

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

HOUSE BILL NO. 489
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate 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 and 19.2-11.16, 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 and 19.2-11.16, 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 does not serve as legal counsel, an investigator, or an advocate for any party or participant in a restorative justice practice and (i) has completed a restorative justice facilitation training, certification, or apprenticeship provided by a recognized restorative justice practitioner, organization, or academic institution; (ii) has demonstrated a history of facilitating restorative justice practices consistent with generally accepted restorative justice practice principles; or (iii) has been trained through culturally recognized traditions grounded in restorative justice principles.

"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 practice" 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.

33 *A. Participation in a restorative justice practice shall not be used as evidence or as an admission of guilt,*
34 *delinquency, or civil liability in current or subsequent legal proceedings against any participant, unless the*
35 *participants explicitly agree otherwise in writing.*

36 *B. Except as provided in this section or by written agreement of the parties, restorative justice*
37 *communications shall not be admissible in, or subject to discovery for, any legal proceeding. Disclosure of*
38 *such communication shall not be compelled in any judicial or administrative proceeding, arbitration, or*
39 *mediation if the parties have executed a confidentiality agreement to that effect.*

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

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

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

45 *2. Disclosure is necessary to comply with another law;*

46 *3. A court, tribunal, or administrative body requires a report on a restorative justice practice. However,*
47 *unless the parties agree in writing to include additional information, such report shall be limited to the fact*
48 *that a restorative justice practice has taken place, an opinion regarding the success of the restorative justice*
49 *practice, and whether further restorative justice practices are expected;*

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

54 *5. The parties have waived such privilege pursuant to a written and signed agreement.*

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