

HOUSE BILL NO. 379

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES PORTER, Green, Kelly

Introduced: 12/29/95

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

**1 "An Act authorizing establishment of alternative dispute resolution centers to foster
2 the resolution of disputes between juvenile offenders and their victims."**

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

4 * Section 1. AS 47.10.020(a) is amended to read:

5 (a) Whenever circumstances subject a minor to the jurisdiction of
6 AS 47.10.010 - 47.10.142, the court shall

7 (1) provide, under procedures adopted by court rule, that, for a minor
8 who is alleged to be a delinquent minor under AS 47.10.010(a)(1), a state agency shall
9 make a preliminary inquiry to determine if any action is appropriate and may take
10 appropriate action to adjust or dispose of the matter without a court hearing; if, under
11 this paragraph,

12 (A) the state agency makes a preliminary inquiry and takes
13 appropriate action to adjust or dispose of the matter without a court hearing,
14 the minor may not be detained or taken into custody as a condition of the

1 adjustment or disposition and, subject to (d) of this section, the matter shall be
2 closed by the agency if the minor successfully completes all that is required of
3 the minor by the agency in the adjustment or disposition; in a municipality or
4 municipalities in which a youth court has been established under AS 47.10.265,
5 adjustment or disposition of the matter under this paragraph may include
6 referral to the youth court; **if an alternative dispute resolution center has**
7 **been established under AS 47.10.267, adjustment or disposition of the**
8 **matter under this paragraph may include use of the services of the**
9 **alternative dispute resolution center;**

10 (B) the agency concludes that the matter may not be adjusted
11 or disposed of without a court hearing, the agency may file a petition under (2)
12 of this subsection setting out the facts; or

13 (2) appoint a competent person or agency to make a preliminary inquiry
14 and report for the information of the court to determine whether the interests of the
15 public or of the minor require that further action be taken; if, under this paragraph, the
16 court appoints a person or agency to make a preliminary inquiry and to report to it,
17 then upon the receipt of the report, the court may informally adjust or dispose of the
18 matter without a hearing, or it may authorize the person having knowledge of the facts
19 of the case to file with the court a petition setting out the facts; if the court informally
20 adjusts or disposes of the matter, the minor may not be detained or taken into the
21 custody of the court as a condition of the adjustment or disposition, and the matter
22 shall be closed by the court upon adjustment or disposition.

23 * **Sec. 2.** AS 47.10 is amended by adding a new section to read:

24 Sec. 47.10.267. ALTERNATIVE DISPUTE RESOLUTION FOR MATTERS
25 INVOLVING MINORS. (a) A municipality or a nonprofit corporation organized
26 exclusively for the resolution of disputes between minors who are alleged to have
27 committed offenses and the victim of those offenses may establish and operate an
28 alternative dispute resolution center.

29 (b) A center may not begin operation under this section until a plan for
30 establishing a center for the mediation and settlement of disputes has been approved
31 by the assembly or council of the municipality establishing the center or, in the case

1 of a center operated by a nonprofit corporation, by the assembly or council of the
2 municipality within which the center will be located. A plan for a dispute resolution
3 center may not be approved and the center may not begin operation until the assembly
4 or council finds that the plan adequately prescribes procedures

5 (1) for filing requests for dispute resolution services with the center and
6 for scheduling mediation sessions participated in by the parties to the dispute;

7 (2) to ensure that each dispute mediated by the center meets the criteria
8 for appropriateness for mediation set by the assembly or council and for rejecting
9 disputes that do not meet the criteria;

10 (3) for giving notice of time, place, and nature of the mediation session
11 to the parties, and for conducting mediation sessions that comply with the provisions
12 of this section;

13 (4) to ensure that participation by all parties is voluntary;

14 (5) for obtaining referrals from public and private bodies;

15 (6) for meeting the particular needs of the participants, including
16 providing services at times convenient to the participants, in sign language, and in
17 languages other than English;

18 (7) for providing trained mediators who, during the dispute resolution
19 process, may not make decisions or determinations of the issues involved, but who
20 shall facilitate negotiations by the participants themselves to achieve a voluntary
21 resolution of the issues; and

22 (8) for informing and educating the community about the dispute
23 resolution center and encouraging the use of the center's services in appropriate cases.

24 (c) A center established under this section annually shall provide to the
25 administrative director of the Alaska Court System the data regarding its operation as
26 the administrative director requires. The administrative director shall report annually
27 to the supreme court, the legislature, and the governor regarding the operation of
28 centers established under this chapter.

29 (d) A center established under this section shall provide dispute resolution
30 services between a minor who has committed an offense and who, because of the
31 commission of the offense, may be alleged to be a delinquent minor under

1 AS 47.10.010(a)(1), and a person who was a victim of that offense. The center shall
2 provide dispute resolution services either without charge to a participant or for a fee
3 that is based on the participant's ability to pay.

4 (e) In conducting a dispute resolution process under this section, a center shall
5 require that

6 (1) the minor and the victim enter into a written agreement that
7 expresses the method by which they shall attempt to resolve the issues in dispute; and

8 (2) at the conclusion of the dispute resolution process, the minor and
9 the victim enter into a written agreement that sets out the settlement of the issues and
10 the future responsibilities, if any, of each party.

11 (f) All memoranda, work notes or products, or case files of centers established
12 under this section are confidential and privileged and are not subject to disclosure in
13 any judicial or administrative proceeding unless the court or administrative tribunal
14 determines that the materials were submitted by a participant to the center for the
15 purpose of avoiding discovery of the material in a subsequent proceeding. Any
16 communication relating to the subject matter of the resolution made during the
17 resolution process by a participant, mediator, or another person is a privileged
18 communication and is not subject to disclosure in a judicial or administrative
19 proceeding unless all parties to the communication waive the privilege. However,
20 privilege and limitation on evidentiary use set out in this subsection do not apply to
21 a communication of a threat that injury or damage may be inflicted on a person or on
22 the property of a party to the dispute to the extent the communication may be relevant
23 evidence in a criminal matter.

24 (g) A minor or a victim who voluntarily enters a dispute resolution process at
25 a center established under this chapter may revoke consent, withdraw from dispute
26 resolution, and seek judicial or administrative redress before reaching a written
27 resolution agreement. The withdrawal shall be in writing. If a minor or a victim
28 withdraws from dispute resolution, a legal penalty, sanction, or restraint may not be
29 imposed upon the person for that withdrawal.

30 (h) A center established under this section may seek and accept contributions
31 and any other available money and may expend the money to carry out the purposes

1 of this section.

2 (i) A member of the board of directors of a dispute resolution center is
3 immune from suit in a civil action based upon a proceeding or other official act
4 performed in good faith as a member of the board. Employees and volunteers of a
5 dispute resolution center are immune from suit in a civil action based on a proceeding
6 or other official act performed in their capacity as employees or volunteers, except in
7 cases of wilful or wanton misconduct. A center is immune from suit in a civil action
8 based on a proceeding or other official act performed by its employees, volunteers, or
9 members or its board of directors, except in cases of wilful or wanton misconduct by
10 its employees or volunteers or in cases of official acts performed in bad faith by
11 members of the board.

12 (j) In this section, "center" means an alternative dispute resolution center.