

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

CORRECTED ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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.

SENATE
Amended 2nd Reading
February 21, 2011

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 other restorative processes may address
11 the harms and needs of participants; and

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

15 (2) The general assembly encourages and supports the use of all
16 forms of dispute resolution and mediation.

17 **SECTION 2.** 13-22-302, Colorado Revised Statutes, is amended
18 BY THE ADDITION OF A NEW SUBSECTION to read:

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

21 —
22 (94.1) "RESTORATIVE JUSTICE PRACTICE" MEANS, IN THE CONTEXT
23 OF A CIVIL CLAIM, FACILITATED MEETINGS ATTENDED VOLUNTARILY BY
24 THE PARTIES AND OTHER APPROPRIATE INDIVIDUALS THAT PROVIDE THE
25 OPPORTUNITY FOR A VOLUNTARY ACKNOWLEDGMENT OF RESPONSIBILITY
26 AND A DISCUSSION CONCERNING THE REPAIR OF ANY HARM, DAMAGE, OR

1 LOSS.

2 **SECTION 3.** 13-22-307, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **13-22-307. Confidentiality.** (6) IN ANY CIVIL ACTION OR
5 ARBITRATION PROCEEDING BROUGHT BY OR ON BEHALF OF A PARTY TO A
6 MEDIATION, ANY STATEMENT, AFFIRMATION, GESTURE, OR CONDUCT THAT
7 EXPRESSES FAULT, APOLOGY, SYMPATHY, COMMISERATION, CONDOLENCE,
8 COMPASSION, OR A GENERAL SENSE OF BENEVOLENCE AND THAT IS MADE
9 DURING THE MEDIATION IN THE CIVIL ACTION OR ARBITRATION
10 PROCEEDING BY THAT PARTY OR THAT PARTY'S REPRESENTATIVE SHALL BE
11 INADMISSIBLE AGAINST THAT PARTY AS EVIDENCE OF AN ADMISSION OF
12 LIABILITY OR AS EVIDENCE OF AN ADMISSION AGAINST INTEREST IN THE
13 CIVIL ACTION OR ARBITRATION PROCEEDING.

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

16 **13-22-313. Judicial referral to ancillary forms of alternative**
17 **dispute resolution.** (1) Any court of record, in its discretion, may refer
18 a case to any ancillary form of alternative dispute resolution; except that
19 the court shall not refer the case to any ancillary form of alternative
20 dispute resolution where one of the parties claims that it has been the
21 victim of physical or psychological abuse by the other party and states
22 that it is thereby unwilling to enter into ancillary forms of alternative
23 dispute resolution. PRIOR TO THE DETERMINATION OF RESPONSIBILITY IN
24 A CASE, THE COURT SHALL NOT REFER A CASE TO A RESTORATIVE JUSTICE
25 PRACTICE WITHOUT THE WRITTEN, INFORMED CONSENT OF ALL PARTIES.

26 In addition, the court may exempt from referral any case in which a party
27 files with the court, within five days of a referral order, a motion

1 objecting to ancillary forms of alternative dispute resolution and
2 demonstrating compelling reasons why ancillary forms of alternative
3 dispute resolution should not be ordered. Compelling reasons may
4 include, but are not limited to, that the costs of ancillary forms of
5 alternative dispute resolution would be higher than the requested relief,
6 and previous attempts to resolve the issues were not successful, OR THE
7 COURT HAS REFERRED THE CASE TO A RESTORATIVE JUSTICE PRACTICE
8 AND ANY PARTY IS UNWILLING TO PARTICIPATE IN THE RESTORATIVE
9 JUSTICE PRACTICE. Such forms of alternative dispute resolution may
10 include, but are not limited to: arbitration, early neutral evaluation,
11 med-arb, ___ mini-trial, multi-door courthouse concepts, RESTORATIVE
12 JUSTICE, ___ settlement conference, special master, summary jury trial,
13 or any other form of alternative dispute resolution which the court deems
14 to be an effective method for resolving the dispute in question. Parties
15 and 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. Part 3 of article 22 of title 13 is amended BY THE
21 ADDITION OF A NEW SECTION to read:

22 13-22-314. Participation in a restorative justice practice. IF,
23 PRIOR TO A DETERMINATION OF RESPONSIBILITY IN A CASE, THE COURT
24 REFERS THE CASE TO A RESTORATIVE JUSTICE PRACTICE, THE
25 RESTORATIVE JUSTICE PRACTICE SHALL NOT TAKE PLACE WITHOUT THE
26 WRITTEN, INFORMED CONSENT OF ALL PARTIES. IF A PARTY IS
27 REPRESENTED BY AN ATTORNEY, PRIOR TO GIVING WRITTEN CONSENT, THE

1 PARTY SHALL BE GIVEN THE OPPORTUNITY TO DISCUSS WITH HIS OR HER
2 ATTORNEY WHETHER IT IS ADVISABLE FOR THE PARTY TO PARTICIPATE IN
3 A RESTORATIVE JUSTICE PRACTICE. _____

4 **SECTION 6. Act subject to petition - effective date.** This act
5 shall take effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part shall not take effect
11 unless approved by the people at the general election to be held in
12 November 2012 and shall take effect on the date of the official
13 declaration of the vote thereon by the governor.