

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

17 **SECTION 2.** 13-22-302 (3), Colorado Revised Statutes, is
18 amended, and the said 13-22-302 is further amended BY THE
19 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

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

1 SUBSECTION (6.5) OF THIS SECTION.

2 (6.5) "RESTORATIVE MEDIATION" MEANS A VOLUNTARY PROCESS,
3 FACILITATED BY A TRAINED INDIVIDUAL, THROUGH WHICH PARTICIPANTS,
4 WHICH MAY INCLUDE, BUT NEED NOT BE LIMITED TO, A RESPONSIBLE
5 PARTY AND HIS OR HER SUPPORTERS, A VICTIM OR INJURED PARTY AND HIS
6 OR HER SUPPORTERS, AND AN INSURANCE REPRESENTATIVE, IF
7 APPROPRIATE, MEET FACE-TO-FACE TO DISCUSS AN ACCIDENT, DISPUTE,
8 CONFLICT, OR OFFENSE AND THE HARM, DAMAGES, AND LOSS SUFFERED BY
9 THE VICTIM OR INJURED PARTY. THE PROCESS MAY PROVIDE THE
10 RESPONSIBLE PARTY WITH THE OPPORTUNITY TO ACCEPT RESPONSIBILITY
11 AND TO OFFER AN APOLOGY AND SYMPATHY TO THE VICTIM OR INJURED
12 PARTY, IF APPROPRIATE. THE PROCESS MAY ALSO INCLUDE A DISCUSSION
13 AND AGREEMENT BY THE PARTICIPANTS CONCERNING HOW TO REPAIR THE
14 HARM, DAMAGE, OR LOSS SUFFERED BY THE VICTIM OR INJURED PARTY.

15 (94.1) "RESTORATIVE JUSTICE" MEANS THOSE PRACTICES THAT
16 EMPHASIZE REPAIRING THE HARM TO THE VICTIM AND THE COMMUNITY
17 CAUSED BY CRIMINAL ACTS. RESTORATIVE JUSTICE PRACTICES MAY
18 INCLUDE VICTIM-OFFENDER CONFERENCES ATTENDED VOLUNTARILY BY
19 THE VICTIM, A VICTIM ADVOCATE, THE OFFENDER, COMMUNITY MEMBERS,
20 AND SUPPORTERS OF THE VICTIM OR THE OFFENDER THAT PROVIDE AN
21 OPPORTUNITY FOR THE OFFENDER TO ACCEPT RESPONSIBILITY FOR THE
22 HARM CAUSED TO THOSE AFFECTED BY THE CRIME AND TO PARTICIPATE IN
23 SETTING CONSEQUENCES TO REPAIR THE HARM. CONSEQUENCES
24 RECOMMENDED BY THE PARTICIPANTS MAY INCLUDE, BUT NEED NOT BE
25 LIMITED TO, APOLOGIES, COMMUNITY SERVICE, RESTORATION, AND
26 COUNSELING. THE SELECTED CONSEQUENCES ARE INCORPORATED INTO AN
27 AGREEMENT THAT SETS TIME LIMITS FOR COMPLETION OF THE

1 CONSEQUENCES AND IS SIGNED BY ALL PARTICIPANTS.

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

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

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

18 **SECTION 4.** 13-22-311, Colorado Revised Statutes, is amended
19 BY THE ADDITION OF A NEW SUBSECTION to read:

20 **13-22-311. Court referral to mediation - duties of mediator.**
21 (5) FOR PURPOSES OF THIS PART 3, "MEDIATION SERVICES" SHALL ALSO
22 INCLUDE "RESTORATIVE MEDIATION" AS DEFINED IN SECTION 13-22-302
23 (6.5).

24 **SECTION 5.** 13-22-313 (1), Colorado Revised Statutes, is
25 amended to read:

26 **13-22-313. Judicial referral to ancillary forms of alternative**
27 **dispute resolution.** (1) Any court of record, in its discretion, may refer

1 a case to any ancillary form of alternative dispute resolution; except that
2 the court shall not refer the case to any ancillary form of alternative
3 dispute resolution where one of the parties claims that it has been the
4 victim of physical or psychological abuse by the other party and states
5 that it is thereby unwilling to enter into ancillary forms of alternative
6 dispute resolution. PRIOR TO THE DETERMINATION OF RESPONSIBILITY IN
7 A CASE, THE COURT SHALL NOT REFER A CASE TO A RESTORATIVE JUSTICE
8 OR RESTORATIVE MEDIATION PROCESS WITHOUT THE WRITTEN, INFORMED
9 CONSENT OF ALL PARTIES. In addition, the court may exempt from referral
10 any case in which a party files with the court, within five days of a
11 referral order, a motion objecting to ancillary forms of alternative dispute
12 resolution and demonstrating compelling reasons why ancillary forms of
13 alternative dispute resolution should not be ordered. Compelling reasons
14 may include, but are not limited to, that the costs of ancillary forms of
15 alternative dispute resolution would be higher than the requested relief,
16 and previous attempts to resolve the issues were not successful, OR THE
17 COURT HAS REFERRED THE CASE TO A RESTORATIVE JUSTICE OR
18 RESTORATIVE MEDIATION PROCESS AND ANY PARTY IS UNWILLING TO
19 PARTICIPATE IN THE PROCESS. Such forms of alternative dispute
20 resolution may include, but are not limited to: arbitration, early neutral
21 evaluation, med-arb, MEDIATION, mini-trial, multi-door courthouse
22 concepts, RESTORATIVE JUSTICE, RESTORATIVE MEDIATION, settlement
23 conference, special master, summary jury trial, or any other form of
24 alternative dispute resolution which the court deems to be an effective
25 method for resolving the dispute in question. Parties and counsel are
26 encouraged to seek the most appropriate forum for the resolution of their
27 dispute. Judges may provide guidance or suggest an appropriate forum.

1 However, nothing in this section shall impinge upon the right of parties
2 to have their dispute tried in a court of law, including trial by jury.

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

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

16 **SECTION 7.** Act subject to petition - effective date. This act
17 shall take effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part shall not take effect
23 unless approved by the people at the general election to be held in
24 November 2012 and shall take effect on the date of the official
25 declaration of the vote thereon by the governor.