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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 38

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO VICTIM-OFFENDER MEDIATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 95, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 95. Victim-Offender ~~Mediation~~ Alternative Case Resolution.

Section 2. Amend § 9501, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9501. Purpose.

(a) The General Assembly finds and declares that:

(1) The resolution of felony, misdemeanor and juvenile delinquent ~~disputes-offenses~~ can be costly and complex in a judicial setting where the parties involved are necessarily in an adversary posture and subject to formalized procedures; and

(2) Victim-offender ~~mediation programs~~ alternative case resolutions can meet the needs of Delaware's citizens by providing forums in which persons may voluntarily participate in the resolution of certain criminal offenses in an informal and less adversarial atmosphere.

(b) It is the intent of the General Assembly that each program established ~~pursuant to~~ under this chapter do all of the following:

(1) ~~Stimulate the establishment of~~ Establish and use of victim-offender ~~mediation~~ alternative case resolution programs to help meet the need for alternatives to the courts for the resolution of certain criminal offenses, whether before or after ~~adjudication~~ adjudication.

(2) Encourage continuing community participation in the development, administration and oversight of local victim-offender ~~mediation programs~~ alternative case resolution.

(3) Offer structures for victim-offender ~~mediation~~ alternative case resolution which may serve as models for programs in other ~~communities~~ and communities.

(4) ~~Serve a specific community or locale and resolve certain criminal offenses that arise within that community or locale. [Repealed.]~~

Section 3. Amend § 9502, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9502. Program funding; operation; supervision.

(a) There is hereby established a Victim-Offender ~~Mediation~~ Alternative Case Resolution Committee to be composed of the Attorney General, Chief Defender, ~~Chief Magistrate~~, Chief Judge of the Court of Common Pleas, ~~Chair~~ Director of the Criminal Justice Council, ~~State Court Administrator~~ and the Chief Judge of Family Court or their designees to administer this chapter. ~~No funds shall~~ Funds may not be awarded or a program approved without the approval of the Victim-Offender ~~Mediation~~ Alternative Case Resolution Committee.

(b) To be eligible for state funds, a program must do all of the following:

(1) Be operated by a 501(c)(3) [26 U.S.C. § 501(c)(3)] organization in ~~Delaware~~; Delaware.

(2) Provide neutral mediators who have received training in conflict resolution ~~techniques~~; techniques.

(3) Comply with this chapter and the rules adopted by the Victim-Offender ~~Mediation Committee~~; Alternative Case Resolution Committee.

(4) Provide victim-offender ~~mediation~~ alternative case resolution in felony, misdemeanor and juvenile delinquency cases without cost to the ~~participants~~; and participants.

(5) At the conclusion of the ~~mediation~~ alternative case resolution process provide a written agreement or decision to the referral source setting forth the settlement of the issues and future responsibilities of each participant.

(c) Each program that receives funds under this chapter must be operated under a contract with the Victim-Offender ~~Mediation~~ Alternative Case Resolution Committee and must comply with this chapter.

(d) An organization applying to the Victim-Offender ~~Mediation~~ Alternative Case Resolution Committee for funding is to include all of the following information in its application:

(1) Cost of operating the victim-offender mediation program, including the compensation of ~~employees~~; employees.

(2) Description of the proposed area of service and number of participants expected to be ~~served~~; served.

(3) Proof of nonprofit ~~status~~; and status.

(4) ~~Charter of incorporation~~. [Repealed.]

(e) The Chair of the Victim-Offender ~~Mediation~~ Alternative Case Resolution Committee or the Chair's designee may inspect, examine and audit the fiscal affairs and 990 Forms of victim-offender ~~mediation~~ alternative case resolution programs.

(f) A program operated under this chapter is not a state agency or an instrumentality of the State. Employees and volunteers of a program are not employees of the State.

(g) A program that receives funds from the Victim-Offender ~~Mediation~~ Alternative Case Resolution Committee under this chapter must annually provide the Victim-Offender ~~Mediation~~ Alternative Case Resolution Committee with statistical data regarding all of the following:

(1) The operating ~~budget;~~ budget.

(2) The number of case referrals, categories, or types of cases ~~referred;~~ referred.

(3) The number of parties ~~served;~~ served.

(4) The number of cases ~~resolved;~~ resolved.

(5) The nature of the ~~resolution, amount,~~ resolution and amount and type of restitution to the victim ~~and/or community;~~ or community.

(6) The rate of ~~compliance;~~ compliance of the accused with the agreement of the parties.

(7) The length of total case processing time by the victim-offender ~~mediation program;~~ alternative case resolution program.

(8) ~~Community~~ If applicable, community service hours agreed to, ~~if applicable;~~ and to and community service hours completed.

(9) ~~Community service hours completed, if applicable.~~ [Repealed.]

~~The data shall maintain the confidentiality and anonymity of all mediation participants.~~

Section 4. Amend § 9503, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9503. Confidentiality.

~~All memoranda, work notes or products, or case files or programs established under this chapter are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the program for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the mediation process by any participant, mediator or any other person is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding unless all parties to the~~

81 ~~communication waive the privilege. The foregoing privilege and limitation of evidentiary use does not apply to any~~
82 ~~communication of a threat that injury or damage may be inflicted on any person or on the property of a party to the dispute,~~
83 ~~to the extent the communication may be relevant evidence in a criminal matter. Nothing in this section shall prevent the~~
84 ~~Victim-Offender Mediation Committee from obtaining access to any information it deems necessary to administer this~~
85 ~~chapter.~~

86 (a) All memoranda, work notes or products, case files or programs, and data collected under this chapter are
87 confidential and privileged. This information is not subject to disclosure in any judicial or administrative proceeding.

88 (b) Confidentiality under subsection (a) of this section may be waived if a court or administrative tribunal
89 determine that the materials were submitted by a participant to the program for the purpose of avoiding discovery of the
90 material in a subsequent proceeding.

91 (c) Any communication relating to the subject matter of the resolution made during the mediation process by any
92 participant, mediator, or any other person is a privileged communication. It is not subject to disclosure in any judicial or
93 administrative proceeding unless all parties to the communication waive the privilege.

94 (d) To the extent that the communication in subsection (c) of this section may be relevant evidence in a criminal
95 matter, the privilege and limitation of evidentiary use does not apply to any communication of a threat that injury or
96 damage may be inflicted on any person or on the property of a party to the dispute.

97 (e) Nothing in this section prevents the Victim-Offender Alternative Case Resolution Committee from obtaining
98 access to any information it deems necessary to administer this chapter.

99 Section 5. Amend § 9504, Title 11 of the Delaware Code by making deletions as shown by strike through and
100 insertions as shown by underline as follows:

101 § 9504. Eligibility.

102 ~~No offender shall be admitted to the program unless the Attorney General certifies that the offender is appropriate~~
103 ~~to the program, regardless of any criteria established under any program or this chapter.~~

104 ~~Any person who voluntarily enters a mediation process at a victim-offender mediation program established under~~
105 ~~this chapter may revoke that person's consent, withdraw from mediation and seek judicial or administrative redress prior to~~
106 ~~reaching a written agreement. No legal penalty, sanction or restraint may be imposed upon the person for such withdrawal.~~

107 (a) An offender may not be admitted to the program unless the Attorney General certifies that the offender is
108 appropriate for the program, regardless of any criteria established under any program or this chapter.

109 (b) A person who voluntarily enters an alternative case resolution process at a victim-offender alternative case
110 resolution program established under this chapter may revoke that person's consent, withdraw from the alternative case

111 resolution process, and seek judicial or administrative redress before reaching a written agreement. A legal penalty,
112 sanction, or restraint may not be imposed on the person for such withdrawal.

113 Section 6. Amend § 9505, Title 11 of the Delaware Code by making deletions as shown by strikethrough and
114 insertions as shown by underline as follows:

115 § 9505. Immunity.

116 (a) Members of the Victim-Offender ~~Mediation~~ Alternative Case Resolution Committee or board of directors of
117 an organization with a victim-offender ~~mediation~~ alternative case resolution program are immune from suit in any civil
118 action based upon any proceedings or other official acts performed in good faith as members of the board.

119 (b) State employees and employees and volunteers of a victim-offender ~~mediation~~ alternative case resolution
120 program are immune from suit in any civil action based on any proceedings or other official act performed in their capacity
121 as employees or volunteers, except in cases of wilful or wanton misconduct.

122 (c) A victim-offender ~~mediation~~ alternative case resolution program is immune from suit in any civil action based
123 on any of its proceedings or other official acts performed by its employees, ~~volunteers-volunteers,~~ or members of its board
124 of directors, ~~except (1) in cases of wilful or wanton misconduct by its employees or volunteers, and (2) in cases of official~~
125 ~~acts performed in bad faith by members of its board.~~ except in the following cases:

126 (1) Wilful or wanton misconduct by its employees or volunteers.

127 (2) Official acts performed in bad faith by members of its board.

SYNOPSIS

The Victim-Offender Mediation Committee was established by the 138th General Assembly in 1996. There have been no significant changes to the statute since then. The composition of the Committee and the nature of the services provided by vendors selected to provide victim-offender mediation services, however, has changed since the program's inception in 1996. For example, the Court of Common Pleas is the principal beneficiary of the program but is not a Committee member.

This Act updates the composition of the Committee; renames the Committee to acknowledge the broader scope of services provided by vendors selected by the Committee to run alternative case resolution services; updates criteria used to select vendors and reporting requirements; and makes additional corrections to conform to the Delaware Legislative Drafting Manual.

Author: Senator Brown