ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9163 HOUSE JUDICIARY

FISCAL NOTE

STATE OF ALASKA **BILL NO:** HB 7

1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety

Title: Victim/Juvenile Offender Mediation. BRU: Alaska State Troopers

Component: Detachments

Sponsor: Representative Porter

Requestor: H. Judiciary **COMPONENT SERIAL NO.** 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receiots						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: $ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone 269-5412

Division: Alaska State Troopers Date: January 10, 1997

Approved by Commissioner: Ron Smith Date: 1/29/97

Agency: Ronald L. Otte, Department of Public

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FISCAL NOTE

STATE OF ALASKA **BILL NO. HB 7**

1997 LEGISLATIVE SESSION

Revision Date:

Title: "An Act authorizing establishment of community dispute resolution centers..."

Sponsor: Rep. Porter

Requestor: (H, Jud

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 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

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 97) cost: $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared by: Brant McGee, Director

Phone: (907) 264-4414

Division: Office of Public Advocacy

Date:

Approved by Commissioner: Mark Boyer (for VB)

Date: 1/11/96

Agency: Department of Administration

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Rev: 11/96

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FISCAL NOTE

STATE OF ALASKA **BILL NO. HB 7**

1997 LEGISLATIVE SESSION

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

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 97) cost: $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara K. Brink, Acting Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/17/96

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CS FOR HOUSE BILL NO. 7(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

"An Act authorizing establishment of community dispute resolution centers to foster the resolution of disputes between juvenile offenders and their victims, and providing immunity from civil suits for youth courts and for members of the boards of directors, employees, volunteers, and members of youth courts."

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

*** Section 1.** AS 47.12.040(a) is amended to read:

(a) Whenever circumstances subject a minor to the jurisdiction of this chapter, the court shall

(1) provide, under procedures adopted by court rule, that, for a minor who is alleged to be a delinquent minor under AS 47.12.020, a state agency shall make a preliminary inquiry to determine if any action is appropriate and may take appropriate action to adjust the matter without a court hearing; if, under this paragraph,

(A) the state agency makes a preliminary inquiry and takes appropriate action to adjust the matter without a court hearing, the minor may

not be detained or taken into custody as a condition of the adjustment and, subject to AS 47.12.060, the matter shall be closed by the agency if the minor successfully completes all that is required of the minor by the agency in the adjustment; in a municipality or municipalities in which a youth court has been established under AS 47.12.400, adjustment of the matter under this paragraph may include referral to the youth court; **if a community dispute resolution center has been established under AS 47.12.450(a) and has obtained recognition under AS 47.12.450(b), adjustment of the matter under this paragraph may include use of the services of the community dispute resolution center;**

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

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

* **Sec. 2.** AS 47.12.120(b) is amended to read:

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

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued

supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

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

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

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

(3) order the minor committed to the custody of the department and placed on probation, to be supervised by the department, and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time not to exceed two years and in no event to extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

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

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

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; **under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution;** and

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent;

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

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

(A) on a project identified in 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; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1).

*** Sec. 3.** AS 47.12.400 is amended by adding a new subsection to read:

(g) A member of the board of directors of a nonprofit corporation obtaining recognition from the commissioner to serve as a youth court under this section is immune from suit in a civil action based upon a proceeding or other official act performed in good faith as a member of the board. Employees and volunteers of a youth court are immune from suit in a civil action based on a proceeding or other official act performed in their capacity as employees or volunteers, except in cases of wilful or wanton misconduct. A youth court is immune from suit in a civil action based on a proceeding or other official act performed by its employees, volunteers, or members of its board of directors, except in cases of wilful or wanton misconduct by its employees or volunteers or in cases of official acts performed in bad faith by members of the board.

*** Sec. 4.** AS 47.12 is amended by adding a new section to read:

Article 3A. Community Dispute Resolution Centers.

Sec. 47.12.450. 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 47.12.040(a)(1)(A) or the court making a referral under AS 47.12.120(b)(4)(A), as appropriate, the following:

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

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

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

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

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

(c) A center established under this section shall provide dispute resolution services between a minor who has committed an offense and who, because of the commission of the offense, may be alleged to be a delinquent minor under AS 47.12.020, and a person who was a victim of that offense. The center shall provide dispute resolution services either without charge to a participant or for a fee that is based on the participant's ability to pay.

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

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

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

(e) Except for a notice or a communication described in (b)(7) of this section, all memoranda, work notes or products, or case files of centers established under this section are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by a participant, mediator, or another person is a privileged communication and is not subject to disclosure in a judicial or administrative proceeding unless all parties to the communication waive the privilege. However, privilege and limitation on evidentiary use set out in this subsection do not apply to a communication of a threat that injury or damage may be inflicted on a person or on the property of a party to the dispute to the extent the communication may be relevant evidence in a criminal matter.

(f) A minor or a victim who enters a dispute resolution process at a center established under this section may revoke consent, withdraw from dispute resolution,

and seek judicial or administrative redress before reaching a written resolution agreement. The withdrawal must be in writing. If a minor or a victim withdraws from dispute resolution, a legal penalty, sanction, or restraint may not be imposed upon the person for that withdrawal.

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

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

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

0-LS0076\E
Chenoweth
1/15/97
Rep. Porter
216 CAP

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE PORTER

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act authorizing establishment of community dispute resolution centers to foster the resolution of disputes between juvenile offenders and their victims, and providing immunity from civil suits for youth courts and for members of the boards of directors, employees, volunteers, and members of youth courts."

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

*** Section 1.** AS 22.35 is amended by adding a new section to read:

Sec. 22.35.020. Recognition of community dispute resolution centers for matters involving minors. The administrative director may recognize an entity described in AS 47.12.450(a) as a community dispute resolution center to serve as a center to resolve disputes between minors and victims. Before extending recognition under this section, the administrative director shall determine that the bylaws of the entity set out standards and procedures that meet the requirements of AS 47.12.450(b).

*** Sec. 2.** AS 47.12.040(a) is amended to read:

(a) Whenever circumstances subject a minor to the jurisdiction of this chapter,

the court shall

(1) provide, under procedures adopted by court rule, that, for a minor who is alleged to be a delinquent minor under AS 47.12.020, a state agency shall make a preliminary inquiry to determine if any action is appropriate and may take appropriate action to adjust the matter without a court hearing; if, under this paragraph,

(A) the state agency makes a preliminary inquiry and takes appropriate action to adjust the matter without a court hearing, the minor may not be detained or taken into custody as a condition of the adjustment and, subject to AS 47.12.060, the matter shall be closed by the agency if the minor successfully completes all that is required of the minor by the agency in the adjustment; in a municipality or municipalities in which a youth court has been established under AS 47.12.400, adjustment of the matter under this paragraph may include referral to the youth court; **if a community dispute resolution center has been established under AS 47.12.450(a) and has obtained recognition under AS 22.35.020 or AS 47.12.450(b), adjustment of the matter under this paragraph may include use of the services of the community dispute resolution center;**

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

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

* **Sec. 3.** AS 47.12.120(b) is amended to read:

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

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

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

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

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

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

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

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

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

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; **under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the administrative director of the Alaska Court System under AS 22.35.020 or by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution;** and

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the

minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent;

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

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

(A) on a project identified in 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; or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1).

* **Sec. 4.** AS 47.12.400 is amended by adding a new subsection to read:

(g) A member of the board of directors of a nonprofit corporation obtaining recognition from the commissioner to serve as a youth court under this section is immune from suit in a civil action based upon a proceeding or other official act performed in good faith as a member of the board. Employees and volunteers of a youth court are immune from suit in a civil action based on a proceeding or other official act performed in their capacity as employees or volunteers, except in cases of wilful or wanton misconduct. A youth court is immune from suit in a civil action based on a proceeding or other official act performed by its employees, volunteers, or members of its board of directors, except in cases of wilful or wanton misconduct by its employees or volunteers or in cases of official acts performed in bad faith by members of the board.

* **Sec. 5.** AS 47.12 is amended by adding a new section to read:

Article 3A. Community Dispute Resolution Centers.

Sec. 47.12.450. 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 47.12.040(a)(1)(A) or the court making a referral under AS 47.12.120(b)(4)(A), as appropriate, the following:

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

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

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

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

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

(c) A center established under this section shall provide dispute resolution services between a minor who has committed an offense and who, because of the commission of the offense, may be alleged to be a delinquent minor under AS 47.12.020, and a person who was a victim of that offense. The center shall provide dispute resolution services either without charge to a participant or for a fee that is based on the participant's ability to pay.

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

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

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

(e) Except for a notice or a communication described in (b)(7) of this section, all memoranda, work notes or products, or case files of centers established under this section are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by a participant,

mediator, or another person is a privileged communication and is not subject to disclosure in a judicial or administrative proceeding unless all parties to the communication waive the privilege. However, privilege and limitation on evidentiary use set out in this subsection do not apply to a communication of a threat that injury or damage may be inflicted on a person or on the property of a party to the dispute to the extent the communication may be relevant evidence in a criminal matter.

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

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

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

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

From:
Margo Knuth
Amend. #1
Adopted
1/31/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 7

Page 1, lines 4-10:

Delete Section 1 and renumber following sections.

Page 2, line 13:

Delete "AS 22.34.020 or"

Page 4, lines 20-21:

Delete "adminstrative director of the Alaska Court System under AS 22.35.020 or by the"

Diane Wanlass
re: HB 6
HB 3

→ Lori's bill?

How do these interact?

HAVE WE ADOPTED THE COMMITTEE
THE SPONSOR SUBSTITUTE?

Problems with dividing issues to keep federal funding.

IMMUNITY
YOUTH CT
pg 5 [redacted] Sec. 4 (g)

Amendment #2
Croft moves
Green object

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY
TO: SSHB 7

Page 4, line 25 following "restitution":
Insert ". The minor may withdraw, at any time, from the services of the center with no penalty for violating the court order. The withdrawal must be in writing"

appears already in SB

Mayo suggests
just strike "voluntarily" from
line 7 pg. 8.

move to — strike
Amend 2 passed as deletion
of voluntarily @ pg. 8 line 7
adopted 1/31/97

Date: January 24, 1997

From: Representative Porter

To: Judiciary Committee, Attn: Lisa

Subject: Witness List for HB 7 hearing, January 31, 1997

Appearing in Anchorage LIO

Susanne DiPietro Alaska Judicial Council	(907)	279-2526
Dr. Patrick M, Cunningham, DSW UAA	(907)	786-1724
Kathleen Anderson Alaska Dispute Settlement Association	(907)	345-3801
Janice Lienhart Victims for Justice	(907)	278-0977
Ralph Samuels Youth Courts	(907)	243-2485

In Juneau Committee Room

Angela Salerno National Association of Social Workers	586-4438

1/28/97 Cunningham @ UAA

UAA - donates time & funds

Funding sources

Faculty development grants

this year now

14K for 1/2 yr > DFYS Fed Grants — pass through

Juv Del Prevent

25K Municipality — "Make a diff" — Assembly

Contributors

Corps

Telec Union

Alask Tel Util

Fund Raising

United Way grant

Childrens Trust Fund 6-7 millions

CTS — when arrested @ intake may use Center as alternative to delinq proceedgs

— Cond of probation

Di Pietro

1/28/97

Not getting referrals from ct.
Order restitution - got to mediation for payment (hasn't happened)

What they get in Arch.
60% kids arrested
Juvenile intake
work in McLaughlin
DFYS intake officer
60% lesser offenses — Ct. / Non Ct. / goes ct / Mediation

Bill Hitchcock

Nickie Stewart

CO. △ Victim thought oldest kid ringleader
Older took stuff
Oldest to Ct - victim wanted them to go to ct
other △ to mediation
△ counsel wanted to know mediation result
mediator will report sex abuse/child abuse threats - no real duty to report

Chris Christensen re:

juvenile - restitution

background of similar unprovoked and serious acts of violence, unsuccessful efforts at rehabilitation, and similarity between current and past misconduct.

2. Criminal Law ⇐1134(3)

Whether sentencing judge erred in imposing current sentences consecutive to time defendant received upon revocation of his parole was not properly before Court of Appeals, where no action on defendant's parole had been taken at time of sentencing hearing, and Parole Board's subsequent action was not matter of record.

Thomas J. Meyer, Asst. Public Defender, Juneau, and John B. Salemi, Public Defender, Anchorage, for appellant.

Richard Svobodny, Dist. Atty. and Bruce M. Botelho, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and MANNHEIMER, JJ.

OPINION

BRYNER, Chief Judge.

David V. Evenson was convicted in 1991 of three counts of assault in the second degree in violation of AS 11.41.210(a)(2). The convictions were for three separate alcohol-related incidents in which Evenson engaged in unprovoked attacks against other people and inflicted serious physical injuries upon them. Although a first felony offender for presumptive sentencing purposes, Evenson had an extensive misdemeanor record and a juvenile history that included adjudications for felony-level assaultive misconduct. Pursuant to the terms of a sentencing agreement, Evenson received consecutive sentences of two years with one year suspended for the three assaults. Evenson served the unsuspended portion of his sentences and, upon release from prison in November 1993, was simultaneously placed under parole and probation supervision. Evenson's conditions of probation required him to comply with all laws and prohibited him from consuming alcoholic beverages or entering bars.

On November 25, 1993, less than two weeks after his release from prison, Evenson was cited for driving without a license; he was convicted of the offense on December 9, 1993. Soon thereafter, he began consuming alcohol regularly. On January 26, 1994, Evenson entered the Imperial Bar in Juneau and tried to start a quarrel with another man; the man attempted to ignore Evenson and ultimately left the bar to avoid a confrontation. Several hours later, Evenson encountered the same man in a restaurant. Without provocation or warning, Evenson struck the man in the face with his fist, inflicting a one and one-half inch cut over the man's eyebrow.

As a result of these incidents, Superior Court Judge Larry R. Weeks revoked Evenson's probation. On each of Evenson's second-degree assault convictions, the judge imposed six months of the one-year term that had originally been suspended. Evenson also entered a no contest plea to a class A misdemeanor charge of fourth-degree assault for the January 26 incident. Judge Weeks sentenced Evenson to six months for that offense. Judge Weeks ordered Evenson to serve all of these sentences consecutively, for a total of two years' additional incarceration. Evenson appeals, contending that his composite sentence is excessive.

[1] In arguing that his sentence is excessive, Evenson virtually ignores the offenses for which he was on probation; instead, he focuses exclusively on the conduct that led to the revocation of his probation. Evenson maintains that, because he received six months' incarceration for his new misdemeanor assault, "[t]he court's imposition of another year and a half for essentially the same conduct went too far."

This argument misses the point: the additional time Evenson received upon revocation of his probation constitutes punishment for his 1991 felony convictions, not for his more recent misdemeanor conviction:

> Because a sentence imposed upon revocation of probation constitutes punishment for the defendant's original offense, the length of the sentence ultimately imposed must be appropriate to the nature and circumstances of the original offense.

Toney v. State, 785 P.2d 902, 903 (Alaska App.1990).

For this reason, in imposing sentence upon revocation of Evenson's probation, Judge Weeks was required to consider, not just Evenson's current conduct, but rather

> all available sentencing evidence, including information concerning the defendant's background, the seriousness of the original offense, the nature of the defendant's conduct while on probation, and the seriousness of the violations that led to the revocation. As in all other sentencing proceedings, relevant information must be evaluated in light of the sentencing criteria articulated in *State v. Chaney*, 477 P.2d 441, 443–44 (Alaska 1970).

Id. (internal citations omitted).

[2] In the present case, Judge Weeks properly considered the totality of the sentencing evidence in light of the *Chaney* criteria. The judge concluded, despite Evenson's assurances to the contrary, that a substantial additional sentence was necessary to serve the purposes of deterrence, community condemnation, and protection of the public. Given the seriousness of the three separate felonies for which Evenson was convicted, Evenson's extensive background of similar unprovoked and serious acts of violence, the substantial efforts that have unsuccessfully been devoted to Evenson's rehabilitation, and the disturbing similarity of Evenson's current and past misconduct, Judge Weeks' sentencing decision seems remarkable, not in its harshness, but rather in its moderation and restraint.[1]

Having independently reviewed the entire sentencing record, we conclude that the sentence imposed below was not clearly mistaken. *McClain v. State*, 519 P.2d 811, 813–14 (Alaska 1974).

The sentences are AFFIRMED.

R.I., Appellant,

v.

STATE of Alaska, Appellee.

No. A-5130.

Court of Appeals of Alaska.

May 12, 1995.

After juvenile was adjudicated delinquent and ordered to make restitution, the Superior Court, Fourth Judicial District, Fairbanks, Mary E. Greene, J., later revoked probation and entered civil judgment in amount of unpaid restitution. Appeal was taken. The Court of Appeals, Mannheimer, J., held that even though delinquent minor could evade restitution order by waiting until he became "too old" for court to take action against him, court lacked authority to issue civil judgment ordering payment of restitution in connection with delinquency matter.

Reversed.

1. Evenson attempts to expand his sentence appeal to include consideration of additional time he evidently received upon revocation of his parole. Evenson maintains that Judge Weeks erred in imposing the current sentences consecutively to the time Evenson received upon revocation of his parole. However, no action on Evenson's parole had been taken at the time of his sentencing hearing in the present case, and the parole board's subsequent action is not a matter of record here. Judge Weeks did not expressly order Evenson's sentences in the current case to be served either concurrently with or consecutively to any additional time that might result from revocation of his parole by the parole board. Evenson has failed to present any authority indicating that Judge Weeks had discretion to preempt subsequent actions of the parole board by ordering the current sentences to be served concurrently with additional time resulting from parole proceedings that had not yet been completed. Under the circumstances, we agree with the state that Evenson's arguments concerning the parole board's actions are not properly before this court.

1. Criminal Law ⇐1208.4(2)
Infants ⇐224

In both criminal cases and juvenile delinquency cases, superior court has authority to order that defendant pay restitution.

2. Criminal Law ⇐982.5(2), 1208.4(2)

Sentencing court can order convicted defendant to pay restitution either as independent component of sentence or as condition of defendant's probation. AS 12.55.045(a), 12.55.100(a)(2).

3. Infants ⇐224

In juvenile delinquency case, superior court can order restitution in lieu of or in addition to other authorized dispositions. AS 47.10.080(b)(1–3).

4. Criminal Law ⇐1208.4(2)
Infants ⇐224

Statutes allowing for imposition of restitution for criminal cases and juvenile delinquency cases do not authorize sentencing court to issue civil judgment in favor of crime victim for amount of damage or loss inflicted by either adult or juvenile defendant. AS 47.10.010 et seq.

5. Infants ⇐224

Superior Court lacks authority to enter civil judgment in juvenile case in favor of intended recipient of restitution. AS 47.10.010 et seq.

6. Criminal Law ⇐977(1)

Legislation, and not inherent judicial power is source of court's sentencing authority.

7. Criminal Law ⇐982.5(1)

While court has wide discretion in setting conditions of defendant's probation, court must have legislative authorization before imposing conditions that fundamentally alter defendant's status as probationer.

8. Infants ⇐223.1

In juvenile delinquency cases, superior court's authority to impose particular types of disposition in juvenile case is granted by and governed by legislation.

9. Infants ⇐223.1

Superior court may not issue civil judgment in favor of crime victim as part of juvenile disposition, despite superior court's broad, inherent power to fashion dispositional orders in juvenile cases.

J. John Franich, Asst. Public Advocate, Fairbanks, and Brant McGee, Public Advocate, Anchorage, for appellant.

D. Rebecca Snow, Asst. Atty. Gen., Fairbanks, and Bruce M. Botelho, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and MANNHEIMER, JJ.

OPINION

MANNHEIMER, Judge.

R.I. was adjudicated a juvenile delinquent under AS 47.10.080(a). As one of the conditions of his probation, he was ordered to make restitution in the amount of $3,018.83. Later, because of various violations of his probation (including failure to make restitution), the superior court revoked R.I.'s probation and institutionalized him. In addition, the court entered a civil judgement against R.I. (in favor of the victims of his crimes) for the amount of the unpaid restitution.

R.I. appeals this last aspect of the superior court's dispositional order. He contends that the superior court, by entering the civil judgement against him, in effect increased the severity of his sentence and thus violated the double jeopardy clauses of the federal and state constitutions. We asked the parties to brief a related issue: whether the superior court had the authority to convert the unpaid restitution into a civil judgement. After consideration of the supplemental briefing, we now hold that the superior court lacked authority to convert the restitution order into a civil judgement.

The superior court's decision to issue a civil judgement against R.I. was apparently prompted by the fact that the court's jurisdiction over R.I. was about to end.[1] The court wished to ensure that R.I. eventually paid the restitution, even if payment did not occur until after R.I.'s release from juvenile supervision. However, in attempting to achieve this goal, the court acted beyond its legal powers.

[1–3] In both criminal cases and juvenile delinquency cases, the legislature has authorized the superior court to order a defendant to pay restitution. In criminal prosecutions, a sentencing court can order a convicted defendant to pay restitution either as an independent component of the defendant's sentence, *see* AS 12.55.045(a), or as a condition of the defendant's probation, *see* AS 12.55.100(a)(2). And in juvenile cases, AS 47.10.080(b)(4) authorizes the superior court to order restitution "in lieu of or in addition to" the dispositions authorized by AS 47.10.080(b)(1)–(b)(3).

[4, 5] These statutes, however, do not authorize a sentencing court to issue a civil judgement in favor of a crime victim for the amount of damage or loss inflicted by an adult or juvenile defendant.[2] More specifically, no provision of AS 47.10 gives the superior court the authority to enter civil judgement in a juvenile case in favor of the intended recipient of restitution. This lack of statutory authority determines the outcome of R.I.'s appeal.

[6, 7] In the realm of criminal law, the Alaska Supreme Court has repeatedly held that legislation, not inherent judicial power, is the source of a court's sentencing authority. The legislature sets the maximum, minimum, and presumptive terms of imprisonment for crimes. *See Nell v. State*, 642 P.2d 1361, 1368 (Alaska App.1982), (citing several Alaska cases "which have explicitly recognized the authority of the legislature in the area of fixing criminal sentences"). The legislature decrees whether a defendant's sentence may be suspended in whole or in part. *Pete v. State*, 379 P.2d 625, 626 (Alaska 1963) (a court has no inherent power to suspend a sentence of imprisonment and place a defendant on probation; such authority must be granted by the legislature). The legislature determines what length of probation may be imposed. *Gonzales v. State*, 608 P.2d 23, 25–26 (Alaska 1980); *Jackson v. State*, 541 P.2d 23, 25 (Alaska 1975) (when a defendant's sentence of imprisonment is suspended and the defendant is placed on probation, the defendant's total period of probation may not exceed the 5-year period specified in AS 12.55.090(c)); *Tiedeman v. State*, 576 P.2d 114, 116 n. 11 (Alaska 1978) (because a different statute (AS 12.55.085(a)) governs probation when a defendant receives a suspended imposition of sentence (SIS), the 5-year limitation does not apply; rather, SIS probation is limited to the same number of years as the maximum sentence of imprisonment for the crime). And, while a court has wide discretion in setting the conditions of a defendant's probation, a court must have legislative authorization before imposing conditions that fundamentally alter a defendant's status as a "probationer" (that is, someone who is released from custody upon his or her promise to abide by certain conditions). *Whittlesey v. State*, 626 P.2d 1066, 1067 (Alaska 1980); *Boyne v. State*, 586 P.2d 1250, 1251 (Alaska 1978) (absent explicit legislative authorization, a court may not impose imprisonment as a condition of probation). *See Brown v. State*, 559 P.2d 107, 110 (Alaska 1977) (because AS 12.55.100(a)(1) authorizes a court to impose a fine as a condition of probation, a sentencing court can order a defendant to pay a fine as a condition of probation even when the underlying crime is punishable by imprisonment only).

[8] In juvenile cases, the supreme court has followed the same rule: the superior

1. Under AS 47.10.100(a), the superior court's jurisdiction over a juvenile ends when the juvenile reaches his or her nineteenth birthday (or, with the child's consent, his or her twentieth birthday). *State v. T.M.*, 860 P.2d 1286, 1288 (Alaska App.1993).

2. We note that, in criminal prosecutions, the legislature has authorized crime victims to pursue execution upon a restitution order as if it were a civil judgement in their favor. Alaska Statute 12.55.051(d) provides:

> The state may enforce payment of a fine and [a] restitution recipient may enforce payment of a restitution order against a defendant under AS 09.35 as if the order were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines and orders of restitution to victims.

court's authority to impose particular types of disposition in a juvenile case is granted by and governed by legislation. *In re E.M.D.*, 490 P.2d 658 (Alaska 1971). In *E.M.D.*, the superior court found a minor to be a "child in need of supervision" under former AS 47.10.290(7) (a status that is now termed "child in need of aid" under AS 47.10.010(a)(2)). Based on this finding, the superior court ordered E.M.D. to be institutionalized "in a correctional or detention facility ... until released therefrom upon a showing ... that the minor has completed a program of rehabilitation and has been amenable thereto". *E.M.D.*, 490 P.2d at 659.

The minor appealed, contending that the superior court had exceeded its authority when it ordered her to be institutionalized. E.M.D. argued that the legislature had authorized institutionalization only for delinquent minors, not for children in need of supervision. The supreme court agreed:

> Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children.... Of controlling significance here is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter.
>
> Study of our children's laws leads to the conclusion that the legislature has authorized institutionalization only where the child is found to be a delinquent minor.... [T]he only instance under our children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state[.] Since the runaway child in the case at bar was found to be a child in need of supervision, not a delinquent minor, no legal basis existed for her incarceration.

E.M.D., 490 P.2d at 659–660.

Attempting to avoid this result, the State in *E.M.D.* argued that the superior court was not bound by the literal terms of AS 47.10. The State contended that, "in light of the legislature's broad policy declaration [that] protection of children is the paramount purpose [of the] laws pertaining to children's courts", the superior court should be deemed to enjoy broad power to fashion dispositions different from, or in addition to, the ones specifically listed in AS 47.10.080. *Id.* at 660. The supreme court rejected this argument:

> [W]e recently held that the benevolent social theory supposedly underlying children's court [legislation] does not furnish justification for dispensing with constitutional safeguards [citing *R.L.R. v. State*, 487 P.2d 27, 30–31 (Alaska 1971) (a child alleged to be a delinquent minor is entitled to a trial by jury)]. [In] the case at bar, it is equally appropriate to note that notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings.

E.M.D., 490 P.2d at 660.

[9] Returning to the present case, no provision of AS 47.10 authorizes the superior court to issue a civil judgement in favor of a crime victim as part of a juvenile disposition. The State attempts to deal with this lack of statutory authority by asserting that, in children's cases, the superior court enjoys broad, inherent power to fashion dispositional orders. The State reasons that there was no need for the legislature to specify the superior court's power to convert a restitution order to a civil judgement in children's cases because the superior court has "broad dispositional discretion" to pursue any mode of enforcing its judgement.

This is essentially the same argument that the supreme court rejected in *E.M.D.*. The superior court does not have unfettered dispositional power in children's cases; rather, the court's authority arises from, and is limited by, statute. The legislation defining the superior court's authority in juvenile cases does not authorize the court to enter civil judgement in favor of a crime victim or convert a previously-entered restitution order into a civil judgement. Because no provision of AS 47.10 confers this power on the superior court, we hold that the superior court lacked the authority to convert the restitution portion of its dispositional order into a civil judgement against R.I..

The State contends that, if the superior court lacks the power to convert its restitution orders to civil judgements, then delinquent minors might evade the court's orders "simply by waiting to get too old" for the court to take action against them. Nevertheless, as the State's brief in *E.M.D.* recognized, courts must not exceed their granted powers "even where ... the factual circumstances cry out for a disposition beyond the fingertips of the [sentencing] court". *E.M.D.*, 490 P.2d at 660–61 n. 10.

The contested portion of the superior court's judgement is REVERSED.

wilful misconduct
HB7

not entitled to substitute its judgment for the arbitrator's on this matter. Rather, the lower court should have applied a presumption of arbitrability, and reviewed for reasonableness the arbitrator's decision that the dispute was arbitrable. We hold that the arbitrator could have reasonably concluded that Ebasco's failure to submit Ahtna's claim breached obligations that arose while the JVA was in effect. Consequently, the superior court's rejection of the tardy claim rationale is reversed.

IV. CONCLUSION

We REVERSE the superior court's determination that this dispute was not arbitrable, and REMAND for consideration of Ebasco's AS 09.43.120(a)(4) claim.

AETNA CASUALTY & SURETY CO., Appellant and Cross-Appellee,

v.

MARION EQUIPMENT CO., Appellee and Cross-Appellant.

No. 4205.

Supreme Court of Alaska.

May 19, 1995.

Insurer, which had provided defense to and settled claim against construction contractor following accident in which subcontractor's employee's arm was crushed by hoist component at shopping mall construction site, brought indemnity claim against hoist lessor pursuant to indemnity provision of equipment lease between lessor and contractor. The Superior Court, Third Judicial District, Dana A. Fabe, J., granted summary judgment for lessor, and insurer appealed and lessor cross-appealed. The Supreme Court, Moore, C.J., held that: (1) antiindemnity statute governing agreements "contained in, collateral to, or affecting" construction contracts applied to the hoist lease and forbade insurer's indemnity claim, and (2) trial court did not abuse its discretion in awarding lessor 20% of its attorney's fees as prevailing party.

Affirmed.

1. Judgment ⇐185(6)

Movant is entitled to summary judgment if, drawing all reasonable inferences in favor of nonmovant, record fails to disclose genuine issue of material fact and movant is entitled to judgment as matter of law.

2. Appeal and Error ⇐893(1)

Interpretation of statute presents question of law, which Supreme Court reviews de novo.

3. Indemnity ⇐3

Anti-indemnity statute governing agreements "contained in, collateral to, or affecting" construction contracts applied to hoist lease between equipment lessor and construction contractor, where lease contained provision obligating lessor to indemnify contractor for claims arising out of, in connection with or incident to lessor's performance thereunder, and contained other provisions designating hoist's use in shopping mall construction project; such reading of anti-indemnity statute was consistent with legislative goal of increasing safety at construction sites. AS 45.45.900.

4. Indemnity ⇐3

Anti-indemnity statute, which invalidates construction-related agreements to provide indemnity for "sole negligence and wilful misconduct" of indemnitee or others related to indemnitee, forbade indemnity claim against hoist lessor, brought under provision of its lease with construction contractor obligating lessor to indemnify contractor for claims relating to lessor's performance thereunder, following accident in which subcontractor's employee's arm was crushed by hoist component at shopping mall construction site, where jury found that lessee acted with reckless disregard for employee's interests and safety, as such amounted to finding of "wilful misconduct" within meaning of statute. AS 45.45.900.

See publication Words and Phrases for other judicial constructions and definitions.

5. Indemnity ⇐3

"Wilful misconduct," within meaning of anti-indemnity statute invalidating construction-related agreements to indemnify one for one's own "wilful misconduct," means volitional action taken either with knowledge that serious injury to another will probably result, or with wanton and reckless disregard of possible results. AS 45.45.900.

6. Insurance ⇐138(1)

Liability for punitive damages is insurable.

7. Indemnity ⇐3

Anti-indemnity statute, which invalidates construction-related agreements to provide indemnity for "sole negligence and wilful misconduct" of indemnitee or its directly responsible agents, servants or independent contractors, forbade indemnity claim against hoist lessor, brought under provision of lessor's lease with construction contractor obligating lessor to indemnify contractor for claims relating to lessor's performance thereunder, following accident in which subcontractor's employee's arm was crushed by hoist component at shopping mall construction site, where jury found that lessee was 95% liable and employee was 5% liable for accident, since employee's employment by subcontractor of lessee brought him, in addition to lessee, within category of persons for whom indemnity is prohibited under "sole negligence" prong of statute. AS 45.45.900.

8. Indemnity ⇐9(2)

Trial court did not abuse its discretion in awarding equipment lessor 20% of its attorney's fees, as prevailing party in indemnity action brought against it pursuant to indemnity provision in its hoist lease with construction contractor, despite lessor's contention that enhanced award was compelled by complexity of facts and issues, extremely high monetary stakes and underlying need to vindicate public policy announced in anti-indemnity statute. AS 45.45.900; Rules Civ.Proc., Rule 82.

9. Appeal and Error ⇐984(5)

Award of attorney's fees is reviewed for abuse of discretion.

Mark A. Sandberg and William M. Wuestenfeld, Sandberg, Smith, Wuestenfeld & Corey, Anchorage, for appellant and cross-appellee.

Daniel A. Gerety, Andrew Guidi, and Donald C. Thomas, Delaney, Wiles, Hayes, Reitman & Brubaker, Inc., Anchorage, for appellee and cross-appellant.

OPINION

MOORE, Chief Justice.

I. *INTRODUCTION*

This case requires us to determine whether an indemnity clause in a lease agreement obligates Marion Equipment Company (Marion) to indemnify Aetna Casualty & Surety Company (Aetna) for its expenses in defending and settling a suit against the Howard S. Wright Construction Company (Wright). The trial court granted summary judgment in favor of Marion. We conclude that the indemnity sought by Aetna is prohibited by AS 45.45.900 and therefore affirm.

II. *FACTS AND PROCEEDINGS*

This case arises out of an injury sustained by James Crane, a journeyman electrician employed by Cochran Electric Company (Cochran). Cochran was a subcontractor employed by Wright, the general contractor in the construction of the Fifth Avenue Mall in Anchorage. Crane was repairing a construction hoist that was erected, operated and maintained by Wright, and leased by Wright from Marion. A component of the hoist crushed Crane's arm, which was later amputated.

Crane sued Wright, Marion, and the hoist manufacturer, among others. Wright tendered the claim to Cochran and Marion. Cochran accepted Wright's tender, and in turn tendered the defense to Aetna.

Marion was dropped from Crane's suit after winning partial summary judgment which dismissed all negligence claims against it. Aetna took the case to trial, where a jury found Wright 95% liable for Crane's injuries and found Crane 5% comparatively negligent. Crane won compensatory damages of $3,805,055 and punitive damages of $500,000. Prejudgment interest and attorney's fees threatened to make Wright's total exposure over $7 million, and in post-trial motion practice, Aetna settled with Crane for $6.25 million.

The basis for the current suit is paragraph L of the hoist lease agreement between Marion and Wright, which provided:

> To the fullest extent permitted by law [Marion] shall indemnify and save harmless [Wright], its officers, agents, and employees from and against any and all suits, claims, actions, losses, costs, including attorney's fees, penalties, damages, and loss of use, of whatsoever kind or nature, ... arising out of, in connection with, or incident to [Marion's] performance hereunder.

Aetna seeks indemnification by Marion for the $6.25 million settlement, plus more than $460,000 in attorney's fees that were incurred in Wright's defense.

The trial court entered summary judgment for Marion on two independent grounds. First, the court accepted Marion's argument that since Wright had agreed to put the hoist in working order, operate it, and maintain it, Crane's injury "could not reasonably be said to have originated from, grown out of, or flowed from Marion's rental and delivery of the hoist". Second, the court accepted Marion's contention that the indemnity clause at issue here was rendered unenforceable by AS 45.45.900, which provides:

> A provision, clause, covenant, or agreement contained in, collateral to, or affecting a construction contract that purports to indemnify the promisee against liability ... from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable.

The court held that the lease agreement came within the terms of the statute and that Wright's behavior—which the jury in Crane's suit had deemed reckless and deserving of punitive damages—constituted "wilful misconduct" under the statute.

III. *DISCUSSION*

Aetna appeals from each of the trial court's rulings. It argues that Crane's injury did in fact "arise out of" Marion's performance under the lease agreement. It also contends that AS 45.45.900 is inapplicable here, or that, if the statute applies, it does not preclude indemnity on these facts. We find it necessary to consider only the question whether AS 45.45.900 prohibits the indemnity Aetna seeks.

[1, 2] Marion is entitled to summary judgment if, drawing all reasonable inferences in favor of Aetna, the record fails to disclose a genuine issue of material fact and Marion is entitled to judgment as a matter of law. *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085, 1086 (Alaska 1989). The interpretation of a statute presents a question of law, which this court reviews de novo. *City of Dillingham v. CH2M Hill Northwest, Inc.*, 873 P.2d 1271, 1273 n. 2 (Alaska 1994).

A. *AS 45.45.900 Bars the Indemnity that Aetna Seeks*

1. *AS 45.45.900 applies to the equipment lease*

[3] We have never been asked to decide whether AS 45.45.900 applies to leases of construction equipment. However, at least eighteen other states have enacted statutes identical or similar to AS 45.45.900,[1] and the weight of authority from the jurisdictions that have considered this question indicates that the statute does govern such leases.

1. *See* Ariz.Rev.Stat.Ann. § 34-226; Cal.Civ.Code §§ 2782, 2782.5; Conn.Gen.Stat. § 52-572k; Ga.Code Ann. § 20-504; Hawaii Rev.Stat. § 431:10-222; Idaho Code § 29-114; Ill.Ann.Stat. ch. 740, para. 35/1; Ind.Code Ann. § 26-2-5-1; Md.Code Ann., Cts. & Jud.Prac. § 5-305; Mich.Comp.Laws Ann. § 691.991; N.M.Stat.Ann. § 56-7-1; S.C.Code Ann. § 32-2-10; S.D.Codified Laws Ann. 56-3-18; Tenn.Code Ann. § 62-6-123; Utah Code Ann. § 13-8-1; Va.Code Ann. § 11-4.1; Wash.Rev.Code § 4.24.115; W.Va.Code § 55-8-14.

This body of authority, coupled with the language of the Marion–Wright lease, convinces us that AS 45.45.900 applies.

Calkins v. Lorain Division of Kuehring Co., 26 Wash.App. 206, 613 P.2d 143 (1980), dealt with contractual relationships identical to the case at bar, although it examined an indemnity clause that ran in the opposite direction. In *Calkins*, the Mitchell Brothers Crane Division leased a crane to the Earley Company, which operated and maintained it while dismantling a chemical plant. An indemnity clause in the lease agreement said that Earley would assume liability for all damages caused by the operation of the crane. An Earley employee was injured by the crane's operation, and sued Mitchell. Mitchell tendered a claim to Earley, was rebuffed, and subsequently sued Earley under the indemnity clause. Although the court based its holding on other grounds, it concluded that the indemnity clause violated the policy expressed by Washington's version of AS 45.45.900.[2] *Id.* 613 P.2d at 145.

Two Illinois courts have applied that state's statute[3] to leases of construction equipment. *Folkers v. Drott Manufacturing Co.*, 152 Ill.App.3d 58, 105 Ill.Dec. 263, 504 N.E.2d 132 (1987), factually mirrors *Calkins*. Imperial Crane Services leased a crane to Clark Painting Company. Under the lease, Clark indemnified Imperial for liabilities arising out of the crane's operation. An employee of Clark was injured by the crane and sued Imperial, prompting Imperial to sue Clark under the indemnity clause. The court found that the indemnity provision fell "squarely within the parameters of the statute," basing this holding on the fact that the lease agreement explained that the crane would be "for use in construction." *Id.* 105 Ill.Dec. at 268, 504 N.E.2d at 137.

In the case at bar, the lease contains an effectively identical provision: it obligates Marion to "furnish [the hoist] ... for the construction of ANCHORAGE 5TH AVENUE [mall]." The lease gives further evidence that it is an agreement collateral to a construction contract, by obligating Marion to "be bound by the terms of said MAIN CONTRACT [between Wright and the mall developers] ... in any way applicable to this Subcontract".

An earlier Illinois case is *American Pecco Corp. v. Concrete Building Systems Co.*, 392 F.Supp. 789 (N.D.Ill.1975). In that case, Central Contractors Service leased a crane and provided an operator to Gateway Erectors. A clause in the lease obligated Gateway to assume liabilities arising from the use of the leased equipment. After Central was sued for damages arising from the crane's operation, Central sought indemnity from Gateway. The court disallowed the suit under Illinois' version of AS 45.45.900. *Id.* at 794.

Aetna attempts to distinguish *American Pecco* on the grounds that the lessor in that case provided an operator as well as a crane. *American Pecco*'s holding, however, does not rely solely on the court's conclusion that, "[b]y providing the crane and operator, [the lessor] became in substance, a subcontractor." 392 F.Supp. at 793. The court ruled that "[d]oubts as to who is properly covered by this legislation should be resolved consistent with legislative policy," which the court defined as "a clear intent to void exculpatory clauses that purport to hold a person harmless from his own negligence in construction related activities." *Id.* at 793–94. The court stated, in terms applicable to the case at bar: "The crane was designed to be used in construction activities. Central cannot logically claim it was unaware of the use to which the crane would be put, when the crane was in fact put to a designed use." *Id.* at 793.

2. The Washington statute voids certain types of indemnity clauses in agreements "in, or in connection with or collateral to, a contract or agreement relative to the construction ... of, any building." Wash.Rev.Code § 4.24.115.

3. The Illinois statute voids certain indemnity clauses in "contracts or agreements ... for the construction ... of a building (or) structure ... or other work dealing with construction." Ill.Ann.Stat. ch. 740, para. 35/1.

4. On this point, however, it is relevant to note that both the lease agreement and the indemnity clause at issue here refer to Marion as "SUBCONTRACTOR" and Wright as "CONTRACTOR."

Finally, *Elliott Crane Service v. H.G. Hill Stores*, 840 S.W.2d 376 (Tenn.App.1992), stands in direct opposition to one of Aetna's arguments against applying AS 45.45.900. Aetna argues that the lease agreement here is not "contained in, collateral to, or affecting a construction contract" because, under Alaska law, Marion is not a contractor and cannot sign construction contracts. In the Tennessee case, Elliott leased a crane and provided an operator to Hill, under an agreement in which Hill agreed to indemnify Elliott for liabilities arising out of the "Lessee's operation." A Hill employee was injured and sued Elliott, prompting Elliott's indemnity claim against Hill. The court held that Elliott did not fit Tennessee's statutory definition of a construction contractor, but, quoting *American Pecco*, the court applied Tennessee's version of AS 45.45.900[5] to the indemnity claim. 840 S.W.2d at 380.

In sum, there is a substantial body of authority which implies that the lease agreement before us is subject to AS 45.45.900. There are also cases which refuse to apply anti-indemnity statutes similar to AS 45.45.900 to leases of equipment used on construction sites. However, we find that these cases are not only factually distinguishable from the case at bar, but that their analysis actually favors applying AS 45.45.900.

In *McMunn v. Hertz Equipment Rental Corp.*, 791 F.2d 88 (7th Cir.1986), the court considered applying Indiana's version of AS 45.45.900[6] to an indemnity provision in Hertz's lease of a "bobcat loader" to a construction contractor. The lease indemnified Hertz from liabilities arising from the loader's operation. The lessee contractor used the loader on a construction site. A worker was injured and sued Hertz, prompting Hertz's indemnity claim against the contractor. *McMunn* allows us to evaluate Aetna's argument that if the lease agreement in this case is subject to AS 45.45.900, then any lessor of trucks, cars, or tools whose equipment finds its way onto a construction site will be unwittingly and unfairly deprived of its ability to enter into indemnity agreements.

Judge Posner based the court's ruling on the public policy underlying anti-indemnity statutes of this type, which legislatures have enacted in an effort to increase safety at construction sites.[7] The *McMunn* court decided that the policy behind the statute would be only "weakly engaged" by the facts of that case. 791 F.2d at 93. It reached that conclusion by means of a syllogism which began with the assumption that a negligible number of bobcats leased by Hertz were used in construction jobs.[8] From this the court reasoned that even if the bobcat lease were held subject to the anti-indemnity statute, "Hertz [would] not make appreciably more careful inspections on the off chance that the loader might be put to a use for which it would not have indemnity." *Id.* Because the application of the statute to the lease would not further the statute's goal of promoting worksite safety, *McMunn* concluded that Indiana's anti-indemnity statute should not be held to govern the rental agreement.

While its empirical assumption regarding the uses of a bobcat loader may be questionable, *McMunn*'s analysis is helpful. Following Judge Posner's reasoning, AS 45.45.900 should be applied to void indemnity clauses in equipment lease agreements if such a legal rule would advance the purposes of the anti-indemnity statute by inducing careful inspection and use of the leased equipment.

Unlike *McMunn*, the indemnitee in the instant case is not the equipment supplier, Marion, but the general contractor and a party to the construction contract, Wright. We believe that where the indemnity clause runs in this direction, applying AS 45.45.900 to the indemnity clause is consistent with the legislative goal of increasing safety at construction sites.

Moreover, in the case at bar, the equipment leased was a construction hoist which was designated by the terms of the lease agreement for use in the construction of the Fifth Avenue Mall. It is useful to note that while Judge Posner considered only those indemnity clauses which ran in favor of the equipment lessor, he hypothesized that "where the equipment supplied to the party to the construction contract is specialized to ... construction or otherwise clearly intended for it," the statutory policy would be served by holding the agreement subject to the indemnity bar. *McMunn*, 791 F.2d at 93. Therefore, even if the indemnity clause at issue ran in favor of Marion, this case would be identical to Judge Posner's hypothetical, and the "safety incentives of the supplier might be enhanced by forbidding indemnity." *Id.*

In sum, although *McMunn* held that the lease agreement at issue was not subject to Indiana's anti-indemnity statute, the opinion leads us to conclude that in order to give effect to the purpose of AS 45.45.900, we must apply the statute to the lease at issue. *McMunn* also answers Aetna's "floodgates" argument, which implies that there is no principled way to apply AS 45.45.900 to leased equipment without extending the holding to every "truck rented from Hertz [and every] hammer rented from Stephan's Tool Rental." Assuming the validity of this concern, it is surely satisfied in cases like the present where the equipment is "specialized to ... construction or otherwise clearly intended for it." *McMunn*, 791 F.2d at 93; *see also American Pecco*, 392 F.Supp. at 793 (holding lease subject to anti-indemnity statute because equipment "was designed to be used in construction activities ... and was in fact put to [that] designed use").

In the face of the authority discussed above, Aetna relies on a Michigan case which it claims is the "only reported decision which squarely addresses this issue." In *Pritts v. J.I. Case Co.*, 108 Mich.App. 22, 310 N.W.2d 261, 267 (1981), the Mi-Jack Products Company leased a travel lift to American Prestressed Concrete Company (APC), a manufacturer of prestressed concrete components. The lease agreement obligated APC to indemnify Mi-Jack for liabilities arising out of the use of the lift. After "an industrial accident" involving the lift, *id.* 310 N.W.2d at 263, APC argued that indemnity was prohibited by Michigan's version of AS 45.45.900.[9] The court refused to apply the statute to "suppliers of those enguged in construction." *Id.* 310 N.W.2d at 267.

Another case refusing to apply an indemnity to a lease of construction equipment is *Orville Milk Co. v. Beller*, 486 N.E.2d 555 (Ind.App.1985), which involved the rental of space heaters by a construction contractor who used them to warm part of a building under construction. The heaters caused the carbon monoxide poisoning of a worker, who was injured after he became dizzy and fell. *Id.* at 558–59. The lease agreement indemnified the lessor from liabilities arising from the heaters' operation. The contractor attempted to avoid indemnification by arguing that Indiana's version of AS 45.45.900 voided the indemnity agreement. The court summarily refused to apply the statute. *Id.* at 561.

We decline to follow *Pritts* and *Beller*. First, as the trial court in the instant case observed, the *Pritts* court apparently struggled with what it perceived to be a dearth of legal authority on this subject: "[the defendant] has not cited, nor can we find, any

5. The Tennessee statute voids indemnity clauses that save harmless an indemnitee from its sole negligence in agreements "in or in connection with or collateral to a contract ... relative to the construction ... of a building." Tenn.Code Ann. § 62-6-123.

6. Indiana's statute voids indemnity clauses in any agreement "contained in, collateral to, or affecting any [non-highway] construction ... contract" where the clause purports to relieve the indemnitee from sole negligence. Ind.Code Ann. § 26-2-5-1.

7. In the days before such anti-indemnity statutes, it was common practice for general contractors to obtain indemnity agreements from their subcontractors. State legislatures believed that such agreements led the indemnitee to be less careful and thereby increased the incidence of accidents at the worksite. The legislative response was the enaction of anti-indemnity statutes. *McMunn*, 791 F.2d at 92 (citing *Fort Wayne Cablevision v. Indiana & Mich. Elec. Co.*, 443 N.E.2d 863 (Ind.App.1983)); *see also* Stein, et al., *Construction Law* § 13.17(2)(b) (1993).

8. The court deemed that the loader was typically used for snow removal and highway construction, which was not covered by the statute. 791 F.2d at 93.

9. Like Washington and Tennessee, Michigan voids certain indemnity clauses in agreements "in, or in connection with or collateral to, a contract or agreement relative to the construction ... of a building." Mich.Comp.Laws Ann. § 691.991.

wilful misconduct

cases in which the statute has been held to apply to equipment suppliers." 310 N.W.2d at 267. We face no such dilemma here, as shown by the authority discussed above. Second, both cases are factually distinguishable from the case at bar. Although its description of the facts is ambiguous, *Pritts* implies that the leased travel lift was in use at an industrial site rather than on a construction project. *Id.* The heaters leased in *Beller* were not specifically designed for use in construction, as was the hoist in the case before us. Moreover, the lessor in *Beller* was not told of the purpose for which the equipment was rented, 486 N.E.2d at 557, whereas the lease agreement in the case at bar explicitly stated that the hoist would be used in construction. Third, to the extent that these cases support Aetna's contention that AS 45.45.900 does not apply to "suppliers of those engaged in Construction," we decline to adopt such a rule.

Our analysis of the case law, the lease at issue here, and the purpose of AS 45.45.900 lead us to conclude that the Marion–Wright lease is governed by the statute. It now remains for us to determine whether the statute renders the indemnity agreement in the lease void and/or unenforceable.

2. *AS 45.45.900 renders Aetna's claim for indemnity unenforceable*

[4] The indemnity clause at issue is unenforceable if it purports to indemnify Wright "from the sole negligence or wilful misconduct of [Wright] or [Wright's] agents, servants or independent contractors who are directly responsible to [Wright]." AS 45.45.900. We conclude that Aetna is attempting to seek indemnity for an injury that resulted from Wright's wilful misconduct and sole negligence. Thus, on both of the grounds set forth in AS 45.45.900, we hold the indemnity clause in this case unenforceable.

The trial court held the indemnity clause unenforceable because it concluded that Aetna was seeking indemnity for Wright's wilful misconduct. The court based this conclusion on the fact that the jury in the *Crane* lawsuit found that Wright's behavior constituted grounds for punitive damages. In the words of the jury instruction, Wright's conduct was found to be "the result of maliciousness or hostile feelings toward the plaintiff, or ... undertaken with reckless indifference to the interests, rights, or safety of others." Based on this finding of reckless indifference, the lower court ruled that Wright's actions were the equivalent of wilful misconduct.

[5] Aetna argues that wilful misconduct is a term inapplicable to Wright because it describes only those tortfeasors who intend harm. We disagree. It is true that "[t]he phrase 'wilful misconduct' implies intent. However, the intention relates to the misconduct, not to the result, and, therefore, an intent to injure need not be shown." *Brockman v. Bell*, 78 Ohio App.3d 508, 605 N.E.2d 445, 449 (1992).

A number of Alaska cases inferentially support the lower court's holding that actions undertaken with "reckless indifference to the interests, rights, and safety of others" constitute wilful misconduct. In *Van Biene v. ERA Helicopters, Inc.*, 779 P.2d 315 (Alaska 1989), we held that allegations of wilful misconduct were insufficient to make out a cause of action for an intentional tort. *Id.* at 318–19. In *Korvan Air Lines Co. v. State*, 779 P.2d 332 (Alaska 1989), we noted that a defendant had been found guilty of wilful misconduct by a jury following this instruction:

> The defendants' behavior is wilful misconduct if they intentionally performed or failed to perform some act or series of acts either:
>
> (1) with knowledge that such act or omission would probably result in injury or damage, or
>
> (2) in a manner from which could be implied *reckless disregard* of the probable consequences of the act or omission.

Id. at 337 & n. 3 (emphasis added). Finally, in *Borg–Warner Corp. v. Avco Corp.*, 850 P.2d 628 (Alaska 1993), we termed "persuasive" the view that in comparative negligence jurisdictions like Alaska, "wilful misconduct" should be considered a category of misconduct that "falls short of being intentional." [10] We held that intentional tortfeasors are those who act with specific intent to cause an injury. We classified "wilful and wanton" actors as unintentional tortfeasors. *Id.* at 633.

What we have implied in the aforementioned cases, we hold explicitly today in the context of AS 45.45.900: "wilful misconduct" means volitional action taken either "with a knowledge that serious injury to another will probably result, or with wanton and reckless disregard of the possible results." *Rost v. United States*, 803 F.2d 448, 450 (9th Cir. 1986) (quotation omitted). Because Wright was found by a jury to have acted with reckless disregard of Crane's interests and safety, Wright's injurious behavior is properly termed wilful misconduct. Consequently, AS 45.45.900 forbids the indemnity Aetna seeks.

Aetna cites *Borg–Warner* for the proposition that "a comprehensive system of comparative negligence should allow for the apportionment of damages in all cases involving misconduct which falls short of being intentional." 850 P.2d at 633 n. 14. From this Aetna infers that AS 45.45.900 should be read to "prohibit indemnity only for tortfeasors who ... intended harm." This inference is unwarranted, however. The case at bar does not concern Alaska's "comprehensive system of comparative negligence;" rather, this case requires us to construe AS 45.45.900, an anti-indemnity statute. In the statute, the legislature chose to disallow indemnification in construction-related contracts where the indemnitee is guilty of "wilful misconduct"—a term with specific legal meaning that does not require intent to harm. The legislature's authority to enact this provision is not in doubt, and thus we are bound to give effect to this provision in light of our precedents concerning the meaning of the term "wilful misconduct."

[6] Aetna also argues that because liability for punitive damages can be insured against in Alaska, activity that gives rise to punitive damages should also be subject to indemnification. While it is true, as Aetna notes, that a company can insure itself against punitive damages, it is equally true, under AS 45.45.900, that except in an insurance contract no party in a construction-related contract may obtain indemnity for its "sole negligence or wilful misconduct." In other words, Aetna's argument simply ignores the fact that the parameters of indemnity law have been narrowed by the legislature in a way that the parameters of insurance law have not. Since we are obligated to respect this legislated distinction, we must reject Aetna's interpretation of AS 45.45.900.

[7] Finally, even if Wright had not engaged in wilful misconduct, we find that AS 45.45.900 would disallow indemnity in this case. Alaska Statute 45.45.900 voids indemnity clauses in construction-related contracts when they purport to indemnify the promisee against liability from the sole negligence "of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee." In this case, the jury found Crane's accident 95% attributable to the negligence of Wright and 5% attributable to the negligence of Crane, who was employed by Wright's subcontractor, Cochran. Since Crane was employed by a subcontractor of Wright, he falls into the category of "[Wright's] agents, servants or independent contractors who are directly responsible to [Wright]." [11] AS 45.45.900.

B. *The Trial Court Did Not Abuse Its Discretion in Awarding Marion 20% of Its Attorney's Fees*

[8, 9] Marion cross-appeals the lower court's decision to award Marion 20% of its attorney's fees. An award of attorney's fees is reviewed for abuse of discretion. *Irving v. Bullock*, 549 P.2d 1184, 1190 (Alaska 1976).

10. *Borg-Warner* involved the interpretation of former AS 09.16.010(c), which barred contribution in the case of "any tortfeasor who has intentionally caused an injury."

11. We reserve decision on the question whether the term "sole negligence" in the statute relates only to the negligence of the promisee, those for whom the promisee is responsible, and the promisor, or whether third-party negligence is also meant to be addressed.

In this case, where the prevailing party received no money judgment and the case did not go to trial, the court awarded Marion 20% of its total fees pursuant to Alaska Civil Rule 82. The court "[saw] no reason to vary from the presumptive Rule 82 formula." Marion argues that an enhanced award is compelled by "the complexity of the facts and issues, the extremely high monetary stakes involved, and the underlying need to vindicate the public policy announced in [AS 45.45.900]." Marion cites no authority for the proposition that any of these factors compel an enhanced fee award, however. We find no abuse of discretion and therefore affirm the award.

IV. *CONCLUSION*

Because the indemnity Aetna seeks is prohibited by AS 45.45.900, we AFFIRM summary judgment for Marion. We also AFFIRM the trial court's award of attorney's fees.

Franklin E. DAWSON, Appellant,

v.

STATE of Alaska, Appellee.

No. A-5065.

Court of Appeals of Alaska.

March 31, 1995.

Rehearing Denied April 14, 1995.

Following jury trial before the Superior Court, Third Judicial District, Anchorage, Rene J. Gonzalez, J., defendant was convicted of two counts of delivering cocaine and five counts of maintaining a residence used for distribution of cocaine under so-called "crack-house statute." Defendant appealed. The Court of Appeals, Bryner, C.J., held that: (1) under crack-house statute as properly construed, despite theoretical sufficiency of evidence to support conviction of two violations of statute, verdicts could not be sustained given inadequate jury instructions that did not require determination of all necessary elements of offense; (2) imposition of three-year sentence upon defendant as first-time offender for delivery of cocaine was not clearly mistaken; and (3) imposition of special condition of probation that forbade defendant from having any contact with his wife was unwarranted under facts.

Affirmed in part; reversed in part and remanded.

1. Disorderly House ⇐2

Alaska's crack-house statute must be construed to require finding of continuity and to preclude conviction for isolated incident of possession or distribution. AS 11.71.040(a)(5).

2. Disorderly House ⇐19

Existence of continuity or duration necessary to find violation of Alaska's crack-house statute presents factual question to be decided in light of totality of facts of each case; there is no inflexible rule that evidence found only on single occasion cannot be sufficient to show crime of continuing nature necessary to support conviction. AS 11.71.040(a)(5).

3. Disorderly House ⇐2

Central goal of Alaska's crack-house statute is to prohibit persons from personally using or permitting others to use various types of property, enumerated in statute, for purpose of keeping or distributing controlled substances. AS 11.71.040(a)(5).

4. Disorderly House ⇐5

For person to "keep or maintain" structure in violation of Alaska's crack-house statute, person must control or have authority to control use or occupancy of structure. AS 11.71.040(a)(5).

See publication Words and Phrases for other judicial constructions and definitions.

5. Disorderly House ⇐1

Requirement in crack-house statute specifying that property must be used "for keeping or distributing controlled substances in violation of a felony offense" simply requires that property be used for purpose of keeping or distributing drugs in manner that amounts to felony under Alaska's drug laws; use for purposes of committing misdemeanor-grade controlled substance offenses is excluded from language of crack-house statute. AS 11.71.040(a)(5).

6. Disorderly House ⇐2

Under crack-house statute, which requires that defendant "knowingly" keep or maintain property used for drug-related purposes, defendant must actually know that property is being used illegally when the illegal use is carried on by other persons. AS 11.71.040(a)(5).

7. Disorderly House ⇐2

Under crack-house statute, defendant must act knowingly both with respect to proscribed conduct of keeping or maintaining property that is used for purpose of illegal storage or distribution of controlled substances and with respect to existence of illegal use itself. AS 11.71.040(a)(5).

8. Disorderly House ⇐2

For purposes of crack-house statute, when defendant keeps or maintains property and allows others to use it for purpose of drug related activities, state need not prove that defendant acted intentionally; that is, defendant need not share illegal purpose of those who carry on drug-related activity, but need only know of it. AS 11.71.040(a)(5).

9. Criminal Law ⇐1173.2(2)

Although evidence was theoretically sufficient to support defendant's conviction for two violations of crack-house statute, verdicts of conviction would not stand where they did not represent determination of all necessary elements of offense; because each of alleged violations of crack-house statute was based on isolated drug sale, and because full and accurate instructions on elements of offense were not given at trial, jury was never required to decide whether defendant's use of premises for keeping and distributing cocaine was in fact continuing use, or whether it merely amounted to series of isolated transactions that were incidental to defendant's presence in apartments. AS 11.71.040(a)(5).

10. Drugs and Narcotics ⇐133

Sentence for first-time offender that fell well below second-offense presumptive term was within permissible range of sentences for conviction of delivery of cocaine; defendant was sentenced to three years, and second-offense presumptive term was four years; given clearly commercial nature of defendant's involvement in cocaine trafficking and extensive history of misdemeanor convictions, three-year sentence was not clearly mistaken. AS 11.71.030(c), 12.55.125(d)(1).

11. Criminal Law ⇐982.5(2)

As imposed, special condition of probation that forbade defendant from having any contact with his wife unless contact was approved by probation officer was unduly restrictive of liberty and could not withstand scrutiny; court made no apparent effort to tailor scope of marital association restriction to any specific circumstances of case.

Rex Lamont Butler, Anchorage, for appellant.

Kenneth M. Rosenstein, Asst. Atty. Gen., Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and MANNHEIMER, JJ.

OPINION

BRYNER, Chief Judge.

Franklin E. Dawson was convicted by a jury of two counts of delivering cocaine, in violation of AS 11.16.110(2)(B) and AS 11.71.030(a)(1) (misconduct involving a controlled substance in the third degree), and five counts of maintaining a residence used for the distribution of cocaine, in violation of AS 11.71.040(a)(5) (misconduct involving a controlled substance in the fourth degree). Superior Court Judge Rene J. Gonzalez sentenced Dawson to three years' imprisonment on each of the delivery counts and ordered the sentences to run concurrently with one another. On each of the maintaining charges, the judge sentenced Dawson to two

Restitution

re: juveniles

See RI v. State 894 P2 683 (App '95)

See JCW v State 880 P2 1067 (App '94)

AS 47.10.080(b)(4)

HB7

Susanne DiPietro, Staff Atty, Jud Council
279-2526

- How does this change cts. sentencing ability?
- Can cts. sent. to dispute res now?

- Rationale for confidentiality - move now is to open up hearings, etc.
- Does victims rights group support confidentiality? Lienhart?

- What about ct. ordering juvenile delinquent to pay for service? Will this bill allow?

Fed. Funding
Vic Off Media Project
through DFYS
pass through
granted to State

Patrick Cunningham
Juneau
(907) 786-1724
Volunteers
private/non profit
Vic for Justice

Exec Dirct
Nikishka
Stewart
274 1542
Comm Dispute
Res. Center, Inc
CORP Developed from VOMP

MEMORANDUM

Date: **1/23/97**

To: Joe Green

From: Lisa Kirsch

Re: **HB 7--Community Dispute Resolution Centers for Juvenile Offenders**

This is a bill from Brian Porter that gives the court system a means of recognizing dispute resolution centers and gives the court and the Dept. Health and Social Services the power to send a delinquent minor to a recognized center under certain circumstances.

This bill also provides some important legal protections for the dispute resolution centers. First it gives them immunity to law suits for youth courts and dispute resolution centers as long as there is no willful or wanton misconduct. Second, it makes communications within the dispute resolution centers confidential under the Alaska Statutes. This protects the centers from subpoena of their records which they would prefer to keep confidential. Does this immunity include "so long as there is no willful or wanton misconduct" investigation?

Rep. Porter has requested a hearing and wants this on the calendar "at our earliest convenience." Please let me know if I should schedule it for next week. We have overviews on Monday (Dept. Public Safety) and Wednesday (Dept. of Corrections), but nothing Scheduled on Friday, January 31.

IF YOU WANT ME TO PUT THIS ON OUR CALENDAR FOR NEXT WEEK, I MUST GIVE THE SCHEDULE TO THE CLERK'S OFFICE BY 4PM TODAY

Lisa

1) would the HB impact community resolution centers (are they now in existance?) and if so why and fiscal note to that effect?

2) ff 2 above on immunity

3) The new wording is passive (-may be). Can the court use these centers now? If so what does this bill do?

Alaska State Legislature

House of Representatives

House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Chairman: Representative Joe Green
Vice-Chairman: Representative Con Bunde

Representative Ethan Berkowitz
Representative Eric Croft
Representative Jeannette James
Representative Brian Porter
*Representative Norman Rokeberg

AGENDA

Friday, January 31, 1997

HB 7 **Community Dispute Resolution Centers for Juvenile Offenders and their Victims**

Anchorage LIO Witnesses:

Susanne DiPietro, Staff Attorney
Alaska Judicial Council

Dr. Patrick Cunningham, Associate Professor
Department of Social Work, UAA

Kathleen Anderson, President
Alaska Dispute Settlement Association

Janice Lienhart, Executive Director
Victims for Justice

Ralph Samuels
Youth Courts

Angela Salerno
National Association of Social Workers

* Representative Rokeberg will not attend

Victim Offender Mediation Fact Sheet

RE: HB 7
FROM: Angela

What Is It?

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 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 as it allows them to confront the offender with the very real personal impact of their crime.
- Victims report satisfaction with the restitution agreements because 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 for the crime.
- Offenders are more willing to fulfill 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.
- People see action being taken on a community level.
- National studies that followed offenders in victim offender mediation programs found that they committed considerably fewer future crimes than a matched sample of similar offenders not in mediation.*

* It remains for future studies to show whether this trend is statistically significant (i.e. whether the reduction was attributable to chance or a result of the program.)

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 community, juvenile intake, community businesses, the Office of the Attorney General, the Division of Family and Youth Services, the Anchorage Police Department and juvenile probation.

Funding Sources. VOMP employs only one part-time staff member. The bulk of VOMP's services are delivered by trained, community volunteers. VOMP applies for grants from a variety public and private sources, including local businesses. Currently, most of VOMP's funding comes from the federal Office of Juvenile Justice and Delinquency Protection (OJJDP), administered by the Alaska Division of Family and Youth Services.

II. Program Goals

VOMP's goals are to meet the needs of victims of crime, juvenile offenders, juvenile justice system workers and the community as a whole. Specifically, the VOMP strives to:

- provide an additional referral option for juvenile Intake and other juvenile justice workers;
- create and maintain positive community investment in the problem of (and the solutions to) juvenile crime. This goal includes educating the community about VOMP and what it does;
- increase offenders' feelings of accountability;
- empower victims to have a more active role in achieving restorative justice;
- provide an opportunity for conciliation (or reconciliation) between victim and offender;
- provide an opportunity to create and implement a restitution agreement.

Ancillary goals include providing both victims and offenders appropriate referrals to other services, and providing an opportunity for "healing" or closure around the criminal incident for both the victim and the offender. Other project goals include studying whether participation in VOMP increases victim satisfaction and reduces further criminal behavior (recidivism).

III. Referrals and Screening

Referrals. VOMP receives case referrals from the Juvenile Intake Office and the Probation Office of the Division of Family and Youth Services.[1] Upon receiving a referral, VOMP staff screen the case and the participants to ensure that the mediation/dialogue process involves only individuals for whom it is suitable, and to ensure that the mediation process is safe for all participants. VOMP staff screen each case individually. VOMP staff and volunteers strictly protect the confidentiality of victims, juveniles and of all referral information.

Screening. Examples of suitable cases involve first- or second-time minor property crime offenders, for example, juveniles accused of criminal mischief, theft and burglary. Examples of unsuitable cases which screening should eliminate include: cases which present a risk of "revictimizing" the victim through abusive interaction with the offender or a risk of further harm to

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[1] In the near future, VOMP also expects to receive referrals from Youth Court under the Municipality of Anchorage's Making a Difference Program.

the victim, the offender or the volunteer mediators; cases in which any participant is unable, whether because of emotional, behavioral or developmental problems, to negotiate on his or her own behalf; cases in which either party is negotiating in bad faith; cases in which participation is not voluntary; and cases in which the offender does not admit to some level of involvement in the offense Unsuitable cases are referred back to Juvenile Intake. Suitable cases are assigned to mediators.

There is no charge to participate in victim offender mediation.

IV. Recruitment and Training of Volunteers

Recruitment. VOMP's goal is to use volunteers as much as possible in implementing its program. Staff try to select mediators, employees and volunteers from a cross-section of the community. Staff interview and train prospective volunteers or employees before accepting them into the program. Staff also supervise and consult with volunteer mediators on an ongoing basis.

Training. All staff (paid and volunteer) and mediators must be trained in mediation skills, the VOMP process, the juvenile justice system, victim awareness, and issues about working with teens.[2] VOMP provides to all volunteers a comprehensive training consisting of 40 hours of class instruction in mediation skills including: communication and conflict resolution theory, the mediation process, active listening and communication exercises, confidentiality of the process, speakers from juvenile justice agencies and victims' groups, role plays, and videos. Handouts are provided for all trainings. There is no charge for the training.

V. Orientation Session

After a case is accepted, VOMP staff or trained volunteers meet separately with both the victim and the offender to screen and evaluate them, using the guidelines set out in section III, above. If appropriate, staff then orient them to the process and ensure that their participation is voluntary. During the orientation sessions, VOMP staff fully inform victims and offenders orally and in writing about the mediation process, procedures and goals, and stress that their participation is voluntary. The parties must read and sign a written consent to mediate before mediation can begin. The parties

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[2]Volunteers who previously have received mediation training and who demonstrate ability to mediate need not take the VOMP basic mediation training. They are required, however, to take the substantive program training.

also are asked to fill out the first of two written program evaluation instruments at the orientation session.

VI. Mediation

After all parties have successfully completed the orientation session, the case is assigned to a team of two mediators. The teams are composed of one veteran mediator and one with less experience. The mediators facilitate a face-to-face meeting between the victim and the offender. During this mediation, the victim and offender address informational and emotional needs, and discuss the victim's losses. The mediators assist the parties, if they wish, to negotiate a mutually acceptable restitution agreement. Either party may withdraw from the mediation at any time. Mediators make every effort to get the withdrawal in writing.

If the victim and the offender negotiate an acceptable restitution agreement, the mediators help the parties reduce the agreement to writing. The mediators place the agreement, if any, into the VOMP file. If one of the participants withdraws from the mediation, the mediators make a notation in the VOMP file. The mediators destroy any notes at the end of the mediation in order to protect the participants' confidentiality.

VII. Contract Monitoring and Follow Up

VOMP staff and volunteers monitor performance of any contracts established during the mediation. VOMP staff offer support to the offenders to help them successfully complete their contracts.

Upon successful completion of the contract, VOMP staff report back to Juvenile Intake that the contract has been fulfilled. If the contract is not fulfilled, staff report that fact to Intake, with a notation as to which party failed to fulfill the contract.

After the case is closed, volunteers contact the participants by telephoneand ask them to complete the second of the evaluation instruments. The volunteers read the questions over the phone and record the responses onto a written evaluation instrument. No names are recorded on the written evaluation instrument, in order to protect the participants' confidentiality.

VII. Evaluation

The VOMP program includes an evaluation component. This evaluation is based on work done by Drs. Umbreit and Coates as modified to reflect the unique goals of this project and the needs of this community. The evaluation measures the success and efficacy of the project, whether the project meets organizers' goals, and whether it meets the needs of the victims, youthful offenders, juvenile justice personnel, and the community. Data collection began in 1994.

Volunteers, mediators and staff gather the evaluation data. The evaluation is based on both qualitative and quantitative data, including: (1) statistical analysis of written evaluation forms completed by mediators and mediation participants; (2) statistical reports completed by the project director; (3) media coverage of the project; (4) comparative information from similar programs in other states; and (5) structured interviews with participants, program staff, and representatives from referring agencies (courts, juvenile probation, victims' advocacy groups, prosecutors and defense attorneys). Victims and offenders who are referred to the program but do not mediate are surveyed for comparison to those who mediated.

VOMP evaluation volunteers strictly protect the participants' confidentiality during the entire evaluation process.

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

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

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF EDUCATION
COURTS

SESSION:
STATE CAPITOL ROOM 119
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-4910
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVE., SUITE 640
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

DISTRICT 20

HB 7 this session

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 agreemtns 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

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FAX (907) 258-5510

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.

HB 379 Bill/Resolution Floor Action Page 2 of 3

Current Status: (S) FIN

	Jrn-Date	Jrn-Page		Action
1	12/29/95	2365	(H)	PREFILE RELEASED
2	01/08/96	2365	(H)	READ THE FIRST TIME - REFERRAL(S)
3	01/08/96	2365	(H)	JUDICIARY, FINANCE
4	01/19/96	2494	(H)	COSPONSOR(S): GREEN, KELLY
5	01/22/96	2504	(H)	JUD RPT CS(JUD) NT 7DP
6	01/22/96	2505	(H)	DP: PORTER, GREEN, BUNDE, TOOHEY,
7	01/22/96	2505	(H)	B.DAVIS, FINKELSTEIN, VEZEY
8	01/22/96	2505	(H)	ZERO FISCAL NOTES (COURT, ADM-2, DHSS)
9	01/22/96	2505	(H)	ZERO FISCAL NOTE (LAW)
10	01/31/96	2585	(H)	FIN REFERRAL WAIVED
11	02/09/96	2699	(H)	RULES TO CALENDAR 2/9/96
12	02/09/96	2699	(H)	READ THE SECOND TIME
13	02/09/96	2699	(H)	JUD CS ADOPTED UNAN CONSENT
14	02/09/96	2700	(H)	ADVANCED TO THIRD READING 2/12 CALENDAR
15	02/09/96	2707	(H)	COSPONSOR(S): BUNDE, TOOHEY, THERRIAULT
16	02/12/96	2733	(H)	READ THE THIRD TIME CSHB 379(JUD)
17	02/12/96	2733	(H)	PASSED Y34 E6
18	02/12/96	2740	(H)	TRANSMITTED TO (S)

Selection=> p

PF1 HELP PF2 SUBJ PF3 EXIT PF4 MENU PF5 TEXT PF6 PRINT PF7 BWD PF8 FWD PF9 CMT/JRNL PF10 FIRST PF11 LAST PF12 QUIT

HB 379 Bill/Resolution Floor Action Page 3 of 3

Current Status: (S) FIN

	Jrn-Date	Jrn-Page		Action
1	02/13/96	2402	(S)	READ THE FIRST TIME - REFERRAL(S)
2	02/13/96	2402	(S)	JUD, FIN
3	05/03/96	3872	(S)	JUD RPT SCS 3DP 1NR SAME TITLE
4	05/03/96	3873	(S)	PREVIOUS H ZERO FNS (LAW, COURT,
5	05/03/96	3873	(S)	ADM-2, DHSS)
6	05/03/96	3873	(S)	REFERRED TO FINANCE

Selection=>

PF1 HELP PF2 SUBJ PF3 EXIT PF4 MENU PF5 TEXT PF6 PRINT PF7 BWD PF8 FWD PF9 CMT/JRNL PF10 FIRST PF11 LAST PF12 QUIT

CS FOR HOUSE BILL NO. 379(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 1/22/96
Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Green, Kelly

A BILL

FOR AN ACT ENTITLED

"An Act authorizing establishment of community dispute resolution centers to foster the resolution of disputes between juvenile offenders and their victims."

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

* **Section 1.** AS 22.35 is amended by adding a new section to read:

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

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

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

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

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

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

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

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

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

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

(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 victim 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:

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

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

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

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

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

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

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						
CHANGE IN REVENUES ( )						

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 for Risenhoover
Agency: Administration
Date:

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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) 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

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 to the Public Defender Agency.

Prepared by: John Salemi, Director
Division: Public Defender Agency
Phone: 269-264-4400
Date: _____

Approved by Commissioner: (Mark Boyer) Alston M. Elg
Agency: Department of Administration
Date: _____

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Rev: 12/95
nn hb379pd wpd

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date:
Title: "..authorizing...alternate dispute resolution centers ...disputes between juvenile offenders and their victims."
Sponsor: Representative Porter
Requester: Representative Porter

Dept. Affected: Department of Law
BRU: Civil Division
Component: General Legal Services

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 L. Pegues

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 1/16/96

Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 1/16/96
Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB379

Revision Date:
Dept. Affected: Health and Social Services
Title: Establish Alternate Dispute Resolution
BRU: Family and Youth Services
Centers for Juvenile Offenders
Component: DFYS Central Office
Sponsor: Representative Porter
COMPONENT SERIAL NO. 259
Requestor: House (JUD)
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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

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
Phone:
Date: 01/16/96

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 1/16/96

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FISCAL NOTE

STATE OF ALASKA — **BILL NO.** CSHB 379 (JUD)

1996 LEGISLATIVE SESSION

Revision Date:

Dept. Affected: Alaska Court System

Title: An Act authorizing establishment of community dispute resolution centers ... juvenile offender

BRU: Trial Courts

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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: $ 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 — Phone: 264-8228

Agency: Alaska Court System — Date: 01/16/96

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 01/16/96

Agency: Alaska Court System

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Rev 1/96

7)

..OUSE COMMITTEE REPO..T

Date Referred to Committee: January .. .996 FURTHER RE ..RRALS: Finance

Date of Committee Action: 19 JAN 96

The JUDICIARY Committee considered: HB 379

HOUSE BILL NO. 379 VICTIM/JUVENILE OFFENDER MEDIATION

'An Act authorizing establishment of alternative dispute resolution centers to foster the resolution of disputes between juvenile offenders and their victims."

recommends it be replaced with the following committee substitute CS HB 379 (JUD)
[ ] the same title
[✓] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [ ] fiscal note(s) _____

5) [✓] zero fiscal note(s) CI Supt, Admin (2) [ ] zero fiscal note(s) _____
HHSS, Law

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Porter	✓			
Green	✓			
Bunde	✓			
Tocicy	✓			
B. Davis	✓			
Finkelstein	✓			
Vezey	✓			
	(7)			

CHAIR'S SIGNATURE Brian D Porter

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

Representative Al Vezey
Alaska Legislature
Juneau, AK

Via FAX: 907/465-3258

Dear Representative Vezey:

I am sorry that the Anchorage LIO office disconnected us before the end of yesterday's hearing on CSHB 399. 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,

Susanne Di Pietro

Susanne Di Pietro
Staff Attorney

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

TOTAL P.02

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

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.[1] 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

Susanne Di Pietro
Staff Attorney

cc: Representative Brian Porter

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

TOTAL P.02

DREW PETERSON
ATTORNEY AT LAW, MEDIATOR AND DISPUTE RESOLUTION CONSULTANT

4[illegible] LAUREL STREET, SUITE 220
ANCHORAGE, ALASKA 99508

(907) 561-1518 • FAX (907) 562-0760

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 disutes 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 is I believe supported wholeheartedly by the Anchorage mediation community. I would urge the favorable support of HB 379 as a method of further strengthing this great service.

Sincerely,

DREW PETERSON
DHP/dp

FAX to 274-0332

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive
Anchorage, Alaska 99508

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,

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

Janice Lienhart, Executive Director
Victims for Justice

- Crisis Intervention
- Short and Long Term Emotional Support
- Grief Educaton
- 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

Serving victims of violent crimes and the families and friends of murder victims.

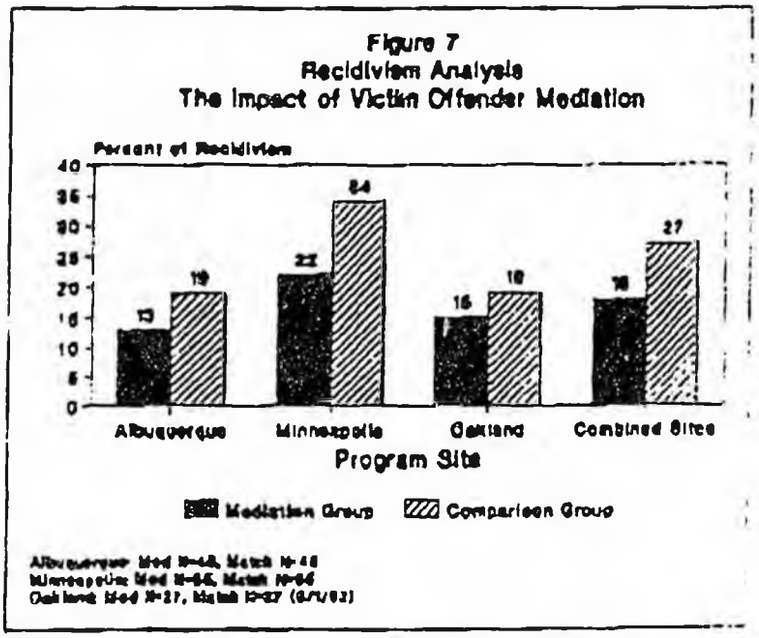
THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL

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 naive 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.

A Publication of the Justice Center

ALASKA JUSTICE FORUM

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. Trostle

A pilot victim-offender mediation program, which involves juveniles accused of certain offenses and the victims of these crimes, has recently been established in Anchorage. Mediation is offered as a diversion from the justice system in which the offender may accept to avoid more formal adjudication.

Mediation between a victim and offender with the goal of achieving restitution and reconciliation can supplement the formal adjudication process. Under mediation, both victim and offender are active participants in the resolution process. The victim has the opportunity to confront the offender to seek a resolution of the offense, and the offender is provided with the opportunity to make amends for the crime. Such problem-solving intends to restore both parties to more positive social functioning in the larger community and to compensate for some of the perceived inadequacies of the criminal justice system. Mediation programs often are used as an alternative to adjudication within the justice system or as a diversion from the system.

The Western tradition from which the U.S. system of criminal justice has developed views crime as an offense against the state, even though a victim may also be involved. It is 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 often quite passive. Since, until recently, in ordinary court proceedings victims were seldom more than observers, feelings of frustration, powerlessness, and further victimization could arise.

Victim-Offender Mediation

Victim-offender mediation programs provide an opportunity for victims to meet the offenders face-to-face in the presence of a trained mediator for the purpose of reaching a reconciliation intended to resolve the injury of the crime in some way. Crime, under the mediation model, is viewed as a conflict between people rather than as an offense against the state. 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 also achieves involvement by stressing 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 application of a modern system 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 1979 in the United States by a program with the same name, which was started in Elkhart County, Indiana through the joint efforts of PACT Inc. (Prisoners and Community Together) and the Mennonite Church. The program spread, and by 1981 eight programs had been developed in the United States and Canada. By [illegible], 90 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 Burt Galaway in a 1988 article in *Social Service Review*, of 14,001 cases referred by the courts to VORP programs, 86 per cent 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

Please see Mediation, page 3

HIGHLIGHTS INSIDE THIS ISSUE

Mediation

continued from page 1

Department of Social Work and the Justice Center of the University of Alaska Anchorage.

In spring 1994, a survey was sent to 29 Anchorage area private and organizations directly or peripherally involved in the juvenile justice system. Responses came from the Division of Family and Youth Services, the offices of the Public Defender, Public Advocacy, the Attorney General, law enforcement, the court system and various social service agencies. The intent of the survey was to determine the feasibility of establishing a victim-offender mediation program targeting juvenile offenders in Anchorage. Respondents were asked a series of questions regarding program concepts, the types of crimes, offenders, and victims to be targeted, and the organizational structure, funding and staffing patterns. The support for establishing a program from those surveyed was highly positive overall, with many expressing a willingness to participate actively in the development of a program. Many of those surveyed later joined the project planning group.

In fall 1993, an informal initial case, the Victim-Offender Mediation Project Planning Group, was formed. The group included the original four organizations, representatives from Juvenile Probation, the Office of Public Advocacy, the Alaska Judicial Council, the Alaska Youth and Parent Foundation, Family and District Court Judges, the Attorney General's Office, the Anchorage Chamber of Commerce, private practice attorneys, and professional mediators. A six-month pilot project began in early 1994.

Plans for the pilot project evolved from committees of the Project Planning Group. The Chief Juvenile Probation Intake Officer and his staff agreed to provide referrals of cases identified as meeting the criterion of first or second-time juvenile offenders accused of property crimes. It was decided that intake staff would screen cases and determine which were appropriate for mediation. The Municipal Council participated in the development of instruments to evaluate the project, and the Alaska Youth and Parent Foundation, an Anchorage area non-profit agency, provided their facilities for training, meetings, and mediation sessions. A part-time coordinator was hired to train volunteers and implement the pilot project.

Ten volunteers, with previous mediation training, participated in a training program specific to victim-offender mediation. A training model developed by VORP in Elkhart, Indiana was drawn upon that included values and orientations of mediations and issues in juvenile justice. Trainees participated in role-playing that replicated the entire mediation process, beginning with the initial contact of the participants through mediation and contracting. A second training was completed for additional community volunteers and included a teenager who had been active with Anchorage Youth Court. Fifteen trained volunteer mediators are now participating in the project. Except for the part-time coordinator, none of the participants is paid. Although evaluation of the project is in the initial stages, the volunteer mediators report success in the cases that have gone to mediation.

* By late summer 1994, 61 referrals had been received from Probation Intake, with 16 mediations and contracts being completed, 13 cases in progress and 32 cases settled without mediation occurring. Of those 32, 22 victims declined mediation and 4 cases were screened as not appropriate for mediation. In 4 cases the offender failed to keep the appointment and in 2 cases the victim did not keep the mediation appointment.

Each mediation case has its own flow; however, an overall process has been developed. The intake officer interviews the offender following arrest and, if in the judgment of the intake officer, the case meets the criteria for mediation, it is offered as a possible disposition. (Ordinarily, offenders are first or second-time offenders charged with property crimes, although several assault cases have also been mediated.)

Following the referral from Juvenile Intake, the project coordinator compiles the

Please see Mediation, page 6

Alaska Justice Forum

Editor: Antonia Moras
Editorial Board: John Angell, Allan Barnes, Roger Congdon, Richard Curtis, Kimmet Manlus, Roger Miller, Lisa Rieger, Nancy Schafer, Lawrence Trostle
Typesetting and Layout: Melissa S. Green

Justice Center: John Angell, Director

Alaska Justice Statistical Analysis Unit: Allan Barnes, Director

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Mediation
(continued from page 5)

necessary information to give the case to the mediators. They then contact the offender to determine if he or she wishes to participate in the process. If the offender agrees to participate an appointment is made with the victim. If all parties determine that mediation is feasible, it is scheduled with a team of two mediators. The main purpose is to reach a resolution between the victim and offender. Mediators function as neutral facilitators of the process. Contracts for restitution resulting from the mediation are monitored by the project coordinator, with the intake officer informed of the final outcome. If a contract is not successfully completed, the intake officer makes a decision about further action in the case.

An example of a successful mediation involved a juvenile who had inflicted $1,000 of damage by wrecking into the garage of an elderly couple. Initially the couple were resistant to mediation because of fear that meeting the offender would result in becoming known to the offender. They came to realize the irrationality of this fear because the offender probably already did know where they lived. With the mediators present, the couple were able to ask questions of the offender and the offender was also able to explain his behavior. The woman negotiated a restitution contract with the offender in which he was to write her a letter of apology. The man presented receipts for repairs to the garage and contracted with the offender to do work at the couple's home at $5 per hour during the summer until the $1,000 in damages were paid. Both the couple and offender expressed satisfaction with the mediation process and the offender completed his contract. The male victim described his decision to participate in the mediation as akin to jury duty, a civic responsibility to participate in the justice process.

The project contains a formal evaluation component. The mediators complete separate pre-mediation questionnaires through interviews with both the victim and offender. Another interview is conducted with each participant immediately after the mediation, and telephone interviews with both victim and offender are also conducted 10 to 14 days later. Referred cases which did not result in mediation are evaluated to determine those factors which preclude the process. The major intent of the project evaluation is to gather information for use in developing an effective, ongoing program. The assembly and analysis of the data are monitored by the Alaska Judicial Council.

The evaluation instruments contain questions concerning the nature of the offense, feelings about the crime, perceptions of the effects of the offense, and perceptions about the justice process and the mediation process. In addition, both victims and offenders are given an opportunity to provide additional relevant comments if they desire.

The Victim Offender Mediation Project has received start-up funding through University of Alaska Anchorage Faculty Development Grants and the First National Bank of Anchorage. Project members are now seeking additional funding to continue and further develop an ongoing program. Long-range plans are to institutionalize a victim-offender mediation program throughout the state in both the juvenile and adult criminal justice system. In a related effort, some members of the project are meeting with the Alaska Department of Corrections to develop an office for victim advocacy which would be housed in the offices of the Commissioner of Corrections but would operate as an entity separate from adult corrections. This may, in the future, lead to victim-offender mediation involving inmates in the Department of Corrections and their victims. Also, legislation may be sought to obtain confidentiality protection for the mediation process and support for statewide program development.

Patrick Cunningham is an associate professor of social work at the University of Alaska Anchorage. Lawrence C. Trostle is an assistant professor with the Justice Center.

H
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Crime control

Here's an idea with great potential

What would you say about a program that sends youthful criminals a stern message, reduces the chances they will reoffend and gives victims more say in the outcome of a case — all for a fraction of the cost of dispensing conventional juvenile 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. Efforts to launch such a program are 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 experts dominate action for inaction on the case. Criminals are tempted to beat the rap by contesting the evidence, instead of coming clean.

As for victims, the crime often leaves them feeling isolated and powerless. Those feelings are often amplified when the system treats them as complete afterthoughts. Sometimes victims may not even learn the youthful criminal's identity. Mediation can encourage the offender to take responsibility for the crime while helping victims restore some feeling of control over their lives.

Perhaps the most amazing thing about this pilot program is its price. It costs a mere $9,000 for six months, funded by two University of Alaska faculty development grants. Volunteer help from many quarters makes the shoestring 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 project's performance.

Similar approaches have worked well elsewhere. Research by UAA students found 100 such programs around the country, and scores more in Canada and Europe. In one study of 14,000 cases, recidivism rates fell and offenders honored 86 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 statewide. Widespread mediation might someday revolutionize American style justice.

Throughout history, other cultures have emphasized restitution and reintegrating offenders into the community. Those values now get lost in the shuffle of adversarial-style American justice. Making amends and healing victims are incidental 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. One [illegible] start might be the [illegible]

[illegible]

COMPASS
POINTS OF VIEW FROM OUR COMMUNITY

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

Because the juvenile's role is so passive, he or she 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 [illegible] feel further [illegible] the juvenile [illegible]

[illegible] Anchorage [illegible] development grant awarded in 1991 explored the feasibility of [illegible] victim-juvenile offender mediation program in Anchorage. The juveniles 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 courtroom to allow for participation and reconciliation. The victim and offender meet privately, face to face. An impartial mediator guides them in a round table discussion, and together they develop a mutually acceptable restitution agreement. The agreement reached might be as simple as a sincere letter of apology or a community service contract.

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

Dearborn

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.

Dr. Pat Cunningham, Department of Social Work, and Dr. Larry Trostle, Department of Justice, co-authored 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 Justice will contact and screen victim participants. The Alaska Judicial Council will 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 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.

JOURNAL OF LAW

B

Vol.18, No. 3 Week of January 17, 1994 Section B to THE ALASKA JOURNAL OF COMMERCE

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, we lock people up in ever increasing numbers and don't see much deterence from criminal behavior after release.

Dr. Larry Trostle

Dr. Pat Cunningham

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 postive improvement to the current juvenile justice system.

Our current system dictates restitution in a courtroom setting where both offender and victim play passive 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 probation 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 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 offenders 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 2B

Law Roundup

Alternative Dispute Resolution NEWS & INFORMATION

ALASKA BAR ASSOCIATION
ADR SECTION

ALASKA DISPUTE SETTLEMENT ASSOCIATION

Victim-offender mediation: Restorative alternative

By Nikishka Stewart

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 restitution 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 opportunity for parties to feel restored from or reconciled to the event. 4.) To provide a referral option for the juvenile corrections system to help handle their caseload. 5.) To maintain a high level of community investment and support.

Nikishka Stewart.

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 Buttcane (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 [illegible]

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 McA Campion 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 N. Ulstrom, 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 relitigation, 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, Tesche & Wagg, Anchorage, for Appellants. Joseph A. Kalamarides, Kalamarides & Associates, Anchorage, for Appellees.

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/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

Continued from Page 18

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

Continued from Page 19

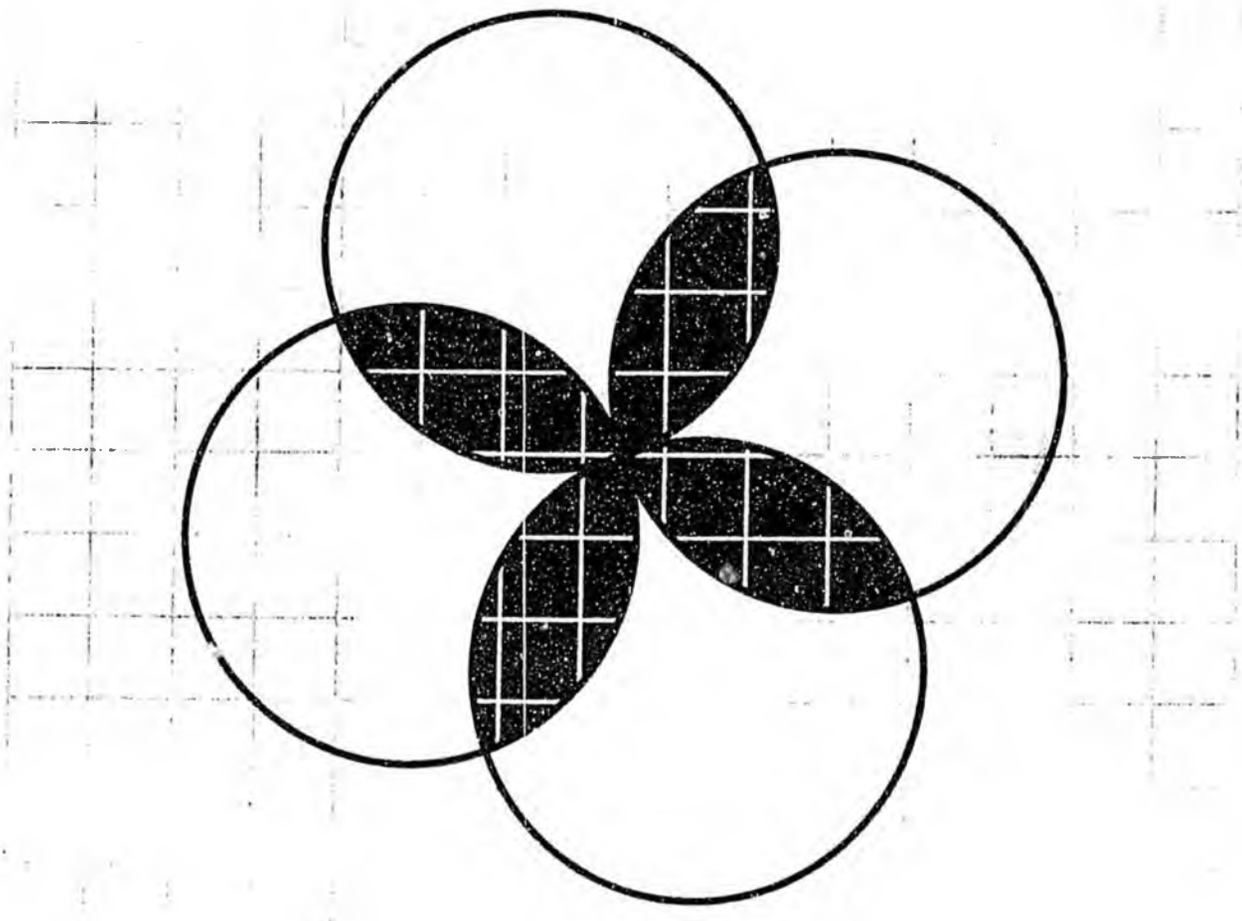
Inspiration doesn't have the graphics features of programs like PowerPoint or Persuasion. But we do like the program both as an outliner, and for the ease in which we could prepare good looking graphics.

Inspiration for Windows, Version 4. Inspiration Software Inc., 2920 SW Dolph Court, Portland, OR 97219. Phone (800) 877-4292 ex 14 or (503) 245-9011. Fax (503) 246-4292.

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@bix.com, bbayer on MCI Mail, !bbayer on ABA Net, or Barry Bayer on Counsel Con...

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

Matrix of Community-Based Initiatives



MAY 1995

Program Summary

Contact:

Tim Murray
Office of Justice Programs
633 Indiana Avenue NW.
Washington, DC 20531
202-616-5001

SafeFutures: Partnerships to Reduce Youth Violence and Delinquency

The SafeFutures Program calls on the community to enhance existing partnerships to address the needs of at-risk and delinquency youth. These partnerships must include public and private agencies; community-based organizations, such as religious, civic and business groups; community residents; and youth. The major goal of this program is to prevent and control juvenile delinquency through implementation of a strategy that is comprehensive, customer-focused, community-based, and draws on the resources of services agencies at all levels of government and the private sector. The strategy includes the development of a continuum of care for all youth, with a particular focus on delinquent youth. Prevention and intervention, including a range of graduated sanctions and treatment services, comprise this continuum. Partnerships, availability of services, and community responsiveness lie at the heart of SafeFutures.

This initiative places a strong premium on linkages to other ongoing Federal, State, local, and tribal initiatives concerned with youth development, economic development, and public safety. Five sites (three urban, one rural, and one tribal government) will be funded. Two of the four urban/rural sites will be designated Empowerment Zones/Enterprise Communities. Funds will be used to support nine different programs ranging from prevention through aftercare but linked together as part of a broader comprehensive program. A total of $7,200,000 is available for FY 95. Total length of the program is 5 years, conditioned on grantee performance and availability of future funds.

Contact:

Betty Chemers
Special Emphasis Division
Office of Juvenile Justice and Delinquency Prevention
633 Indiana Avenue NW.
Washington, DC 20531
202-307-5914

0-LS0076\E
Chenoweth
1/15/97
Rep. Porter
216 CAP

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE PORTER

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act authorizing establishment of community dispute resolution centers to foster the resolution of disputes between juvenile offenders and their victims, and providing immunity from civil suits for youth courts and for members of the boards of directors, employees, volunteers, and members of youth courts."

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

DELETE AMEND #1

*** Section 1.** AS 22.35 is amended by adding a new section to read:

Sec. 22.35.020. Recognition of community dispute resolution centers for matters involving minors. The administrative director may recognize an entity described in AS 47.12.450(a) as a community dispute resolution center to serve as a center to resolve disputes between minors and victims. Before extending recognition under this section, the administrative director shall determine that the bylaws of the entity set out standards and procedures that meet the requirements of AS 47.12.450(b).

* Sec. 2. / AS 47.12.040(a) is amended to read:

(a) Whenever circumstances subject a minor to the jurisdiction of this chapter,

the court shall

(1) provide, under procedures adopted by court rule, that, for a minor who is alleged to be a delinquent minor under AS 47.12.020, a state agency shall make a preliminary inquiry to determine if any action is appropriate and may take appropriate action to adjust the matter without a court hearing; if, under this paragraph,

(A) the state agency makes a preliminary inquiry and takes appropriate action to adjust the matter without a court hearing, the minor may not be detained or taken into custody as a condition of the adjustment and, subject to AS 47.12.060, the matter shall be closed by the agency if the minor successfully completes all that is required of the minor by the agency in the adjustment; in a municipality or municipalities in which a youth court has been established under AS 47.12.400, adjustment of the matter under this paragraph may include referral to the youth court; **if a community dispute resolution center has been established under AS 47.12.450(a) and has obtained recognition under ~~AS 22.35.020 or~~ AS 47.12.450(b), adjustment of the matter under this paragraph may include use of the services of the community dispute resolution center;**

DELETE AMEND. #1

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

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

* Sec. ~~1~~ 2 AS 47.12.120(b) is amended to read:

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

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

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

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

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

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

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

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

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

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; **under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the** ~~**administrative director of the Alaska Court System under AS 22.35.020 or**~~ ~~**by the**~~ **commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution;** and

DELETE AMEND. #1

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; for purposes of this subparagraph, "runaway or missing minor" means a minor who a parent reasonably believes is absent from the

minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent;

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

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

(A) on a project identified in 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: or

(7) in addition to an order under (1) - (6) of this subsection, order the minor's parent or guardian to comply with orders made under AS 47.12.155, including participation in treatment under AS 47.12.155(b)(1).

* Sec. ~~X~~ 3 AS 47.12.400 is amended by adding a new subsection to read:

(g) A member of the board of directors of a nonprofit corporation obtaining recognition from the commissioner to serve as a youth court under this section is immune from suit in a civil action based upon a proceeding or other official act performed in good faith as a member of the board. Employees and volunteers of a youth court are immune from suit in a civil action based on a proceeding or other official act performed in their capacity as employees or volunteers, except in cases of wilful or wanton misconduct. A youth court is immune from suit in a civil action based on a proceeding or other official act performed by its employees, volunteers, or members of its board of directors, except in cases of wilful or wanton misconduct by its employees or volunteers or in cases of official acts performed in bad faith by members of the board.

* Sec. 4. AS 47.12 is amended by adding a new section to read:

Article 3A. Community Dispute Resolution Centers.

Sec. 47.12.450. 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 47.12.040(a)(1)(A) or the court making a referral under AS 47.12.120(b)(4)(A), as appropriate, the following:

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

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

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

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

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

(c) A center established under this section shall provide dispute resolution services between a minor who has committed an offense and who, because of the commission of the offense, may be alleged to be a delinquent minor under AS 47.12.020, and a person who was a victim of that offense. The center shall provide dispute resolution services either without charge to a participant or for a fee that is based on the participant's ability to pay.

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

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

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

(e) Except for a notice or a communication described in (b)(7) of this section, all memoranda, work notes or products, or case files of centers established under this section are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by a participant,

mediator, or another person is a privileged communication and is not subject to disclosure in a judicial or administrative proceeding unless all parties to the communication waive the privilege. However, privilege and limitation on evidentiary use set out in this subsection do not apply to a communication of a threat that injury or damage may be inflicted on a person or on the property of a party to the dispute to the extent the communication may be relevant evidence in a criminal matter.

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

AMEND #2

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

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

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