

1                                   **CHILD CUSTODY MEDIATION PROCEDURE**

2   2000 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Loretta Baca**

5 AN ACT RELATING TO HUSBAND AND WIFE; PROVIDING FOR MEDIATION OF  
6 CHILD-CUSTODY ISSUES IN DIVORCE; REQUIRING THAT AGREEMENTS NOT  
7 ADHERED TO BY ONE PARTY BE SENT BACK THROUGH THE MEDIATION PROCESS;  
8 AND MAKING TECHNICAL CORRECTIONS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11           **30-3-10**, as last amended by Chapter 6, Laws of Utah 1999

12           **30-3-38**, as last amended by Chapters 235 and 329, Laws of Utah 1997

13 *Be it enacted by the Legislature of the state of Utah:*

14           Section 1. Section **30-3-10** is amended to read:

15           **30-3-10. Custody of children in case of separation or divorce -- Custody**  
16 **consideration.**

17           (1) If a husband and wife having minor children are separated, or their marriage is declared  
18 void or dissolved, the court shall make an order for the future care and custody of the minor  
19 children as it considers appropriate. In determining custody, the court shall consider the best  
20 interests of the child and the past conduct and demonstrated moral standards of each of the parties.  
21 The court may inquire of the children and take into consideration the children's desires regarding  
22 future custody or visitation schedules, but the expressed desires are not controlling and the court  
23 may determine the children's custody or visitation otherwise. Interviews with the children may be  
24 conducted by the judge in camera only with the prior consent of the parties.

25           (2) In awarding custody, the court shall consider, among other factors the court finds  
26 relevant, which parent is most likely to act in the best interests of the child, including allowing the  
27 child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

28 (3) If the court finds that one parent does not desire custody of the child, or has attempted  
29 to permanently relinquish custody to a third party, it shall take that evidence into consideration in  
30 determining whether to award custody to the other parent.

31 (4) (a) A court may not discriminate against a parent due to a disability, as defined in  
32 Section 57-21-2, in awarding custody or determining whether a substantial change has occurred  
33 for the purpose of modifying an award of custody.

34 (b) If a court takes a parent's disability into account in awarding custody or determining  
35 whether a substantial change has occurred for the purpose of modifying an award of custody, the  
36 parent with a disability may rebut any evidence, presumption, or inference arising therefrom by  
37 showing that:

38 (i) the disability does not significantly or substantially inhibit the parent's ability to provide  
39 for the physical and emotional needs of the child at issue; or

40 (ii) the parent with a disability has sufficient human, monetary, or other resources available  
41 to supplement the parent's ability to provide for the physical and emotional needs of the child at  
42 issue.

43 (c) Nothing in this section may be construed to apply to:

44 (i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and  
45 Family Services, or Title 78, Chapter 3a, Juvenile Courts; or

46 (ii) adoption proceedings under Title 78, Chapter 30, Adoption.

47 (5) If the parents arrive at an agreement concerning the custody of their minor children  
48 through mediation, the court may approve the arrangement and sign the agreement as an order.

49 Section 2. Section **30-3-38** is amended to read:

50 **30-3-38. Pilot Program for Expedited Visitation Enforcement.**

51 (1) There is established an Expedited Visitation Enforcement Pilot Program in the third  
52 judicial district to be administered by the Administrative Office of the Courts from July 1, 1996,  
53 to July 1, 2000.

54 (2) As used in this section:

55 (a) "Mediator" means a person who:

56 (i) is qualified to mediate visitation disputes under criteria established by the  
57 Administrative Office of the Courts; and

58 (ii) agrees to follow billing guidelines established by the Administrative Office of the

59 Courts and this section.

60 (b) "Services to facilitate visitation" or "services" means services designed to assist  
61 families in resolving visitation problems through:

- 62 (i) counseling;
- 63 (ii) supervised visitation;
- 64 (iii) neutral drop-off and pick-up;
- 65 (iv) educational classes; and
- 66 (v) other related activities.

67 (3) (a) Under this pilot program, if a parent files a motion in the third district court alleging  
68 that court-ordered visitation rights are being violated, the clerk of the court, after assigning the case  
69 to a judge, shall refer the case to the administrator of this pilot program for assignment to a  
70 mediator.

71 (b) Upon receipt of a case, the mediator shall:

- 72 (i) meet with the parents to address visitation issues within 15 days of the motion being  
73 filed;
- 74 (ii) assess the situation;
- 75 (iii) facilitate an agreement on visitation between the parents; and
- 76 (iv) determine whether a referral to a service provider under Subsection (3)(c) is  
77 warranted.

78 (c) While a case is in mediation, a mediator may refer the parents to a service provider  
79 designated by the Department of Human Services for services to facilitate visitation if:

- 80 (i) the services may be of significant benefit to the parents; or
- 81 (ii) (A) a mediated agreement between the parents is unlikely; and
- 82 (B) the services may facilitate an agreement.

83 (d) At anytime during mediation, a mediator shall terminate mediation and transfer the  
84 case to the administrator of the pilot program for referral to the judge to whom the case was  
85 assigned under Subsection [~~(2)~~] (3)(a) if:

- 86 (i) a written agreement between the parents is reached; or
- 87 (ii) the parents are unable to reach an agreement through mediation; and
- 88 (A) the parents have received services to facilitate visitation;
- 89 (B) both parents object to receiving services to facilitate visitation; or

90 (C) the parents are unlikely to benefit from receiving services to facilitate visitation.

91 (e) Upon receiving a case from the administrator of the pilot program, a judge may:

92 (i) review the agreement of the parents and, if acceptable, sign it as an order;

93 (ii) order the parents to receive services to facilitate visitation;

94 (iii) proceed with the case; or

95 (iv) take other appropriate action.

96 (4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child  
97 who is the subject of a visitation order against the other parent or a member of the other parent's  
98 household to a mediator or service provider, the mediator or service provider shall immediately  
99 report that information to:

100 (i) the judge assigned to the case who may immediately issue orders and take other  
101 appropriate action to resolve the allegation and protect the child; and

102 (ii) the Division of Family Services within the Department of Human Services in the  
103 manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting  
104 Requirements.

105 (b) If an allegation under Subsection (4)(a) is made against a parent with visitation rights  
106 or a member of that parent's household, visitation by that parent shall be supervised until:

107 (i) the allegation has been resolved; or

108 (ii) a court orders otherwise.

109 (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to  
110 mediate visitation problems and a service provider may continue to provide services to facilitate  
111 visitation unless otherwise ordered by a court.

112 (5) (a) The Department of Human Services may contract with one or more entities in  
113 accordance with Title 63, Chapter 56, Utah Procurement Code, to provide:

114 (i) services to facilitate visitation;

115 (ii) case management services; and

116 (iii) administrative services.

117 (b) An entity who contracts with the Department of Human Services under Subsection  
118 (5)(a) shall:

119 (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

120 (ii) agree to follow billing guidelines established by the Department of Human Services

121 and this section.

122 (6) (a) Except as provided in Subsection (6)(b), the cost of mediation and the cost of  
123 services to facilitate visitation shall be:

124 (i) reduced to a sum certain;

125 (ii) divided equally between the parents; and

126 (iii) charged against each parent taking into account the ability of that parent to pay under  
127 billing guidelines adopted in accordance with this section.

128 (b) (i) A judge may order a parent to pay an amount in excess of that provided for in  
129 Subsection (6)(a) if the parent:

130 (A) failed to participate in good faith in mediation or services to facilitate visitation; or

131 (B) made an unfounded assertion or claim of physical or sexual abuse of a child.

132 (c) (i) The cost of mediation and services to facilitate visitation may be charged to parents  
133 at periodic intervals.

134 (ii) Mediation and services to facilitate visitation may only be terminated on the ground  
135 of nonpayment if both parents are delinquent.

136 (7) If a parent fails to cooperate in good faith in mediation or services to facilitate  
137 visitation, a court may order, in subsequent proceedings, a temporary change in custody or  
138 visitation.

139 (8) If a parent fails to comply with the agreement reached under Subsection (3), the court  
140 may refer the case back to the administrator of the program for renewed mediation.

141 [~~8~~] (9) (a) The Judicial Council may make rules to implement and administer the  
142 provisions of this pilot program related to mediation.

143 (b) The Department of Human Services may make rules to implement and administer the  
144 provisions of this pilot program related to services to facilitate visitation.

145 [~~9~~] (10) (a) The Administrative Office of the Courts shall adopt outcome measures to  
146 evaluate the effectiveness of the mediation component of this pilot program. Progress reports shall  
147 be provided to the Judiciary Interim Committee by August 1998 and as requested thereafter by the  
148 committee. At least once during this pilot program, the Administrative Office of the Courts shall  
149 present to the committee the results of a survey that measures the effectiveness of the program in  
150 terms of increased compliance with visitation orders and the responses of interested persons.

151 (b) The Department of Human Services shall adopt outcome measures to evaluate the

152 effectiveness of the services component of this pilot program. Progress reports shall be provided  
153 to the Judiciary Interim Committee by August 1998 and as requested thereafter by the committee.

154 (c) The Administrative Office of the Courts and the Department of Human Services may  
155 adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections  
156 [~~8(a)~~] (9)(a) and (b).

157 [~~(10)~~] (11) (a) The Department of Human Services shall apply for federal funds designated  
158 for visitation, if such funds are available.

159 (b) This pilot program shall be funded through funds received under Subsection (11)(a),  
160 the Children’s Legal Defense Account as established in Section 63-63a-8, or other available  
161 funding. Without funding, the pilot program may not proceed.

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**Legislative Review Note**  
**as of 1-4-00 1:29 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**