



Rep. Emanuel Chris Welch

Filed: 3/29/2019

10100HB1458ham001

LRB101 06902 LNS 58236 a

1 AMENDMENT TO HOUSE BILL 1458

2 AMENDMENT NO. _____. Amend House Bill 1458 by replacing
3 everything after the enacting clause with the following:

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

6 "(735 ILCS 5/8-804.5 new)

7 Sec. 8-804.5. Parties to 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

1 General Assembly affords this privilege in recognition of
2 restorative justice as a powerful tool in addressing the needs
3 of victims, offenders, and the larger community in the process
4 of repairing the fabric of community peace. The General
5 Assembly further encourages residents of this State to employ
6 restorative justice practices, not only in justiciable
7 matters, but in all aspects of life and law.

8 (b) As used in this Section:

9 "Communication" means any information received by a party
10 in preparation for, during, or received after a restorative
11 justice practice.

12 "Facilitator" means a person who facilitates a restorative
13 justice practice.

14 "Restorative justice practice" means a convening, such as
15 victim-offender mediation, peace circle, or other conflict
16 resolution sessions, in which parties who have caused harm,
17 parties who have been harmed, or community stakeholders
18 collectively gather to identify harm, repair harm to the extent
19 possible, address trauma, reduce the likelihood of further
20 harm, or strengthen community ties by focusing on the needs and
21 obligations of all parties involved through a participatory
22 process.

23 "Party" means a person, including a facilitator, an
24 individual who has caused harm, an individual who has been
25 harmed, a community member, or any other participant, who is
26 approved by the facilitator and participates in a restorative

1 justice practice.

2 (c) This Section applies to a restorative justice practice
3 in which:

4 (1) at least one party is participating in a
5 restorative justice practice pursuant to statute or court
6 or administrative agency rule or referred to participate in
7 a restorative justice practice by a court, administrative
8 agency, mediator, or arbitrator;

9 (2) the restorative justice practice is convened or
10 facilitated by a school;

11 (3) the restorative justice practice is convened or
12 facilitated by a law enforcement agency; or

13 (4) the restorative justice practice is convened or
14 facilitated by a restorative justice facilitator.

15 (d) The legitimacy of the restorative justice practice, if
16 challenged in any civil, juvenile, criminal, or administrative
17 proceeding, shall be determined by the judge. The judge, in a
18 hearing conducted pursuant to this subsection, may consider
19 information that would otherwise be privileged to the extent
20 that the information is probative of the issue.

21 (e) If a restorative justice practice is convened, neither
22 the fact that it has been convened, nor anything said or done
23 within the practice, is admissible in any court, unless this
24 privilege is:

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

1 (2) subject to one or more of the exemptions in
2 subsection (g); or

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

4 Any waiver is limited to the participation and
5 communication of that party only, and the participation or
6 communications of any other participants remain confidential
7 and privileged unless waived by the other parties. This
8 information is not subject to discovery or disclosure in any
9 judicial or extra-judicial proceedings.

10 (f) Evidence that is otherwise admissible or subject to
11 discovery does not become inadmissible or protected from
12 discovery solely because it was discussed or used in a
13 restorative justice practice.

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

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

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

24 (ii) to comply with other law;

25 (iii) to report on a restorative justice practice
26 as described under paragraph (1) of subsection (c);

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

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

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

12 (B) the need for the information; and

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

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

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