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## SENATE BILL NO. 679

Offered January 22, 2010

A BILL to amend the Code of Virginia by adding in Chapter 1.1 of Title 19.2 a section numbered 19.2-11.5, relating to restorative justice programs.

Patrons—Hanger and Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1.1 of Title 19.2 a section numbered 19.2-11.5 as follows:

§ 19.2-11.5. Establishment of restorative justice program.

A. As used in this section:

"Facilitator" means a person trained in restorative justice principles and practices whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

"Restorative justice" means those practices that emphasize repairing the harm to the victim and the community caused by criminal acts.

"Restorative justice outcome" means an agreement reached as a result of a restorative process. Restorative outcomes include, but are not limited to, responses and programs such as apologies, reparation, restitution, and community service aimed at meeting the individual and collective needs and responsibilities of the parties.

"Restorative justice process" means any process in which the victim, when appropriate, and the offender, and, when appropriate, any other individuals or community members affected by a crime are given the opportunity to participate in a meeting, dialogue, or conference and address the harms, needs, and obligations arising from the crime with the help of a facilitator and which provides an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime.

"Restorative justice program" means any program that uses restorative justice processes and seeks to achieve a restorative justice outcome.

B. Upon deferred adjudication or adjudication of guilt, or at any time up to and including sentencing, a court may order an offender into a restorative justice program administered through a court-approved restorative justice program provider. An offender ordered into this program shall be assessed for his suitability to enter the program by the provider and, if deemed suitable, the offender shall participate in the program. The provider shall, on a timely basis, provide the court and the attorney for the Commonwealth directly, or through the probation office, the outcome of the assessment and, if appropriate, any restorative justice outcome. Such results may be used by the court at the sentencing of the offender.

C. Victim participation in a restorative justice program shall only be upon the voluntary consent of the victim obtained by the facilitator or his designee.

D. All communications and work product relating to any restorative justice process shall not be subject to disclosure or admissible in evidence in any subsequent judicial or administrative proceeding, except with the agreement of the participants or as required by the court or restorative justice program. All memoranda, work products and other materials contained in the case files of a facilitator or restorative justice program are confidential. Any communication made in or in connection with the restorative justice program including screening, intake, and scheduling a restorative justice process, whether made to the facilitator or restorative justice program staff or to a party, or to any other person, is confidential. However, a written agreement signed by the parties shall not be confidential.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all participants to the restorative justice process agree in writing to waive the confidentiality; (ii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the restorative justice process; (iii) where a threat to inflict bodily injury is made; (iv) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime; (v) where an ethics complaint is made against the facilitator by a participant to the restorative justice process to the extent necessary for the complainant to prove misconduct and the facilitator to defend against such complaint; or (vi) as provided by law or rule. The use of attorney work product in a restorative justice process shall not result in a waiver of the attorney work product privilege. The confidentiality privilege does not extend to the disclosure of any criminal act that is not the subject of the restorative justice process.

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59       E. A court-approved restorative justice program provider, including its employees, volunteers, or  
60 members of its board of directors, that provides restorative justice processes for offenders ordered into  
61 such a program is immune from civil liability for, or resulting from, any act or omission made while  
62 engaged in efforts to assist or conduct a restorative justice process, unless the act or omission was  
63 made in bad faith with malicious intent or in a manner exhibiting a willful, wanton disregard of the  
64 rights, safety, or property of another.