

Amendments to Senate Bill No. 393
1st Reading Copy

Requested by Senator Kim Gillan

For the Senate Judiciary Committee

Prepared by Valencia Lane
February 19, 2007 (12:14pm)

*Don
mt -
mediation
assoc.*

1. Title, line 5.

Following: "WHICH"

Strike: "CUSTODY"

Insert: "PARENTING"

2. Title, line 6.

Following: "OF"

Strike: "CUSTODY"

Insert: "PARENTING"

3. Page 1, line 17.

Following: line 16

Strike: "dissolution of their marriage regarding custody of minor children"

Insert: "parenting of a minor child"

Following: "mediation"

Insert: "of the parenting dispute"

4. Page 1, line 18.

Following: "finds"

Strike: "that the case is not appropriate for mediation."

Insert: ":

(a) that participation in parenting mediation would result in the imposition of a cost to a party whose filing or appearance fees have been waived pursuant to 25-10-404;

(b) that requiring parenting mediation would constitute a financial hardship to either party;

(c) that there is no facilitative mediator with the qualifications stated in 40-4-307 in the county in which either party resides;

(d) that the parties have previously participated in mediation of the parenting dispute; or

(e) that the required parenting mediation is prohibited by subsection (5).

(3)"

5. Page 1, line 18.

Following: "purposes of"

Insert: "mandatory parenting"

(OVER)

6. Page 1, line 19.

Following: "over the"

Strike: "custody of or visitation with"

Insert: "parenting of"

7. Page 1, line 20.

Following: "of a"

Strike: "visitation agreement"

Insert: "parenting plan"

8. Page 1, line 22.

Following: "making"

Insert: "parenting"

Following: "decisions"

Strike: "about child custody and visitation"

9. Page 1, line 24.

Following: "of"

Strike: "custody and visitation"

Insert: "parenting"

10. Page 1, line 26.

Following: "of"

Strike: "custody and visitation"

Insert: "parenting"

11. Page 1, line 27.

Following: line 26

Insert: "(4) A letter from the mediator addressed to the parties
is sufficient proof of participation in a mediation under
this part."

Renumber: subsequent subsections

- END -

SENATE BILL NO. 393

INTRODUCED BY K. GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A COURT TO ORDER MEDIATION IN A MARRIAGE DISSOLUTION IN WHICH ~~CUSTODY PARENTING~~ OF MINOR CHILDREN IS DISPUTED AND THE PARTIES CANNOT AGREE ON THE TERMS OF ~~CUSTODY PARENTING~~; AND AMENDING SECTION 40-4-301, MCA."

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

Section 1. Section 40-4-301, MCA, is amended to read:

"40-4-301. Family law mediation -- exception. (1) The district court may at any time consider the advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case. Any party may request the court to order mediation. If the parties agree to mediation, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the mediation sessions.

(2) If the parties to a proceeding pursuant to this chapter are unable to agree on the terms for the parenting of a minor child, dissolution of their marriage regarding custody of minor children, the court shall require mediation of the parenting dispute, unless the court finds that the case is not appropriate for mediation.

MT. Mediation Ass'n. Comment

Changes to original bill draft to make it clear that mandatory mediation provision only applies to parenting disputes. The mandatory mediation will also apply to non-divorce parenting disputes, where the parents of a child were not married. Rather than "appropriate for mediation" the "unless" lists the parenting cases in which mediation is not mandatory.

(a) that participation in parenting mediation would result in the imposition of a cost to a party whose filing or appearance fees have been waived pursuant to 25-10-404;

Comment

If filing or appearance fees are waived and the mediation will impose a cost on the participant parenting mediation is not required. If parenting mediation does not incur a cost, then parenting mediation would be required even if there are filing or appearance fees waived.

(b) that requiring parenting mediation would constitute a financial hardship to either party;

This is a separate financial hardship for the court to opt a parenting case out for cause shown.

(c) that there is no facilitative mediator with the qualifications stated in 40-4-307 in the county in which either party resides;

(OVER)

comment

Parenting mediation would not be mandatory if a mediator was not available locally. The restatement of the qualification requirement of 40-4-307 is intended to discourage appointment of mediators that do not have the qualifications stated later in the Family Mediation Act.

(d) that the parties have previously participated in mediation of the parenting dispute; or,

This provision is intended to allow a party a way out of a second mediation on the same parenting issue.

(e) that (5) prohibits the required parenting mediation.

Parenting mediation is not mandatory where prohibited later in the statute.

(3) The purposes of mandatory parenting mediation may include:

(a) reducing acrimony between the parties over the parenting custody of or visitation with a minor child;

(b) the development of a parenting plan visitation agreement that is in a child's best interests;

(c) providing the parties with informed choices and, when possible, giving the parties the responsibility for making parenting decisions about child custody and visitation;

(d) providing a structured, confidential, and nonadversarial setting that will facilitate the cooperative resolution of parenting custody and visitation disputes and minimize the stress and anxiety to which the parties and the child may be subjected; and

(e) reducing the likelihood of relitigation of parenting custody and visitation disputes.

(4) A letter from the mediator addressed to the parties is sufficient proof of participation in a mediation under this part.

comment

Added to make it clear what would be sufficient to establish that the parties had participated in a parenting mediation as ordered.

(2)(3)(5) The court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party.

(3)(4)(6) The court shall appoint a mediator from the list maintained pursuant to 40-4-306. By agreement of all parties, mediators not on the list may be appointed.

(4)(5)(7) The court may adopt rules to implement this part."

- END -

Lane, Valencia

From: Kerry Newcomer [kerry@kerrynewcomermediator.com]
Sent: Monday, February 12, 2007 3:01 PM
To: Glonky@aol.com
Cc: 'Tara Veazey'
Subject: SB 393

Attachments: MtMA SB393 R3.wpd; MtMA SB393 R3 Comments.wpd; MtMA SB393 R3.pdf



MtMA SB393
R3.wpd (12 KB)



MtMA SB393 R3
Comments.wpd (14..



MtMA SB393 R3.pdf
(42 KB)

Dear Senator Gillan:

Attached is a redraft of SB 393 that should address the concerns of the Montana Legal Services Association, based upon my correspondence with Tara Veazey, the Director of the MLSA Community Lawyering Project. I do not know if the redraft addresses the concerns of Dana Toole, the MLSA Mediation Program Developer, who spoke in opposition to SB 393.

I also contacted Andrea Olsen, the lobbyist for the Montana Trial Lawyers Association, who talked briefly with us on Friday after the hearing. Andrea just wanted to convey information about how divorce scheduling works in Missoula, if I understand her correctly.

The attachments are a WordPerfect version, the same in .pdf and a WordPerfect version with my comments in blue to explain the further changes I made. The red text is to show changes to your bill as introduced at the Senate Judiciary Committee hearing on Friday, February 9.

Following this message is a forwarded exchange of messages between Tara and me for your information.

It is not my intent to divert your bill from its original purpose. I know you are very busy and I'm offering the proposed modifications with the thought that the changes would address the concerns of not only the Montana Mediation Association but also the other stakeholders in the process.

Feel free to call or email if there is anything else I can do. I'll contact the committee members that I know or have met to urge passage out of the committee.

Kerry Newcomer, President
Montana Mediation Association

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-----Original Message-----