

The House Committee on Judiciary offers the following substitute to HB 382:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 24 of the Official Code of Georgia Annotated, relating to
2 privileges, so as to provide a privilege for participation in victim centered programs; to
3 provide for definitions; to provide for limitations; to provide for civil immunity for
4 facilitators in certain circumstances; to provide for related matters; to repeal conflicting laws;
5 and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 5 of Title 24 of the Official Code of Georgia Annotated, relating to privileges, is
9 amended by revising paragraphs (8) and (9) of and adding a new paragraph to subsection (a)
10 of Code Section 24-5-501, relating to certain communications privileged, to read as follows:

11 "(8) Communications between or among any psychiatrist, psychologist, licensed clinical
12 social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and
13 family therapist, and licensed professional counselor who are rendering psychotherapy
14 or have rendered psychotherapy to a patient, regarding that patient's communications
15 which are otherwise privileged by paragraph (5), (6), or (7) of this subsection; ~~and~~

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- 16 (9) Communications between accountant and client as provided by Code Section
17 43-3-29; and
18 (10) Communications made in the context of victim centered programs, including, but
19 not limited to, restorative justice practices and sanctioned victim-offender dialogues as
20 provided for in Code Section 24-5-511."

21 **SECTION 2.**

22 Said chapter is further amended by adding a new Code section to read as follows:

23 "24-5-511.

24 (a) As used in this Code section, the term:

25 (1) 'Circle' means a versatile restorative practice that can be used proactively to develop
26 relationships and build community or reactively to respond to wrongdoing, conflicts, and
27 problems.

28 (2) 'Conference' means a structured meeting between offenders and victims, and, if
29 desired, other related parties such as family and friends, in which such persons deal with
30 the consequences of a crime or wrongdoing and decide how best to repair the harm.

31 (3) 'Facilitator' means a person who is trained to facilitate a restorative justice practice
32 or victim-offender dialogue.

33 (4) 'Party' means a person, including a facilitator, a victim, an offender, a community
34 member, and any other participant, who voluntarily consents to participate with others
35 in a restorative justice practice or victim-offender dialogue.

36 (5) 'Proceeding' means any legal action subject to the laws of this state, including, but
37 not limited to, civil, criminal, juvenile, or administrative hearings.

38 (6) 'Restorative justice practice' or 'practice' means a gathering, such as a conference or
39 circle, in which parties collectively gather to identify and repair harm to the extent
40 possible, address trauma, reduce the likelihood of further harm, and strengthen

41 community ties by focusing on the needs and obligations of all parties involved through
42 a participatory process.

43 (7) 'Victim-offender dialogue' or 'dialogue' means a process in which the victim of a
44 crime, or his or her surviving family members, and the offender who committed the crime
45 meet in a secure setting. Such dialogues shall be facilitated by a facilitator with the goal
46 of identifying and repairing harm to the extent possible, addressing trauma, and reducing
47 the likelihood of further harm.

48 (b)(1) Any communication or action made at any time while preparing for or
49 participating in a restorative justice practice or a victim-offender dialogue or as a
50 follow-up to that practice or dialogue, or the fact that the practice or dialogue has been
51 planned or convened, shall be privileged and shall not be referred to, used, or admitted
52 in any civil, criminal, juvenile, or administrative proceeding unless such privilege is
53 waived. Such waiver may be made during the proceeding or in writing by the party or
54 parties protected by the privilege. Privileged information shall not be subject to
55 discovery or disclosure in any judicial or extrajudicial proceeding and shall not be subject
56 to public inspection as provided by Article 4 of Chapter 18 of Title 50.

57 (2) Parties of a restorative justice practice or victim-offender dialogue may refuse to
58 disclose communications relating to a restorative justice practice or victim-offender
59 dialogue and prevent others from disclosing such communications.

60 (3) Any waiver of privilege shall be limited to the participation and communications of
61 the waiving party only, and the participation or communications of any other participant
62 shall remain privileged unless waived by such other participant.

63 (c) Evidence that is otherwise admissible or subject to discovery shall not become
64 inadmissible or protected from discovery solely because it was discussed or used in a
65 restorative justice practice or victim-offender dialogue.

66 (d) The privilege afforded by this Code section shall not extend to a situation in which:

67 (1) There are threats of imminent violence to self or others; or

68 (2) The facilitator believes that a child is being abused or that the safety of any party or
69 other person is in danger.

70 A court, tribunal, or administrative body may require a report on a restorative justice
71 practice or victim-offender dialogue, but such report shall be limited to the fact that a
72 practice or dialogue has taken place and whether further practices or dialogues are
73 expected.

74 (e) The privilege created by this Code section shall not be grounds to fail to comply with
75 mandatory reporting requirements as set forth in Code Section 19-7-5 or Chapter 5 of Title
76 30, the 'Disabled Adults and Elder Persons Protection Act.'

77 (f) No facilitator shall be held liable for civil damages for any statement, action, omission,
78 or decision made in the course of a restorative justice practice or victim-offender dialogue
79 unless that statement, action, omission, or decision is:

80 (1) Grossly negligent and made with malice; or

81 (2) Made with willful disregard for the safety or property of any party to the restorative
82 justice practice or victim-offender dialogue."

83 **SECTION 3.**

84 All laws and parts of laws in conflict with this Act are repealed.