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COLORADO
HOUSE OF REPRESENTATIVES
PETE LEE – HOUSE DISTRICT 18

To: NACRJ Annual Meeting Oakland
Subject: Overview of Restorative Justice in Colorado Law
Date: June 17, 2017

Colorado's Statutes implement restorative justice through a declaration of legislative intent in CRS 19-2-102 and through provisions enacted pursuant to seven bills; HB 07-1129, HB 08-1117, HB11-1032, HB13-1254, HB15-1094¹, HB17-1039 and SB17-220

Colorado's Legislative Intent: 19-2-102-Children's Code, Juvenile Justice System

- (1) The general assembly finds that the intent of this article is to protect, restore and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law and, in certain cases, will also provide the opportunity to bring together affected victims, the community and juvenile offenders for restorative purposes. The general assembly further finds that, while holding paramount the public safety, the juvenile justice system shall take into consideration the best interests of the juvenile, the victim and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming productive members of society.
- (2) The general assembly hereby finds that the public has the right to safe and secure homes and communities and that when a delinquent act occurs such safety and security is compromised; and the result is harm to the victim, the community and the juvenile offender. The general assembly finds that the juvenile justice system should seek to repair such harm and that the victims and communities should be provided with the opportunity to elect to participate actively in a restorative process that would hold the juvenile offender accountable for his or her offense.

HB 07-1129² - Introduced by Rep. Michael Merrifield has three sections; (1.) the bill "strongly encourages" local juvenile justice planning committees to consider restorative justice programs when developing their plans (CRS 19-2-211); (2.) it creates a state level Restorative Justice Coordinating Council to provide assistance and education related to restorative justice programs (19-2-213); and (3.) it directs the Tony Grampas Youth Services Board to consider applications from restorative justice programs and encourages them to consider whether applicants for grants have restorative justice components in their applications (CRS 25-20.5-202).

¹ All bills can be found at <http://www.leg.state.co.us/>

²http://www.leg.state.co.us/CLICS/CLICS2007A/csl.nsf/fsbillcont3/08E4E31921F6DBA587257251007C4573?Open&file=1129_enr.pdf

The Restorative Justice Coordinating Council consists of the following members: a statewide juvenile justice council member appointed by the executive director of DPS; a representative from Division of Youth Services from DHS, appointed by the Executive Director of DHS; a representative from DPS appointed by the Executive Director of DPS; a representative of the Judicial Department appointed by the State Court Administrator; two representatives from statewide organizations who develop and implement Restorative Justice programs, appointed by Executive Director of DPS; a District Attorney with juvenile experience appointed by the DAs Council; a victim advocate with RJ experience, appointed by the State Court Administrator; a representative from the Department of Education appointed by the Education Commissioner.

HB 08-1117³ - Introduced by Rep. Michael Merrifield and Sen. John Morse, was a collaborative effort of prosecutors, defenders, magistrates, and victim and children's advocates. It is intended to increase the use of restorative justice in the juvenile justice system. Following are the provisions of the bill:

1. **Juvenile Diversion:** It adds restorative justice practices to the juvenile diversion programs in order to "promote juvenile offenders' accountability, recognize and support the rights of victims, heal the harm to relationships and the community caused by juvenile crime and reduce the costs within the juvenile justice system" (19-2-303). It adds "restorative justice practices" and "victim offender conferences" to the "services" provided by Juvenile Diversion programs (19-1-103 (44)). It encourages juvenile diversion to integrate restorative justice practices in their programs and requires diversion to consider RJ practices in programs applying for grants (19-2-303 2,5).

2. **Advisement and Entry of Guilty Plea:** It provides for judges to make juvenile offenders and their parents aware that restorative justice victim-offender conferences may be part of the sentence, both at their advisement during their first appearance and again at the time they enter a guilty plea (19-2-706 and 708). A suggested advisement is "Your sentence may include the possibility of participating in restorative justice including a victim offender conference. Restorative justice is intended to repair the harm to the victim and the community resulting from criminal acts."

3. **Sentencing Option:** It adds restorative justice to the Courts sentencing options; the Judge can order a juvenile offender to participate in an intake conference to determine his or her suitability for participation in a face to face meeting with the victim (19-2-907).

4. **Probation Option:** It adds restorative justice to the probation department options in the same manner, by authorizing them to order the offender to an intake conference to determine his or her suitability for participation in a victim offender conference (19-2-925).

5. **Definition of Restorative Justice:** Finally, the bill defines restorative justice as follows: "Restorative Justice means those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members and supporters of the victim or the offender for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include,

³http://www.leg.state.co.us/CLICS/CLICS2008A/csl.nsf/fsbillcont3/89CFF33A6845DC0787257371006A336F?Open&file=1032_enr.pdf

but need not be limited to apologies, community service, restoration and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all parties” (19-1-103 (44) and 18-1-901 (3) (o.5).

6. **Exceptions:** Restorative justice may not be ordered where the juvenile was adjudicated a delinquent for unlawful sexual behavior or where underlying facts involve domestic violence (19-2-907 (l) and 19-2-925 (l)).

HB 11-1032⁴ – introduced by Rep. Pete Lee (June 30, 2011)

Section 1. 16-7-702 Permissive Advisement of Adults; Defendants appearing for other than traffic offenses in 42 CRS may be advised that RJ may be part of the sentence if available in the jurisdiction and requested by the victim, who has been advised about RJ per 24-4.1-303

Section 2. 17-28-101 Dept of Corrections Programs – Restitution to Victims section is amended to add mental and emotional injury to the losses of victims which offenders have a duty to provide restoration and restitution for.

Section 3 17-28-103 Dept. of Corrections Victim-offender Pilot Program is authorized when funds become available.

Section 4. 18-1-102 e Expands the purpose of the Colorado Criminal Code to include promotion of individual responsibility and restoration and healing for victims and communities, while reducing recidivism and costs by use of restorative justice purposes.

Section 5. 18-1-102.5 (1) (c) and (1) (d) Expands the pupose of sentencing under the Code to include the promotion of individual responsibility and restoration and healing for victims and communities, while reducing recidivism and costs by use of restorative justice practices.

Section 6. 18-1-901 (3) (o.5) Definition of “restorative justice practices” in full:

“Restorative justice practices” means practices that emphasize repairing the harm caused to victims and the community by offenses. Restorative justice practices include victim initiated victim-offender conferences, family group conferences, circles, community conferences, and other similar victim-centered practices. Restorative justice practices are facilitated meetings attended voluntarily by the victim or victim’s representatives, the victim’s supporters, the offender, and the offender’s supporters and may include community members. By engaging the parties to the offense in voluntary dialogue, restorative justice practices provide an opportunity for the offender to accept responsibility for the harm caused to the victim and community, promote victim healing, and enable the participants to agree on consequences to repair the harm, to the extent possible, including but not limited to apologies, community service, reparation, restoration, and counseling. Restorative justice practices may be used in addition to any other conditions, consequences, or sentence imposed by the court.

Section 7. 18-1.3-104 (1) (b.5) (1) Alternative in Imposition of Sentence – A candidate for an alternative sentence who would otherwise be sent to prison, may be considered for community service, or specialized restitution program – which may include restorative justice –if not a sex offense, domestic violence, stalking or protective order case; fee of \$125 on a sliding scale, or the fee may be waived by the court. Statements in conference are confidential and cannot be used

⁴[http://www.leg.state.co.us/clics/clics2011a/csl.nsf/billcontainers/D9ABC2E028CA4D3487257808008012EA/\\$FILE/1032_enr.pdf](http://www.leg.state.co.us/clics/clics2011a/csl.nsf/billcontainers/D9ABC2E028CA4D3487257808008012EA/$FILE/1032_enr.pdf)

as a basis for charging or prosecuting the defendant, unless the defendant commits a chargeable offense during the conference.

Section 8. 18-1.3-204 Conditions of Probation – When granting probation, the Court may order participation in RJ practices if available in the jurisdiction, requested by the victim who has been advised about RJ pursuant to 24-4.1-303 (11)(g) and the defendant is determined suitable – i.e. no sex offense per 16-2-102 (9), domestic violence per 18-6-800.3, stalking per 18-3-602, or violation of a protective order per 18-6-803.5.

Section 9. 19-1-103 Juvenile Diversion – Amended to add reference to new definition of restorative justice in 18-1-901 (3) (o.5) and requirement that Restorative Justice victim offender conferences be requested by the victims, who had been informed about it and deemed suitable by Probation or RJ facilitator. Restorative justice victim offender conferences shall be conducted by facilitators recommended by the District Attorney.

Section 10. 19-2-311 – Victim Offender Conferences Pilot Program at Division of Youth Corrections; almost identical to DOC Pilot Program, except cost provisions less restrictive than DOC.

Section 11. 19-2-512 Petition Initiation – If DA files a delinquency petition, and it's the juvenile's first offense, and the jurisdiction has an RJ program, the DA or designee can determine if the juvenile is suitable for RJ and victim requests consideration of RJ as an alternative to formal prosecution. DA is to determine juvenile suitability based upon whether the juvenile accepts responsibility, expresses remorse and is willing to repair the harm, and parents or guardian are willing to participate, and victim requests it, RJ may be utilized. The DA may offer dismissal of charges if the juvenile successfully completes conditions arising from the process to address the harm, subject to court approval.

Section 12. 19-2-706 (1) Mandatory Juvenile Advisement at first appearance – The standard advisement must state that restorative justice practices, including victim offender conferences could be part of the sentence

Section 13. 19-2-708 Mandatory advisement at Entry of Plea

Section 14. 19-2-905 Presentence Investigation – Prior to sentencing a juvenile for an offense that would be a felony or a non traffic misdemeanor, if committed by an adult, the court can request a suitability assessment, if requested by the victim and if the offense is not for unlawful sexual behavior, domestic violence, stalking or a protective order case. Suitability Assessment to be performed for \$40 on a sliding scale or waived by court, and the VO Conference to be conducted for \$125 on a sliding scale or waived by court.

Section 15. 19-2-907 (1) Juvenile Sentencing Schedule – The Court has been precluded from ordering participation in restorative justice if the juvenile has been adjudicated for unlawful sexual behavior or sexual violence. This provision adds stalking per 18-6-302 and violation of protective order per 18-6-803.5 to the offenses for which RJ is not appropriate. This provision also states that cases are to be facilitated for a fee of no more than \$125 on a sliding scale or it may be waived by the judge.

Section 16; 19-2-925 Probation – Added stalking and violation of protective order as cases in which the juvenile would not be suitable for restorative justice, as in 19-2-907.

Section 17, 18; 22-32-144 Restorative Justice in schools – The General Assembly supports and encourages the use of restorative justice as a school's first consideration to remediate offenses such as interpersonal conflicts, bullying, verbal and physical conflicts, theft, damage to property, class disruption, harassment, internet harassment and attendance issues. The General Assembly encourages each school district to implement training and education in the

principles and practices of RJ to ensure that capable personnel are available to successfully facilitate all steps of the restorative justice process. Also, adds a definition of Restorative Justice to the statute. All provisions apply to Charter schools as well.

Section 19 24-4.1-302.5 Rights Afforded to Victims – Adds new section 1.5. The victim has the right to be informed about the possibility of RJ practices as defined in 18-1-901 (3) (o.5)

Section 20 24-4.1-303 Procedure for ensuring rights of victims – Specifies that the District Attorney has the responsibility to inform victims of the availability of RJ practices.

Section 21- The act goes into effect on August 10, 2011.

Restorative Justice HB 13-1254⁵ – Introduced by Rep. Pete Lee (May 2013)

HB 13-1254 expands and clarifies the restorative justice program as adopted in Colorado in 2007, 2008, and 2011 with the goal of keeping juveniles out of the criminal justice system. Significant provisions of the bill include establishing a juvenile pilot program incorporating pre-filing diversion, collecting information about the programs and creating a database, changing the procedure for initiating the restorative justice process, adding members to the Restorative Justice Coordinating Council, creating a surcharge to cover program costs, and clarifying language in the original bill.

Establishing a juvenile pilot program – This bill creates pilot programs in four districts: two new programs in the 10th and 19th districts (Pueblo and Weld/Larimer), and two existing ones in the 12th and 20th (Alamosa and Boulder). Prior to filing charges, District Attorneys would identify juvenile first offenders who have committed non-traffic misdemeanors or Class 3, 4, 5 and 6 felonies and screen them for participation. If the juvenile successfully completes the program, no charges will be filed. Participants will pay a \$125 fee to be a part of the program.

Collecting data –The pilot programs will report certain information to the Division of Criminal Justice, with the ultimate goal of obtaining empirical data about the capability of restorative justice practices to reduce costs, lower recidivism rates, and improve the well-being of victims and offenders. Data submitted to the DCJ will include the number and demographics of juveniles who met the program criteria, did/did not participate, reached reparation agreements, completed the agreements, re-arrest rates, and the results of victim and offender satisfaction surveys.

Creating a database of restorative justice programs –The Restorative Justice Coordinating Council (RJCC) will develop a database of existing restorative justice programs, including information regarding their jurisdictions, the types of practices used, costs and fees, as well as the training and experience of facilitators and details about participants and their outcomes. This data will be reported to the House and Senate Judiciary Committees.

Changing the procedure for initiating the restorative justice process – To expand the utilization of restorative justice practices, this bill allows for juvenile and adult offenders, District Attorneys, and other law enforcement personnel to request the use of restorative justice practices, in addition to victims. Offenders would not be permitted to contact victims directly. District Attorneys would remain the point of contact with victims to determine if the victim wants to participate, submit a victim impact statement, or have a surrogate participate on their behalf.

⁵http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/DD9C764A4B2DF9C187257AE E00574204?Open&file=1254_enr.pdf

Adding members to the RJCC – This bill adds members to the RJCC, including one State Board of Parole appointee, one Juvenile Parole Board appointee, one Department of Corrections appointee, one victims advocacy group appointee, and three restorative justice practitioners.

Creating a court surcharge to cover program costs – This \$10 charge will apply to any adult or juvenile convicted or adjudicated of a crime, and will be used to support restorative justice programs and the administrative costs of the RJCC.

Making clarifications – This bill adds the phrase “which includes victim offender conferences” to the term “restorative justice practices” to clarify the language of the original bill regarding victims’ rights and removes the phrase “victim initiated” from the definition of restorative justice.

Restorative Justice HB15-1094⁶ – Introduced by Rep. Pete Lee (March 2015)

HB15-1094 was cosponsored by Senators Linda Newell and John Cooke. It expanded the scope of the pre-filing diversion pilot program created by HB13-1254 to allow the inclusion of juvenile offenders who committed municipal and petty offenses and to enable DAs to use their discretion to waive the first offense limitation. The goal is to include more juveniles to participate in restorative justice. The bill also expanded the State Restorative Justice Council to include a Judge, Public Defender and a representative from law enforcement. The bill also allowed the Council to accept money from gifts, grants, donations and events and, finally, provides that the pre-conference evaluation questionnaire may be provided to victims and community members if practicable. HB15-1094 passed the House and Senate unanimously.

Concerning Communication Issues Related to Restorative Justice HB17-1039⁷ Rep Pete Lee, Sen. Daniel Kagan

HB17-1039 was sponsored by Senator Daniel Kagan. Intended to increase the inclusion of restorative justice conferences in plea bargains, the bill added a provision to the applicable statute, 16-7-301, authorizing the DA to consent to a suitability assessment for participation. It also directs the Probation Department, when conducting the pre-sentence investigation, to indicate whether the offender meets the eligibility requirements for participation in restorative justice, 16-11-102.

Sunset Restorative Justice Coordinating Council SB17-220⁸ Sen. Lois Court, Rep. Jeni Arndt

The bill continues the Restorative Justice Coordinating Council indefinitely based on the recommendation of the sunset review. It also moves the Council from Title 19 to Title 13 in the statutes as restorative justice has expanded from juvenile cases to adult cases.

⁶[http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont2/834352222353756C87257DA20062703C/\\$FILE/1094_enr.pdf](http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont2/834352222353756C87257DA20062703C/$FILE/1094_enr.pdf)

⁷ http://leg.colorado.gov/sites/default/files/documents/2017A/bills/2017A_1039_signed.pdf

⁸ https://leg.colorado.gov/sites/default/files/documents/2017A/bills/2017A_220_signed.pdf