

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 introduced, 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. Under the bill, the Administrative Office of the Courts would be required to report to the Judicial Council which counties have been selected by July 1, 2013, and 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.
- 17 (3) Competency development of the minor through the provision
- 18 of treatment, education, and skill building needed for success in
- 19 the community.
- 20 (b) Crime results in injury to the victim, the community, and
- 21 the offender. Whenever appropriate, the juvenile justice system
- 22 should seek to repair those injuries, taking into account the age,
- 23 mental capacity, and developmental maturity of the minor, the
- 24 nature of the offense, and the resources available to the minor to
- 25 accomplish the goals of Section 237 of the Welfare and Institutions

Code, enacted by Section 2 of this act. Victims and communities should be actively involved in helping to develop programs and services, and in ensuring accountability through helping individual minors to understand the impact of their actions. These activities shall be pursued in a manner consistent with the minor's right to due process and the right of victims and minors under Section 676.5 of the Welfare and Institutions Code.

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

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

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

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

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

(c) The restorative justice program shall be implemented through a restorative justice protocol developed by the juvenile court in conjunction with the prosecutor, public defender, probation department, and, when possible, representatives from victims' groups, law enforcement, community organizations and service providers, restorative justice groups, and clinicians with expertise in adolescent development. The protocol shall address all of the following:

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

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

(3) The rights of minors.

1 (4) Confidentiality issues.

2 (5) Timeliness for case processing.

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

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

6 (8) The process for handling any failure to adhere to the
7 program.

8 (d) The program in each case shall seek to repair the harm to
9 the victim, the minor, and the community caused by the behavior
10 bringing the minor before the juvenile court. The program
11 requirements shall be tailored to the age, mental capacity, and
12 developmental maturity of the minor, the nature of the offense,
13 and the resources available to the minor to accomplish the goals
14 of this section.

15 (e) All eligible minors shall be referred to a restorative justice
16 program as part of the court's order for informal supervision
17 pursuant to Section 654.2, the court's order for nonwardship
18 probation under subdivision (a) of Section 725, the court's
19 disposition order under Section 727, or the court's order for
20 deferred entry of judgment under Section 790, unless the court
21 determines that the restorative justice program is not in the best
22 interest of the minor, in which case the court shall provide for other
23 appropriate disposition of the case.

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

28 (1) To the extent that participation in the program is consistent
29 with both the minor's case plan developed pursuant to Section
30 706.5 and any provision of reunification services to the minor and
31 his or her family pursuant to Section 727.2.

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

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

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

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

1 (3) Offenses described within subdivision (c) of Section 290 of
2 the Penal Code.

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

4 (h) In order to participate in the restorative justice program, the
5 minor must, notwithstanding a formal admission, accept
6 responsibility for the offense and agree to cooperate with the
7 restorative justice process.

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

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

13 (b) The Administrative Office of the Courts shall select counties
14 for involvement in the pilot program that are of varying sizes and
15 collectively include diverse populations. The selection of counties
16 shall reflect the presence of supportive and collaborative juvenile
17 justice partner agencies, the capacity of the court to manage and
18 mediate cases, the scope of utilization that is proposed, and
19 previous attempts to adopt restorative justice programs.

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

23 (d) On or before July 1, 2013, the Administrative Office of the
24 Courts shall report to the Judicial Council which counties have
25 been selected for involvement in the pilot program. Courts in those
26 counties shall begin implementing restorative justice programs
27 under Section 237, no later than January 1, 2014.

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

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

37 (2) A cost-benefit analysis of the adoption of restorative justice
38 programs.

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

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

7 (5) The percentage of cases referred to restorative justice
8 programs that were mediated to completion as prescribed by the
9 court.

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

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

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