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**SUBSTITUTE HOUSE BILL 2806**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Goodman, Fey, and Davis)

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

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

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

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

(2)(a) ((~~Each superior court may make available a mediator. The court shall use the most cost-effective mediation services that are readily available unless there is good cause to access alternative providers. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.~~

~~(b)~~)) In any proceeding involving issues relating to residential time or other matters governed by a parenting plan, except relocation or modification of a parenting plan, the matter ((~~may~~)) must be ((~~set~~)) scheduled for mediation of the contested issues ((~~before or concurrent with the setting of the matter for hearing.~~)) within ninety days after service and filing of responsive pleadings are completed or due, whichever comes first, unless excused for good cause shown. The purpose of early mediation proceedings is to reduce acrimony that might exist between the parties and to seek to develop an agreement for a workable parenting plan.

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

(i) Mandatory expertise and training for mediators;

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

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

(iv) Standards for providing mediation at a reduced or waived fee if a party is indigent or has a court order for a fee waiver pursuant to Washington state court rules, general rule GR 34; and

(v) The process by which parties may seek excusal from mediation for the reasons provided in (c) of this subsection. The process must include a form through which parties may seek excusal.

(c) Mediation is required as provided under this subsection (2) except:

(i) Where any of the following orders with respect to one or both of the parties exists, excluding ex parte orders: Domestic violence protection orders, restraining orders, or no-contact orders; stalking protection orders or no-contact orders; sexual assault protection orders or no-contact orders; or extreme risk protection orders;

(ii) Where a party chooses to opt out of mediation because an impediment to mediation exists, including allegations of family or intimate partner violence, cognitive impairment, behavioral health disorder, or other circumstances that might render mediation inappropriate or that would unreasonably interfere with the mediation process; or

(iii) Where a party chooses to opt out of mediation for any reason.

(d) Either party may by motion seek a court order requiring mandatory mediation in a case otherwise exempt under (c) of this subsection if both parties agree that the parties would be able to mediate their dispute at arm's length under the particular circumstances of the case.

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

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

((~~(3)~~)) (4)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

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

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

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

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

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

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

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

((~~(5)~~)) (6) Any agreement reached by the parties as a result of mediation ((~~shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court~~)) must be memorialized in writing and signed by the parties. The agreement is binding on the parties as an enforceable contract and as an agreement under Washington state court rules, superior court civil rule CR 2A.

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