

CS FOR HOUSE BILL NO. 379(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 1/22/96
Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Green, Kelly, Bunde, Toohey, Therriault

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing establishment of community dispute resolution centers to
2 foster 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 22.35 is amended by adding a new section to read:

5 Sec. 22.35.020. RECOGNITION OF COMMUNITY DISPUTE RESOLUTION
6 CENTERS FOR MATTERS INVOLVING MINORS. The administrative director may
7 recognize an entity described in AS 47.10.267(a) as a community dispute resolution
8 center to serve as a center to resolve disputes between minors and victims. Before
9 extending recognition under this section, the administrative director shall determine that
10 the bylaws of the entity set out standards and procedures that meet the requirements of
11 AS 47.10.267(b).

12 * **Sec. 2.** AS 47.10.020(a) is amended to read:

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

15 (1) provide, under procedures adopted by court rule, that, for a minor

1 who is alleged to be a delinquent minor under AS 47.10.010(a)(1), a state agency shall
2 make a preliminary inquiry to determine if any action is appropriate and may take
3 appropriate action to adjust or dispose of the matter without a court hearing; if, under
4 this paragraph,

5 (A) the state agency makes a preliminary inquiry and takes
6 appropriate action to adjust or dispose of the matter without a court hearing,
7 the minor may not be detained or taken into custody as a condition of the
8 adjustment or disposition and, subject to (d) of this section, the matter shall be
9 closed by the agency if the minor successfully completes all that is required of
10 the minor by the agency in the adjustment or disposition; in a municipality or
11 municipalities in which a youth court has been established under AS 47.10.265,
12 adjustment or disposition of the matter under this paragraph may include
13 referral to the youth court; **if a community dispute resolution center has**
14 **been established under AS 47.10.267(a) and has obtained recognition under**
15 **AS 22.35.020 or AS 47.10.267(b), adjustment or disposition of the matter**
16 **under this paragraph may include use of the services of the community**
17 **dispute resolution center;**

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

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

31 * **Sec. 3.** AS 47.10.080(b) is amended to read:

1 (b) If the court finds that the minor is delinquent, it shall

2 (1) order the minor committed to the department for a period of time
3 not to exceed two years or in any event extend past the day the minor becomes 19,
4 except that the department may petition for and the court may grant in a hearing (A)
5 two-year extensions of commitment that do not extend beyond the child's 19th
6 birthday if the extension is in the best interests of the minor and the public; and (B)
7 an additional one-year period of supervision past age 19 if continued supervision is in
8 the best interests of the person and the person consents to it; the department shall place
9 the minor in the juvenile facility that the department considers appropriate and that
10 may include a juvenile correctional school, juvenile work camp, treatment facility,
11 detention home, or detention facility; the minor may be released from placement or
12 detention and placed on probation on order of the court and may also be released by
13 the department, in its discretion, under AS 47.10.200;

14 (2) order the minor placed on probation, to be supervised by the
15 department, and released to the minor's parents, guardian, or a suitable person; if the
16 court orders the minor placed on probation, it may specify the terms and conditions
17 of probation; the probation may be for a period of time, not to exceed two years and
18 in no event extend past the day the minor becomes 19, except that the department may
19 petition for and the court may grant in a hearing

20 (A) two-year extensions of supervision that do not extend
21 beyond the child's 19th birthday if the extension is in the best interests of the
22 minor and the public; and

23 (B) an additional one-year period of supervision past age 19 if
24 the continued supervision is in the best interests of the person and the person
25 consents to it;

26 (3) order the minor committed to the department and placed on
27 probation, to be supervised by the department, and released to the minor's parents,
28 guardian, other suitable person, or suitable nondetention setting such as a family home,
29 group care facility, or child care facility, whichever the department considers
30 appropriate to implement the treatment plan of the predisposition report; if the court
31 orders the minor placed on probation, it may specify the terms and conditions of

1 probation; the department may transfer the minor, in the minor's best interests, from
2 one of the probationary placement settings listed in this paragraph to another, and the
3 minor, the minor's parents or guardian, and the minor's attorney are entitled to
4 reasonable notice of the transfer; the probation may be for a period of time, not to
5 exceed two years and in no event extend past the day the minor becomes 19, except
6 that the department may petition for and the court may grant in a hearing

7 (A) two-year extensions of commitment that do not extend
8 beyond the child's 19th birthday if the extension is in the best interests of the
9 minor and the public; and

10 (B) an additional one-year period of supervision past age 19 if
11 the continued supervision is in the best interests of the person and the person
12 consents to it;

13 (4) order the minor to make suitable restitution in lieu of or in addition
14 to the court's order under ~~(1) - (3)~~ [(1), (2), OR (3)] of this subsection; the court may
15 not refuse to make an order of restitution under this paragraph to benefit the victim of
16 the act of the minor that is the basis of the delinquency adjudication; **the court may**
17 **require the minor to use the services of a community dispute resolution center**
18 **that has been recognized by the administrative director of the Alaska Court**
19 **System under AS 22.35.020 or by the commissioner under AS 47.10.267(b) to**
20 **resolve any dispute between the minor and the victim of the minor's offense as**
21 **to the amount of or manner of payment of restitution;**

22 (5) order the minor committed to the department for placement in an
23 adventure based education program established under AS 47.21.020 with conditions
24 the court considers appropriate concerning release upon satisfactory completion of the
25 program or commitment under (1) of this subsection if the program is not satisfactorily
26 completed; or

27 (6) in addition to an order under (1) - (5) of this subsection, if the
28 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
29 11.71.040(a)(4), order the minor to perform 50 hours of community service; for
30 purposes of this paragraph, "community service" includes work

31 (A) defined as community service under AS 33.30.901; or

1 (B) that, on the recommendation of the city council or
2 traditional village council, would benefit persons within the city or village who
3 are elderly or disabled.

4 * **Sec. 4.** AS 47.10 is amended by adding a new section to read:

5 Sec. 47.10.267. COMMUNITY DISPUTE RESOLUTION CENTERS FOR
6 MATTERS INVOLVING MINORS. (a) An entity organized for the purpose of
7 providing community mediation services may establish and operate a community
8 dispute resolution center to resolve disputes between minors who are alleged to have
9 committed offenses and the victim of those offenses.

10 (b) The commissioner may recognize an entity organized for the purpose of
11 providing community mediation services as a community dispute resolution center to
12 serve as a center to resolve disputes between minors and victims. Before extending
13 recognition under this subsection, the commissioner shall determine that the bylaws of
14 the entity set out standards and procedures

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

17 (2) to ensure that each dispute mediated meets the criteria for
18 appropriateness for mediation and for rejecting disputes that do not meet the criteria;

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

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

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

24 (6) for providing mediators who, during the dispute resolution process,
25 may not make decisions or determinations of the issues involved, but who shall
26 facilitate negotiations by the participants themselves to achieve a voluntary resolution
27 of the issues;

28 (7) for communicating to the agency making a referral under
29 AS 47.10.020(a)(1)(A) or the court making a referral under AS 47.10.080(b)(4), as
30 appropriate, the following:

31 (A) notice that the minor and victim have been unable to enter

1 into a written agreement under (d)(2) of this section or that the minor or victim
2 has withdrawn from mediation as authorized by (f) of this section;

3 (B) notice that the minor and victim have entered into a written
4 agreement under (d)(2) of this section; the center shall transmit a copy of the
5 agreement to the agency or the court, as appropriate;

6 (C) notice that the minor has failed to perform fully the minor's
7 obligations under the written agreement under (d)(2) of this section;

8 (D) notice that the minor has successfully completed all that is
9 required of the minor under the provisions of the written agreement under
10 (d)(2) of this section; and

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

14 (c) A center established under this section shall provide dispute resolution
15 services between a minor who has committed an offense and who, because of the
16 commission of the offense, may be alleged to be a delinquent minor under
17 AS 47.10.010(a)(1), and a person who was a victim of that offense. The center shall
18 provide dispute resolution services either without charge to a participant or for a fee
19 that is based on the participant's ability to pay.

20 (d) In conducting a dispute resolution process under this section, a center shall
21 require that

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

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

27 (e) Except for a notice or a communication described in (b)(7) of this section,
28 all memoranda, work notes or products, or case files of centers established under this
29 section are confidential and privileged and are not subject to disclosure in any judicial
30 or administrative proceeding unless the court or administrative tribunal determines that
31 the materials were submitted by a participant to the center for the purpose of avoiding

1 discovery of the material in a subsequent proceeding. Any communication relating to
2 the subject matter of the resolution made during the resolution process by a participant,
3 mediator, or another person is a privileged communication and is not subject to
4 disclosure in a judicial or administrative proceeding unless all parties to the
5 communication waive the privilege. However, privilege and limitation on evidentiary
6 use set out in this subsection do not apply to a communication of a threat that injury
7 or damage may be inflicted on a person or on the property of a party to the dispute
8 to the extent the communication may be relevant evidence in a criminal matter.

9 (f) A minor or a victim who voluntarily enters a dispute resolution process at
10 a center established under this chapter may revoke consent, withdraw from dispute
11 resolution, and seek judicial or administrative redress before reaching a written
12 resolution agreement. The withdrawal shall be in writing. If a minor or a victim
13 withdraws from dispute resolution, a legal penalty, sanction, or restraint may not be
14 imposed upon the person for that withdrawal.

15 (g) A center established under this section may seek and accept contributions
16 and any other available money and may expend the money to carry out the purposes
17 of this section.

18 (h) A member of the board of directors of a community dispute resolution
19 center is immune from suit in a civil action based upon a proceeding or other official
20 act performed in good faith as a member of the board. Employees and volunteers of
21 a community dispute resolution center are immune from suit in a civil action based on
22 a proceeding or other official act performed in their capacity as employees or
23 volunteers, except in cases of wilful or wanton misconduct. A center is immune from
24 suit in a civil action based on a proceeding or other official act performed by its
25 employees, volunteers, or members or its board of directors, except in cases of wilful
26 or wanton misconduct by its employees or volunteers or in cases of official acts
27 performed in bad faith by members of the board.

28 (i) In this section, "center" means a community dispute resolution center.