
HOUSE BILL 2806

State of Washington

66th Legislature

2020 Regular Session

By Representatives Goodman, Fey, and Davis

Read first time 01/22/20. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to mediation in family law cases involving
2 children; and amending RCW 26.09.015.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 26.09.015 and 2008 c 6 s 1044 are each amended to
5 read as follows:

6 (1) In any proceeding under this chapter, other than a proceeding
7 under subsection (2) of this section, the matter may be set for
8 mediation of the contested issues before or concurrent with the
9 setting of the matter for hearing. The purpose of the mediation
10 proceeding shall be to ~~((reduce acrimony which may exist between the~~
11 ~~parties and to develop an agreement assuring the child's close and~~
12 ~~continuing contact with both parents after the marriage or the~~
13 ~~domestic partnership is dissolved)) assist parties to reach
14 agreements on contested issues. The mediator shall use ~~((his or her))~~
15 best efforts to effect a settlement of the dispute.~~

16 (2) (a) ~~((Each superior court may make available a mediator. The~~
17 ~~court shall use the most cost-effective mediation services that are~~
18 ~~readily available unless there is good cause to access alternative~~
19 ~~providers. The mediator may be a member of the professional staff of~~
20 ~~a family court or mental health services agency, or may be any other~~
21 ~~person or agency designated by the court. In order to provide~~

1 mediation services, the court is not required to institute a family
2 court.

3 ~~(b))~~) In any proceeding involving issues relating to residential
4 time or other matters governed by a parenting plan, except relocation
5 or modification of a parenting plan, the matter ~~((may))~~ must be
6 ~~((set))~~ scheduled for mediation of the contested issues ~~((before or~~
7 ~~concurrent with the setting of the matter for hearing.))~~ within
8 ninety days after service and filing of responsive pleadings are
9 completed, or due, unless excused for good cause shown. Parties must
10 address issues in a parenting plan in mediation prior to any court
11 hearings for the establishment of a final parenting plan, unless
12 excused for good cause shown, joinder, or mutual agreement by the
13 parties. The purpose of early mediation proceedings shall be to
14 reduce acrimony that may exist between the parties and to seek to
15 develop an agreement for a workable parenting plan.

16 (b) Each superior court shall establish a program and rules to
17 provide for early mediation of cases involving issues relating to
18 residential time or other matters governed by a parenting plan. Such
19 rules must address:

20 (i) The number and length of mediation sessions, which in no case
21 may be less than one mediation session, and additional sessions as
22 are deemed appropriate by the mediator and the parties. Each
23 mediation session must be at least two hours unless mediated issues
24 are resolved prior to that time or the mediator and parties agree
25 that further mediation would be unproductive or futile;

26 (ii) Mandatory expertise and training for mediators;

27 (iii) Limitation of the mediation program to issues relating to
28 residential time or other matters governed by a parenting plan;

29 (iv) Standards for determining which issues should be referred to
30 mediation and timelines for mediation to be concluded; and

31 (v) A process for a party to seek excusal from mediation because
32 an impediment to mediation exists, including allegations of family or
33 intimate partner violence, cognitive impairment, behavioral health
34 disorder, or other circumstances that may render mediation
35 inappropriate or that would unreasonably interfere with the mediation
36 process. The process may include a form that parties may use to seek
37 excusal.

38 (c) Mediation shall be required as provided under this subsection
39 (2) except:

40 (i) For good cause shown upon motion and approval by the court;

1 (ii) Where a domestic violence restraining order or protection
2 order, excluding ex parte orders, involving the parties has been
3 entered by a court at any time within the previous twelve months;

4 (iii) Where a domestic violence no-contact order exists under
5 chapter 10.99 RCW; or

6 (iv) Where the court upon motion finds that domestic abuse has
7 occurred between the parties and that such abuse would interfere with
8 arm's length mediation.

9 (d) Either party may by motion seek a court order requiring
10 mandatory mediation in a case otherwise exempt under (c)(ii) through
11 (iv) of this subsection (2) if the moving party believes that the
12 parties would be able to mediate their dispute at arm's length under
13 the particular circumstances of the case.

14 (3)(a) Each superior court may make available a mediator. The
15 court shall use the most cost-effective mediation services that are
16 readily available unless there is good cause to access alternative
17 providers. The mediator may be a member of the professional staff of
18 a family court or mental health services agency, a dispute resolution
19 center established under chapter 7.75 RCW, or any other person or
20 agency designated by the court. In order to provide mediation
21 services, the court is not required to establish a family court.

22 (b) Counties may, and to the extent state funding is provided
23 therefor counties shall, provide both predecree and postdecree
24 mediation at reduced or waived fee to the parties ((within one year
25 of the filing of the dissolution petition)).

26 ((+3)) (c) If a party is indigent or has a court order for a fee
27 waiver pursuant to Washington state rules of court, general rule GR
28 34, the party is not required to pay any fee for the mediation.

29 (4)(a) Mediation proceedings under this chapter shall be governed
30 in all respects by chapter 7.07 RCW, except as follows:

31 (i) Mediation communications in postdecree mediations mandated by
32 a parenting plan are admissible in subsequent proceedings for the
33 limited purpose of proving:

34 (A) Abuse, neglect, abandonment, exploitation, or unlawful
35 harassment as defined in RCW 9A.46.020(1), of a child;

36 (B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1),
37 of a family or household member as defined in RCW 26.50.010((+2));
38 or

39 (C) That a parent used or frustrated the dispute resolution
40 process without good reason for purposes of RCW 26.09.184(4)(d).

1 (ii) If a postdecree mediation-arbitration proceeding is required
2 pursuant to a parenting plan and the same person acts as both
3 mediator and arbitrator, mediation communications in the mediation
4 phase of such a proceeding may be admitted during the arbitration
5 phase, and shall be admissible in the judicial review of such a
6 proceeding under RCW 26.09.184(4) (e) to the extent necessary for such
7 review to be effective.

8 (b) None of the exceptions under (a)(i) and (ii) of this
9 subsection shall subject a mediator to compulsory process to testify
10 except by court order for good cause shown, taking into consideration
11 the need for the mediator's testimony and the interest in the
12 mediator maintaining an appearance of impartiality. If a mediation
13 communication is not privileged under (a)(i) of this subsection or
14 that portion of (a)(ii) of this subsection pertaining to judicial
15 review, only the portion of the communication necessary for the
16 application of the exception may be admitted, and such admission of
17 evidence shall not render any other mediation communication
18 discoverable or admissible except as may be provided in chapter 7.07
19 RCW.

20 ~~((4))~~ (5) The mediator ~~((shall assess the needs and interests
21 of the child or children involved in the controversy and))~~ may
22 interview the child or children if the mediator deems such interview
23 appropriate or necessary, but only if both parents are in agreement
24 that the interview is appropriate or necessary. If both parents are
25 not in agreement, the interview may not take place.

26 ~~((5))~~ (6) Any agreement reached by the parties as a result of
27 mediation ~~((shall be reported to the court and to counsel for the
28 parties by the mediator on the day set for mediation or any time
29 thereafter designated by the court))~~ must be memorialized in writing
30 and signed by the parties. The parties shall present to the court a
31 temporary or final parenting plan that incorporates the agreements
32 from the mediation within fourteen days of the agreement.

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