

**SENATE . . . . . No. 2078**

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**The Commonwealth of Massachusetts**

**In the Year Two Thousand Fourteen**

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 2012  
2 Official Edition, is hereby amended by adding the following:

3 “Community-based restorative justice program”, a diversion and rehabilitation option  
4 established on restorative justice principles that partners with police, courts, the office of  
5 probation and the community within which the offense occurred to offer impartial facilitators  
6 trained in restorative justice practices to engage responsible parties and impacted parties, or  
7 members of the community if there are no identifiable impacted parties, in a restorative justice  
8 meeting to develop a plan of repair.

9 “Impacted party”, the person or persons alleged to have suffered harm caused by, or been  
10 the victims of a crime committed by, the responsible party.

11 “Plan of repair”, a confidential written blueprint developed during the restorative justice  
12 process and agreed to by all parties consisting of specific actions to be taken by the responsible  
13 party to redress the harm caused to the impacted party or the community, which includes a  
14 timeline for the completion of the plan.

15 “Referring body”, the court, office of probation, district attorney’s office or police  
16 department responsible for diverting or referring a matter to the restorative justice process and  
17 selecting a community-based restorative justice program.

18 “Responsible party”, an offender or a person alleged to have caused harm to or  
19 committed a crime against the impacted party and who is willing to accept responsibility for that  
20 harm or crime.

21 “Restorative justice”, a comprehensive approach to community harm including criminal  
22 justice that emphasizes repairing the harm caused by an event or crime. Restorative justice is a  
23 set of principles that supports responsible parties to accept responsibility for their actions and  
24 prioritizes repairing the harm done to the impacted parties or the community.

25 “Restorative justice meeting”, includes but is not limited to responsible party-impacted  
26 party conferences, restorative dialogues, family group conferences, restorative circles of  
27 accountability and support, community group conferences, solution circles, peace circles,  
28 restorative circles and restorative mediation.

29 SECTION 2. Section 55B of said chapter 119, as so appearing, is hereby amended in  
30 lines 12-13 by inserting after the words “upon compliance with specific terms and conditions”  
31 the following:-

32 including a community-based restorative justice program, but the court shall not refer  
33 participation in a community-based restorative justice program if the responsible party was  
34 adjudicated for unlawful sexual behavior or a crime in which the underlying factual basis  
35 involves domestic or family violence.

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

38 The law enforcement officer may refer such child to a community-based restorative  
39 justice program, as defined by section 52 of this chapter, but participation in a community-based  
40 restorative justice program shall not be referred if the responsible party was detained for  
41 unlawful sexual behavior or a crime in which the underlying factual basis involves domestic or  
42 family violence.

43 SECTION 4. Section 3 of chapter 276A of the General Laws, as appearing in the 2012  
44 Official Edition, is hereby amended after the third paragraph by inserting the following:-

45 Such programs may include a community-based restorative justice program, as defined in  
46 section 52 of chapter 119, but participation in a community-based restorative justice program  
47 shall not be referred if the responsible party was adjudicated for unlawful sexual behavior or a  
48 crime in which the underlying factual basis involves domestic or family violence.

49 SECTION 5. Section 87A of chapter 276 of the General Laws, as appearing in the 2012  
50 Official Edition, is hereby amended in line 5 by inserting after the words “specified rehabilitative  
51 programs” the following:-

52 including a community-based restorative justice program, as defined in section 52 of  
53 chapter 119, but participation in a community-based restorative justice program shall not be  
54 referred if the responsible party was adjudicated for unlawful sexual behavior or a crime in  
55 which the underlying factual basis involves domestic or family violence.

56 SECTION 6. Said chapter 276, as so appearing, is hereby amended by adding the  
57 following section:-

58 Section \_\_\_\_\_. Notwithstanding the provisions of any general or special law to the  
59 contrary, there shall be established an advisory committee to study and track the use of and  
60 referral to community-based restorative justice programs, as defined in section 52 of chapter 119.  
61 The advisory committee shall consist of 16 members: 1 of whom shall be the secretary of public  
62 safety and security, or a designee, who shall serve as chair; 1 of whom shall be the secretary of  
63 health and human services or a designee; 1 of whom shall be a representative of the  
64 Massachusetts District Attorneys Association; 1 of whom shall be a representative from the  
65 Massachusetts Committee for Public Counsel Services; 2 of whom shall be the co-chairs of the  
66 joint committee on judiciary or their designees; 2 of whom shall be the co-chairs of the joint  
67 committee on children, families and persons with disabilities or their designee; 2 of whom shall  
68 represent police, of which one shall be a representative of the Massachusetts Police Association  
69 and one shall be a representative of the Massachusetts Chiefs of Police Association; 3 of whom  
70 shall be representatives of community-based restorative justice programs, as defined by section  
71 52 of chapter 119, of which 1 shall be from a program that accepts police referrals, 1 shall work  
72 with school-aged juveniles and 1 shall be from a program that accepts referrals from the office of  
73 probation, a district attorney or a court; 1 of whom shall be a representative from an organization  
74 that serves or advocates for victims of domestic violence, rape or sexual assault; 1 of whom shall  
75 be a member of the Massachusetts Association of School Superintendents or its designee; and 1  
76 of whom shall be a professor with expertise in restorative justice or criminal justice diversion  
77 programs. The advisory committee shall track the use of community-based restorative justice  
78 programs and shall make legislative, policy and regulatory recommendations to aid in the use of  
79 community-based restorative justice programs, including but not limited to: qualitative and  
80 quantitative outcomes for participants; recidivism rates of responsible parties; criteria for youth  
81 involvement and training; cost savings for the commonwealth; training guidelines for restorative  
82 justice facilitators and criteria for state certified programs; data on racial, socioeconomic and  
83 geographic disparities in the use of community-based restorative justice programs; guidelines for  
84 restorative justice best practices; appropriate training and funding sources for community-based  
85 restorative programs; and plans for the expansion of restorative justice programs and  
86 opportunities throughout the commonwealth. The advisory committee shall file a report of its  
87 findings and recommendations with the Governor, the clerks of the house of representatives and  
88 senate no later than December 31, 2016.

89 SECTION 7. Said chapter 119, as so appearing, is hereby amended by adding the  
90 following:-

91 Section \_\_\_\_\_.

92 (a) In deciding whether to divert a matter to a community-based restorative justice  
93 program, the referring body shall consider the following criteria: an alleged offender's

94 willingness to take responsibility; an alleged victim's willingness to engage the alleged offender  
95 either in person or through a representative; the desires of other alleged victims, if any; whether  
96 the restorative justice process may be appropriately used in the case of multiple alleged victims;  
97 and reasonable assurances for physical and emotional safety of all in the process.

98 (b) A referring body shall only divert a responsible party to a community-based  
99 restorative justice program pursuant to sections 39H or 55B of chapter 119 or section 3 of  
100 chapter 276A with the consent of the impacted party. An impacted party's participation in a  
101 community-based restorative justice program shall be voluntary and the impacted party may  
102 participate through a representative. If there is not an impacted party to a harm or crime, or if an  
103 impacted party cannot be identified, cannot be contacted or does not respond the referring body  
104 may still divert the responsible party to a community-based restorative justice program. If  
105 impacted parties participate in a community-based restorative justice program they shall  
106 determine which community members, if any, may participate in the process with them.

107 (c) If there are multiple impacted parties the referring body shall only divert a responsible  
108 party to a community-based restorative justice program for those impacted parties who consent  
109 to the use of restorative justice in their case. The referring body may prohibit the use of a  
110 community-based restorative justice program if not all impacted parties are willing to participate  
111 in restorative justice and the referring body finds that allowing only some impacted parties to use  
112 the restorative justice process would violate the privacy of other impacted parties or the rights of  
113 the responsible party.

114 (d) A community-based restorative justice program shall engage the impacted party, if  
115 any, or the impacted party's representative, if any, the responsible party, members of the  
116 community, if any, and the referring body to develop a plan of repair. The plan of repair shall be  
117 subject to the review and approval of the referring body. The referring body shall determine  
118 whether a responsible party has sufficiently completed a community-based restorative justice  
119 program, including the plan of repair. If the referring body determines the responsible party has  
120 not sufficiently completed the program or plan of repair it shall determine whether the matter  
121 needs to be transferred to another form of adjudication, including criminal justice. The  
122 completion of the plan of repair shall mark the end of the responsible party's participation in a  
123 community-based restorative justice program.

124 (e) Notwithstanding any law to the contrary, the office of probation shall supervise and  
125 monitor the progress of responsible parties referred to community-based restorative justice  
126 programs under section 87A of chapter 276 or section 3 of chapter 276A and determine whether  
127 responsible parties have complied with the terms of their probation or diversion, respectively.  
128 The office of probation shall certify and monitor the community-based restorative justice  
129 programs it uses pursuant to section 8 of chapter 276A.

130 (f) A referring body shall ensure that a community-based restorative justice program  
131 provides a trained and impartial restorative justice facilitator to manage the restorative justice  
132 process, including mediating the restorative justice meeting and the development of a plan of  
133 repair.

134 (g) An independent facilitator of a community-based restorative justice program shall  
135 monitor the progress of a plan of repair, provide regular progress reports for the referring body's  
136 review and return the matter to the referring body for another form of adjudication if the parties  
137 do not comply with the plan of repair.

138 (h) Participation in a community-based restorative justice program shall not be used as  
139 evidence or as admission of guilt or civil liability in current or subsequent legal proceedings;  
140 provided however, that a responsible party's participation in a community-based restorative  
141 justice program may be used as evidence in any legal proceeding to determine whether that  
142 responsible party has complied with the terms of any court order, condition of probation or other  
143 agreement stipulating a responsible party's participation in such a program.