

SENATE CS FOR CS FOR HOUSE BILL NO. 379(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/3/96

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (A) defined as community service under AS 33.30.901; or
2 (B) that, on the recommendation of the city council or
3 traditional village council, would benefit persons within the city or village who
4 are elderly or disabled.

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

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

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

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

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

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

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

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

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

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

1 (A) notice that the minor and victim have been unable to enter
2 into a written agreement under (d)(2) of this section or that the minor or victim
3 has withdrawn from mediation as authorized by (f) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 * **Sec. 5.** REVISOR'S INSTRUCTION. In the event SCS CSSH B 387(JUD), passed by
31 the Nineteenth Alaska State Legislature, becomes law, the amendment to AS 47.10.020(a)

1 made in sec. 2 of this Act shall be treated as an amendment to AS 47.12.040; the amendment
2 to AS 47.10.080(b) made in sec. 3 of this Act shall be treated as an amendment to
3 AS 47.12.120; and AS 47.10.267, enacted by sec. 4 of this Act, shall be renumbered by the
4 revisor to place it in AS 47.12, with conforming changes made to AS 22.35.020, enacted by
5 sec. 1 of this Act.