

CHAPTER 292

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 94-1283

BY REPRESENTATIVES Keller, Adkins, Blue, Clarke, Friednash, George, Gordon, Hagedorn, Hernandez, Kerns, Knox, Linkhart, Mattingly, Nichol, Pierson, Reeser, Rupert, Strom, and Sullivan;
also SENATORS Thiebaut and Mares.

AN ACT

CONCERNING THE USE OF MEDIATION IN COURT PROCEEDINGS REGARDING CHILD PROTECTION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 3 of article 3 of title 19, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

19-3-310.5. Mediation - pilot program - repeal. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT USE OF MEDIATION IN DEPENDENCY AND NEGLECT CASES CAN HELP SUPPORT THE RIGHTS OF FAMILIES AND CHILDREN AND HEREBY DECLARES THAT IT IS IN THE BEST INTERESTS OF CHILDREN THAT QUALIFIED MEDIATION SERVICES BE AVAILABLE IN CERTAIN PHASES OF CHILD DEPENDENCY AND NEGLECT CASES. FOR THE PURPOSE OF PROVIDING MEDIATION SERVICES, THE GENERAL ASSEMBLY HEREBY FINDS THAT IT IS NECESSARY TO ESTABLISH A PILOT PROGRAM UNDER WHICH CASES BROUGHT IN SELECTED COUNTIES MAY BE REFERRED TO MEDIATION BY APPROVED MEDIATORS.

(2) THERE IS HEREBY ESTABLISHED A PILOT PROGRAM TO PROVIDE MEDIATION SERVICES IN CASES BROUGHT UNDER THE PROVISIONS OF THIS ARTICLE. UNDER THE PILOT PROGRAM, THE STATE BOARD SHALL DESIGNATE TWO OR MORE COUNTIES IN WHICH MEDIATION SERVICES SHALL BE PROVIDED PURSUANT TO THE REQUIREMENTS OF THIS SECTION.

(3) UNDER THE PILOT PROGRAM, MEDIATION OPERATES UNDER THE JURISDICTION OF THE COURT IN ANY CASE. A COURT WITHIN A PILOT COUNTY MAY, AT THE REQUEST OF ANY PARTY OR UPON THE COURT'S OWN INITIATIVE, REFER A CASE BROUGHT UNDER THE PROVISIONS OF THIS ARTICLE TO MEDIATION SERVICES. A COURT MAY REFER A

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

CASE TO MEDIATION SERVICES AT ANY TIME AFTER THE COURT OBTAINS JURISDICTION OVER ANY OF THE PARTIES. NO MEDIATION SHALL BE ORDERED BY A COURT IN ANY CASE UNLESS A PARTY IS REPRESENTED BY COUNSEL OR HAS WAIVED THE PARTY'S RIGHT TO COUNSEL, WHETHER APPOINTED OR RETAINED.

(4) (a) A CASE MAY NOT BE REFERRED TO MEDIATION IF:

(I) THERE IS A CRIMINAL CHARGE PENDING AGAINST ANY PARTY THAT INVOLVES THE ISSUES IN THE CASE OR THERE HAS BEEN A CONVICTION OF ANY PARTY FOR ANY SUCH CRIMINAL CHARGE; OR

(II) THERE IS A VICTIM WHO ALLEGES THAT HE OR SHE HAS BEEN PHYSICALLY INJURED, SEXUALLY ABUSED, OR SUBJECTED TO DOMESTIC VIOLENCE IN ANY WAY THAT INVOLVES THE ISSUES IN THE CASE.

(b) THE MEDIATION OF A CASE IS TERMINATED IF:

(I) ANY PARTY INVOLVED IN THE MEDIATION REQUESTS THAT THE MEDIATION PROCESS CEASE;

(II) THE MEDIATOR MAKES A DETERMINATION THAT THE MEDIATION SHOULD BE TERMINATED BECAUSE MEDIATION IS NOT APPROPRIATE FOR THE CASE OR BECAUSE IT IS UNLIKELY THAT AN AGREEMENT WILL BE REACHED BY THE PARTIES;

(III) AFTER THE INITIAL REFERRAL TO MEDIATION, THE COURT DETERMINES THAT, UNDER THE REQUIREMENTS OF THIS SECTION, THE CASE IS NOT A PROPER CASE FOR MEDIATION; OR

(IV) THE PARTIES REACH A PARTIAL AGREEMENT THROUGH THE MEDIATION, BUT THERE ARE ISSUES REMAINING TO BE DETERMINED BY THE COURT.

(5) THE PARTIES IN A CASE SHALL BE CHARGED A FEE FOR THE MEDIATION SERVICES PROVIDED UNDER THE PROVISIONS OF THIS SECTION. EACH COUNTY IN THE PILOT PROGRAM SHALL SET THE FEE TO BE IMPOSED IN THE COUNTY AT A LEVEL THAT IS SUFFICIENT TO FUND THE PILOT PROGRAM. A COUNTY IN THE PILOT PROGRAM MAY ESTABLISH A SLIDING FEE SCALE FOR MEDIATION SERVICES. IF A SLIDING SCALE IS ESTABLISHED, THE COUNTY SHALL STRUCTURE THE FEE SCALE SUCH THAT THE TOTAL AMOUNT OF FEES COLLECTED FROM ALL PARTIES OBTAINING MEDIATION SERVICES IN THE COUNTY IS SUFFICIENT TO FUND THE PILOT PROGRAM. UNDER THE PILOT PROGRAM, MEDIATION SERVICES MAY BE PROVIDED ONLY TO A PERSON WHO HAS PAID THE FEE ESTABLISHED FOR MEDIATION SERVICES. MEDIATION SERVICES ARE NOT AVAILABLE UNDER THE PILOT PROGRAM TO ANY PERSON WHO IS UNABLE TO PAY THE FEE.

(6) (a) UPON COMPLETION OF MEDIATION SERVICES UNDER THE PROVISIONS OF THIS SECTION, THE MEDIATOR SHALL SUPPLY TO THE COURT A WRITTEN STATEMENT CERTIFYING THAT THE PARTIES HAVE MET WITH THE MEDIATOR UNLESS THE COUNSEL FOR A PARTY IS REQUIRED TO SUPPLY THE STATEMENT PURSUANT TO LOCAL RULE OR PURSUANT TO ORDER OF THE COURT.

(b) IF THE MEDIATOR AND THE PARTIES AGREE THAT THE PARTIES ARE ENGAGING

IN GOOD FAITH MEDIATION AND INFORM THE COURT THEREOF, THE COURT MAY CONTINUE ANY PENDING HEARING IN THE CASE TO A DATE CERTAIN.

(7) IF THE PARTIES INVOLVED IN A CASE THAT IS REFERRED TO MEDIATION UNDER THIS SECTION REACH A FULL OR PARTIAL AGREEMENT, THE PARTIES SHALL PREPARE A WRITTEN AGREEMENT THAT IS SIGNED BY THE PARTIES. THE PARTIES SHALL PRESENT THE AGREEMENT TO THE COURT AS A STIPULATION AND, IF APPROVED BY THE COURT, THE AGREEMENT IS ENFORCEABLE AS AN ORDER OF THE COURT.

(8) A MEDIATOR MAY PROVIDE MEDIATION SERVICES UNDER THE PROVISIONS OF THIS SECTION IF THE MEDIATOR HAS OBTAINED APPROVAL FROM THE OFFICE OF DISPUTE RESOLUTION IN THE JUDICIAL DEPARTMENT CREATED UNDER SECTION 13-22-303, C.R.S., AND HAS OBTAINED ANY TRAINING OR APPROVAL REQUIRED BY THE COUNTY THAT IS OPERATING THE MEDIATION PROGRAM. A GUARDIAN AD LITEM OR OTHER MEDIATOR WHO IS OTHERWISE QUALIFIED UNDER THE PROVISIONS OF THIS SECTION MAY PROVIDE MEDIATION SERVICES UNDER THIS SECTION ONLY IF THE GUARDIAN AD LITEM OR OTHER MEDIATOR HAS NOT PREVIOUSLY HAD CONTACT WITH ANY OF THE PARTIES IN THE CASE.

(9) ANY MEDIATION CONDUCTED UNDER THE PROVISIONS OF THIS SECTION IS SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS PROVIDED IN SECTION 13-22-307, C.R.S.

(10) A COUNTY THAT IS OPERATING A MEDIATION PILOT PROGRAM UNDER THE PROVISIONS OF THIS SECTION SHALL PREPARE A WRITTEN REPORT REGARDING THE EXPERIENCES OF THE COUNTY IN USING MEDIATION SERVICES. THE COUNTY SHALL SUBMIT THE REPORT TO THE HOUSE AND SENATE JUDICIARY COMMITTEES ON OR BEFORE JANUARY 1, 1996. THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) THE NUMBER OF FAMILIES REFERRED TO MEDIATION AND THE NUMBER OF FAMILIES WHO SUCCESSFULLY REACHED A SETTLEMENT;

(b) THE TYPES OF CASES THAT WERE REFERRED TO MEDIATION BY THE COURT;

(c) IN CASES IN WHICH MEDIATION WAS USED, WHETHER THERE WERE ANY COST SAVINGS AND THE EXTENT OF THOSE COST SAVINGS; AND

(d) THE CRITERIA USED BY THE COUNTY IN APPROVING MEDIATORS AND WHETHER ANY SPECIAL TRAINING OR INSTRUCTION WAS GIVEN TO MEDIATORS.

(11) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1999.

SECTION 2. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 3. Effective date. This act shall take effect July 1, 1994.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 31, 1994