



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4295

Introduced 1/28/2020, by Rep. Will Guzzardi

SYNOPSIS AS INTRODUCED:

735 ILCS 5/804.5 new

Amends the Code of Civil Procedure. Provides that anything said or done during or in preparation for a restorative justice practice or as a follow-up to that practice, or the fact that the practice has been planned or convened, is privileged and cannot be referred to, used, or admitted in any civil, criminal, juvenile, or administrative proceeding unless the privilege is waived, during the proceeding or in writing, by the party or parties protected by the privilege. Provides that the legitimacy of a restorative justice practice, if challenged in any civil, juvenile, criminal, or administrative proceeding, shall be determined by a judge. Provides that the privilege does not apply when: (1) disclosure is necessary to prevent death, great bodily harm, or the commission of a crime; (2) necessary to comply with another law; or (3) a court, tribunal, or administrative body requires a report on a restorative justice practice, but such report shall be limited to the fact that a practice has taken place, an opinion regarding the success of the practice, and whether further restorative justice practices are expected. Effective immediately.

LRB101 16042 LNS 65404 b

1 AN ACT concerning civil law.

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 804.5 as follows:

6 (735 ILCS 5/804.5 new)

7 Sec. 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
10 participation in such practices and ensuring that anything said
11 or done during the practice, or in anticipation of or as a
12 follow-up to the practice, is privileged and may not be used in
13 any future proceeding unless the privilege is waived by the
14 informed consent of the party or parties covered by the
15 privilege. The General Assembly affords this privilege in
16 recognition of restorative justice as a powerful tool in
17 addressing the needs of victims, offenders, and the larger
18 community in the process of repairing the fabric of community
19 peace. The General Assembly encourages residents of this State
20 to employ restorative justice practices, not only in
21 justiciable matters, but in all aspects of life and law.

22 (b) As used in this Section:

23 "Circle" means a versatile restorative practice that can be

1 used proactively, to develop relationships and build
2 community, or reactively, to respond to wrongdoing, conflicts,
3 and problems.

4 "Conference" means a structured meeting between offenders,
5 victims, and both parties' family and friends, in which they
6 deal with the consequences of a crime or wrongdoing and decide
7 how best to repair the harm.

8 "Facilitator" means a person who is trained to facilitate a
9 restorative justice practice.

10 "Party" means a person, including a facilitator, an
11 individual who has caused harm, an individual who has been
12 harmed, a community member, and any other participant, who
13 voluntarily consents to participate with others who have agreed
14 to participate in a restorative justice practice.

15 "Proceeding" means any legal action subject to this Code,
16 including, but not limited to, civil, criminal, juvenile, or
17 administrative hearings.

18 "Restorative justice practice" or "practice" means a
19 gathering, such as a conference or circle, in which parties who
20 have caused harm or who have been harmed and community
21 stakeholders collectively gather to identify and repair harm to
22 the extent possible, address trauma, reduce the likelihood of
23 further harm, and strengthen community ties by focusing on the
24 needs and obligations of all parties involved through a
25 participatory process.

26 (c) Anything said or done during or in preparation for a

1 restorative justice practice or as a follow-up to that
2 practice, or the fact that the practice has been planned or
3 convened, is privileged and cannot be referred to, used, or
4 admitted in any civil, criminal, juvenile, or administrative
5 proceeding unless the privilege is waived, during the
6 proceeding or in writing, by the party or parties protected by
7 the privilege. Privileged information is not subject to
8 discovery or disclosure in any judicial or extrajudicial
9 proceedings.

10 Any waiver of privilege is limited to the participation and
11 communication of the waiving party only, and the participation
12 or communications of any other participant remain privileged
13 unless waived by the other participant.

14 (d) Evidence that is otherwise admissible or subject to
15 discovery does not become inadmissible or protected from
16 discovery solely because it was discussed or used in a
17 restorative justice practice.

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

24 (f) The privilege afforded by this Section does not apply
25 if:

26 (1) disclosure is necessary to prevent death, great

1 bodily harm, or the commission of a crime;
2 (2) necessary to comply with another law; or
3 (3) a court, tribunal, or administrative body requires
4 a report on a restorative justice practice, but such report
5 shall be limited to the fact that a practice has taken
6 place, an opinion regarding the success of the practice,
7 and whether further restorative justice practices are
8 expected.

9 (g) This Section applies to all restorative justice
10 practices that are convened on or after the effective date of
11 this amendatory Act of the 101st General Assembly.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.