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HOUSE BILL 1353

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Upthegrove and Fey

Read first time 01/24/13. Referred to Committee on 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 read  
5 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 setting  
9 of the matter for hearing. The purpose of the mediation proceeding  
10 shall be to reduce acrimony which may exist between the parties (~~and~~  
11 ~~to develop an agreement assuring the child's close and continuing~~  
12 ~~contact with both parents after the marriage or the domestic~~  
13 ~~partnership is dissolved)). The mediator shall use his or her best  
14 efforts to effect a settlement of the dispute.~~

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

1 ~~person or agency designated by the court. In order to provide~~  
2 ~~mediation services, the court is not required to institute a family~~  
3 ~~court.~~

4 ~~(b)) (2)(a)~~ In any proceeding involving issues relating to  
5 residential time or other matters governed by a parenting plan, the  
6 matter ~~((may))~~ must be ~~((set))~~ scheduled for mediation of the contested  
7 issues ~~((before or concurrent with the setting of the matter for~~  
8 ~~hearing))~~ within sixty to ninety days after service and filing of  
9 responsive pleadings is completed. 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 domestic  
13 partnership is dissolved. The mediator shall use his or her best  
14 efforts to effect a settlement of the dispute.

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

19 (i) The number and length of mediation sessions, which in no case  
20 may be less than one mediation session, and additional sessions as are  
21 deemed appropriate by the mediator or the parties. Each mediation  
22 session must last approximately two to three hours unless mediated  
23 issues are resolved prior to that time;

24 (ii) Mandatory expertise and training for mediators;

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

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

29 (v) Excusal from mediation if the court determines that an  
30 impediment to mediation exists, including family violence, mental or  
31 cognitive impairment, alcohol abuse or chemical dependency, or other  
32 circumstances that may render mediation inappropriate or that would  
33 unreasonably interfere with the mediation process.

34 (3)(a) Each superior court may make available a mediator. The  
35 court shall use the most cost-effective mediation services that are  
36 readily available unless there is good cause to access alternative  
37 providers. The mediator may be a member of the professional staff of  
38 a family court or mental health services agency, or may be any other

1 person or agency designated by the court. In order to provide  
2 mediation services, the court is not required to institute a family  
3 court.

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

8 ((+3)) (4)(a) Mediation proceedings under this chapter shall be  
9 governed in all respects by chapter 7.07 RCW, except as follows:

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

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

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

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

19 (ii) If a postdecree mediation-arbitration proceeding is required  
20 pursuant to a parenting plan and the same person acts as both mediator  
21 and arbitrator, mediation communications in the mediation phase of such  
22 a proceeding may be admitted during the arbitration phase, and shall be  
23 admissible in the judicial review of such a proceeding under RCW  
24 26.09.184(4)(e) to the extent necessary for such review to be  
25 effective.

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

37 ((+4)) (5) The mediator shall assess the needs and interests of

1 the child or children involved in the controversy and may interview the  
2 child or children if the mediator deems such interview appropriate or  
3 necessary.

4 ~~((+5))~~ (6) Any agreement reached by the parties as a result of  
5 mediation shall be reported to the court and to counsel for the parties  
6 by the mediator on the day set for mediation or any time thereafter  
7 designated by the court.

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