

SENATE No. 71

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 adoption of the accompanying bill:

An Act promoting restorative justice practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	Middlesex and Worcester
Jay R. Kaufman	15th Middlesex
Aaron Vega	5th Hampden
Peter V. Kocot	1st Hampshire
Jason M. Lewis	Fifth Middlesex
Jennifer E. Benson	37th Middlesex
Kenneth J. Donnelly	Fourth Middlesex
Cory Atkins	14th Middlesex
Michael J. Barrett	Third Middlesex
Sean Garballey	23rd Middlesex
Mary S. Keefe	15th Worcester
Marjorie C. Decker	25th Middlesex
Tricia Farley-Bouvier	3rd Berkshire
Ruth B. Balsler	12th Middlesex
Carolyn C. Dykema	8th Middlesex
William N. Brownsberger	Second Suffolk and Middlesex
Joseph W. McGonagle, Jr.	28th Middlesex
Daniel A. Wolf	Cape and Islands

<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Leah Cole</i>	<i>12th Essex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

SENATE No. 71

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 71) of James B. Eldridge, Jay R. Kaufman, Aaron Vega, Peter V. Kocot 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. 52 OF 2013-2014.]

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 SECTION 1. Whereas it is the policy of this Commonwealth that principles of restorative
2 justice be included in shaping how the criminal justice system responds to those affected by
3 crime, including those who have caused harm as well as, any direct and indirect persons in the
4 community. The goal is to create repair measures tailored to each instance of wrongdoing, which
5 are consistent, balanced and restorative.

6 Policy objectives are to:

7 (1) Include those most affected by crime in the pursuit of meaningful justice, answer
8 questions and provide safety and meet the unique needs of those affected.

9 (2) Repair damage in the communities in which criminal acts occur.

10 (3) Reduce recidivism and the risk of more serious crimes in the future that may require a
11 more intensive and costly response from the legal system, such as prosecution and incarceration.

12 Whereas it is the intent that law enforcement officials develop and employ restorative
13 justice approaches whenever feasible. It is the further intent of the Legislature that such
14 restorative justice approaches be designed to encourage participation by local community
15 members and impacted parties, when they so choose, as well as public officials, in holding those
16 who cause harm accountable for damage caused to communities and impacted parties, and in
17 restoring them to the law-abiding community, through activities which may include but are not
18 limited to ones which:

19 (1) Ask offenders to:

20 (A) Acknowledge wrongdoing and meet obligations to the impacted parties;

21 (B) Make restitution, if appropriate, for damage to those affected by the crime;

22 (C) Make reparation for damage to the community by fulfilling meaningful a service
23 in the community; and

24 (D) When relevant, successfully complete treatment which addresses the offense or other
25 underlying needs or undertake academic, vocational training or other self-improving activity.

26 (2) Aid in the recovery of impacted parties either in action or through symbolic gesture
27 structured by the community-based restorative justice program.

28 (3) Help identify the causes of crime and ways community members and municipal and
29 Commonwealth can reduce or prevent crime in the future.

30 SECTION 2. Section 52 of chapter 119 of the General Laws, as appearing in the 2012
31 Official Edition, is hereby amended by adding the following:

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

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

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

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

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

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

55 SECTION 3. Section 55B of said chapter 119, as so appearing, is hereby amended in
56 lines 12-13 by inserting after the words “upon compliance with specific terms and conditions”
57 the following:-

58 including a community-based restorative justice program,

59 SECTION 4. Section 39H of said chapter 119, as so appearing, is hereby amended after
60 the second paragraph by inserting the following:-

61 The law enforcement officer may refer such child to a community-based restorative
62 justice program, as defined by section 52 of this chapter.

63 SECTION 5. Section 3 of chapter 276A of the General Laws, as appearing in the 2012
64 Official Edition, is hereby amended after the third paragraph by inserting the following:-

65 Such programs may include a community-based restorative justice program, as defined in
66 section 52 of chapter 119.

67 SECTION 6. Section 87A of chapter 276 of the General Laws, as appearing in the 2012
68 Official Edition, is hereby amended in line 5 by inserting after the words “specified rehabilitative
69 programs” the following:-

70 including a community-based restorative justice program, as defined in section 52 of
71 chapter 119.

72 SECTION 7. Said chapter 276, as so appearing, is hereby amended by adding the
73 following section:-

74 Section X. Notwithstanding the provisions of any general or special law to the contrary,
75 there shall be established an advisory committee to study and track the use of and referral to
76 community-based restorative justice programs, as defined in section 52 of chapter 119. The
77 advisory committee shall be trained in restorative justice practices prior to undertaking the duties
78 in this section. The advisory committee shall consist of 18 members: 1 of whom shall be the
79 secretary of public safety and security, or a designee; 1 of whom shall be the secretary of health
80 and human services or a designee; 1 of whom shall be a representative of the Massachusetts
81 District Attorneys Association; 1 of whom shall be a representative from the Massachusetts
82 Committee for Public Counsel Services; 2 of whom shall be co-chairs of the joint committee on
83 judiciary or their designees; 2 of whom shall be the co-chairs of the joint committee on children,
84 families and persons with disabilities or their designee; 2 of whom shall represent police, of
85 which one shall be a representative of the Massachusetts Police Association and one shall be a
86 representative of the Massachusetts Chiefs of Police Association; 8 of whom shall be
87 representatives of community-based restorative justice programs, as defined by section 52 of
88 chapter 119, of which 1 shall be from a program that accepts police referrals, 1 shall work with
89 school-aged juveniles and 1 shall be from a program that accepts referrals from the office of
90 probation, a district attorney or a court; and 1 of whom shall be a representative from an
91 organization that serves or advocates for victims of domestic violence, rape or sexual assault.
92 The advisory committee shall track the use of community-based restorative justice programs and
93 may make legislative, policy and regulatory recommendations to aid in the use of community-
94 based restorative justice programs, including but not limited to: qualitative and quantitative

95 outcomes for participants; recidivism rates of responsible parties; criteria for youth involvement
96 and training; cost savings for the commonwealth; training guidelines for restorative justice
97 facilitators and criteria for state certified programs; data on racial, socioeconomic and geographic
98 disparities in the use of community-based restorative justice programs; guidelines for restorative
99 justice best practices; appropriate training and funding sources for community-based restorative
100 programs; and plans for the expansion of restorative justice programs and opportunities
101 throughout the commonwealth. The advisory committee shall file a report of its findings and
102 recommendations with the Governor, the clerks of the house of representatives and senate no
103 later than December 31, 2016.

104 SECTION 8. Said chapter 276, as so appearing, is hereby amended by adding the
105 following section:-

106 SECTION X. Notwithstanding the provisions of any general or special law to the
107 contrary, there shall be established an Office of Restorative Justice under the Judiciary. The
108 Office of Restorative Justice shall be staffed by at least one person to monitor and provide
109 technical assistance to the community-based restorative justice programs, providers and other
110 parties to the plan of repair. Subject to appropriation, the Office of Restorative Justice shall be
111 funded not less than \$200,000 to implement and execute duties.

112 SECTION 9. Said chapter 119, as so appearing, is hereby amended by adding the
113 following:-

114 Section X.

115 (a) In deciding whether to divert a matter to a community-based restorative justice
116 program, the following criteria may be considered: an alleged offender's willingness to take

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

121 (b) Impacted and responsible parties may be referred to a community-based restorative
122 justice program by police departments on a pre-complaint basis pursuant to the provisions of this
123 act.

124 (c) A responsible party may be diverted to a community-based restorative justice program
125 pursuant to sections 39H or 55B of chapter 119 or section 3 of chapter 276A with the consent of
126 the impacted party. An impacted party's participation in a community-based restorative justice
127 program shall be voluntary and the impacted party may participate through a representative. If
128 there is not an impacted party to a harm or crime, or if an impacted party cannot be identified,
129 cannot be contacted, does not wish to participate or does not respond, then the responsible party
130 may be diverted to a community-based restorative justice program. If impacted parties
131 participate in a community-based restorative justice program, then they may select community
132 members, if any, which can participate in the process with them.

133 (d) A community-based restorative justice program shall engage the impacted party, if
134 any, or the impacted party's representative, if any, the responsible party, members of the
135 community, if any, and other required parties to develop a plan of repair. The plan of repair may
136 be made available for the review. The community-based restorative justice program may
137 determine whether a responsible party has sufficiently completed a community-based restorative
138 justice program, including the plan of repair. The plan of repair may be subject to changes during

139 implementation of the plan if community-based restorative justice program recommends it. The
140 completion of the plan of repair shall mark the end of the responsible party's participation in a
141 community-based restorative justice program.

142 (e) The Office of Restorative Justice shall ensure that a community-based restorative
143 justice program provides a trained restorative justice facilitator to manage the restorative justice
144 process, including holding the restorative justice meeting and the development of a plan of
145 repair.

146 (f) Participation in a community-based restorative justice program shall not be used as
147 evidence or as admission of guilt or civil liability in current or subsequent legal proceedings;
148 provided however, that a responsible party's participation in a community-based restorative
149 justice program may be used as evidence in any legal proceeding to determine whether that
150 responsible party has complied with the terms of any court order, condition of probation or other
151 agreement stipulating a responsible party's participation in such a program. All memoranda, and
152 other work product prepared by a community-based restorative justice program and the program
153 case files shall be confidential and not subject to disclosure in any judicial or administrative
154 proceeding involving any of the parties to which such materials apply. Any communication made
155 in the course of and relating to the subject matter of any plan of repair or restorative justice
156 meeting shall be a confidential communication and not subject to disclosure in any judicial or
157 administrative proceeding.