

LEG. FINANCE - BILLS 1983 - 1984 2086

CSSB 312

2086

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: ASB 312 (JUD)
Title: Creating Office of Public Advocacy

Sponsor: _____
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Justice

BRU, Program or Subprogram(s) Affected: _____
Alaska Court System

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		(328.9)				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		(2,066.6)				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		(2,395.5)				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		(2,395.5)				
FEDERAL FUNDS						
OTHER						
TOTAL		(2,395.5)				

POSITIONS:

FULL-TIME		(8)				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher Phone: 264-0561
Division: Alaska Court System Date: 1/17/84

Approved by Commissioner: [Signature] Date: 1/17/84
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ANALYSIS OF SB 312

The FY 85 budget for the Court System contains \$2,395,500 of funds for the functions being transferred to the Department of Administration by this bill. In the transfer of the guardian function, the Court System will maintain the existing eight (8) positions until the Department of Administration has established its organization and offices around the state. At that time the positions will be transferred to the Department of Administration.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 14, 1984

REQUEST Bill/Resolution No.: CSSB 312 (Jud) FISCAL DETAIL Department of Administration
 Title: "Creation of the office of Public Advocacy" Agency Affected: Administration
 Program Category Affected: _____
 Sponsor: Senate Rules BRU, Program or Subprogram(s) Affected: _____
 Requestor: Governor
 Date of Request: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		726.6	1309.9	1375.4	1444.2	1516.4
100 PERSONAL SERVICES		88.0	136.5	143.3	150.5	158.0
200 TRAVEL		1308.0	808.3	848.7	891.1	935.6
300 CONTRACTUAL		22.8	35.2	36.9	38.7	40.6
400 SUPPLIES		30.9	13.7	-	-	-
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		2176.3	2303.6	2404.3	2524.5	2650.6
CAPITAL		-	-	-	-	-
REVENUE		-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND		2176.3	2303.6	2404.3	2524.5	2650.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		18.0	26.0	26.0	26.0	26.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Allen C. Drobett Phone: 465-3753

Division: Senate Finance Committee Date: 2/11/84

Approved by Commissioner: _____ Date: _____

Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

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) OR 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.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 7, 1984
Page 1 of 6

<p>REQUEST Bill/Resolution No.: <u>CSSB 312 (Jud)</u> Title: <u>"Creation of the office of Public Advocacy"</u> Sponsor: <u>Senate Rules</u> Requestor: <u>Governor</u> Date of Request: _____</p>	<p>FISCAL DETAIL Agency Affected: <u>Administration</u> Program Category Affected: _____ BRU, Program of Subprogram(s) Affected: _____</p>
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		726.6	1309.9	1375.4	1444.2	1516.4
200 TRAVEL		88.0	136.5	143.3	150.5	158.0
300 CONTRACTUAL		1458.0	808.3	848.7	891.1	935.6
400 SUPPLIES		22.8	35.2	36.9	38.7	40.6
500 EQUIPMENT		30.9	13.7	-		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS		69.2				
TOTAL OPERATING		2395.5	2303.6	2404.3	2524.5	2650.6
CAPITAL		-	-	-	-	-
REVENUE		-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	2395.5	2303.6	2404.3	2524.5	2650.6
FEDERAL FUNDS					
OTHER					
TOTAL					

POSITIONS:

FULL-TIME	18.0	26.0	26.0	26.0	26.0
PART-TIME					
TEMPORARY					

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Christine L. Dooley
 Division: Administrative Services

Phone: 465-4418
 Date: February 7, 1984

Approved by Commissioner: Lisa Rudd
 Agency: DEPARTMENT OF ADMINISTRATION

Date: 2/13/84

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CSSB 312 (Jud)
Fiscal Note Analysis
Prepared by Administrative Services
Department of Administration

Date: February 7, 1984

Establishment of the Office of Public Advocacy will transfer numerous attorney functions, now being handled by the court system through contracts with attorneys in private practice, to a new office with staff attorneys and guardians. The attached breakdown of budget figures is based on suggested staffing for this office provided to the Department of Administration by the Alaska Court System.

Due to the fact that the Office of Public Advocacy, like the Public Defender Agency, will be unable to control which cases are assigned it by the court system, flexibility must be allowed the department. This was the reason for the original lump sum fiscal note presented to this committee.

A number of variables associated with transforming these attorney functions in to a new State agency still exist. These variables necessitate giving the Department of Administration maximum flexibility in allocation of funds between personal services and contractual and or transfer of positions from one geographic area to another to accomplish the following:

1. Provision of quality services to indigent clients in remote bush areas by contracting with local attorneys on a case-by-case basis;
2. Handling multiple-defendant conflict cases by contract where the Public Defender Agency and the Office of Public Advocacy are each already handling one defendant and have a conflict in representing additional defendants associated with the case; and
3. Transfer of attorneys, guardians, and clerical positions from one Office of Public Advocacy branch office to another as the caseloads warrant.

These projected costs are predicated upon utilization of attorneys as State employees rather than engagement of private attorneys contracted on an as-needed basis. However, some private attorney contracts will continue to be necessary in cases of multiple party conflict and to assist the Office of Public Advocacy in remote locations.

It is intended that the court system will continue to handle the responsibilities of the guardianship cases in FY 85 and the completion of any open contracts until the cases are resolved. The court system will retain the seven guardian PCII's and one accounting clerk, and the Department of Administration will allocate Reimbursable Services Agreement funds to the court for these costs. In FY 86 these 8 positions will transfer to the Department of Administration.

The Department of Administration will manage the Public Advocacy FY 85 Budget Appropriation during the transition period and RSA funds to the Court System to pay the continued contract costs during this period.

Office of Public Advocacy

FY 85 Staff Projection

<u>Hire Date</u>	<u>Staff</u>	<u>Position</u>	<u>Location</u>	<u>Full 12 Month P.S. Cost</u>	<u>Months Vacant</u>	<u>FY 85 Partial Cost</u>
07-01-84		Attorney VI	Anchorage (1)	\$ 74,900	0	\$ 74,900
07-01-84		Legal Secretary I	Anchorage (1)	28,482	0	28,482
09-01-84		Attorney IV	Anchorage (3)	203,748	2 mos.	169,790
		Attorney III	Anchorage (2)	119,978	2 mos.	99,982
		Legal Secretary I	Anchorage (1)	28,482	2 mos.	23,735
		Administrative Officer	Anchorage (1)	44,395	2 mos.	36,996
		Investigator	Anchorage (2)	81,750	2 mos.	68,125
11-01-84		Attorney IV	Fairbanks (1)	77,261	4 mos.	51,507
		Attorney III	Fairbanks (1)	67,916	4 mos.	45,277
		Legal Secretary I	Fairbanks (1)	31,809	4 mos.	21,206
11-01-84		Attorney IV	Ketchikan/ (1) Southeast	67,916	4 mos.	45,277
		Legal Secretary I	Ketchikan/ (1) Southeast	28,482	4 mos.	18,988
		Accounting Technician I	Ketchikan/ (2) Southeast	63,618	4 mos.	42,412
			(18)	918,737 (726,677)		726,677
			**	\$ 192,050		

** In FY 85 This personal services differential is a result of the (Phase-In) vacancies. In FY 86 these dollars are necessary for full twelve (12) month funding of these position.

NOTE: This vacancy factor of approximately 20% has been used to reduce the other line items associated with this proposed budget.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

CSSB 312 (Jud)
Fiscal Note Analysis
Prepared by Administrative Services
Department of Administration

Date: February 7, 1984

Establishment of the Office of Public Advocacy will transfer numerous attorney functions, now being handled by the court system through contracts with attorneys in private practice, to a new office with staff attorneys and guardians. The attached breakdown of budget figures is based on suggested staffing for this office provided to the Department of Administration by the Alaska Court System.

Due to the fact that the Office of Public Advocacy, like the Public Defender Agency, will be unable to control which cases are assigned it by the court system, flexibility must be allowed the department. This was the reason for the original lump sum fiscal note presented to this committee.

A number of variables associated with transforming these attorney functions in to a new State agency still exist. These variables necessitate giving the Department of Administration maximum flexibility in allocation of funds between personal services and contractual and or transfer of positions from one geographic area to another to accomplish the following:

1. Provision of quality services to indigent clients in remote bush areas by contracting with local attorneys on a case-by-case basis;
2. Handling multiple-defendant conflict cases by contract where the Public Defender Agency and the Office of Public Advocacy are each already handling one defendant and have a conflict in representing additional defendants associated with the case; and
3. Transfer of attorneys, guardians, and clerical positions from one Office of Public Advocacy branch office to another as the caseloads warrant.

These projected costs are predicated upon utilization of attorneys as State employees rather than engagement of private attorneys contracted on an as-needed basis. However, some private attorney contracts will continue to be necessary in cases of multiple party conflict and to assist the Office of Public Advocacy in remote locations.

It is intended that the court system will continue to handle the responsibilities of the guardianship cases in FY 85 and the completion of any open contracts until the cases are resolved. The court system will retain the seven guardian PCU's and one accounting clerk, and the Department of Administration will allocate Reimbursable Services Agreement funds to the court for these costs. In FY 86 these 8 positions will transfer to the Department of Administration.

The Department of Administration will manage the Public Advocacy FY 85 Budget Appropriation during the transition period and RSA funds to the Court System to pay the continued contract costs during this period.

CSSB 312 (Jud)
Fiscal Note Analysis
Prepared by Administrative Services
Department of Administration

Date: February 7, 1984

The Department of Administration, Division of Administrative Services, has projected the need for two additional accounting technicians to handle the increased responsibilities of another division within the department. These positions are for additional workload in professional contracts, vendor payment and payroll functions for these three new offices.

This Fiscal Note is based on information from the court system on caseloads, location of cases, hours per case and costs of guardianship.

Because the Public Advocacy Office will be administered differently than in the court system, we can not guarantee that moving the function will be a cost saving matter. Neither can we guarantee the actual costs since we have used court system projections without having performed this function ourselves.

Office of Public Advocacy

FY 85 Staff Projection

<u>Hire Date</u>	<u>Staff</u>	<u>Position</u>	<u>Location</u>	<u>Full 12 Month P.S. Cost</u>	<u>Months Vacant</u>	<u>FY 85 Partial Cost</u>
07-01-84		Attorney VI	Anchorage (1)	\$ 74,900	0	\$ 74,900
07-01-84		Legal Secretary I	Anchorage (1)	28,482	0	28,482
09-01-84		Attorney IV	Anchorage (3)	203,748	2 mos.	169,790
		Attorney III	Anchorage (2)	119,976	2 mos.	99,982
		Legal Secretary I	Anchorage (1)	28,482	2 mos.	23,735
		Administrative Officer	Anchorage (1)	44,395	2 mos.	36,996
		Investigator	Anchorage (2)	91,750	2 mos.	68,125
11-01-84		Attorney IV	Fairbanks (1)	77,261	4 mos.	51,507
		Attorney III	Fairbanks (1)	67,916	4 mos.	45,277
		Legal Secretary I	Fairbanks (1)	31,809	4 mos.	21,206
11-01-84		Attorney IV	Ketchikan/ (1) Southeast	67,916	4 mos.	45,277
		Legal Secretary I	Ketchikan/(1) Southeast	28,482	4 mos.	18,988
		Accounting Technician I	Ketchikan/(2) Southeast	63,618	4 mos.	42,412
			(18)	918,737 (726,677)		726,677
				<u>\$ 192,060</u>		

** In FY 85 This personal services differential is a result of the (Phase-In) vacancies. In FY 86 these dollars are necessary for full twelve (12) month funding of these position.

NOTE: This vacancy factor of approximately 20% has been used to reduce the other line items associated with this proposed budget.

Office of Public Advocacy
 Analysis of
 Proposed FY 85 Budget

	FULL YEAR COSTS	ADJUSTMENTS FOR PARTIAL YEAR FY 85		FY 85 PROPOSED BUDGET
100 PERSONNEL	1,247.6	Guardians (remain on Court System payroll for FY 85)	(328.9)	
		20% Vacancy due to phase-in process	(192.1)	726.6
200 TRAVEL	110.0	20% Reduction due to phase-in process	(22.0)	88.0
300 CONTRACTUAL				
Space leases for 26 employees (@ 200 sq. ft. @ \$2.40/sq. ft.)	124.8	20% Reduction due to phase-in process	(25.0)	99.8
Equipment rental, phones, postage, etc.	45.0	20% Reduction due to phase-in process	(9.0)	36.0
Visitors, experts, contracted attorneys in remote locations, third-party conflict attorneys (based on information from ACS)	600.0	20% Reduction due to phase-in process	(120.0)	480.0
		RSA to AK Court System for Guardians and overhead	429.0 <100%>	429.0
		RSA to AK Court System for payments to attorneys during start up	413.2 <50%>	413.2
400 COMMODITIES	28.5	20% Reduction due to phase-in process	(5.7)	22.8
500 EQUIPMENT		New equipment and new office furniture	30.9	30.9
600 MISCELLANEOUS		Extraordinary travel, moving costs and other costs of setting up new agency	69.2 0	69.2
	<u>2,155.9</u>			<u>2,395.5</u>

1.	POSITION TITLE Accounting Technician I				GRADE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.						
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION AMA	ELECTION DISTRICT	LEG.								
3.	CONTINUATION LEVEL				JUSTIFICATION											
4.	TYPE OF EXPENDITURE				<p>This position will provide Administrative Support in Accounting, Payroll and Professional Contract Services for the Statewide Public Advocate Offices.</p>											
	1		2								3					
	PERSONAL SERVICES															
5.	Salary		23,676													
6.	Benefits		4,052													
7.	Supplemental Benefits		1,451													
8.	Fringe Benefits *		2,630													
9.	Total PERSONAL SERVICES		01								31,809					
10.	Travel		02													
11.	Contractual		03													
12.	Commodities		04													
13.	Equipment		05													
14.	Other															
15.	TOTAL COST										31,809					
	RECEIPT CODE										FUNDING SOURCE					
16.					Federal Receipts		1002									
17.					G.F. Match		1003									
18.					General Funds		1004		31,809							
19.					I-A Receipts		1005									
20.					Program Receipts		1028									
21.					Other											
FOR BSM USE ONLY																
4A KEY NUMBER																

8/1B1/0204-01/1

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Centralized Administrative Svs.
 BRU Centralized Administrative Svs.
 COMPONENT Administrative Services

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FY 85

1.	POSITION TITLE Accounting Technician I				RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.					
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION AMA	ELECTION DISTRICT	LEG.							
3.	CONTINUATION LEVEL				JUSTIFICATION										
4.	Type of expenditure				<p>This position will provide Administrative Support in Accounting, Payroll and Professional Contract Services for the Statewide Public Advocate Offices.</p>										
	1		2								3				
	PERSONAL SERVICES														
5.	Salary		23,676												
6.	Benefits		4,052												
7.	Supplemental Benefits		1,451												
8.	Fixed Benefits		2,630												
9.	TOTAL PERSONAL SERVICES		01								31,809				
10.	Travel		02												
11.	Contractual		03												
12.	Commodities		04												
13.	Equipment		05												
14.	Other														
15.	TOTAL COST										31,809				
	RECEIPT CODE	FUNDING SOURCE													
16.		Federal Receipts 1002													
17.		G.F. Match 1003													
18.		General Funds 1004			31,809										
19.		I-A Receipts 1005													
20.		Program Receipts 1028													
21.		Other													
FOR BSM USE ONLY															
4A KEY NUMBER _____															

8/1B1/0204-01/2

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Centralized Administrative Svs.
 BRU Centralized Administrative Svs.
 COMPONENT Administrative Services

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FY 85

1.	POSITION TITLE Legal Secretary I				RANK/STEP 10A	BARC. UNIT GGU	FORM 12	PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCH NUMBER New	BRU PRIORITY	LOCATION AWA	ELECTION DISTRICT		LEG.		
3.	CONTINUATION LEVEL				ADDITION		JUSTIFICATION				
4.	TYPE OF EXPENDITURE				AMOUNT		<p>This position will provide the Legal Secretary Services in the new Juneau-Ketchikan office which will replace the present private attorney contracts.</p>				
	1		2		3						
	PERSONAL SERVICES										
5.	Salary		20,976								
6.	Benefits		3,590								
7.	Supplemental Benefits		1,286								
8.	Fixed Benefits		2,630								
9.	Total PERSONAL SERVICES		01	28,482							
10.	Travel		02								
11.	Contractual		03								
12.	Commodities		04								
13.	Equipment		05								
14.	Other										
15.	TOTAL COST			28,482							
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts	1002								
17.		G.F. Match	1003								
18.		General Funds	1004	28,482							
19.		I-A Receipts	1005								
20.		Program Receipts	1028								
21.		Other									
FOR BSM USE ONLY											
4A KEY NUMBER											

8/1B1/0204-01/3

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

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FY 85

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION AWA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	Line of Expenditure				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary	53,568								
6.	Benefits	9,168								
7.	Supplemental Benefits	2,550								
8.	Fired Benefits	2,630								
9.	TOTAL PERSONAL SERVICES	01		67,916						
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST			67,916						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		67,916						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR BSM USE ONLY										
4A KEY NUMBER _____										

This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litem and provides representation in civil matters.

This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.

8/1B1/0204-01/4

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

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1.	POSITION TITLE Legal Secretary I				BASE/STEP 10A	BARG. UNIT GGU	FOLIO 12	PAGE/LINE	GOV.	APPROV.	DISAPP.	
2.	TYPE OF POSITION PET	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRD PRIORITY	LOCATION FBA	ELECTION DISTRICT		LEG.			
3.	CONTINUATION LEVEL				QUALIFICATION							
4.	TYPE OF EXPENDITURE				AMOUNT							
	1	2			3							
	PERSONAL SERVICES											
5.	Salary	20,976										
6.	Benefits	3,590										
7.	Supplemental Benefits	1,286										
8.	Fixed Benefits	2,630										
9.	TOTAL PERSONAL SERVICES	01			28,482							
10.	Travel	02										
11.	Contractual	03										
12.	Commodities	04										
13.	Equipment	05										
14.	Other											
15.	TOTAL COST				28,482							
16.	RECEIPT CODE	FUNDING SOURCE										
17.		Federal Receipts 1002										
18.		G.F. Match 1003										
19.		General Funds 1004		28,482								
20.		I-A Receipts 1005										
21.		Program Receipts 1028										
		Other										
FOR BSM USE ONLY												
4A KEY NUMBER												

This position will provide the Legal Secretary Services in the new Anchorage office which will replace the present private attorney contracts.

8/1B1/0204-01/5

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

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FY 85

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTRIBUTION LEVEL				JUSTIFICATION					
4.	TYPE OF CONTRIBUTION				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		53,568							
6.	Benefits		9,168							
7.	Supplemental Benefits		2,550							
8.	Fixed Benefits		2,630							
9.	TOTAL PERSONAL SERVICES		01		67,916					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04							
13.	Equipment		05							
14.	Other									
15.	TOTAL COST				67,916					
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		67,916						
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								
FOR BSM USE ONLY										
4A KEY NUMBER _____										

This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litem and provides representation in civil matters.

This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.

8/1B1/0204-01/6

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration

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BRU Public Advocate

COMPONENT Public Advocate

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1.	POSITION TITLE Attorney IV				GRADE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRIEF PRIORITY	LOCATION FBA	ELECTION DISTRICT	LEG.		
3.	CONFIRMATION LEVEL				QUALIFICATION					
4.	Type of Expenditure				AMOUNT					
	1		2		3					
	PERSONNEL SERVICES									
5.	Salary	53,568								
6.	Benefits	9,168								
7.	Supplemental Benefits	2,550								
8.	Fixed Benefits	2,630								
9.	Total Personnel Services	01		67,916						
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST			67,916						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		67,916						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR BSM USE ONLY										
4A KEY NUMBER										

This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litem and provides representation in civil matters.

This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.

8/1B1/0204-01/7

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration

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BRU Public Advocate

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1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litem and provides representation in civil matters.</p> <p>This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary		53,568									
6.	Benefits		9,168									
7.	Supplemental Benefits		2,550									
8.	Fixed Benefits		2,630									
9.	TOTAL PERSONAL SERVICES		01								67,916	
10.	Travel		02									
11.	Contractual		03									
12.	Commodities		04									
13.	Equipment		05									
14.	Other											
15.	TOTAL COST										67,916	
	RECEIPT CODE										FUNDING SOURCE	
16.					Federal Receipts 1002							
17.					G.F. Match 1003							
18.					General Funds 1004							
19.					I-A Receipts 1005							
20.					Program Receipts 1028							
21.					Other							
						67,916						
FOR BSM USE ONLY												
4A KEY NUMBER												

8/1B1/0204-01/8

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

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FY 85

1.	POSITION TITLE Attorney III				RANGE/STEP 22A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		46,800							
6.	Benefits		8,009							
7.	Supplemental Benefits		2,550							
8.	Fixed Benefits		2,630							
9.	TOTAL PERSONAL SERVICES		01		59,989					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04							
13.	Equipment		05							
14.	Other									
15.	TOTAL COST				59,989					
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		C.F. Match 1003								
19.		General Funds 1004		59,989						
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								
FOR BSM USE ONLY										
4A KEY NUMBER										

This position represents indigent defendants in misdemeanors when the Public Defender Agency cannot represent the defendant because of conflict; serves as guardian ad litem in cases identified by office as containing routine factual and legal issues; represents parties in civil matters.

Requires travel to other locations in this judicial district.

8/1B1/0204-01/9

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

FY 85

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1.	POSITION TITLE Attorney III			RAISE/STEP 22A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION ERA	ELECTION DISTRICT	LEG.		
3.	CONTINGUATION LEVEL	ADDITION		JUSTIFICATION						
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	46,800								
6.	Benefits	8,009								
7.	Supplemental Benefits	2,550								
8.	Fixed Benefits	2,630								
9.	TOTAL PERSONAL SERVICES	01	59,989							
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST		59,989							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		59,989						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR BSM USE ONLY 9A KEY NUMBER										

This position represents indigent defendants in misdemeanors when the Public Defender Agency cannot represent the defendant because of conflict; serves as guardian ad litem in cases identified by office as containing routine factual and legal issues; represents parties in civil matters.

Requires travel to other locations in this judicial district.

8/181/0204-01/10

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

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 Revised Date

FY 85

1.	POSITION TITLE Legal Secretary I			RANGE/STEP 10A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.	
3.	CONTRIBUTION LEVEL			JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	20,976							
6.	Benefits	3,590							
7.	Supplemental Benefits	1,286							
8.	Fired Benefits	2,630							
9.	TOTAL PERSONAL SERVICES	01	28,482						
10.	Travel	02							
11.	Contractual	03							
12.	Commodities	04							
13.	Equipment	05							
14.	Other								
15.	TOTAL COST		28,482						
16.	RECEIPT CODE	FUNDING SOURCE							
17.		Federal Receipts	1002						
18.		G.F. Hatch	1003						
19.		General Funds	1004	28,482					
20.		I-A Receipts	1005						
21.		Program Receipts	1028						
		Other							
FOR BSM USE ONLY									
4A KLY NUMBER									

This position will provide the Legal Secretary Services in the new Juneau-Ketchikan office which will replace the present private attorney contracts.

8/1B1/0204-01/11

13 REQUEST FOR NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

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FY 85

1	POSITION TITLE Attorney VI				RANGE/STEP 26A	BARG. UNIT PX	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		
3	CONTINUATION LEVEL				JUSTIFICATION					
4	Type of Expenditure			AMOUNT	<p>Directs the Office of Public Advocacy Agency, hires employees, sets up the organization and manages the Agency.</p> <p>Handles similar types of cases as the Attorney IV position but in smaller volume due to administrative responsibilities.</p>					
	1	2	3							
	PERSONAL SERVICES									
5	Salary	59,532								
6	Benefits	10,128								
7	Supplemental Benefits	2,550								
8	Fixed Benefits	2,630								
9	TOTAL PERSONAL SERVICES	01	74,900							
10	Travel	02								
11	Contractual	03								
12	Commodities	04								
13	Equipment	05								
14	Other									
15	TOTAL COST		74,900							
	RECEIPT CODE	FUNDING SOURCE								
16		Federal Receipts 1002								
17		G.F. Match 1003								
18		General Funds 1004		74,900						
19		I-A Receipts 1005								
20		Program Receipts 1028								
21		Other								
FOR BSM USE ONLY										
4A KEY NUMBER										

8/1B1/0204-01/13

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration

PROGRAM Due Process

BRU Public Advocate

COMPONENT Public Advocate

Page of

Revised Date

FY 85

1.	POSITION TITLE Investigator	RANGE/STEP 16A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION FBA	ELECTION DISTRICT
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION		
4.	TYPE OF EXPENDITURE		AMOUNT				
	1	2	3				
	PERSONAL SERVICES						
5.	Salary	31,032					
6.	Benefits	5,311					
7.	Supplemental Benefits	1,902					
8.	Fixed Benefits	2,630					
9.	TOTAL PERSONAL SERVICES	01	40,875				
10.	Travel	02					
11.	Contractual	03					
12.	Commodities	04					
13.	Equipment	05					
14.	Other						
15.	TOTAL COST		40,875				
16.	RECEIPT CODE	FUNDING SOURCE					
17.		Federal Receipts 1002					
18.		G.F. Match 1003					
19.		General Funds 1004		40,875			
20.		I-A Receipts 1005					
21.		Program Receipts 1028					
21.		Other					
FOR BSM USE ONLY 4A KEY NUMBER _____							

Develops facts and interviews witnesses in criminal and civil cases. Assists Attorneys appointed as guardian ad litem in home studies. Requires travel as assigned in this judicial district.

8/1B1/0204-01/14

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

Page _____ of _____
 Revised Date _____

FY 85

1.	POSITION TITLE Investigator				GRADE/STEP 16A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION ERA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				QUALIFICATION					
4.	TYPE OF EXPENDITURE				ACCOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary	31,032								
6.	Benefits	5,311								
7.	Supplemental Benefits	1,902								
8.	Fixed Benefits	2,630								
9.	TOTAL PERSONAL SERVICES	01		40,875						
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST			40,875						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		C.F. Match 1003								
18.		General Funds 1004		40,875						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR BSM USE ONLY										
4A KEY NUMBER										

Develops facts and interviews witnesses in criminal and civil cases. Assists Attorneys appointed as guardian ad litem in home studies. Requires travel as assigned in this judicial district.

8/181/0204-01/15

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
PROGRAM Due Process
BRU Public Advocate
COMPONENT Public Advocate

Page of
Revised Date

FY 85

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION JPA	ELECTION DISTRICT	LEG.		
3.	CONTRIBUTION LEVEL				ADDITION		JUSTIFICATION			
4.	Type of Expenditure				Account		<p>This position represents indigent defendants in felonies, appeals and misdemeanors; serves as guardian ad litem and provides representation in civil matters.</p> <p>This position serves as senior attorney in this location with some travel necessary to other locations in this judicial district.</p>			
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		61,548							
6.	Benefits		10,533							
7.	Supplemental Benefits		2,550							
8.	Fixed Benefits		2,630							
9.	TOTAL PERSONAL SERVICES		01		77,261					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04							
13.	Equipment		05							
14.	Other									
15.	TOTAL COST				77,261					
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		77,261						
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								
FOR HCM USE ONLY				4A KEY NUMBER						

8/1R1/0204-01/17

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

Page of
 Revised Date

FY 85

1.	POSITION TITLE Attorney III				CLASS/STEP 22A	BARG. UNIT PX	FORM 12 PAGE/LINE	CON.	APPROV.	DISAPP.		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION JBA	ELECTION DISTRICT	LEG.				
3.	CONTRIBUTION LEVEL				JUSTIFICATION							
4.	Type of Contribution				<p>This position represents indigent defendants in misdemeanors when the Public Defender Agency cannot represent the defendant because of conflict; serves as guardian ad litem in cases identified by office as containing routine factual and legal issues; represents parties in civil matters.</p> <p>Requires travel to other locations in this judicial district.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary	53,568										
6.	Benefits	9,168										
7.	Supplemental Benefits	2,550										
8.	Fixed Benefits	2,630										
9.	TOTAL PERSONAL SERVICES	01		67,916								
10.	Travel	02										
11.	Contractual	03										
12.	Commodities	04										
13.	Equipment	05										
14.	Other											
15.	TOTAL COST			67,916								
16.	RECEIPT CODE	FUNDING SOURCE										
17.		Federal Receipts 1002										
18.		G.F. Match 1003										
19.		General Funds 1004		67,916								
20.		I-A Receipts 1005										
21.		Program Receipts 1028										
		Other										

FOR BSM USE ONLY
4A KEY NUMBER

8/1B1/0204-01-18

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
PROGRAM Due Process
BRU Public Advocate
COMPONENT Public Advocate

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Revised Date

FY 85

1.	POSITION TITLE Legal Secretary I				RANK/STEP 10A	BARG. UNIT GGU	FUND 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER New	BRU PRIORITY	LOCATION JBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				ADDITION		JUSTIFICATION			
4.	TYPE OF CONTINUATION			AMOUNT						
	1		2		3					
PERSONAL SERVICES										
5.	Salary		23,676							
6.	Benefits		4,052							
7.	Supplemental benefits		1,451							
8.	Fixed Benefits		2,630							
9.	Total PERSONAL SERVICES		01		31,809					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04							
13.	Equipment		05							
14.	Other									
15.	TOTAL COST				31,809					
FUNDING SOURCE										
16.	RECEIPT CODE		FUNDING SOURCE							
17.			Federal Receipts 1002							
18.			G.F. Match 1003							
19.			General Funds 1004		31,809					
20.			I-A Receipts 1005							
21.			Program Receipts 1028							
21.			Other							
FOR BSM USE ONLY										
9A KEY NUMBER										

8/1B1/0204-01/19

13 REQUEST FOR
NEW POSITION

AGENCY Department of Administration
 PROGRAM Due Process
 BRU Public Advocate
 COMPONENT Public Advocate

Page of
 Revised Date

FY 85

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

FOUR - STATE DEPT.
CENTRAL ALASKA DIST.
NOT RECORDED

MEMORANDUM

January 13, 1984

SUBJECT: Office of Public Advocacy
TO: Senator Bill Ray
FROM: Edward H. Hein *E.H.*
Legislative Counsel

Enclosed is the committee substitute for SB 312 requested by your aide, Paula Scavera. Note that several changes were made from the original bill. Other than the amendments specifically requested by Paula, the changes are stylistic and technical, not substantive. These latter changes, including the renumbering of bill sections, were necessary in order to conform with our drafting manual and with changes in the statutes since the bill was first introduced.

EHH:ojb
J2/029
Enclosure

To: Paula Scavera
From: Karla Forsythe, General Counsel
Alaska Court System
Date: January 19, 1984
Subject: CS for SB 312 (Judiciary)

Karla Forsythe

After discussing with Senator Pettyjohn his concerns about the present draft committee substitute, I have the following suggestions for the final version:

1. Page 2, line 6. Instead of "AS 47.15", the statutory citation should read "AS 47.15.050". I believe the deletion was a typographical error.

2. Page 5, lines 20 and 21. Since indigent defendants will be represented either by the public defender agency or through the office of advocacy, the last part of the paragraph should be deleted, to read:

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

3. Page 5, line 24. For the same reason, the reference to assigned private attorney should be deleted, so that the section will read:

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

4. Page 5, line 27. This entire section should be repealed, and therefore should read:

*Sec. 11. AS 13.85.130^(A) is repealed. Section b should be retained as noted on the attached copy

Since either the public defender agency or the office of advocacy will provide representation, the court will no longer be concerned with appointing attorneys other than these agencies in these cases.

5. Page 6, lines 22 and 23. The office of public advocacy will NOT be appointed in every proceeding under this section, but only if the parties are indigent. Therefore, the reference to "an attorney" should be included, and the paragraph should read:

Sec. 25.24.310. REPRESENTATION OF MINOR. (a) In an action involving a question of the custody, support, or visitation of a minor, the [THE] court may, upon the motion of a [EITHER] party to the action or upon its own motion, appoint an attorney or the office of public advocacy . . . (the remainder of page 6 does not change).

6. Page 7, lines 2 and 3. Senator Pettyjohn was concerned that appointments are made at state expense only if there is no other recourse. The language could be changed to read:

If the parties are indigent or temporarily without funds. . .

rather than "If one or both of the parties is indigent or temporarily without funds."

7. Page 7, line 13. Similarly, this line could read: [EITHER PARTY OR BOTH PARENTS] "If the parties are only temporarily without funds . . ." .

8. Page 7, lines 17 through 19. Senator Pettyjohn would like to delete the reference to persons receiving legal services, and the court system has no problem with this deletion. The wording would read:

(starting on line 16) "[FOR] legal representation or other

services required by the court [RENDERED TO THE CHILD: HOWEVER, NO REPAYMENT MAY BE REQUIRED FOR THOSE WHO ARE RECEIVING LEGAL SERVICES FOR THE INDIGENT].

9. Page 7, line 27. Senator Pettyjohn is concerned that the language regarding sale of property belonging to both parties might be interpreted as excluding other mechanisms for allocating costs. His concern could be clarified by adding language to line 27, so that line 27 would read:

before a division of property is made, or by other appropriate means.

10. Page 8, line 10. Since the court may appoint guardians ad litem outside the advocacy office for persons who can afford them, the existing statutory language should be retained, so that line 10 would read:

"appointing a guardian ad litem shall . . ."

11. Page 8, lines 25 and 26. This language could be conformed to previous changes to read:

"If the parties are indigent"

rather than

"If one or both of the parties is indigent . . ."

* * * *

I have attached a marked-up copy of the committee substitute draft to show these changes. Please give me a call if you have any questions.

The Anchorage Times

City / State

January 12, 1984

B

/ Editorials

Court-appointed attorneys question system's worth

by Anne Willette
Times Writer

Defendants in criminal cases who are unable to afford lawyers may find themselves thrown into a system that provides justice in appearance only, some Anchorage attorneys charge.

In two separate cases now before the Alaska Supreme Court, attorneys Daniel Winfree and John Wood argue the court system's practice of appointing private lawyers for poor defendants is flawed.

They say attorneys are arbitrarily forced to take on criminal cases, regardless of their competence in criminal law, and then aren't fairly compensated for their work.

Court-appointed attorneys represent the "third tier" in a system designed to guarantee the constitutional right to an attorney for people too poor to pay for one.

Those people are initially referred to the state-funded Public Defenders Agency. If the lawyers in that office can't represent the defendant because of a conflict of interest — representing a co-defendant, for example — the defendant is then passed on to one of two law firms under contract with the court system.

Those firms are paid \$140,000 to represent no more than 25 felony and 65 misdemeanor defendants in a 10-month period. Additional felony cases assigned to the firms cost the court system \$3,000 or \$8,000 each, depending on the seriousness of the offense.

If the contract firms can't handle a case, the court appoints a private at-

torney from a list of Anchorage lawyers. Court-appointed attorneys are paid \$40 an hour for felony cases, with a ceiling of \$2,500 — next to nothing considering that private attorneys commonly require \$1,500 to \$3,000 just to take a case, then charge about \$100 an hour.

Attorneys appointed by the court are expected to accept the case, regardless of their experience in criminal law. Refusal could result in jail time or a fine for contempt of court.

That's what happened to John Wood in 1981. The attorney, who now is a member of the Anchorage Assembly, broke with tradition and refused to represent a man charged with nine offenses ranging from drunken driving to siphoning gas.

Wood argued that he was incompetent to represent the man because he had not practiced criminal law since 1973. He also questioned the court's authority to force him to take the case.

Another attorney was appointed, but Superior Court Judge Ralph Moody fined Wood \$500 for contempt of court. Wood appealed to the Supreme Court and is now waiting for the court to rule.

Daniel Winfree, who works for the law firm of Perkins, Cole, Stone, Olsen and Williams, took a different route to get his case before the Supreme Court.

The firm accepted a court appointment to represent Alexander Resek — the man charged with hearing a drug trafficking operation that allegedly brought \$600,000 worth of cocaine into Alaska from Colombia each week — but has argued it will be unable to ef-

fectively represent him unless the court system gives it more money.

Winfree and Bruce Bookman, for Alexander Resek, along with Michael Jungreis for Debra Resek and George Weiss for Alberto Resek, told Superior Court Judge Victor Carlson last month that the \$2,500 paid to each of them does not even begin to cover what it will cost to defend the Reseks.

They point to the police investigation that spanned six months and cost \$750,000. Police amassed 6,000 pages of police reports and 500 hours of tape-recorded conversations, many in Spanish.

Winfree says he expects the cost of representing Alexander Resek on 47 drug charges will top \$100,000. As of Dec. 31, the firm had invested \$17,000 on the case. Jungreis and Weiss, who each practice alone, say they have invested in excess of \$5,800 and \$10,000, respectively.

And the case is only in its preliminary stages. Pre-trial motions have to be prepared, the pre-trial hearing could take five days, and the trial is expected to last six weeks.

Jungreis and Weiss fear the case could put them out of business. They say they will have to work for free for the equivalent of three months to effectively represent their clients. During that time, they will not be able to take on any new — and paying — defendants.

Judge Carlson denied the request for more money; the three attorneys appealed to the state Court of Appeals and requested the hourly rate be increased to \$100.

See Attorneys, page B-3

Attorneys work to balance ethics, responsibility to system

Continued from page B-1

The court passed the case on to the Supreme Court Wednesday, saying the case raises substantial question on the obligations of appointed attorneys to work for free. The final decision should be made by the Supreme Court, the appeals court said.

Wood and Winfree agree the big losers in the court's system of appointing attorneys are the defendants.

"It sets up a system that gives the appearance of justice," Wood says. Effective representation means much more than having someone licensed in a practice of law stand beside a defendant in court; that person must be competent in the area of criminal law and do a good job.

Criminal law has become a specialized area, Wood says. Attorneys have an ethical obligation not to take cases they don't feel they can handle competently.

On that point, Wood has the backing of the Anchorage Bar Association. In a friend of the court brief, bar association attorney Robert Wagstaff argues the court puts lawyers in a no-win situation when it forces them to take cases they don't feel they can handle. Ethically, Wagstaff says, they know they shouldn't take the case, but they also know they could be fined or sent to jail if they refuse.

Wagstaff cites a November 1980 study by the Alaska Judicial Council on felony sentences. The study showed that from 1976-1979, defendants represented by court

appointed attorneys received substantially longer sentences than those represented by private lawyers or public defenders. The sentences in murder and kidnapping cases were more than twice as long for the clients of court-appointed counsels than the clients of public defenders.

Winfree attributes much of the discrepancy in the sentences to money. If they attorneys aren't fairly compensated for their work, they can't afford to adequately prepare their cases, and the defendants lose.

He agrees that attorneys have

an ethical obligation to take the cases of indigent defendants, but does not believe they are obligated to work for next to nothing.

Hospitals don't provide free medical care to the poor, fuel oil companies don't provide free heating oil, Winfree says. Judges and prosecutors are paid for working on cases that involve the poor, so why should court-appointed attorneys work for next to nothing?

The state, not individual attorneys arbitrarily selected by the court, has a constitutional and statutory obligation to bear the

cost of providing effective representation for indigent defendants, Winfree says.

A defendant's right to effective assistance of counsel is not satisfied when the court appoints a lawyer, then provides no money to prepare a defense, he says.

A bill now before the Senate Finance Committee may remedy the problems with the court's system of appointing attorneys.

Karla Forsythe, general counsel for the court system, says the bill would set up a sister agency to the Public Defenders Agency, called the Office of Public Advo-

cacy, under the Department of Administration.

A defendant who couldn't be represented by the public defenders would be referred to the staff attorneys in the public advocacy office. If that office couldn't take the case, it would be contracted out to a private attorney.

The bill would do away with the \$40-an-hour pay scale for court-appointed attorneys and the two contracts with private law firms, Forsythe says. Private attorneys would be hired as needed according to their fee and level of experience.

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 8, 1983

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to create an office of public advocacy within the Department of Administration. The bill transfers responsibility for the public guardian program (AS 13.26.360 -- 13.26.410) and for administration of statutorily required advocacy services from the court system to the executive branch.

PUBLIC GUARDIANSHIP

The public guardian office, established by the legislature in 1981 (AS 13.26.370), provides guardianship and conservatorship services to incapacitated persons and minors when no one else is willing or qualified to perform in this capacity. Many of the wards are severely handicapped due to mental retardation, developmental disabilities, or mental illness. The public guardian's responsibilities for individual wards include placement; securing medical, dental, vocational, or rehabilitation services; financial management; benefits application; and personal visits.

The public guardian is also required to assist private guardians throughout the state to ensure that guardians and conservators secure the necessary services for the persons they protect. This task involves maintaining contact with community resource programs and government agencies, and producing informational and educational aids.

The court system is not qualified or equipped to handle such a social services program. By law, coroners/public administrators must serve as the public guardians, yet none of the coroner/public administrators is a social worker.

PUBLIC REPRESENTATION

The court system, by statute (AS 18.85.130(a)), appoints and compensates attorneys who represent indigent persons when the public defender agency cannot provide an attorney because of a conflict of interests. The court is also authorized by current law to appoint and pay for guardians ad litem to represent the best interests of a minor in proceedings which affect the minor's welfare (AS 09.65.130). Representation and guardian ad litem services presently are provided by contract with private law firms and by direct court appointment at hourly rates that are below customary rates charged by attorneys.

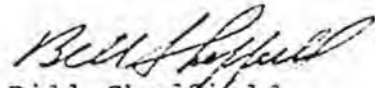
OFFICE OF PUBLIC ADVOCACY

The bill creates an office of public advocacy under the commissioner of administration, who also oversees the public defender agency. The office will be empowered to provide public guardian and guardian ad litem services as well as legal representation to indigent persons, when authorized by existing statutes. Services will be provided both by staff employed by the office and by independent contractors, subject to centralized management under the commissioner of administration.

In creating such an office, it is anticipated that it will have locations in major population areas around the state. This will permit efficient sharing of resources, including space, personnel, clerical support, and other administrative costs, with other state offices. In developing the staffing requirements and other costs, it has been determined that in many instances it will be less costly for the state to establish full-time offices with full-time employees rather than contract for these services.

The judicial branch supports transfer of the public guardian program and the management of advocacy services to the office of public advocacy. Principles of sound management and fiscal responsibility point to the desirability of this approach, and I urge passage of the bill.

Sincerely,


Bill Sheffield
Governor

M E M O R A N D U M

TO: House Judiciary Committee members

FROM: Karla Forsythe, General Counsel
Alaska Court System *Karla Forsythe*

DATE: March 2, 1984

SUBJECT: ^(JUD) CSB 312 - Office of Public Advocacy
Sectional Analysis

At the request of counsel to the committee, I am providing a sectional analysis of SB 312.

Sec. 1. This is the major new section of the bill; other sections basically amend existing law to cross-reference the Office of Public Advocacy.

The section creates an Office of Public Advocacy in the Department of Administration. The office will take over from the court the state's responsibility for administering and paying for legal representation and guardian ad litem services. The office will also take over the public guardian function which was established by the legislature in 1981.

Section 1 permits the office to adopt regulations, to employ directly or to contract with attorneys and other staff, and requires that services shall be performed in a manner that avoids conflicts of interest.

The various functions outlined in section 1 are not new, and are already authorized or required by state law.

Sec. 2. State law authorizes appointment of an attorney or guardian ad litem when a minor petitions for removal of the disabilities of minority. This section cross-references AS 25.24.310,

Section analysis - SB 312

Page Two

the general statute in existing law which describes when and how such appointments will be made.

Sec. 3. This section provides that the court will appoint the office of public advocacy rather than a private attorney to represent a respondent in a guardianship proceeding when the respondent is financially unable to employ an attorney.

Sec. 4. Presently the court arranges for visitors and experts in guardianship proceedings. This new section requires these appointments to be made through the Office of Public Advocacy.

Sec. 5. This section contains technical drafting amendments to existing law, and is intended to avoid references to the male gender only.

Sec. 6. This new section makes the Office of Public Advocacy rather than the court responsible for an existing function -- providing guardian ad litem services to respondents in guardianship cases who because of impaired ability cannot evaluate information regarding the proceedings, and who would suffer financial hardship or become dependent on a government agency or private person if services were not provided at state expenses (which is the standard under current law).

Sec. 7. This section amends existing law by referring to the public guardian as a function rather than an office.

Sec. 8. The public guardian function is transferred from the public administrator to the Office of Public Advocacy.

Sec. 9 - 11. These sections amend existing law to authorize the court to appoint the Office of Public Advocacy rather than private attorneys to represent indigent defendants whom the Public Defender Agency cannot represent because of a conflict of interest. Language in existing law which requires appointment in accordance with a fee schedule adopted by the supreme court and payment by the court system is stricken.

Sec. 12 - 13. These sections remove the public guardian duties from the coroner/public administrator.

Sec. 14. This section amends existing AS 25.24.310, which permits appointment of an attorney or guardian ad litem to represent a minor in a custody, support or visitation proceeding, or in any other proceeding affecting a minor's welfare. The amendments make clear that the Office of Public Advocacy is appointed only when the parties are indigent or temporarily without funds, which is the standard under current law. Otherwise the court will appoint a private attorney. For all appointments, the court will enter a repayment order. The attorney general remains responsible for enforcing collections owed the state, and an amendment clarifies that repayment is made to the general fund.

Sec. 15. This section amends state personnel law to include Office of Public Advocacy attorneys within the partially exempt service.

Sec. 16. This section amends existing law to provide that appointment of an attorney or guardian ad litem in cases brought under the Uniform Interstate Compact on Juveniles is made in accordance with AS 25.24.310.

Section analysis - SB 312

Page Four

Sec. 17. This section clarifies that when the Department of Health and Social Services or a local government brings an action for termination of parental rights, appointment of a guardian ad litem as required under existing law is made under the terms of AS 25.24.310.

Sec. 18. This section amends existing law to clarify that the Office of Public Advocacy rather than court appointed attorneys represent parents of minors in commitment proceedings.

Sec. 19. This section provides an effective date of July 1, 1984.

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.

Introduced: 6/9/83
Referred: Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 312

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST 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 an 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
17 AS 13.26.360 -- 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 respon-
22 dents in guardianship proceedings who will suffer financial hardship
23 or become dependent upon a government agency or a private person or
24 agency if the services are not provided at state expense, under
25 AS 13.26.112;

26 (4) provide legal representation to respondents in guardi-
27 anship proceedings who are financially unable to employ attorneys
28 (AS 13.26.106(b)), to indigent parties in cases involving child cus-
29 tody where the opposing party is represented by counsel provided by a

1 public agency, and to indigent parents or guardians of a minor respon-
2 dent in a commitment proceeding concerning the minor (AS 47.30.775);

3 (5) provide legal representation and guardian ad litem
4 services, under AS 09.65.130; in cases arising under the Uniform
5 Interstate Compact on Juveniles (AS 47.15); in cases involving pe-
6 titions to adopt a minor (AS 25.23.100(j)); in cases involving pe-
7 titions to remove the disabilities of a minor (AS 09.55.590); in
8 children's proceedings (AS 47.10.050(a)); and in cases involving
9 indigent persons who are entitled to representation under AS 18.85.100
10 and who cannot be represented by the public defender agency because of
11 a conflict of interests.

12 (b) The commissioner of administration may

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

15 (2) make such reports of the office's operation as the
16 governor or legislature from time to time requests, or as may be
17 required by law;

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

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

27 (b) The commissioner of administration may employ attorneys as
28 required to perform the duties set out in AS 44.21.410. Attorneys
29 employed by the commissioner of administration in the office of public

1 advocacy are in the partially exempt service under AS 39.25.120.

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

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

11 (a) Attorneys employed by the office or retained under contract to
12 provide legal representation must be admitted to the practice of law
13 in this state.

14 (b) Attorneys employed by the office may not engage in the
15 private practice of law. This prohibition does not apply to attorneys
16 who provide services to the office as independent contractors.

17 Sec. 44.21.440. CONFLICTS OF INTERESTS. All services and legal
18 representation rendered by the office of public advocacy, whether
19 performed under contract or by employees of the office, must be pro-
20 vided in a manner that avoids conflicts of interests.

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

22 (e) The court may appoint an attorney or a guardian ad litem to
23 represent the interests of the petitioner at the hearing. Appointment
24 of an attorney or guardian ad litem must be made under the terms of
25 AS 09.65.130.

26 * Sec. 3. AS 09.65.130 is amended to read:

27 Sec. 09.65.130. REPRESENTATION OF MINOR [CHILD]. (a) In an
28 action involving a question of the custody, support, or visitation of
29 a minor, the [THE] court may, upon the motion of a [EITHER] party to

1 the action or upon its own motion, appoint the office of public advo-
2 cacy [AN ATTORNEY] to represent the minor with respect to [HIS] custo-
3 dy, support, and visitation or in any other legal proceeding involving
4 the minor's [HIS] welfare. When custody, support, or visitation is
5 [ARE] at issue in a divorce, it is the responsibility of the parties
6 or their counsel to notify the court that such a matter is [THOSE
7 MATTERS ARE] at issue. Upon notification, the court shall determine
8 whether the minor [CHILD] should have legal representation or other
9 services and shall make a finding on the record before trial. The
10 court shall notify the office of public advocacy if legal representa-
11 tion or other services are required. The court shall enter an order
12 for costs, fees, and disbursements in favor of the state [CHILD'S
13 ATTORNEY] and may further order that other services be provided for
14 the protection of the minor [CHILD].

15 (b) If custody, support, or visitation is at [AN] issue, the
16 order for costs, fees, and disbursements must [SHALL] be made against
17 either or both parents, except that, if one of the parties responsible
18 for the costs is indigent, the costs, fees, and disbursements for that
19 party must [SHALL] be borne by the state. If either party or both
20 parents are only temporarily without funds, [AS DETERMINED BY THE
21 COURT,] the office of public advocacy shall provide [COURT MAY ADVANCE
22 PAYMENT FOR] legal representation or other services required by the
23 court [RENDERED TO THE CHILD]; however, no repayment may be required
24 of a party who is [FOR THOSE WHO ARE] receiving legal services for the
25 indigent. The attorney general is responsible for enforcing collec-
26 tions owed the state [COURT], and repayment must [SHALL] be made
27 [DIRECTLY] to the Department of Revenue under AS 37.10.050 for deposit
28 in the general fund [COURT UNDER THE PROVISIONS OF RULES GOVERNING THE
29 ADMINISTRATION OF THE COURTS]. The court shall, if possible, avoid

1 assigning costs to only one party by ordering that costs of the mi-
2 nor's [CHILD'S] legal representation or other services be paid from
3 proceeds derived from a sale of property belonging to both parties,
4 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 the office of public advocacy
8 [AN ATTORNEY OR OTHER PERSON] 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 [HIS] welfare. The court shall
11 require [APPOINT] a guardian ad litem when, in the opinion of the
12 court, representation of the minor's [CHILD'S] best interests, to be
13 distinguished from the minor's [HIS] preferences, would serve the
14 welfare of the minor [CHILD]. [THE PERSON APPOINTED UNDER (a) OF THIS
15 SECTION MAY ALSO BE APPOINTED AS GUARDIAN AD LITEM UNDER THIS SUB-
16 SECTION.] The court in its order appointing the office of public
17 advocacy [A GUARDIAN AD LITEM] shall limit the duration of the
18 appointment of the guardian ad litem to the pendency of the legal
19 proceedings affecting the minor's [CHILD'S] interests, and shall
20 outline the guardian ad litem's responsibilities and limit the guard-
21 ian ad litem's [HIS] authority to those matters related to [HIS]
22 effective representation of the minor's [CHILD'S] best interests in
23 the pending legal proceeding. The office of public advocacy [COURT]
24 shall make every reasonable effort to provide [APPOINT] a guardian ad
25 litem from among persons in the community where the minor's [CHILD'S]
26 parents or the person having legal custody or guardianship of the
27 minor's [CHILD'S] person reside. When custody, support, or visitation
28 is [ARE] at issue in a divorce, it is the responsibility of the
29 parties or their counsel to notify the court that such a matter is

1 [THESE MATTERS ARE] at issue. Upon notification, the court shall
2 determine if the minor's [CHILD'S] best interests need representation
3 or if the minor [CHILD] needs other services and shall make a finding
4 on the record before trial. The court shall notify the office of
5 public advocacy if guardian ad litem services are required. The court
6 shall enter an order for costs, fees, and disbursements in favor of
7 the state [CHILD'S GUARDIAN AD LITEM] and may further order that other
8 services be provided for the protection of the minor [CHILD].

9 * Sec. 4. AS 13.26.106(b) is amended to read:

10 (b) The respondent is entitled to be represented by an attorney
11 in the proceedings. If the respondent is financially unable to employ
12 an attorney [TO REPRESENT HIM], the court shall appoint the office of
13 public advocacy (AS 44.21.400), under AS 13.26.131, [AN ATTORNEY] to
14 represent the respondent in the proceedings.

15 * Sec. 5. AS 13.26.106 is amended by adding a new subsection to
16 read:

17 (d) Appointment of the visitor and the expert under (c) of this
18 section must be made through the office of public advocacy (AS 44.-
19 21.400), under AS 13.26.131.

20 * Sec. 6. AS 13.26.112(b) and (c) are amended to read:

21 (b) The office of public advocacy shall provide guardian ad
22 litem services to persons who would 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.

25 (c) The guardian ad litem shall assist the ward or respondent in
26 determining his or her interests in regard to the legal proceedings in
27 which he or she is involved. If the ward or respondent is entirely
28 incapable of determining his or her own interests, the guardian ad
29 litem shall make that determination and advise the court and counsel

1 for all parties accordingly. The guardian ad litem shall

2 (1) inquire thoroughly into all the circumstances that a
3 prudent individual in the position of the ward or respondent would
4 consider in determining his or her own interests in the proceedings;
5 and

6 (2) encourage the ward or respondent to participate, to the
7 maximum extent of his or her capability, in all decisions and to act
8 on his or her own behalf on all matters in which the ward or respon-
9 dent [HE] is able.

10 (d) [(c)] The attorney of the ward or respondent may also be the
11 guardian ad litem for the ward or respondent if there is no other
12 party readily available and able to serve as a guardian ad litem and
13 whose interests would not conflict with those of the ward or respon-
14 dent.

15 * Sec. 7. AS 13.26.360 is amended to read:

16 Sec. 13.26.360. PURPOSE. The legislature recognizes that many
17 Alaskans, for reasons of incapacity or minority, are in need of a
18 guardian or conservator. Often these persons cannot find a person
19 able and willing to serve as guardian or conservator. The legislature
20 intends through AS 13.26.360 -- 13.26.410 to establish the function
21 [OFFICE] of public guardian for the purpose of furnishing guardianship
22 and conservatorship services. It further intends by establishing this
23 function [OFFICE] to provide assistance to guardians throughout the
24 state in securing necessary services for their wards and to assist the
25 courts, attorneys, visitors, respondents, and proposed guardians in
26 the orderly and expeditious handling of guardianship proceedings.

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

28 (a) The office of public advocacy (AS 41.21.400) shall serve as
29 the public guardian [PUBLIC ADMINISTRATOR (AS 22.15.310) SHALL ALSO

1 ACT AS THE PUBLIC GUARDIAN FOR THE JUDICIAL DISTRICT FOR WHICH HE IS
2 APPOINTED].

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

4 (d) If a court determines that the person is entitled to be
5 represented by an attorney at public expense, it shall promptly notify
6 the agency or the office of public advocacy, or assign a private
7 attorney to represent the person [FOR HIM] under AS 18.85.130.

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

9 (e) Upon notification or assignment under this section, the
10 agency, office of public advocacy, or assigned private attorney shall
11 represent the person with respect to whom the notification or assign-
12 ment is made.

13 * Sec. 11. Sec. AS 18.85.130(a) is amended to read:

14 (a) For cause, the court may, on its own motion or upon the
15 application of the public defender or the office of public advocacy,
16 appoint an attorney other than the public defender or the office of
17 public advocacy to represent the indigent person at any stage of the
18 proceedings or on appeal. [THE PRIVATE ATTORNEY SHALL BE AWARDED REA-
19 SONABLE COMPENSATION ACCORDING TO A SCHEDULE OF FEES PROMULGATED BY
20 THE SUPREME COURT AND REIMBURSEMENT FOR EXPENSES NECESSARILY INCURRED.
21 THIS SHALL BE PAID BY THE COURT SYSTEM.]

22 * Sec. 12. AS 22.15.310 is amended to read:

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

27 * Sec. 13. AS 22.15.350 is amended to read:

28 Sec. 22.15.350. OTHER DUTIES. In addition to the other duties
29 of a public administrator, the public administrator shall perform the

1 duties set out in AS 22.15.110 and AS 12.65.020 -- 12.65.110 [AND
2 SHALL PERFORM THE DUTIES OF PUBLIC GUARDIAN AS SET OUT IN AS 13.26 360
3 -- 13.26.410].

4 * Sec. 14. AS 39.25.120(c)(3) is amended to read:

5 (3) attorney members of the staff of the Department of Law,
6 [AND] of the public defender agency, and of the office of public
7 advocacy in the Department of Administration;

8 * Sec. 15. AS 47.15.050 is amended to read:

9 Sec. 47.15.050. ATTORNEY OR GUARDIAN AD LITEM [FEES]. Appoint-
10 ment of an attorney [A COUNSEL] or guardian ad litem [APPOINTED] under
11 the provisions of this compact [MAY BE PAID AS PROVIDED IN THE RULES
12 GOVERNING THE ADMINISTRATION OF ALL COURTS] must be made under AS 09.-
13 65.130 or AS 44.21.400 -- 44.21.440.

14 * Sec. 16. AS 47.17.030(e) is amended to read:

15 (e) In all actions taken by the department or a health and
16 social services agency of a local government under this chapter that
17 result in a judicial proceeding, the child must [SHALL] be represented
18 by a guardian ad litem in that proceeding. Appointment of a guardian
19 ad litem must be made under AS 09.65.130.

20 * Sec. 17. AS 47.30.775 is amended to read:

21 Sec. 47.30.775. COMMITMENT OF MINORS. The provisions of AS 47.-
22 30.700 -- 47.30.815 apply to minors. However, all notices required to
23 be served on the respondent in AS 47.30.700 -- 47.30.815 must [SHALL]
24 also be served on the parent or guardian of a respondent who is a
25 minor, and parents or guardians of a minor respondent must [SHALL] be
26 notified that they may appear as parties in any commitment proceeding
27 concerning the minor and that as parties they are entitled to retain
28 their own attorney or have the office of public advocacy [ONE] ap-
29 pointed for them by the court. A minor respondent has the same rights

1 to waiver and informed consent as an adult respondent under AS 47.-
2 30.660 -- 47.30.915; however, the minor must [HE SHALL] be represented
3 by counsel in waiver and consent proceedings.

4 * Sec. 18. This Act takes effect July 1, 1984.