

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0367.01 Michael Dohr x4347

HOUSE BILL 17-1039

HOUSE SPONSORSHIP

Lee,

SENATE SPONSORSHIP

Kagan,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING COMMUNICATION ISSUES RELATED TO RESTORATIVE**
102 **JUSTICE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill makes all communications during the restorative justice process made by all participants in the process confidential unless:

- ! All participants in the process, including the restorative justice program or restorative justice facilitator, consent in writing to waive confidentiality of specific communications for a stated purpose;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- ! An offender or other participant commits a chargeable offense as part of a restorative justice or restorative practice communication;
- ! A report is made by a statutory mandatory reporter of behavior that threatens the safety of a child under 18 years of age; or
- ! Disclosure of a communication is necessary and relevant to an action alleging willful or wanton misconduct of a restorative justice facilitator or organization.

The bill requires the restorative justice program or facilitator to disclose those exceptions and any other applicable exceptions prior to starting the process.

The bill requires the court, during the arraignment advisement, to inform the defendant that if convicted the sentence may include restorative justice practices. The bill allows the district attorney to include restorative justice practices as part of a recommended sentence in a plea bargain. The bill directs that the presentence report must include an assessment of the defendant's suitability for restorative justice practices.

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

2

3 **SECTION 1.** In Colorado Revised Statutes, 16-7-202, **amend** (1)

4 as follows:

5 **16-7-202. Presence of defendant.** (1) If the offense charged is
 6 a felony, a level 1 drug misdemeanor, or a class 1 misdemeanor or if the
 7 maximum penalty for the offense charged is more than one year's
 8 imprisonment, the defendant must be personally present for arraignment;
 9 except that the court, for good cause shown, may accept a plea of not
 10 guilty made by an attorney representing the defendant without requiring
 11 the defendant to be personally present. In all prosecutions for lesser
 12 offenses, the defendant may appear by his or her attorney who may enter
 13 a plea on his or her behalf. If the defendant appears personally for a
 14 charge that is not in title 42, ~~C.R.S.~~, the court may advise the defendant
 15 of the possibility that restorative justice practices may be part of a

1 sentence, if available in the jurisdiction. ~~and requested by the victim who~~
2 ~~has been informed about the restorative justice practices pursuant to~~
3 ~~section 24-4.1-303 (11)(g), C.R.S.~~

4 **SECTION 2.** In Colorado Revised Statutes, 16-11-102, **amend**
5 (1.9) introductory portion; and **add** (1.9)(b.5) as follows:

6 **16-11-102. Presentence or probation investigation.** (1.9) Each
7 presentence report ~~shall~~ **MUST** also:

8 (b.5) **INDICATE WHETHER THE OFFENDER MEETS THE MINIMUM**
9 **ELIGIBILITY REQUIREMENTS AS PROVIDED IN SECTIONS 18-1.3-104 (1)(b.5)**
10 **AND 18-1.3-204 (2)(a)(III.5) FOR PARTICIPATION IN RESTORATIVE JUSTICE**
11 **PRACTICES.**

12 **SECTION 3.** In Colorado Revised Statutes, 16-7-301, **add** (2)(f)
13 as follows:

14 **16-7-301. Propriety of plea discussions and plea agreements.**

15 (2) The district attorney may agree to one or more of the following,
16 depending upon the circumstances of the individual case:

17 (f) **TO CONSENT TO AN ASSESSMENT FOR SUITABILITY FOR**
18 **PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES, INCLUDING**
19 **VICTIM-OFFENDER CONFERENCES.**

20 **SECTION 4. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2018 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.