

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 117

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATOR COGHILL

Introduced: 1/19/16

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a tribal court diversion program for certain offenses; and relating to
2 exemption of and levy on permanent fund dividends."

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

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

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

6 **Sec. 12.80.100. Tribal court diversion program.** (a) Subject to (e) of this
7 section, upon recommendation of the appropriate law enforcement agency, the
8 department, after consultation with the appropriate tribal court, may elect to defer
9 prosecution of a tribal member in a criminal case and refer the tribal member to a
10 tribal court under the procedure provided in this section when the tribal member has
11 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;

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

2 (4) AS 04.11.501;

3 (5) AS 04.16.050;

4 (6) AS 28.35.280.

5 (b) The department may not consent to a referral under this section unless the
6 department has met with the victim and explained the process and consequences of the
7 referral to the victim.

8 (c) The department may not make a referral under this section unless the
9 department obtains written consent from the tribal member stating that the tribal
10 member

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

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

15 (3) will not have the right to legal counsel in tribal court at the expense
16 of the state or tribe if legal counsel is permitted in the applicable tribal court; and

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

19 (d) Once the department makes a referral under this section, the tribal member
20 consents to be adjudicated, and the tribal court accepts jurisdiction, the department
21 may withhold prosecution for the offense. The tribal court may incorporate culturally
22 derived procedures, including restorative justice hearings and circle sentencing,
23 imposing fines, or requiring forfeiture of property under procedures adopted by the
24 tribal court. It is the intent of the legislature that the tribal court

25 (1) shall have the discretion to use fines, fees, and other monetary
26 remedies on a case-by-case basis that best meets the needs of the victim, the
27 community, and the tribe;

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

31 (e) If a tribal member is accused of committing an offense listed under (a) of

1 this section involving domestic violence, the mandatory arrest provisions of
 2 AS 18.65.530 still apply. The arresting or investigating officer shall also comply with
 3 the provisions of AS 18.65.515 and 18.65.520. If there is a mandatory arrest for an
 4 offense listed under (a) of this section, the department may elect to make a referral
 5 under this section at the state court arraignment.

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

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

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

- 17 (1) the name of the tribal member;
- 18 (2) the circumstances of the offense;
- 19 (3) the remedy ordered by the tribal court; and
- 20 (4) the time allowed for compliance.

21 (b) The tribal court shall promptly notify the department on a form provided
 22 by the department if

- 23 (1) the tribal member complies with the tribally imposed remedy and
 24 the date of that compliance;
- 25 (2) the tribal member fails to comply with the tribally imposed remedy
 26 within the time allowed for compliance.

27 (c) If the tribal member is later referred to tribal court under
 28 AS 12.80.100(a)(1) or (2) after committing another offense, the tribal court shall use a
 29 new form applicable to that new offense.

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

1 **Sec. 12.80.120. Jurisdiction.** Nothing in AS 12.80.100 - 12.80.200 limits,
2 alters, or diminishes the sovereignty or jurisdiction of the tribal court or the tribe.

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

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

5 (2) "law enforcement agency" means the division of Alaska state
6 troopers, a village public safety officer program, a village police officer agency, a
7 tribal police officer agency, or a municipal or borough law enforcement agency;

8 (3) "tribal court" means a tribal justice system established by a tribe;

9 (4) "tribal member" means a member of a federally recognized Indian
10 tribe;

11 (5) "tribe" means an Indian tribe or band or Alaska Native village that
12 is recognized by federal law.

13 * **Sec. 2.** AS 43.23.065(b) is amended to read:

14 (b) An exemption is not available under this section for permanent fund
15 dividends taken to satisfy

16 (1) child support obligations required by court order or decision of the
17 child support services agency under AS 25.27.140 - 25.27.220;

18 (2) **court-ordered** [COURT ORDERED] restitution under
19 AS 12.55.045 - 12.55.051, 12.55.100, or AS 47.12.120(b)(4) **or tribal-court-ordered**
20 **restitution under AS 12.80.100 - 12.80.200;**

21 (3) claims on defaulted education loans under AS 43.23.067;

22 (4) **court-ordered** [COURT ORDERED] fines;

23 (5) writs of execution under AS 09.35 of a judgment that is entered

24 (A) against a minor in a civil action to recover damages and
25 court costs;

26 (B) under AS 09.65.255 against the parent, parents, or legal
27 guardian of an unemancipated minor;

28 (6) a debt owed by an eligible individual to an agency of the state,
29 including the University of Alaska, unless the debt is contested and an appeal is
30 pending, or the time limit for filing an appeal has not expired;

31 (7) a debt owed to a person for a program for the rehabilitation of

1 perpetrators of domestic violence required under AS 12.55.101, AS 18.66.100(c)(15),
2 AS 25.20.061(3), or AS 33.16.150(f)(2);

3 (8) a judgment for unpaid rent or damage owed to a landlord by an
4 eligible individual that was a tenant of the landlord; in this paragraph, "tenant" has the
5 meaning given in AS 34.03.360;

6 **(9) tribal-court-ordered fines under AS 12.80.100 - 12.80.200.**