

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>Alabama</b> <a href="#">Ala. Code § 6-6-20</a> ; MEDIATION STATUTE  <a href="#">Ala. Code § 30-5-1</a> ; Definition of Domestic Violence	Yes.  [Custody] “In a proceeding concerning the custody or visitation of a child , . . . if the court finds that domestic violence has occurred, the court shall not order mediation.” Ala. Code § 6-6-20 (e)	Yes.  (f) A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of domestic or family violence between the parties. Where evidence of domestic violence exists mediation shall occur only if: (1) Mediation is requested by the victim of the alleged domestic or family violence; (2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and (3) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.  Ala. Code § 6-6-20 (f)(1)-(3)	Yes.  “A court shall not order parties into mediation for resolution of the issues in a petition for protection pursuant to The Protection from Abuse Act, Sections 30-5-1 through 30-5-10 or in any other petition for an order for protection where domestic violence is alleged.” Ala. Code § 6-6-20 (d)
<b>Alaska</b> <a href="#">Alaska R. Civ. P. 100</a> ; Mediation and Other Forms of Alternative Dispute Resolution  Alaska Stat. Ann. § 18.66.990(3) (West); Definition of Domestic Violence	Yes.  “If domestic violence has occurred between the parties and mediation is requested in a matter covered by AS 25, mediation may only be ordered when permitted under AS 25.20.080, AS 25.24.060, or 25.24.140.” Alaska R. Civ. P. 100 (a)	Yes.  “(f) . . . If the court proposes or suggests mediation under this subsection, (1) mediation may not occur unless the victim of the alleged domestic violence agrees to the mediation; and (2) the court shall advise the parties that each party has the right to not agree to mediation and that the	Yes.  “If domestic violence has occurred between the parties . . . [m]ediation may not be ordered between the parties to, or in, a case filed [for protective orders] under AS 18.66.100-18.66.180.”  Alaska R. Civ. P. 100 (a)

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p><i>Mediation of Child Custody Matter:</i> AS §25.20.080</p> <p><i>Mediation [of Divorce]:</i> AS §25.24.060</p> <p><i>Orders During [Divorce] Action:</i> AS §25.24.140</p>	<p>decision of each party will not bias other decisions of the court.”</p> <p>“(g) A mediator who receives a referral or order from a court to conduct mediation under (a) of this section shall evaluate whether domestic violence has occurred between the parties. A mediator may not engage in mediation when either party has committed a crime involving domestic violence unless</p> <p>(1) mediation is requested by the victim of the alleged domestic violence, or proposed by the court and agreed to by the victim;</p> <p>(2) mediation is provided by a mediator who is trained in domestic violence in a manner that protects the safety of the victim and any household member, taking into account the results of an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim; and</p> <p>(3) the victim is permitted to have in attendance a person of the victim's choice, including an attorney.”</p> <p><i>Mediation of Child Custody Matter:</i> Alaska AS §25.20.080</p> <p><i>Mediation [of Divorce]:</i> AS §25.24.060</p> <p><i>Orders During [Divorce] Action:</i> AS §25.24.140</p>	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>Arizona</b>  <a href="#">17B A.R.S. Rules Fam.Law Proc., Rule 67</a> ; Mediation, Arbitration, Settlement Conferences, and Other Dispute Resolution Processes Outside of Conciliation Court Services  Ariz. Rev. Stat. Ann. § 13-3601(2014); Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure	Discretionary.  2. <i>Commencement of Mediation.</i> On its own motion, or on motion of either or both parties to a dispute, the court may order a matter referred to mediation. The court may decline to order a matter referred to mediation if it appears that mediation is inappropriate for reasons such as parental unfitness, substance abuse, mental incapacity, domestic violence, or other good cause, or that mediation will cause undue delay.  AZ ST RFLP Rule 67	Yes.  3. <i>Domestic Violence.</i> a. In a proceeding concerning custody or parenting time of a child, if an order of protection is in effect involving the parties or there is a finding by the court of any conduct that would form the basis for an order of protection, <b>the court may order mediation or refer the parties to mediation only if there are policies and procedures in place that protect the victim from harm, harassment, or intimidation.</b> b. Every party shall be notified in writing or orally in open court prior to mediation of the ability to request a waiver of mediation or to request that reasonable procedures be in place at the mediation to protect a victim of domestic violence, as determined by the court. Neither party shall be required to appear for mediation pending determination of this matter. c. <b>The mediator shall reject for mediation or terminate mediation in any case the mediator deems mediation to be inappropriate because of domestic violence.</b>  AZ ST RFLP Rule 67	Yes.  <b>E. Alternative Dispute Resolution</b> 1. The parties in a proceeding for an Order of Protection shall not be referred to mediate that Order of Protection.  <i>Arizona Rules of Protective Order Procedure</i> AZ ST RPOP Rule 1

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>Arkansas</b> <a href="#">ARK. CODE ANN. § 16-7-202 (WEST) (2014);</a> MEDIATION STATUTE  A.C.A. § 9-15-103; DEFINITION OF DOMESTIC VIOLENCE	No	No	Statute is Silent
<b>California</b> <a href="#">CAL. FAM. CODE § 3170</a> (WEST); SETTING MATTERS FOR MEDIATION; GUIDELINES FOR HANDLING DOMESTIC VIOLENCE CASES [CHILD CUSTODY]  <a href="#">CA ST FAM JUV Rule 5.215</a> ; Judicial Council's Rules on Mediation in Domestic Violence Cases.  Cal. Fam. Code § 6203 (West 2014); Cal. Fam. Code § 6211 (West 2014); Definition of Domestic Violence  .	No.	Yes.  “In a Family Court Services case in which there has been a history of domestic violence between the parties or in which a protective order as defined in Family Code section 6218 is in effect, at the request of the party who is alleging domestic violence in a written declaration under penalty of perjury or who is protected by the order, the Family Court Services mediator, counselor, evaluator, or investigator must meet with the parties separately and at separate times. When appropriate, arrangements for separate sessions must protect the confidentiality of each party's times of arrival, departure, and meeting with Family Court Services. Family Court Services must provide information to the parties regarding their options for separate sessions under Family Code sections 3113 and 3181. If domestic violence is discovered after mediation or evaluation has begun, the Family Court Services staff member assigned to the case must confer with the parties separately regarding safety-related issues and	Yes.  <i>(3) No negotiation of violence</i> Family Court Services staff must not negotiate with the parties about using violence with each other, whether either party should or should not obtain or dismiss a restraining order, or whether either party should cooperate with criminal prosecution.  CA ST FAM JUV Rule 5.215

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		<p>the option of continuing in separate sessions at separate times. Family Court Services staff, including support staff, must not respond to a party's request for separate sessions as though it were evidence of his or her lack of cooperation with the Family Court Services process.”</p> <p>CA ST FAM JUV Rule 5.215</p> <p>“(c) Notwithstanding any other provision of law to the contrary, if a court has issued a protective order, a support person shall be permitted to accompany a party protected by the order during any mediation orientation or mediation session, including separate mediation sessions, held pursuant to a proceeding described in Section 3021.”</p> <p>Cal. Fam. Code § 6303 (c) (West)</p>	
<b>Colorado</b>  <a href="#">Colo. Rev. Stat. Ann. § 13-22-313</a> (West) (2014); Judicial referral to ancillary forms of alternative dispute resolution	Yes.  1) Any court of record, in its discretion, may refer a case to any ancillary form of alternative dispute resolution; except that the court shall not refer the case to any ancillary form of alternative dispute resolution where one of the parties claims that it has been	No.	No.

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>the victim of physical or psychological abuse by the other party and states that it is thereby unwilling to enter into ancillary forms of alternative dispute resolution.</p> <p>Colo. Rev. Stat. Ann. § 13-22-313 (West)</p>		
<b>Connecticut</b>	<b>No</b>	No.	No.
<b>Delaware</b> <a href="#">Del. Code Ann. tit. 13 § 711A</a> ; ORDERED MEDIATION PROHIBITED  <a href="#">DEL. CODE ANN. TIT. 13 § 703A(A)</a> ; DEFINITION OF DOMESTIC VIOLENCE	<p>YES</p> <p>“Notwithstanding any other provision of law to the contrary, Family Court mediation conferences shall be prohibited in any child custody or visitation or support proceeding in which 1 of the parties has been found by a court, whether in that proceeding or in some other proceeding, to have committed an act of domestic violence against the other party or if either party has been ordered to stay away or have no contact with the other party, unless a victim of domestic violence who is represented by counsel requests such mediation.”</p> <p>Del. Code Ann. tit. 13 § 711A (West 2014)</p>	No.	No.

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>District of Columbia</b> <a href="#">Hyperlink to code at code.findlaw.com;</a>  [RELEVANT BLURB].	No.	No.	No.
<b>Florida</b> <a href="#">Fla. Stat. Ann. § 44.102</a> ; COURT ORDERED MEDIATION	<i>Yes, Fla. Stat. §44.102. But law recognized as unconstitutional in <a href="#">Massey v. David</a>, 979 So.2d 931(2008)</i>  (c) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.  Fla. Stat. Ann. § 44.102 (West)	No.	No.

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>Georgia</b> <a href="#">Ga. Code Ann., § 15-11-20</a> (2014); REFERRAL TO MEDIATION  <a href="#">GEORGIA COMMISSION OF DISPUTE RESOLUTION, GUIDELINES FOR CASES INVOLVING DOMESTIC VIOLENCE.</a>	Yes “(b) When referring a case to mediation, the court shall take into consideration the guidelines from the Georgia Commission of Dispute Resolution for mediating cases involving domestic violence or family violence.” Ga. Code Ann., § 15-11-20  “If the person alleging domestic violence declines mediation, the case will be released for process through the court system, and the court will simply be notified that mediation was not appropriate.” Georgia Commission of Dispute Resolution, Guidelines for Cases Involving Domestic Violence	Yes  “If the party alleging domestic violence chooses to mediate, the program must take appropriate steps to ensure that the safeguards set forth in Section II herein are in place for the mediation session.”  Georgia Commission of Dispute Resolution, Guidelines for Cases Involving Domestic Violence	Yes
<b>Hawaii</b> <a href="#">Haw. Rev. Stat. Ann. §580-41.5</a> (2014); Battered spouses; exemption from mediation in divorce proceedings.  [RELEVANT BLURB].	Yes.  “(a) In contested divorce proceedings where there are allegations of spousal abuse, the court shall not require a party alleging the spousal abuse to participate in any component of any mediation program against the wishes of that party.” “(c) In a proceeding concerning the custody or visitation of a child, if a	Yes “(b) A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of family violence between the parties. A mediator shall not engage in mediation when it appears to the mediator or when either party asserts that family violence has occurred unless: (1) Mediation is authorized by	Yes.  “(c) In a proceeding concerning the custody or visitation of a child, if a protective order is in effect, the court shall not require a party alleging family violence to participate in any component of any mediation program against the wishes of that party”  Haw. Rev. Stat. Ann. §580-41.5 (2014).

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## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>protective order is in effect, the court shall not require a party alleging family violence to participate in any component of any mediation program against the wishes of that party”</p> <p>Haw. Rev. Stat. Ann. §580-41.5 (2014).</p>	<p>the victim of the alleged family violence;</p> <p>(2) Mediation is provided in a specialized manner that protects the safety of the victim by a mediator who is trained in family violence; and</p> <p>(3) The victim is permitted to have in attendance at mediation, a supporting person of the victim's choice including but not limited to an attorney or advocate. If the victim chooses to exercise such option, any other party to the mediation will be permitted to have in attendance at mediation, a supporting person of the party's choice including but not limited to an attorney or advocate.”</p> <p>Haw. Rev. Stat. Ann. §580-41.5 (2014).</p>	
<b>Idaho</b>	No.	No.	No.

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>Illinois</b> <a href="#">750 ILL. COMP. STAT. 5/607.1</a> ; RESTRICTIONS ON MEDIATION IN CASES INVOLVING VISITATION ORDERS  20 ILCS 1310/1; Definition of Domestic Violence.	Yes.  [Visitation cases] “(c) After hearing all of the evidence, the court may order one or more of the following: . . . (4) Counseling or mediation, except in cases where there is evidence of domestic violence, as defined in Section 1 of the Domestic Violence Shelters Act, <sup>1</sup> occurring between the parties.” 750 Ill. Comp. Stat. 5/607.1 (2013)	No, but see local court rules. [e.g. Uniform Rules of Practice Circuit Court of Illinois Nineteenth Judicial Circuit, IL R 19 CIR Rule 11.13(D)]	
<b>Indiana</b> <a href="#">Ind. Code § 34-26-5-15 (2014)</a> ; PROHIBITION ON MEDIATION [IN CIVIL PROTECTION ORDER HEARINGS]  Ind. Code § 34-6-2-34.5; Definition of Domestic Violence	No	No	Yes  Sec. 15. A court may not: (1) order parties into mediation; or (2) refer parties to mediation; for resolution of the issues in a petition for an order for protection regarding family or domestic violence. This section may not be construed to preclude mediation in other cases involving the same parties.  <i>Ind. Code 34-26-5-15</i>
<b>Iowa</b> <a href="#">Iowa Code Ann. §598.7(2014)</a> ; MEDIATION	Yes “The district court may, on its own motion or on the motion of any party, order the parties to participate in mediation in any		

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
IOWA CODE ANN. § 598.41 SUBSECTION 3, PARA L; APPLICABLE DEFINITION OF “DOMESTIC ABUSE”	<p>dissolution of marriage action or other domestic relations action. Mediation performed under this section shall comply with the provisions of chapter 679C. The provisions of this section shall not apply if the action involves a child support or medical support obligation enforced by the child support recovery unit. The provisions of this section shall not apply to actions which involve elder abuse as defined in <a href="#">section 235F.1</a> or domestic abuse pursuant to chapter 236. The provisions of this section shall not affect a judicial district's or court's authority to order settlement conferences pursuant to rules of civil procedure. The court shall, on application of a party, grant a waiver from any court-ordered mediation under this section if the party demonstrates that a history of domestic abuse exists as specified in <a href="#">section 598.41, subsection 3</a>, paragraph “j”.</p> <p><i>Iowa Code Ann. §598.7</i></p>		
<b>Kansas</b>	No.	No.	No.

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<p><b>Kentucky</b> <a href="#">Ky. Rev. Stat. Ann. § 403.036</a>; MEDIATION NOT TO BE ORDERED UNLESS CONDITIONS MET</p> <p><a href="#">Ky. Rev. Stat § 403.725</a>; Mediation Prohibited in Protective Orders</p> <p><a href="#">Ky. Rev. Stat § 403.720</a>; Definition of Domestic Violence</p>	<p>Yes.</p> <p>“In any court proceeding conducted pursuant to <a href="#">KRS 403.010</a> to <a href="#">403.350</a>, if there is a finding of domestic violence and abuse, as defined in <a href="#">KRS 403.720</a>, the court shall not order mediation unless requested by the victim of the alleged domestic violence and abuse, and the court finds that:</p> <ol style="list-style-type: none"> <li>1) The victim's request is voluntary and not the result of coercion; and</li> <li>2) Mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the victim of the alleged domestic violence and abuse.”</li> </ol> <p><a href="#">Ky. Rev. Stat. Ann. § 403.036</a> (West 2014)</p>	No.	<p>Yes.</p> <p>(5) No Circuit or District Court shall require mediation, conciliation, or counseling prior to or as a condition of issuing an emergency protective order or domestic violence order.</p> <p><i>Ky. Rev. Stat § 403.725. Petition, who may file; protective orders</i></p>
<p><b>Louisiana</b> <a href="#">La. Rev. Stat. Ann § 9:363</a> (2014); ORDERED MEDITATION PROHIBITED</p> <p>La. Rev. Stat. Ann. § 9:362 (2014); Definition of</p>	<p>Yes.</p> <p>“Notwithstanding any other provision of law to the contrary, in any separation, divorce, child custody, visitation, child support, alimony, or community property proceeding, no spouse or parent who satisfies the court that he or she, or any</p>	No.	

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07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
Family Violence	of the children, has been the victim of family violence perpetrated by the other spouse or parent shall be court ordered to participate in mediation.” La. Rev. Stat. Ann § 9:363		
<b>Maine</b> <a href="#">Me. Rev. Stat. tit. 19-A, § 251</a> (2014); MEDIATION STATUTE	Discretionary.  <b>“(2)(B).</b> Upon motion supported by affidavit, the court may, for extraordinary cause shown, waive the mediation requirement under this subsection.”  Me. Rev. Stat. tit. 19-A, § 251	No.	No.
<b>Maryland</b>	No.	No.	No.
<b>Massachusetts</b>	No.	No.	The fundamental purpose of proceedings under c. 209A is to adjudicate the need for protection from abuse and, if that need is found to exist, to issue abuse prevention orders. Given this protective purpose, it is inappropriate for the court in c. 209A proceedings to attempt to reconcile the parties or to mediate disputes.

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
			MA R ABUSE PREV Guideline 1:01
<p><b>Michigan</b> <a href="#">Mich. Comp. Laws Ann. § 600.5072</a> (West) 2014; INFORMED NOTICE; PARTICIPATION IN ARBITRATION, REQUIREMENTS</p> <p>Mich. Comp. Laws. Ann. § 400.1501 (2014); Definition of Domestic Violence</p>	<p>Yes.</p> <p>“(2) If either party is subject to a personal protection order involving domestic violence or if, in the pending domestic relations matter, there are allegations of domestic violence or child abuse, the court shall not refer the case to arbitration unless each party to the domestic relations matter waives this exclusion.”</p> <p>Mich. Comp. Laws Ann. § 600.5072 (West)</p>	<p>Yes.</p> <p>“(2) . . . A party cannot waive this exclusion from arbitration unless the party is represented by an attorney throughout the action, including the arbitration process, and the party is informed on the record concerning all of the following: (a) The arbitration process. (b) The suspension of the formal rules of evidence. (c) The binding nature of arbitration.”</p> <p>Mich. Comp. Laws Ann. § 600.5072 (West)</p>	
<p><b>Minnesota</b> <a href="#">Minn. Stat. §518.619</a>; CUSTODY OR VISITATION; MEDIATION SERVICES</p>	<p>YES.</p> <p>“Subd. 2. Exception. If the court determines that there is probable cause that one of the parties, or a child of a party, has been</p>	<p>YES.</p> <p>“Subd. 2. Exception. If the court determines that there is probable cause that one of the parties, or a child of a party, has been</p>	<p>Yes.</p> <p>“Sections 572.31 to 572.36 [mediation] do not apply to proceedings relating to the determination of criminal liability or proceedings</p>

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<a href="#">Minn. Stat. Ann. § 518B.01 (West) (2014)</a> DEFINITION OF DOMESTIC ABUSE	<p>physically or sexually abused by the other party, the court shall not require or refer the parties to mediation or any other process that requires parties to meet and confer without counsel, if any, present”</p> <p>Minn. Stat. Ann. §518.619 (2014). Custody or visitation: Mediation Services</p>	<p>physically or sexually abused by the other party, the court shall not require or refer the parties to mediation or any other process that requires parties to meet and confer without counsel, if any, present.”</p> <p>Minn. Stat. Ann. §518.619 (2014). Custody or visitation: Mediation Services</p>	<p>brought [for civil protection orders] under chapters 518, 518A, 518B, and 518C, or proceedings relating to guardianship, conservatorship, or civil commitment.”</p> <p>Minn. Stat. Ann. § 572.40 (West)</p> <p>“For purposes of this section, ‘offender’ means an adult charged with a nonviolent crime or a juvenile who has been referred to a mediation program before or after a petition for delinquency has been filed in connection with a nonviolent offense, and ‘nonviolent crime’ and ‘nonviolent offense’ exclude any offense in which the victim is a family or household member, as defined in section 518B.01, subdivision 2.”</p> <p>Minn. Stat. Ann. § 611A.77 (West)</p>

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>Mississippi</b>	No.	No.	No.
<b>Missouri</b> <a href="#">Mo. Ann. Stat. § 452.372</a> ; PETITION FOR DISSOLUTION OF MARRIAGE, EDUCATION SESSIONS—ALTERNATIVE DISPUTE RESOLUTION  <a href="#">Mo. Ann. Stat. § 455.010</a> (West); Definition of Domestic Violence	Discretionary based on “good cause”  2. In cases involving custody or visitation issues, the court may, except for good cause shown or as provided in subsection 3 of this section, order the parties to the action to participate in an alternative dispute resolution program pursuant to supreme court rule to resolve any issues in dispute or may set a hearing on the matter. As used in this section, “good cause” includes, but is not limited to, uncontested custody or temporary physical custody cases, or a finding of domestic violence or abuse as determined by a court with jurisdiction after all parties have received notice and an opportunity to be heard, but does not mean the absence of qualified mediators. V.A.M.S. 452.372(2)	No.	No.



## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>Montana</b> <a href="#">Mont. Code Ann. § 40-4-301 (2014)</a> ; FAMILY LAW MEDIATION, EXCEPTION  <a href="#">Mont. Code Ann. § 40-15-116 (2014)</a> ; Definition of Domestic Violence	Yes.  (2) Unless each of the parties provides written, informed consent, the court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party. A mediation conducted under this subsection may be conducted by a mediator who is trained in mediating domestic violence cases.  Mont. Code Ann. § 40-4-301	Yes.  “A mediation conducted under this subsection may be conducted by a mediator who is trained in mediating domestic violence cases.”  Mont. Code Ann. § 40-4-301	No.
<b>Nebraska</b> <a href="#">Neb. Rev. Stat. § 43-2939 (2014)</a> ; PARENTING ACT MEDIATOR; DUTIES; CONFLICT OF INTEREST; REPORT OF CHILD ABUSE OR NEGLECT; TERMINATION OF MEDIATION.  <a href="#">Neb. Rev. Stat. § 42-903(2014)</a> ;	No.	Yes. (1) A Parenting Act mediator, prior to meeting with the parties in an initial mediation session, shall provide an individual initial screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of	No.

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07/14

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Definition of Domestic Violence		<p>intimidation or coercion, or a party's inability to negotiate freely and make informed decisions.</p> <p>If any of these conditions exist, the mediator shall not proceed with the mediation session but shall proceed with a specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or court conciliation program, or shall refer the parties to a mediator who is so qualified.</p> <p>When public records such as current or expired protection orders, criminal domestic violence cases, and child abuse or neglect proceedings are provided to a mediator, such records shall be considered during the individual initial screening session to determine appropriate dispute resolution methods.</p> <p>The mediator has the duty to determine whether to proceed</p>	

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07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		<p>in joint session, individual sessions, or caucus meetings with the parties in order to address safety and freedom to negotiate. In any mediation or specialized alternative dispute resolution, a mediator has the ongoing duty to assess appropriateness of the process and safety of the process upon the parties.</p> <p>(5) The mediator may terminate mediation if one or more of the following conditions exist:</p> <p>(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;</p> <p>(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or</p> <p>(c) Mediation will otherwise fail to serve the best interests of the child.</p> <p>Neb. Rev. Stat. § 43-2939</p>	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		(2014)	
<b>Nevada</b> <a href="#">Nev. Rev. Stat. Ann. § 3.475 (West)(2014); Nev. Rev. Stat. Ann. § 3.500 (West)(2014);</a> Establishment of Mandated Mediation for Custody Cases	See local court rules.  1. In a county whose population is 700,000 or more, the district court shall establish by rule approved by the Supreme Court a program of mandatory mediation in cases that involve the custody or visitation of a child. 2. The program must (b) Authorize the court to exclude a case from the program for good cause shown, including, but not limited to, a showing that: (1) There is a history of child abuse or domestic violence by one of the parties; (2) The parties are currently participating in private mediation; or (3) One of the parties resides outside of the jurisdiction of the court. Nev. Rev. Stat. Ann. § 3.475 (West)(2014)  1. In a county whose	See local court rules.	No.

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## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>population is 100,000 or more and less than 700,000, the district court shall establish by rule approved by the Supreme Court a program of mandatory mediation in cases which involve the custody or visitation of a child. A district court in a county whose population is less than 100,000 may establish such a program in the same manner for use in that county. The district courts in two or more counties whose populations are less than 100,000 may establish such a program in the same manner for use in the counties in which the courts are located.</p> <p>2. The program must:</p> <p>(a) Require the impartial mediation of the issues of custody and visitation and any other nonfinancial issue deemed appropriate by the court.</p> <p>(b) Allow the court to exclude a case from the program for good cause shown, including a showing of a history of child abuse or domestic violence by one of the parties,</p>		

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## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	ongoing private mediation or residency of one of the parties out of the jurisdiction of the court. Nev. Rev. Stat. Ann. § 3.500 (West)(2014)		
<b>New Hampshire</b> <a href="#">N.H. Rev. Stat. Ann. § 461-A:7</a> (2014); MEDIATION OF CASES INVOLVING CHILDREN  <a href="#">N.H. Rev. Stat. Ann. § 173-B:1</a> (2014); Definition of Domestic Violence.	Yes.  V. The court shall not order mediation if there is a finding of domestic violence as defined in RSA 173-B:1, unless all parties agree to mediation.  N.H. Rev. Stat. Ann. § 461-A:7		
<b>New Jersey</b> <a href="#">N.J. Ct. R. 1:40-5</a> (2014); Mediation in Family Part Matters  <a href="#">N.J. Stat. Ann. 2C:25-19</a> (2014); Definition of Domestic Violence.	Yes, but only where there is a protection order.  “However, no matter shall be referred to mediation if there is in effect a preliminary or final order of domestic violence entered pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.). In matters	No.	Yes.  “An order issued under this act shall only restrain or provide damages payable from a person against whom a complaint has been filed under this act and only after a finding or an admission is made that an act of domestic violence was committed by that person.

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## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>involving domestic violence in which no order has been entered or in cases involving child abuse or sexual abuse, the custody or parenting time issues shall be referred to mediation provided that the issues of domestic violence, child abuse or sexual abuse shall not be mediated in the custody mediation process. “</p> <p>N.J. Ct. R. 1:40-5(2014)</p>		<p>The issue of whether or not a violation of this act occurred, including an act of contempt under this act, shall not be subject to mediation or negotiation in any form. In addition, where a temporary or final order has been issued pursuant to this act, no party shall be ordered to participate in mediation on the issue of custody or parenting time.”</p> <p>N.J. Stat. Ann. § 2C:25-29 (West)</p>
<p><b>New Mexico</b>  <a href="#">N.M. Stat. Ann. § 40-4-8</a>  <a href="#">(West)(2014)</a>;            MEDIATION IN CONTESTED CUSTODY    <a href="#">N.M. Stat. Ann. § 40-13-2</a>  <a href="#">(West)(2014)</a>;            Definition of Domestic Violence</p>	<p>Yes.</p> <p>B. When custody is contested, the court:            (1) shall refer that issue to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend mediation</p> <p>N.M. Stat. Ann. § 40-4-8 (West)(2014)</p>	<p>Yes.</p> <p>B. When custody is contested, the court:            (1) shall refer that issue to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend mediation unless the court specifically finds that:            (a) the following three conditions are satisfied: 1) the mediator has substantial training concerning the effects</p>	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		<p>of domestic violence or child abuse on victims; 2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering from an imbalance of power as a result of the alleged domestic violence; and 3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between the parties resulting from the alleged domestic violence or child abuse; or</p> <p>(b) in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence;</p> <p>N.M. Stat. Ann. § 40-4-8 (West)</p>	



## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>New York</b>	See local court rules.	See local court rules.	
<b>North Carolina</b> <a href="#">N.C. Gen. Stat. Ann. § 7A-38.4A (West)(2014)</a> ; MEDIATION STATUTE	Yes.  (d) Parties who have been victims of domestic violence may be excused from physically attending or participating in a mediated settlement conference or other settlement procedure.  N.C. Gen. Stat. Ann. § 7A-38.4A (West)	Yes.  (d). Parties who have been victims of domestic violence may be excused from physically attending or participating in a mediated settlement conference or other settlement procedure.  N.C. Gen. Stat. Ann. § 7A-38.4A (West)	
<b>North Dakota</b> <a href="#">N.D. Cent. Code. Ann. § 14-09.1-02 (2014)</a> ; CONTESTED CHILD PROCEEDING MEDIATION	Yes.  In any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense. The court may not order mediation if the custody, support, or visitation issue involves or may involve	No.	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>physical or sexual abuse of any party or the child of any party to the proceeding.</p> <p>N.D. Cent. Code Ann. § 14-09.1-02 (West)</p>		
<p><b>Ohio</b></p> <p>Ohio Sup. R. 16 (2014); MEDIATION</p>	<p>Yes, but check local rules.</p> <p><b>(2) Required provisions for domestic relations and juvenile court mediation rules.</b> A local rule for mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children or delinquency or status offense cases shall include the provisions of division (B)(1) of this rule. The mediation rule shall include provisions that allow mediation to proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in division (C)(2) of this rule and all of the following conditions are satisfied:</p> <p>(a) The person who is or may be the victim of domestic</p>	<p>Yes, but check local rules.</p> <p>(b) The parties have the capacity to mediate without fear of coercion or control.</p> <p>(c) Appropriate procedures are in place to provide for the safety of the person who is or may be the victim of domestic violence and all other persons present at the mediation.</p> <p>(d) Procedures are in place for the mediator to terminate mediation if he or she believes there is continued threat of domestic violence or coercion between the parties.</p> <p>(e) Procedures are in place for issuing written findings of fact, as required by R.C. 3109.052, to refer certain cases involving domestic violence to mediation.</p> <p>Ohio Sup. R. 16</p>	<p>Yes, but check local rules.</p> <p><b>(B) Content of Mediation Rule.</b> A local rule providing for mediation shall include the applicable provisions set forth in this division, in addition to such other provisions as the court or division considers necessary and appropriate.</p> <p><b>(1) Required provisions for all mediation rules.</b> A local mediation rule shall include all of the following provisions:</p> <p>(a) Procedures for ensuring that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.</p> <p>(b) Procedures for screening for domestic violence both before and during mediation.</p> <p>(c) Procedures for encouraging</p>

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>violence is fully informed, both orally and in writing, about the mediation process, his or her right to decline participation in the mediation process, and his or her option to have a support person present at mediation sessions.</p> <p>Ohio Sup. R. 16</p>		<p>appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.</p> <p>(d) Procedures for prohibiting the use of mediation in any of the following:</p> <ol style="list-style-type: none"> <li>1) As an alternative to the prosecution or adjudication of domestic violence;</li> <li>2) In determining whether to grant, modify or terminate a protection order;</li> <li>3) In determining the terms and conditions of a protection order; and</li> <li>4) In determining the penalty for violation of a protection order.</li> </ol> <p>Nothing in division (B)(1)(d) of this rule shall prohibit the use of mediation in a subsequent divorce or custody case even though that case may result in the termination of the provisions of a protection order.</p> <p>Ohio Sup. R. 16</p>

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<p>Oklahoma  <a href="#">Okla. Stat. Ann. tit. 43, § 107.3 (West) (2014)</a>; PROCEEDING FOR DISPOSITION OF CHILDREN</p> <p><a href="#">Okla. Stat. Ann. tit. 22, § 60.1 (West)</a>; Definition of Domestic Violence</p>	<p>Yes, but may be unconstitutional. (see <a href="#">Kelley v. Kelley</a>, 175 P.3d 400 (Ok. 2008)).</p> <p>[Custody]</p> <p>“B. When property, separate maintenance, or custody is at issue, the court:</p> <p>1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation.”</p> <p>Okla. Stat. Ann. tit. 43, § 107.3 (West) (2014)</p>	<p>Yes, but may be unconstitutional. (see <a href="#">Kelley v. Kelley</a>, 175 P.3d 400 (Ok. 2008)).</p> <p>“B. When property, separate maintenance, or custody is at issue, the court:</p> <p>1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:</p> <p>the following three conditions are satisfied:</p> <p>1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,</p> <p>2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of</p>	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		<p>power as a result of the alleged domestic violence, and</p> <p>3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between parties resulting from the alleged domestic violence or child abuse, or</p> <p>in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence.”</p> <p>Okla. Stat. Ann. tit. 43, § 107.3 (West)</p>	
<p><b>Oregon</b></p> <p><a href="#">Or. Rev. Stat. Ann. § 107.755 (West)(2014)</a>; MEDIATION STATUTE.</p>	<p>(C) All mediation programs and mediators must develop and implement:</p> <p>(i) A screening and ongoing evaluation process of domestic violence issues for all mediation cases;</p> <p>(ii) A provision for opting out of mediation that allows a party to decline mediation after the party has been informed of the advantages</p>	<p>(C) All mediation programs and mediators must develop and implement:</p> <p>(iii) A set of safety procedures intended to minimize the likelihood of intimidation or violence in the orientation session, during mediation or on the way in or out of the building in which the orientation or mediation occurs;</p>	<p>(B) Neither the existence of nor the provisions of a restraining order issued under ORS 107.718 may be mediated</p> <p>Or. Rev. Stat. Ann. § 107.755 (West)</p>

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>and disadvantages of mediation or at any time during the mediation</p> <p>Or. Rev. Stat. Ann. § 107.755 (West) (2014)</p>	<p>(D) When a mediator explains the process to the parties, the mediator shall include in the explanation the disadvantages of mediation and the alternatives to mediation;</p> <p>(E) All mediators shall obtain continuing education regarding domestic violence and related issues; and</p> <p>(F) Mediation programs shall collect appropriate data. Mediation programs shall be sensitive to domestic violence issues when determining what data to collect.</p> <p>Or. Rev. Stat. Ann. § 107.755 (West) (2014)</p>	
<p><b>Pennsylvania</b></p> <p><a href="#">23 Pa. Cons. Stat. Ann. § 3901 (2014)</a>;</p> <p>MEDIATION STATUTE .</p>	<p>YES.</p> <p>(2) The court shall not order an orientation session or mediation in a case where either party or child of either party is or has been a subject of domestic violence or child abuse at any time during the pendency of an action under this part or within 24 months preceding the filing of any</p>	<p>No.</p>	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	action under this part.  23 Pa. Cons. Stat. Ann. § 3901 (West)		
<b>Rhode Island</b> <a href="#">R.I. GEN. LAWS § 15-5-29 (2014)</a> ; MEDIATION IN CHILD CUSTODY  [RELEVANT BLURB].	No.	No.	
<b>South Carolina</b> <a href="#">S.C. Code § 63-5-530 (2014)</a> ; Mediation Statute  [RELEVANT BLURB].	No.	No.	No.
<b>South Dakota</b> <a href="#">S.D. Codified Laws § 25-4-56 (2014)</a> ; MEDIATION ORDERS--EXCEPTIONS .	Yes.  “[M]ediation shall not be ordered if: 1) One of the parents has been convicted of domestic abuse as defined in subdivision 25-10-1(1); or 2) One of the parents has been convicted of assault against a person as defined in subdivision 25-10-1(2), except against any person related by consanguinity, but not living in the same household; or	No.	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>3) One of the parents has a history of domestic abuse.”</p> <p>S.D. Codified Laws § 25-4-56</p>		
<p><b>Tennessee</b>  <a href="#">Tenn. Code Ann. § 36-6-107</a> (2014);            Mediation Process, Cases Involving Domestic Violence.</p>	<p>Yes.</p> <p>(a) In any proceeding concerning the custody of a child, if an order of protection issued in or recognized by this state is in effect or if there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer either party to mediation only if:</p> <p>(1) Mediation is agreed to by the victim of the alleged domestic or family violence</p> <p>Tenn. Code Ann. § 36-6-107 (West) (2014)</p>	<p>Yes</p> <p>(a) In any proceeding concerning the custody of a child, if an order of protection issued in or recognized by this state is in effect or if there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer either party to mediation only if:</p> <p>(1) Mediation is agreed to by the victim of the alleged domestic or family violence;</p> <p>(2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and</p> <p>(3) The victim is permitted to have in attendance at</p>	



## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		<p>mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation.</p> <p>(b) Where the court makes findings of child abuse or child sexual abuse under § 36-6-106(a)(8), the court may only award visitation under circumstances that guarantee the safety of the child. In order to guarantee the safety of the child, the court may order:</p> <p>(1) That all visits be supervised by a responsible adult or agency, the costs to be primarily borne by the perpetrating parent;</p> <p>(2) That the perpetrating parent attend and complete a program of counseling or other intervention as a precondition to visitation;</p> <p>(3) That overnight visitation be prohibited until such time that the perpetrating parent has completed court ordered counseling or intervention, or otherwise demonstrated a</p>	

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## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		<p>change in circumstances that guarantees the safety of the child;</p> <p>(4) That the address of the child and the non-perpetrating parent be kept confidential;</p> <p>and</p> <p>(5) Any other conditions the court deems necessary and proper to guarantee the safety of the child.</p> <p>Tenn. Code Ann. § 36-6-107 (West) (2014)</p>	
<p><b>Texas</b></p> <p><a href="#">Tex. Fam. Code Ann. § 6.602 (West) (2014)</a>; MEDIATION PROCEDURES</p>	<p>Yes.</p> <p>(d) A party may at any time prior to the final mediation order file a written objection to the referral of a suit for dissolution of a marriage to mediation on the basis of family violence having been committed against the objecting party by the other party. After an objection is filed, the suit may not be referred to mediation unless, on the request of the other party, a hearing is held and the court finds that a</p>	<p>Yes.</p> <p>(d) A party may at any time prior to the final mediation order file a written objection to the referral of a suit for dissolution of a marriage to mediation on the basis of family violence having been committed against the objecting party by the other party. After an objection is filed, the suit may not be referred to mediation unless, on the request of the other party, a hearing is held and the court finds that a</p>	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
	<p>preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation.</p> <p>Tex. Fam. Code Ann. § 6.602 (West)</p>	<p>preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation.</p> <p>Tex. Fam. Code Ann. § 6.602 (West) (2014)</p>	
<p><b>Utah</b>  <a href="#">Utah Code Ann. § 78B-6-207 (West) (2014)</a>; PROCEDURES FOR MEDIATION</p>	<p>Discretionary, for “good cause.”</p> <p>(1) A judge or court commissioner may refer to mediation any case for which the Judicial Council and Supreme Court have established a program or procedures. A party may file with the court an objection to the referral which may be granted for good cause.</p> <p>Utah Code Ann. § 78B-6-207 (West) (2014).</p>	No.	

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## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>Vermont</b> <a href="#">15 Vt. Stat. Ann. § 666 (2014)</a> ; Agreements Between Parents	No.	No.	
<b>Virginia</b> <a href="#">Va. Code Ann. § 20-124.4 (West) (2014)</a> ; MEDIATION	Discretionary.  “In any appropriate case the court shall refer the parents or persons with a legitimate interest to a dispute resolution evaluation session to be conducted by a mediator certified pursuant to guidelines promulgated by the Judicial Council at no cost and in accordance with the procedures set out in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01. In assessing the appropriateness of a referral, the court shall ascertain upon motion of a party whether there is a history of family abuse.”  Va. Code Ann. § 20-124.4 (West) (2014)	No.	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<p><b>Washington</b>  <a href="#">Wash. Rev. Code Ann. § 26.09.016 (West) (2014)</a>;            MEDIATION IN CASES INVOLVING DOMESTIC VIOLENCE OR CHILD ABUSE</p> <p><a href="#">Wash. Rev. Code Ann. § 26.50.010 (West)(2014)</a>;            Definition of Domestic Violence.</p>	<p>Yes</p> <p>Mediation is generally inappropriate in cases involving domestic violence and child abuse. In order to effectively identify cases where issues of domestic violence and child abuse are present and reduce conflict in dissolution matters: (1) Where appropriate parties shall be provided access to trained domestic violence advocates; and (2) in cases where a victim requests mediation the court may make exceptions and permit mediation, so long as the court makes a finding that mediation is appropriate under the circumstances and the victim is permitted to have a supporting person present during the mediation proceedings.</p> <p>Wash. Rev. Code Ann. § 26.09.016 (West)</p>	<p>Yes</p> <p>Mediation is generally inappropriate in cases involving domestic violence and child abuse. In order to effectively identify cases where issues of domestic violence and child abuse are present and reduce conflict in dissolution matters: (1) Where appropriate parties shall be provided access to trained domestic violence advocates; and (2) in cases where a victim requests mediation the court may make exceptions and permit mediation, so long as the court makes a finding that mediation is appropriate under the circumstances and the victim is permitted to have a supporting person present during the mediation proceedings.</p> <p>Wash. Rev. Code Ann. § 26.09.016 (West)</p>	

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
<b>West Virginia</b> <a href="#">W. Va. Code Ann. § 48-9-202(b) (2014)</a> ; COURT ORDERED SERVICES [MEDIATION]	No.	Yes.  (b) The supreme court of appeals shall make and promulgate rules that will provide for premediation screening procedures to determine whether domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements would adversely affect the safety of a party, the ability of a party to meaningfully participate in the mediation or the capacity of a party to freely and voluntarily consent to any proposed agreement reached as a result of the mediation. Such rules shall authorize a family court judge to consider alternatives to mediation which may aid the parties in establishing a parenting plan. Such rules shall not establish a per se bar to mediation if domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements exist, but may	

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## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		<p>be the basis for the court, in its discretion, not to order services under subsection (a) of this section or not to require a parent to have face-to-face meetings with the other parent.</p> <p>W. Va. Code Ann. § 48-9-202 (West)</p>	
<b>Wisconsin</b>	No.	No.	No.
<b>Wyoming</b>	No.	No.	No.
<b>Guam</b> <a href="#">19 Guam Code Ann. §7111</a> (2014); COURT ORDERED AND COURT REFERRED CONCILIATION OR MEDIATION OF CASES PROHIBITED	Yes.  The Superior Court of Guam shall not order parties into conciliation or mediation when either party asserts that family violence has occurred.  § 7111. Court Ordered and Court Referred Conciliation or Mediation of Cases Prohibited., 19 G.C.A. § 7111	Yes  The Court shall make available conciliation or mediation services for resolution of the issues in a petition for an order of protection only under the following circumstances: (a) conciliation or mediation is requested by the victim of the alleged family violence; and conciliation or mediation is deemed appropriate after	Yes.  The Superior Court of Guam shall not order parties into conciliation or mediation when either party asserts that family violence has occurred.  § 7111. Court Ordered and Court Referred Conciliation or Mediation of Cases Prohibited., 19 G.C.A. § 7111

## Mediation in Family Law Matters Where DV is Present

07/14

Family Law Statute on Mediation & DV Definition	Mediation Ban/Opt Out In Custody Cases with DV Finding	Mediation with a protective condition	Mediation Ban/Opt Out in Protection Order Cases
		<p>screening by a licensed Individual Marriage and Family Therapist, clinical psychologist or psychiatrist trained in family violence issues; and</p> <p>(b) conciliation or mediation is provided in a specialized manner that protects the safety of the victim by a certified mediator who is trained in family violence; and</p> <p>(c) the victim is permitted to have in attendance at conciliation or mediation a supporting person of his or her choice, including, but not limited to, an attorney or advocate at no expense to the Court; and</p> <p>(d) the mediator or conciliation or mediation service provides any other procedure deemed necessary by the Court to protect the victim from intimidation from the alleged perpetrator.</p> <p>§ 7111. Court Ordered and Court Referred Conciliation or Mediation of Cases Prohibited., 19 G.C.A. § 7111</p>	



## Mediation in Family Law Matters Where DV is Present

07/14