

SENATE BILL NO. 117

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY SENATOR COGHILL

Introduced: 4/24/15

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a tribal court diversion program for certain offenses; relating to**
2 **superior court jurisdiction; and amending Rules 215, 609, 610, and 611, Alaska Rules of**
3 **Appellate Procedure."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 12.80 is amended by adding new sections to read:

6 **Article 2. Tribal Court Diversion Program.**

7 **Sec. 12.80.100. Tribal court diversion program.** (a) Subject to (e) of this
8 section, upon recommendation of the appropriate law enforcement agency, the state
9 may elect to defer prosecution of a tribal member in a criminal case and refer the tribal
10 member to a tribal court under the procedure provided in this section when the tribal
11 member has been accused of committing one of the following offenses:

12 (1) an attempt under AS 11.31.100 or solicitation under AS 11.31.110
13 to commit a class B misdemeanor under AS 11;

14 (2) assault in the fourth degree under AS 11.41.230 if the tribal

1 member has not previously

2 (A) been convicted of

3 (i) a felony crime against a person under AS 11.41; or

4 (ii) assault in the fourth degree; or

5 (B) been referred to a tribal court under this section;

6 (3) a class B misdemeanor under AS 11;

7 (4) AS 04.11.501;

8 (5) AS 04.16.050;

9 (6) AS 28.35.280.

10 (b) The state may not consent to a referral under this section unless the state
11 has consulted with the victim and explained the process and consequences of the
12 referral to the victim. The state may not elect to proceed under this section if the tribal
13 member has previously been referred to a tribal court under the procedure provided in
14 this section two or more times.

15 (c) The state may not make a referral under this section unless the state obtains
16 written consent from the tribal member stating that the tribal member

17 (1) agrees to be adjudicated before the appropriate tribal court;

18 (2) agrees to comply with the tribally imposed remedy, if any, and that,
19 if the tribal member fails to comply with the tribally imposed remedy, the state may
20 initiate prosecution for the offense in state court;

21 (3) will not have the right to legal counsel in tribal court; and

22 (4) acknowledges that the tribal court is not bound by Alaska law or
23 procedure.

24 (d) Once the state makes a referral under this section and the tribal member
25 consents to be adjudicated before the appropriate tribal court for the alleged offense,
26 the state may withhold prosecution for the offense. The tribal court may incorporate
27 culturally derived procedures, including restorative justice hearings and circle
28 sentencing, imposing fines, or requiring forfeiture of property under procedures
29 adopted by the tribal court. It is the intent of the legislature that the tribal court

30 (1) shall use the fines collected for restitution for the victim of the
31 crime and, if any funds remain after victim restitution has been paid, for the benefit of

1 the tribe;

2 (2) shall notify the appropriate law enforcement agency if the tribal
3 court becomes aware of potential criminal conduct involving a felony, misdemeanor,
4 or violation not listed under (a) of this section.

5 (e) If a tribal member is accused of committing an offense listed under (a) of
6 this section involving domestic violence, the mandatory arrest provisions of
7 AS 18.65.530 still apply. The arresting or investigating officer shall also comply with
8 the provisions of AS 18.65.515 and 18.65.520. If there is a mandatory arrest for an
9 offense listed under (a) of this section, the state may elect to make a referral under this
10 section at the state court arraignment.

11 (f) If the state elects to make a referral under this section and the tribal
12 member does not comply with the tribally imposed remedy under (d) of this section,
13 the state may prosecute the tribal member in state court.

14 (g) If the state makes a referral under this section and the tribal member
15 complies with the tribally imposed remedy under (d) of this section, the state may not
16 prosecute the tribal member in state court.

17 **Sec. 12.80.110. Tribal court diversion program; notice required.** (a) If the
18 state elects to refer a criminal case to tribal court under AS 12.80.100, the appropriate
19 tribal court shall promptly provide notice to the state on a form created by the
20 department after a remedy is ordered that includes the following information:

- 21 (1) the name of the tribal member;
22 (2) the circumstances of the offense; and
23 (3) the remedy ordered by the tribal court.

24 (b) The tribal court shall promptly notify the state on a form provided by the
25 department if

- 26 (1) the tribal member complies with the tribally imposed remedy and
27 the date of that compliance;
28 (2) the tribal member fails to comply with the tribally imposed remedy
29 within 120 days after the date the tribal court imposes the remedy.

30 (c) If the tribal member is later referred to tribal court under
31 AS 12.80.100(a)(1) or (2) after committing another offense, the tribal court shall use a

1 new form applicable to that new offense.

2 (d) The tribal court shall provide the forms under (a) and (b) of this section to
3 the department at least on a quarterly basis.

4 **Sec. 12.80.120. Appeals.** (a) If a tribal member consents to a referral to a tribal
5 court in a criminal case under AS 12.80.100, the tribal member may appeal the tribal
6 court's decision or tribally imposed remedy to the superior court within 30 days after
7 the tribal court's decision.

8 (b) On appeal, the tribal member shall be afforded all rights and privileges
9 available by law or under the Constitution of the State of Alaska.

10 **Sec. 12.80.130. Jurisdiction.** Nothing in AS 12.80.100 - 12.80.200 limits,
11 alters, or diminishes the sovereignty or jurisdiction of the tribal court or the tribe.

12 **Sec. 12.80.200. Definitions.** In AS 12.80.100 - 12.80.200,

13 (1) "department" means the Department of Law;

14 (2) "tribal court" means a tribal justice system established by a tribe;

15 (3) "tribal member" means a member of a federally recognized Indian
16 tribe;

17 (4) "tribe" means an Indian tribe or band or Alaska Native village that
18 is recognized by federal law.

19 * **Sec. 2.** AS 22.10.020 is amended by adding a new subsection to read:

20 (j) The superior court has jurisdiction in matters appealed to it under
21 AS 12.80.100 - 12.80.120. The superior court, in its discretion, may grant a trial de
22 novo, in whole or in part.

23 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 12.80.120, added by sec. 1 of
26 this Act, and AS 22.10.020(j), added by sec. 2 of this Act, have the effect of changing Rule
27 215, Alaska Rules of Appellate Procedure, by giving a tribal court member the right to appeal
28 a sentence for a misdemeanor offense imposed by a tribal court where the sentence imposed is
29 less than 120 days imprisonment.

30 (b) AS 12.80.120, added by sec. 1 of this Act, and AS 22.10.020(j), added by sec. 2 of
31 this Act, have the effect of changing Rules 609, 610, and 611, Alaska Rules of Appellate

- 1 Procedure, by giving a tribal court member the right to appeal a decision or sentence imposed
- 2 by a tribal court to the superior court.