

**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



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

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

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

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

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

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

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

72 (c) The advisory committee shall, in its discretion, approve, monitor and assist all  
73 community-based restorative justice programs to which a juvenile or adult defendant may be  
74 diverted pursuant to this chapter. The advisory committee shall issue approval of existing and  
75 new programs for a term of 2 years, and may renew such approval in 2-year increments, to any  
76 person, partnership, corporation, society, association or other agency or entity of any kind  
77 deemed to be responsible and suitable to establish and maintain the high quality and  
78 individualized service expected of a community-based restorative justice program; provided,  
79 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.