

An Act promoting restorative justice practices.

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

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

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

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

15 “Referring body”, the court, office of probation, district attorney’s office or police
16 department responsible for diverting or referring a matter to the restorative justice process and
17 selecting a community-based restorative justice program.

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

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

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

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

32 including a community-based restorative justice program, but the court shall not refer
33 participation in a community-based restorative justice program if the responsible party was
34 adjudicated for unlawful sexual behavior or a crime in which the underlying factual basis
35 involves domestic or family violence.

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

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

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

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

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

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

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

58 Section _____. Notwithstanding the provisions of any general or special law to the contrary,
59 there shall be established an advisory committee to study and track the use of and referral to
60 community-based restorative justice programs, as defined in section 52 of chapter 119. The
61 advisory committee shall consist of 16 members: 1 of whom shall be the secretary of public
62 safety and security, or a designee, who shall serve as chair; 1 of whom shall be the secretary of
63 health and human services or a designee; 1 of whom shall be a representative of the

64 Massachusetts District Attorneys Association; 1 of whom shall be a representative from the
65 Massachusetts Committee for Public Counsel Services; 2 of whom shall be the co-chairs of the
66 joint committee on judiciary or their designees; 2 of whom shall be the co-chairs of the joint
67 committee on children, families and persons with disabilities or their designee; 2 of whom shall
68 represent police, of which one shall be a representative of the Massachusetts Police Association
69 and one shall be a representative of the Massachusetts Chiefs of Police Association; 3 of whom
70 shall be representatives of community-based restorative justice programs, as defined by section
71 52 of chapter 119, of which 1 shall be from a program that accepts police referrals, 1 shall work
72 with school-aged juveniles and 1 shall be from a program that accepts referrals from the office of
73 probation, a district attorney or a court; 1 of whom shall be a representative from an organization
74 that serves or advocates for victims of domestic violence, rape or sexual assault; 1 of whom shall
75 be a member of the Massachusetts Association of School Superintendents or its designee; and 1
76 of whom shall be a professor with expertise in restorative justice or criminal justice diversion
77 programs. The advisory committee shall track the use of community-based restorative justice
78 programs and shall make legislative, policy and regulatory recommendations to aid in the use of
79 community-based restorative justice programs, including but not limited to: qualitative and
80 quantitative outcomes for participants; recidivism rates of responsible parties; criteria for youth
81 involvement and training; cost savings for the commonwealth; training guidelines for restorative
82 justice facilitators and criteria for state certified programs; data on racial, socioeconomic and
83 geographic disparities in the use of community-based restorative justice programs; guidelines for
84 restorative justice best practices; appropriate training and funding sources for community-based
85 restorative programs; and plans for the expansion of restorative justice programs and
86 opportunities throughout the commonwealth. The advisory committee shall file a report of its
87 findings and recommendations with the Governor, the clerks of the house of representatives and
88 senate no later than December 31, 2016.

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

90 Section ____.

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

97 (b) A referring body shall only divert a responsible party to a community-based restorative
98 justice program pursuant to sections 39H or 55B of chapter 119 or section 3 of chapter 276A
99 with the consent of the impacted party. An impacted party's participation in a community-based
100 restorative justice program shall be voluntary and the impacted party may participate through a
101 representative. If there is not an impacted party to a harm or crime, or if an impacted party

102 cannot be identified, cannot be contacted or does not respond the referring body may still divert
103 the responsible party to a community-based restorative justice program. If impacted parties
104 participate in a community-based restorative justice program they shall determine which
105 community members, if any, may participate in the process with them.

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

113 (d) A community-based restorative justice program shall engage the impacted party, if any, or
114 the impacted party's representative, if any, the responsible party, members of the community, if
115 any, and the referring body to develop a plan of repair. The plan of repair shall be subject to the
116 review and approval of the referring body. The referring body shall determine whether a
117 responsible party has sufficiently completed a community-based restorative justice program,
118 including the plan of repair. If the referring body determines the responsible party has not
119 sufficiently completed the program or plan of repair it shall determine whether the matter needs
120 to be transferred to another form of adjudication, including criminal justice. The completion of
121 the plan of repair shall mark the end of the responsible party's participation in a community-
122 based restorative justice program.

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

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

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

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

139 program may be used as evidence in any legal proceeding to determine whether that responsible
140 party has complied with the terms of any court order, condition of probation or other agreement
141 stipulating a responsible party's participation in such a program.