

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1849 Session of 2023

INTRODUCED BY RABB, D. WILLIAMS, HILL-EVANS, MADDEN, KINSEY, KHAN, DALEY, WARREN, KRAJEWSKI, GREEN, CEPEDA-FREYTIZ, SHUSTERMAN, MAYES AND KENYATTA, NOVEMBER 15, 2023

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 27, 2024

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in sentencing, further <--
3 providing for sentencing generally and providing for
4 restorative justice. IN COMMENCEMENT OF PROCEEDINGS, <--
5 PROVIDING FOR RESTORATIVE JUSTICE.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 9721(a) of Title 42 of the Pennsylvania <--
9 Consolidated Statutes is amended by adding a paragraph to read:
10 § 9721. Sentencing generally.

11 (a) General rule. In determining the sentence to be imposed
12 the court shall, except as provided in subsection (a.1),
13 consider and select one or more of the following alternatives,
14 and may impose them consecutively or concurrently:

15 * * *

16 (8) Restorative justice.

17 * * *

18 Section 2. Title 42 is amended by adding a section to read:

1 ~~§ 9726.1. Restorative justice.~~

2 ~~(a) Restorative justice as exclusive sentence. The court~~
3 ~~may sentence a defendant to undergo restorative justice~~
4 ~~exclusively if the court, after considering the nature and~~
5 ~~circumstances of the crime committed by the defendant and the~~
6 ~~history and character of the defendant, determines that~~
7 ~~restorative justice alone is appropriate.~~

8 ~~(b) Restorative justice as additional sentence. The court~~
9 ~~may sentence a defendant to undergo restorative justice in~~
10 ~~addition to another sentence, involving total or partial~~
11 ~~confinement or probation, if the court determines that~~
12 ~~restorative justice is specially adapted to the deterrence of~~
13 ~~the crime involved or the correction of the defendant.~~

14 ~~(c) Definitions. As used in this section, the following~~
15 ~~words and phrases shall have the meanings given to them in this~~
16 ~~subsection unless the context clearly indicates otherwise:~~

17 ~~"Circle." A versatile restorative practice that can be used:~~

18 ~~(1) proactively to develop relationships and build~~
19 ~~community; or~~

20 ~~(2) reactively to respond to wrongdoing, conflicts and~~
21 ~~problems.~~

22 ~~"Conference." A structured meeting among individuals who~~
23 ~~have caused harm, individuals who have been harmed and the~~
24 ~~family and friends of these individuals, in which they deal with~~
25 ~~the consequences of a crime or wrongdoing and decide how best to~~
26 ~~repair the harm.~~

27 ~~"Facilitator." An individual who is trained to facilitate a~~
28 ~~restorative justice practice.~~

29 ~~"Party." As follows:~~

30 ~~(1) An individual who voluntarily consents to~~

~~participate in a restorative justice practice.~~

~~(2) The term includes a facilitator, an individual who has caused harm, an individual who has been harmed, a community stakeholder or any other participant in a restorative justice practice.~~

~~"Restorative justice." A gathering, such as a conference or circle, in which individuals who have caused harm, individuals who have been harmed, community stakeholders and a facilitator collectively gather to identify and repair the harm to the extent possible, address trauma, reduce the likelihood of further harm and strengthen community ties by focusing on the needs and obligations of all parties involved through a participatory process.~~

SECTION 1. CHAPTER 89 OF TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBCHAPTER TO READ:

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SUBCHAPTER E

RESTORATIVE JUSTICE

SEC.

8961. DEFINITIONS.

8962. RESTORATIVE JUSTICE.

§ 8961. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"ACCOUNTABILITY." THE ACTIVE PROCESS THAT IS UNDERTAKEN BY AN INDIVIDUAL WHO CAUSED HARM TO DEMONSTRATE REMORSE IN PRACTICE.

"COMMUNITY CONFERENCE." A CONSENSUAL DISPUTE RESOLUTION ORGANIZED TO ADDRESS NEGATIVE OUTCOMES RELATED TO A CRIMINAL ACT PERPETRATED BY AN OFFENDER, TO PROVIDE CONSEQUENCES AND TO HEAL

1 AND REPAIR HARM.

2 "CONSENSUAL DISPUTE RESOLUTION." A VOLUNTARY SETTLEMENT
3 PROCESS BY WHICH PARTIES ADDRESS DISPUTES THROUGH RESTORATIVE
4 JUSTICE, AVOIDING RESOLUTION THROUGH THE CRIMINAL JUSTICE
5 SYSTEM.

6 "FACILITATOR." A PRACTITIONER OF RESTORATIVE JUSTICE WHO
7 ENTERS INTO THE RESTORATIVE JUSTICE PROCESS UNDER SECTION 8962
8 (C) (RELATING TO RESTORATIVE JUSTICE).

9 "RESTORATIVE JUSTICE." PROGRAMS WHICH EMPHASIZE REPAIRING
10 THE HARM DONE TO INDIVIDUALS AND THE COMMUNITY AT LARGE BY THE
11 CRIMINAL ACT OR ACTS OF AN OFFENDER. RESTORATIVE JUSTICE
12 INCLUDES, BUT IS NOT LIMITED TO:

13 (1) COMMUNITY CONFERENCES;

14 (2) CONFLICT RESOLUTION;

15 (3) COUNSELING;

16 (4) COMMUNITY SERVICE;

17 (5) VICTIM-OFFENDER CONFERENCES;

18 (6) VICTIM-OFFENDER MEDIATION;

19 (7) FAMILY OR GROUP DECISION-MAKING CONFERENCES; AND

20 (8) VICTIM IMPACT PANELS.

21 § 8962. RESTORATIVE JUSTICE.

22 (A) FINDINGS.--THE GENERAL ASSEMBLY FINDS AND DECLARES AS
23 FOLLOWS:

24 (1) RESTORATIVE JUSTICE IS AN EFFECTIVE ALTERNATIVE TO
25 SENTENCING INDIVIDUALS WHO HAVE COMMITTED A CRIME BY
26 PROVIDING AN OPPORTUNITY FOR THE OFFENDER TO ACCEPT
27 RESPONSIBILITY FOR THE HARM CAUSED AND TO ENGAGE WITH VICTIMS
28 AND THE COMMUNITY TO REPAIR THE HARM TO THE DEGREE POSSIBLE.

29 (2) RESTORATIVE JUSTICE HAS BEEN SHOWN TO PREVENT
30 FURTHER CRIMINAL ACTIVITY BY OFFENDERS.

1 (3) IT IS THE POLICY OF THIS COMMONWEALTH THAT
2 RESTORATIVE JUSTICE BE USED WHENEVER POSSIBLE TO:

3 (I) RESOLVE CONFLICTS AND DISPUTES BY MEANS OF A
4 NONADVERSARIAL COMMUNITY PROCESS;

5 (II) ENSURE THAT OFFENDERS ARE HELD ACCOUNTABLE
6 OUTSIDE OF THE CRIMINAL JUSTICE SYSTEM; AND

7 (III) ENCOURAGE THE HEALING OF ALL PARTIES AFFECTED
8 BY CRIME.

9 (B) RESTORATIVE JUSTICE AS PRETRIAL DIVERSION.--
10 NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY AND SUBJECT
11 TO SUBSECTION (C), EACH DISTRICT ATTORNEY MAY USE RESTORATIVE
12 JUSTICE AS A PRETRIAL DIVERSION FOR ANY OFFENSE, EXCEPT OFFENSES
13 UNDER 18 PA.C.S. CH. 25 (RELATING TO CRIMINAL HOMICIDE).

14 (C) CONSENT BY ALL PARTIES.--RESTORATIVE JUSTICE MAY ONLY BE
15 USED AS A PRETRIAL DIVERSION IF THE DISTRICT ATTORNEY, OFFENDER
16 AND VICTIM OF THE OFFENDER EACH AGREE TO ENTER INTO THE
17 RESTORATIVE JUSTICE PROCESS WITH A FACILITATOR.

18 (D) RESTORATIVE JUSTICE PROCESS.--THE RESTORATIVE JUSTICE
19 PROCESS CONSENTED TO UNDER SUBSECTION (C) SHALL INCLUDE A PLAN
20 TO REPAIR THE HARM WHICH IS AGREED TO BY ALL PARTIES AND A TIME
21 LIMIT FOR COMPLETION OF THE PLAN.

22 (E) CONFIDENTIALITY.--THE FOLLOWING APPLY:

23 (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), ALL
24 MEMORANDA, WORK NOTES OR PRODUCTS, CASE FILES OR PROGRAMS,
25 DATA AND COMMUNICATIONS RELATED TO THE RESTORATIVE JUSTICE
26 PROCESS ARE CONFIDENTIAL AND SHALL NOT BE SUBJECT TO
27 DISCLOSURE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING
28 UNLESS ALL PARTIES TO THE COMMUNICATION WAIVE THE PRIVILEGE.

29 (2) CONFIDENTIALITY UNDER PARAGRAPH (1) SHALL NOT APPLY:

30 (I) IF AN OFFENDER COMMITS A CHARGEABLE OFFENSE

1 DURING THE RESTORATIVE JUSTICE PROCESS.

2 (II) TO ANY COMMUNICATION RELATED TO THE MANDATORY

3 REPORTING OF CHILD ABUSE OR NEGLECT.

4 Section 3 2. This act shall take effect in 60 days.

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