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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)

READ FIRST TIME 02/07/20.

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, whichever comes first, unless excused for good  
10 cause shown. The purpose of early mediation proceedings is to reduce  
11 acrimony that might exist between the parties and to seek to develop  
12 an agreement for a workable parenting plan.

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

17 (i) Mandatory expertise and training for mediators;

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

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

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

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

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

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

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

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

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

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

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

20 ~~((+3))~~ (4)(a) Mediation proceedings under this chapter shall be  
21 governed in all respects by chapter 7.07 RCW, except as follows:

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

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

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

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

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

39 (b) None of the exceptions under (a)(i) and (ii) of this  
40 subsection shall subject a mediator to compulsory process to testify

1 except by court order for good cause shown, taking into consideration  
2 the need for the mediator's testimony and the interest in the  
3 mediator maintaining an appearance of impartiality. If a mediation  
4 communication is not privileged under (a)(i) of this subsection or  
5 that portion of (a)(ii) of this subsection pertaining to judicial  
6 review, only the portion of the communication necessary for the  
7 application of the exception may be admitted, and such admission of  
8 evidence shall not render any other mediation communication  
9 discoverable or admissible except as may be provided in chapter 7.07  
10 RCW.

11 ~~((4))~~ (5) The mediator ~~((shall assess the needs and interests~~  
12 ~~of the child or children involved in the controversy and))~~ may  
13 interview the child or children if the mediator deems such interview  
14 appropriate or necessary, but only if both parents are in agreement  
15 that the interview is appropriate or necessary. If both parents are  
16 not in agreement, the interview may not take place.

17 ~~((5))~~ (6) Any agreement reached by the parties as a result of  
18 mediation ~~((shall be reported to the court and to counsel for the~~  
19 ~~parties by the mediator on the day set for mediation or any time~~  
20 ~~thereafter designated by the court))~~ must be memorialized in writing  
21 and signed by the parties. The agreement is binding on the parties as  
22 an enforceable contract and as an agreement under Washington state  
23 court rules, superior court civil rule CR 2A.

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