SENATE DOCKET, NO. 1117 FILED ON: 1/18/2013

SENATE . . . . . No. 52

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act promoting restorative justice practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	*Middlesex and Worcester*
Denise Andrews	*2nd Franklin*
Mary S. Keefe	*15th Worcester*
Jay R. Kaufman	*15th Middlesex*
Ruth B. Balser	*12th Middlesex*
Jonathan Hecht	*29th Middlesex*
Kenneth I. Gordon	*21st Middlesex*
Michael Barrett	*Third Middlesex*
Patricia D. Jehlen	*Second Middlesex*

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SENATE . . . . . No. 52

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 52) of James B. Eldridge, Denise Andrews, Mary S. Keefe, Jay R. Kaufman and other members of the General Court for legislation to promote restorative justice practices. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *41* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act promoting restorative justice practices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 52 of Chapter 119 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by adding the following definitions:

3 "Restorative justice," a comprehensive approach to community harm up to and including
4 criminal justice that emphasizes repairing the harm or crime caused by the event. It is a set of
5 principles that supports an offender, hereinafter referred to as the "responsible party," to accept
6 responsibility for his/her actions and prioritizes repairing the harm done to the victim, hereinafter
7 referred to as the "impacted party," and community caused by wrongdoing or criminal acts. As a
8 result, restorative justice seeks to engage the impacted party, the responsible party, and
9 community members in order to respond to a harm or crime, and repair the injuries caused to all
10 parties and the community.

11 "Restorative justice meeting," includes but is not limited to responsible party-impacted
12 party conferences, restorative dialogues, family group conferences, restorative circles of
13 accountability and support, community group conferences, solution circles, peace circles,
14 restorative circles, restorative mediation. Restorative justice meetings are attended voluntarily
15 by the impacted party or impacted party's representatives, the impacted party's supporters, the
16 responsible party, and the responsible party's supporters, should include community members
17 and may include a representative of the referring agency. The restorative justice meeting is
18 facilitated by a trained and impartial restorative justice facilitator. In referring participation to a

19 restorative justice process, the court or referring agency must consider the following criteria: a
20 responsible party's willingness to take responsibility; an impacted party's willingness to engage
21 the responsible party; and reasonable assurances for physical and emotional safety of all in the
22 process. Completion of the restorative justice process is marked by a constructive and
23 confidential plan of repair agreed upon by all participating parties. The plan of repair must
24 contain a specific, monitored timeline for completion and must be signed by all participants. The
25 community-based restorative justice program shall monitor the plan of repair, and must return
26 the case to the referring source if the parties do not comply by the plan of repair. Participation in
27 a community-based restorative justice program shall not be used as evidence of admission of
28 guilt in current or subsequent legal proceedings nor shall that participation be used for other
29 purposes in a court of law.

30 "Community-based restorative justice program," a program established on restorative
31 justice principles, as defined by this section, within the community in which the offense occurred
32 and which partners with police, courts, and the community to offer impartial facilitators trained
33 in restorative justice practices, as defined in this section, to facilitate the participation of
34 responsible parties and impacted parties in a restorative justice meeting.

35 SECTION 2. Section 55B of said chapter 119, as so appearing, is hereby amended in
36 lines 12-13 by inserting after the words "upon compliance with specific terms and conditions"
37 the following:- , including an established community-based restorative justice program, except
38 that the court may not refer participation in restorative justice process if the responsible party
39 was adjudicated for unlawful sexual behavior or a crime in which the underlying factual basis
40 involves domestic or family violence,

41 SECTION 3. Section 39H of said chapter 119, as so appearing, is hereby amended after
42 the second paragraph by inserting the following paragraph:-

43 The law enforcement officer may refer such child to an established community-based
44 restorative justice program, as defined in Section 1 of this Act, except that participation in a
45 restorative justice process shall not be recommended if the responsible party was arrested for
46 unlawful sexual behavior or a crime in which the underlying factual basis involves domestic or
47 family violence.

48 SECTION 4. Section 3 of Chapter 276A is hereby amended after the third paragraph by
49 inserting the following paragraph:-

50 Such programs may include an established community-based restorative justice program,
51 as defined in Section 1 of this Act, except that the court may not refer participation in restorative
52 justice process if the responsible party was adjudicated for unlawful sexual behavior or a crime
53 in which the underlying factual basis involves domestic or family violence.

54 SECTION 5. Section 87A of Chapter 276 is hereby amended in line 5 by inserting after
55 the words “specified rehabilitative programs” the following:- including an established
56 community-based restorative justice program, as defined in Section 1 of this Act, except that the
57 court may not refer participation in restorative justice process if the responsible party was
58 adjudicated for unlawful sexual behavior or a crime in which the underlying factual basis
59 involves domestic or family violence,

60 SECTION 6. Notwithstanding the provisions of any general or special law to the
61 contrary, there shall be established an advisory committee to study and track the use of and
62 referral to community-based restorative programs, as defined in Section 1 of this Act, in juvenile
63 and adult criminal proceedings in the Commonwealth. The advisory committee shall consist of
64 17 members, 1 of whom shall be the secretary of public safety and security, or a designee, who
65 shall serve as chair of the task force; 1 of whom shall be the secretary of health and human
66 services, or a designee, 1 of whom shall be a representative of the Massachusetts District
67 Attorneys Association; 1 of whom shall be a representative from the Massachusetts Committee
68 for Public Counsel Services; 2 of whom shall be the chairs of the joint committee on judiciary, or
69 their designees; 2 of whom shall be the chairs of the joint committee on children, families, and
70 persons with disabilities, or their designee, 2 of whom shall be appointed by the governor, of
71 which one shall be a representative of the Massachusetts Police Association or law enforcement
72 community; 3 of whom shall be representatives of a community-based restorative justice
73 program, as defined by Section 52 of Chapter 119, of which 1 of whom shall be from a school-
74 based restorative justice program, 1shall be from a program that accepts police referrals, and
75 1shall be from a program that accept court referrals; 1 of whom shall be a representative from an
76 organization that serves or advocates for victims of domestic violence, rape, or sexual assault;
77 and 1 of whom shall be a professor with expertise in restorative justice or criminal justice
78 diversion programs. The advisory committee shall track the use of restorative justice, as allowed
79 for under this Act and Section 38 of Chapter 240 of the Acts of 2012, and shall make legislative
80 and regulatory recommendations to aid in the administration of restorative justice programs,
81 including but not limited to: qualitative and quantitative outcomes for participants, recidivism
82 rates of responsible parties, criteria for youth involvement and training where appropriate,
83 outline cost savings for the Commonwealth, establish training guidelines for restorative justice
84 facilitators and criteria for state certified programs, publish guidelines for restorative justice best
85 practices in Massachusetts, create recommendations for identifying appropriate training and
86 funding sources for community-based restorative programs, as defined by SECTION of this Act,
87 as well as draft a strategic plan for the expansion of restorative justice programs and
88 opportunities throughout the Commonwealth. The advisory committee shall file a report of its
89 findings and recommendations with the Governor, clerks of the house of representatives and
90 senate no later than December 31, 2015.