

**HB**

**379**

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date: \_\_\_\_\_  
 Title: An Act authorizing establishment of alternative  
dispute resolution centers...  
 Sponsor: Rep. Porter  
 Requestor: (H) Jud

Dept. Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
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<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

Prepared by John Salemi, Director  
 Division: Public Defender Agency

Phone: 268-264-4400  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: \_\_\_\_\_

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB379

Revision Date: \_\_\_\_\_  
 Title: Establish Alternate Dispute Resolution  
Centers for Juvenile Offenders  
 Sponsor: Representative Porter  
 Requestor: House (JUD)

Dept. Affected: Health and Social Services  
 BRU: Family and Youth Services  
 Component: DFYS Central Office  
 COMPONENT SERIAL NO. 259  
 See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF MHTIA						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost:                     30.0                    

**ANALYSIS:** (Attach a separate page if necessary)

This bill has no fiscal impact on the Division of Family & Youth Services.

Prepared by: L. Diane Worley  
 Division: Family & Youth Services  
 Approved by Commissioner: Karen Pedrotti  
 Agency: Department of Health & Social Services

Phone: \_\_\_\_\_  
 Date: 01/16/96  
 Date: 1/11/96

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# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO. CSHB 379 (JUD)**

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: An Act authorizing establishment of BRU: Trial Courts  
community dispute resolution centers ... juvenile offender Component: \_\_\_\_\_  
 Sponsor: Rep. Porter  
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 OF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 96) cost: \$ None

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228  
 Agency: Alaska Court System Date: 01/16/96

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 01/16/96  
 Agency: Alaska Court System

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FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date: \_\_\_\_\_  
Title: "An Act authorizing establishment of alternative dispute resolution centers..."  
Sponsor: Rep. Porter  
Requestor: (H) Judiciary

Department Affected: Administration  
BRU: Office of Public Advocacy  
Component: Office of Public Advocacy  
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on the Office of Public Advocacy.

Prepared by: Brant McGee, Public Advocate  
Division: Office of Public Advocacy

Phone: 274-1684  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Administration

Date: \_\_\_\_\_

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...authorizing...alternate dispute resolution centers BRU: Civil Division  
...disputes between juvenile offenders and their victims." Component: General Legal Services  
 Sponsor: Representative Porter  
 Requester: Representative Porter COMPONENT SERIAL NO. 2087

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends AS 47.10 to authorize municipalities or nonprofit corporations organized exclusively for the resolution of disputes between minors who are alleged to have committed offenses and the victim of these offenses, to establish and operate alternative dispute resolution centers. The bill also provides that disposition of a juvenile court matter may include use of the services of an alternate dispute resolution center. Use of a center would be voluntary for both juvenile offenders and victims. The bill will not have a fiscal impact for the Department of Law, because alternate dispute resolution centers would be operated by municipalities and nonprofit organizations, and because of the voluntary nature of the bill's dispute resolution process. The bill should have a positive impact on the state's overburdened juvenile justice system.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 1/16/96  
 Date: 1/16/96

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### 11. Impact of Mediation on Recidivism

- *Juvenile offenders in victim offender mediation programs committed considerably fewer crimes than a matched sample of similar offenders not in mediation.*
- *This finding of lower recidivism, however, was not statistically significant.*

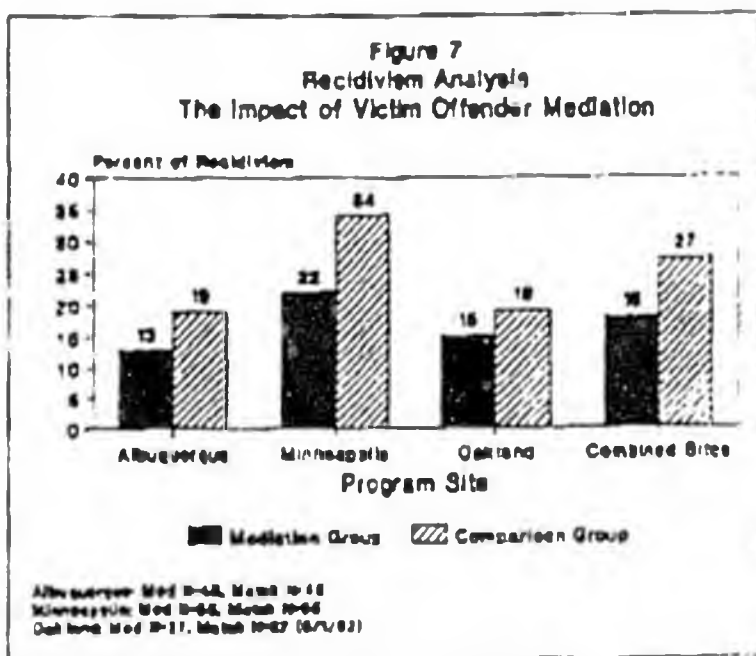
The issue of whether or not the victim offender mediation process has an impact upon reducing further criminal behavior (recidivism) by those offenders participating in mediation was examined at each of the three initial sites. The comparison group at each site consisted of similar offenders from the same jurisdiction who were matched with offenders in mediation, along the variables of age, sex, race, offense and restitution amount.

As Figure 7 indicates, juvenile offenders in the three mediation programs committed considerably fewer additional crimes, within a one year period following the mediation, than similar offenders in the court administered restitution program. They also tended to commit crimes that were less serious than the offense of referral to the mediation program. The largest reduction in recidivism occurred at the Minneapolis program site (post adjudication cases in Hennepin County), with a recidivism rate of 22 % for the mediation sample and a rate of 34 % for the comparison group sample.

While it is important to know that the victim offender mediation process appears to have had an effect on suppressing further criminal behavior, the finding is not, however, statistically significant. The possibility that this apparent effect of mediation upon reducing recidivism occurred by chance cannot be ruled out. This marginal but non-significant reduction of recidivism is consistent with two English studies of victim offender mediation (Dignan, 1990, Marshall and Merry, 1990). Only one study in the U.S. is known (Schneider, 1986) to have found a significant impact of mediation upon offender recidivism. The program in that study, however, did not employ the same type of procedures

used by the programs described in this cross-site analysis of victim offender mediation.

For some, a finding of a marginal but non-significant impact of the mediation process upon reducing offender recidivism may come as a disappointment. For others, including the authors, it comes as no surprise. Rather, such a finding is consistent with recidivism studies related to other community justice alternative programs. It could be argued that it is



rather naïve to think that a time-limited intervention such as mediation by itself (perhaps 4-8 hours per case) would be likely to have a dramatic effect on altering criminal and delinquent behavior in which many other factors related to family life, education, chemical abuse and available opportunities for treatment and growth are known to be major contributing factors.

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:  
Referred:

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 11.71.030(a)(4), order the minor to perform 50 hours of community service, for  
31 purposes of this paragraph, "community service" includes work

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

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

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

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

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

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

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

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

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

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

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

(7) for communicating to the agency making a referral under AS 47.10.020(a)(1)(A) or the court making a referral under AS 47.10.080(b)(4), as 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.

# Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN  
HOUSE JUDICIARY COMMITTEE

MEMBER  
HOUSE LABOR & COMMERCE COMMITTEE  
HOUSE STATE AFFAIRS COMMITTEE  
INTERNATIONAL TRADE & TOURISM  
COMMITTEE

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**DISTRICT 20**

## SPONSOR STATEMENT

For

### HB 379 COMMUNITY DISPUTE RESOLUTION CENTERS

Victim offender mediation is a process in which trained volunteer mediators bring victims and juvenile offenders face to face to discuss the property loss and emotional damage caused by the crime. The goal of this meeting is for the victim and the offender to agree on a restitution contract.

Victim offender mediation is part of the larger concept of restorative justice. With this approach offenders take personal responsibility for repairing the damage they have caused.

#### WHAT ARE THE BENEFITS?

##### FOR VICTIMS:

- Victims report great satisfaction with the mediation process. It allows them to confront the offender with the very real personal impact of their crime.
- Victims report satisfaction with the restitution agreements due to the fact that they are tailor made to repair their specific loss and their needs for restitution.
- Victims appreciate having their case resolved in a timely and efficient manner with their maximum involvement.

##### FOR OFFENDERS:

- Offenders have the chance to talk with a victim and to make amends of the crime.
- Offenders are more willing to fulfill the restitution agreements that they helped create.
- Offenders' parents get involved.

##### FOR THE COMMUNITY:

- The public sees timely and more meaningful responses to juvenile crime.
- Volunteer community mediators have a direct impact on youth.
- National studies of offenders in victim offender mediation programs found that they committed considerably fewer future crimes.

# Alaska State Legislature

## Representative Brian S. Porter



CHAIRMAN  
HOUSE JUDICIARY COMMITTEE

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### DISTRICT 20

#### Memorandum

**Date:** January 17, 1995  
**To:** Representative Brian Porter, Chair  
House Judiciary Committee Members  
**From:** Daniella Loper, Leg. Aide to Representative Porter  
**RE:** HB 379 Community Dispute Resolution Centers

The bill establishes community dispute resolution centers as an alternative for informal resolution and disposition for certain offenses committed by minors. Further, this bill allows judges to use these resolution centers in conjunction with restitution orders made when a minor is adjudicated a delinquent.

**Bill section 1**, adding a new bill section, to permit the administrative director of the court system to recognize an entity as a community dispute resolution center.

**Bill section 2** amends AS 47.10.020(a)(1)(A) to authorize referral of a minor to a community dispute resolution center for purposes of informal adjustment or disposition of a matter by the Department of Health & Social Services following preliminary inquiry.

**Bill section 3** amends AS 47.10.080(b)(4) to permit a judge who has adjudicated a minor to be a delinquent and ordered the minor to pay restitution to require the minor and victim of the minor's offense to use the services of a community dispute resolution center to resolve a dispute involving the amount or manner of payment of the restitution.

**Bill section 4**, adding a new bill section, AS 47.10.267, spells out the procedures by which an entity organized for the purpose of providing community mediation services may operate a community dispute resolution center qualifying under this Act to provide services for minors and the victims of their offenses. Moreover, establishes that all communication within the mediation process is confidential and privileged. Withdrawal from the dispute resolution process either by the offender or the victim is allowed and they may seek judicial or administrative

redress. Employees, volunteers and the board of directors for the dispute resolution center are immune from suit in a civil action except in cases of willful or wanton misconduct.



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR  
William T. Cotton

January 18, 1996

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Janice Lennhart  
Victor A. Ooba

Representative Al Vezey  
Alaska Legislature  
Juneau, AK

ATTORNEY MEMBERS  
Mark E. Ashburn  
Thomas G. Nave  
Christopher E. Zimmerman

Via FAX: 907/465-3258

CHAIRMAN, EX OFFICIO  
Allen T. Compton  
Chief Justice  
Supreme Court

Dear Representative Vezey:

I am sorry that the Anchorage LIO office disconnected us before the end of yesterday's hearing on CSHB 339. I understand you had some concern about the necessity of this legislation, since mediation already is occurring. In fact, the bill is necessary for a number of reasons:

- The bill formally establishes the confidentiality procedures under which VOMP now operates informally. As long as these procedures remain informal, community mediation programs will continue to be vulnerable to expensive and damaging legal challenges;
- The bill formally establishes reasonable protection from suit for citizens who volunteer their time to these worthwhile programs. Without this measure of protection, volunteers will continue to be vulnerable to expensive and damaging lawsuits;
- The bill creates a mechanism for the court system to refer offenders to mediate restitution contracts. No other law of which I am aware explicitly gives the court this valuable option;
- The bill encourages creation of mediation programs statewide by clearly establishing the necessary process and standards. I can tell you from experience that creating the VOMP pilot project involved an enormous amount of volunteer work and coordination between a dozen state agencies and other entities. This bill gives other groups a "running start" which might well make the difference between creating a community mediation program or not.

These are just a few of the reasons that this legislation is so important. I note for comparison that the legislature last session passed a statute formally establishing the use of youth courts, despite the fact that the Anchorage Youth Court already was operating. If you have questions please do not hesitate to call. Thank you for your time.

Sincerely,

*Suzanne Di Pietro*  
Suzanne Di Pietro  
Staff Attorney

cc: Representative Brian Porter (FAX 907/465-3834)

4770 Mills Drive  
Anchorage, Alaska 99508-4733

April 22, 1996

Senator Robin Taylor  
Capital Room 30

Dear Senator Taylor:

RE: HB370

This Bill originated in Anchorage but has implications for the state, including your district. Restorative justice is anti-crime, cost effective, and engages the community in an active response. I encourage you to wage your disagreement with Representative Porter in a different way and not hold this bill hostage. Community Dispute Resolution is not restricted to geographic communities. It can be equally effective with the legislative community.

House Bill 379, authorizing the establishment of community dispute resolution centers to foster restorative justice has successfully passed the House and is in the Senate Judiciary Committee. In your capacity as a Chair of this Committee, I will be most appreciative for any help you can muster to move this Bill through the Senate before adjournment. The Anchorage Community Dispute Resolution Center is doing a marvelous job mediating restitution contracts between victims and juvenile offenders and this legislation is necessary to its continued growth and the development of similar programs throughout the state. A long term goal is to institutionalize this intervention in the adult and juvenile criminal justice system.

Restorative justice places accountability expectations on offenders creating an awareness of the harmful consequences of their actions, requiring that they take action to "make amends" to victims and the community, and involves victims directly in the justice process, wherever possible. These are low-cost community-based programs utilizing trained volunteers to effect restorative justice outcomes. It would be most unfortunate if the development of this proactive response to crime is delayed in receiving the necessary legislative support during this session.

Sincerely yours,



Patrick M. Cunningham



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR  
William T. Cotton

January 19, 1996

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ATTORNEY MEMBERS  
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Christopher E. Zimmerman

CHAIRMAN, EX OFFICIO  
Allen T. Compton  
Chief Justice  
Supreme Court

Representative Mark Hanley,  
Representative Richard Foster  
Co-Chairs, House Finance Committee  
Alaska Legislature  
Juneau, AK

Via FAX: 907/465-2418  
907/465-3242

Dear Representatives Hanley and Foster:

I am writing to support Representative Porter's request that you waive CSHB 379 (juvenile victim-offender mediation) out of the House Finance Committee. The bill has no fiscal notes and will not negatively impact the state's budget.<sup>1</sup> Second, the agencies affected by the bill have warmly supported it, and no opposition is anticipated. Finally, waiving the bill out of the House Finance Committee puts it that much closer to a hearing and vote on the House floor. With time at such a premium during this busy second session, every little bit helps.

We who have worked on the bill are extremely pleased with the efficiency with which it has progressed through the legislative process. Whatever your decision in this matter, we appreciate your willingness to consider our request and hope that CSHB 379 will receive your favorable consideration.

If you have questions or wish more information about the juvenile victim offender mediation project, please do not hesitate to call. Thank you for your time.

Sincerely,

Susanne Di Pietro  
Staff Attorney

cc: Representative Brian Porter

<sup>1</sup> In fact, it is our hope that the bill will save the state money by helping overburdened juvenile intake officers handle their caseloads.

**DREW PETERSON**  
ATTORNEY AT LAW, MEDIATOR AND DISPUTE RESOLUTION CONSULTANT

4325 LAUREL STREET, SUITE 220  
ANCHORAGE, ALASKA 99508

(907) 561-1510 • FAX (907) 502-0700

January 16, 1996

TO WHOM IT MAY CONCERN:

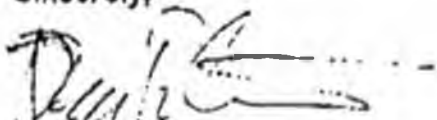
This letter is written in support of the Anchorage Community Dispute Resolution Center (CDRC), and specifically to encourage the favorable consideration of HB 379.

I have been a practicing attorney in Anchorage since 1979, and a practicing mediator since 1987. I am an active member of the Anchorage mediation community, involved with both the Alaska Dispute Settlement Association and the Alternative Dispute Resolution Section of the Alaska Bar Association. I sit on the Mediation Committee of the Alaska Supreme Court. I am also one of the CDRC volunteer mediators, so I have first hand experience with the program.

During the years that I have been involved with mediation in Anchorage, I believe that CDRC has generated the most immediate positive response to the use of mediation by people who were previously uninformed about the mediation process. CDRC has done a tremendous job in a short time of demonstrating that real community benefit can be provided by mediation services, notably in mediating disputes between juvenile criminal offenders and the victims of their crimes. The CDRC program is an example of the kind of innovative, proactive programs which are needed for society to do a better job than it has in the past in effectively dealing with juvenile crime.

I cannot say enough nice things about the CDRC program. It is doing a wonderful job, and as I believe supported wholeheartedly by the Anchorage mediation community. I would urge the favorable support of HB 379 as a method of further strengthening this great service.

Sincerely,



DREW PETERSON  
DHP/dp

FAX to 274-0332



# UNIVERSITY OF ALASKA ANCHORAGE

3211 Prudence Drive  
Anchorage, Alaska 99506

COLLEGE OF ARTS AND SCIENCES  
DEPARTMENT OF SOCIAL WORK

January 16, 1995

Representative Brian Porter  
Chair, House Judiciary Committee  
Juneau, Alaska

RE. HB 379, Community Dispute Resolution Centers

Dear Representative Porter:

I wish to offer my support to your efforts to obtain passage of HB 397, which you recently introduced, as the primary sponsor. I am writing to you in my dual roles as a faculty member of the University of Alaska Anchorage with a long history of work in juvenile justice, and as the Chair of the McLaughlin Youth Center's Citizen Advisory Board.

In my opinion, establishing community dispute resolution centers to promote the active participation of victims and juvenile offenders in obtaining restorative justice, will have a positive and profound impact upon reducing crime and its deleterious effects. It engages both the victim and offender in a more active participation in the justice process. Direct confrontation, restitution, accountability, socialization, healing, empowerment, and achieving justice are all possible within this model. These centers will provide the opportunity for community members to actively participate in this process as volunteers and have a direct impact upon reducing crime, where they live. The dollar cost is minimal the savings enormous.

I recognize that this is not the final solution to one of our major social problem but it is definitely a program that has proven effectiveness. It is particularly useful in recognizing the need for victims to be major participants in responding to crimes against them and also in diverting youth from escalating their criminal activity. The idea of presenting a problem solving model in which the resolving of disputes can occur, without violence, has the potential of not only impacting juvenile offenders and their victims but anyone who chooses violence to solve dilemmas.

Thank you for creating this piece of legislation and if I can be of any assistance, please call upon me.

Sincerely yours,

A handwritten signature in cursive script that reads "Patrick M. Cunningham".

Dr. Patrick M. Cunningham, DSW  
Associate Professor

# Victims for Justice

619 East Fifth Avenue, Anchorage, AK 99501  
Phone: (907)278-0977 FAX: (907)258-0740

January 17, 1996

Dear Representative Brian Porter,

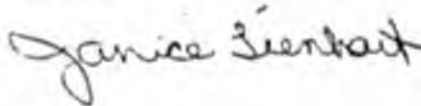
As a founder of Victims for Justice and the Victim-Offender mediation project. I strongly support HB 379 Community Dispute Resolution Centers.

The main purpose of this legislation is to replace the nonparticipative courtroom with a new environment. Crime is viewed as a conflict between two people. Mediation, as process for mutual resolution of conflict, is more likely than a courtroom to allow for participation and reconciliation.

Mediation offers other benefits over and above reaching an agreement on restitution. The victim may feel some healing from the crime. The juvenile may feel more accountable and as a result may be more likely to comply with the restitution agreement. By intervening early, the first-time offender might be less likely to commit future violent acts.

It is anticipated that the Alaska Victim Offender Mediation Project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. Mediation may succeed where juvenile justice has failed in reducing the number of violent youths in our society.

Sincerely,



Janice Lienhart, Executive Director  
Victims for Justice

Crisis Intervention

Short and Long Term  
Emotional Support

Grief Education

Victim Advocacy

Assault Support  
Group

Homicide Survivors  
Support Group

Court Accompaniment

CourtWatch Program

Annual Victims Rights  
Week Observance

Member - National  
Association of Victim  
Advocacy

Member - National  
Organization Victim  
Assistance

THE FOLLOWING PAGES MAY  
NOT FILM LEGIBLY BECAUSE OF  
THE POOR QUALITY OF THE ORIGINAL



# ALASKA JUSTICE FORUM

A Publication of the  
Justice Center

Alaska Justice  
Statistical Analysis Unit

Summer 1994

UNIVERSITY OF ALASKA ANCHORAGE

Vol. 11, No. 2

## Victim-Offender Mediation in Anchorage

Patricia Cunningham  
and Lawrence C. Tritle

A pilot victim-offender mediation program, which involves mediation sessions of certain offenses and the victims thereof, has recently been established in Anchorage. Mediation is offered as a diversion from the courts, with the hope that offenders may accept responsibility for their actions.

Mediation between a victim and offender is in the goal of reconciling relations and reconciliation and supplementing the formal adjudication process. Under mediation, both victim and offender are active participants in the restorative process. The victim has the opportunity to confront the offender to seek a resolution of the offense, and the offender is given the opportunity to make amends for the crime. Such restorative programs intend to restore both parties to more positive social functioning in the larger community and to compensate the harm of the crime and its consequences in the criminal justice system. Mediation programs often are used as an alternative to a trial, or within the trial process, as a diversion from the system.

The western world is turning to the restorative system of criminal justice. This is done as a response to an offense against the state, even though a victim may also be involved in the state that prosecutes and

brings a case to disposition. Neither the victim nor the offender have much to say in the process, with the involvement of both being quite passive. Since until recently, in ordinary court proceedings, victims were seldom more than observers, feelings of marginalization, helplessness, and further victimization were common.

### Victim-Offender Mediation

Victim-offender mediation programs provide an opportunity for victims to meet the offender, usually face in the presence of a trained mediator for the purpose of reaching a resolution which intends to resolve the harm of the crime in some way. In fact, under the mediation model, is viewed as a contract between people rather than as an authoritative decree. Through mediation the victim has the opportunity for involvement in the process of negotiating restitution, expressing feelings, and seeking answers from the offender. For the offender, mediation provides an opportunity for involving accountability for the act, personalizing the crime, and providing a corrective intervention. The idea of the offender making restitution to the wronged person has precedent in many cultures, although it has not commonly been used as a criminal sanction under modern Western systems.

### Development

An early incarnation of a modern Western model providing mediation between a victim and offender occurred in 1974 in Kitchener, Ontario, Canada, the Victim-Offender Reconciliation Program or VORP. This was followed in 1976 in the United States by a program with the same name, which was started in Elkhart County, Indiana through the participation of the U.S. Prisoners and Community Corrections and the Marquette Center. The program continued until 1981

program sites had been established primarily in the Midwest and Canada. By 1994, 25 victim-offender mediation programs were operating in Canada, over 100 in the United States, and 165 in Western Europe.

According to Sam Galaway in a 1993 article in *Social Service Review*, of 14,000 cases referred by the courts to VORP programs, 86 percent were reported to have resulted in successfully completed restitution contracts. The study indicated that victims, for the most part, were not vindictive in negotiating with the offender and that there was a high level of willingness to meet among victim and offender. While long-term research regarding the effectiveness of the mediation model has been limited, such preliminary findings have been consistent in demonstrating that mediation is an effective way to resolve conflict between some crime victims and their offenders.

### The Development of Victim-Offender Mediation in Anchorage

To date, the criminal justice system in Alaska has used formal mediation primarily with juvenile offenders. In 1991, Janice Lienhart, one of the founders of Victims for Justice, a private, nonprofit agency, which provides services to victims of crimes, sought assistance from staff at the McLaughlin Youth Center for a family whose son had been killed by a juvenile, who at that time was being held at the Center. What resulted was a victim-offender mediation involving the family and the juvenile. As a result of that mediation and several subsequent ones at McLaughlin, a core group of professionals formed an organizational base to explore the idea of implementing a victim-offender mediation program in Anchorage. Four organizations were represented in this effort: Victims for Justice, the McLaughlin Youth Center, the

### HIGHLIGHTS INSIDE THIS ISSUE

- The Bureau of Justice Statistics describes federal and state prison populations, page 7.
- Cook Inlet Region Inc. awards \$100,000 grant to the Justice Center, page 9.
- The Bureau of Justice Statistics analyzes the incidence of child sexual abuse and victimization in the work place, page 11.

### SUPPORTING DOCUMENTS

For more information, see page 12.







Michael Carey, Editor  
 Patrick Dougherty, Managing Editor

Volume 1, Number 1, 1984-1985  
 Katherine Fanning, Editor  
 Lawrence Fanning, Editor  
 Founded in 1981

# Crime control

Here's an idea with great potential

What would you say about a program that sends a thoughtful letter to a victim, reduces the chances they will be offended and gives victims more say in the outcome of a case — all for a fraction of the cost of dispensing conventional justice?

You'd probably say it sounds too good to be true.

## Mediation could prove better than the current justice system.

But it's not. Such a program is being started in Anchorage, perhaps as early as next month. Known as a "victim-offender mediation project," it's being spearheaded by two University of Alaska

professors, Pat Cunningham and Larry Trostle.

The effort targets juveniles who are nabbed for first- or second-time property crimes. If both the offender and victim agree, they will meet face-to-face with a mediator and work out a restitution agreement. Options will include repayment, community service or perhaps just a letter of apology — whatever the two parties can agree to.

Mediation could prove better than the current justice system in several ways. Conventional proceedings relegate both offender and victim to passive roles. Judges, prosecutors, lawyers, police officers and other officials dominate action on the case. Criminals are tempted to beat the rap by contesting the evidence, instead of doing it right.

For victims, the crime often leaves them feeling hurt and powerless. The justice system treats them as complete bystanders. Many victims may not even learn the youthful offender's identity. Mediation can encourage the offender to take responsibility for his crimes while helping victims restore some feeling of control over their lives.

Perhaps the most amazing thing about this pilot program is that it costs a mere \$100 for six months, funded by the University of Alaska faculty development grants. Volunteer help from many quarters makes the obnoxious operation possible. Victims for Justice will help find victims to participate. Mediators will volunteer their services. Alaska Youth and Parent Foundation will supply office space. The Alaska Judicial Council will track the program's performance.

Similar approaches have worked well elsewhere. Pennsylvania State University found 120 such programs across the country and scores more in Canada and Europe. In a study of 14,000 cases, recidivism rates fell and offenders honored 96 percent of the restitution agreements.

Cunningham hopes the approach will merit expanding to juveniles outside Anchorage and to selected violent offenders. Eventually it may offer a useful alternative for certain crimes and offenders in the adult system as well. Widespread mediation might someday revolutionize American-style justice.

Throughout history, other cultures have emphasized restitution and reintegrating offenders into the community. Their values were — got lost in the shuffle of adversarial-style American justice. Making amends and healing victims are essential to deciding whether the accused is guilty or innocent. Mediation could produce a criminal justice system that delivers less crime and more justice.

# FORUM / LETTERS

## Mediation offers hope where juvenile justice fails

By MARY ANN DEARBORN

Youth violence is on the increase. There seems to be no easy fix. Too often people blame the individual. Perhaps if we develop a better understanding of how the individual relates to his or her environment, we can take steps to improve how our children cope with their world and how the world copes with them. By creating the right environment, successful interventions may be developed to correct or avoid violent behavior. The juvenile justice system might be the



confidential, under current children's court rules, the victim may never find out the juvenile's identity.

Because the juvenile's role is to passively be or the frequently does not feel remorse and is reluctant to comply with the ordered restitution. Due to an overburdened legal system, compliance with restitution may not be enforced. As a result, the victim may feel further harmed by the offender's failure to comply with the court's order. This is true before and after the offender's release.

Another problem is that the juvenile court system is often overwhelmed by the number of cases. The court may not have the resources to enforce restitution. The offender's probation officer may not have the resources to enforce restitution. The offender's probation officer may not have the resources to enforce restitution.

venues targeted are first and second time property offenders. The pilot project is now in the second stage and is funded through June. This program represents a dramatically different approach to the current juvenile justice system and is supported by 15 groups, including state agencies and the Alaska Court System.

The main purpose of the program is to replace the nonparticipative courtroom with a new environment. Crime is viewed as a conflict between two people. Mediation as a process for mutual resolution of conflict is more likely than a court trial to allow the offender to take responsibility for the crime. An impartial mediator guides the offender and the victim as they develop a mutually acceptable restitution agreement. The agreement

*Mediation, as a process for mutual resolution of conflict, is more likely than a courtroom to allow for participation and reconciliation.*



Dearborn

reached might be as simple as a sincere letter of apology or a community service contract.

Mediation offers a better teaching environment on restitution. The offender is not being lectured from the court. The offender may feel more responsible and as a result may be more likely to comply with the restitution agreement. If, under court order, the offender is not likely to comply with the restitution agreement, the offender may

Dr. Pat Cunningham, Department of Social Work, and Dr. Larry Trustle, Department of Justice, coordinated the UAA grant and are working with other members of the community to get the project rolling.

Juvenile probation officers will be making referrals and will follow up to make certain the restitution agreements are fulfilled by the juveniles. Victims for free will contact and screen potential participants. The Alaska Judicial Council will

monitor the project to run from the intervention has merit. Alaska Youth and Parent Foundation has offered office space, and Niki Stewart, former AYPF coordinator, has been hired to coordinate the program.

It is anticipated that the Alaska Victim Offender Mediation Project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. Crowded correctional institutions and growing doubts as to their effectiveness in deterring crime make victim-offender mediation a highly cost-effective alternative to incarceration for some offenders. Mediation may succeed where juvenile justice has failed in reducing the number of violent youths in our society.

Mary Ann Dearborn is a professional mediator in Anchorage.

## Alaska groups target juvenile - victim mediation

By Mary Ann Dearborn  
For the Journal of Commerce

Mediation is not just for settling civil disputes. Crime is viewed as a conflict between people and mediation offers an environment which is more likely than a courtroom to lead to a mutually acceptable resolution of that conflict.

A University of Alaska Anchorage faculty development grant awarded in 1993 is exploring the feasibility of establishing a victim juvenile offender mediation program in Anchorage, Alaska. The pilot project is now in the second stage and is funded through June, 1994.

Dr. Pat Cunningham, Department of Social Work, and Dr. Larry Trostle, Department of Justice, co-authored the grant, and 15 Alaska groups are supporting the program, including state agencies and the Alaska Court system.

A mediated settlement approach to settling crimes pre dates the idea of imprisonment. Restitution to persons wronged, intended to heal the injury of the crime, has precedence in many cultures. However restitution as a criminal sanction has played an insignificant role in the history of our criminal justice system. Instead of making individuals act responsibly, it locks people up in ever increasing



Dr. Larry Trostle

numbers and don't see much deterrence from criminal behavior after release.

First and second time juvenile property offenders are being targeted for a special project that will allow the juvenile offender and victim to meet face to face, using an impartial mediator, for the purpose of developing a restitution agreement. Some believe this will be a positive improvement to the current juvenile justice system.

Our current system dictates restitution in a courtroom setting where both offender and victim play passive



Dr. Pat Cunningham

roles. Due to confidentiality under children's court rules, the victim may never find out the juvenile's identity. Because of lack of participation, the juvenile frequently does not feel remorse, is reluctant to comply with the ordered restitution, and due to an overburdened legal system compliance with restitution may not be enforced. As a result the victim may feel further victimized this time by the system, and the juvenile may not think twice before pursuing future criminal activity.

The program calls for juvenile pro

bation officers to make referrals to the program and follow up to ensure restitution agreements are fulfilled by the juveniles. Victims for Justice would contact and screen victim participants. The Alaska Judicial Council would monitor the project to confirm the intervention has merit. Alaska Youth and Parent Foundation has offered office space and Niki Stewart, former AYPF coordinator, has been hired to coordinate the project. Professional and volunteer mediators are offering their services and will be trained to work with the program.

Mediation, as an intervention alternative to the current juvenile justice system, offers a hope for other benefits over and above reaching an agreement on restitution. The victim may feel some healing from the crime. The juvenile may feel more accountable and as a result may be more likely to comply with the restitution agreement. By intervening early, the young offender may be less likely to commit future criminal acts.

It is anticipated that the Alaska Victim Offender Mediation project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. The long range plan is to implement this program statewide and in both the juvenile and

Continued on Page 28

# Alternative Dispute Resolution

NEWS & INFORMATION

ALASKA BAR  
ASSOCIATION  
ADR SECTION



## Victim-offender mediation: Restorative alternative

By Nikishka Stewart

In January 1994 a pilot project funded through the University of Alaska Anchorage implementing a Victim-Offender Mediation Project. This project addresses juvenile crime and its effects on individuals and the community as a whole.

In our society, crime is viewed as an offense against the state and not as an injury to a person. Victim-Offender Mediation seeks to personalize the experience and humanize the parties involved while seeking a resolution agreement that effectively resolves the damage done.

The Anchorage mediation project has adopted five goals that help it accomplish this mission: 1.) To encourage accountability on the part of the juvenile offender. 2.) To provide an opportunity for the victim to work directly with the offender in discussing restitution. 3.) To provide an op-

portunity for parties to feel restored from or reconciled to the event. 4.) To provide a referral option for the juve-



Nikishka Stewart

nil corrections system to help handle their caseload. 5.) To maintain a high level of community investment and support.

This project utilizes trained volunteer mediators from the community and has a dynamic advisory committee which includes Master Bill Hitchcock (children's court), Donis Morris (McLaughlin Youth Center), Janice Lienhart (Victims for Justice), Suzanne Cole (Public Defender), Bob Buttene (Juvenile Intake), Patrick Cunningham (UAA), Sig Murphy (District Court Judge), Jay Page (First National Bank) and approximately 15 other community members who volunteer their time to provide direction and support.

To date the project has handled 60 cases. All referrals come from the intake officers at the Juvenile Intake Department housed at McLaughlin Youth Center. Of these 60 cases, 23 are ongoing and being developed for

mediation, 22 were closed without going to mediation and, so far, 15 were successfully mediated with restitution contracts in place.

In the 22 cases that were closed without mediation, 18 of those were due to victims declining to participate and four were screened out by program staff. Typically, when a party refuses it is the victim who declines.

There are more than 200 programs such as this throughout the U.S. and Canada. It is a community-based approach to a problem that affects us as individuals and as a community. How many of us have had the experience of being the victim of a crime? We know the ripple effect it has. We wonder, "Who did it?", "Why me?", "Are they going to do it again?" Without information and answers to these questions, we find that our minds tend to work to fill the void. We suppose all sorts of things and can often paint a picture of some horrible, threatening person who seeks only to prey on the unsuspecting. We can lose faith in our surroundings, in others. We wonder, what is safe any more? Who can you trust?

If the case is not resolved to the point where our questions are answered and to the point we feel justice is done our aggravation and frustration can be compounded. We end up fed up with the system and b-

Mead

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## Restorative alternative works for victim-offender mediation

Continued from Page 20

that crime is out of control. The Anchorage-based project brings victim and juvenile offender face to face in a safe and constructive setting to discuss the crime and the impacts it has had. The offenders hear how their actions have affected another person, the victims hear the juveniles' side of the story, and both parties work out an agreement that "makes it right." The offender takes

responsibility and shows he or she is willing to work it out. The victim is heard, in control, and gets to deal with reality rather than fearful suppositions. The end result is that both parties get to put the crime behind them. The victim feels restored and the offender has had a reality check that makes him or her think twice about breaking the law again. For further information or to volunteer, contact Nikishka (Niki) Stewart, the Project Coordinator at 274-1542.

## Reformers tout ADR programs

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ments sooner than the typical eve-of-trial agreements. Within 30 days of the filing of a responsive pleading, an administrator holds a meeting with the attorneys and their clients, including someone from both sides with the authority to settle. Each side discusses facts, issues and possible solutions.

If no settlement is reached, the administrator and the parties agree on the limited discovery that will be needed for ADR, which is scheduled within 90 days of the meeting. Litigants can choose from a number of options, but most pick mediation overseen by the program's administrator, probably because his services are free.

According to Donna Stienstra, a senior research associate for the Federal Judicial Center, the emphasis on getting cases into ADR quickly in Missouri's program is unusual. "There is an expectation that ADR works better later," she said. "One of the surprises of the program may be that

it works well early."

Indeed statistics kept by the district show some success. The cases are divided into three groups: those that are required to go through the early assessment program, those that may opt for it, and a control group of those that may not opt for it.

The median time from filing to disposition of the cases was 232 days for those required to participate, 310 days for those that could opt in, and 317 days for the control group. The cases studied were filed between Jan. 1, 1992, and April 30, 1993.

The 404 attorneys surveyed gave the program a thumbs up. Ninety-two percent said it should be continued and 67 percent said it was very or somewhat helpful in reducing the cost of resolving cases.

Wolf says the program "has been very effective in a district (without) significant problems" with case backlogs. "Can you imagine how effective it would be in a district where many cases are taking three years or more to go to trial?" he asked.

## Inspiration for Windows program outlines

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Inspiration doesn't have the graphics features of programs like Power Point or Persuasion. But we do like the program both as an outliner, and for the ease in which we could prepare good looking graphics.

Inspiration for Windows, Version 4. Inspiration Software Inc., 2920 N. Dolph Court, Portland, OR 97219. Phone (600) 677-4292 ex 14 or (503) 247-5011. Fax: (503) 247-4272.

writes about computers from his office in Homewood, Ill. Benjamin H. Cohen is based in Chicago, Ill. These columns are available electronically on NewsNet, Predicasts Newsletter file, Westlaw in the LawPrac file, and on Counsel Connect. For further information you can contact Law Office Technology Review by writing to P.O. Box 2577, Homewood, IL 60430, or sending e-mail to [bbayer@bx.com](mailto:bbayer@bx.com), [bbayer@MCI Mail](mailto:bbayer@MCI Mail), [bbayer@ASA](mailto:bbayer@ASA) or Net or Barry Bayer on Counsel

corpus or a petition for post-conviction relief) because, over this five-year period, the accumulated loss of good time has come to equal the number of days remaining in his sentence.

**ALASKA SUPREME COURT**  
NOTE: INCLUDES TWO OPINIONS RELEASED BY THE ALASKA SUPREME COURT  
THE WEEK OF July 1, 1994

- Collateral estoppel
- Full Faith and Credit Clause

Denis McCampion v. State of Alaska, Department of Community & Regional Affairs, Housing Assistance Division, Op. No. 4096 (Alaska July 1, 1994) (14 pages)

OPINION: Moore, C.J.

ATTORNEYS: Kevin M. Morford, Jensen, Harris & Roth, Anchorage, for Appellant. Richard H. Ustrom, Routh & Crabtree, P.C., Anchorage, for Appellee.

TRIAL COURT: J. Justin Ripley, Superior Court, Third Judicial District, Anchorage.

PRINCIPAL ISSUE ON APPEAL: Under collateral estoppel and the Full Faith and Credit Clause, is a federal judgment interpreting an Alaska statute binding between the parties in later litigation in Alaska?

HOLDING: The superior court judgment was reversed. The doctrine of collateral estoppel, also referred to as issue preclusion, bars re-litigation, even in an action on a different claim, of all issues of fact or law that were actually litigated and necessarily decided in a prior proceeding.

- Rebuttal of presumption of compensability in Worker Compensation cases
- Necessity of expert medical evidence in Worker Compensation cases
- Substantial evidence needed to support Board conclusions

Norcon, Inc. and Eagle Pacific Insurance Co. v. Alaska Workers' Compensation Board and Ellen Siebert, Op. No. 4097 (Alaska July 1, 1994) (17 pages)

OPINION: Compton, J.

ATTORNEYS: Karen L. Russell and Joseph M. Cooper, Russell, Tescho & Wagg, Anchorage, for Appellants. Joseph A. Kalamarides, Kalamarides & Associates, Anchorage, for Appellees.

**"I'd rather have a root canal!"  
notes from a mediation**

Donny B.\* Broke into the home of Mr. and Mrs. S\*. He used a garden shovel to break into their front porch when neither of them were home. Substantial and costly damage was done to the home. The estimate for repair was beyond Mr. and Mrs. S's means.

In a mediation facilitated by two trained volunteer mediators, Mr. and Mrs. S, an older couple, confronted the offender with what his crime had done to them.

Mrs. S. told Donny and the mediators she was out of state at the time caring for her father who was very ill. She spoke of receiving the phone call from her husband and feeling great stress at being unable to return home to support him. She was surprised when tears came to her eyes and had to pause several times as she told of her feelings of helplessness and anger about the crime and not being able to share the burden with her husband.

Mr. S went next and said that the break-in had been the last in a string of misfortunes for the couple. He had suffered a stroke that year and had incurred much debt that was not covered by insurance. The doctor had ordered him to avoid stress to protect his health but it had been very difficult due to the bills his father-in-law's illness, and now the break-in.

Donny, his voice often shaky and strained, told Mr. and Mrs. S. that he now felt he was stupid and wrong for having broken in to their home. He told them that it had been an exciting spur of the moment crime, his first, and he had never thought about the real people who lived there. After much discussion of the impacts on Mr. and Mrs. S and of his own loss of parental trust, friends, and loss of feelings of self-worth, Donny agreed to do what he could to make it up to them. He also wanted to rebuild his relationship with his parents and hoped the efforts he made toward the couple would help.

Before the mediation, Mr. and Mrs. S talked about how they were fearful to confront the individual who had done the crime. Some thoughts they were having were: Why me? What were you thinking when you did this? Don't you know how devastating this is for us? How do you feel about hurting people this way? What did we do to make you do this to us? As much as they wanted answers they feared retribution. After talking with Donny in the mediation, Mr. and Mrs. S. realized that he was just a kid who had done a dumb thing. They could see him becoming more aware of the impact of his crime. They felt safe again and also reassured by Donny's honest and thorough answers to all of their questions.

The mediators moved the discussion on to restitution. The victims and the offender talked about how to make things right. Donny explained he didn't have the money for permanent repairs. At this point, Mr. and Mrs. S decided to give Donny a chance to personally make it up to them. They explained that neither of them could do yard work anymore and had to pay someone to do that. Mrs. S. proposed that Donny do the yard jobs to work off the costs. Mr. and Mrs. S could then take the yard work money from their budget and apply it to fixing the porch. Startled and grateful, Donny accepted. Together, they collaborated on the details of the agreement, including alternative plans to continue the yard work into the next spring if winter closed in before the total debt was paid.

Mediation had certainly turned things around for the victims and the offender. All the apprehension and stress was relieved. Everyone was feeling better. Mr. S finished up the mediation by offering that if Donny did a good job on their yard and he wanted some money they would consider hiring him in the future to more yard work. Donny, feeling proud and grateful, shook hand with Mr. and Mrs. S. and assured them he would be at work bright and early the following Saturday. Mrs. S. said as she left, "You know, when I was approached to do this mediation I thought I would rather have had a root canal. But now that I've been through it I realize it is the best thing I could have done."

\* This case synopsis is based on a real mediation. The names of clients and certain details have been changed to protect the participant's identities and confidentiality.

## Victim Offender Mediation Project Program Standards and Policies

The juvenile Victim Offender Mediation Project (VOMP) recruits, trains, and assigns community, volunteer mediators to facilitate face-to-face meetings between certain juvenile offenders and their victims. Participation is entirely voluntary. VOMP's long-term goals are to implement its services statewide and in both juvenile and adult systems.

### I. Administration

*Structure.* The VOMP project is administered by a private, nonprofit corporation, the Community Dispute Resolution Center, Inc. The CDRC's mission is to provide community dispute resolution and related services in Alaska. The VOMP program is one way in which the CDRC fulfills this mission. The Board of Directors of the CDRC hires and supervises VOMP's executive director, who serves as staff to VOMP and who in turn trains and supervises all VOMP volunteers.

*Standards and Policies.* The CDRC Board reviews and adopts all standards and policies relating to programs that it administers, including these standards. These standards and policies govern operation of the juvenile Victim Offender Mediation Project. They are separate from but consistent with the CDRC's administrative and personnel policies. The CDRC Board can change these policies as it sees fit to best administer the VOMP program.

*Community Advisory Committee.* A committee of volunteers from the community advises the CDRC Board of Directors on policy and technical issues relating to VOMP. The Community Advisory Committee meets monthly and includes representatives from Victims for Justice (a private, nonprofit victim counseling and advocacy entity), McLaughlin Youth Center, the University of Alaska (Departments of Social Work and the Justice Center), the Alaska Court System, the Public Defender Agency, the Office of Public Advocacy, the Alaska Judicial Council, the local mediation

## REPORT

The first victim-offender mediation/dialogue program was established in Canada in 1974. Since then, victim-offender mediation/dialogue programs have spread to the United States as well as to other countries throughout the world. Over one hundred programs are now in existence in the United States, alone.

Victim-offender mediation/dialogue programs, as their name suggests, are programs in which a criminal offender and the victim of the crime meet together in the presence of a trained mediator-facilitator. During the meeting or meetings, the victim is afforded the opportunity to seek answers to questions about the crime that may have been troubling the victim, such as why the offender chose the victim's home to burglarize. The victim is also given the chance to tell the offender about how the crime has affected the victim. It is during this portion of the meeting that the offender will often, for the first time, realize the level of emotional trauma caused by his or her criminal conduct. During the meeting, the offender also discusses his or her views about the crime, and this discussion will often culminate in an expression of remorse for the harm that the offender has caused.

The victim and offender then attempt to reach an agreement to redress the harm caused by the offender's criminal conduct. The agreement may require the offender to pay restitution to the victim, to perform work for the victim, to perform community service work, and/or to participate in programs, such as a substance abuse treatment program. Through the implementation of the agreement, which holds an offender accountable for the harm caused by his or her criminal behavior, a victim-offender mediation/dialogue program can serve as an integral component in a comprehensive corrections system, helping to avoid the high human and economic costs of unnecessary incarceration.

One of the chief benefits of victim-offender mediation/dialogue programs is that they humanize the criminal justice process. By bringing criminal offenders together face-to-face with their victims, it becomes more difficult for the offenders to rationalize their criminal behavior. As they face the individual that they have victimized, the harm caused by their crime is also no longer an abstraction but very real.

Mediation/dialogue sessions also bring a human face to the person who is otherwise abstractly and impersonally known as "the criminal." During such sessions, victims may gain a better understanding of who the offenders are and of the circumstances that may have contributed to their criminal behavior.

Research results have confirmed the many benefits of victim-offender mediation/dialogue programs. See, e.g., Mark S. Umbreit & Robert B. Coates, Victim Offender Mediation: An Analysis of Programs in Four States of the U.S. (1992); Jim Dignan, Reaching the Damage: An Evaluation of an Experimental Adult Reformation Scheme in Leicestershire, Northamptonshire (1990); Tony F. Marshall & Susan Merry, Crime and