

SENATE BILL NO. 117
INTRODUCED BY HALLIGAN

IN THE SENATE

JANUARY 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 26, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 28, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 45; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 8, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 10, 1993	SECOND READING, CONCURRED IN.
MARCH 12, 1993	THIRD READING, CONCURRED IN. AYES, 84; NOES, 11.
MARCH 13, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 16, 1993	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.
MARCH 17, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.
AYES, 48; NOES, 0.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 117
2 INTRODUCED BY Kelly
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING MEDIATION
5 OF FAMILY LAW PROCEEDINGS; PROVIDING FOR SUBMITTING
6 PROCEEDINGS TO MEDIATION; TOLLING AN APPLICABLE STATUTE OF
7 LIMITATIONS DURING MEDIATION; PROVIDING CONFIDENTIALITY FOR
8 MEDIATION PROCEEDINGS; PROVIDING FOR SUBMISSION OF MEDIATION
9 AGREEMENTS TO THE COURT; PROVIDING REQUIREMENTS FOR
10 MEDIATORS; AND AUTHORIZING COURTS TO ADOPT FEES FOR
11 MEDIATION PROCEEDINGS."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. Section 1. Family law mediation --
15 exception. (1) The district court may at any time consider
16 the advisability of requiring the parties to dissolution of
17 marriage, a child custody proceeding, or a child support
18 proceeding to participate in the mediation of the case. Any
19 party may request mediation. The court may require the
20 attendance of the parties or the representatives of the
21 parties with authority to settle the case at the mediation
22 sessions.

23 (2) The court may not order mediation if the court
24 determines that there is probable cause to believe that one
25 of the parties or a child of a party has been physically or

1 sexually abused by the other party.

2 (3) The court shall appoint a mediator from the list
3 maintained pursuant to [section 6]. By agreement of all
4 parties, mediators not on the list may be appointed.

5 (4) The court may adopt rules to implement [sections 1
6 through 8].

7 NEW SECTION. Section 2. Mediation proceeding --
8 tolling of statute of limitations. (1) The purpose of a
9 mediation proceeding is to reduce the acrimony that may
10 exist between the parties and to develop an agreement that
11 is supportive of the best interests of a child involved in
12 the proceeding.

13 (2) The mediator shall attempt to effect a settlement
14 of the child custody, child support, visitation, or property
15 settlement dispute. The mediator may not use coercive
16 measures to effect the settlement. The mediator may
17 recommend that a party obtain assistance from other
18 resources in the community.

19 (3) Subject to [section 1(1)], the mediator may exclude
20 attorneys from the mediation sessions. The parties'
21 attorneys may confer with the mediator prior to the
22 mediation session and may review and approve any agreement.

23 (4) An applicable statute of limitations is tolled as
24 to the participants during the period of mediation. The
25 tolling commences on the date the parties agree in writing

1 to participate in the mediation and ends on the date the
2 mediation is officially terminated by the mediator.

3 NEW SECTION. Section 3. Proceedings -- records --
4 confidentiality. Mediation proceedings must be conducted in
5 private. All records of a mediation proceeding are
6 confidential and may not be used in evidence in an action
7 enumerated in [section 1]. Matters subject to the mediation
8 proceeding are confidential. A mediator or a party to the
9 mediation is not subject to compelled disclosure of any part
10 of the mediation proceeding.

11 NEW SECTION. Section 4. Mediator recommendation. If
12 the parties are unable to reach an agreement, the mediator
13 may recommend to the court that an investigation be
14 conducted or that other action be taken to assist the
15 parties to resolve the controversy before the court hears
16 the issues. The mediator may not conduct the investigation.
17 The mediator may, upon stipulation by the parties, recommend
18 temporary orders to the court prior to the final decree.

19 NEW SECTION. Section 5. Mediation agreement. An
20 agreement reached by the parties as a result of mediation
21 must be discussed by the parties with their attorneys, if
22 any, and the approved agreement may be submitted to the
23 court. An agreement may not be submitted to the court if any
24 party objects. The court may adopt the agreement.

25 NEW SECTION. Section 6. Mediator list. The district

1 court shall establish and maintain a list of mediators
2 available to assist parties in formally mediating disputes
3 as provided in [sections 1 and 2]. The list of mediators
4 must be maintained by the clerk of court. The clerk of court
5 may accept the applications of individuals who meet the
6 qualifications required under [section 7] and who seek
7 placement on the mediator list. The applications must be
8 presented to the court for review and approval. A mediator
9 may be a member of the professional staff of a district
10 court, probation department, mental health services agency,
11 or private mediation service.

12 NEW SECTION. Section 7. Mediator qualifications. A
13 mediator shall meet the following minimum qualifications:

14 (1) knowledge of the court system and the procedures
15 used in family law matters;

16 (2) knowledge of other resources in the community to
17 which the parties may be referred for assistance;

18 (3) knowledge of child development, clinical issues
19 relating to children, the effects of marriage dissolution on
20 children, and child custody research; and

21 (4) a minimum of 40 hours of certified mediation
22 training.

23 NEW SECTION. Section 8. Funding. A court may establish
24 a fee schedule for the costs of administering [sections 1

1 through 8]. The fees must be paid by the parties to the
2 mediation proceeding.

3 NEW SECTION. **Section 9.** Codification instruction.
4 [Sections 1 through 8] are intended to be codified as an
5 integral part of Title 40, chapter 4, and the provisions of
6 Title 40, chapter 4, apply to [sections 1 through 8].

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 117

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING MEDIATION OF FAMILY LAW PROCEEDINGS; PROVIDING FOR SUBMITTING PROCEEDINGS TO MEDIATION; TOLLING AN APPLICABLE STATUTE OF LIMITATIONS DURING MEDIATION; PROVIDING CONFIDENTIALITY FOR MEDIATION PROCEEDINGS; PROVIDING FOR SUBMISSION OF MEDIATION AGREEMENTS TO THE COURT; PROVIDING REQUIREMENTS FOR MEDIATORS; AND AUTHORIZING COURTS TO ADOPT FEES FOR MEDIATION PROCEEDINGS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Family law mediation -- exception. (1) The district court may at any time consider the advisability of requiring the parties to ~~dissolution--of marriage--a--child-custody-proceeding--or--a-child-support A~~ proceeding UNDER THIS CHAPTER to participate in the mediation of the case. Any party may request THE COURT TO ORDER mediation. The 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) The court may not ~~order--mediation~~ AUTHORIZE OR PERMIT CONTINUATION OF MEDIATED NEGOTIATIONS if the court

~~determines--that--there--is--probable--cause--to-believe~~ HAS REASON TO SUSPECT that one of the parties or a child of a party has been physically, or sexually, OR EMOTIONALLY abused by the other party.

(3) The court shall appoint a mediator from the list maintained pursuant to [section 6]. By agreement of all parties, mediators not on the list may be appointed.

(4) The court may adopt rules to implement [sections 1 through 8].

NEW SECTION. Section 2. Mediation proceeding -- tolling of statute of limitations. (1) The purpose of a mediation proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the child custody, child support, visitation, MAINTENANCE, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to [section 1(1)], the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement.

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in writing to participate in the mediation OR WHEN THE COURT ORDERS MEDIATION, WHICHEVER IS LATER, and ends on the date the mediation is officially terminated by the mediator.

NEW SECTION. Section 3. Proceedings -- records -- confidentiality. Mediation proceedings must be conducted in private. All records of a mediation proceeding are confidential and may not be used in evidence in an action enumerated in [section 1]. Matters subject to the mediation proceeding are confidential. A mediator or a party to the mediation is not subject to compelled disclosure of any part of the mediation proceeding.

NEW SECTION. Section 4. Mediator recommendation. If the parties are unable to reach an agreement, the mediator ~~may--recommend~~ SHALL SUBMIT THE MEDIATOR'S RECOMMENDATION to the court ~~that--an--investigation--be--conducted--or--that--other~~ action--be--taken to assist the parties to resolve the controversy ~~before--the--court--hears--the--issues. The--mediator~~ may--not--conduct--the--investigation. The mediator may, upon stipulation by the parties, recommend temporary orders to the court prior to the final decree.

NEW SECTION. Section 5. Mediation agreement. An agreement reached by the parties as a result of mediation

must be discussed by the parties with their attorneys, if any, and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement.

NEW SECTION. Section 6. Mediator list. The district court shall establish and maintain a list of mediators available to assist parties in formally mediating disputes as provided in [sections 1 and 2]. The list of mediators must be maintained by the clerk of court. The clerk of court may accept the applications of individuals who meet the qualifications required under [section 7] and who seek placement on the mediator list. The applications must be presented to the court for review and approval. A mediator may be a member of the ~~professional~~ staff OR CONTRACTED STAFF of a district court, probation department, mental health services agency, or private mediation service.

NEW SECTION. Section 7. Mediator qualifications. A mediator shall meet the following minimum qualifications:

(1) knowledge of the court system and the procedures used in family law matters;

(2) knowledge of other resources in the community to which the parties may be referred for assistance; AND

(3) IF APPLICABLE, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and child custody

1 research; and

2 {4}--a--minimum--of--40--hours--of--certified--mediation
3 training;

4 NEW SECTION. **Section 8. Funding.** A court may establish
5 a fee schedule for the costs of administering [sections 1
6 through 8]. The fees must be paid by the parties to the
7 mediation proceeding.

8 NEW SECTION. **Section 9. Codification instruction.**
9 [Sections 1 through 8] are intended to be codified as an
10 integral part of Title 40, chapter 4, and the provisions of
11 Title 40, chapter 4, apply to [sections 1 through 8].

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~~determines--that--there--is--probable--cause--to-believe~~ HAS REASON TO SUSPECT that one of the parties or a child of a party has been physically, or sexually, OR EMOTIONALLY abused by the other party.

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2 {4}--a--minimum--of--40--hours--of--certified--mediation
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11 Title 40, chapter 4, apply to [sections 1 through 8].

-End-

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 117 (third reading copy -- blue) be concurred in as amended .

Signed: Russell C. Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Toole

1. Page 3, lines 15 and 16.

Strike: "If" on line 15 through end of line 16

2. Page 3, lines 17 and 18.

Strike: "SHALL" on line 17 through "court" on line 18

3. Page 3, lines 19 and 20.

Strike: "to assist" on line 19 through "controversy" on line 20

Strike: "." on line 20

4. Page 4, line 22.

Strike: "AND"

5. Page 5, line 1.

Following: "and"

Insert: "; and

(4) knowledge of the mediation process"

-END-

HOUSE

SB 117

Committee Vote:

Yes 18, No 0.

5015535C UpE

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1 research~~r~~-and; AND

2 (4) KNOWLEDGE OF THE MEDIATION PROCESS.

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