

HOUSE BILL NO. 5987

April 12, 2022, Introduced by Reps. LaGrand, Stone, Kuppa, Anthony, Rogers, Hope, Brabec, Sowerby, Brann, Brenda Carter, Haadsma, Hood, Weiss and Yancey and referred to the Committee on Judiciary.

A bill to provide for restorative justice facilitation; and to establish criteria for certain mediators and restorative justice facilitators.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "restorative justice
2 practices enabling act".

3 Sec. 2. As used in this act:

4 (a) "Center" means that term as defined in section 2 of the
5 community dispute resolution act, 1988 PA 260, MCL 691.1552.

1 (b) "Facilitator" means a mediator who meets all of the
2 following requirements:

3 (i) Has conducted at least 3 mediation sessions in a setting
4 that is not a restorative justice facilitation.

5 (ii) Has completed additional training on restorative justice
6 basic concepts, trauma informed practices, juvenile-developmental
7 characteristics, and crime victimization.

8 (c) "Mediator" means an individual who conducts mediations at
9 a center and who has not less than 30 hours of mediation training
10 in conflict resolution techniques, neutrality, agreement, writing,
11 and ethics.

12 (d) "Offender" means the defendant in a criminal case or the
13 respondent in a juvenile justice case who committed or allegedly
14 committed the offense, or an individual sentenced and committed to
15 the department of corrections for an offense.

16 (e) "Offense" means a violation of a penal law of this state.

17 (f) "Repair plan agreement" means the agreement following a
18 restorative justice facilitation that describes the consequences to
19 repair the harm from an offense, including, but not limited to, the
20 offender providing an apology, reparation, restitution, or
21 restoration, performing community service, or receiving counseling.

22 (g) "Restorative justice facilitation" means a voluntary
23 program of classes or facilitated meetings conducted by a mediator
24 or facilitator to reach a repair plan agreement with an offender,
25 the victim of the offense, if any, and other interested
26 individuals.

27 (h) "Victim" means an individual who or a member of a
28 community that is harmed by the commission of an offense.

29 Sec. 3. (1) Restorative justice facilitation practices in this

1 state must comply with this act.

2 (2) Participation in restorative justice facilitation in a
3 criminal case, in a juvenile justice case, or during release on
4 parole is voluntary and must comply with this act.

5 Sec. 4. (1) Restorative justice facilitation must take place
6 through a center. The offender and any victim who elects to
7 participate in restorative justice facilitation must first provide
8 consent to participate to a center.

9 (2) Except as provided in subsection (3), a mediator shall not
10 provide restorative justice facilitation unless the mediator is
11 supervised by a facilitator.

12 (3) A mediator shall not provide restorative justice
13 facilitation if the offense involved a victim.

14 Sec. 5. (1) The mediator or facilitator of a restorative
15 justice facilitation shall provide an opportunity for the
16 participants to achieve a mutually acceptable resolution to the
17 harm, in joint or separate sessions, as appropriate, utilizing
18 dialogue and negotiation.

19 (2) A mediator or facilitator of a restorative justice
20 facilitation shall be impartial, neutral, and unbiased, and shall
21 not make a decision for a participant in the facilitation.

22 (3) If a participant in a restorative justice facilitation is
23 unable to agree, or, if the mediator or facilitator determines an
24 agreement would be unconscionable due to duress or other factors,
25 the mediator or facilitator shall terminate the restorative justice
26 facilitation. If restorative justice facilitation is terminated,
27 the fact that the facilitation is terminated must not be used
28 against a participant in any manner.

29 (4) A mediator or facilitator shall not make or impose a

1 sanction or penalty on a participant in a restorative justice
2 facilitation.

3 (5) A mediator or facilitator may recommend resources to a
4 participant, if appropriate.

5 (6) A participant in a restorative justice facilitation must
6 be advised to obtain a legal review of any agreement.

7 Sec. 6. (1) Except as otherwise provided by law or if any of
8 the following situations apply, a verbal, written, or electronic
9 communication made in or in connection with a restorative justice
10 facilitation and any repair plan agreement resulting from that
11 facilitation, whether made to the mediator, facilitator,
12 participant, or other individual attending the mediation session,
13 are confidential:

14 (a) Each participant in the facilitation consents to waiving
15 confidentiality and disclosing a specific communication.

16 (b) A subsequent action against the mediator or facilitator is
17 initiated by a participant in the facilitation for damages arising
18 out of the facilitation process.

19 (c) The communication was made to further another crime or
20 fraud.

21 (d) The mediator or facilitator believes disclosure is
22 required to report a threat to an individual's safety.

23 (2) Except as otherwise provided by law, an admission,
24 representation, or statement made in a restorative justice
25 facilitation that is not otherwise discoverable or obtainable is
26 not admissible as evidence or subject to discovery.

27 (3) Except as otherwise provided by law and section 9 or
28 unless each participant to a restorative justice facilitation
29 consents in writing, the mediator or facilitator of the restorative

1 justice facilitation is not subject to the process requiring the
2 disclosure of any matter discussed during the facilitation.

3 Sec. 7. A mediator or facilitator who conducts a restorative
4 justice facilitation is not liable for civil damages for an act or
5 omission in the scope of the mediator's or facilitator's employment
6 or function as a mediator or facilitator, unless he or she acted in
7 bad faith, with a malicious purpose, or in a manner exhibiting
8 wanton or willful disregard of the rights, safety, or property of
9 another.

10 Sec. 9. (1) If a restorative justice facilitation results in a
11 repair plan agreement, the agreement must be in writing and signed
12 by the participants and must include the time periods in which the
13 plan must be accomplished.

14 (2) If a restorative justice facilitation occurs in
15 conjunction with a specific criminal or juvenile justice case and
16 results in a repair plan agreement not less than 5 business days
17 before a sentencing or disposition hearing, the mediator or
18 facilitator shall provide the court with the repair plan agreement
19 described in subsection (1) before the court sentences or enters an
20 order of disposition for the offender. The mediator or facilitator
21 may also testify to the repair plan agreement, or provide
22 additional reports of the repair plan agreement, to the court, a
23 probation officer, a parole officer, or another supervising
24 authority.

25 (3) The court may consider the repair plan agreement in the
26 order of sentencing or disposition.