

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring judicial districts to adopt local rules providing for mandatory mediation in parenting disputes; and amending section 40-4-301, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Mandatory mediation of parenting disputes.** (1)(a) Unless mediation is prohibited under 40-4-219 or 40-4-301(2), each judicial district shall issue a local rule that mandates early mediation of all cases in which a party files a petition for temporary or permanent child support, for enforcement of an existing child support order, for the entry of an interim or permanent parenting plan, or for modification of an existing parenting plan.

(b) The mediation must be initiated no less than 60 days after the petition is filed.

(2) If the mediation fails to produce an agreement on all disputed parenting matters, the local rule may provide that the matter be submitted to a special or standing master for resolution pursuant to Rule 53, Montana Rules of Civil Procedure. The court shall establish minimum standards for the appointment of a special or standing master, including familiarity with family law and the extent of required judicial experience.

(3) (a) Each judicial district shall maintain a list of certified family mediators who meet the minimum qualifications set forth in 40-4-307 and, in addition, who have at least 40 hours of training in basic mediation and training in family law, domestic violence, early childhood development, and substance abuse.

(b) A district court may waive the requirements in subsection (1)(a) for good cause shown.

(c) Parties may select any mediator who meets the minimum qualifications of 40-4-307.

(d) If the parties have not agreed to the selection of a mediator within 7 days of the issuance of the order of referral, the court shall appoint a certified family mediator on a random, rotating, or other equitable basis.

(4) The parties shall share the costs of the mediation and use of the special or standing master in accordance with a fee schedule to be established by the district court and based on the income and resources of the parties. To be eligible for appointment by the court, a mediator or special or standing master must agree to comply with the courts fee schedule.

Section 2. Section 40-4-301 , MCA, is amended to read:

"40-4-301. Family law mediation -- exception. (1) ~~The~~ Except as provided in [section 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) Unless each of the parties provides written, informed consent, 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. A mediation conducted under this subsection may be conducted by a mediator who is trained in mediating domestic violence cases.

(3) 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) The court may adopt rules to implement this part.

(5) For purposes of this section, "informed consent" means an educated, competent, and voluntary choice to enter into mediation."
{Internal References to 40-4-301:

40-4-215 40-4-302 40-4-303 40-4-306 }

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