

SENATE No. 2467

The Commonwealth of Massachusetts

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

SENATE, Wednesday, July 27, 2016

The committee on Ways and Means, to whom was referred the Senate Bill promoting restorative justice practices (Senate, No. 71),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2467).

For the committee,
Karen E. Spilka

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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:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 276A the
2 following new chapter:-

CHAPTER 276B

RESTORATIVE JUSTICE

5 Section 1. As used in this chapter the following terms shall have the following meanings
6 unless the context clearly requires otherwise:

7 “Community-based restorative justice program”, a restorative justice program that
8 engages parties to a criminal offense and members of the community in which the crime
9 occurred to develop a plan of repair; provided, however, that programs may include other
10 impacted individuals, as appropriate, community members or dialogues between a victim and
11 offender.

12 “Restorative justice”, a voluntary process involving parties to a criminal offense,
13 members of the community in which the crime occurred and other individuals impacted by the

14 criminal offense, as appropriate, to collectively identify and address harms, needs and
15 obligations, in order to understand the impact of a crime; provided, however, that restorative
16 justice requires an offender's acceptance of responsibility for the offender's actions and supports
17 the offender as the offender makes reparation to the victim and the community in which the harm
18 occurred.

19 Section 2. Restorative justice principles shall be utilized as an option for criminal and
20 juvenile justice practitioners and parties to certain crimes pursuant to section 3. Law enforcement
21 officials shall employ restorative justice principles wherever applicable in an effort to reduce
22 recidivism and the risk of more serious crimes which may require a more intensive and costly
23 response from the legal system, such as prosecution and incarceration. Such principles shall be
24 designed by local community members. Participation in a community-based restorative justice
25 program shall be voluntary and shall be available to both juvenile and adult offenders. A juvenile
26 or adult offender may be diverted to a community-based restorative justice program at the
27 discretion of the court and with the consent of the participating district attorney and the victim,
28 where applicable. Diversion to a restorative justice program shall be available with judicial
29 approval at arraignment and until final disposition of the case. Charges shall be dismissed upon
30 the successful completion of a restorative justice program as determined by a judge in the court
31 in which the arraignment occurred and with the consent of the participating district attorney. If
32 the judge finds that a juvenile or adult defendant has not successfully completed the program or
33 is in violation of program requirements, the case shall be returned to the docket in order to
34 commence with criminal proceedings.

35 Section 3. A person shall not be eligible to participate in a community-based restorative
36 justice program if that person is charged with: (i) a sexual offense as defined by section 1 of

chapter 123A; (ii) an offense against a family or household member as defined by section 13M of chapter 265; or (iii) an offense resulting in serious bodily injury as determined by the judge.

Section 4. Participation in a community-based restorative justice program shall not be used as evidence or as an admission of guilt, delinquency or civil liability in a current or subsequent legal proceeding. Any communication made by a juvenile or an adult offender during the course of an assignment to a community-based restorative justice program shall be confidential and shall not be subject to disclosure in a judicial or administrative proceeding. Such evidence, however, shall be admissible in such proceedings if that evidence was obtained through an independent source.

All memoranda and other work product prepared by a community-based restorative justice program and the program's case files shall be confidential and not subject to disclosure in a judicial or administrative proceeding involving any of the parties to which such materials apply. Any communication made in the course of and relating to the subject matter of a plan of repair or restorative justice meeting shall be considered a confidential communication and not subject to disclosure in a judicial or administrative proceeding.

Section 5. (a) There shall be an advisory committee to provide an ongoing review of community-based restorative justice programs. The advisory committee shall include a representative of each of the following chosen by the chairs of the joint committee on the judiciary: the executive office of public safety and security; the executive office of health and human services; the Massachusetts district attorneys association; the committee for public counsel services; the executive office of the trial court; the office of the commissioner of probation; the Massachusetts Chiefs of Police Association Incorporated, the Massachusetts office

for victim assistance; 6 representatives from community-based restorative justice programs; and a retired judge. The chairs of the joint committee on the judiciary shall designate the chair of the committee. The members of the committee shall be appointed for terms of 6 years. Terms of those members appointed because of their public office or position shall end when the member leaves such public office or position and a successor shall be appointed in the prescribed manner.

(b) The advisory committee shall partner with an educational institution to provide data tracking and support as the committee monitors the use of community-based restorative justice programs and make legislative, policy and regulatory recommendations. In its ongoing analysis, the committee shall, at a minimum: (i) evaluate cost savings; (ii) create guidelines for restorative justice best practices, including caseload and enrollment; (iii) identify funding sources for community-based restorative justice programs; and (iv) establish plans for the expansion of community-based restorative justice programs, educational outreach and awareness throughout the commonwealth.

(c) The advisory committee shall, in its discretion, approve, monitor and assist all community-based restorative justice programs to which a juvenile or adult defendant may be diverted pursuant to this chapter. The advisory committee shall issue approval of existing and new programs for a term of 2 years, and may renew such approval in 2-year increments, to any person, partnership, corporation, society, association or other agency or entity of any kind deemed to be responsible and suitable to establish and maintain the high quality and individualized service expected of a community-based restorative justice program; provided, however, that such approval is subject to revocation for cause as determined by the committee.

80 (d) The advisory committee shall annually submit a report with findings,
81 recommendations and a list of approved community-based restorative justice programs to the
82 governor and the clerks of the senate and house of representatives, who shall forward the same to
83 the chairs of the joint committee on the judiciary and to the chairs of the joint committee on
84 public safety and homeland security, not later than December 31.

85 SECTION 2. Appointments to the advisory committee established in section 5 of chapter
86 276B of the General Laws shall be made not later than October 1, 2016 and the first meeting of
87 that advisory committee shall be held not later than December 1, 2016.