

First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

**REENGROSSED**

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

LLS NO. 11-0464.01 Brita Darling

**SENATE BILL 11-013**

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**SENATE SPONSORSHIP**

**Newell,**

**HOUSE SPONSORSHIP**

**Lee,**

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**Senate Committees**  
Judiciary

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING THE USE OF ALTERNATIVE DISPUTE RESOLUTION**  
102 **PRACTICES.**

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**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 3rd Reading  
February 22, 2011

SENATE  
Amended 2nd Reading  
February 21, 2011

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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 PRACTICE, == settlement conference, special master, summary  
13 jury trial, or any other form of alternative dispute resolution which the  
14 court deems to be an effective method for resolving the dispute in  
15 question. Parties and counsel are encouraged to seek the most appropriate  
16 forum for the resolution of their dispute. Judges may provide guidance  
17 or suggest an appropriate forum. However, nothing in this section shall  
18 impinge upon the right of parties to have their dispute tried in a court of  
19 law, including 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.