

HOUSE No. 4368

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 The General Laws, as appearing in the 2014 Official Edition, are amended by adding the
2 following new chapter:

3 Chapter 276B: Restorative Justice

4 SECTION 1. Policy Objectives.

5 It is the policy of this Commonwealth that principles of restorative justice are included as
6 an option for criminal and juvenile justice practitioners and parties to certain crimes. It is the
7 goal that law enforcement officials employ restorative justice approaches wherever applicable, as
8 it may reduce recidivism and the risk of more serious crimes that would require a more intensive
9 and costly response from the legal system, such as prosecution and incarceration. Restorative
10 justice approaches should be designed by local community members; and impacted parties are
11 encouraged to participate, when they so choose.

12 SECTION 2. Definitions.

13 As used in this chapter the following terms shall have the following meanings.

14 “Restorative justice,” a voluntary process that involves those who have a stake in an
15 offense to collectively identify and address harms, needs and obligations, in order to understand
16 the impact of a crime. Restorative Justice principles recognize crime violates the social fabric of
17 our communities and relationships within them. Restorative justice requires an offender’s
18 acceptance of responsibility for their actions and supports the offender as they make repair to the
19 victim and/or community in which the harm occurred. Restorative justice also includes victims
20 affected by crime in the process.

21 “Community-based restorative justice program,” a program established on restorative
22 justice principles that engages parties to a crime and/or members of the community to develop a
23 plan of repair. Programs may include the parties to a case, their supporters, and community
24 members, or one-on-one dialogues between a victim and offender.

25 SECTION 3. Participation.

26 Participation in a community-based restorative justice program shall be voluntary and
27 shall be available to both a juvenile and adult defendant. A juvenile or adult defendant may be
28 diverted to a community-based restorative justice program with the consent of the District
29 Attorney and the victim. Restorative justice shall be available at any stage of the case beginning
30 immediately post arraignment. Restorative justice may be contemplated as a means of
31 disposition, with judicial approval. If a juvenile or adult defendant successfully completes the
32 restorative justice program, the charge will be dismissed. If a juvenile or adult defendant does
33 not successfully complete the program or is found to be in violation of program requirements, the

34 case will be returned to the court in which it was arraigned in order to commence with
35 proceedings.

36 SECTION 4. Ineligible Offenses.

37 Certain offenses shall be ineligible, including: a sexual offense as defined by section 1 of
38 chapter 123A; any offense against a family or household member as defined by section 13M of
39 chapter 265; or any offense resulting in substantial impairment of the physical condition
40 including any burn, subdural hematoma, injury to any internal organ, any injury which occurs as
41 the result of repeated harm to any bodily function or organ including human skin or any physical
42 condition which substantially imperils a person's health or welfare. An offense resulting in the
43 fracture of a bone is not automatically excluded, but may be considered ineligible in light of the
44 facts and circumstances of the case.

45 SECTION 5. Confidentiality.

46 Participation in a community-based restorative justice program shall not be used as
47 evidence or as an admission of guilt, delinquency, or civil liability in current or subsequent legal
48 proceedings. Any communication made by a juvenile or adult defendant during the course of an
49 assignment to a community-based restorative justice program shall be confidential. As such, it
50 shall not be subject to disclosure in any judicial or administrative proceeding. Such evidence,
51 however, shall be admissible in these proceedings if it is obtained through an independent source
52 or would have been inevitably discovered by lawful means.

53 SECTION 6. Advisory Committee.

54 Notwithstanding the provisions of any general or special law to the contrary, there shall
55 be established an advisory committee to review community-based restorative justice programs,
56 as defined in chapter 276B. The advisory committee shall consist of twelve members. The Joint
57 Chairs of the Judiciary Committee shall appoint those members and shall designate one member
58 as Advisory Committee Chair. Members shall include a representative from the Executive Office
59 of Public Safety and Security, the Executive Office of Health and Human Services, the
60 Massachusetts District Attorneys Association, the Massachusetts Committee for Public Counsel
61 Services, the Executive Office of the Trial Court, the Office of the Commissioner of Probation,
62 the Massachusetts Chiefs of Police Association, the Massachusetts Office for Victim Assistance,
63 three representatives from community-based restorative justice programs, and a current or past
64 member of the Judiciary. The members of the Advisory Committee shall be appointed for six-
65 year terms. Terms of those members appointed because of their public office or position shall
66 end when the member leaves such public office or position, and a successor shall be appointed in
67 the proscribed manner.

68 All advisory committee appointments shall be made not later than 60 days after the
69 effective date of this bill. The first meeting of this advisory committee shall take place within 90
70 days of the effective date of this bill.

71 The advisory committee shall partner with an educational institution for data tracking and
72 support as it monitors the use of community-based restorative justice programs and makes
73 legislative, policy and regulatory recommendations to aid in the use of community-based
74 restorative justice programs. Additional responsibilities of the committee include but are not
75 limited to: evaluating cost savings; creating guidelines for restorative justice best practices
76 including caseload and enrollment; identifying funding sources for community-based restorative

77 justice programs; and establishing plans for the expansion of community-based restorative
78 justice programs, educational outreach and awareness raising efforts throughout the
79 Commonwealth.

80 The advisory committee shall, in its discretion, approve, monitor, and assist all
81 community-based restorative justice programs to which a juvenile or adult defendant may be
82 diverted pursuant to this chapter. The advisory committee shall issue approval of existing and
83 new programs for a term of two years, and may renew approval for like terms, subject to
84 revocation for cause, to any person, partnership, corporation, society, association or other agency
85 or entity of any kind, deemed to be responsible and suitable to establish and maintain the high
86 quality and individualized service expected of such a community-based restorative justice
87 program.

88 The advisory committee shall file the first report of its findings, recommendations, and a
89 list of approved community-based restorative justice programs with the Governor and the clerks
90 of the House of Representatives and Senate no later than December 31, 2017. Reporting shall
91 continue on an annual basis and will be due by the last day of each December.

92 SECTION 7. Amendment to Chapter 119.

93 The General Laws, as appearing in the 2014 Official Edition, are amended by adding
94 section 86: Restorative Justice for Juveniles. Said chapter shall incorporate sections one through
95 six of chapter 276B.