

Offered: 1/24/84  
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 312 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of public advocacy; and  
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 44.21 is amended by adding new sections to read:

10 ARTICLE 8. OFFICE OF PUBLIC ADVOCACY.

11 Sec. 44.21.400. PUBLIC ADVOCACY OFFICE ESTABLISHED. There is  
12 created in the Department of Administration the office of public advo-  
13 cacy.

14 Sec. 44.21.410. POWERS AND DUTIES OF PUBLIC ADVOCACY OFFICE.

15 (a) The office of public advocacy shall

16 (1) perform the duties of the public guardian under AS 13.-  
17 26.360 - 13.26.410;

18 (2) provide visitors and experts in guardianship proceed-  
19 ings under AS 13.26.131;

20 (3) provide guardian ad litem services to children in child  
21 protection actions under AS 47.17.030(e) and to wards and respondents  
22 in guardianship proceedings who will suffer financial hardship or  
23 become dependent upon a government agency or a private person or  
24 agency if the services are not provided at state expense under AS 13.-  
25 26.112;

26 (4) provide legal representation in guardianship proceed-  
27 ings to respondents who are financially unable to employ attorneys  
28 under AS 13.26.106(b), to indigent parties in cases involving child  
29 custody in which the opposing party is represented by counsel provided

1 by a public agency, and to indigent parents or guardians of a minor  
2 respondent in a commitment proceeding concerning the minor under  
3 AS 47.30.775;

4 (5) provide legal representation and guardian ad litem  
5 services under AS 25.24.310; in cases arising under the Uniform Inter-  
6 state Compact on Juveniles (AS 47.15); in cases involving petitions to  
7 adopt a minor under AS 25.23.100(j); in cases involving petitions to  
8 remove the disabilities of a minor under AS 09.55.590; in children's  
9 proceedings under AS 47.10.050(a); and in cases involving indigent  
10 persons who are entitled to representation under AS 18.85.100 and who  
11 cannot be represented by the public defender agency because of a  
12 conflict of interests.

13 (b) The commissioner of administration may

14 (1) adopt regulations that the commissioner considers  
15 necessary to implement AS 44.21.400 - 44.21.440;

16 (2) report on the operation of the office of public advo-  
17 cacy when requested by the governor or legislature or when required by  
18 law;

19 (3) solicit and accept grants of funds from the federal  
20 government and from private foundations, and allocate or restrict the  
21 use of those funds as required by the grantor.

22 Sec. 44.21.420. EMPLOYMENT OF OFFICE PERSONNEL. (a) The com-  
23 missioner of administration may employ guardians ad litem, public  
24 guardians, clerical staff, and other assistants that the commissioner  
25 determines are needed to perform the duties set out in AS 44.21.410.  
26 Employees under this subsection are in the classified service under  
27 AS 39.25.100.

28 (b) The commissioner of administration may employ attorneys  
29 needed to perform the duties set out in AS 44.21.410. Attorneys

1 employed by the commissioner of administration in the office of public  
2 advocacy are in the partially exempt service under AS 39.25.120.

3 (c) The commissioner of administration may contract for services  
4 of court-appointed visitors and experts needed to perform the duties  
5 set out in AS 44.21.410. The commissioner may contract with attorneys  
6 to provide legal representation, and with other persons to provide  
7 guardian ad litem services, as needed to perform the duties set out in  
8 AS 44.21.410. The commissioner may determine the rate of compensation  
9 for contractual services, taking into account the time involved, the  
10 skill and experience required, and other pertinent factors.

11 Sec. 44.21.430. ATTORNEYS ENGAGED BY PUBLIC ADVOCACY OFFICE.

12 (a) Only an attorney admitted to the practice of law in this state  
13 may be employed or retained under contract by the office of public  
14 advocacy to provide legal representation.

15 (b) An attorney employed by the office of public advocacy may  
16 not engage in the private practice of law unless the attorney provides  
17 services to the office as an independent contractor.

18 Sec. 44.21.440. CONFLICTS OF INTERESTS. Services and legal  
19 representation rendered by the office of public advocacy, whether  
20 performed by a person under contract or by an employee of the office,  
21 shall be provided in a manner that avoids conflicts of interests.

22 \* Sec. 2. AS 09.55.590(e) is amended to read:

23 (e) The court may appoint an attorney or a guardian ad litem to  
24 represent the interests of the petitioner at the hearing. Appointment  
25 of an attorney or guardian ad litem shall be made in accordance with  
26 AS 25.24.310.

27 \* Sec. 3. AS 13.26.106(b) is amended to read:

28 (b) The respondent is entitled to be represented by an attorney  
29 in the proceedings. If the respondent is financially unable to employ

1 an attorney [TO REPRESENT HIM], the court shall appoint the office of  
2 public advocacy (AS 44.21.400) under AS 13.26.131 [AN ATTORNEY] to  
3 represent the respondent in the proceedings.

4 \* Sec. 4. AS 13.26.106 is amended by adding a new subsection to read:

5 (d) Appointment of the visitor and the expert under (c) of this  
6 section must be made through the office of public advocacy (AS 44.-  
7 21.400) under AS 13.26.131.

8 \* Sec. 5. AS 13.26.112(b) is amended to read:

9 (b) The guardian ad litem shall assist the ward or respondent in  
10 determining the ward's or respondent's [HIS] interests in regard to  
11 the legal proceedings [IN] which involve the ward or respondent [HE IS  
12 INVOLVED]. If the ward or respondent is entirely incapable of deter-  
13 mining those [HIS OWN] interests, the guardian ad litem shall make  
14 that determination and advise the court and counsel for all parties  
15 accordingly. The guardian ad litem shall

16 (1) inquire thoroughly into all the circumstances that a  
17 prudent [INDIVIDUAL IN THE POSITION OF THE] ward or respondent would  
18 consider in determining the ward's or respondent's [HIS] own interests  
19 in the proceedings; and

20 (2) encourage the ward or respondent to participate, to the  
21 maximum extent possible [OF HIS CAPABILITY], in all decisions and to  
22 act on the ward's or respondent's [HIS] own behalf on all matters in  
23 which the ward or respondent [HE] is able.

24 \* Sec. 6. AS 13.26.112 is amended by adding a new subsection to read:

25 (d) The office of public advocacy shall provide guardian ad  
26 litem services to persons who would suffer financial hardship or  
27 become dependent upon a government agency or a private person or  
28 agency if the services are not provided at state expense.

29 \* Sec. 7. AS 13.26.360 is amended to read:

1           Sec. 13.26.360. PURPOSE. The legislature recognizes that many  
2 Alaskans, for reasons of incapacity or minority, are in need of a  
3 guardian or conservator. Often these persons cannot find a person  
4 able and willing to serve as guardian or conservator. The legislature  
5 intends through AS 13.26.360 - 13.26.410 to establish the function  
6 [OFFICE] of public guardian for the purpose of furnishing guardianship  
7 and conservatorship services. It further intends by establishing this  
8 function [OFFICE] to provide assistance to guardians throughout the  
9 state in securing necessary services for their wards and to assist the  
10 courts, attorneys, visitors, respondents, and proposed guardians in  
11 the orderly and expeditious handling of guardianship proceedings.

12 \* Sec. 8. AS 13.26.370(a) is amended to read:

13           (a) The office of public advocacy (AS 41.21.400) shall serve as  
14 the public guardian [PUBLIC ADMINISTRATOR (AS 22.15.310) SHALL ALSO  
15 ACT AS THE PUBLIC GUARDIAN FOR THE JUDICIAL DISTRICT FOR WHICH HE IS  
16 APPOINTED].

17 \* Sec. 9. AS 18.85.110(d) is amended to read:

18           (d) If a court determines that the person is entitled to be  
19 represented by an attorney at public expense, it shall promptly notify  
20 the agency or the office of public advocacy [OR ASSIGN A PRIVATE  
21 ATTORNEY FOR HIM UNDER AS 18.85.130].

22 \* Sec. 10. AS 18.85.110(e) is amended to read:

23           (e) Upon notification or assignment under this section, the  
24 agency or the office of public advocacy [OR ASSIGNED PRIVATE ATTORNEY]  
25 shall represent the person with respect to whom the notification or  
26 assignment is made.

27 \* Sec. 11. AS 18.85.130 is amended to read:

28           Sec. 18.85.130. CONTRACTS WITH PRIVATE ATTORNEYS [SUBSTITUTE  
29 DEFENDER]. When [(a) FOR CAUSE, THE COURT MAY, ON ITS OWN MOTION OR

1 UPON THE APPLICATION OF THE PUBLIC DEFENDER, APPOINT AN ATTORNEY OTHER  
2 THAN THE PUBLIC DEFENDER TO REPRESENT THE INDIGENT PERSON AT ANY STAGE  
3 OF THE PROCEEDINGS OR ON APPEAL. THE ATTORNEY SHALL BE AWARDED  
4 REASONABLE COMPENSATION ACCORDING TO A SCHEDULE OF FEES PROMULGATED BY  
5 THE SUPREME COURT AND REIMBURSEMENT FOR EXPENSES NECESSARILY INCURRED.  
6 THIS SHALL BE PAID BY THE COURT SYSTEM.

7 (b) IN ADDITION TO SUBSTITUTION UNDER (a) OF THIS SECTION, WHEN]  
8 the public interest requires, and a person is entitled to representa-  
9 tion by the agency under this chapter, the public defender may con-  
10 tract with one or more private attorneys to assist the public defender  
11 [HIM]. The public defender shall pay for these services out of  
12 appropriations to the agency.

13 \* Sec. 12. AS 22.15.310 is amended to read:

14 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme  
15 court, the presiding judge in each judicial district shall appoint a  
16 person to act as public administrator of the estates of deceased  
17 persons and [,] as coroner [, AND AS PUBLIC GUARDIAN].

18 \* Sec. 13. AS 22.15.350 is amended to read:

19 Sec. 22.15.350. OTHER DUTIES. In addition to the other duties  
20 of a public administrator, the public administrator shall perform the  
21 duties set out in AS 22.15.110 and AS 12.65.020 - 12.65.110 [AND SHALL  
22 PERFORM THE DUTIES OF PUBLIC GUARDIAN AS SET OUT IN AS 13.26.360 -  
23 13.26.410].

24 \* Sec. 14. AS 25.24.310 is amended to read:

25 Sec. 25.24.310. REPRESENTATION OF MINOR. (a) In an action  
26 involving a question of the custody, support, or visitation of a  
27 minor, the [THE] court may, upon the motion of a [EITHER] party to the  
28 action or upon its own motion, appoint an attorney or the office of  
29 public advocacy to represent a minor with respect to the custody,

1 support, and visitation of the minor or in any other legal proceeding  
2 involving the minor's welfare. When custody, support, or visitation  
3 is [ARE] at issue in a divorce, it is the responsibility of the par-  
4 ties or their counsel to notify the court that such a matter is [THOSE  
5 MATTERS ARE] at issue. Upon notification, the court shall determine  
6 whether the minor [CHILD] should have legal representation or other  
7 services and shall make a finding on the record before trial. If the  
8 parties are indigent or temporarily without funds, the court shall  
9 appoint the office of public advocacy. The court shall notify the  
10 office of public advocacy if the office is required to provide legal  
11 representation or other services. The court shall enter an order for  
12 costs, fees, and disbursements in favor of the state [CHILD'S ATTOR-  
13 NEY] and may further order that other services be provided for the  
14 protection of the minor [CHILD].

15 (b) If custody, support, or visitation is at [AN] issue, the  
16 order for costs, fees, and disbursements shall be made against either  
17 or both parents, except that, if one of the parties responsible for  
18 the costs is indigent, the costs, fees, and disbursements for that  
19 party shall be borne by the state. If the [EITHER OR BOTH] parents  
20 are only temporarily without funds, [AS DETERMINED BY THE COURT,] the  
21 office of public advocacy shall provide [COURT MAY ADVANCE PAYMENT  
22 FOR] legal representation or other services required by the court  
23 [RENDERED TO THE CHILD; HOWEVER, NO REPAYMENT MAY BE REQUIRED FOR  
24 THOSE WHO ARE RECEIVING LEGAL SERVICES FOR THE INDIGENT]. The attor-  
25 ney general is responsible for enforcing collections owed the state.  
26 Repayment [COURT, AND REPAYMENT] shall be made [DIRECTLY] to the  
27 Department of Revenue under AS 37.10.050 for deposit in the general  
28 fund [COURT UNDER THE PROVISIONS OF RULES GOVERNING THE ADMINISTRATION  
29 OF THE COURTS]. The court shall, if possible, avoid assigning costs

1 to only one party by ordering that costs of the minor's [CHILD'S]  
2 legal representation or other services be paid from proceeds derived  
3 from a sale of property belonging jointly or individually to both  
4 parties, before a division of property is made.

5 (c) Instead of, or in addition to, appointment of an attorney  
6 under (a) of this section, the court may, upon the motion of either  
7 party or upon its own motion, appoint an attorney or other person or  
8 the office of public advocacy to provide [SERVE AS] guardian ad litem  
9 services to [REPRESENT THE BEST INTERESTS OF] a minor in any legal  
10 proceedings involving the minor's welfare. The court shall require  
11 [APPOINT] a guardian ad litem when, in the opinion of the court,  
12 representation of the minor's [CHILD'S] best interests, to be distin-  
13 guished from preferences, would serve the welfare of the minor  
14 [CHILD]. [THE PERSON APPOINTED UNDER (a) OF THIS SECTION MAY ALSO BE  
15 APPOINTED AS GUARDIAN AD LITEM UNDER THIS SUBSECTION.] The court in  
16 its order appointing a guardian ad litem shall limit the duration of  
17 the appointment of the guardian ad litem to the pendency of the legal  
18 proceedings affecting the minor's [CHILD'S] interests, and shall  
19 outline the guardian ad litem's responsibilities and limit the author-  
20 ity to those matters related to the guardian's effective representa-  
21 tion of the minor's [CHILD'S] best interests in the pending legal  
22 proceeding. The court shall make every reasonable effort to appoint a  
23 guardian ad litem from among persons in the community where the  
24 minor's [CHILD'S] parents or the person having legal custody or  
25 guardianship of the minor's [CHILD'S] person reside. When custody,  
26 support, or visitation is [ARE] at issue in a divorce, it is the  
27 responsibility of the parties or their counsel to notify the court  
28 that such a matter is [THESE MATTERS ARE] at issue. Upon notifica-  
29 tion, the court shall determine if the minor's [CHILD'S] best

1 interests need representation or if the minor [CHILD] needs other  
2 services and shall make a finding on the record before trial. If one  
3 or both of the parties is indigent or temporarily without funds the  
4 court shall appoint the office of public advocacy. The court shall  
5 notify the office of public advocacy if the office is required to  
6 provide guardian ad litem services. The court shall enter an order  
7 for costs, fees, and disbursements in favor of the state [CHILD'S  
8 GUARDIAN AD LITEM] and may further order that other services be pro-  
9 vided for the protection of the minor [CHILD].

10 \* Sec. 15. AS 39.25.120(c) is amended to read:

11 (c) The following positions in the state service constitute the  
12 partially exempt service:

13 (1) deputy and assistant commissioners of the principal  
14 departments of the executive branch, including the assistant adjutant  
15 general of the Department of Military Affairs;

16 (2) the directors of the major divisions of the principal  
17 departments of the executive branch and the regional directors of the  
18 Department of Transportation and Public Facilities;

19 (3) attorney members of the staff of the Department of Law,  
20 [AND] of the public defender agency, and of the office of public advo-  
21 cacy in the Department of Administration;

22 (4) one private secretary for each head of a principal  
23 department in the executive branch;

24 (5) employees of councils, boards, or commissions estab-  
25 lished by statute in the Office of the Governor or the office of the  
26 lieutenant governor, unless a different classification is provided by  
27 statute;

28 (6) the executive director, deputy director, hearing offi-  
29 cers, and administrative law judges of the Alaska Public Utilities

1 Commission;

2 (7) the director, deputy director, staff legal counsel, and  
3 hearing officers of the Alaska Transportation Commission;

4 (8) not more than two special assistants to the commis-  
5 sioner of each of the principal departments of the executive branch,  
6 but the number may be increased if the partially exempt service is  
7 extended under AS 39.25.130 to include the additional special assis-  
8 tants;

9 (9) the principal executive officer of the following  
10 boards, councils, or commissions:

11 (A) Alaska Public Broadcasting Commission;

12 (B) Professional Teaching Practices Commission;

13 (C) Parole Board;

14 (D) Board of Nursing;

15 (E) Real Estate Commission;

16 (F) Alaska Royalty Oil and Gas Development Advisory

17 Board;

18 (G) Alaska Historical Commission;

19 (H) Alaska State Council on the Arts;

20 (I) Alaska Police Standards Council;

21 (J) Council on Science and Technology;

22 (K) Older Alaskans Commission;

23 (10) Alaska Pioneers' Home managers;

24 (11) hearing examiners in the Department of Revenue;

25 (12) the comptroller in the division of treasury, Depart-  
26 ment of Revenue;

27 (13) investment officers in the Department of Revenue;

28 (14) airport managers in the Department of Transportation  
29 and Public Facilities employed at the Anchorage and Fairbanks

1 International Airports;

2 (15) the deputy director of the division of tourism and the  
3 deputy director of the division of insurance in the Department of  
4 Commerce and Economic Development;

5 (16) the executive director and staff of the Alaska Public  
6 Offices Commission;

7 (17) the director, deputy director, personnel analysts II,  
8 labor relations analysts I, labor relations analysts II, senior nego-  
9 tiators, and research directors of the division of labor relations in  
10 the Department of Administration;

11 (18) the rehabilitation administrator of the Workers'  
12 Compensation Board.

13 \* Sec. 16. AS 47.15.050 is amended to read:

14 Sec. 47.15.050. FEES. Appointment of an attorney [A COUNSEL] or  
15 guardian ad litem [APPOINTED] under the provisions of this compact  
16 shall be made in accordance with AS 25.24.310 or AS 44.21.400 -  
17 44.21.440 [MAY BE PAID AS PROVIDED IN THE RULES GOVERNING THE ADMIN-  
18 ISTRATION OF ALL COURTS].

19 \* Sec. 17. AS 47.17.030(e) is amended to read:

20 (e) In all actions taken by the department or a health and  
21 social services agency of a local government under this chapter that  
22 result in a judicial proceeding, the child shall be represented by a  
23 guardian ad litem in that proceeding. Appointment of a guardian ad  
24 litem shall be made in accordance with AS 25.24.310.

25 \* Sec. 18. AS 47.30.775 is amended to read:

26 Sec. 47.30.775. COMMITMENT OF MINORS. The provisions of AS 47.-  
27 30.700 - 47.30.815 apply to minors. However, all notices required to  
28 be served on the respondent in AS 47.30.700 - 47.30.815 shall also be  
29 served on the parent or guardian of a respondent who is a minor, and

1 parents or guardians of a minor respondent shall be notified that they  
2 may appear as parties in any commitment proceeding concerning the  
3 minor and that as parties they are entitled to retain their own attor-  
4 ney or have the office of public advocacy [ONE] appointed for them by  
5 the court. A minor respondent has the same rights to waiver and in-  
6 formed consent as an adult respondent under AS 47.30.660 - 47.30.915;  
7 however, the minor [HE] shall be represented by counsel in waiver and  
8 consent proceedings.

9 \* Sec. 19. This Act takes effect July 1, 1984.