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HOUSE BILL NO. 489

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute—Delegate Hope)

A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 1.4, consisting of sections numbered 19.2-11.15, 19.2-11.16, and 19.2-11.17, relating to restorative justice practices.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 1.4, consisting of sections numbered 19.2-11.15, 19.2-11.16, and 19.2-11.17, as follows:

CHAPTER 1.4.

RESTORATIVE JUSTICE PRACTICES.

§ 19.2-11.15. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Restorative justice communication" means all communications, memoranda, work products, documents, and other materials, written or oral, that are made in the course of, or in connection with, any phase of a restorative justice practice.

"Restorative justice facilitator" means a person who is trained to facilitate a restorative justice practice.

"Restorative justice practice" means a voluntary participatory process in which parties who have caused harm, parties who have been harmed, or other participants gather with one or more restorative justice facilitators to (i) identify and repair harm to the extent possible; (ii) address trauma; (iii) reduce the likelihood of further harm; or (iv) strengthen community ties by focusing on the needs and obligations of all parties involved. "Restorative justice" includes all phases of such a process, including referral, preparation, pre-enrollment, enrollment, post-enrollment, facilitated dialogue or meeting, and post-dialogue phases of the process.

§ 19.2-11.16. Effect of participation in restorative justice in current or subsequent legal proceedings; confidentiality of statements.

A. Participation in a restorative justice practice shall not be used as evidence or as an admission of guilt, delinquency, or civil liability in current or subsequent legal proceedings against any participant.

B. Except as provided in this section, restorative justice communications shall not be admissible in, or subject to discovery for, any legal proceeding. Disclosure of such communication shall not be compelled in any judicial or administrative proceeding, arbitration, or mediation.

C. No person involved in a restorative justice practice may testify in any judicial or administrative proceeding, arbitration, or mediation about any phase of the restorative justice practice except as required by subsection D.

D. The privilege afforded by this section does not apply if:

1. Disclosure is necessary to prevent death or serious harm;

2. Disclosure is necessary to comply with another law;

3. A court, tribunal, or administrative body requires a report on a restorative justice practice. However, such report shall be limited to the fact that a restorative justice practice has taken place, an opinion regarding the success of the restorative justice practice, and whether further restorative justice practices are expected; or

4. A person who participated in a restorative justice practice, including a practitioner, is called to testify by a party. However, such testimony shall be limited to the fact that a restorative justice practice has taken place, an opinion regarding the success of the restorative justice practice, and whether further restorative justice practices are expected.

E. Evidence that is otherwise admissible or subject to disclosure or discovery shall not be inadmissible or protected from disclosure or discovery solely because such evidence was discussed or used in a restorative justice practice.

F. Any person who participates in a restorative justice practice shall be deemed to have consented to the limitations on admissibility and discovery imposed pursuant to this section, irrespective of any written or formal agreement to the contrary.

§ 19.2-11.17. Immunity from civil liability.

Any person, who in good faith, discloses any restorative justice communication based on his belief that such disclosure is allowed pursuant to subsection D of § 19.2-11.16 shall be immune from any civil liability for such disclosure, provided such disclosure was limited to solely address any such allowable disclosure.

HOUSE SUBSTITUTE

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