



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB1458

by Rep. Emanuel Chris Welch

SYNOPSIS AS INTRODUCED:

735 ILCS 5/8-804.5 new

Amends the Code of Civil Procedure. Defines "communication" and "restorative justice practice". Provides that communications received by a party in preparation for, during, or after a restorative justice practice are inadmissible in court unless the privilege is: waived by the party or parties about whom the communication concerns; subject to certain exemptions; or used in furtherance of a criminal act.

LRB101 06902 LNS 51934 b

1 AN ACT concerning civil procedure.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding
5 Section 8-804.5 as follows:

6 (735 ILCS 5/8-804.5 new)

7 Sec. 8-804.5. Parties to a restorative justice practice.

8 (a) This Section is intended to encourage the use of
9 restorative justice practices by providing a privilege for such
10 participation and ensuring that anything communicated during
11 the practice is strictly confidential, and will not be used
12 against the parties in any future court proceedings without
13 their informed consent. This Section further intends to codify
14 that the privilege within a restorative justice practice shall
15 only be waived by informed consent of the party or parties
16 about whom the participation or communication concerns. The
17 General Assembly affords this privilege in recognition of
18 restorative justice as a powerful tool in addressing the needs
19 of victims, offenders, and the larger community in the process
20 of repairing the fabric of community peace. The General
21 Assembly further encourages residents of this State to employ
22 restorative justice practices, not only in justiciable
23 matters, but in all aspects of life and law.

1 (b) As used in this Section:

2 "Communication" mean any information received by a
3 party in preparation for, during, or received after a
4 restorative justice practice.

5 "Restorative justice practice" means a convening, such
6 as victim-offender mediation, peace circle, or other
7 conflict resolution sessions, in which parties who have
8 caused harm, parties who have been harmed, or community
9 stakeholders collectively gather to identify harm, repair
10 harm to the extent possible, address trauma, reduce the
11 likelihood of further harm, or strengthen community ties by
12 focusing on the needs and obligations of all parties
13 involved through a participatory process.

14 (c) If a restorative justice practice is convened, neither
15 the fact that it has been convened, nor anything said or done
16 within the practice, is admissible in any court, unless this
17 privilege is:

18 (1) waived, in court or in writing, by the party or
19 parties about whom the information relates;

20 (2) subject to one or more of the exemptions in
21 subsection (f); or

22 (3) used in furtherance of a criminal act.

23 Any waiver is limited to the participation and
24 communication of that party only, and the participation or
25 communications of any other participants remain confidential
26 and privileged unless waived by the other parties. This

1 information is not subject to discovery or disclosure in any
2 judicial or extra-judicial proceedings.

3 (d) Evidence that is otherwise admissible or subject to
4 discovery does not become inadmissible or protected from
5 discovery solely because it was discussed or used in a
6 restorative justice practice.

7 (e) The legitimacy of the restorative justice practice, if
8 challenged in any civil, juvenile, criminal, or administrative
9 proceeding, shall be determined by the judge. The judge, in a
10 hearing conducted pursuant to this subsection, may consider
11 information that would otherwise be privileged to the extent
12 that the information is probative of the issue.

13 (f) No party to a restorative justice practice shall reveal
14 information relating to the practice unless the party or
15 parties about whom the information relates waives this
16 privilege in court or in writing, or the disclosure is
17 otherwise permitted by this Section.

18 (1) Nothing with respect to this privilege shall
19 preclude a party to a restorative justice practice from
20 revealing information:

21 (i) if that person reasonably believes it is
22 necessary to prevent death or great bodily harm;

23 (ii) to comply with other law;

24 (iii) to report on a restorative justice practice
25 session taking place in order to comply with a
26 court-related program; however, this report shall be

1 limited to the fact that a practice has taken place, an
2 opinion regarding the success of the practice, and if
3 further proceedings are to follow. The specific
4 communications elicited in the practice shall not be
5 reported to the court unless waived by the appropriate
6 parties; or

7 (iv) to comply with a court order following a
8 hearing that considers the following factors:

9 (A) the ease of obtaining the information
10 through other methods;

11 (B) the need for the information; and

12 (C) the interest in protecting the privacy of
13 restorative justice practices.

14 (2) A party may reveal information relating to the
15 practice to the extent that the person reasonably believes
16 disclosure is necessary to prevent a participant from
17 committing a crime in circumstances other than those
18 specified in subparagraph (i) of paragraph (1).

19 (3) Any party to a restorative justice practice who, by
20 reason of his or her employment or profession, is legally
21 required to report information shall not be relieved of
22 that duty based on this privilege.