

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2094

BY DELEGATE GRAVES, ESPINOSA, SUMMERS, HANNA, B.

WARD, PRITT, J. PACK, BURKHAMMER, L. PACK, CAPITO

AND BARNHART

[Introduced February 10, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-725 of the Code of West Virginia, 1931, as amended, relating
2 to the juvenile restorative justice programs; clarifying time-frame and conditions for
3 juvenile referral to restorative justice programs; providing definitions related to the juvenile
4 restorative justice programs; establishing particular aspects of a voluntary restorative
5 justice program including the requirement that the juvenile offender and victim each
6 participate voluntarily; focusing on repairing harm done by facilitated communication
7 between victim, offender, and associated third parties or stakeholders; requiring
8 restorative justice programs to include victim-offender mediation dialogue, family group
9 conferencing and implementation of measures to redress the victim and community to
10 provide an opportunity for the offender to accept responsibility and address repair of that
11 harm; implement measures designed to redress the victim and community; address status
12 offenses as appropriate and necessary; and providing that the petition against the juvenile
13 shall be dismissed if the juvenile has not previously and successfully completed a
14 restorative justice programs, is referred to and then successfully completes restorative
15 justice program; and, provides that self-incriminating information obtained as the result
16 of a restorative justice program is not admissible in subsequent juvenile proceedings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-725. Restorative Justice Programs.

1 (a) The court or prosecuting attorney may divert a juvenile referred to the court ~~for a status~~
2 ~~offense or for a nonviolent misdemeanor offense~~ to a restorative justice program, where available,
3 at any point in time where it is deemed to be of benefit. ~~prior to adjudication.~~

4 (b) Definitions. — When used in this section, terms defined herein have the meanings
5 ascribed to them:

6 (1) "Divert" means referral of certain individuals to a community-based set of services
7 designed to prevent the need for court intervention;

8 (2) “Restorative justice program” is an evidence-based practice and community-based
9 program designed to understand the harm to the victim and community caused by the juvenile
10 and to organize processes in which individual crime victims, other community members, and
11 juvenile offenders are involved in finding constructive resolutions;

12 (3) “Stakeholder” means a person or representative of an entity who has standing in the
13 offense for which the juvenile is charged and is before the court.

14 (4) “Evidence-based practice” means policies, procedures, programs, and practices
15 demonstrated by experience and research to reliably produce reductions in the likelihood of
16 reoffending.

17 (c) A restorative justice program shall:

18 (1) Emphasize repairing the harm against the victim and the community caused by the
19 juvenile;

20 (2) Be voluntary for both the victim and the juvenile offender, either of which may veto the
21 referral;

22 (3) Focus on repairing harm done through facilitated communication between victim,
23 offender, and associated third parties; which may include:

24 (A) Any evidence based practice, restorative justice programs, victim-offender mediation,
25 dialogues, or family group conferencing attended voluntarily by the victim, the juvenile offender,
26 a facilitator, a victim advocate, community members, any other stakeholder, or supporters of the
27 victim or the juvenile offender that provide an opportunity for the offender to accept responsibility
28 for the harm caused to those affected by the crime and to participate in setting consequences to
29 repair the harm;

30 (B) Implement measures designed to provide redress to the victim and community,
31 including, but not limited to, restitution to the victim, restitution to the community, services for the
32 victim or the community, or any other reasonable sanction intended to provide restitution to the
33 victim or the community; and,

34 (4) Address status offenses as deemed necessary or appropriate.

35 ~~(2) Include victim-offender dialogues or family group conferencing attended voluntarily by~~
36 ~~the victim, the juvenile offender, a facilitator, a victim advocate, community members, or~~
37 ~~supporters of the victim or the juvenile offender that provide an opportunity for the offender to~~
38 ~~accept responsibility for the harm caused to those affected by the crime and to participate in~~
39 ~~setting consequences to repair the harm; and~~

40 ~~(3) Implement sanctions for the juvenile, including, but not limited to, restitution to the~~
41 ~~victim, restitution to the community, services for the victim or the community, or any other sanction~~
42 ~~intended to provide restitution to the victim or the community.~~

43 (d) If a juvenile has not previously successfully completed a restorative justice program
44 and is referred to and successfully completes a restorative justice program, the petition against
45 the juvenile shall be dismissed.

46 (e) No self-incriminating information obtained as the result of a restorative justice program
47 is admissible in a subsequent proceeding under this article.