

SB 385 A STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Addie Smith, Counsel

Meeting Dates: 5/9

WHAT THE MEASURE DOES:

Directs the presiding judge of each judicial district to establish a voluntary alternative dispute resolution conference procedure for custody and parenting time modification and enforcement that is to occur before the court hearing on modification or enforcement of parenting time and custody. Requires that the court appoint conference officers who are contract or volunteer attorneys, trained mediators or employees of the Oregon Judicial Department. Mandates that the conference officer complete training in mediation, child development, and domestic violence as prescribed by the presiding judge. Ensures that each party has the opportunity to present their position at the conference. Ensures that safety concerns are accommodated in any conference meetings. Allows each party to have their attorney present at the conference. Provides that if, during the conference, the parties reach an agreement, the parties sign a stipulated agreement which will be submitted to the court that heard the underlying case. Specifies that if, during the conference, the parties do not reach an agreement, the conference officer can develop a stipulated agreement on any resolved issues and/or make recommendations to the court on the contested issues. Allows the court, upon receipt of stipulated agreement or recommendations, to approve the stipulated agreement, approve the recommendations of the conference officer, modify the recommendations of the conference officer, reject the recommendations in whole or in part, or set the matter for a hearing and require the parties to appear personally in court. Requires a party to object to the court's decision within 30 days. Requires that participants be notified of the fact that if an agreement is not reached, the officer may make a recommendation to the court but that no party loses their right to a hearing. Designates that relevant forms will be created by the State Court Administrator. Allows for hearings to be set by the conference officers. Specifies that the process of this measure is not to be used when another state has jurisdiction to determine custody and parenting time, to any modification of joint custody where there has been no change in circumstances and a change would not be in the best interest of the child, to any modification of a parenting plan where the modification would not be in the best interest of the child and the safety of the parties, or to any proceeding where a hearing is required. Clarifies that the process of the measure may not be used in Family Abuse Prevention Act (FAPA) proceedings.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In the 2016 interim, the Senate Committee on Judiciary convened a work group to explore concerns related to Oregon custody and parenting time statutes. The work group was composed of advocates, expert practitioners, judges, and affected stakeholders. To complete its work, the work group surveyed current Oregon law and practice, state statutes nationwide, relevant case law, and academic research on best practices for child custody and parenting time disputes and decisions. The results of that work group are a slate of measures designed to aid judges in their decision-making processes, balance the interests of parties, and protect the best interest and safety of children in these proceedings and decision-making processes. Senate Bill 385 is one of those bills.

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One specific best practice reviewed by the interim work group on child custody and parenting time was an informal alternative dispute resolution program used in Arizona courts that promotes constructive ways to resolve parenting time and custody disputes through alternative dispute resolution procedures. Generally, procedures that allow a conference officer to gather information can be shared in the form of reports and recommendations to the court, should the settlement conversations fail to find a resolution.

Currently, ORS 107.755 through 107.785 provide for mediation where it appears that custody, parenting time, or visitation of a child is contested. The purpose of those proceedings is to reach a workable settlement of any contested issues that would otherwise be litigated. For that reason, the current program requires the mediator to report to the court any agreement the parties have reached at the conclusion of the mediation but, if no agreement is reached, the mediator may only report that fact to the court. Further, the mediator may not provide any recommendations to the court without the written consent of parties. Under this model, mediated conversations and communications are confidential.

Senate Bill 385 A creates an informal alternative dispute resolution process where if, during the conference, the parties do not reach an agreement, the conference officer can develop a stipulated agreement on any resolved issues and/or make recommendations to the court on the contested issues.