

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

January 26, 2011
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB11-013 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, page 2, after line 14 insert:
 - 2 "(2) The general assembly encourages and supports the use of all
 - 3 forms of dispute resolution and mediation."
- 4 Page 2, strike line 17 and substitute "ADDITION OF THE FOLLOWING
- 5 NEW SUBSECTIONS, to read:".
- 6 Page 2, line 26, strike "VOLUNTARY," and substitute "VOLUNTARY
- 7 PROCESS,".
- 8 Page 3, line 1, strike "PROCESS BY" and substitute "BY A TRAINED
- 9 INDIVIDUAL, THROUGH".
- 10 Page 3, after line 12 insert:
 - 11 "(94.1) "RESTORATIVE JUSTICE" MEANS THOSE PRACTICES THAT
 - 12 EMPHASIZE REPAIRING THE HARM TO THE VICTIM AND THE COMMUNITY
 - 13 CAUSED BY CRIMINAL ACTS. RESTORATIVE JUSTICE PRACTICES MAY
 - 14 INCLUDE VICTIM-OFFENDER CONFERENCES ATTENDED VOLUNTARILY BY
 - 15 THE VICTIM, A VICTIM ADVOCATE, THE OFFENDER, COMMUNITY MEMBERS,
 - 16 AND SUPPORTERS OF THE VICTIM OR THE OFFENDER THAT PROVIDE AN
 - 17 OPPORTUNITY FOR THE OFFENDER TO ACCEPT RESPONSIBILITY FOR THE
 - 18 HARM CAUSED TO THOSE AFFECTED BY THE CRIME AND TO PARTICIPATE IN

1 SETTING CONSEQUENCES TO REPAIR THE HARM. CONSEQUENCES
2 RECOMMENDED BY THE PARTICIPANTS MAY INCLUDE, BUT NEED NOT BE
3 LIMITED TO, APOLOGIES, COMMUNITY SERVICE, RESTORATION, AND
4 COUNSELING. THE SELECTED CONSEQUENCES ARE INCORPORATED INTO AN
5 AGREEMENT THAT SETS TIME LIMITS FOR COMPLETION OF THE
6 CONSEQUENCES AND IS SIGNED BY ALL PARTICIPANTS.

7 **SECTION 3.** 13-22-307 (4), Colorado Revised Statutes, is
8 amended to read:

9 **13-22-307. Confidentiality.** (4) (a) EXCEPT AS PROVIDED IN
10 PARAGRAPH (b) OF THIS SUBSECTION (4), nothing in this section shall
11 prevent the discovery or admissibility of any evidence that is otherwise
12 discoverable, merely because the evidence was presented in the course of
13 a mediation service proceeding or dispute resolution proceeding.

14 (b) IN ANY CIVIL ACTION OR ARBITRATION PROCEEDING BROUGHT
15 BY OR ON BEHALF OF A PARTY TO THE MEDIATION, ANY STATEMENT,
16 AFFIRMATION, GESTURE, OR CONDUCT THAT EXPRESSES FAULT, APOLOGY,
17 SYMPATHY, COMMISERATION, CONDOLENCE, COMPASSION, OR A GENERAL
18 SENSE OF BENEVOLENCE AND THAT IS MADE BY A PARTY TO THE
19 MEDIATION OR THE PARTY'S REPRESENTATIVE SHALL BE INADMISSIBLE AS
20 EVIDENCE OF AN ADMISSION OF LIABILITY OR AS EVIDENCE OF AN
21 ADMISSION AGAINST INTEREST IN THE CIVIL ACTION OR ARBITRATION
22 PROCEEDING."

23 Renumber succeeding sections accordingly.

24 Page 4, line 1, after "resolution." insert "PRIOR TO THE DETERMINATION
25 OF RESPONSIBILITY IN A CASE, THE COURT SHALL NOT REFER A CASE TO A
26 RESTORATIVE JUSTICE OR RESTORATIVE MEDIATION PROCESS WITHOUT
27 THE WRITTEN, INFORMED CONSENT OF ALL PARTIES."

28 Page 4, line 7, strike "relief" and substitute "relief,".

29 Page 4, line 8, strike "and" and substitute "~~and~~", and strike "successful."
30 and substitute "successful, OR THE COURT HAS REFERRED THE CASE TO A
31 RESTORATIVE JUSTICE OR RESTORATIVE MEDIATION PROCESS AND ANY
32 PARTY IS UNWILLING TO PARTICIPATE IN THE PROCESS."

33 Page 4, after line 19 insert:

34 **"SECTION 6.** Part 3 of article 22 of title 13 is amended BY THE
35 ADDITION OF A NEW SECTION to read:

1 **13-22-314. Participation in restorative justice and restorative**
2 **mediation.** PARTICIPATION IN A RESTORATIVE JUSTICE OR RESTORATIVE
3 MEDIATION PROCESS SHALL BE VOLUNTARY. IF, PRIOR TO A
4 DETERMINATION OF RESPONSIBILITY IN A CASE, THE COURT REFERS THE
5 CASE TO A RESTORATIVE JUSTICE OR RESTORATIVE MEDIATION PROCESS,
6 THE PROCESS SHALL NOT TAKE PLACE WITHOUT THE WRITTEN, INFORMED
7 CONSENT OF ALL PARTIES. IF A PARTY IS REPRESENTED BY AN ATTORNEY,
8 PRIOR TO GIVING WRITTEN CONSENT, THE PARTY SHALL BE GIVEN THE
9 OPPORTUNITY TO DISCUSS WITH HIS OR HER ATTORNEY WHETHER IT IS
10 ADVISABLE FOR THE PARTY TO PARTICIPATE IN A RESTORATIVE JUSTICE OR
11 RESTORATIVE MEDIATION PROCESS."

12 Renumber succeeding section accordingly.

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