

ASSEMBLY, No. 70

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KAVANAUGH and Assemblywoman CRECCO

1 AN ACT establishing a court-referred family mediation program and  
2 supplementing Title 2A of the New Jersey Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "Family  
8 Mediation Reform Act of 1995."

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10 2. The Legislature finds and declares that:

11 a. Mediation is a cooperative process by which parties are assisted  
12 in formulating an agreement by a mediator;

13 b. It is a process wherein the decision-making authority rests with  
14 the parties;

15 c. It is in the best interest of a child to encourage mediated  
16 resolution of disputes over child custody, visitation, or support;

17 d. It is the intent of this legislation that the State establish a  
18 statewide mediation program designed to implement mediation of  
19 family matters.

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21 3. As used in this act:

22 "Mediation" means a process whereby a neutral third person called  
23 a mediator acts to encourage and facilitate the resolution of a dispute  
24 between two or more parties. It is an informal and non-adversarial  
25 process with the objective of helping the disputing parties reach a  
26 mutually acceptable and voluntary agreement. Mediation includes  
27 "family mediation" which means mediation of family matters involving  
28 dissolution of marriage, property division, shared or sole parental  
29 responsibility or custody, visitation or support.

30 "Mediator" means a person who is qualified, trained and certified  
31 in accordance with the Rules of Court to assist parties in identifying  
32 issues, fostering joint problem-solving, and exploring settlement  
33 alternatives.

1       4. a. The court may refer to mediation all or any part of an action  
2 for divorce, nullity, separate maintenance or support, where the  
3 custody, visitation or support of a minor child is an issue.

4       b. The court shall not refer any case to mediation where it finds  
5 that there has been a significant history of domestic violence which  
6 would compromise the mediation process.

7       c. If a party objects, in writing, to attending the mediation session  
8 the matter shall not be referred to mediation by the court.

9       d. Presence of attorneys at the mediation session is not required.  
10 Attorneys for each party may attend the mediation session and  
11 privately communicate with their clients.

12       e. The mediator may terminate the mediation if the mediator  
13 determines that mediation efforts are unsuccessful.

14       f. Once the parties have successfully completed the mediation  
15 process and an agreement is reached, the agreement shall be reduced  
16 to writing and submitted to the court. The court may approve or  
17 reject the mediation agreement. If the court rejects the mediation  
18 agreement the court shall state its reasons on the record. If the court  
19 approves the mediation agreement the court shall incorporate the  
20 terms of the agreement in the final order.

21       g. If the parties do not reach an agreement, the mediator shall  
22 notify the court of that result and the matter shall be referred back to  
23 the court for formal disposition.

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25       5. Notwithstanding any other provision of law to the contrary, no  
26 person serving as a mediator pursuant to P.L.     , c.     (C.     )  
27 (now pending before the Legislature as this bill) shall be liable for  
28 damages resulting from any exercise of judgment or discretion in  
29 connection with the person's duties unless the actions evidence a  
30 reckless disregard for the duties imposed by the position. Nothing in  
31 this section shall be deemed to grant immunity to any mediator causing  
32 damage by that person's wilful, wanton or grossly negligence act of  
33 commission or omission.

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35       6. Notwithstanding any other provision of law to the contrary, all  
36 oral and written communications made during the mediation  
37 proceeding, other than an executed settlement agreement, shall be  
38 confidential and shall not be admissible as evidence in any court  
39 proceeding.

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41       7. The Supreme Court of New Jersey may adopt Rules of Court  
42 appropriate or necessary to effectuate the purpose of this act. The  
43 Supreme Court may establish minimum standards and procedures for  
44 certification which shall include the qualifications, professional  
45 conduct, discipline and training for mediators. The Supreme Court  
46 may set fees to be charged to applicants for certification and renewal

1 of certification. The revenues generated from these fees shall be used  
2 to offset the costs of administration of the certification process.

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4 8. This act shall take effect immediately.

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7 STATEMENT

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9 This bill would establish a court-referred family mediation program.  
10 The bill provides that the court may refer the parties in a divorce  
11 action to mediation. Since some matters do not necessarily lend  
12 themselves to mediation, the bill provides that if the court determines  
13 that there is a history of domestic violence which compromises the  
14 mediation process the case would not be referred to mediation. In  
15 addition, if any party objects to attending the mediation session the  
16 matter would not be referred to mediation. The bill also provides that  
17 the mediator would be authorized to terminate the session if the  
18 mediation efforts are unsuccessful.

19 Once the parties have completed the mediation process and an  
20 agreement is reached the agreement would be reduced to writing and  
21 submitted to the court. The court may then approve or reject the  
22 agreement. If the agreement is approved the terms of agreement  
23 would be incorporated into the final order. If an agreement is rejected  
24 the court would state its reasons on the record. If an agreement is not  
25 reached the matter would be referred to the court for formal  
26 disposition.

27 The bill also provides that no person serving as a mediator would  
28 be liable for damages resulting from any exercise of judgment or  
29 discretion in connection with the person's duties. In addition, all  
30 communication made during the mediation, other than the agreement,  
31 would be considered confidential and would not be admissible as  
32 evidence in any court proceeding.

33 The Supreme Court may adopt Rules of Court appropriate or  
34 necessary to effectuate the purpose of the bill.

35 This bill embodies recommendation 5 of the report of the  
36 Commission to Study the Law of Divorce, issued April 18, 1995.

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41 Establishes a court-referred family mediation program.