from the courtroom and provided an audio device for communicating with counsel).

23 *In re Cecilia R.*, 327 N.E.2d 812, 814 (N.Y. 1975); *see also In re Hand*, 494 N.Y.S.2d 642, 644 (N.Y. Fam. 1985) (noting that a juvenile's right to be present "is encompassed within the confrontation clauses of the [New York] and Federal Constitutions").

24 *In re Borden*, 546 A.2d at 125; *In re Cecilia R.*, 327 N.E.2d at 814 (emphasizing the opportunity to "make suggestions or requests to counsel, to clarify misunderstandings").

25 *See In re J.E.*, 675 N.E.2d 156, 167 (Ill. App. 1996) (noting that a parent's presence "ensure[s] the juvenile his right to counsel").

There is no basis to limit AS 18.85.100(a)(2), as the Public Defender Agency argues, to actions that are within the representing attorney's discretion and cannot be invoked at the client's absolute right. [Pet. Br. 15-19] For one, and as discussed in more detail below, AS 18.85.100 does not limit the funding obligation to the "necessary services and facilities of this representation"—it also includes "attorney services and facilities and the court costs," which by its terms goes beyond the representation.[26] In addition, "representation" necessarily includes carrying out actions that are in the client's sole discretion, such as waiving a jury trial, filing an appeal, or even deciding whether to contest the allegations. These decisions all increase costs for the Public Defender Agency yet are in the client's discretion.[27] The Agency's payment obligation should not be limited to actions that are solely in the attorney's discretion.

Nor is paying for a juvenile to attend trial in person, as the Public Defender Agency argues, akin to requiring the Agency to provide standby counsel for pro se "defendants who do not want to be represented by the Agency's attorneys."[28] [*See* Pet. Br. 18-19] In *Public Defender Agency v. Superior Court*, the Court of Appeals vacated an order appointing an assistant public defender as standby counsel, reasoning that the Public Defender Act does not authorize "the appointment of the Agency's attorneys for

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26 AS 18.85.100(b).

27 *See Walker v. State*, 578 P.2d 1388, 1389-90 (Alaska 1978) (client decides whether to waive jury trial right); *LaVigne v. State*, 812 P.2d 217, 219 (Alaska 1991) (client decides whether to testify); *Stone v. State*, 255 P.3d 979, 983 (Alaska 2011) (client decides whether to pursue first-tier appellate review).

28 *Public Defender Agency v. Superior Ct.*, 343 P.3d 914, 917 (Alaska App. 2015).

any purpose other than representation."[29] There is no similarity between being appointed as standby for a pro se defendant and paying to enable *a client* to attend adjudication in person. This Court should reject the Agency's argument that funding its client's travel to trial would apportion resources "for purposes that do not involve the act of providing legal representation [to] its clients." [Pet. Br. 19] A right to attend is an aspect of the juvenile's defense. Paying to allow the juvenile to exercise that right is a necessary service and facility of representation.

This is supported by a 1977 attorney general opinion that concluded that when the Public Defender Agency is providing representation and the expense is a necessary incident of representation, "any necessary transportation expenses that may properly be authorized at public expense should be paid by the Public Defender Agency."[30] Attorney general opinions are generally "entitled to some deference."[31] But because the attorney general is charged with administering state legal services and providing legal opinions to "all state officers and departments," an attorney general opinion addressing an administrative dispute between executive branch agencies, as here, should be given

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29 *Id.* at 917.

30 1977 Op. Alaska Att'y Gen. (Oct. 7), 1977 WL 22018, at *3; *see also* 1978 Op. Alaska Att'y Gen. (Sept. 25), 1978 WL 18588, at *1 (applying Oct. 7, 1977 opinion to juvenile context).

31 *State v. Dupier*, 118 P.3d 1039, 1050 n.62 (Alaska 2005).

greater weight.[32] And "in the absence of controlling authority, opinions of the attorney general are persuasive."[33]

The attorney general analyzed the question of transporting "individuals from point A to point B for a necessary court appearance as a result of their being charged with a criminal offense" when the individuals "do not require transportation as a result of being held in custody."[34] For example, a person may be arrested at his or her home in point A, held in custody at point B and then released on bail and returned to point A, but then have "to come back to point B for further court proceedings."[35] The attorney general rejected having the agencies that would have detained the defendant pay for that transportation because it is "not necessitated by or incidental to any present or prior custody."[36] The attorney general concluded that individuals represented by private counsel would be responsible for their own transportation costs.[37] And individuals represented by the Public Defender Agency are entitled to transportation paid by the Agency:

> If the individual is represented by the Public Defender Agency . . . and if the expense is a necessary incident of representation, then any

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32 *See* AS 44.23.020(b)(5); *Allison v. State*, 583 P.2d 813, 816 n.15 (Alaska 1978) ("While opinions of the attorney general are not controlling as to the meaning of the statute the fact that his opinions have not been challenged and that he is the officer charged by law with advising the officers charged with the enforcement of the law as to the meaning of it, entitle his opinions to great weight." (quoting *Smith v. Muni. Ct. of Glendale Jud. Dist.*, 334 P.2d 931, 935 (Cal. App. 1959))).

33 7 Am. Jur. 2d *Attorney General* § 9 (2018).

34 1977 Op. Alaska Att'y Gen. (Oct. 7), 1977 WL 22018, at *3.

35 *Id.*

36 *Id.*

37 *Id.*

> necessary transportation expenses that may properly be authorized at public expense should be paid by the Public Defender Agency pursuant to AS 18.85.100.[38]

The Public Defender Agency argues that the opinion does not support reading AS 18.85.100(a)(2) to include transportation to adjudication because it "did not explicitly state that indigent defendants' travel costs to court are always 'a necessary incident of representation.' " [Pet. Br. 21] But the core of the opinion is that the Agency's obligations under AS 18.85.100 include paying "any necessary transportation expenses that may properly be authorized at public expense."[39] The parties agree that some public agency must pay to transport indigent out-of-custody juveniles to adjudication [*see* Exc. 142], and the Public Defender Agency argues that "a defendant's right to appear at his own trial is absolute." [Pet. Br. 17] Transportation to trial is thus a "necessary transportation expense[] that may properly be authorized at public expense."[40] The attorney general opinion supports reading AS 18.85.100(a)(2) as requiring the Public Defender Agency to fund a juvenile's transportation.

B. The Public Defender Act also requires the Agency to pay for facilities and court costs that would otherwise be a hardship for the client to bear, which also must include transportation to adjudication.

The Public Defender Agency's obligation to pay is also found in AS 18.85.100(b), which requires that "the attorney services and facilities and the court costs . . . be provided at public expense to the extent that the person . . . is unable to provide for

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38 *Id.* The opinion was applied to the juvenile context in a separate opinion the next year. 1978 Op. Alaska Att'y Gen. (Sept. 25), 1978 WL 18588, at *1.

39 1977 Op. Alaska Att'y Gen. (Oct. 7), 1977 WL 22018, at *3.

40 *Id.*

payment without undue hardship." This Court has interpreted at "public expense" to mean that the agency providing defense counsel shall pay.[41] The Public Defender Agency argues that its payment obligation is limited to costs tied directly to an attorney's actions or exercise of professional discretion [*see* Pet. Br. 17-18], but the legislature included "facilities and the court costs" in addition to "attorney services."[42]

The legislature also tied the scope of funding in this section to the scope of the client's indigence: the agency must fund facilities and court costs "to the extent that the person . . . is unable to provide for payment without undue hardship."[43] That is, the statute requires the agency to pay costs that would ordinarily be borne by the client were it not for the client's indigence.

The Public Defender Act's definition of indigence further supports this reading. An indigent person is defined as:

> [one] who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and *all other necessary expenses of representation* without depriving the party or the party's dependents of food, clothing, or shelter and who has not disposed of any assets since the commission of the offense with the intent or for the purpose of establishing eligibility for assistance under this chapter.[44]

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41 *See Alaska Legal Servs. Corp. v. Thomas*, 623 P.2d 342, 344 (Alaska 1981) ("The plain meaning of the words 'at public expense' as used in AS 18.85 is that either the public defender agency will pay the attorney's fees if it hires private counsel for a defendant, or the court system will pay if it appoints the private counsel.").

42 AS 18.85.100(b).

43 *Id.*

44 AS 18.85.170(4) (emphasis added).

That is, an indigent person is not just someone who cannot afford an attorney—it is also someone who cannot afford "other necessary expenses of representation." In turn, the word "expenses," "when used with reference to representation," is defined to include "an expense of investigation, other preparation, and *trial*."[45] Put another way, a person may be indigent because that person cannot afford an "expense of . . . trial."[46] And where there is a right to participate in person, an expense of trial includes the cost of getting to trial. Thus, a person who cannot afford to get to trial cannot afford a "necessary expense[] of representation" and is by definition indigent.[47]

Following this Court's "general rule that '[w]henever possible, each part or section of a statute should be construed with every other part or section, so as to produce a harmonious whole,' "[48] the definition of indigence should inform the Agency's obligation under AS 18.85.100(b) to pay "the attorney services and facilities and the court costs . . . to the extent that the person . . . is unable to provide for payment without undue hardship."[49] That is, the section should be read to require payment of necessary expenses that cannot be paid due to indigence. If an unaffordable expense—here, the cost of transport to trial—would trigger the definition of indigence, it should also trigger the

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45 AS 18.85.170(3) (emphasis added).

46 *Id.*

47 AS 18.85.170(4).

48 *Ward v. State, Dep't of Pub. Safety*, 288 P.3d 94, 99 (Alaska 2012) (quoting *Forest v. Safeway Stores, Inc.*, 830 P.2d 778, 781 (Alaska 1992)).

49 AS 18.85.100(b).

Public Defender Agency's obligation to cover the expense, thereby removing the barrier of indigence from the juvenile's participation in his or her defense.[50]

C. An Office of Public Advocacy regulation allows that agency to pay for client travel and thus supports reading the Public Defender Act to allow the same.

A regulation adopted by the Department of Administration, Office of Public Advocacy (OPA) expressly authorizes that agency to reimburse private appointed counsel for "necessary travel and per diem by the defendant."[51] As authority for this regulation, the Department of Administration has cited AS 44.21.410,[52] a statute setting out OPA's duties, including to "provide legal representation . . . in cases involving indigent persons who are entitled to representation under AS 18.85.100 [the Public Defender Act]" but where there is a conflict of interest preventing representation by the Public Defender Agency.[53] There is no express language in AS 44.21.410 requiring OPA to reimburse its contract attorneys for client travel, so the authority must be found in OPA's obligation to provide representation.[54] Therefore OPA has concluded—construing a statute incorporating the Public Defender Act—that providing indigent representation includes

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50 *See also* AS 18.85.010 (establishing Public Defender Agency "to serve the needs of indigent defendants").

51 2 AAC 60.040 ("Extraordinary expenses for appointed attorneys will be reimbursed only if prior authority has been obtained from the public advocate. In this section, 'extraordinary expenses' are limited to expenses for: (1) investigation; (2) expert witnesses; and (3) necessary travel and per diem by the defendant, appointed counsel, and witnesses, which may not exceed the rate authorized for state employees.").

52 *See* 2 AAC 60.040.

53 AS 44.21.410(a)(5).

54 *See id.*

covering a defendant's travel expense. This interpretation supports construing the Public Defender Act in the same way.[55]

The Public Defender Agency argues that the OPA regulation "is inconsistent with requiring payment to secure the defendant's presence at his court proceedings" because the regulation describes the cost as an "extraordinary expense" that must first be approved by the public advocate. [*See* Pet. Br. 22, 24-25] But that shows only that OPA has a process for evaluating and approving the expense. That could, for example, include consideration of whether it would be a true hardship for the defendant to independently pay for travel.

The Public Defender Agency also argues that the cost should be related "not to presence at trial, but to the representation," costs the Agency asserts could include a client's travel to be "evaluated by an expert" or to meet with the attorney. [Pet. Br. 25] It makes little sense to assert that this trial preparation travel would be "relate[d] directly to an attorney's act of representation," but that attending trial itself would not. [Pet. Br. 25]

Finally, the Public Defender Agency argues that OPA does not actually read its regulation to provide for paying travel costs, echoing OPA's assertion (in an amicus brief in a different case) that "none of the submissions of the other parties, or *amici*, can point to any occurrence . . . that has resulted in OPA paying the costs of travel and *per diem* for

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[55] *Cf. Vonder Haar v. State, Dep't of Admin., Div. of Motor Vehicles*, 349 P.3d 173, 180 (Alaska 2015) (applying the deferential reasonable basis standard of review to statutory interpretation that "implicates agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions." (quoting *Marathon Oil Co. v. State, Dep't of Natural Res.*, 254 P.3d 1078, 1082 (Alaska 2011))).

released juveniles." [Exc. 17 (emphasis in original)] But "[p]ositions on interpretations of statutes adopted by agencies during litigation which contradict earlier regulations are not owed deference by courts."[56] This Court should give no weight to OPA's assertion in another case.

D. The legislative history of the Public Defender Act supports having the Agency pay for juvenile transportation costs.

This Court takes a sliding scale approach to statutory interpretation—"the plainer the language of the statute, the more convincing any contrary legislative history must be" to justify a different interpretation.[57] Because the plain language of the Public Defender Act supports having the Public Defender Agency pay for transportation to adjudication, the Agency must present persuasive contrary legislative history to overcome that interpretation. The Agency fails to do so. [*See* Pet. Br. 16 n.55 (asserting that the legislative history of AS 18.85.100(a)(2) "does not further illuminate its meaning")] While the legislative history of the Act does not explicitly speak to client travel, it does indicate that the Act was drafted with the intent of the Agency covering a client's expenses of litigation. Thus, the legislative history does not justify departing from the plain language of the Act—and it actually supports concluding that the Agency should cover travel to court when needed.

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56 *Totemoff v. State*, 905 P.2d 954, 967 (Alaska 1995) (applying federal law).

57 *State, Dep't of Public Safety v. Doe I*, __ P.3d __, Slip Op. No. 7270 at 6, 2018 WL 3799927 at *2 (Alaska Aug. 10, 2018) (quoting *City of Valdez v. State*, 372 P.3d 240, 248 (Alaska 2016)).

An early draft of the Public Defender Act was prepared in 1967 by a committee of the Anchorage Bar Association.[58] The draft contained language that tracks what is now AS 18.85.100(a)(2) and (b), and read:

> A needy person . . . is entitled . . . to be provided with the necessary services and facilities of representation (including investigation and other preparation).
>
> The attorney, services and facilities, and court costs shall be provided at public expense to the extent that the person, at the time the court determines need, is unable to provide for their payment without undue hardship.[59]

This language was adopted verbatim from the National Conference of Commissioners on Uniform State Laws' 1966 Model Defense of Needy Person's Act.[60] In 1969, the legislature passed the Public Defender Act incorporating nearly identical language.[61]

In the prefatory note to the 1966 model act, the drafter explains that the United States Supreme Court "has extended to needy persons the protections that it provides to persons of adequate means" and "is tending to extend its protection of needy persons to all aspects of an 'adequate defense,' including necessary facilities for investigation and

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58 Alaska Judicial Council, *The Alaska Public Defender Agency in Perspective* 11 & app'x I (1974), *available at* http://www.ajc.state.ak.us/sites/default/files/imported/reports/pub74.pdf.

59 *Id.* at app'x I §10(a)(2).

60 *Compare id.* at 11 & app'x I, *with* Reed Dickerson, *Model Defense of Needy Persons Act*, 4 Harv. J. Legis. 3, 8 §2(a)(2) (1966), *available at* https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2514&context=facpub. The Public Defender Agency cites to a 1970 Model Public Defender Act [Pet. Br. 16 n.55], but because Alaska's Public Defender Act was passed in 1969, it is more likely that the Anchorage Bar Association was referencing the 1966 model act.

61 *See* SLA 1969, ch.109 §1.

trial."[62] The model act's approach was "not to define the exact limits of the right to an adequate defense," but to provide needy persons with "whatever the Supreme Court says it consists of for persons of adequate means" and "to the extent that [the needy person] is unable to pay for it, [that person] is entitled to have it paid for by the state."[63] In the comment to the section paralleling what Alaska adopted as AS 18.85.100(a), the drafter explained that it "makes clear that the criminal defendant is entitled to all the necessary elements of adequate representation."[64] That is, the model act was designed to ensure payment for any rights that are associated with an indigent client's defense.

The model act's broad purpose of providing and funding an "adequate defense," undercuts the Public Defender Agency's argument that the legislature created the Agency for the narrow purpose of "reliev[ing] private attorneys of the financial burden of representing indigent criminal defendants" and that funding under the Act was intended to only cover expenses that a private attorney would ordinarily pay. [Pet. Br. 15] A non-indigent defendant might fund necessary aspects of the defense (such as travel to trial) out of pocket, rather than have them be covered by the private attorney, but that should not mean that the Public Defender Agency was not meant to provide those costs for its clients. For example, the prefatory note to the 1966 model act highlights transcripts as a "necessary expense of defense other than the services of an attorney"[65]—transcripts could

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62 Dickerson, 4 Harv. J. Legis. at 5.

63 *Id.*

64 *Id.* at 9.

65 *See id.* at 4 (citing *Griffin v. Illinois*, 351 U.S. 12 (1956); *Draper v. Washington*, 372 U.S. 487 (1963)).

be purchased out of pocket by a non-indigent defendant, but that does not mean that the Public Defender Agency should not cover them for an indigent defendant.

The 1966 model act also included provisions allocating expenses of defense where an agency is run by local governments.[66] Under the model act, a local government, such as a county, could establish a local public defender office.[67] The model act required the local government, subject to the appropriations for public defense, to pay "any direct expense . . . that is necessarily incurred in representing a needy person."[68] These sections indicate that the model act intended to have the expenses of defense paid by appropriations for public defense. These sections were not ultimately included in the Alaska Public Defender Act, but that does not mean the legislature rejected this underlying concept; rather these sections were likely excluded because they dealt with allocation of expenses where public defense agencies are run by local governments rather than by the state, which does not occur in Alaska. The sections nonetheless further indicate that the model act's right to "necessary services and facilities" and "attorney services and facilities and the court costs" at public expense was contemplated to broadly include expense incurred in defense, which would be covered by the government's appropriations for public defense.

The Public Defender Agency asserts that post-enactment appropriations to the Agency that did not expressly include funding for client travel should bear on this Court's

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66 *Id.* at 19 §§ 12-13.

67 *See id.* at 19 §12.

68 *Id.* at 19 §13.

determination of the legislature's intent. [Pet. Br. 15] But actions of the legislature after a statute has been enacted are not relevant to the legislative history or the legislature's intent.[69] At any rate, as the Agency notes, in 1971 the Agency itself requested funding for client transportation.[70] [Pet. Br. 14] While the request was described as money to help clients return home when released on bail or their own recognizance, there is no indication that it would not have included return travel to attend trial (a cost more directly related to the defense).

E. Requiring the Public Defender Agency to pay for transportation will not create a conflict between the Agency and its clients.

This Court should reject the argument that requiring the Public Defender Agency to fund the transportation places the Agency at odds with its client. [*See* Pet. Br. 26-32]

An agency providing indigent representation regularly must follow a client's wishes to exercise his or her rights, even when that will increase the agency's expenses.[71] And the Rules of Professional Conduct allow attorneys of indigent clients to "pay court costs and expenses of litigation on behalf of the client,"[72] which must include the cost of

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69 *See Ward v. State, Dep't of Pub. Safety*, 288 P.3d 94, 104 & n.50 (Alaska 2012) (explaining that testimony after statute's passage is not relevant to legislative history and collecting cases).

70 Alaska Judicial Council, *The Alaska Public Defender Agency in Perspective* 43 (1974), *available at* http://www.ajc.state.ak.us/sites/default/files/imported/reports/pub74.pdf.

71 *See, e.g.*, *Walker v. State*, 578 P.2d 1388, 1389-90 (Alaska 1978) (client's decision to waive trial by jury); *LaVigne v. State*, 812 P.2d 217, 219 (Alaska 1991) (decision to testify); *Stone v. State*, 255 P.3d 979, 983 (Alaska 2011) (decision to appeal).

72 Alaska R. Pro. Conduct 1.8(e)(2).

exercising the juvenile's right to attend the delinquency adjudication.[73] Covering the expense of litigation "enable[es] poor clients to assert their rights."[74] There is no ethical concern with the Public Defender Agency funding a juvenile's transportation to trial.

Moreover, there is no ethical issue with the Public Defender Agency evaluating its client's finances to determine if the client is eligible for a benefit at public expense. [*See* Pet. Br. 27-31] An attorney may, without creating a conflict of interests, determine whether a client is seeking to have a litigation-related cost covered at public expense when he or she is not entitled to it.[75] An Alaska Bar Association ethics opinion explains that if an appointed lawyer becomes aware of a change in the client's financial situation that might make the client ineligible for representation at public expense, the lawyer should advise the client to report it to the court and explain that the lawyer will do so if the client does not.[76] And Alaska Administrative Rule 12(f)(1) requires appointed counsel

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73 *See, e.g.*, CT Eth. Op. 04-02, 2004 WL 3413887, at *1 (Conn. Bar. Ass'n 2004) (reading "expenses of litigation" in rule identical to Alaska Rule 1.8(e)(2) to authorize "payment of travel and lodging on behalf of an indigent client"); UT Eth. Op. 02-09 ¶¶ 3, 11, 2002 WL 31160051 (Utah St. Bar. 2002) (confirming that paying litigation expenses, including travel, "is simply advancing court costs and expenses of litigation").

74 Restatement (Third) of the Law Governing Lawyers § 36 cmt. c (2000). The cost of litigation travel is different than prohibited payments for a client's living expenses. *See In re K.A.H.*, 967 P.2d 91, 93-94 (Alaska 1998) (holding Rule 1.8(e) bars paying client's living expenses, but allowing court costs and litigation expenses ensures "courts are open to indigent[s]")

75 Alaska R. Pro. Conduct 3.3(b) ("A lawyer . . . who knows that a person, including the lawyer's client, intends to engage, is engaging, or has engaged in . . . fraudulent conduct related to the proceeding shall take reasonable and timely remedial measures, including, if necessary, disclosure to the tribunal.").

76 Alaska Eth. Op. 95-3 (Alaska Bar Ass'n 1995).

to inform the court if the attorney learns of a change in the client's finances that could make the client ineligible for appointed counsel.

This also does not create a conflict that would undermine continuing representation. In *Office of Public Advocacy v. Superior Court*, this Court upheld a superior court order under Criminal Rule 39(e)(2) to require the Office of Public Advocacy to continue to represent a client, subject to the client reimbursing the Office, after learning that the client was likely ineligible for counsel at public expense.[77] There is no conflict with the Public Defender Agency maintaining an awareness of its client's financial situation and corresponding eligibility for travel to trial at public expense.

Nor is there an overriding practical concern with the Public Defender Agency evaluating its client's eligibility for costs. The Public Defender Agency argues that reading "necessary services and facilities of . . . representation"[78] in the Public Defender Act to include a juvenile's transportation "appears to commit the question of clients' eligibility for travel costs to the Agency's discretion." [Pet. Br. 27] But this assumes that necessary "services and facilities" are limited to expenses that are in the attorney's discretion. [*See* Pet. Br. 17-18] The language of the Public Defender Act does not support that limitation—it entitles defendants not only to attorney representation, but also to

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77 *Office of Pub. Advocacy v. Super. Ct., 2d Jud. Dist.*, 3 P.3d 932, 932-33, 935 (Alaska 2000); *see also* Alaska R. Crim. Pro. 39(e)(2) ("If the court determines that a defendant is no longer eligible for court-appointed counsel under Criminal Rule 39.1, the court may (A) terminate the appointment; or (B) continue the appointment and, at the conclusion of the criminal proceedings . . . enter judgment against the defendant for the actual cost of appointed counsel . . . .").

78 AS 18.85.100(a)(2).

facilities and court costs that the client could not pay without hardship.[79] Moreover, the court, rather than the Agency, could evaluate a defendant's eligibility for coverage for travel to trial.[80] Under Criminal Rule 39.1, the court determines eligibility for appointed counsel by comparing a defendant's total financial resources with the "likely cost of private representation through trial."[81] The cost of private representation includes consideration of a case's "special characteristics that are likely to increase the cost of private representation"—this should be read to include consideration of unique expenses such as travel from a remote village to a trial site.[82] The Public Defender Agency overstates its concern that it would have to determine its client's eligibility for travel costs.

This Court should conclude that the Public Defender Act obligates the Public Defender Agency to fund an indigent, out-of-custody juvenile's transportation to trial.

II. The delinquency statutes do not require the Division of Juvenile Justice to pay to transport an out-of-custody juvenile to adjudication.

This Court should likewise conclude that no statute obligates the Division of Juvenile Justice to fund an indigent, out-of-custody juvenile's transportation to trial. Side-by-side, the Public Defender Act places a broader obligation on the Public Defender Agency to pay for services for its clients than the delinquency statutes place on the Division of Juvenile Justice:

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79 *See* AS 18.85.100(b)

80 *See* Crim. R. 39.1.

81 Crim. R. 39.1(b)(1).

82 Crim. R. 39.1(d)(2)(C).

Public Defender Act	Delinquency Statute
AS 18.85.100: (a) An indigent person . . . is entitled . . . (2) to be provided with the *necessary services* and *facilities* of this representation, including investigation and other preparation. (b) . . . the *attorney services and facilities and the court costs* shall be provided at public expense to the extent that the person . . . is unable to provide for payment without undue hardship.	AS 47.12.120(e): The department shall pay all *court costs* incurred in all proceedings in connection with the adjudication of delinquency . . . .

The Public Defender Agency is obligated to provide "necessary services and facilities of [the] representation," "attorney services and facilities and the court costs." The comparatively narrow requirement in AS 47.12.120(e) that the Department of Health and Social Services pay "all court costs" does not require the Division of Juvenile Justice to pay travel costs for an out-of-custody juvenile.

This Court considers three factors in determining a statute's meaning: "the language of the statute, the legislative history of the statute, and the legislative purpose behind the statute."[83] None of these factors supports interpreting the delinquency statutes to require the Division of Juvenile Justice to pay.

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[83] *Alaska Ass'n of Naturopathic Physicians v. State, Dep't of Commerce*, 414 P.3d 630, 634 (Alaska 2018) (quoting *Oels v. Anchorage Police Dep't Emps. Ass'n*, 279 P.3d 589, 595 (Alaska 2012)).

A. The plain language of the delinquency statutes does not include travel costs for out-of-custody juveniles.

When interpreting a statute, this Court "begin[s] with the plain meaning of the statutory text."[84] The one section of the delinquency statutes that mentions payment of adjudication-related costs—AS 47.12.120(e)—does not encompass an out-of-custody juvenile's transportation to adjudication.

That section states that the Department of Health and Social Services—the department that houses the Division of Juvenile Justice—shall pay "all court costs incurred in all proceedings in connection with the adjudication of delinquency."[85] That does not mean all litigation expenses. In Black's Law Dictionary, the relevant usage of "costs" describe "[t]he charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees." This usage of "costs" is "[a]lso termed *court costs*."[86] Other phrases such as "litigation costs" or "legal costs" are comparatively broader than "court costs," and include "[t]he expenses of litigation, prosecution, or other legal transaction, [especially] those allowed in favor of one party against the other."[87]

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84 *State, Dep't of Public Safety v. Doe I*, __ P.3d __, Slip Op. No. 7270 at 6, 2018 WL 3799927 at *3 (Alaska Aug. 10, 2018) (quoting *Hendricks-Pierce v State, Dep't of Corr.*, 323 P.3d 30, 35 (Alaska 1977)).

85 AS 47.12.120(e) ("The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings that result in the release of a minor."); AS 47.12.990(5) (" 'department' means the Department of Health and Social Services.").

86 Black's Law Dictionary (10th ed. 2014) (*cost*); *see also State, Dep't of Public Safety*, 2018 WL 3799927 at *4 (noting that this Court "find[s] it useful to consider dictionary definitions when assessing the plain meaning of a term.").

87 Black's Law Dictionary (10th ed. 2014) (*cost*, meaning 2).

Consistent with Black's Law Dictionary, the Court should read the phrase "court costs" narrowly. Because an out-of-custody juvenile's transportation is not a "charge[] or fee[] taxed by the court," the plain language of the sole section of the delinquency statutes that addresses payment of costs does not include transportation.

B. Legislative history supports a narrow interpretation of "court costs."

The legislative history of AS 47.12.120(e) supports a narrow reading of the "court costs" that the Department of Health and Social Services must pay. In *State v. M.T.*, the Court of Appeals correctly relied on legislative history to reject an argument that these "court costs" included the cost of transporting a juvenile.[88] [Exc. 2-4] This Court should do the same.

The legislative history supports a narrow view of the Department of Health and Social Services' funding obligation in delinquency cases because that obligation was initially broad and then was subsequently narrowed. Delinquency statute AS 47.12.120(e) finds its roots in a territorial predecessor broadly governing the Territorial Department of Public Welfare's juvenile duties, from delinquency to foster care.[89] In 1949, the territorial statutes required that department to pay "the proper and necessary costs of the court and witnesses and other expenses necessarily incurred in enforcement of [the juveniles chapter]."[90] In 1957, the chapter on juveniles was amended to create separate articles on juvenile courts, the Department of Juvenile Institutions, and the duties of the Department

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88 *State v. M.T.*, No. A-11042/11961, at *2-4 (Alaska App., July 24, 2014).

89 *See generally* Chapter 51-3, Juveniles, 1949 Compiled Laws of Alaska.

90 Section 51-3-19, 1949 Compiled Laws of Alaska.

of Public Welfare.[91] When the statutes were separated, the territorial legislature retained the language imposing costs of "witnesses and other expenses necessarily incurred" on the Department of Public Welfare only in the section governing foster care—it left the language out in the delinquency adjudication section.[92] The separate article on juvenile courts and delinquency proceedings imposed only "all court costs" on the newly created Department of Juvenile Institutions (a territorial analog to the Division of Juvenile Justice).[93] The language of that section is nearly identical to today's AS 47.12.120(e).[94]

Because the legislature retained "witnesses and other expenses necessarily incurred" in only one section, but left "court costs" in both, the legislature intended court costs to mean something more narrow than "witnesses and other expenses necessarily

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91 *See generally* Chapter 51-3, Juveniles, 1957 Compiled Laws of Alaska.

92 *Compare* Section 51-3-30(2), 1957 Compiled Laws of Alaska ("The Department of Juvenile Institutions shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this Act [this chapter], including hearings which result in the release of the minor." (alteration in original)), *with* Section 51-3-64, 1957 Compiled Laws of Alaska ("To carry this Act [this chapter] into effect, the proper and necessary costs of the court and witnesses and other expenses incurred in enforcement of this article [§§ 51-3-61 – 51-3-64 herein] shall be borne by the Department of Public Welfare from funds made available to it under the provisions of this Act." (alteration in original)).

93 Section 51-3-30(2), 1957 Compiled Laws of Alaska (alteration in original).

94 *See* AS 47.12.120(e) ("The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings that result in the release of the minor."). The section on foster care is also nearly identical to current statue. *Compare* Section 51-3-64, 1957 Compiled Laws of Alaska, *with* AS 47.14.130.

incurred."[95] The legislative history demonstrates that the legislature did not intend "court costs" to be a catchall. The delinquency statutes should be construed narrowly and not to include an out-of-custody juvenile's transportation costs.

C. The purpose of the delinquency statutes is furthered by requiring the Public Defender Agency, not the Division of Juvenile Justice, to pay transportation costs.

Alaska Statute 47.12.010—the legislature's statement of purpose in establishing the delinquency system—includes "provid[ing] due process through which juvenile offenders, victims, parents, and guardians are assured fair legal proceedings during which constitutional and other legal rights are recognized and enforced." But that statement of purpose does not mandate the Division of Juvenile Justice to provide funding to ensure that all the goals of the statutes are met. The delinquency statutes govern more than the Division's conduct; they set out general procedures that govern the delinquency process.[96] And the statutes' purposes are fulfilled by many agencies, including the public defense agencies.[97]

A core purpose of the delinquency process is to help a juvenile develop "into a productive citizen."[98] This is accomplished in part by "hold[ing] each juvenile offender

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95 *Cf. Totemoff v. State*, 739 P.2d 769, 776 (Alaska App. 1987) (holding court should not recognize aggravator or mitigator not listed in statute when legislative history shows legislature had considered and rejected similar factor).

96 *See, e.g.*, AS 47.12.040 (investigation procedures required of both Division of Juvenile Justice and the court); AS 47.12.090 (guardian ad litem and counsel appointment procedures for court); AS 47.12.110 (hearing procedures).

97 *See* AS 47.12.090 (appointment of counsel); AS 18.85.100(a).

98 AS 47.12.010(b)(1)(D).

directly accountable for the offender's conduct" and by "creat[ing] an expectation that parents will be held responsible for the conduct and needs of their children."[99] In delinquency proceedings, costs of defense, even those that are guaranteed by right, are placed on the juvenile or his or her parents—including the right to counsel.[100] Parents are also required to pay for costs associated with the proceedings including restitution,[101] and the cost of the juvenile's treatment,[102] maintenance, and care.[103]

If expenses of defense are paid by the Public Defender Agency, in some circumstances that agency can recover them from the client or parents.[104] It furthers the delinquency statutes' purpose of holding juveniles and parents responsible to have the travel expense be borne by the agency that might have an opportunity to recover it from the juvenile or parent.

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99 AS 47.12.010(b)(3), (7).

100 Alaska Delinq. R. 16(b) (court may appoint counsel under Crim. R. 39 and Admin. R. 12 for juvenile not represented by counsel of choice, and require parent to deposit money); *see also* Alaska Admin R. 12(e)(6) (recovery from parents of child for other constitutionally required attorney appointments); Admin. R. 12(c)(3) (costs assessed against parent when child needs guardian ad litem or representation in custody dispute).

101 AS 47.12.155(b)(3); Delinq. R. 23.2.

102 AS 47.12.155(c).

103 AS 47.12.230(a).

104 *See* AS 18.85.120(c) (allowing court to enter judgment upon conviction that defendant pay "for services of representation and court costs"); AS 18.85.150 (allowing agency to recover wrongly deeded costs); Admin. R. 12(b)(3) (allowing recovery from parent).

D. The Public Defender Agency has not identified any other persuasive reason why the Division of Juvenile Justice should pay transportation costs.

The Public Defender Agency argues primarily that the Division of Juvenile Justice's relationship with juveniles in delinquency proceedings "makes DJJ's payment of the children's travel costs appropriate." [Pet. Br. 34] But the relationship between the Division and out-of-custody juveniles is not enough to infer a statutory obligation. No special relationship exists between the Division and a non-detained minor that would obligate the Division to fund travel.

First, when a juvenile is released from detention prior to adjudication, the juvenile is "released to the care and *custody* of the parent, guardian, or custodian."[105] Placing a juvenile under a conduct agreement while a delinquency matter is pending does not bring the juvenile into the Division's custody and does not create a "quasi-parental, supervisory relationship" that would impose travel costs on the Division. [*See* Pet. Br. 34-36] A conduct agreement places conditions on a juvenile's release, approved and issued by the court.[106] Unless the Division again detains the juvenile and the court "commits [the] minor to the custody of the department,"[107] the juvenile will remain in the custody of others until adjudication of delinquency. J.B.'s conduct agreement and order for release require him to comply with some conditions set by his Division probation/intake officer, but they also require him to comply with rules, instructions, and curfew hours set by his

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105 AS 47.12.080.

106 Delinq. R. 12(c); *see also* AS 47.12.080.

107 *See* AS 47.12.240(a)

parents. [Exc. 29-31] J.B.'s agreement requires him to "appear at all scheduled court hearings," but it does not mention that the Division will bring him there. [Exc. 29] To infer a quasi-parental relationship from the very document that removes a juvenile from the Division's custody would make little sense.

Second, the fact that by pursuing a delinquency adjudication the Division can seek to have a juvenile declared delinquent and thus a ward of the state does not mean that the statutes intend for the Division to pay to transport the juvenile to adjudication. [*See* Pet. Br. 36-38] The adjudication of delinquency is what makes a juvenile a ward of the State[108]—not the Division's filing of the petition or decision not to divert the case.[109] The Division acquires legal custody after adjudication of delinquency when the court commits the juvenile to the Division.[110] Until then, the Division has no special relationship with a non-detained juvenile that could require it to pay for travel costs.

Third, the fact that a Division regional chief probation officer, in an affidavit filed in a different case, said that the Division in "extremely rare" cases has paid for an out-of-custody juvenile's travel does not "demonstrate[] that it is the appropriate entity to bear such costs for all out-of-custody children." [Pet. Br. 38; *see* Exc. 7] The officer noted that the Division generally pays travel costs for juveniles that are detained by the Division or, by court order, are in its long-term custody. [Exc. 6] But the affidavit explained that the

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108 AS 47.12.120(d) ("A minor *found to be delinquent* is a ward of the state while committed to the department or while the department has the power to supervise the minor's actions." (emphasis added)).

109 *See* AS 47.12.040; AS 47.12.060.

110 AS 47.12.150(a); AS 47.12.120(b)(1), (3).

"Division does not normally pay transportation costs for out-of-custody clients to return to a trial site," and that "the Division does not have the same responsibility to pay for travel costs of all out-of-custody clients." [Exc. 7] The fact that the Division has, in rare circumstances, worked with juveniles or parents on transportation does not mean the Division should be saddled with a statutory duty.

There is also no basis for the Public Defender Agency's argument that the Division's past exercise of discretion to help with transportation, and the Division's potential reliance on available funds in exercising that discretion, poses an equal protection problem. [*See* Pet. Br. 40; Exc. 7-8] The Agency argues that if the Division declined to fund a juvenile's transportation it could "chill the exercise of fundamental constitutional rights." [Pet. Br. 40] But, as the Court of Appeals noted below, all the parties to this case "agree that *some* government entity should be responsible for paying to transport indigent defendants to the site of their trial." [Exc. 145] The threshold to an equal protection concern—the impairment of a constitutional interest[111]—is not at issue in this petition for hearing. If the Agency is raising an as-applied challenge to a regional officer's understanding of policy, evidenced by an affidavit in another case, there is no indication that the policy was at play in the facts of this case. [Pet. Br. 40] Moreover, the Agency has not articulated why guaranteeing the constitutional right would fall with the Division, rather than another agency. [*See* Pet. Br. 40] And even were there a blanket

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[111] *See Matanuska–Susitna Borough School Dist. v. State*, 931 P.2d 391, 397 (Alaska 1997) ("Where there is no unequal treatment, there can be no violation of the right to equal protection of law.").

right to have the Division pay rather than another agency, out-of-custody and in-custody juveniles are not similarly situated as to the Division's obligation to support them.[112] The Agency's constitutional argument should have no bearing on the Court's decision.

Finally, the Division of Juvenile Justice's and Department of Law's discretion in pursuing delinquency adjudication does not mean that the Division should bear the cost of a juvenile's travel to trial. [*See* Pet. Br. 42-45] The cases cited by the Public Defender Agency to argue that payment should be borne by the prosecuting authority are inapplicable. [Pet. Br. 43-44] In *United States v. Badalamenti*, a court ordered that defendants be given lodging at the government's expense for a years-long trial a thousand miles from home.[113] But that case only addressed whether there was a government obligation to provide the cost; it was not a dispute among government agencies over which must pay.[114] And subsequent cases have narrowed *Badalamenti*'s application to its

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112 *See Dennis O. v. Stephanie O.*, 393 P.3d 401, 411-12 (Alaska 2017) (applying shorthand similarly situated analysis, and concluding that in a custody dispute, a parent facing an opposing parent with public counsel is not similarly situated to a parent facing an opposing parent with private counsel—in the first scenario the unrepresented parent has a due process right to appointed counsel, in the second scenario the unrepresented parent has no such right); *see also* 1978 Op. Alaska Att'y Gen. (Sept. 25), 1978 WL 18588, at *1 (explaining Department of Health and Social Services has "primary responsibility" for transporting detained juveniles); *cf.* 1977 Op. Alaska Att'y Gen. (Oct. 7), 1977 WL 22018, at *1-3 (distinguishing transportation responsibilities of state agencies for individuals in custody, individuals being released from custody, and individuals charged with an offense and needing transportation not incidental to custody).

113 1986 WL 8309, at *2 (S.D.N.Y. July 22, 1986).

114 *See id.*

unusual facts.[115] In *State v. Randolph*, a court reversed an order requiring a public defender office to pay costs of court-appointed counsel.[116] In the end, the court placed the costs on the prosecuting authority—but it did so because there was no statutory basis for the public defender office to represent the defendants.[117]

Here, the Public Defender Agency is required by statute to represent indigent minors in delinquency proceedings and is required to provide "the necessary services and facilities" of that representation.[118] This Court should reject the Public Defender Agency's argument that pursuing adjudication of delinquency should be conditioned on the Division of Juvenile Justice paying for an out-of-custody juvenile's transportation to trial.

III. The Court did not order briefing on whether the court system should pay.

The Public Defender Agency argues that if the Court "determines that DJJ is not required to pay travel costs . . . , the court system remains an appropriate entity to bear those costs." [Pet. Br. 45] This argument goes beyond this Court's order granting the Agency's petition for hearing and ordering briefing.[119] And this Court has permitted the

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115 *See United States v. Stone*, 2012 WL 345267, at *2 (E.D. Mich., Feb. 1, 2012) (noting it is defendants' choice to accept lodging at a halfway house or drive to trial); *United States v. Ibarra*, 2014 WL 4352063, at *4 (S.D. Cal., Sept. 2, 2014) (noting three day trial 120 miles from home did not present same "extraordinary circumstances").

116 800 N.W.2d 150, 157 (Minn. 2011).

117 *Id.* at 161; *see also id.* at 153 ("[T]he Legislature has not authorized public defenders to represent indigent misdemeanants on appeal . . . .").

118 AS 18.85.100(a)(2).

119 Order, *Public Defender Agency v. Superior Court*, S-16983 (Alaska, May 8, 2018).

court system to be excused from participating in the petition for hearing.[120] Neither the superior court nor Court of Appeals analyzed this question below. [Exc. 94-99, 141-46] At the present juncture, this Court does not need to take up whether the court system has an independent obligation to pay.

However, if the court system has provided appointed counsel for an out-of-custody indigent juvenile—and the appointment is not due to a conflict of interest in appointment to the Public Defender Agency or Office of Public Advocacy[121]—then the court should pay just as any other agency providing indigent representation.[122] Further, in that circumstance, the court system's payment is not a "court cost" that would be paid by the Division of Juvenile Justice. As explained above, the Department of Health and Social Services' obligation to pay "court costs" under AS 47.12.120(e) should be narrowly construed as including only "charges or fees taxed by the court, such as filing fees, jury

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120 *Id.*

121 If the Public Defender Agency has a conflict of interest, the court will appoint the Office of Public Advocacy to provide counsel. Alaska Admin. R. 12(b)(1)(A). Only if the Office of Public Advocacy is unable to provide an attorney by staff or contract and provides the court with names of attorneys may the court independently appoint an attorney where appointment would originally land with the Public Defender Agency. Admin. R. 12(b)(1)(B). But the Office of Public Advocacy "shall be responsible for compensating any attorney appointed." *Id.* For the same reasons the Public Defender Agency's representation would require payment of a juvenile's transportation, the Office's role under Admin. R. 12(b)(1)(B) would likewise place the payment obligation on the Office.

122 *See* Admin. R. 12(e)(5)(E) (requiring, for court appointments other than conflict counsel, that the court reimburse investigation, expert witness, and travel costs in "extremely complex cases"); *cf. Alaska Legal Servs. Corp. v. Thomas*, 623 P.2d 342, 344 (Alaska 1981) ("The plain meaning of the words 'at public expense' as used in AS 18.85 is that either the public defender agency will pay the attorney's fees if it hires private counsel for a defendant, or the court system will pay if it appoints the private counsel.").

fees, courthouse fees, and reporter fees."[123] The court system's costs of providing assistance with defense would not be passed along to the Division.

CONCLUSION

For the reasons above, this Court should affirm the Court of Appeals' ruling that the Public Defender Agency is obligated to pay for an out-of-custody, indigent juvenile client's transportation to his or her adjudication hearing.

DATED September 17, 2018

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123 Black's Law Dictionary (10th ed. 2014) (*cost*, meaning 2, "[a]lso termed *court costs*").