

CHAPTER 296

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 11-1032

BY REPRESENTATIVE(S) Lee, Casso, Court, Duran, Fields, Fischer, Gardner D., Hamner, Hullinghorst, Jones, Kagan, Kefalas, Kerr J., Labuda, Levy, Looper, Massey, McCann, Miklosi, Nikkel, Pabon, Pace, Peniston, Riesberg, Schafer S., Scott, Solano, Todd, Tyler, Vigil, Williams A., Wilson, Ferrandino, Soper;
also SENATOR(S) Newell, Aguilar, Bacon, Giron, Guzman, Heath, Hudak, Schwartz.

AN ACT**CONCERNING RESTORATIVE JUSTICE.**

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

SECTION 1. 16-7-202 (1), Colorado Revised Statutes, is amended to read:

16-7-202. Presence of defendant. (1) If the offense charged is a felony or a class 1 misdemeanor or if the maximum penalty for the offense charged is more than one year's imprisonment, the defendant must be personally present for arraignment; except that the court, for good cause shown, may accept a plea of not guilty made by an attorney representing the defendant without requiring the defendant to be personally present. In all prosecutions for lesser offenses, the defendant may appear by his OR HER attorney who may enter a plea on his OR HER behalf. IF THE DEFENDANT APPEARS PERSONALLY FOR A CHARGE THAT IS NOT IN TITLE 42, C.R.S., THE COURT MAY ADVISE THE DEFENDANT OF THE POSSIBILITY THAT RESTORATIVE JUSTICE PRACTICES MAY BE PART OF A SENTENCE, IF AVAILABLE IN THE JURISDICTION AND REQUESTED BY THE VICTIM WHO HAS BEEN INFORMED ABOUT THE RESTORATIVE JUSTICE PRACTICES PURSUANT TO SECTION 24-4.1-303 (11) (g), C.R.S.

SECTION 2. 17-28-101, Colorado Revised Statutes, is amended to read:

17-28-101. Legislative declaration. (1) The general assembly finds and declares that:

- (a) The number of victims of crime increases daily;
- (b) These victims suffer undue hardship by virtue of physical, MENTAL, AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

EMOTIONAL injury or loss of property;

(c) Persons found guilty of causing such suffering ~~should be~~ ARE under a moral and legal obligation to make adequate restitution AND RESTORATION to those injured by their conduct;

(d) Restitution AND RESTORATION provided by criminal offenders to their victims may be ~~an instrument~~ INSTRUMENTS of rehabilitation for offenders AND MAY CONTRIBUTE TO THE HEALING AND IMPROVED EMOTIONAL WELL-BEING OF THEIR VICTIMS.

(2) The purpose of this article is to encourage the establishment of programs to provide for restitution to AND RESTORATION OF victims of crime by offenders who are sentenced, or who have been released on parole, or who are being held in local correctional and detention facilities. It is the intent of the general assembly that restitution be utilized wherever feasible to restore losses to the victims of crime and to aid the offender in reintegration as a productive member of society. IT IS ALSO THE PURPOSE OF THIS ARTICLE TO PROMOTE ESTABLISHMENT OF VICTIM-OFFENDER CONFERENCES IN THE INSTITUTIONS UNDER THE CONTROL OF THE DEPARTMENT OF CORRECTIONS, USING RESTORATIVE JUSTICE PRACTICES AS DEFINED IN SECTION 18-1-901 (3) (o.5), C.R.S.

SECTION 3. Article 28 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-28-103. Victim-offender conferences - pilot program. THE DEPARTMENT IS AUTHORIZED TO ESTABLISH A PILOT PROGRAM, WHEN FUNDS BECOME AVAILABLE, IN ITS CORRECTIONAL FACILITIES TO FACILITATE VICTIM-INITIATED VICTIM-OFFENDER CONFERENCES WHEREBY A VICTIM OF A CRIME MAY REQUEST A FACILITATED CONFERENCE WITH THE OFFENDER WHO COMMITTED THE CRIME, IF THE OFFENDER IS IN THE CUSTODY OF THE DEPARTMENT. AFTER SUCH A PILOT PROGRAM IS ESTABLISHED, THE DEPARTMENT MAY ESTABLISH POLICIES AND PROCEDURES FOR THE VICTIM-OFFENDER CONFERENCES USING VOLUNTEERS TO FACILITATE THE CONFERENCES. THE VOLUNTEERS SHALL COMPLETE THE DEPARTMENT'S VOLUNTEER AND FACILITY-SPECIFIC TRAINING PROGRAMS AND COMPLETE HIGH-RISK VICTIM-OFFENDER TRAINING AND VICTIM ADVOCACY TRAINING. THE DEPARTMENT SHALL NOT COMPENSATE OR REIMBURSE A VOLUNTEER OR VICTIM FOR ANY EXPENSES NOR OTHERWISE INCUR ANY ADDITIONAL EXPENSES TO ESTABLISH OR OPERATE THE VICTIM-OFFENDER CONFERENCES PILOT PROGRAM. IF A PILOT PROGRAM IS AVAILABLE, AND SUBSEQUENT TO THE VICTIM'S OR THE VICTIM REPRESENTATIVE'S REQUEST, THE DEPARTMENT SHALL ARRANGE SUCH A CONFERENCE ONLY AFTER DETERMINING THAT THE CONFERENCE WOULD BE SAFE AND ONLY IF THE OFFENDER AGREES TO PARTICIPATE. THE PURPOSES OF THE CONFERENCE SHALL BE TO ENABLE THE VICTIM TO MEET THE OFFENDER, TO OBTAIN ANSWERS TO QUESTIONS ONLY THE OFFENDER CAN ANSWER, TO ASSIST THE VICTIM IN HEALING FROM THE IMPACT OF THE CRIME, AND TO PROMOTE A SENSE OF REMORSE AND ACCEPTANCE OF RESPONSIBILITY BY THE OFFENDER THAT MAY CONTRIBUTE TO HIS OR HER REHABILITATION.

SECTION 4. 18-1-102 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-1-102. Purpose of code, statutory construction. (1) This code shall be construed in such manner as to promote maximum fulfillment of its general purposes, namely:

(e) TO PROMOTE ACCEPTANCE OF RESPONSIBILITY AND ACCOUNTABILITY BY OFFENDERS AND TO PROVIDE RESTORATION AND HEALING FOR VICTIMS AND THE COMMUNITY WHILE ATTEMPTING TO REDUCE RECIDIVISM AND THE COSTS TO SOCIETY BY THE USE OF RESTORATIVE JUSTICE PRACTICES.

SECTION 5. 18-1-102.5 (1) (c) and (1) (d), Colorado Revised Statutes, are amended, and the said 18-1-102.5 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

18-1-102.5. Purposes of code with respect to sentencing. (1) The purposes of this code with respect to sentencing are:

(c) To prevent crime and promote respect for the law by providing an effective deterrent to others likely to commit similar offenses; ~~and~~

(d) To promote rehabilitation by encouraging correctional programs that elicit the voluntary cooperation and participation of convicted offenders; AND

(f) TO PROMOTE ACCEPTANCE OF RESPONSIBILITY AND ACCOUNTABILITY BY OFFENDERS AND TO PROVIDE RESTORATION AND HEALING FOR VICTIMS AND THE COMMUNITY WHILE ATTEMPTING TO REDUCE RECIDIVISM AND THE COSTS TO SOCIETY BY THE USE OF RESTORATIVE JUSTICE PRACTICES.

SECTION 6. 18-1-901 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-1-901. Definitions. (3) (o.5) "RESTORATIVE JUSTICE PRACTICES" MEANS PRACTICES THAT EMPHASIZE REPAIRING THE HARM CAUSED TO VICTIMS AND THE COMMUNITY BY OFFENSES. RESTORATIVE JUSTICE PRACTICES INCLUDE VICTIM INITIATED VICTIM-OFFENDER CONFERENCES, FAMILY GROUP CONFERENCES, CIRCLES, COMMUNITY CONFERENCES, AND OTHER SIMILAR VICTIM-CENTERED PRACTICES. RESTORATIVE JUSTICE PRACTICES ARE FACILITATED MEETINGS ATTENDED VOLUNTARILY BY THE VICTIM OR VICTIM'S REPRESENTATIVES, THE VICTIM'S SUPPORTERS, THE OFFENDER, AND THE OFFENDER'S SUPPORTERS AND MAY INCLUDE COMMUNITY MEMBERS. BY ENGAGING THE PARTIES TO THE OFFENSE IN VOLUNTARY DIALOGUE, RESTORATIVE JUSTICE PRACTICES PROVIDE AN OPPORTUNITY FOR THE OFFENDER TO ACCEPT RESPONSIBILITY FOR THE HARM CAUSED TO THE VICTIM AND COMMUNITY, PROMOTE VICTIM HEALING, AND ENABLE THE PARTICIPANTS TO AGREE ON CONSEQUENCES TO REPAIR THE HARM, TO THE EXTENT POSSIBLE, INCLUDING BUT NOT LIMITED TO APOLOGIES, COMMUNITY SERVICE, REPARATION, RESTORATION, AND COUNSELING. RESTORATIVE JUSTICE PRACTICES MAY BE USED IN ADDITION TO ANY OTHER CONDITIONS, CONSEQUENCES, OR SENTENCE IMPOSED BY THE COURT.

SECTION 7. 18-1.3-104 (1) (b.5) (I), Colorado Revised Statutes, is amended to read:

18-1.3-104. Alternatives in imposition of sentence. (1) Within the limitations

of the applicable statute pertaining to sentencing and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(b.5) (I) Except as otherwise provided by subparagraph (II) of this paragraph (b.5), any defendant who, in the determination of the court, is a candidate for an alternative sentencing option and who would otherwise be sentenced to imprisonment pursuant to paragraph (b) of this subsection (1) may, as an alternative, be sentenced to a specialized restitution and community service program pursuant to section 18-1.3-302, WHICH MAY INCLUDE RESTORATIVE JUSTICE PRACTICES, AS DEFINED IN SECTION 18-1-901 (3) (o.5), if such defendant is determined eligible and is accepted into such program. TO BE ELIGIBLE FOR RESTORATIVE JUSTICE PRACTICES, THE DEFENDANT SHALL NOT HAVE BEEN CONVICTED OF UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 16-22-102 (9), C.R.S., A CRIME IN WHICH THE UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3 (1), STALKING AS DEFINED IN SECTION 18-3-602, OR VIOLATION OF A PROTECTION ORDER AS DEFINED IN SECTION 18-6-803.5. IF THE COURT ORDERS THE DEFENDANT TO ATTEND A RESTORATIVE JUSTICE PRACTICES VICTIM-OFFENDER CONFERENCE, THE FACILITATOR OF THE CONFERENCE SHALL PROVIDE HIS OR HER SERVICES FOR A FEE OF NO MORE THAN ONE HUNDRED TWENTY-FIVE DOLLARS, BASED ON A SLIDING SCALE, HOWEVER, THE FEE MAY BE WAIVED BY THE COURT. ANY STATEMENTS MADE DURING THE CONFERENCE SHALL BE CONFIDENTIAL AND SHALL NOT BE USED AS A BASIS FOR CHARGING OR PROSECUTING THE DEFENDANT UNLESS THE DEFENDANT COMMITS A CHARGEABLE OFFENSE DURING THE CONFERENCE.

SECTION 8. 18-1.3-204 (2) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

18-1.3-204. Conditions of probation. (2) (a) When granting probation, the court may, as a condition of probation, require that the defendant:

(III.5) PARTICIPATE IN RESTORATIVE JUSTICE PRACTICES, AS DEFINED IN SECTION 18-1-901 (3) (o.5), IF AVAILABLE IN THE JURISDICTION, REQUESTED BY THE VICTIM WHO HAS BEEN INFORMED ABOUT RESTORATIVE JUSTICE PRACTICES PURSUANT TO SECTION 24-4.1-303 (11) (g), C.R.S., AND THE DEFENDANT IS DETERMINED SUITABLE BY A DESIGNATED RESTORATIVE JUSTICE PRACTICES FACILITATOR. TO BE ELIGIBLE FOR RESTORATIVE JUSTICE PRACTICES, THE DEFENDANT SHALL NOT HAVE BEEN CONVICTED OF UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 16-22-102 (9), C.R.S., A CRIME IN WHICH THE UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3 (1), STALKING AS DEFINED IN SECTION 18-3-602, OR VIOLATION OF A PROTECTION ORDER AS DEFINED IN SECTION 18-6-803.5. ANY STATEMENTS MADE DURING A RESTORATIVE JUSTICE CONFERENCE SHALL BE CONFIDENTIAL AND SHALL NOT BE USED AS A BASIS FOR CHARGING OR PROSECUTING THE DEFENDANT UNLESS THE DEFENDANT COMMITS A CHARGEABLE OFFENSE DURING THE CONFERENCE. FAILURE TO COMPLETE THE REQUIREMENTS ARISING FROM A RESTORATIVE JUSTICE CONFERENCE MAY BE CONSIDERED A VIOLATION OF PROBATION. NOTHING IN THIS SUBPARAGRAPH (III.5) SHALL BE CONSTRUED TO REQUIRE A VICTIM TO PARTICIPATE IN A RESTORATIVE JUSTICE VICTIM-OFFENDER CONFERENCE.

SECTION 9. 19-1-103 (44), Colorado Revised Statutes, is amended to read:

19-1-103. Definitions. As used in this title or in the specified portion of this title, unless the context otherwise requires:

(44) "Diversion" means a decision made by a person with authority or a delegate of that person that results in specific official action of the legal system not being taken in regard to a specific juvenile or child and in lieu thereof providing individually designed services by a specific program. The goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system. Diversion of a juvenile or child may take place either at the prefiling level as an alternative to the filing of a petition pursuant to section 19-2-512 or at the postadjudication level as an adjunct to probation services following an adjudicatory hearing pursuant to section 19-3-505 or a disposition as a part of sentencing pursuant to section 19-2-907. "Services", as used in this subsection (44), includes but is not limited to diagnostic needs assessment, restitution programs, community service, job training and placement, specialized tutoring, constructive recreational activities, general counseling and counseling during a crisis situation, and follow-up activities. Services may include restorative justice practices ~~including, where practicable, victim-offender conferences~~ AS DEFINED IN SECTION 18-1-901 (3) (o.5), AS REQUESTED BY THE VICTIM, AFTER BEING INFORMED ABOUT RESTORATIVE JUSTICE PRACTICES PURSUANT TO SECTION 24-4.1-303 (11) (g), C.R.S., AND AS DEEMED SUITABLE BY THE PROBATION DEPARTMENT OR A DESIGNATED RESTORATIVE JUSTICE PRACTICES FACILITATOR. SUCH PRACTICES MAY INCLUDE VICTIM-OFFENDER CONFERENCES, IF REQUESTED BY THE VICTIM. RESTORATIVE JUSTICE PRACTICES SHALL BE CONDUCTED BY FACILITATORS RECOMMENDED BY THE DISTRICT ATTORNEY.

SECTION 10. Part 3 of article 2 of title 19, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

19-2-311. Victim-offender conferences - pilot program. THE DIVISION OF YOUTH CORRECTIONS IS AUTHORIZED TO ESTABLISH A PILOT PROGRAM, WHEN FUNDS BECOME AVAILABLE, IN ITS FACILITIES TO FACILITATE VICTIM-INITIATED VICTIM-OFFENDER CONFERENCES WHEREBY A VICTIM OF A CRIME MAY REQUEST A FACILITATED CONFERENCE WITH THE JUVENILE WHO COMMITTED THE CRIME, IF THE JUVENILE IS IN THE CUSTODY OF THE DIVISION OF YOUTH CORRECTIONS. AFTER SUCH A PILOT PROGRAM IS ESTABLISHED, THE DIVISION OF YOUTH CORRECTIONS MAY ESTABLISH POLICIES AND PROCEDURES FOR THE VICTIM-OFFENDER CONFERENCES USING VOLUNTEERS TO FACILITATE THE CONFERENCES. THE VOLUNTEERS SHALL COMPLETE THE DIVISION OF YOUTH CORRECTIONS' VOLUNTEER AND FACILITY-SPECIFIC TRAINING PROGRAMS AND COMPLETE HIGH-RISK VICTIM-OFFENDER TRAINING AND VICTIM ADVOCACY TRAINING. THE DIVISION OF YOUTH CORRECTIONS SHALL NOT COMPENSATE OR REIMBURSE A VOLUNTEER OR VICTIM FOR ANY EXPENSES. IF A PILOT PROGRAM IS AVAILABLE, AND SUBSEQUENT TO THE VICTIM'S OR THE VICTIM REPRESENTATIVE'S REQUEST, THE DIVISION OF YOUTH CORRECTIONS SHALL ARRANGE SUCH A CONFERENCE ONLY AFTER DETERMINING THAT THE CONFERENCE WOULD BE SAFE AND ONLY IF THE JUVENILE AGREES TO PARTICIPATE. THE PURPOSES OF THE CONFERENCE SHALL BE TO ENABLE THE VICTIM TO MEET THE JUVENILE, TO OBTAIN ANSWERS TO QUESTIONS ONLY THE JUVENILE CAN ANSWER, TO ASSIST THE VICTIM IN HEALING FROM THE IMPACT OF THE

CRIME, AND TO PROMOTE A SENSE OF REMORSE AND ACCEPTANCE OF RESPONSIBILITY BY THE JUVENILE THAT MAY CONTRIBUTE TO HIS OR HER REHABILITATION.

SECTION 11. 19-2-512, Colorado Revised Statutes, is amended to read:

19-2-512. Petition initiation. (1) If the district attorney determines that the interests of the juvenile or of the community require that further action be taken, the district attorney may file a petition in delinquency on the form specified in section 19-2-513, which shall be accepted by the court. If the district attorney chooses to file a petition in delinquency on any juvenile who receives a detention hearing under section 19-2-508, he or she shall file said petition within seventy-two hours after the detention hearing, excluding Saturdays, Sundays, and legal holidays. Upon filing of such petition, the court, if practicable, shall send notice of the pendency of such action to the natural parents of the juvenile who is the subject of such petition.

(2) IF THE PETITION IS THE FIRST JUVENILE PETITION FILED AGAINST THE JUVENILE IN ANY JURISDICTION AND IS INITIATED IN A JURISDICTION THAT HAS RESTORATIVE JUSTICE PRACTICES AVAILABLE, THE DISTRICT ATTORNEY OR HIS OR HER DESIGNEE MAY DETERMINE WHETHER A JUVENILE IS SUITABLE FOR RESTORATIVE JUSTICE PRACTICES. IN MAKING A DETERMINATION OF WHETHER THE JUVENILE IS SUITABLE FOR RESTORATIVE JUSTICE PRACTICES, THE DISTRICT ATTORNEY SHALL FIRST DETERMINE WHETHER THE VICTIM, HAVING BEEN INFORMED ABOUT RESTORATIVE JUSTICE PRACTICES PURSUANT TO SECTION 24-4.1-303 (11) (g), C.R.S., IS REQUESTING CONSIDERATION OF RESTORATIVE JUSTICE PRACTICES AS AN ALTERNATIVE TO FORMAL PROSECUTION. UPON SUCH REQUEST, THE DISTRICT ATTORNEY SHALL CONSIDER WHETHER THE JUVENILE ACCEPTS RESPONSIBILITY FOR, EXPRESSES REMORSE FOR, AND IS WILLING TO REPAIR THE HARM CAUSED BY HIS OR HER ACTIONS AND WHETHER THE JUVENILE'S PARENT OR LEGAL GUARDIAN IS WILLING TO SUPPORT THE JUVENILE IN THE PROCESS. IF REQUESTED BY THE VICTIM, RESTORATIVE JUSTICE PRACTICES MAY BE UTILIZED AS PART OF THIS PROCESS. THE DISTRICT ATTORNEY MAY OFFER DISMISSAL OF CHARGES AS AN OPTION FOR THE SUCCESSFUL COMPLETION OF THESE AND ANY OTHER CONDITIONS IMPOSED AND DESIGNED TO ADDRESS THE HARM DONE TO THE VICTIM AND THE COMMUNITY BY THE OFFENDER, SUBJECT TO APPROVAL BY THE COURT.

SECTION 12. 19-2-706 (1), Colorado Revised Statutes, is amended to read:

19-2-706. Advisement. (1) At the first appearance before the court after the filing of a petition, the juvenile and his or her parents, guardian, or other legal custodian shall be advised by the court of their constitutional and legal rights as set forth in rule 3 of the Colorado rules of juvenile procedure. Such advisement ~~may~~ SHALL include the possibility of restorative justice practices, including victim-offender conferences if applicable. THE ADVISEMENT REGARDING RESTORATIVE JUSTICE PRACTICES DOES NOT ESTABLISH ANY RIGHT TO RESTORATIVE JUSTICE PRACTICES ON BEHALF OF THE JUVENILE, AND FAILURE TO PROVIDE AN ADVISEMENT REGARDING RESTORATIVE JUSTICE PRACTICES DOES NOT CONSTITUTE ANY LEGAL ERROR BY THE COURT.

SECTION 13. 19-2-708 (2), Colorado Revised Statutes, is amended to read:

19-2-708. Entry of plea. (2) Upon the entry of a plea of guilty to one or more

of the allegations contained in the petition, the court shall advise the juvenile in accordance with rule 3 of the Colorado rules of juvenile procedure. Such advisement ~~may~~ SHALL include the possibility of restorative justice practices, including victim-offender conferences if applicable. THE ADVISEMENT REGARDING RESTORATIVE JUSTICE PRACTICES DOES NOT ESTABLISH ANY RIGHT TO RESTORATIVE JUSTICE PRACTICES ON BEHALF OF THE JUVENILE, AND FAILURE TO PROVIDE AN ADVISEMENT REGARDING RESTORATIVE JUSTICE PRACTICES DOES NOT CONSTITUTE ANY LEGAL ERROR BY THE COURT.

SECTION 14. 19-2-905, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-2-905. Presentence investigation. (4) PRIOR TO SENTENCING A JUVENILE WHO WAS ADJUDICATED FOR AN OFFENSE THAT WOULD BE A FELONY OR MISDEMEANOR NOT CONTAINED IN TITLE 42, C.R.S., IF COMMITTED BY AN ADULT, THE COURT, AND UPON THE REQUEST OF THE VICTIM, MAY ORDER THE JUVENILE TO PARTICIPATE IN AN ASSESSMENT TO DETERMINE WHETHER THE JUVENILE WOULD BE SUITABLE FOR PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES THAT WOULD BE A PART OF THE JUVENILE'S SENTENCE; EXCEPT THAT THE COURT MAY NOT ORDER PARTICIPATION IN A RESTORATIVE JUSTICE PRACTICE IF THE JUVENILE WAS ADJUDICATED A DELINQUENT FOR UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9), C.R.S., A CRIME IN WHICH THE UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3 (1), C.R.S., STALKING AS DEFINED IN SECTION 18-3-602, C.R.S., OR VIOLATION OF A PROTECTION ORDER AS DEFINED IN SECTION 18-6-803.5, C.R.S. IF THE COURT ORDERS A SUITABILITY ASSESSMENT, THE ASSESSOR SHALL PROVIDE THE SERVICES FOR A FEE OF NO MORE THAN FORTY DOLLARS BASED ON A SLIDING SCALE, HOWEVER, THE FEE MAY BE WAIVED BY THE COURT. IF THE JUVENILE PARTICIPATES IN A RESTORATIVE JUSTICE PRACTICES VICTIM-OFFENDER CONFERENCE, THE FACILITATOR SHALL PROVIDE THESE SERVICES FOR A FEE OF NO MORE THAN ONE HUNDRED TWENTY-FIVE DOLLARS BASED ON A SLIDING SCALE, HOWEVER, THE FEE MAY BE WAIVED BY THE COURT.

SECTION 15. 19-2-907 (1) (l), Colorado Revised Statutes, is amended to read:

19-2-907. Sentencing schedule - options. (1) Upon completion of the sentencing hearing, pursuant to section 19-2-906, the court shall enter a decree of sentence or commitment imposing any of the following sentences or combination of sentences, as appropriate:

(l) Participation in an evaluation to determine whether the juvenile would be suitable for restorative justice practices, that would be a part of the juvenile's sentence; except that the court may not order participation in restorative justice practices if the juvenile was adjudicated a delinquent for unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., ~~or~~ a crime in which the underlying factual basis involves domestic violence as defined in section 18-6-800.3 (1), C.R.S., STALKING AS DEFINED IN SECTION 18-3-602, C.R.S., OR VIOLATION OF A PROTECTION ORDER AS DEFINED IN SECTION 18-6-803.5, C.R.S. IF THE COURT ORDERS PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES, THE FACILITATOR SHALL PROVIDE THESE SERVICES FOR A FEE OF NO MORE THAN ONE HUNDRED TWENTY-FIVE DOLLARS BASED ON A SLIDING SCALE, HOWEVER, THE FEE MAY BE

WAIVED BY THE COURT. NOTHING IN THIS PARAGRAPH (1) SHALL BE CONSTRUED TO REQUIRE A VICTIM TO PARTICIPATE IN A RESTORATIVE JUSTICE VICTIM-OFFENDER CONFERENCE.

SECTION 16. 19-2-925 (2) (1), Colorado Revised Statutes, is amended to read:

19-2-925. Probation - terms - release - revocation. (2) The court shall, as minimum conditions of probation, order that the juvenile:

(1) May be evaluated to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's probation program; except that the court may not order participation in restorative justice practices if the juvenile was adjudicated a delinquent for unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., or a crime in which the underlying factual basis involves domestic violence as defined in section 18-6-800.3 (1), C.R.S., STALKING AS DEFINED IN SECTION 18-3-602, C.R.S., OR VIOLATION OF A PROTECTION ORDER AS DEFINED IN SECTION 18-6-803.5, C.R.S.

SECTION 17. Article 32 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-32-144. Restorative justice practices - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

(a) CONFLICTS AND OFFENSES ARISING DURING THE SCHOOL DAY INTERRUPT LEARNING, THREATEN SCHOOL SAFETY, AND OFTEN LEAD TO SUSPENSIONS, EXPULSIONS, AND AN INCREASE IN THE LIKELIHOOD OF A STUDENT DROPPING OUT OF SCHOOL;

(b) STUDENTS WHO DROP OUT OF HIGH SCHOOL FACE DIMINISHED JOB OPPORTUNITIES, LOWER LIFETIME EARNINGS, AND INCREASED UNEMPLOYMENT AND MORE OFTEN REQUIRE PUBLIC ASSISTANCE. THEY ARE MORE LIKELY TO PARTICIPATE IN CRIMINAL ACTIVITY, RESULTING IN HIGHER INCARCERATION RATES, AND THEY FACE MUCH GREATER CHALLENGES TO BECOMING PRODUCTIVE, CONTRIBUTING MEMBERS OF THEIR COMMUNITIES.

(c) SCHOOL CONFLICTS CAN RESULT IN OFFENSES THAT VIOLATE SCHOOL RULES AND LOCAL LAWS AND DAMAGE RELATIONSHIPS AMONG MEMBERS OF THE SCHOOL AND SURROUNDING COMMUNITY;

(d) RESTORATIVE JUSTICE, WHICH REQUIRES THE OFFENDER TO ACCEPT RESPONSIBILITY AND ACCOUNTABILITY FOR HIS OR HER ACTIONS, TEACHES CONFLICT RESOLUTION, REPAIRS THE HARM FROM THE OFFENSE, REDUCES CLASSROOM DISRUPTIONS, SUSPENSIONS, EXPULSIONS, AND CONSEQUENT DROPOUTS, PROMOTES SCHOOL SAFETY, AND ENABLES VICTIMS, OFFENDERS, AND COMMUNITY MEMBERS TO REBUILD THE COMMUNITY AND RESTORE RELATIONSHIPS; AND

(e) THE GENERAL ASSEMBLY HAS A VITAL INTEREST IN REDUCING CLASSROOM DISRUPTIONS, SUSPENSIONS, EXPULSIONS, AND DROPOUT RATES AND IN ASSISTING VICTIMS, REDUCING REFERRALS TO THE JUSTICE SYSTEM, AND BUILDING SAFER, MORE COHESIVE SCHOOL COMMUNITIES TO PROMOTE LEARNING.

(2) (a) THEREFORE, THE GENERAL ASSEMBLY SUPPORTS AND ENCOURAGES THE USE OF RESTORATIVE JUSTICE AS A SCHOOL'S FIRST CONSIDERATION TO REMEDIATE OFFENSES SUCH AS INTERPERSONAL CONFLICTS, BULLYING, VERBAL AND PHYSICAL CONFLICTS, THEFT, DAMAGE TO PROPERTY, CLASS DISRUPTION, HARASSMENT AND INTERNET HARASSMENT, AND ATTENDANCE ISSUES.

(b) THE GENERAL ASSEMBLY ENCOURAGES EACH SCHOOL DISTRICT TO IMPLEMENT TRAINING AND EDUCATION IN THE PRINCIPLES AND PRACTICES OF RESTORATIVE JUSTICE TO ENSURE THAT CAPABLE PERSONNEL AND RESOURCES ARE AVAILABLE TO SUCCESSFULLY FACILITATE ALL STEPS OF THE RESTORATIVE JUSTICE PROCESS.

(3) FOR PURPOSES OF THIS SECTION, "RESTORATIVE JUSTICE" MEANS PRACTICES THAT EMPHASIZE REPAIRING THE HARM TO THE VICTIM AND THE SCHOOL COMMUNITY CAUSED BY A STUDENT'S MISCONDUCT. RESTORATIVE JUSTICE PRACTICES MAY INCLUDE VICTIM-INITIATED VICTIM-OFFENDER CONFERENCES ATTENDED VOLUNTARILY BY THE VICTIM, A VICTIM ADVOCATE, THE OFFENDER, SCHOOL MEMBERS, AND SUPPORTERS OF THE VICTIM AND THE OFFENDER, WHICH PROGRAM PROVIDES AN OPPORTUNITY FOR THE OFFENDER TO ACCEPT RESPONSIBILITY FOR THE HARM CAUSED TO THOSE AFFECTED BY THE ACT AND TO PARTICIPATE IN SETTING CONSEQUENCES TO REPAIR THE HARM. CONSEQUENCES RECOMMENDED BY THE PARTICIPANTS MAY INCLUDE, BUT NEED NOT BE LIMITED TO, APOLOGIES, COMMUNITY SERVICE, RESTITUTION, RESTORATION, AND COUNSELING. THE SELECTED CONSEQUENCES SHALL BE INCORPORATED INTO AN AGREEMENT THAT SETS TIME LIMITS FOR COMPLETION OF THE CONSEQUENCES AND IS SIGNED BY ALL PARTICIPANTS.

(4) EACH SCHOOL DISTRICT IS ENCOURAGED TO DEVELOP AND UTILIZE RESTORATIVE JUSTICE PRACTICES THAT ARE PART OF THE DISCIPLINARY PROGRAM OF EACH SCHOOL IN THE DISTRICT.

SECTION 18. Part 5 of article 30.5 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-30.5-522. Restorative justice practices. THE STATE CHARTER SCHOOL INSTITUTE IS ENCOURAGED TO DEVELOP AND UTILIZE RESTORATIVE JUSTICE PRACTICES, AS DEFINED IN SECTION 22-32-144 (3), THAT ARE PART OF THE DISCIPLINARY PROGRAM OF EACH INSTITUTE CHARTER SCHOOL.

SECTION 19. 24-4.1-302.5 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-4.1-302.5. Rights afforded to victims. (1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(1.5) THE RIGHT TO BE INFORMED ABOUT THE POSSIBILITY OF RESTORATIVE JUSTICE PRACTICES, AS DEFINED IN SECTION 18-1-901 (3) (o.5), C.R.S.

SECTION 20. 24-4.1-303 (11) (e) and (11) (f), Colorado Revised Statutes, are amended, and the said 24-4.1-303 (11) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-4.1-303. Procedures for ensuring rights of victims of crimes. (11) The district attorney shall inform a victim of the following:

(e) The availability of benefits pursuant to this article and the name, address, and telephone number of any person to contact to obtain such benefits; ~~and~~

(f) The availability of transportation to and from any court proceeding for any victim, except as provided in section 24-4.1-302.5 (2); AND

(g) THE AVAILABILITY OF RESTORATIVE JUSTICE PRACTICES, AS DEFINED IN SECTION 18-1-901 (3) (o.5), C.R.S.

SECTION 21. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 7, 2011