

---

**Civil Rights & Judiciary Committee**

---

**HB 2806**

**Brief Description:** Concerning mediation in family law cases involving children.

**Sponsors:** Representatives Goodman, Fey and Davis.

**Brief Summary of Bill**

- Revises standards for mediation in dissolution and legal separation proceedings.
- Requires mediation of all issues in a parenting plan, except dissolution and relocation, before a court hearing on the matter, and creates various exceptions, including for domestic violence.

**Hearing Date:** 2/4/20

**Staff:** Emily Williams (786-7291) and Edie Adams (786-7180).

**Background:**

Mediation in Dissolution and Legal Separation.

In marriage dissolution and legal separation proceedings, the matter may be set mediation before or concurrent to setting a date for a hearing. The purpose of mediation is to reduce acrimony between parties and to develop an agreement to assure that the child has continuing close contact with both parents.

Each superior court may make a mediator available. The mediation made available must be the most cost effective services that are readily available unless there is good cause. The mediator may be professional staff of a family court or mental health services agency, or anyone else designated by the court.

In proceedings involving issues covered in a parenting plan, parties may set mediation before or concurrent to setting a date for a hearing. The mediator shall assess the needs of a child and may interview the child if the mediator deems it appropriate. Any agreement reached by the parties

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

must be reported to the court and to the counsel of the parties. Some superior courts in Washington require mediation of parenting plans before a hearing.

Courts will generally not permit mediation in cases involving domestic violence or child abuse. Parties must be provided with access to trained domestic violence advocates in order to identify these cases. When the victim requests mediation, the court may permit it if it finds that it is appropriate under the circumstances. In those cases, the victim is permitted to have a support person present during mediation.

#### Parenting Plans.

In dissolution or legal separation cases in which there are minor children, the court must establish a parenting plan that provides for the care of the minor children. The parenting plan must include an allocation of decision making authority to one or both parents, establish a residential schedule for the child, and provide for the resolution of future disputes between the parents.

The residential schedule designates in which parent's home the child resides on given days of the year. A court must consider specific factors when determining the child's residential schedule. A court may order that the child frequently alternate his or her residence between the parents for brief and substantially equal intervals of time if it is in the child's best interest. The court may consider the geographic proximity of the parties to the extent necessary to ensure the ability of the parents to share parenting functions.

Generally, a court may modify the residential provisions of a parenting plan only upon a showing of a substantial change of circumstances with respect to the child or the nonmoving party, and that the modification is in the best interests of the child. A person petitioning for a modification of the residential provisions must file an affidavit with supporting facts, and the court will deny the motion for a modification unless the court finds that adequate cause for the modification is presented in the affidavit.

When a parent with whom a child resides the majority of the time intends to relocate, he or she must notify every other person who has residential time or visitation with the child of the intent to relocate. A person may object to the relocation of a child through a petition for modification of the parenting plan pursuant to relocation. "Relocate" means a change in principal residence either permanently or for a protracted period of time.

#### **Summary of Bill:**

##### Mediation in Dissolution and Legal Separation.

Standards for mediation in dissolution and legal separation proceedings are revised, and a requirement for mediation is established in cases involving parenting plan issues.

The purpose of mediation in dissolution or legal separation proceedings is to assist parties to reach agreements on contested issues. The mediator may be professional staff of a family court or mental health services agency, a dispute resolution center, or anyone else designated by the court. Counties may, and must if there is funding, provide mediation at a reduced or waived fee. Mediation is free if a party is indigent or there is a court order for a fee waiver. The mediator may only interview a child if both parents agree the interview is appropriate or necessary.

### Mediation of Parenting Plans in Dissolution and Legal Separation.

In a proceeding involving parenting plan issues, except relocation or modification, parties must mediate the issues in a final parenting plan before a court hearing on the plan or any issue in the plan. This requirement may be excused for good cause shown, joinder, or mutual agreement by the parties. The purpose of mediation for issues in a parenting plan is to reduce acrimony that may exist between the parties and to seek to develop an agreement for a workable parenting plan.

The proceeding must be scheduled for mediation within 90 days after service and filing of responsive pleadings. The scheduling requirement may be excused for good cause.

Parties are exempt from mediation:

- where a domestic violence restraining order or protection order, excluding ex parte orders, involving the parties has been entered at any time within the past 12 months;
- where a domestic violence no-contact order exists;
- where the parties move for exemption because of a finding that domestic abuse has occurred between the parties and that such abuse would interfere with arm's length mediation; or
- where the parties move for exemption for good cause.

Either party may seek an order requiring mediation despite an exemption by motion to the court. In this motion, the moving party must show that the parties would be able to mediate their dispute at arm's length under the circumstances.

Each superior court must adopt a program and rules for mediation of parenting plan issues that address the following:

- the number and length of mediation sessions, subject to some restrictions: there must be at least one session and there must be additional sessions as deemed appropriate by the mediator and the parties; and sessions must be at least two hours, unless the issues are resolved in less time or the mediator and the parties agree that further mediation would be unproductive or futile;
- qualifications for the mediator, including expertise and training;
- subject matter limitations, which must be limited to issues in a parenting plan, and processes for determining when an issue must be mediated; and
- a process for parties to seek excusal from mediation for various reasons including allegations of family or intimate partner violence, or other circumstances that may render mediation inappropriate or that would unreasonably interfere with the mediation process. This process may include a form that parties may use to seek excusal.

**Appropriation:** None.

**Fiscal Note:** Requested on January 29, 2020.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.