

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0464.01 Brita Darling

SENATE BILL 11-013

SENATE SPONSORSHIP

Newell,

HOUSE SPONSORSHIP

Lee,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE USE OF ALTERNATIVE DISPUTE RESOLUTION
102 PRACTICES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill defines the term "restorative mediation" and includes "restorative mediation" as a part of "mediation services" as that term is used in the "Dispute Resolution Act". The bill clarifies that a court may refer a case to additional forms of alternative dispute resolution, including mediation, restorative justice, and restorative mediation.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Alternative dispute resolution practices in Colorado provide
5 a cost-effective, efficient, and timely method for resolving offenses,
6 disputes, and conflicts; and

7 (b) Engagement of the participants, acceptance of accountability,
8 and restoration from harms are critical elements in the resolution of
9 offenses, disputes, and conflicts; and

10 (c) Restorative justice and restorative mediation practices address
11 the harms and needs of participants; and

12 (d) Restorative justice and restorative mediation practices
13 facilitate a voluntary dialogue that promotes engagement, accountability,
14 and restoration.

15 **SECTION 2.** 13-22-302 (3), Colorado Revised Statutes, is
16 amended, and the said 13-22-302 is further amended BY THE
17 ADDITION OF A NEW SUBSECTION, to read:

18 **13-22-302. Definitions.** As used in this part 3, unless the context
19 otherwise requires:

20 (3) "Mediation services" or "dispute resolution programs" means
21 a process by which parties involved in a dispute, whether or not an action
22 has been filed in court, agree to enter into one or more settlement
23 discussions with a mediator in order to resolve their dispute. "MEDIATION
24 SERVICES" SHALL ALSO INCLUDE RESTORATIVE MEDIATION AS DEFINED IN
25 SUBSECTION (6.5) OF THIS SECTION.

26 (6.5) "RESTORATIVE MEDIATION" MEANS A VOLUNTARY,

1 FACILITATED PROCESS BY WHICH PARTICIPANTS, WHICH MAY INCLUDE, BUT
2 NEED NOT BE LIMITED TO, A RESPONSIBLE PARTY AND HIS OR HER
3 SUPPORTERS, A VICTIM OR INJURED PARTY AND HIS OR HER SUPPORTERS,
4 AND AN INSURANCE REPRESENTATIVE, IF APPROPRIATE, MEET
5 FACE-TO-FACE TO DISCUSS AN ACCIDENT, DISPUTE, CONFLICT, OR OFFENSE
6 AND THE HARM, DAMAGES, AND LOSS SUFFERED BY THE VICTIM OR
7 INJURED PARTY. THE PROCESS MAY PROVIDE THE RESPONSIBLE PARTY
8 WITH THE OPPORTUNITY TO ACCEPT RESPONSIBILITY AND TO OFFER AN
9 APOLOGY AND SYMPATHY TO THE VICTIM OR INJURED PARTY, IF
10 APPROPRIATE. THE PROCESS MAY ALSO INCLUDE A DISCUSSION AND
11 AGREEMENT BY THE PARTICIPANTS CONCERNING HOW TO REPAIR THE
12 HARM, DAMAGE, OR LOSS SUFFERED BY THE VICTIM OR INJURED PARTY.

13 **SECTION 3.** 13-22-311, Colorado Revised Statutes, is amended
14 BY THE ADDITION OF A NEW SUBSECTION to read:

15 **13-22-311. Court referral to mediation - duties of mediator.**
16 (5) FOR PURPOSES OF THIS PART 3, "MEDIATION SERVICES" SHALL ALSO
17 INCLUDE "RESTORATIVE MEDIATION" AS DEFINED IN SECTION 13-22-302
18 (6.5).

19 **SECTION 4.** 13-22-313 (1), Colorado Revised Statutes, is
20 amended to read:

21 **13-22-313. Judicial referral to ancillary forms of alternative**
22 **dispute resolution.** (1) Any court of record, in its discretion, may refer
23 a case to any ancillary form of alternative dispute resolution; except that
24 the court shall not refer the case to any ancillary form of alternative
25 dispute resolution where one of the parties claims that it has been the
26 victim of physical or psychological abuse by the other party and states
27 that it is thereby unwilling to enter into ancillary forms of alternative

1 dispute resolution. In addition, the court may exempt from referral any
2 case in which a party files with the court, within five days of a referral
3 order, a motion objecting to ancillary forms of alternative dispute
4 resolution and demonstrating compelling reasons why ancillary forms of
5 alternative dispute resolution should not be ordered. Compelling reasons
6 may include, but are not limited to, that the costs of ancillary forms of
7 alternative dispute resolution would be higher than the requested relief
8 and previous attempts to resolve the issues were not successful. Such
9 forms of alternative dispute resolution may include, but are not limited to:
10 arbitration, early neutral evaluation, med-arb, MEDIATION, mini-trial,
11 multi-door courthouse concepts, RESTORATIVE JUSTICE, RESTORATIVE
12 MEDIATION, settlement conference, special master, summary jury trial, or
13 any other form of alternative dispute resolution which the court deems to
14 be an effective method for resolving the dispute in question. Parties and
15 counsel are encouraged to seek the most appropriate forum for the
16 resolution of their dispute. Judges may provide guidance or suggest an
17 appropriate forum. However, nothing in this section shall impinge upon
18 the right of parties to have their dispute tried in a court of law, including
19 trial by jury.

20 **SECTION 5. Act subject to petition - effective date.** This act
21 shall take effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part shall not take effect

1 unless approved by the people at the general election to be held in
2 November 2012 and shall take effect on the date of the official
3 declaration of the vote thereon by the governor.