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An Act

HOUSE BILL 08-1117

BY REPRESENTATIVE(S) Merrifield, Gardner B., Levy, Carroll M., Carroll T., Fischer, Green, Kefalas, Kerr A., Looper, McFadyen, Stafford, Borodkin, Butcher, Casso, Ferrandino, Frangas, Gallegos, Garza-Hicks, Hodge, Jahn, Labuda, Madden, Massey, Middleton, Peniston, Pommer, Primavera, Rice, Riesberg, Roberts, Solano, Stephens, Summers, and Weissmann;

also SENATOR(S) Morse, Bacon, Boyd, Brophy, Gibbs, Gordon, Hagedorn, Isgar, Mitchell S., Sandoval, Schwartz, Shaffer, Spence, Taylor, Tochtrop, Tupa, Ward, Williams, and Windels.

CONCERNING THE INCLUSION OF RESTORATIVE JUSTICE IN THE CHILDREN'S CODE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 19-1-103 (44), Colorado Revised Statutes, is amended, and the said 19-1-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

19-1-103. Definitions. As used in this title or in the specified portion of this title, unless the context otherwise requires:

(44) "Diversion" means a decision made by a person with authority

or a delegate of that person that results in specific official action of the legal system not being taken in regard to a specific juvenile or child and in lieu thereof providing individually designed services by a specific program. The goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system. Diversion of a juvenile or child may take place either at the prefiling level as an alternative to the filing of a petition pursuant to section 19-2-512 or at the postadjudication level as an adjunct to probation services following an adjudicatory hearing pursuant to section 19-3-505 or a disposition as a part of sentencing pursuant to section 19-2-907. "Services", as used in this subsection (44), includes but is not limited to diagnostic needs assessment, restitution programs, community service, job training and placement, specialized tutoring, constructive recreational activities, general counseling and counseling during a crisis situation, and follow-up activities. SERVICES MAY INCLUDE RESTORATIVE JUSTICE PRACTICES, INCLUDING WHERE PRACTICABLE, VICTIM-OFFENDER CONFERENCES.

(94.1) "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 THAT PROVIDE AN OPPORTUNITY 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, 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 PARTICIPANTS.

SECTION 2. 19-2-303 (1), (2), and (5), Colorado Revised Statutes, are amended to read:

19-2-303. Juvenile diversion programs - authorized. (1) In order to more fully implement the stated objectives of this title, the general assembly declares its intent to establish a juvenile diversion program THAT, WHEN POSSIBLE, INTEGRATES RESTORATIVE JUSTICE PRACTICES to provide community-based alternatives to the formal court system that will reduce

juvenile crime and recidivism, change juvenile offenders' behavior and attitudes, 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.

(2) The division of criminal justice of the department of public safety is authorized to establish and administer a juvenile diversion program THAT, WHEN POSSIBLE, INTEGRATES RESTORATIVE JUSTICE PRACTICES. In order to effectuate the program, the division may contract with governmental units and nongovernmental agencies to provide services for eligible youth through community-based projects providing an alternative to a petition filed pursuant to section 19-2-512, an adjudicatory hearing pursuant to section 19-3-505, or dispositions of a juvenile delinquent pursuant to section 19-2-907.

(5) When applying for a contract with the division of criminal justice to provide services to youths under the juvenile diversion program, a community project shall submit for review by the division a list of the project's objectives, A LIST OF THE RESTORATIVE JUSTICE PRACTICES, IF APPLICABLE, INCLUDED IN THE PROJECT, a report of the progress made during the previous year if applicable toward implementing the stated objectives, an annual budget, and such other documentation as may be required by the director.

SECTION 3. 19-2-706 (1), Colorado Revised Statutes, is amended to read:

19-2-706. Advisement. (1) At the first appearance before the court after the filing of a petition, the juvenile and his or her parents, guardian, or other legal custodian shall be advised by the court of their constitutional and legal rights as set forth in rule 3 of the Colorado rules of juvenile procedure. SUCH ADVISEMENT MAY INCLUDE THE POSSIBILITY OF RESTORATIVE JUSTICE PRACTICES, INCLUDING VICTIM OFFENDER CONFERENCES IF APPLICABLE.

SECTION 4. 19-2-708 (2), Colorado Revised Statutes, is amended to read:

19-2-708. Entry of plea. (2) Upon the entry of a plea of guilty to one or more of the allegations contained in the petition, the court shall

advise the juvenile in accordance with rule 3 of the Colorado rules of juvenile procedure. SUCH ADVISEMENT MAY INCLUDE THE POSSIBILITY OF RESTORATIVE JUSTICE PRACTICES, INCLUDING VICTIM OFFENDER CONFERENCES IF APPLICABLE.

SECTION 5. 19-2-907 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19-2-907. Sentencing schedule - options. (1) Upon completion of the sentencing hearing, pursuant to section 19-2-906, the court shall enter a decree of sentence or commitment imposing any of the following sentences or combination of sentences, as appropriate:

(1) PARTICIPATION IN AN EVALUATION TO DETERMINE WHETHER THE JUVENILE WOULD BE SUITABLE FOR RESTORATIVE JUSTICE PRACTICES THAT WOULD BE A PART OF THE JUVENILE'S SENTENCE; EXCEPT THAT THE COURT MAY NOT ORDER PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES IF THE JUVENILE WAS ADJUDICATED A DELINQUENT FOR UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 16-22-102 (9), C.R.S., OR A CRIME IN WHICH THE UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3 (1), C.R.S.

SECTION 6. 19-2-925 (2) (j) and (2) (k), Colorado Revised Statutes, are amended, and the said 19-2-925 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

19-2-925. Probation - terms - release - revocation. (2) The court shall, as minimum conditions of probation, order that the juvenile:

(j) Pay the victim compensation fee as ordered by the court; ~~and~~

(k) Pay the surcharge levied pursuant to section 24-4.2-104 (1) (a) (I), C.R.S.; AND

(l) MAY BE EVALUATED TO DETERMINE WHETHER THE JUVENILE WOULD BE SUITABLE FOR RESTORATIVE JUSTICE PRACTICES THAT WOULD BE A PART OF THE JUVENILE'S PROBATION PROGRAM; EXCEPT THAT THE COURT MAY NOT ORDER PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES IF THE JUVENILE WAS ADJUDICATED A DELINQUENT FOR UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 16-22-102 (9), C.R.S., OR A CRIME IN

WHICH THE UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE AS
DEFINED IN SECTION 18-6-800.3 (1), C.R.S.

SECTION 7. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO