

HOUSE No. 793

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act promoting restorative justice practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>

<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>

HOUSE No. 793

By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 793) of Sean Garballey and others for legislation promoting restorative justice practices. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act promoting restorative justice practices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: It is the policy of this Commonwealth that principles of restorative justice
2 are included as an option for criminal and juvenile justice practitioners and parties to certain
3 harms. It is the goal that law enforcement officials employ restorative justice approaches
4 wherever applicable, as it may mend and strengthen the social fabric, increase the safety, security
5 and wellbeing of communities, and reduce recidivism and the risk of more serious crimes that
6 would require a more intensive and costly response from the legal system, such as prosecution
7 and incarceration. Local community members should design restorative justice approaches,
8 considering the elements of truth-telling and confidentiality; impacted parties are encouraged to
9 participate when they so choose. Nothing in this chapter shall be construed to limit restorative
10 justice practices or approaches that are, or may be utilized, outside the scope of this bill.

11 SECTION 2. The General Laws are hereby amended by inserting after chapter 276A the
12 following chapter:-

13 CHAPTER 276B.

14 RESTORATIVE JUSTICE.

15 Section 1. Definitions

16 As used in this chapter, the following terms shall have the following meanings unless the
17 context clearly requires otherwise:

18 “Restorative justice”, a voluntary process whereby the offenders, victims, and members
19 of the community collectively identify and address harms, needs and obligations resulting from
20 an offense, in order to understand the impact of that offense. Restorative justice requires an
21 offender’s acceptance of responsibility for their actions and supports the offender as they make
22 repair to the victim or community in which the harm occurred.

23 “Community-based restorative justice program”, a program established on restorative
24 justice principles and approved by the restorative justice advisory committee that engages parties
25 to a crime or members of the community in order to develop a plan of repair that addresses the
26 needs of the parties and the community. Programs may include the parties to a case, their
27 supporters, and community members, or one-on-one dialogues between a victim and offender.

28 Section 2. Participation

29 Participation in a community-based restorative justice program shall be voluntary and
30 shall be available to both a juvenile and adult defendant. A juvenile or adult defendant may be
31 diverted to a community-based restorative justice program at any stage of a case beginning
32 immediately post arraignment and with the consent of the District Attorney and the victim.
33 Restorative justice may be contemplated as a means of disposition, with judicial approval. If a

34 juvenile or adult defendant successfully completes the restorative justice program, the charge
35 will be dismissed. If a juvenile or adult defendant does not successfully complete the program or
36 is found to be in violation of program requirements, the case will be returned to the court in
37 which it was arraigned in order to commence with proceedings.

38 Section 3. Ineligible Offenses

39 A person shall not be eligible to participate in a community-based restorative justice
40 program if that person is charged with: (i) a sexual offense as defined by section 1 of chapter
41 123A; (ii) any offense against a family or household member as defined by section 13M of
42 chapter 265; or (iii) any offense resulting in substantial impairment of the physical condition
43 including any burn, subdural hematoma, injury to any internal organ, any injury which occurs as
44 the result of repeated harm to any bodily function or organ including human skin or any physical
45 condition which substantially imperils a person's health or welfare. A person charged with an
46 offense that resulted in the fracture of a bone is not automatically ineligible, but may be
47 considered ineligible in light of the facts and circumstances of the case.

48 Section 4. Confidentiality

49 Participation in a community-based restorative justice program shall not be used as
50 evidence or as an admission of guilt, delinquency, or civil liability in current or subsequent legal
51 proceedings. A statement made by a juvenile or adult defendant during the course of an
52 assignment to a community-based restorative justice program shall be confidential and shall not
53 be subject to disclosure in any judicial or administrative proceeding; provided, however, that
54 nothing in this section shall preclude any evidence obtained through an independent source or

55 that would have been inevitably discovered by lawful means from being admitted at such
56 proceedings.

57 SECTION 3. Chapter 119 of the General Laws is hereby amended by inserting after
58 section 85 the following section:-

59 Section 86. Restorative justice

60 A child against whom a complaint is brought under this chapter may participate in a
61 community-based restorative justice program pursuant to the requirements of chapter 276B.

62 SECTION 4. There shall be established a restorative justice advisory committee to
63 review community-based restorative justice programs. The advisory committee shall consist of
64 sixteen members: the co-chairs of the joint committee on the judiciary, who shall serve as co-
65 chairs of the advisory committee; the Secretary of Public Safety and Security or a designee; the
66 Secretary of Health and Human Services or a designee; the President of the Massachusetts
67 District Attorneys Association or a designee; the Chair of the Committee for Public Counsel
68 Services or a designee; the Commissioner of Probation or a designee; the President of the
69 Massachusetts Chiefs of Police Association or a designee; the Executive Director of the
70 Massachusetts Office for Victim Assistance or a designee; and 7 persons to be appointed by the
71 governor, 1 of whom shall be a retired Massachusetts Trial Court judge and 6 of whom shall be
72 representatives of community-based restorative justice programs. Each member of the advisory
73 committee shall serve a 6-year term and members appointed through an official title shall be
74 members for as long as they hold that title.

75 The committee shall, in its discretion, approve, monitor and assist all community-based
76 restorative justice programs to which a juvenile or adult defendant may be diverted pursuant to

77 this chapter. The committee shall issue approval of new and existing programs for a term of 2
78 years, and may renew approval for additional 2-year terms, subject to revocation for cause. The
79 committee shall establish criteria to determine approval of a program. The committee may issue
80 approval to a person, partnership, corporation, society, association or other agency or entity.

81 The advisory committee shall track the use of community-based restorative justice
82 programs through a partnership with an educational institution and shall make legislative, policy
83 and regulatory recommendations to aid in the use of community-based restorative justice
84 programs, including but not limited to: qualitative and quantitative outcomes for participants;
85 recidivism rates of responsible parties; criteria for youth involvement and training; cost savings
86 for the commonwealth; training guidelines for restorative justice facilitators; data on racial
87 socioeconomic and geographic disparities in the use of community-based restorative justice
88 programs; guidelines for restorative justice best practices; appropriate training and funding
89 sources for community-based restorative programs; and plans for the expansion of restorative
90 justice programs and opportunities throughout the commonwealth.

91 The advisory committee shall annually submit a report with findings and
92 recommendations to the governor and the clerks of the senate and house of representatives no
93 later than December 31.

94 Appointments to the advisory committee shall be made not later than October 1, 2018
95 and the first meeting of the advisory committee shall be held not later than December 1, 2018.