HB

538

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 9, 1990 FURTHER REFERRALS:
FINANCE

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 538

HOUSE BILL NO. 538 CHILD VISITATION MEDIATION PROJECT

"An Act authorizing a child visitation mediation project; and providing for an effective date."

RECOMMENDATIONS:
[ ] be replaced with _____ _____ [ ] the same title [ ] a new title
[ ] have attached amendment( )
[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact_____
[ ] zero fiscal note_____
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

_____
Chairman's Signature

HOUSE COMMITTEE REPORT

6 4/9

(7)
Date Referred: February 12, 1990 FURTHER REFERRALS: JUDICIARY FINANCE

Date of Committee Action: 4/6/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 538

HOUSE BILL NO. 538 CHILD VISITATION MEDIATION PROJECT

"An Act authorizing a child visitation mediation project; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with CS HB 538 (HESS) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal impact _____ [ ] fiscal note(s) _____
[X] zero fiscal note HESS Comm. [ ] zero fiscal note(s) _____
[ ] zero with analysis _____ [ ] zero fn/analysis _____

SIGNING DO PASS: ELLIS

GRUENBERG
C. DAVIS
BOYER

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
FURNACE		X	
		X	

Chairman's Signature

6-2238F
Chenoweth
5/1/90

Original sponsor(s): REP. ELLIS, Menard, Ulmer

IN THE HOUSE

CS FOR HOUSE BILL NO. 538 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring the Alaska Judicial Council to establish and evaluate a child visitation mediation project; and providing for an effective date."

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

* Section 1. CHILD VISITATION MEDIATION PROJECT. (a) To better enable persons having either custody of or rights of visitation for a minor child to reach voluntary agreements relating to child visitations that are in the best interests of the child, the Alaska Judicial Council shall

(1) establish a child visitation mediation project using mediators to mediate child visitation disputes; the mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the child visitation mediation project created under (1) of this subsection; the evaluation must measure

(A) the success of the project in terms of its ability to promote and serve the best interests of the child;

(B) the satisfaction of the legitimate and appropriate needs of the persons who participate in the project;

(C) the project's efficiency; and

(D) the project's economy.

(b) In establishing the child visitation mediation project under (a) of this section, the Alaska Judicial Council shall

(1) require the screening of cases and exclude from the scope of

the child visitation mediation project cases in which

(A) there has been an indication of domestic violence as defined in AS 18.66.900;

(B) the child or children who are the subject of a visitation order require the continuing services of a guardian ad litem;

(C) a material change in the visitation order is being sought; or

(D) court records reflect a pattern of harassment of one party by another;

(2) develop a curriculum for the initial contact and for the mediation orientation session that describes the process and purpose of mediation and informs all parties of their rights and the scope and purpose of the project before mediation begins;

(3) consult, as to the child visitation mediation project's design and evaluation

(A) with the Alaska Court System; and

(B) in a formal process, with custodial and noncustodial parents;

(4) consult with other states to determine their experiences with child visitation mediation and to obtain their recommendations relating to mediation of child visitation disputes; and

(5) develop a list of qualifications for persons who may serve as mediators.

(c) A person may participate in the child visitation mediation project if the person is a party to a valid visitation order and files a complaint regarding implementation of the order with the Alaska Court System, and the complaint requests mediation services.

(d) The Alaska Judicial Council shall determine a party's eligibility to participate in the project by screening complaints.

(e) If one party to the visitation order files a complaint requesting mediation services and the person qualifies for those services, a mediator shall contact the other party and, in a nonthreatening manner and consistent with the material developed under (b)(2) of this section, notify the other party that a complaint has been filed and that visitation mediation services are available. In making the contact, the mediator shall outline the parties' option either to participate in mediation or to continue with the court case. The mediator shall also invite the notified party to attend an initial orientation session, advising the party that the party may withdraw from mediation after the orientation session.

(f) Mediation under the child visitation mediation project is limited to the visitation dispute. Mediation must be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(g) A person who is a party to mediation under the child visitation mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A party's refusal to participate may not be used against the party in a proceeding.

(h) Mediation conferences under the child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(i) In this section, "party" means a person having either custody of or rights of visitation for a minor child.

* Sec. 2. PROJECT EVALUATION. The Alaska Judicial Council shall complete the evaluation required under sec. 1(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992. The evaluation of the project must consider establishing a sliding scale fee system for

visitation mediation services if this child visitation mediation program is continued after February 1, 1992.

* Sec. 3. ADDITIONAL MEDIATION PROJECTS PROHIBITED. The Alaska Court System may not establish and conduct another mediation project until the child visitation mediation project established by this Act has been evaluated under sec. 2 of this Act.

* Sec. 4. USE OF FEDERAL FUNDS. The Alaska Judicial Council shall apply for federal money that may be available for the child visitation mediation project.

* Sec. 5. This Act is repealed February 1, 1992.

* Sec. 6. This Act takes effect July 1, 1990.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M May 4, 1990

SUBJECT: Draft CSHB 538 ( )

TO: Representative Peter Goll
ATTN: Hayden Kaden

FROM: Jack Chenoweth
Legislative Counsel

That opening sentence ("To promote and serve the best interests of the children . . . relating to child visitations that are in the best interests of the child . . . ") is probably the most convoluted provision that has crossed my desk all session.

Can't we repair it before it gets amended on the floor???

JBC:mi
wkmi6/087

6-2238S
Chenoweth
5/4/90

Original sponsor(s): REP. ELLIS, Menard, Ulmer

IN THE HOUSE

CS FOR HOUSE BILL NO. 538 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring the Alaska Judicial Council to establish and evaluate a child visitation mediation project; and providing for an effective date."

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

* Section 1. CHILD VISITATION MEDIATION PROJECT. (a) To promote and serve the best interests of the children who are the subject of visitation orders by better enabling the persons having either custody of or rights of visitation for a minor child to reach voluntary agreements relating to child visitations that are in the best interests of the child, the Alaska Judicial Council shall

(1) establish a child visitation mediation project using mediators to mediate child visitation disputes; the mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the child visitation mediation project created under (1) of this subsection; the evaluation must measure

(A) the success of the project in terms of its ability to promote and serve the best interests of the child;

(B) the satisfaction of the legitimate and appropriate needs of the persons who participate in the project;

(C) the project's efficiency;

(D) the project's economy;

(E) whether the project has decreased the time required to

resolve disputes relating to child visitation;

(F) whether the project has reduced litigation relating to visitation disputes; and

(G) whether mediation under the project improves compliance with court-ordered child support payments.

(b) In establishing the child visitation mediation project under (a) of this section, the Alaska Judicial Council shall

(1) require the screening of cases and exclude from the scope of the child visitation mediation project cases in which

(A) there has been an indication of domestic violence as defined in AS 18.66.900 or a pattern of harassment of one party by another; or

(B) a party desires to materially change the existing visitation schedule;

(2) develop protocols for the initial contact and for the mediation orientation session that describes the process and purpose of mediation and informs all parties of their rights and the scope and purpose of the project before mediation begins;

(3) consult, as to the child visitation mediation project's design and evaluation

(A) with the Alaska Court System; and

(B) in a formal process, with custodial and noncustodial parents and other appropriate parties;

(4) consult with other states to determine their experiences with child visitation mediation and to obtain their recommendations relating to mediation of child visitation disputes; and

(5) develop a list of qualifications for persons who may serve as mediators.

(c) A person may participate in the child visitation mediation

project if the person is a party to a valid visitation order and submits a written request for mediation to the Alaska Judicial Council. The request must state the existing visitation schedule as set out in the current visitation order, the actual visitation being exercised, what the party hopes that mediation will accomplish, and the efforts that the party has made to resolve the party's concerns.

(d) If a minor child for whom visitation rights are made the subject of mediation has a guardian ad litem, the guardian ad litem

(1) shall be involved in all aspects of mediation; and

(2) shall approve any agreement to child visitation that arises out of mediation.

(e) If one party to the visitation order files a request for mediation and the person qualifies for mediation, a mediator shall contact the other party and, in a nonthreatening manner and consistent with the protocols developed under (b)(2) of this section, notify the other party that a request for mediation has been filed and that visitation mediation services are available. In making the contact, the mediator shall outline the parties' option to participate in mediation. The mediator shall also invite the notified party to attend an initial orientation session, advising the party that the party may withdraw from mediation at any time.

(f) Mediation under the child visitation mediation project is limited to the visitation dispute. Mediation must be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(g) A person who has been contacted under (e) of this section and agrees to participate in mediation under the child visitation mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A

party's refusal to participate may not be used against the party in a proceeding.

(h) Mediation conferences under the child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(i) In this section, "party"

(1) means a person having either custody of or rights of visitation for a minor child; and

(2) includes, when appropriate, the guardian ad litem of the minor child.

* Sec. 2. PROJECT EVALUATION. The Alaska Judicial Council shall complete the evaluation required under sec. 1(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992. The evaluation of the project must consider establishing a sliding scale fee system for visitation mediation services if this child visitation mediation program is continued after February 1, 1992.

* Sec. 3. ADDITIONAL MEDIATION PROJECTS PROHIBITED. The Alaska Court System may not establish and conduct another mediation project until February 1, 1992.

* Sec. 4. USE OF FEDERAL FUNDS. The Alaska Judicial Council shall apply for federal money that may be available for the child visitation mediation project.

* Sec. 5. This Act is repealed February 1, 1992.

* Sec. 6. This Act takes effect July 1, 1990.

6-2238S
Chenoweth
5/4/90

Original sponsor(s): REP. ELLIS, Menard, Ulmer

This W/Be
Inserted
5-4-90
7:15 p.m.

IN THE HOUSE

CS FOR HOUSE BILL NO. 538 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring the Alaska Judicial Council to establish and evaluate a child visitation mediation project; and providing for an effective date." per Hayden

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

* Section 1. CHILD VISITATION MEDIATION PROJECT. (a) To promote and serve the best interests of the children who are the subject of visitation orders by better enabling the persons having either custody of or rights of visitation for a minor child to reach voluntary agreements relating to child visitations that are in the best interests of the child, the Alaska Judicial Council shall

(1) establish a child visitation mediation project using mediators to mediate child visitation disputes; the mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the child visitation mediation project created under (1) of this subsection; the evaluation must measure

(A) the success of the project in terms of its ability to promote and serve the best interests of the child;

(B) the satisfaction of the legitimate and appropriate needs of the persons who participate in the project;

(C) the project's efficiency;

(D) the project's economy;

(E) whether the project has decreased the time required to

resolve disputes relating to child visitation;

(F) whether the project has reduced litigation relating to visitation disputes; and

(G) whether mediation under the project improves compliance with court-ordered child support payments.

(b) In establishing the child visitation mediation project under (a) of this section, the Alaska Judicial Council shall

(1) require the screening of cases and exclude from the scope of the child visitation mediation project cases in which

(A) there has been an indication of domestic violence as defined in AS 18.66.900 or a pattern of harassment of one party by another; or

(B) a party desires to materially change the existing visitation schedule;

(2) develop protocols for the initial contact and for the mediation orientation session that describes the process and purpose of mediation and informs all parties of their rights and the scope and purpose of the project before mediation begins;

(3) consult, as to the child visitation mediation project's design and evaluation

(A) with the Alaska Court System; and

(B) in a formal process, with custodial and noncustodial parents and other appropriate parties;

(4) consult with other states to determine their experiences with child visitation mediation and to obtain their recommendations relating to mediation of child visitation disputes; and

(5) develop a list of qualifications for persons who may serve as mediators.

(c) A person may participate in the child visitation mediation

project if the person is a party to a valid visitation order and submits a written request for mediation to the Alaska Judicial Council. The request must state the existing visitation schedule as set out in the current visitation order, the actual visitation being exercised, what the party hopes that mediation will accomplish, and the efforts that the party has made to resolve the party's concerns.

(d) If a minor child for whom visitation rights are made the subject of mediation has a guardian ad litem, the guardian ad litem

(1) shall be involved in all aspects of mediation; and

(2) shall approve any agreement to child visitation that arises out of mediation.

(e) If one party to the visitation order files a request for mediation and the person qualifies for mediation, a mediator shall contact the other party and, in a nonthreatening manner and consistent with the protocols developed under (b)(2) of this section, notify the other party that a request for mediation has been filed and that visitation mediation services are available. In making the contact, the mediator shall outline the parties' option to participate in mediation. The mediator shall also invite the notified party to attend an initial orientation session, advising the party that the party may withdraw from mediation at any time.

(f) Mediation under the child visitation mediation project is limited to the visitation dispute. Mediation must be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(g) A person who has been contacted under (e) of this section and agrees to participate in mediation under the child visitation mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A

party's refusal to participate may not be used against the party in a proceeding.

(h) Mediation conferences under the child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(i) In this section, "party"

(1) means a person having either custody of or rights of visitation for a minor child; and

(2) includes, when appropriate, the guardian ad litem of the minor child.

* Sec. 2. PROJECT EVALUATION. The Alaska Judicial Council shall complete the evaluation required under sec. 1(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992. The evaluation of the project must consider establishing a sliding scale fee system for visitation mediation services if this child visitation mediation program is continued after February 1, 1992.

* Sec. 3. ADDITIONAL MEDIATION PROJECTS PROHIBITED. The Alaska Court System may not establish and conduct another mediation project until February 1, 1992.

* Sec. 4. USE OF FEDERAL FUNDS. The Alaska Judicial Council shall apply for federal money that may be available for the child visitation mediation project.

* Sec. 5. This Act is repealed February 1, 1992.

* Sec. 6. This Act takes effect July 1, 1990.

6-2238P ✓
Chenoweth
4/6/90

Original sponsor(s): REP. ELLIS, Menard, Ulmer

IN THE HOUSE BY THE HESS COMMITTEE

CS FOR HOUSE BILL NO. 538 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act authorizing the Alaska Judicial Council to establish and evaluate a child visitation mediation project and establishing an advisory council to provide advice concerning the project; and providing for an effective date."

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

* Section 1. FINDING. The legislature finds that it is in the best interests of a child to have reasonable access to both of the child's parents unless there are circumstances in which that access would be detrimental to the child.

* Sec. 2. CHILD VISITATION MEDIATION PROJECT. (a) To better enable persons having either custody of or rights of visitation for a minor child to reach voluntary agreements relating to child visitations that are in the best interests of the child, the Alaska Judicial Council may

(1) create a child visitation mediation project using mediators to mediate child visitation disputes; the mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the project created under (1) of this subsection; the evaluation must measure the success of the project in terms of its ability to promote and serve the best interests of the child, the project's efficiency, and the project's economy.

(b) In establishing the project under (a) of this section, the Alaska

Judicial Council shall

(1) exclude from the scope of the project cases in which there has been an indication of domestic violence as defined in AS 18.66.900; and

(2) develop a curriculum for the initial mediation session that informs all parties of their visitation rights and the scope and purpose of the project before mediation begins.

(c) Except as provided in (d) of this section, mediation under the child visitation mediation project shall be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(d) A party who is involved in mediation under the child visitation mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A party's refusal to participate may not be used against the party in another proceeding.

(e) Mediation conferences under the child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(f) Unless precluded by (b)(1) of this section, a minor who is at least 13 years of age may refer persons having custody of or rights of visitation for the minor to the child visitation mediation project.

(g) In this section, "party" means a person having either custody of or rights of visitation for a minor child.

* Sec. 2. PROJECT ADVISORY COUNCIL. (a) There is established an advisory council to advise the Alaska Judicial Council concerning the project authorized by sec. 1 of this Act. Before the Alaska Judicial Council begins offering mediation services under the project, the advisory council shall make recommendations to the Alaska Judicial Council

concerning the implementation of the project and how the success of the project should be measured.

(b) The advisory council consists of seven members, including

(1) a representative of the judicial branch, appointed by the chief justice of the supreme court;

(2) a person who is experienced as a mediator, appointed by the governor;

(3) a legislator, appointed by the governor;

(4) four parents, two of whom are custodial parents and two of whom have visitation rights with their children who are in the custody of the other parent, appointed by the governor.

(c) Members of the advisory council appointed under (b) of this section serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180 for attendance at scheduled meetings of the advisory council.

* Sec. 3. The Alaska Judicial Council shall complete the evaluation required under sec. 2(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992.

* Sec. 4. This Act is repealed February 1, 1992.

* Sec. 5. This Act takes effect July 1, 1990.

Article IV

The Judiciary

Section 1 - Judicial Power and Jurisdiction.

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Section 2 - Supreme Court.

(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office. [Amendment approved August 25, 1970 - Effective October 10, 1970]

Section 3 - Superior Court.

The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Section 4 - Qualifications of Justices and Judges.

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Section 5 - Nomination and Appointment.

The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Section 6 - Approval or Rejection.

Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Section 7 - Vacancy.

The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Section 8 - Judicial Council.

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Section 9 - Additional Duties.

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Section 10 - Commission on Judicial Conduct.

The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from

BILL NO: CSHB 538 DATE: March 15, 1990

TITLE: An Act directing the Office of Public Advocacy to establish a child visitation mediation project, and providing for an effective date

CONTACT: Barbara Miklos 465-4356

DEPARTMENT OF PUBLIC SAFETY

CS for HB 538 (HESS) directs the Office of Public Advocacy to establish a child visitation mediation project. The Council has some concerns about some of the provisions in this bill.

Mediation can be very harmful to victims of domestic violence or sexual assault. Violence distorts the balance of power in a relationship. Violent men physically and psychologically coerce women, by domination and intimidation. Women who are severely intimidated and frightened of violence are not able to make independent decisions in their own best interests or the best interests of their children. Domestic violence and sexual assault occur much more frequently than may be suspected. A study by Stockholm and Helms, which surveyed women in Alaska on the extent of abuse of women by their spouses or live-in partners, found that 26% of the women had been abused as adults. It is important to note that studies show domestic violence occurs at least at the same rate after a separation as before a separation. In fact, violence is often escalated following a separation and, therefore, the danger to the victim is increased.

We recommend that subsection (b), Section 1, lines 25 - 26, page 1, be changed to delete the requirement that a report of domestic violence must be made to a public agency before a domestic violence case can be excluded from mediation. There are several problems with this requirement. Many victims of domestic violence will not have made a report to a public agency. It is only recently that arrests or prosecutions of domestic violence assaults have been vigorously pursued, thus there was previously little advantage to the victims in reporting domestic violence assaults. Reports to DFYS are confidential. If a victim sought services from a non-profit domestic violence program, that would not be a public agency, and those records are also required to be confidential. In most rural areas, services are simply unavailable, and so this provision is of particular concern for people who have lived in rural areas. We recommend that the wording be changed as follows: "The Agency or court may not refer a dispute for mediation if <u>there has been an indication</u> [A PARTY TO A DISPUTE HAS BEEN ACCUSED] of domestic violence, as defined in AS 18.66.900. [IN A REPORT TO OR BY A PUBLIC AGENCY]." The Council on Domestic Violence and Sexual Assault also feels it is important to have someone who has expertise in the field of family violence on the Child Visitation Mediation Council.

The Council on Domestic Violence and Sexual Assault agrees that participation in mediation should be voluntary, as provided for in subsection (c), and that a person's refusal to participate may not be used against the

person in another proceeding. Mediation is most likely to fail where there are truly irreconcilable differences, no common interests, and where both parties are not committed to the process. Research on conflict resolution also indicates that, to the extent that one or both parties feels coerced, negotiations will be deadlocked or agreements that are reached are likely to fail to be implemented.

Generally, the Council is neutral regarding the establishment of this voluntary child visitation mediation project. We strongly feel that no victims of domestic violence should be directed into this process.

Dayle A. Hoetzki

for Arthur English
Commissioner

Alaska State Legislature

Please enter into the record my testimony to the House HESS.
committee name

committee on 538/539, dated 3-7-90.
bill/subject

I am in support of this bill because not all cases of denided visitation are because of D.V. and because of the cost of going to court to get visitation restorted. I have been denided visitation on many holidays and birthdays, if you call the police, there is nothing that can be done to help. In court each parent is made out to be a bad person by each others lawers. My hope is that someday parents won't be bad guys who do not have custody of their children, but just moms or dads who can freely be a part of their childrens life. This bill is a step in the right direction. Don't let the hope of a better way to solve vistatoin die!

Signed: Mabel H Ramsay
Testifier

Representing (Optional)

P O B 874691 Wasilla AK 99687
Address

892-7163
Phone No.

Please enter into the record my testimony to the HOUSE HESS committee name

committee on HB 538/539 bill/subject, dated MARCH 7, 1990.

As a member of Alaska Family Support Group and an advocate of children's rights I am testifying in favor of HB 583 and 539. Section 6) should be amended to include self referral by either custodial or non-custodial parents and direct access in addition to court or CSED referral. Having experienced visitation difficulties for extended periods, ~~during a time~~ actively seeking assistance from the troopers and the court System, in retrospect I can see ~~the~~ mediation as a much more timely + efficient process for the kids benefit than ~~the~~ law enforcement or the judiciary. This ~~mediation~~ would be mediation not to discredit either parent as is customary in the court process of litigation + custody dispute. but rather to gain access of kids to moms + dads.

Signed: Jim Travis JIM TRAVIS
Testifier

member - Alaska Family Support Group
Representing (Optional)

581 MULCHATNA #4
Address

376-2219
Phone No.

ATTENTION: HOUSE H.E.S.S.

H.B. 472 I strongly support this bill. This Bill will put the child support award system in to the democratic process.

In my opinion it is good policy for parents and elected officals to be directly involved in formulating child support laws.

H.B. 571 I strongly support this bill so that obligors will be notified when a duty of support begins accruing.

H.B. 538 and 539 I strongly support these bills. I believe that children have the right to have access to both parents and both parents have the right to access their children. This visitation project will benefit familys and children by providing mediation for visitation problems.

I am a member of the Alaska ^ Support Group.
FAMILY

Paul A. L. Nelson

Paul A. L. Nelson
March 6, 1990

Rhona L. Miels

Rhona L. Miels Non-member

From: Tina Martini
Box 900203
Fairbanks, Ak. 99775

To: Rep. Johnny Ellis and Mark Boyer
Alaska State Legislature
Box V (MS 3100)
Juneau, AK. 99811

Dear Representatives,

I am very sorry I was unable to make it for testimony on March 7th's teleconference. My child was very sick. I hope that this letter will suffice.

I next want to thank Johnny Ellis for introducing House bills 538 and 539.

Finally, I am writing my testimony that was to be heard on the 7th. I have had the experience as a child of being separated from my father. When my parents were divorced, my mother gained custody of 4 children. I love my mother dearly and feel that she raised us well. One thing that I still feel bothers me is that when she gained that custody, visitation with my father was non-existent. Just because my mother didn't get along with him, we weren't to like him either. Countless times when he would call us, we would get upset and begin missing him and wanting to see him. All of us were denied to see him or even to write to him. When my step-father stepped into the picture, my father's efforts to see us diminished. Being a teenager then, it was hard for me to accept this new person as my Dad. His attitude was that if he was paying to raise us, we were to show him the

respect by calling him Dad and we weren't allowed to even mention our natural father's name. My whole teenage life was traumatic. I needed to know where my Dad was and at times I needed the support of his love and tenderness.

When I turned 20, I went on a mission to find out where my father lived. I had finally found him in California. I still love him, write to him and visit him. I understand that the feelings of my step-father were crushed for seeing my natural father, but no amount of money can replace or destroy the love I had for my Dad. I am also not saying that I didn't appreciate the work and let-downs my step-father had to go through, but I feel my feelings weren't even considered. If I would have known that I wasn't going to see my Dad for over 8 years, I wouldn't have agreed to be adopted by my Step-father. I am speaking for the kids that are denied their natural parents love. It is damaging to the growth of a child.

I am still in awe that the courts consistently decide in favor of one parent having control over the rearing of children. I believe that my Dad couldn't get along with my mother, but that didn't mean that I had the same problem. I'd like to see the legislature look at the real situation and try to make the laws fair for all of humankind. We voted you guys in office believing that great things would get done. I still have faith.

Thanks for listening to me.

Sincerely Yours,

Gina Martini

Courtesy of: DADS

THE PRINCE GEORGE'S COUNTY GOVERNMENT
OFFICE OF CHILD SUPPORT ENFORCEMENT, SUITE 405
14701 Gov. Oden Bowie Drive, Upper Marlboro, MD 20772
952-4822

April 9, 1986

M E M O R A N D U M

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Report on Visitation Pilot Project

As you know the Office of Child Support Enforcement is currently conducting a Visitation Pilot Project at the recommendation of the Visitation Task Force with the support and approval of the County executive, legislative and judicial branches of government.

On January 23, 1986, Ms. Rita Gunn, an experienced counselor and social work administrator accepted a temporary (700 hour) Counselor Coordinator I position with this agency to carry out this project.

VISITATION PROJECT STATISTICS

At the end of the first quarter of calendar year 1986 the results of Ms. Gunn's efforts are as follows:

Number of Hours Worked	:203
Number of Visitation Complaints Received	: 92
Number of Visitation Complaints Resolved	: 75
Number of Visitation Complaints Reopened	: 5
Number of Visitation Complaints Carried Over	: 17

Average Number of Complaints Received Per Week	: 9.2
Average Number of Complaints Resolved Per Week	: 7.5
Average Number of Telephone Contacts Per Complaint	: 2.33
Average Time Spent Per Case	: 2 hours 15 minutes

VISITATION PROJECT OPERATION

Ms. Gunn's primary method of operation is to call the custodial or non-custodial parent who has requested her services by contacting our office or the courts. From this call she determines the nature of the complaint, confirms the status of child support payments in the case, researches the case file to determine the nature of court-ordered visitation and explains that she will contact the other party to the case.

The other party is then contacted. In this call she explains the nature of the complaint, listens to the "other side of the story", explains legal requirements and remedies and attempts to resolve the complaint.

Further calls continue to be made to either party until resolution is reached. Her goal is to establish compliance to the court order by both parties, to initiate dialog between the parties regarding the child(ren)'s best interests and to remove herself from the process allowing the parties to work together to assure continued regular visitation and support.

VISITATION PROJECT ADMINISTRATION

Ms. Gunn works eight hours on Thursdays and Fridays and four hours on Saturdays.

She has designed and completes a bi-weekly Visitation Activity Report which is provided to the Executive Director of the Office of Child Support Enforcement. She has also drafted a statement of Prince George's County's Visitation Policy which will be developed into a brochure and mailed to all the Office of Child Support Enforcement clients and obligors. This draft is now being reviewed by the courts and the county administration.

Completed case notes, included on a Visitation Counselor's Report also designed by Ms. Gunn, are filed in case files. These notes will also be filed in corresponding court jackets and are available to all parties should visitation issues eventually require litigation.

VISITATION PROJECT ANALYSIS

To date, one part-time visitation counselor has been able to handle the workload. However, we expect that publication and mailing of the brochure will generate sufficient numbers of new complaints to require increased staffing. Therefore, the Office of Child Support Enforcement has included a request for a full-time Counselor Coordinator I position in the Fy-86 budget request.

If this request is approved, further analysis will be conducted at the end of the second quarter of calendar year 1986 prior to submission of a request to fill this position. Should data not indicate increased need, the position will be filled at 50% until workload necessitates greater staff time for this function.

Should you have any further questions or require further information regarding this project, please don't hesitate to contact me.

MS/mjfh

cc: Visitation Task Force

THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF CHILD SUPPORT ENFORCEMENT
14701 Governor Oden Bowie Drive, Suite 405
Upper Marlboro, Maryland 20772 952-4822

July 15, 1986

M E M O R A N D U M

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Report on Visitation Pilot Project

Visitation project statistics for the period from April 1, 1986 through June 30, 1986 are as follows:

Number of Hours Worked:	282
Number of Visitation Complaints Received:	138
Number of Visitation Complaints Resolved:	125
Number of Visitation Complaints Reopened:	10
Number of Visitation Complaints Carried Over:	23

Average Number of Complaints Received Per Week:	11.5
Average Number of Complaints Resolved Per Week:	10.4
Average Number of Telephone Contacts Per Complaint:	2.2
Average Time Spent Per Case:	1 hour, 17 minutes

We have created a permanent Visitation Counselor position with a county classification of Community Developer I/II. Recruitment will begin as soon as a personnel register is available. Ms. Gunn will continue in her temporary (700 hour) position until the permanent position is filled.

Although her efficiency in handling these complaints has increased as illustrated by the drop in time spent per case from 2 hours 15 minutes in the first quarter of operation to one hour 13 minutes in the second quarter, she has been unable to complete additional work such as development of a brochure and compilation of collection data on visitation cases. Therefore the permanent position will be filled as a full-time rather than half time position.

Should you have any further questions or require further information regarding this project, please don't hesitate to contact me.

MS/mjfh
cc: Visitation Task Force

THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF CHILD SUPPORT ENFORCEMENT
14701 Governor Oden Bowie Drive, Suite 405
Upper Marlboro, Maryland 20772 952-4022

January 21, 1987

M E M O R A N D U M

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Visitation Report

Visitation Statistics for the period from October 1, 1986 through December 31, 1986 are as follows:

NUMBER OF HOURS WORKED	480
NUMBER OF VISITATION COMPLAINTS RECEIVED:	278
NUMBER OF VISITATION COMPLAINTS RESOLVED:	227
NUMBER OF VISITATION COMPLAINTS REOPENED:	19
NUMBER OF VISITATION COMPLAINTS CARRIED OVER:	75

AVERAGE NUMBER OF COMPLAINTS RECEIVED PER WEEK:	23
AVERAGE NUMBER OF COMPLAINTS RESOLVED PER WEEK:	19
AVERAGE NUMBER OF TELEPHONE CONTACTS PER COMPLAINT:	2.99
AVERAGE TIME SPENT PER CASE:	1 hour, 37 minutes

MS/mjfh

IMPORTANT

Note:

The above data means an 80% "resolution" rate at an average settlement time of 1 hour, 37 minutes per case. In a telephone conversation with county officials, we learned the average salary cost per case is about $15.00

- National Council for Children's Rights

FROM: NORTH CAROLINA BAR ASSOC. REPORT

Final Report

of the

Advisory Committee on Child Custody

and Visitation Dispute Mediation

March, 1989

FOREWORD

This report is about children who are hurting.

Consider this typical scene that occurs almost daily in crowded courtrooms across North Carolina...

Many of those present have been in court before and are back because their cases were not reached. The court dockets are crowded.

Two of those present are children of a broken home. We can call them Johnny and Ann. Johnny is twelve years old. His sister Ann is ten.

A man in uniform says: "All 'rise."

A judge enters and takes his place behind the bench. After everyone is seated, he notices Johnny and Ann. He can barely see their small faces above the back of the front row of seats. He wonders about their presence.

The children think about their parents as they watch the judge call the calendar.

They have just spent a great weekend with their father. He asked for assurance from them that they wanted to come and live with him. He had given each a new bicycle. They did want to come and live with him and they had said so. They didn't tell him that they wanted to live with Mom too.

Before they left for the weekend their mother had asked for assurance that the children wanted to remain with her. She had just discussed a beach trip with them for next summer. They did want to live with her and had said so. They didn't tell her that they wanted to live with Dad too.

The judge hears several matters before lunch. As he prepares to leave the courtroom for lunch, he sees a number of grown folks gathering around the two children. The children seem anxious. The grown folks seem determined.

The judge leaves the courtroom because he doesn't feel that it is proper to stay and listen. It occurs to him again that the courtroom is not a good place to determine child custody matters. Perhaps he could talk to the parties and their attorneys after lunch. He thinks about what he can say or do. He thinks about other children who have passed through his courtroom... he thinks about alternatives.

This report is about alternatives.

INTRODUCTION

Powerful currents of social change have worked a revolution in domestic law during the past decade; during that time, North Carolina adopted the Uniform Child Custody Jurisdiction Act, a "no fault" divorce statute, and an Act providing for the fair distribution of marital assets upon divorce by recognizing the value of a homemaker spouse's contributions to the marriage. Antenuptual agreements are now recognized and regulated by statute.

In the area of child placement and custody decisions, the last vestiges of the "maternal preference" rule were repealed, joint custody was expressly recognized as an option, and the visitation rights of grandparents were addressed. Despite this legislative activity, further changes in the traditional methods of decision-making were demanded, as both the professional and popular literature began to document and publicize the harmful effects of using the adversary system to make placement decisions. There is general agreement that "in the long run a custody battle severely victimizes the children involved, creates lifelong hostilities and distrust between parents and children, as well as between the two adults, and squanders the mental, emotional, and financial resources of the family.[1] "More people are resorting to the courts to settle the question of how to restructure their families. This not only threatens to scar a large number of our children who end up being psychologically battered by the enraged parents and the callous approach of the adversary system, it also puts a tremendous burden on the judge."[2]

In the traditional adversary system setting, a definite win-lose component makes adversaries and competitors of the parents and draws their attention from the polar star of the child's best interests. In a litigation setting, child custody is only part of a broader set of economic issues, such as child support, alimony, divorce, and a division of marital property. Unless severed from those issues, custody and visitation decisions may become bargaining chips in the overall negotiations.

We have recently begun to realize the continuing damage litigation inflicts on the reorganizing family unit. Unlike non-domestic cases in which the parties normally need have no post-trial contact, the child's caretakers will need to cooperate in matters involving the child's best interests for years. If they are unable to do so, the damage to the child is limitless. Rather than preparing parents for life after court, traditional litigation often leaves festering wounds which lead not only to future turmoil and disruption, but to relitigation.

In an era of high divorce rates and increased custody litigation, practical considerations require that we acknowledge lengthening dockets and resulting trial delays, an increase in non-domestic litigation with increasing demands on court resources, and rising attorney fees. Both public pressures and the efforts of court professionals have led to a movement toward alternatives to traditional methods of dispute resolution. In the area of child custody, all of the above currents met in 1983 when the General Assembly voted to establish and fund a child custody mediation pilot program in Mecklenburg County. Mediation is a method of resolving disputes in which a neutral third party helps parties in conflict define

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1 Wooley, The Custody Handbook 213 (1979).

2 Id. at 260

the issues involved, talk about their differences of opinion, and reach their own agreement. In the context of custody disputes, the goal of mediation is a "parenting agreement," setting out custody and visitation terms and conditions. In the Mecklenburg program, mediators were provided through a contract with United Family Services, a United Way agency. Mecklenburg's program was evaluated by the North Carolina Bar Association Committee on Dispute Resolution in 1986. The committee's January 1987 Study and Evaluation noted the enthusiastic reception by bench and bar, and recommended that the Mecklenburg program continue as a "mandatory prerequisite to child custody litigation," and that mediation "be made available in other judicial districts if they are willing to make a commitment to the training and retention of high quality mediators."[3] Senator Helen Marvin of Gastonia introduced legislation during the 1987 General Assembly session to establish custody mediation programs across the state. Despite her efforts, budgetary considerations and the lack of highly trained mediators made it impractical to expand the Mecklenburg-type model statewide at that time. Gaston County (Judicial District 27-A) was added as a pilot district and a program began there in December 1987.[4]

The enabling legislation (1987 N.C. Sess. Laws, C. 830, s. 16(d)) provided in part that:

> The Administrative Office of the Courts shall recommend to the 1989 General Assembly a statewide custody mediation program, or it shall recommend that the pilot programs be allowed to expire.

In response to that mandate, Director Franklin Freeman established an advisory committee to consider the role that mediation might fill in the courts. This committee was comprised of eight district court judges from each division across the state -- from urban, semi-urban, and rural areas, from single-county and multi-county districts -- in short, a group representative of our court system. Janet Mason of the Institute of Government served as an ex officio non-voting committee member, with Kathy Shuart of the Administrative Office of the Court's Division of Management Support serving as staff. The committee was charged with considering "the role of mediation as a method of handling custody and visitation issues in domestic cases,"[5] and advising the director as to courses of action which might be presented to the General Assembly. If the committee consensus favored mediation, it was then to define the issues, make recommendations as to due process and procedural requirements, and suggest mediator qualifications and implementation strategies.

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3 Committee on Dispute Resolution, Mandatory Child Custody Mediation Program in Mecklenburg County: A Study and Evaluation (Raleigh: North Carolina Bar Association, 1987), pp. 1 and 8.

4 Divorce Mediation in North Carolina, Vol. 1, No. 1 (North Carolina Bar Association, May 1988), p. 4.

5 Letter dated September 6, 1988, from Franklin Freeman Jr., to members of the Committee.

The Committee met in Salisbury on October 7, 1988, in Gastonia on November 4, 1988, and in Raleigh on December 15-16, 1988, and on January 6, 1989. Oral reports were presented by Chief District Court Judges Jim Lanning and Larry Langson on the pilot programs in Mecklenburg and Gaston Counties. Chief District Court Judge Earl Fowler, Jr., reported on the program he initiated in Buncombe County in which parties are encouraged by the court to attempt mediation, which is made available through a local dispute settlement center using volunteer mediators or through a mental health professional. Ron McCullom, a mediator with the Mecklenburg program, explained the mediation process and its goals. Claire Millar, Executive Director of the Orange County Dispute Resolution Center, and Dee Reid, Coordinator of the Mediation Network of North Carolina, discussed the work of the dispute resolution centers, which presently provide mediation services in fourteen North Carolina counties. Frank Laney of the North Carolina Bar Association provided the association's perspective. In addition to numerous informal conferences and discussions by individual committee members with other judges, members of the bar, and other interested persons, the committee members read extensively in the professional literature and reports from sister states regarding implementation of custody mediation programs. Through the efforts of Kathy Shuart, mediation programs in Connecticut, Florida, Maine, and Michigan were examined in some detail, and outlines of programs in Delaware, Kansas, Michigan, and Nevada considered.

After considering all available information and weighing both advantages and disadvantages, the Committee recommends that mediation of contested custody and visitation issues be institutionalized as a process to be applied routinely in all of our district courts. Complex issues, many requiring hard decision, are raised by that decision. In an effort to satisfy the director's charge, those broad issues are discussed separately below, with the reasoning of the committee summarized, and available alternative solutions noted where appropriate.

ISSUES, FINDINGS AND RECOMMENDATIONS

Issue One: What mediation formats are available and appropriate for North Carolina?

The present movement toward fashioning alternatives to the traditional adversary system of dispute resolution has resulted in a system in North Carolina which includes elements of arbitration, mediation, and conciliation.

The first community dispute settlement center in North Carolina was established in 1978 in Chapel Hill. Additional centers have been established in Chatham County, Guilford County, Wake County, Durham, Winston-Salem, Charlotte, Asheville, Henderson County, Alamance County, Cumberland County, Goldsboro-Wayne County, Orange County, Iredell County, and Polk County. These centers rely on mediation techniques using trained volunteers to promote agreements between the parties to a dispute. Models for delivery of these services vary to some extent from county to county, and funding sources are uncertain and varied; they share, however, a common element of approval and acceptance by both the communities served and the local court systems.

In 1986, following authorization by the 1985 General Assembly, the Supreme Court adopted rules establishing pilot arbitration projects in the 3rd, 14th, and 29th Districts, serving a total of 10 counties. Early indications are that trials are requested in less than 12 percent of cases heard by arbitrators.

In Wake, Buncombe, and Mecklenburg Counties, pilot programs using summary jury trials are being used with great initial success.6

In the Raleigh area, the Christian Conciliation Service attempts to settle disputes using a combination of mediation and arbitration. In a number of other North Carolina cities, Family Services, Inc., a United Way Agency, offers family mediation. There are also many private professional counselors and mediators throughout the state.

Although some of our citizens struggling through family difficulties have voluntarily chosen to use mediation-type services to resolve their differences, a large number of domestic disputes enter the court system. The increasing number of filings threatens the ability of the judicial system to deliver quality resolution services and there is no agreement as to a proper remedy. Nor is the wisdom and propriety of the state's mandating pre-trial mediation in filed cases settled by any means. In enacting legislation in this area, lawmakers must first determine the proper degree of participation by the courts in the mediation process.

In "A Guide to Implementing Divorce Mediation Services in the Public Sector," author Elizabeth Comeaux suggests that there is an "involvement" continuum, and a court may be more directly, or less directly, involved with the application of mediation to the court's caseload.[7]

At one end of the continuum is the **facilitation model**, in which the court may choose to allow mediation to occur, but not make a "substantial public commitment."[8] Under this model, mediation is left to private professionals or volunteers (e.g., dispute settlement centers); nothing is provided at public expense; but the jurisdiction, by local court rule (or by the state court system, by Supreme Court rule; or the General Assembly, by statute), may define mediation, cite it as an alternative, and clarify issues such as confidentiality. This model (without either rule or legislative definition) exists throughout the state in that parties always have the right to take these disputes to private mediators; that is, no legislation exists forbidding mediation.

The second model is the **encouragement model** in which the court offers incentives to the parties or suggests mediation when the parties appear before the court, or provides at the clerk's filing desk brochures from a local dispute settlement center.[9] There may already be a number of judicial districts in North Carolina operating under this model. For example, Orange County Dispute Settlement Center Director Claire Millar's description of the court referral process in Orange County appears to function like this model.

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6 Frank C. Laney, "Alternatives to Trials: North Carolina's Dispute Resolution Program," Popular Government (Fall 1988), p. 12

7 Elizabeth Comeaux, "A Guide to Implementing Divorce Mediation Services in the Public Sector," Conciliation Courts Review , Vol. 21 No. 2, December 1983, at 3.

8 Id. at 3.

9 Id. at 3.

The Buncombe County arrangement, as described by Chief Judge Earl Fowler, also seems to fit this model. The court recommends that mediation be attempted, and parties and counsel are provided with the names of the local dispute settlement center (which is located in the courthouse) and of a local mental health professional who serves as a private mediator.

The third model is one in which the court actually provides mediation services (provision model). Comeaux describes this model as follows:

> These jurisdictions are the most effective in generating mediation users and educating the public about the procedure. The routine exposure of large numbers of the divorcing population to the services of publicly employed mediators lends visibility and credibility to the mediation alternative. It also reduces the refusal rate common to many mediation programs as a result of public ignorance and professional skepticism about mediation. Finally, public sector mediation services may stimulate the development and use of private sector organizations. Once educated, many people will doubtlessly prefer to select a private mediator just as they now select a therapist or lawyer. Indeed, once the public is educated and the private sector is developed, it is possible that some government instituted, public sector mediation services could ultimately be phased out (except for services to indigents).[10]

Finally, the fourth approach is an enhancement of the encouragement model: the mandatory model. By definition, mediation cannot be forced; under this model, parties are not just encouraged, but are required to attempt mediation before they can litigate. To meet the court's requirement, parties must go through an orientation session in which the process is explained and questions are answered. It is the court's way of ensuring that parties are educated about this option. Comeaux states, "This approach may be viewed alternately as a strong statement of public policy concerning the locus of responsibility for resolving family disputes, and/or as a means of conserving judicial resources.[11]

The committee unanimously agreed that in the absence of exclusionary circumstances such as abuse, mediation is preferable to litigation as a forum for resolving custody and visitation issues. However, the committee also recognizes that the public and bar are resistant to new procedures, and that a "voluntary" mediation program would likely result in limited usage. Therefore, a mandatory referral model is recommended in which the parties are required to participate in an orientation session in which they learn about the process of mediation. They may thereafter choose, without penalty, to return to litigation, although it is expected that many couples will choose to remain in mediation. In the present pilot programs in Mecklenburg and Gaston Counties, approximately one-half of those referred to mediation choose to continue the mediation process past orientation. Judges in those districts report that many parties who were initially opposed to mediation remain in the program and reach parenting agreements. Even those not reaching agreement are likely to settle their cases prior to trial,

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10 Id. at 3.

11 Id. at 3.

which is probably at least partially attributable to the avenues of communication opened up by the mediation process. Attorneys in the pilot districts also report that parties are more likely to settle remaining financial matters where the custody and visitation issues are successfully negotiated. Finally, initial indications suggest that relitigation of custody-related disputes is less likely, confirming the experience of other jurisdictions utilizing mediation services.

On balance, the committee feels that the mildly coercive mandatory referral model is more than justified by benefits to children and their families at the time of initial fragmentation, helps families learn to restructure themselves, and benefits the entire court system in the long term.

Issue Two: How should mediation services be provided and administered?

Comeaux suggests that there are four alternative methods of providing and administering mediation services,[12] and our review of other states' programs and our own experiences in North Carolina support that assessment. In summary, mediation services may be provided:

1. Within the local court system. Mediators are members of the court staff in the local jurisdiction and are hired and supervised by local court officials.

2. By a separate unit administered statewide. Mediators are hired jointly by local court officials and a statewide administrative authority. Policy guidelines are established by the statewide authority, which provides training and coordination; day-to-day supervision falls to local court officials. Our Guardian ad Litem program operates under this kind of arrangement.

3. By contracting for services. The court may contract with individuals or agencies for mediation services. Minimum requirements for those providing services may be established statewide, and local court officials and state officials would enter into contracts with providers. The pilot programs in Mecklenburg and Gaston counties fall within this category.

4. By a current support service group. Groups currently providing support services to domestic court may also have a mediation component which is presently not being used for court cases. For example, there is a close working relationship between local courts and Departments of Social Services in collection of clients' child support. The same departments may have trained domestic mediators on staff who currently mediate domestic disputes between clients. Those mediators may also be available for court referrals.

In determining which method is most appropriate for our court system, the committee recognizes that some combination of alternatives might be appropriate. This decision depends in large part on the resources available within the locale and the demand of local caseloads. In addition, each method has strengths and weaknesses which must be considered. The following factors should be considered in determining how to provide and administer services within our unified statewide court system:

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12 Id. at 7.

1. Availability of resources. In our urban jurisdictions, it is likely that any of the service-provider models is a possibility. In more rural jurisdictions, we may not have that flexibility. In fact, we may be introducing a service for which there is no local provider. Under these circumstances, service providers must be recruited to the locale, provided by a state office or neighboring jurisdiction, or developed through training of local personnel. As a by-product of this approach, alternative dispute resolution services may be made available throughout the state. Fortunately, as a result of workshops sponsored by the Mediation Network, over 100 volunteer mediators were trained to mediate custody disputes in North Carolina.[13] Whether they will be available as a resource depends, of course, on whether the model adopted utilizes volunteer mediators.

2. Caseload demands. The number of custody and visitation disputes in a district requiring referral will determine in part the type program established. In a low-demand district, the court may decide to economize by contracting on an "as-needed" basis. Where there is a large caseload and high demand, a court-staff mediator arrangement may be indicated.

3. Management, supervision, and accountability. Mediation of custody and visitation issues is under consideration because of the growing conviction that the mediation forum is better suited than the litigation forum to focus on the best interests of the child. Referral to mediation does not, however, mean an end of court involvement and control. On the contrary, a heightened degree of management will be necessary to ensure both a continuing focus on the best interests of the child and fair treatment of all adult parties. It is essential, therefore, that where the court refers all such matters to mediation, those providing mediation services be fully accountable to the court. The degree of involvement by the court will depend in part, of course, on the mediation model adopted. Service would be more consistent if provided by a statewide unit, and the need for local supervision would be accordingly lessened. It is more likely, however, that the several districts will fashion individual and unique programs, requiring close supervision.

Although the district bench must of necessity supervise daily progress of individual cases, assistance from the Administrative Office of the Courts will be necessary in terms of policies, guidelines, educational orientations, coordination, and supervisory procedures. This would ensure some uniformity of the quality of mediation services throughout the state.

The committee recommends therefore that the Administrative Office of the Courts develop minimum acceptable standards for delivery of mediation services, and for monitoring delivery of those services by mediators.

Issue Three: What are the procedural issues in a custody and visitation mediation program?

Some of the procedural issues that need to be considered in establishing a custody and visitation mediation program have been discussed earlier; however, we raise them here as a group because each should be addressed in enabling legislation, court rule, and administrative guidelines. They include:

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13 The N.C. Mediator, Fall 1988, p. 5.

1. Definition of mediation and its goals. Mediation is defined as a "dispute resolution process utilizing a neutral third-party to facilitate problem solving between parties in conflict" in a report on the pilot program in Mecklenburg County prepared by the North Carolina Bar Association's Committee on Dispute Resolution. The report went on to define the goal of a child custody mediation program as enabling "parents to generate their own resolutions and develop a written agreement, the parenting agreement, that sets out the custody terms and conditions."[14]

> By definition mediation is voluntary, but in some areas parties are being required to try mediation first before coming to court. The mediator has no coercive power. He or she is not bound by a "win or lose" perception of a problem, but rather can concentrate on the underlying relationship of the parties, and by helping them to identify their needs reach a solution through compromise. Professor Fuller has referred to the central quality of mediation as "its capacity to re-orient the parties toward each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward each other."[15]

In a pamphlet distributed to parents entering the Custody/Visitation Mediation Program in Gaston County, the goal of mediation is well stated as "reorganiz(ation of) the family, not to 'award' custody to one parent and make a 'visitor' of the other."

Although the mediator is often referred to as a "neutral," most mediators consider that they are neutral only as between the adult parties, their task being to focus discussion on ways the family can restructure itself in the best interests of the children involved.

2. Scope. The committee recommends that only custody and visitation issues be referred to mediation by the court, so that the mediation sessions can focus only on the best interests of the child without dealing with the financial matters involved in property settlements, alimony claims, and child support awards. While there is admittedly some correlation between the parenting arrangement and the support award, consideration of that issue in a mediation context could divert the parties from the true purpose of mediation. Where disputes arise after the entry of a court order relative to the modification or enforcement of the custody provisions of that order, those issues would also be routinely referred to mediation under the committee's recommendation.

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14 Committee on Dispute Resolution, Mandatory Child Custody Mediation Program in Mecklenburg County: A Study and Evaluation (Raleigh: North Carolina Bar Association, 1987), pp. 1 and 8.

15 Task Force on Dispute Resolution of the North Carolina Bar Foundation, Dispute Resolution (Raleigh: North Carolina Bar Association, 1985), pp. 10-11.

Nor would it seem that cases should be diverted from mediation solely because one of the parties resides outside the county or district. If the parties can litigate their case within a specified area, they can normally mediate the same issues within that area. Obviously, the court could excuse a party from mediation if referral would cause undue hardship, as in the case of an out-of-state party.

Since the purpose of mediation is to benefit the children affected by it, parties would not be excused because of indigency, as either a sliding scale fee arrangement would compensate for their indigency or the court could forgive or reduce fees if necessary.

Since the mechanics of mediation should be left in large part to be shaped by local rule, the committee recommends that details such as the number and duration of mediation sessions be left for the several districts.

3. Timing of mediation referrals. While the committee recommends that all issues of custody and visitation be referred for mediation, the timing and mechanics of referral should be reserved to the individual districts. Individual caseloads, local calendar rules, and expressed preferences of the domestic bar might mandate referral at different points in the litigation continuum. Administrative guidelines should encourage local officials to address these issues in local rules to ensure an effective and efficient procedure.

4. Confidentiality. Unless they are guaranteed confidentiality, parties are not likely to be advised by counsel to freely participate in the mediation experience. The pilot program legislation provided that

> (f) Mediation proceedings shall be held in private and shall be confidential. All verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to this section are absolutely privileged and inadmissible in court.

Although aware of the relationship between guaranteed confidentiality and successful mediation, the committee was concerned that there be no immunity for crimes committed in the presence of the mediator, such as assault and communicating threats. There was also concern that information about continuing criminal activity, such as child or spouse abuse or neglect, not be protected in a subsequent criminal proceeding. Nor should anyone be excused from statutory reporting requirements which require all citizens to report suspected child abuse or neglect to the Department of Social Services.

The committee recommends, therefore, that any legislation provide that there be no privilege as to communications made in furtherance of a crime or fraud, and no grant of immunity from criminal conduct.

5. Privacy. Persons participating in the actual mediation process will of necessity vary from case to case. Whether to include step-parents and the children themselves must be left to the demands of the individual case and the mediator's sound discretion. The pilot legislation provided that the mediator might "exclude counsel from participation in the proceedings if the court finds that

exclusion is appropriate." The committee recommends the deletion of any exclusionary language, since the mediator may -- with the assistance of the supervising court -- take such drastic action if required in a particular case. Counsel are welcome at the sessions, but experience in the pilot districts has indicated that counsel seldom participate in the mediation sessions.

6. Education of the public, the bar, and the bench. The experience of court officials in the pilot districts and in Buncombe, Orange, and Chatham counties underscores the importance of notification to the general public and education of those who will have direct contact with the procedure, including District Court judges, the domestic bar, and the parties to contested domestic actions. Because parties must communicate in good faith in the mediation hearing in order to resolve their disputes, it is critical that they understand the mediation process and enter into the hearing with an open mind, predisposed toward the process. Counsel's understanding of the mediation process and a mediated agreement is critical, as the attorney will set the tone for the client who is entering into mediation. Even a well-designed mediation program will fail without the support of the bar. The Chief District Judge in each of the mediation districts stresses the importance of continual bar education, despite the demands this places on scarce judicial time. Judicial education is equally important, as the judge assigning cases to mediation may be the first to explain to the parties what is involved in the mediation process and how it should be approached.

The committee recommends that a district applying for approval of a mediation project be willing to make a commitment to educate the general public, along with members of the domestic bar and the bench. Dialogue with community leaders and interested lay persons in the community may lead not only to volunteers for a new program, but to long-term support for the effort.

7. Form of the agreement. In the pilot districts, parents who resolve their disputes draft a parenting agreement which states the resolution in simple terms. In Mecklenburg County, this agreement becomes an order of the court through a simple form order which incorporates the agreement by reference. In Gaston County, the terms of the parenting agreement are incorporated into the usual form of consent agreement by the attorneys, which is then signed by the parties and a judge and filed with the court.

Although the mechanics of recognition of a parenting agreement might best be reserved to the several districts, it is important for the purposes of interstate enforcement that a parenting agreement be accorded the respect due any consent order. Otherwise, serious enforcement difficulties arise if one of the parties to a parenting agreement removes a child from the state in violation of the agreement. It is also important that there be a consistent practice within a judicial district.

8. Mediator qualifications. The committee was concerned that the court protect the parties to a mandatory referral custody/visitation mediation program by ensuring the integrity of the mediation process and the competence of those serving as mediators. Unfortunately no formula exists to ensure integrity and competence. Even among dispute resolution professionals there is considerable

debate concerning mediator qualifications, particularly educational degree requirements. In its October 1988 report, the Society of Professionals in Dispute Resolution Commission on Qualifications stated that "(t)here are no obvious answers to what constitutes a qualified neutral or which of the policy options described is appropriate to ensure that those who practice are qualified to do so."[16] Regarding degree requirements, the commission further stated:

> We recognize the knowledge acquired in obtaining various degrees can be useful in the practice of dispute resolution. At this time and for the foreseeable future, however, no such degree in itself ensures competence as a neutral. Furthermore, requiring a degree would foreclose alternative avenues of demonstrating dispute resolution competent.[17]

The pilot legislation required that

> (d) For a person to qualify to provide mediation services under this section, that person shall show that he:
>
> > (1) has a law degree, or at least a master's degree in psychology, social work, family counseling or a comparable human relations discipline, and
> >
> > (2) has at least 40 hours of training in mediation techniques by a qualified instructor of mediation. A qualified instructor of mediation is a professional who has provided mediation services for at least 30 cases, has publicly and explicitly identified his services to include mediation, and has the educational background stated in subsection (1). A counseling service is not a mediation service unless the derivation of a written statement between disputants is the explicit objective of the service. Marital counseling, psychotherapy, and family therapy are not mediation services.

Preliminary results from Maine, after a decade of practical experience, found "no correlation . . . between the educational or experiential qualifications of mediators and their performance. While the attributes of an effective mediator may be hypothesized they are not known."[18]

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16 Society of Professionals in Dispute Resolution Commission on Qualifications; Summary of Issues and Preliminary Principles; October 1988, p.1.

17 Id. at 4.

18 Lincoln Clark, Mediator Qualifications and Effectiveness, p. 1.

Balancing the court's need to protect the parties and the lack of clearly-defined, objective qualification criteria by which to guarantee competence, the committee recommends that educational degree requirements and specialized training requirements similar to those in the pilot program legislation should be considered by the Administrative Office of the Courts in establishing specific qualification guidelines, certification procedures, and performance evaluation standards and procedures. The committee also suggests that because the field of dispute resolution is rapidly changing, the Administrative Office of the Courts should monitor the issue of qualification criteria and update eligibility requirements as appropriate.

Issue Four: How might a statewide custody and visitation mediation program be funded?

The committee's review of programs across the country indicated a variety of funding alternatives: court system funded; user funded; funding through special tax or filing fee assessments; and some combination of the above.

Due to time constrictions, the committee is not in a position to recommend a funding strategy. How a statewide program is funded will depend in large part on the model that is adopted, qualifications adopted for mediators, and the overall cost of operating that model. Costs will be substantially less, of course, if the dispute settlement centers and similar community resources already in place can furnish an administrative framework for the mediation program. Where trained volunteers are used in mediation, such as in Buncombe County, the per case costs are dramatically less than in the pilot districts.

It appears that the funding arrangement for the pilot programs in which the state's appropriation is partially offset by user fees should be considered on a statewide basis. User fees would be determined by the Administrative Office of the Courts, utilizing a sliding scale approach which would ensure a fair distribution of the costs of the program and further guarantee that no children would be denied the benefits of mediation because of the indigency of their parents.

Issue Five: How might a statewide custody and visitation mediation program be implemented?

The committee remains committed to statewide application of the mediation process to custody and visitation disputes, but recognizes the demands on local and state resources in implementing mediation throughout 100 counties and 34 District Court judicial districts, the need to establish court rules and administrative guidelines, and the need to identify and certify qualified mediators. Therefore, the committee recommends a phased-in approach to statewide implementation, beginning with districts which have programs in place. Implementation could then proceed across the state as funding and certified mediators become available. The Administrative Office of the Courts would be in the best position to accept applications from the several districts, and determine an implementation schedule.

CONCLUSION

Mediation offers an exciting alternative to the traditional adversary system of resolving custody and visitation disputes in North Carolina. The committee recommends its use throughout the state as an effective method of making child-centered placement decisions, anticipating benefits not only to parents and children but to an overcrowded court system. Although significant numbers of cases will be successfully negotiated through mediation, the majority of filings will be dealt with in traditional fashion. Children in cases which are not mediated will still be part of an adversary system which may require their attendance at court proceedings and possibly their testimony there. There is presently no requirement that judges who make placement decisions have specialized training or equivalent experience, nor are impartial expert witnesses usually available to the court. Children do not have party status in custody cases, and thus are not usually represented by an advocate.

As Judge Ed McCormick says in the vignette which serves as a Foreword to this Report, we are searching for alternatives. Mediation will not replace traditional litigation, but will provide a valuable option to the courts. If lasting damage is to be avoided to the children of divorce, other options must be explored, other courses charted. The committee recommends that the legislature consider the entire existing statutory framework regulating child placement decisions, with a view toward an overall revision which would guarantee that such decisions be child-centered.

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Mary Van Nimwegen

HOUSE HESS

MARCH 7, 1990 8:30 A.M.

HB 538