

HOUSE No. 1313

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

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:
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>

<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Leah Cole</i>	<i>12th Essex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>

HOUSE No. 1313

By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 1313) of Sean Garballey and others for legislation to promote the use of restorative justice practices. The Judiciary.

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.

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

7 Policy objectives are to:

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

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

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

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

21 (1) Ask offenders to:

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

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

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

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

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

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

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

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

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

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

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

50 “Restorative justice”, a comprehensive approach to community harm including criminal
51 justice that emphasizes repairing the harm caused by an event or crime. Restorative justice is a

52 set of principles that supports responsible parties to accept responsibility for their actions and
53 prioritizes repairing the harm done to the impacted parties or the community.

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

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

61 including a community-based restorative justice program,

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

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

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

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

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

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

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

77 Section X. Notwithstanding the provisions of any general or special law to the contrary,
78 there shall be established an advisory committee to study and track the use of and referral to
79 community-based restorative justice programs, as defined in section 52 of chapter 119. The
80 advisory committee shall be trained in restorative justice practices prior to undertaking the duties
81 in this section. The advisory committee shall consist of 18 members: 1 of whom shall be the
82 secretary of public safety and security, or a designee; 1 of whom shall be the secretary of health
83 and human services or a designee; 1 of whom shall be a representative of the Massachusetts
84 District Attorneys Association; 1 of whom shall be a representative from the Massachusetts
85 Committee for Public Counsel Services; 2 of whom shall be co-chairs of the joint committee on
86 judiciary or their designees; 2 of whom shall be the co-chairs of the joint committee on children,
87 families and persons with disabilities or their designee; 2 of whom shall represent police, of
88 which one shall be a representative of the Massachusetts Police Association and one shall be a
89 representative of the Massachusetts Chiefs of Police Association; 8 of whom shall be
90 representatives of community-based restorative justice programs, as defined by section 52 of
91 chapter 119, of which 1 shall be from a program that accepts police referrals, 1 shall work with
92 school-aged juveniles and 1 shall be from a program that accepts referrals from the office of
93 probation, a district attorney or a court; and 1 of whom shall be a representative from an
94 organization that serves or advocates for victims of domestic violence, rape or sexual assault.
95 The advisory committee shall track the use of community-based restorative justice programs and

96 may make legislative, policy and regulatory recommendations to aid in the use of community-
97 based restorative justice programs, including but not limited to: qualitative and quantitative
98 outcomes for participants; recidivism rates of responsible parties; criteria for youth involvement
99 and training; cost savings for the commonwealth; training guidelines for restorative justice
100 facilitators and criteria for state certified programs; data on racial, socioeconomic and geographic
101 disparities in the use of community-based restorative justice programs; guidelines for restorative
102 justice best practices; appropriate training and funding sources for community-based restorative
103 programs; and plans for the expansion of restorative justice programs and opportunities
104 throughout the commonwealth. The advisory committee shall file a report of its findings and
105 recommendations with the Governor, the clerks of the house of representatives and senate no
106 later than December 31, 2016.

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

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

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

117 Section X.

118 (a) In deciding whether to divert a matter to a community-based restorative justice
119 program, the following criteria may be considered: an alleged offender's willingness to take
120 responsibility; an alleged victim's willingness to engage the alleged offender either in person or
121 through a representative; the desires of other alleged victims, if any; whether the restorative
122 justice process may be appropriately used in the case of multiple alleged victims; and reasonable
123 assurances for physical and emotional safety of all in the process.

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

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

136 (d) A community-based restorative justice program shall engage the impacted party, if
137 any, or the impacted party's representative, if any, the responsible party, members of the
138 community, if any, and other required parties to develop a plan of repair. The plan of repair may
139 be made available for the review. The community-based restorative justice program may

140 determine whether a responsible party has sufficiently completed a community-based restorative
141 justice program, including the plan of repair. The plan of repair may be subject to changes during
142 implementation of the plan if community-based restorative justice program recommends it. The
143 completion of the plan of repair shall mark the end of the responsible party's participation in a
144 community-based restorative justice program.

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

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