**3.03C NEGLIGENCE DEFINED – CAPACITY OF CHILD UNDER SEVEN**

[Plaintiff] [Defendant] was \_\_\_ years old at the time of the incident. The law assumes that a child less than seven years of age is incapable of negligence. But if you decide that the child was capable of understanding the danger and exercising some degree of care, this rule does not apply. In making this decision, you should consider the child’s age, judgment, knowledge, experience, and psychological development.

If you find that the child was not capable of negligence, then you must find that the child was not at fault and you must [return a verdict for the defendant] [not allocate any percentage of the total fault to the child]. If you find that the child was capable of negligence, you must then decide whether the child was in fact negligent.

# Directions for Use

This instruction should be used together with Instruction 3.03A (Negligence Defined-Adult) when a child under seven years old is alleged to be negligent, unless the court has determined the child’s capacity as a matter of law.

# Comment

A child under seven years old is presumed to be incapable of negligence. *Patterson v. Cushman*, 394 P.2d 657, 660 (Alaska 1964). The presumption is rebutted if the child had the capacity to understand the danger and to exercise some degree of care. *Id*. Capacity is a jury question unless fair-minded persons in the exercise of reasonable judgment could not differ on the inferences to be drawn from the evidence. *Id*. *Patterson* held that a six-year-old who was hit by a car had the capacity to be negligent as a matter of law where the child had been warned to watch for vehicles and to not play in the streets. *Id*.