

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0367.01 Michael Dohr x4347

HOUSE BILL 17-1039

HOUSE SPONSORSHIP

Lee,

SENATE SPONSORSHIP

Kagan,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING COMMUNICATION ISSUES RELATED TO RESTORATIVE**
102 **JUSTICE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill makes all communications during the restorative justice process made by all participants in the process confidential unless:

- ! All participants in the process, including the restorative justice program or restorative justice facilitator, consent in writing to waive confidentiality of specific communications for a stated purpose;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! An offender or other participant commits a chargeable offense as part of a restorative justice or restorative practice communication;
- ! A report is made by a statutory mandatory reporter of behavior that threatens the safety of a child under 18 years of age; or
- ! Disclosure of a communication is necessary and relevant to an action alleging willful or wanton misconduct of a restorative justice facilitator or organization.

The bill requires the restorative justice program or facilitator to disclose those exceptions and any other applicable exceptions prior to starting the process.

The bill requires the court, during the arraignment advisement, to inform the defendant that if convicted the sentence may include restorative justice practices. The bill allows the district attorney to include restorative justice practices as part of a recommended sentence in a plea bargain. The bill directs that the presentence report must include an assessment of the defendant's suitability for restorative justice practices.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 13-25-138 as
3 follows:

4 **13-25-138. Confidential communications - restorative justice**

5 **- definition.** (1) (a) ALL COMMUNICATIONS MADE AT ANY STAGE DURING
6 A RESTORATIVE JUSTICE OR RESTORATIVE PRACTICE PROCESS BY A
7 RESTORATIVE JUSTICE FACILITATOR, WHETHER IN A PROFESSIONAL OR
8 VOLUNTEER CAPACITY, OR BY A PARTICIPANT IN THE PROCESS, ARE
9 CONFIDENTIAL. A FACILITATOR OR PARTICIPANT SHALL NOT VOLUNTARILY
10 DISCLOSE OR DISCLOSE THROUGH DISCOVERY OR COMPULSORY PROCESS
11 THOSE COMMUNICATIONS, EXCEPT WHEN:

12 (I) ALL PARTICIPANTS IN THE PROCESS, INCLUDING THE
13 RESTORATIVE JUSTICE PROGRAM OR RESTORATIVE JUSTICE FACILITATOR,
14 CONSENT IN WRITING TO WAIVE CONFIDENTIALITY OF SPECIFIC
15 COMMUNICATIONS FOR A STATED PURPOSE;

1 (II) AN OFFENDER OR OTHER PARTICIPANT COMMITS A
2 CHARGEABLE OFFENSE AS PART OF A RESTORATIVE JUSTICE OR
3 RESTORATIVE PRACTICE COMMUNICATION;

4 (III) A PERSON IS REQUIRED TO FILE A REPORT CONCERNING CHILD
5 ABUSE OR NEGLECT UNDER SECTION 19-3-304; OR

6 (IV) DISCLOSURE OF A COMMUNICATION IS NECESSARY AND
7 RELEVANT TO AN ACTION ALLEGING WILLFUL OR WANTON MISCONDUCT OF
8 A RESTORATIVE JUSTICE FACILITATOR OR ORGANIZATION.

9 (b) A COMMUNICATION THAT IS DISCLOSED IN VIOLATION OF THIS
10 SUBSECTION (1) OR THAT FALLS WITHIN AN EXCEPTION NOT DISCLOSED TO
11 ALL PARTICIPANTS PRIOR TO COMMENCEMENT OF THE PROCESS SHALL NOT
12 BE USED AS A BASIS FOR CHARGING OR PROSECUTING AN OFFENDER AND
13 SHALL NOT BE ADMITTED INTO EVIDENCE IN ANY JUDICIAL, DISCIPLINARY,
14 OR ADMINISTRATIVE PROCEEDING.

15 (c) THIS SECTION DOES NOT PREVENT THE DISCOVERY OR
16 ADMISSIBILITY OF ANY EVIDENCE THAT IS OTHERWISE DISCOVERABLE JUST
17 BECAUSE THE EVIDENCE WAS ALSO COMMUNICATED IN THE COURSE OF A
18 RESTORATIVE JUSTICE CONFERENCE OR THE RESTORATIVE PRACTICE
19 PROCESS. IN ADDITION, THIS SECTION DOES NOT PREVENT THE GATHERING
20 OF INFORMATION FOR RESEARCH OR EDUCATIONAL PURPOSES, OR FOR THE
21 PURPOSE OF EVALUATING THE PERFORMANCE OF A RESTORATIVE JUSTICE
22 PROGRAM OR RESTORATIVE JUSTICE FACILITATOR OR PERFORMING
23 RESEARCH RELATED TO RESTORATIVE JUSTICE AND RESTORATIVE
24 PRACTICES, SO LONG AS THE PARTICIPANTS AND THEIR SPECIFIC
25 CIRCUMSTANCES ARE NOT IDENTIFIED OR IDENTIFIABLE.

26 (2) THE RESTORATIVE JUSTICE PROGRAM OR RESTORATIVE JUSTICE
27 FACILITATOR SHALL DISCLOSE THE EXCEPTIONS IN SUBSECTION (1)(a) OF

1 THIS SECTION ALONG WITH ANY OTHER EXCEPTIONS TO CONFIDENTIALITY
2 THAT MAY BE PRESCRIBED BY INSTITUTIONAL OR PROGRAMMATIC
3 GUIDELINES TO ALL PARTICIPANTS. ALL PARTICIPANTS MUST AGREE IN
4 WRITING TO THE EXCEPTIONS DISCLOSED PURSUANT TO THIS SUBSECTION
5 (2) PRIOR TO COMMENCEMENT OF THE PROCESS.

6 (3) FOR PURPOSES OF THIS SECTION, "RESTORATIVE JUSTICE
7 PRACTICES" MEANS PRACTICES THAT EMPHASIZE REPAIRING THE HARM
8 CAUSED TO VICTIMS AND THE COMMUNITY BY OFFENSES. RESTORATIVE
9 JUSTICE PRACTICES INCLUDE VICTIM-OFFENDER CONFERENCES, FAMILY
10 GROUP CONFERENCES, CIRCLES, COMMUNITY CONFERENCES, AND OTHER
11 SIMILAR VICTIM-CENTERED PRACTICES, WHETHER CONDUCTED WITHIN THE
12 JUVENILE OR CRIMINAL JUSTICE SYSTEMS, SCHOOLS, OR ANY OTHER
13 ADMINISTRATIVE PROCESS. RESTORATIVE JUSTICE PRACTICES ARE
14 FACILITATED MEETINGS ATTENDED VOLUNTARILY BY THE VICTIM OR
15 VICTIM'S REPRESENTATIVES, THE VICTIM'S SUPPORTERS, THE OFFENDER,
16 AND THE OFFENDER'S SUPPORTERS AND MAY INCLUDE COMMUNITY
17 MEMBERS. BY ENGAGING THE PARTIES TO THE OFFENSE IN VOLUNTARY
18 DIALOGUE, RESTORATIVE JUSTICE PRACTICES PROVIDE AN OPPORTUNITY
19 FOR THE OFFENDER TO ACCEPT RESPONSIBILITY FOR THE HARM CAUSED TO
20 THE VICTIM AND COMMUNITY, PROMOTE VICTIM HEALING, AND ENABLE
21 THE PARTICIPANTS TO AGREE ON CONSEQUENCES TO REPAIR THE HARM, TO
22 THE EXTENT POSSIBLE, INCLUDING BUT NOT LIMITED TO APOLOGIES,
23 COMMUNITY SERVICE, REPARATION, RESTORATION, AND COUNSELING.
24 RESTORATIVE JUSTICE PRACTICES MAY BE USED IN ADDITION TO ANY
25 OTHER CONDITIONS, CONSEQUENCES, OR SENTENCE IMPOSED BY THE
26 COURT.

27 **SECTION 2.** In Colorado Revised Statutes, 16-7-207, **add** (1)(h)

1 as follows:

2 **16-7-207. Court's duty to inform on first appearance in court**
3 **and on pleas of guilty.** (1) At the first appearance of the defendant in
4 court or upon arraignment, whichever is first in time, it is the duty of the
5 judge to inform the defendant and make certain that the defendant
6 understands the following:

7 (h) THE DEFENDANT, IF CONVICTED, MAY BE ASSESSED FOR
8 SUITABILITY IN RESTORATIVE JUSTICE PRACTICES, INCLUDING
9 VICTIM-OFFENDER CONFERENCES, IF AVAILABLE IN THE JURISDICTION. THIS
10 ADVISEMENT REGARDING RESTORATIVE JUSTICE PRACTICES DOES NOT
11 ESTABLISH ANY RIGHT TO RESTORATIVE JUSTICE PRACTICES ON BEHALF OF
12 THE DEFENDANT.

13 **SECTION 3.** In Colorado Revised Statutes, 16-7-301, **add** (2)(f)
14 as follows:

15 **16-7-301. Propriety of plea discussions and plea agreements.**
16 (2) The district attorney may agree to one or more of the following,
17 depending upon the circumstances of the individual case:

18 (f) TO INCLUDE AN ASSESSMENT FOR SUITABILITY FOR
19 PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES AS PART OF THE
20 SENTENCE RECOMMENDATION, INCLUDING VICTIM-OFFENDER
21 CONFERENCES, IF AVAILABLE IN THE JURISDICTION.

22 **SECTION 4.** In Colorado Revised Statutes, 16-11-102, **amend**
23 (1)(a)(I) as follows:

24 **16-11-102. Presentence or probation investigation.**
25 (1) (a) (I) Following the return of a verdict of guilty of a felony, other
26 than a class 1 felony, or following a finding of guilt on such charge where
27 the issues were tried to the court, or on a plea of guilty or nolo contendere

1 to such a charge, or upon order of the court in any misdemeanor
2 conviction, the probation officer shall make an investigation and written
3 report to the court before the imposition of sentence. Each presentence
4 report must include AN ASSESSMENT OF THE SUITABILITY OF THE
5 DEFENDANT FOR PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES, a
6 substance abuse assessment or evaluation made pursuant to article 11.5
7 of this title and, unless waived by the court, must include, but not be
8 limited to, information as to the defendant's family background,
9 educational history, employment record, and past criminal record,
10 including the defendant's past juvenile delinquency record, if any;
11 information indicating whether the defendant has been convicted of
12 unlawful sexual behavior as defined in section 16-22-102 (9); an
13 evaluation of the alternative dispositions available for the defendant; the
14 information required by the court pursuant to article 18.5 of this title; a
15 victim impact statement; and such other information as the court may
16 require.

17 **SECTION 5. Act subject to petition - effective date.** This act
18 takes effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly (August
20 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
21 referendum petition is filed pursuant to section 1 (3) of article V of the
22 state constitution against this act or an item, section, or part of this act
23 within such period, then the act, item, section, or part will not take effect
24 unless approved by the people at the general election to be held in
25 November 2018 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.