

AMENDED IN ASSEMBLY MARCH 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1849

**Introduced by Assembly Member Carter
(Coauthor: Assembly Member Perea)**

February 22, 2012

An act to add Section 237 to, and to add and repeal Section 238 of, the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1849, as amended, Carter. Juveniles: restorative justice.

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. Further, existing law sets forth the purpose of juvenile court law and provides that a minor under the juvenile court jurisdiction as a consequence of delinquent conduct shall receive care, treatment, and guidance that holds the minor accountable for his or her behavior, is appropriate for his or her circumstances, and is consistent with his or her best interest and the best interest of the public.

This bill makes findings and declarations related to restorative justice programs. The bill would authorize the juvenile court of a county to adopt a restorative justice program to address the needs of minors, victims, and the community. The bill would require a restorative justice program adopted by a juvenile court to be implemented through a restorative justice protocol developed by the court with the prosecutor, public defender, and, when possible, representatives from other interested groups. Under this bill, certain enumerated offenses would not be eligible for inclusion within a restorative justice program. Additionally, this bill would authorize a court not to refer an eligible

minor to a restorative justice program if the court determines that the program is not in the minor’s best interest. The bill would require the Administrative Office of the Courts to establish restorative justice pilot programs in 5 or more counties. ~~Those counties would begin implementing restorative justice programs by January 1, 2014, provided that the presiding judge in a selected county supports participation in the pilot program.~~ Under the bill, ~~by July 1, 2013,~~ the Administrative Office of the Courts would be required to ~~report~~ *make a recommendation* to the Judicial Council which ~~counties have been selected by July 1, 2013,~~ *and courts should be selected for the program.* ~~After the Judicial Council selects the participating courts, the courts would begin implementing restorative justice programs by January 1, 2014.~~ *The bill would also require the Administrative Office of the Courts to report to the Judicial Council on the performance of the pilot programs by July 1, 2018.*

This bill would prohibit the use of General Fund moneys to fund these pilot programs.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is the intent of the Legislature that principles of restorative
- 4 justice be incorporated into juvenile justice proceedings, consistent
- 5 with the underlying rehabilitative purpose of the Juvenile Court
- 6 Law (Chapter 2 (commencing with Section 200) of Part 1 of
- 7 Division 2 of the Welfare and Institutions Code) and the
- 8 commitment of the Victims’ Bill of Rights Act of 2008 (subdivision
- 9 (b) of Section 28 of Article I of the California Constitution) to due
- 10 process and restitution. Restorative justice principles recognize
- 11 the following needs:
- 12 (1) Community protection from delinquent conduct through a
- 13 continuum of appropriate responses that protects citizens and
- 14 victims.
- 15 (2) Accountability of the minor through restoration of the losses
- 16 experienced by the victim and the community.

1 (3) Competency development of the minor through the provision
2 of treatment, education, and skill building needed for success in
3 the community.

4 (b) Crime results in injury to the victim, the community, and
5 the offender. Whenever appropriate, the juvenile justice system
6 should seek to repair those injuries, taking into account the age,
7 mental capacity, and developmental maturity of the minor, the
8 nature of the offense, and the resources available to the minor to
9 accomplish the goals of Section 237 of the Welfare and Institutions
10 Code, enacted by Section 2 of this act. Victims and communities
11 should be actively involved in helping to develop programs and
12 services, and in ensuring accountability through helping individual
13 minors to understand the impact of their actions. These activities
14 shall be pursued in a manner consistent with the minor’s right to
15 due process and the right of victims and minors under Section
16 676.5 of the Welfare and Institutions Code.

17 (c) Nothing in this act changes the fundamental intention of the
18 Juvenile Court Law that individualized care, treatment, and
19 guidance be provided to each minor coming to the attention of the
20 juvenile court for alleged delinquency.

21 (d) Restorative justice principles, where applied, have improved
22 public safety by changing behaviors that lead juvenile offenders
23 to repeat criminal activity. Mediation processes that implement
24 restorative justice principles have been shown to reduce recidivism
25 rates among juvenile offenders to less than 6 percent, as compared
26 to an average rate of between 15 and 20 percent without mediation.

27 SEC. 2. Section 237 is added to the Welfare and Institutions
28 Code, to read:

29 237. (a) Consistent with the rehabilitative purpose of this
30 chapter, the juvenile court in a county may adopt a restorative
31 justice program to address the needs of minors, victims, and the
32 community.

33 (b) For the purposes of this section, an “eligible minor” is a
34 person under 18 years of age at the time that the offense alleged
35 within the petition is alleged to have been committed.

36 (c) The restorative justice program shall be implemented through
37 a restorative justice protocol developed by the juvenile court in
38 conjunction with the prosecutor, public defender, probation
39 department, and, when possible, representatives from victims’
40 groups, law enforcement, community organizations and service

1 providers, restorative justice groups, and clinicians with expertise
2 in adolescent development. The protocol shall address all of the
3 following:

4 (1) Policies and protocols to be implemented in cases utilizing
5 a restorative justice model.

6 (2) Particular offenses, or the criteria to determine those
7 offenses, that shall be eligible or ineligible for inclusion within
8 the restorative justice program, notwithstanding subdivision (g).

9 (3) The rights of minors.

10 (4) Confidentiality issues.

11 (5) Timeliness for case processing.

12 (6) The roles of the court, prosecutor, and defense counsel in
13 relation to the restorative justice program.

14 (7) The process for evaluating compliance with the program.

15 (8) The process for handling any failure to adhere to the
16 program.

17 (d) The program in each case shall seek to repair the harm to
18 the victim, the minor, and the community caused by the behavior
19 bringing the minor before the juvenile court. The program
20 requirements shall be tailored to the age, mental capacity, and
21 developmental maturity of the minor, the nature of the offense,
22 and the resources available to the minor to accomplish the goals
23 of this section.

24 (e) All eligible minors shall be referred to a restorative justice
25 program as part of the court's order for informal supervision
26 pursuant to Section 654.2, the court's order for nonwardship
27 probation under subdivision (a) of Section 725, the court's
28 disposition order under Section 727, or the court's order for
29 deferred entry of judgment under Section 790, unless the court
30 determines that the restorative justice program is not in the best
31 interest of the minor, in which case the court shall provide for other
32 appropriate disposition of the case.

33 (f) If the court orders the care, custody, and control of the minor
34 to be under the supervision of the probation officer for foster care
35 placement pursuant to subdivision (a) of Section 727, the minor
36 may be referred to the restorative justice program only as follows:

37 (1) To the extent that participation in the program is consistent
38 with both the minor's case plan developed pursuant to Section
39 706.5 and any provision of reunification services to the minor and
40 his or her family pursuant to Section 727.2.

1 (2) To the extent that participation in the program does not result
2 in the loss of federal financial participation for the placement of
3 the minor.

4 (g) Because of their serious nature, the following offenses shall
5 not be eligible for inclusion in the restorative justice program:

6 (1) Offenses that include the personal possession, use, or
7 discharge of a firearm.

8 (2) Offenses described within subdivision (b) of Section 707.

9 (3) Offenses described within subdivision (c) of Section 290 of
10 the Penal Code.

11 (4) Offenses described within Section 186.22 of the Penal Code.

12 (h) In order to participate in the restorative justice program, the
13 minor must, notwithstanding a formal admission, accept
14 responsibility for the offense and agree to cooperate with the
15 restorative justice process.

16 SEC. 3. Section 238 is added to the Welfare and Institutions
17 Code, to read:

18 238. (a) The Administrative Office of the Courts shall establish
19 a pilot program to adopt restorative justice principles, policies,
20 and protocols under Section 237, in five or more counties.

21 (b) The Administrative Office of the Courts shall select counties
22 for involvement in the pilot program that are of varying sizes and
23 collectively include diverse populations. The selection of counties
24 shall reflect the presence of supportive and collaborative juvenile
25 justice partner agencies, the capacity of the court to manage and
26 mediate cases, the scope of utilization that is proposed, and
27 previous attempts to adopt restorative justice programs. *A court*
28 *shall not be selected for involvement unless the presiding judge in*
29 *that county's superior court supports participation in the pilot*
30 *program.*

31 (c) In working with the courts and partner agencies, the
32 Administrative Office of the Courts shall seek to provide guidance
33 on best practices in implementing restorative justice programs.

34 (d) On or before July 1, 2013, the Administrative Office of the
35 Courts shall ~~report~~ *make a recommendation* to the Judicial Council
36 *regarding which counties* ~~have been~~ *should be* selected for
37 involvement in the pilot program. ~~Courts~~ *After the Judicial Council*
38 *determines which courts will be selected to participate in the pilot*
39 *program, courts* in those counties shall begin implementing

1 restorative justice programs under Section 237, no later than
2 January 1, 2014.

3 (e) On or before July 1, 2018, the Administrative Office of the
4 Courts shall report to the Judicial Council on the performance of
5 the restorative justice programs in the counties selected for
6 involvement in the pilot program. The report shall, at a minimum,
7 address all of the following:

8 (1) A statistical analysis of the outcomes of the pilot program,
9 comparing recidivism rates among participants in those programs
10 with those of nonparticipants. This analysis shall consider sustained
11 violations of probation and new sustained petitions.

12 (2) A cost-benefit analysis of the adoption of restorative justice
13 programs.

14 (3) A statistical analysis of satisfaction with the restorative
15 justice programs on the part of victims, offenders, and other parties
16 in the cases involved.

17 (4) A comparative analysis of restitution collection and hours
18 of community service between offenders who participated in
19 restorative justice programs and those who did not.

20 (5) The percentage of cases referred to restorative justice
21 programs that were mediated to completion as prescribed by the
22 court.

23 (6) The percentage of eligible cases that were appropriately
24 referred to a restorative justice program.

25 (f) No General Fund moneys shall be used to fund a restorative
26 justice program adopted pursuant to this section. A restorative
27 justice program shall be adopted in a county only after the juvenile
28 court in that county has obtained funds for these purposes.

29 (g) This section shall remain in effect only until January 1, 2019,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before January 1, 2019, deletes or extends that date.