
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 678 **Hearing Date:** April 23, 2019
Author: Glazer
Version: April 11, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Restorative Justice Pilot Program*

HISTORY

Source: Author

Prior Legislation: AB 1849 (Carter), held on suspense in Assembly Approps., 2012
AB 446 (Carter), Vetoed, 2011
AB 114 (Carter), Vetoed, 2010
AB 360 (Carter), Vetoed, 2008

Support: Anti-Recidivism Coalition; California Attorneys for Criminal Justice; California Catholic Conference; California Civil Liberties Advocacy; Californians for Safety and Justice; Drug Policy Alliance; Ella Baker Center for Human Rights; Felony Murder Elimination Project; Initiate Justice; Restore Justice; San Francisco Public Defender's Office

Opposition: None known

PURPOSE

The purpose of this bill is to establish the Restorative Justice Pilot Program which, upon appropriation by the Legislature, requires the Board of State and Community Corrections (BSCC) to make 5-year grants to up to 3 counties to establish and operate the program.

Existing law authorizes diversion programs for specified crimes (Pen. Code, §§ 1000 et seq. for drug abuse; Pen. Code, § 1001.12 et seq. for child abuse; Pen. Code, §§ 1001.70 et seq. for contributing to the delinquency of another, Pen. Code, §§ 1001.60 et seq. for writing bad checks) and for specific types of offenders (Pen. Code, §§ 1001.80 et seq. for veterans; Pen. Code, §§ 1001.35 et seq. for persons with mental disorders).

Existing law states that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)

This bill requires, on or before January 1, 2021, BSCC to create a five-year Restorative Justice Pilot Program for up to three counties to establish and operate restorative justice diversion programs.

This bill conditions the establishment of this program on appropriation of money for this purpose by the Legislature.

This bill provides the following definitions:

- “Amends” means a satisfaction given by a responsible party to the party injured for a wrong committed.
- “Board” means the BSCC.
- “Community stakeholders” means representatives from the probation department, the district attorney’s office, the public defender’s office, an indigent defense panel, the county health and human services department or behavioral health department, counselors who are either county employees or under contract with the county for this program and who provide services to the crime victim and the responsible party, and representatives from one or more community-based organizations who provide services within the program.
- “Diversion” means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow a responsible party to participate in a restorative justice program.
- “Responsible party” means a defendant who is participating in a restorative justice program.
- “Restorative justice program” or “program” means a program in which a responsible party, in a facilitated setting, meets with a victim, or a surrogate chosen to stand in for a victim, and directly addresses the harms the person has caused and makes amends. The victim, the responsible party, and community stakeholders work together to shape the amends with which the responsible party is required to comply.

This bill requires grant recipients to be determined and grants to be distributed on or before November 1, 2020.

This bill states that BSCC shall reserve from any appropriation for this program an amount sufficient to fund an independent evaluation of the pilot program’s effectiveness in reducing recidivism and bringing satisfaction to the victims of crime.

This bill provides, subject to the conditions stated in this bill, a county participating in this pilot program shall determine the best way to implement the program in its county, establish a multidisciplinary team of community stakeholders that shall establish eligibility requirements, encourage participation in the program, review particular cases, assist in shaping the consequences for the responsible party, and assess the impact of the program.

This bill requires a county that receives a grant to start the restorative justice program as of January 1, 2021 and operate as follows:

- The community stakeholders shall develop a plan for services for all responsible parties in the program, including, but not limited to, housing, employment, and education services.

- Upon the filing of an accusatory complaint, an eligible responsible party and the victim of the crime shall be given information regarding the restorative justice program and be offered the opportunity to participate in the program. A responsible party shall not participate without the consent of their attorney, the consent of the victim when there is an identified victim, and the approval of the prosecuting attorney.
- A defendant is eligible to participate if there is present capacity in the program and if the defendant demonstrates the ability to benefit from services, including, but not limited to, counseling, educational, vocational, and supervision services.
- A defendant shall not be denied participation in the program based on the accusation that the defendant has committed a serious or violent felony or the defendant's past criminal record, however a defendant charged with any of the following offenses shall be ineligible:
 - Murder or voluntary manslaughter;
 - A lewd or lascivious act on a child under 14 years of age;
 - Assault with intent to commit rape, sodomy, or oral copulation;
 - Commission of rape or sexual penetration in concert with another person;
 - Continuous sexual abuse of a child;
 - A violation involving weapons of mass destruction; or,
 - A sex offense which is classified as a Tier 2 or Tier 3 registration offense.
- Upon placement in the program, criminal proceedings against the responsible party shall be suspended for up to 36 months, and as a condition of participating, the responsible party shall waive the right to a speedy trial or a speedy preliminary hearing.
- If the court determines that the release of a responsible party who is otherwise eligible to participate in the program would present an unacceptable risk to public safety, the court may impose a period of confinement in the county jail, not to exceed six months, electronic monitoring, or other conditions of release while the responsible party is participating in the program.
- During the time in which the responsible party is participating in the restorative justice program, the district attorney shall update the court at least once every six months on the status of the case.
- The sheriff of each participating county shall make accommodations to allow a responsible party who is in custody to participate in the program, including allowing the responsible party to participate in rehabilitative programming, to meet with program representatives, and to receive services. After review, the court may impose additional time in custody, may order the responsible party released from custody, or may reduce the conditions of pretrial detention if the court finds that the responsible party is performing satisfactorily in the program.

This bill requires the following interactions between the victim and the responsible party:

- Following counseling and other preparation of the parties, the responsible party shall encounter, in a facilitated setting, the victims, or surrogates chosen by the community stakeholders to stand in for the victims, and directly address the harms the responsible party has caused;
- The victim, or a surrogate chosen to stand in for the victim, shall be given the opportunity to address the responsible party and share the impact of the crime on the victim's life;
- The victim shall be given the opportunity to assist in the shaping of the amends with which the responsible party is required to comply; and,
- The responsible party, the victim, and representatives of community stakeholders shall jointly agree on a restorative justice plan that will bring amends to the victim and the community and help the responsible party make changes that will prevent the commission of additional crimes.

This bill states that statements made by the responsible parties, or information contained in program reports or regarding the responsible party's participation in the program shall not be admissible in any action or proceeding.

This bill limits the application of a restorative justice diversion program to cases in which there is an identifiable victim.

This bill provides that if the responsible party has performed satisfactorily in the program, at the end of the period required for the program by the court, on a motion of one of the parties, the court shall dismiss the criminal charges.

This bill states that a court may conclude that the responsible party has performed satisfactorily if the responsible party has substantially complied with the requirements of the program and the victim is satisfied that the responsible party has made amends consistent with the terms of the restorative justice plan.

This bill states that if the charges are dismissed, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest.

This bill prohibits the arrest record or any record generated as a result of the responsible party's application for or participation in the program, shall not, without the responsible party's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

This bill provides that if the community stakeholders conclude that the responsible party is performing unsatisfactorily in the program or that the responsible party is not benefitting from the services in the program, a motion may be made to terminate participation and a hearing shall be conducted to determine whether trial proceedings shall resume.

This bill requires BSCC to establish requirements for all counties participating in the program to collect consistent data and to report this data to the board or to the qualified research organization designated by the board to analyze the data collected and issue a report on the findings.

This bill states that the data and report shall contain information including, but not limited to, the following:

- Self-reported crime victim satisfaction in the program collected at the completion of the program;
- Self-reported crime victim satisfaction in a traditional court proceeding for similar crimes collected upon the conviction of a defendant;
- Outcome-related data, including employment, housing, and education for program participants, as compared to defendants who are convicted following a plea or trial;
- Comparison of sentencing outcomes for program participants to defendants sentenced for comparable crimes;
- The impact on opportunities for community supervision monitoring;
- Twelve-month, 24-month, 3-year, and 5-year occurrences of crimes for program participants;
- Twelve-month, 24-month, 3-year, and 5-year occurrences of crimes for defendants convicted of similar crimes in the adult system within the county; and,
- Information regarding discrimination or biases regarding court determinations of whether the responsible party has substantially complied with the requirements of the restorative justice program.

This bill requires the report and analysis required by this section shall be submitted to the Chair of the Assembly Public Safety Committee and the Chair of the Senate Public Safety Committee no later than December 31, 2025.

This bill's provisions sunset on January 1, 2026.

COMMENTS

1. Need for This Bill

According to the author of this bill:

In cases in which incarceration does not serve the public interest, SB 678 (Glazer) would provide a safe, effective option that seeks to repair rather than sever communal and family ties in the aftermath of serious crime. The program therefore aims to address the underlying causes of violence and help foster a long-term process of transformation for individuals and communities.

SB 678 (Glazer) places survivors of crime at the center of the restorative justice process by having the responsible party acknowledge the harm inflicted and start the process of making amends while in the program. This program is also intended to reduce recidivism rates by having responsible parties come face-to-face with those they have harmed.

Restorative Justice is a centuries-old alternative to incarceration that brings victims and offenders together in a mediated setting so that the offender can make amends directly to the injured party and the injured party can receive true justice.

This alternative is used by communities in our state today who feel left out of the government-run legal system. This bill would explore the potential of restorative justice to transform individuals and our criminal justice system.

2. Restorative Justice

This bill authorizes the implementation of restorative justice programs in up to three counties that receive grant funding through BSCC for this purpose.

Restorative justice, a relatively recent development in the criminal justice system, is making a bid to follow drug courts as an experiment that eventually becomes a regular part of the mainstream experience of justice. Although programs that comprise portions of the restorative justice ideal have existed for many years, the concept of a holistic umbrella under which restorative programs can thrive is relatively new.

In short, restorative justice is a process by which the harm done to victims of crime can be reduced or repaired. This is generally a cooperative effort between victim and defendant in which defendants are made aware of the personal impact of their criminal actions. In addition, the victim of the crime has an opportunity to work with the defendant in an attempt to dissuade the defendant from committing similar crimes in the future.

In practice, restorative justice typically involves two major phases: opportunities for victims of crime to communicate with defendants, and opportunities for the community to impact the sentence and encourage the defendant to make different choices in the future. According to Restorative Justice Online, a restorative justice evangelism and resource guide, these phases often include victim/defendant mediation, victim impact circles and conferences, victim assistance by or with the defendant, monetary and nonmonetary restitution, and comprehensive community service opportunities. Many of these programs exist individually throughout the country but lack a central theme to drive and manage them cohesively within a given jurisdiction. Restorative justice attempts to remedy this.

(Longman, *Making a case for restorative justice*, American Bar Association (June 28, 2017).)

3. Effect of this Legislation

This bill authorizes BSCC to provide grants to three counties to establish a restorative justice pilot program for five years. The restorative justice program would be pre-plea with criminal proceedings suspended for up to 36 months. Defendants can only participate in the program if

their attorney, the prosecuting attorney and the victim consents to the defendant's participation in the program. Community stakeholders are responsible for developing a plan for services for all responsible parties in the program, including, but not limited to, housing, employment, and education services. The community stakeholders include representatives from the probation department, the district attorney's office, the public defender's office, an indigent defense panel, the county health and human services department or behavioral health department, counselors who are either county employees or under contract with the county for this program and who provide services to the crime victim and the responsible party, and representatives from one or more community-based organizations who provide services within the program.

The restorative justice program allows the victim to address the defendant in a facilitated setting and to help shape the consequences and restorative justice plan for the defendant. This interaction can also provide the victim the opportunity to ask questions of the defendant and perhaps gain closure or emotional healing. The defendant can also see the victim face-to-face and understand the impact of their actions. In instances where a victim may want the defendant to go through the restorative justice program rather than traditional criminal proceedings, but does not wish to meet with or address the responsible party directly, a surrogate may be chosen to stand in for the victim.

The district attorney is responsible for providing progress reports of the defendant to the court. If the defendant, or responsible party, successfully participates in the restorative justice program the charges are dismissed and the records are not to be used against the defendant without their consent. If the defendant is not performing satisfactorily in the program, the court may terminate participation in the program and resume criminal proceedings after a hearing. At the end of the pilot program, a report shall be submitted to the Legislature evaluating the program by analyzing certain data including victim satisfaction, recidivism rates of participants, and comparison of sentencing outcomes for participants versus defendants who go through the traditional criminal justice program.

4. In-Custody Provision

The bill contains a provision that authorizes the court, when it believes that a defendant may pose an unreasonable risk to public safety but may still be appropriate for the restorative justice program, to order the defendant to be in custody for up to 6 months and after review, the court may impose additional time in custody. The bill states that a person who is in custody shall be allowed to participate in rehabilitative programming, to meet with program representatives, and to receive services.

It is unclear whether this requirement authorizes a person to be released to participate in programs, meet with program representatives, and receive programs or if these things must occur within the jails. If the court has already deemed the person to be an unreasonable risk to public safety so that they should not be released, should the bill be clarified to state that the programming and services shall be in-custody?

There appears to be no limit to the length of custody that a person may have to serve which may end up being more time than what the person may serve if convicted of the charged crime. Should a limit be placed on the length of custody that the court may impose?

5. Argument in Support

According to Ella Baker Center for Human Rights:

Restorative Justice is a centuries-old alternative to incarceration that brings victims and offenders together in a mediated setting so that the offender can make amends directly to the injured party and the injured party can receive true justice. Restorative justice has been practiced in many centuries around the world, by indigenous peoples in America, and by communities in our cities that feel shut out of the government-run justice system. The bill would bring those informal and underground systems into the light and explore their potential to transform our broken criminal justice system.

This program puts the survivor at the center of the process. If the survivors of those crimes consent, a case would be diverted early on in the court proceeding into a program designed to repair the harm suffered. This program offers survivors an opportunity to have the harm they have suffered acknowledged and redressed, to participate in shaping the consequences for the harm they survived, and to develop strategies to cope with trauma suffered.

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