SENATE . . . . . No. 2078

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

SENATE, Thursday, April 10, 2014

The committee on Children, Families and Persons with Disabilities. to whom was referred the 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,- reports the accompanying bill (Senate, No. 2078).

For the committee,
Michael J. Barrett

SENATE DOCKET, NO. FILED ON: 03/19/2014

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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:

SECTION 1. Section 52 of chapter 119 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding the following:

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

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

"Plan of repair", a confidential written blueprint developed during the restorative justice process and agreed to by all parties consisting of specific actions to be taken by the responsible

party to redress the harm caused to the impacted party or the community, which includes a timeline for the completion of the plan.

"Referring body", the court, office of probation, district attorney's office or police department responsible for diverting or referring a matter to the restorative justice process and selecting a community-based restorative justice program.

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

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

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

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

including a community-based restorative justice program, but the court shall not refer participation in a community-based restorative justice program if the responsible party was

adjudicated for unlawful sexual behavior or a crime in which the underlying factual basis involves domestic or family violence.

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

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

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

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

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

including a community-based restorative justice program, as defined in section 52 of chapter 119, but participation in a community-based restorative justice program shall not be referred if

the responsible party was adjudicated for unlawful sexual behavior or a crime in which the underlying factual basis involves domestic or family violence.

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

Section ____. Notwithstanding the provisions of any general or special law to the contrary, there shall be established an advisory committee to study and track the use of and referral to community-based restorative justice programs, as defined in section 52 of chapter 119. The advisory committee shall consist of 16 members: 1 of whom shall be the secretary of public safety and security, or a designee, who shall serve as chair; 1 of whom shall be the secretary of health and human services or a designee; 1 of whom shall be a representative of the Massachusetts District Attorneys Association; 1 of whom shall be a representative from the Massachusetts Committee for Public Counsel Services; 2 of whom shall be the co-chairs of the joint committee on judiciary or their designees; 2 of whom shall be the co-chairs of the joint committee on children, families and persons with disabilities or their designee; 2 of whom shall represent police, of which one shall be a representative of the Massachusetts Police Association and one shall be a representative of the Massachusetts Chiefs of Police Association; 3 of whom shall be representatives of community-based restorative justice programs, as defined by section 52 of chapter 119, of which 1 shall be from a program that accepts police referrals, 1 shall work with school-aged juveniles and 1 shall be from a program that accepts referrals from the office of probation, a district attorney or a court; 1 of whom shall be a representative from an organization that serves or advocates for victims of domestic violence, rape or sexual assault; 1 of whom shall be a member of the Massachusetts Association of School Superintendents or its designee; and 1 of whom shall be a professor with expertise in restorative justice or criminal justice diversion

programs. The advisory committee shall track the use of community-based restorative justice programs and shall make legislative, policy and regulatory recommendations to aid in the use of community-based restorative justice programs, including but not limited to: qualitative and quantitative outcomes for participants; recidivism rates of responsible parties; criteria for youth involvement and training; cost savings for the commonwealth; training guidelines for restorative justice facilitators and criteria for state certified programs; data on racial, socioeconomic and geographic disparities in the use of community-based restorative justice programs; guidelines for restorative justice best practices; appropriate training and funding sources for community-based restorative programs; and plans for the expansion of restorative justice programs and opportunities throughout the commonwealth. The advisory committee shall file a report of its findings and recommendations with the Governor, the clerks of the house of representatives and senate no later than December 31, 2016.

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

Section ____.

(a) In deciding whether to divert a matter to a community-based restorative justice program, the referring body shall consider the following criteria: an alleged offender's willingness to take responsibility; an alleged victim's willingness to engage the alleged offender either in person or through a representative; the desires of other alleged victims, if any; whether the restorative justice process may be appropriately used in the case of multiple alleged victims; and reasonable assurances for physical and emotional safety of all in the process.

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

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

(d) A community-based restorative justice program shall engage the impacted party, if any, or the impacted party's representative, if any, the responsible party, members of the community, if any, and the referring body to develop a plan of repair. The plan of repair shall be subject to the review and approval of the referring body. The referring body shall determine whether a responsible party has sufficiently completed a community-based restorative justice program, including the plan of repair. If the referring body determines the responsible party has not sufficiently completed the program or plan of repair it shall determine whether the matter

needs to be transferred to another form of adjudication, including criminal justice. The completion of the plan of repair shall mark the end of the responsible party's participation in a community-based restorative justice program.

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

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

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

(h) Participation in a community-based restorative justice program shall not be used as evidence or as admission of guilt or civil liability in current or subsequent legal proceedings; provided however, that a responsible party's participation in a community-based restorative justice program may be used as evidence in any legal proceeding to determine whether that

responsible party has complied with the terms of any court order, condition of probation or other agreement stipulating a responsible party's participation in such a program.