

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 dissolution of their marriage regarding custody of minor children PARENTING OF A MINOR CHILD, the court shall require mediation OF THE PARENTING DISPUTE, unless the court finds ~~that the case is not appropriate for mediation:~~

(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) The purposes of MANDATORY PARENTING mediation may include:

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

(b) the development of a visitation agreement PARENTING PLAN 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 ~~custody and visitation~~ PARENTING 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 ~~custody and visitation~~ PARENTING disputes.

(4) A LETTER FROM THE MEDIATOR ADDRESSED TO THE PARTIES IS SUFFICIENT PROOF OF PARTICIPATION IN A MEDIATION UNDER THIS PART.

~~(2)(3)(5)~~ (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)~~ (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)~~ (7) The court may adopt rules to implement this part."

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