**3.03B NEGLIGENCE DEFINED – CHILD**

[Plaintiff] [Defendant] was \_\_\_ years old at the time of the incident. Children are not held to the same standards of behavior as adults. For children, reasonable care is the amount of care that a reasonable child of the same age, intelligence, knowledge, and experience would use in a similar situation.

## Directions for Use

This instruction should be given with Instruction 3.03A (Negligence Defined-Adult) when the negligence of a child is at issue, unless the child is under seven years old, or the child engaged in an activity which is normally undertaken by adults and for which adult qualifications are required. If the child is under seven, Instruction 3.03C (Negligence Defined-Capacity of Child under Seven) should be given with 3.03A instead of this instruction. If the child was engaged in an adult activity, the adult standard of care applies, and only Instruction 3.03A should be given. For claims of negligence per se, Instruction 3.04A (Violation of Statute-Negligence Per Se) should be given instead of this instruction.

# Comment

The jury is required to weigh the actions of persons charged with negligence against the standard of conduct of a reasonable person under similar circumstances. *Lyons v. Midnight Sun Transp. Services, Inc.,* 928 P.2d 1202, 1203 (Alaska 1996).

This instruction modifies the standard of care based on Alaska decisions discussing reasonable care as it applies to children. *Ardinger v. Hummell*, 982 P.2d 727, 731 (Alaska 1999)(motor vehicle operated by child); *Patterson v. Cushman,* 394 P.2d 657, 660 (Alaska 1964)(defining ordinary care for a six-year-old child who was hit by a car). *See* *T.P.D. v. A.C.D.*, 981 P.2d 116, 120 n.14 (Alaska 1999).

In *Ardinger*, the court explained the special standard of care for children as the public interest in the welfare and protection of children, and the unfairness of holding children to an adult standard of care which most could not meet. *Id*. Instead, children should be subject to the standard of a reasonable child of the same age, intelligence, knowledge, and experience. *Id.*

The adult standard care nevertheless applies to children who engage in “an activity which is normally undertaken by adults, and for which adult qualifications are required.” *Id.* at 731. A fourteen-year-old girl who allegedly lent her mother’s car to a fifteen-year-old friend was held to an adult standard of care. *Id*.

Negligence per se may also apply to a child who is held to an adult standard of care. *Id*. at 734.