

WEST VIRGINIA LEGISLATURE

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Introduced

House Bill 2094

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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; providing definitions related to the juvenile
 3 restorative justice programs; establishing particular aspects of a voluntary restorative
 4 justice program including juveniles taking responsibility for their actions, focusing on
 5 repairing harm done by facilitated communication between victim, offender, and
 6 associated third parties or stakeholders; including victim-offender mediation,
 7 peacemaking circles, and family group conferencing as aspects of the restorative justice
 8 program; providing that referral to a juvenile justice program must occur before
 9 adjudication; and include a process whereby all parties agree on how to reasonably repair
 10 the harm, which may include, but is not limited to, restitution, community service, or other
 11 reasonable sanctions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-725. Restorative Justice Programs.

1 (a) Definitions. -- When used in this section, terms defined herein have the meanings
 2 ascribed to them:
 3 (1) "Divert" means referral of certain individuals to a community-based set of services
 4 designed to prevent the need for court intervention;
 5 (2) "Restorative justice program" is an evidence-based practice and community-based
 6 program designed to understand the harm to the victim and community caused by the juvenile
 7 and to organize processes in which individual crime victims, other community members, and
 8 juvenile offenders are involved in finding constructive resolutions;
 9 (3) "Status offense" is an offense by a juvenile who:
 10 (A) Habitually and continually refuses to respond to the lawful supervision of his or her
 11 parents, guardian or legal custodian such that the juvenile's behavior substantially endangers the
 12 health, safety or welfare of the juvenile or any other person;

13 (B) Has left the care of his or her parents, guardian or custodian without the consent of
14 that person or without good cause; or

15 (C) Who is habitually absent from school without good cause.

16 (4) "Nonviolent misdemeanor" means a misdemeanor offense that does not include any
17 of the following:

18 (A) An act resulting in bodily injury or death;

19 (B) The use of a weapon in the commission of an offense;

20 (C) A domestic abuse offense involving a significant risk of harm to a family member or
21 household member;

22 (D) A criminal sexual conduct offense; or

23 (E) Any offense for driving under the influence of alcohol or drugs.

24 (5) "Stakeholder" means a person or representative of an entity who has standing in the
25 offense for which the juvenile is charged and is before the court.

26 (6) "Evidence-based practice" means policies, procedures, programs, and practices
27 demonstrated by experience and research to reliably produce reductions in the likelihood of
28 reoffending.

29 (b) The court or prosecuting attorney may divert a juvenile referred to the court for a status
30 offense or for a nonviolent misdemeanor offense to a restorative justice program, where available
31 at any point where it is deemed to be the benefit.

32 (c) A restorative justice program shall:

33 (1) Be voluntary for both the victim and the juvenile offender;

34 (2) Focus on repairing harm done through facilitated communication between victim,
35 offender, and associated third parties; which may include:

36 (3) Victim-offender mediation, dialogues, restorative justice processes, or family group
37 conferencing attended voluntarily by the victim, the juvenile offender, a facilitator, a victim
38 advocate, community members, or supporters of the victim or the juvenile offender that provide

39 an opportunity for the offender to accept responsibility for the harm caused to those affected by
40 the crime and to participate in setting consequences to repair the harm; and

41 (4) Implement measures designed to provide redress to the victim and community,
42 including, but not limited to, restitution to the victim, restitution to the community, services for the
43 victim or the community, or any other reasonable sanction intended to provide restitution to the
44 victim or the community.

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

48 (e) Any information obtained as the result of a juvenile's participation in a restorative justice
49 program is not admissible in any subsequent juvenile proceeding.

NOTE: The purpose of this bill is to address the juvenile restorative justice program by establishing definitions of relevant program terms, establishing specified actions which the juvenile will accomplish during the restorative justice program.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

This section has been totally rewritten, therefore it is entirely underscored.