

# STATE OF NEW YORK

7359

## IN SENATE

January 10, 2018

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to the child custody and support decision-making process

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "child custody reform act".

3 § 2. Declaration of purposes. The legislature hereby finds and  
4 declares that it is in the best interests of a child whose parents are  
5 in dispute over his or her custody that:

6 Parents resolve their dispute as expeditiously as possible in a child-  
7 centered manner;

8 Parents be encouraged to recognize the continuing interest that each  
9 has in the welfare of their child and resolve any differences they may  
10 have concerning custody, parenting and child support obligations prior  
11 to engaging in the adversarial process;

12 Courts undertake an active role in promoting parental settlements in  
13 custody, parenting and child support disputes, and in educating parents  
14 about the needs of their child resulting from divorce or separation;

15 The child centered mediation process, in suitable cases, is an appro-  
16 priate way to help parents resolve child custody, parenting and child  
17 support disputes;

18 Mediation of custody, parenting and child support disputes should be  
19 conducted in collaboration with the courts, in a safe environment, by  
20 well-trained, experienced mediators during which the parents attempt to  
21 plan cooperatively for the welfare of their child; and

22 Uniform statewide standards for mediation should be formulated in  
23 order to ensure the safety, quality and usefulness of the mediation  
24 process to the court as well as to the parents, and to assure compliance  
25 with the due process rights of those involved in custody, parenting and  
26 child support disputes.

27 § 3. The domestic relations law is amended by adding a new section 242  
28 to read as follows:

29 § 242. Special provisions for resolution of child custody, parenting  
30 and child support disputes. (a) Definitions. As used in this section,  
31 unless the context otherwise requires:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD09532-01-7

1 (1) "Child" means a person under eighteen years of age, or for the  
2 purposes of support under twenty-one years of age, who is legally  
3 subject to parental, guardianship or similar control. "Child" includes  
4 children if more than one child is the subject of a custody, parenting  
5 or child support dispute.

6 (2) "Parent" means the biological or adoptive parent, or other legal  
7 custodian or guardian.

8 (3) "Custody" means the right and the responsibility of a parent to  
9 make decisions about the health, welfare and physical care of a child,  
10 and to participate in the making and implementation of a parenting plan.

11 (4) "Physical custody" means the parent with whom the child shall  
12 primarily reside; provided however, that it shall also refer to an  
13 arrangement whereby the child shall reside with each parent on a shared-  
14 time basis.

15 (5) "Child support" or "support" means the respective support obli-  
16 gations of the parents under the child support standards act.

17 (6) "Parenting plan" means a plan, developed by both parents, which  
18 provides for the health, welfare and best interests of the child, and  
19 which includes designations of custody and physical custody, and, as  
20 needed, the amount of time each parent would spend with the child,  
21 including vacations, holidays and special occasions, a description of  
22 each parent's authority to make decisions that affect the child, and a  
23 description of each parent's child support obligation.

24 (7) "Court" means any trial court, including both a supreme court and  
25 a family court of this state, in which a custody or parenting dispute  
26 may be heard.

27 (8) "Mediation" means a confidential, informal procedure in which a  
28 neutral third person helps parents to communicate and make decisions  
29 with each other regarding the best interests and support of their child,  
30 and to formulate a parenting plan.

31 (9) "Mediation provider" means an individual or organization that has  
32 been certified to provide mediation services under guidelines estab-  
33 lished by the chief administrator of the courts, in consultation with  
34 members of the statewide advisory council, pursuant to paragraphs two  
35 and three of subdivision (d) of this section.

36 (10) "Unsuitable" means disputes where domestic violence, abuse,  
37 severe power imbalances or other factors in the participants' relation-  
38 ship render the mediation process inappropriate, as determined by the  
39 methods for identification and screening to be implemented by the chief  
40 administrator of the courts, in consultation with members of the state-  
41 wide advisory council, pursuant to paragraphs two and three of subdivi-  
42 sion (d) of this section.

43 (11) "Suitable" means disputes which are appropriate for mediation, as  
44 determined by the methods for identification and screening to be imple-  
45 mented by the chief administrator of the courts, in consultation with  
46 members of the statewide advisory council, pursuant to paragraphs two  
47 and three of subdivision (d) of this section.

48 (12) "Mediation information session" means an initial session with the  
49 parties to the dispute and the mediation provider, during which the  
50 mediation provider screens for unsuitability factors, explains the  
51 purpose of the mediation process and its voluntary nature, describes  
52 mediation protocols, and begins, in suitable disputes, to identify areas  
53 of dispute.

54 (b) Pretrial procedure, judicial management and determination in  
55 custody, parenting and support disputes. (1) A custody, parenting or  
56 support dispute shall, insofar as is practicable, be assigned to a

1 single judge of the court where the dispute is pending. The judge  
2 assigned to the dispute shall oversee all proceedings in the dispute,  
3 seeking to promote settlement between the parties, where settlement can  
4 be safely promoted, including a reasonably expeditious determination of  
5 custody, support and parental agreement on a parenting plan.

6 (2) During the initial appearance of the parties and at such subse-  
7 quent times as deemed appropriate, the judge to whom the custody,  
8 parenting or support dispute is assigned shall conduct a conference with  
9 the parties to the dispute, and their attorneys, if any, for the  
10 purposes of ascertaining whether or not the custody, parenting or  
11 support dispute is suitable for mediation. The court shall notify the  
12 parties to the dispute or their attorneys, if any, and such other  
13 persons as the court deems necessary of the time and place of such  
14 conference.

15 (3) If, after conferencing with the parties, the court determines that  
16 the dispute is suitable for mediation, the court shall, prior to holding  
17 a hearing or trial to adjudicate the dispute, refer the dispute to a  
18 mediation information session.

19 (4) The court may conduct the conference referred to in paragraph two  
20 of this subdivision prior to determining any or all other issues that  
21 may be involved in a matrimonial or other action or proceeding between  
22 the parties to the custody dispute, if the best interests of the child  
23 will be served by separating the issues.

24 (5) The parties who have been referred to mediation shall be required  
25 to attend a mediation information session, but may thereafter decline  
26 mediation services. If they so decline or the mediator determines  
27 during the mediation information session that the dispute is not suit-  
28 able for mediation, the case shall then be confidentially returned to  
29 the court for further proceedings.

30 (c) Mediation of custody, parenting and support disputes. (1) Subject  
31 to the provisions of paragraph two of this subdivision, each judicial  
32 district shall provide, on a private-pay fee schedule basis to be imple-  
33 mented by the chief administrator of the courts, in consultation with  
34 members of the statewide advisory council pursuant to paragraphs two and  
35 three of subdivision (d) of this section, mediation services to parents  
36 in custody, parenting and support disputes under a service plan or plans  
37 adhering to guidelines so established by the chief administrator of the  
38 courts.

39 (2) The fee schedule basis established pursuant to this subdivision  
40 shall provide for free or low-cost mediation services, as appropriate,  
41 for persons who are indigent or are otherwise unable to afford such  
42 services.

43 (3) Mediation proceedings shall be confidential. All communications  
44 between a mediator and the parties to a dispute, the attorneys for the  
45 parties to the dispute, the child and any court appointed representative  
46 of the child shall be privileged and inadmissible in any judicial or  
47 administrative proceeding. A mediator shall not be called as a witness.  
48 Any notes and work product of the mediator concerning the custody,  
49 parenting or support dispute shall not be discovered or subpoenaed by a  
50 party to the dispute, the attorneys for the parties to the dispute or  
51 the court appointed representative of the child, if any. A mediator who  
52 provides mediation services in a custody, parenting or support dispute  
53 shall not provide information to the court or to any party regarding the  
54 substance of the mediation proceedings; provided however, that, if an  
55 agreement is reached during the mediation proceedings, such agreement

1 shall be in writing and, with the consent of the participants, be  
2 provided to the court.

3 (4) Termination of a mediation if unsuitable. (A) If, during a medi-  
4 ation session, it is determined by the mediator that the dispute has  
5 become unsuitable, the mediator shall terminate the mediation in accord-  
6 ance with protocols established by the chief administrator of the  
7 courts, in consultation with members of the statewide advisory council,  
8 pursuant to paragraphs two and three of subdivision (d) of this section.

9 (B) If such termination should occur, the mediator shall inform the  
10 court that the mediation was discontinued.

11 (d) Duties and powers of the chief administrator of the courts. (1)  
12 The chief administrator of the courts shall be responsible for:

13 (A) Promulgating standards and administrative policies to ensure that  
14 custody, parenting and support disputes are handled by courts, and  
15 affiliated personnel, attorneys, mediators and parties to a dispute in a  
16 manner consistent with the purposes of this section;

17 (B) Promulgating standards and policies to ensure that the services  
18 necessary to conduct mediation are of high and reasonably uniform quali-  
19 ty in all courts hearing custody, parenting and support disputes;

20 (C) Creating plans for delivery of mediation services to courts in  
21 judicial districts pursuant to subdivision (c) of this section;

22 (D) Monitoring the implementation of this section and service plans in  
23 judicial districts; and

24 (E) Organizing and supervising training programs for personnel who  
25 conduct mediation authorized by this section.

26 (2) The chief administrator of the courts shall establish a statewide  
27 advisory committee to render advice on the development of standards and  
28 administrative practices required under this section and on how the  
29 courts can better provide services to families and children involved in  
30 custody, parenting and support disputes. This advisory committee shall  
31 be constituted in such manner as deemed advisable by the chief adminis-  
32 trator of the courts, except that it shall include at least two members  
33 of an organization the purpose of which is to monitor and make recommen-  
34 dations relative to the issue of domestic violence, and at least two  
35 members of a private or governmental organization which is dedicated to  
36 the advancement of alternative dispute resolution. Selection of the  
37 members of the advisory committee shall be completed within three months  
38 of the effective date of this section.

39 (3) Special duties of the statewide advisory committee. The statewide  
40 advisory committee shall develop recommendations for determining train-  
41 ing requirements and such other requirements as the chief administrator  
42 of the courts shall require for mediators who provide family issue medi-  
43 ations. Such requirements shall include protocols for the conduct of a  
44 mediation session and protocols for recognizing the existence of issues  
45 which are unsuitable for mediation. The recommendations of the state-  
46 wide advisory committee shall be included in a written report submitted  
47 to the chief administrator within nine months after the committee  
48 members shall have been appointed. The members of the statewide advi-  
49 sory committee shall serve without compensation but shall be entitled to  
50 reimbursement for necessary and reasonable expenses incurred in the  
51 course of their duties.

52 § 4. This act shall take effect immediately. Provided, that the addi-  
53 tion, amendment and/or repeal of any rule or regulation necessary for  
54 the implementation of this act are immediately authorized and directed  
55 to be made and completed on an emergency basis.