

Mediation in Family Law Matters Where DV is Present

January 2008

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State (DV Model Code §408?)	Mediation Ban/Opt-out with DV Finding?	Mediation Only with Protective Conditions?	Statute
Alabama (yes)	Yes	Yes	<p><i>Ala. Code § 6-6-20 (2007). Civil Practice Remedies</i></p> <p>(d) A court shall not order parties into mediation for resolution of the issues in a petition for an order 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.</p> <p>(e) In a proceeding concerning the custody or visitation of a child, if an order for protection is in effect or if the court finds that domestic violence has occurred, the court shall not order mediation.</p> <p>(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:</p> <p>(1) Mediation is requested 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 mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.</p>
Alaska (yes)	Yes	Yes	<p><i>Alaska R. Civ. Proc. 100 (2007).</i></p> <p>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 [see below].</p> <p>...[T]he court shall consider whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim. Mediation may not be ordered between the parties to, or in, a case filed under AS 18.66.100-18.66.180 [AK civil protection order statute].</p> <p><i>§25.20.080. Mediation of child custody matter</i> <i>§25.24.060 Mediation [of Divorce]</i> <i>§25.24.140 Orders During [Divorce] Action</i></p> <p>(f) The court may not order or refer parties to mediation in a proceeding concerning custody or visitation of a child if a protective order issued or filed under AS 18.66.100-18.66.180 is in effect. The court may not order or refer parties to mediation if a party objects on the grounds that domestic violence has occurred between the parties unless the court finds that the conditions of (g)(1)-(3) of this section are met. If the court proposes or suggests mediation under this subsection,</p> <p>(1) mediation may not occur unless the victim of the alleged domestic violence agrees to the mediation; and</p> <p>(2) the court shall advise the parties that each party has the right to not agree to mediation and that the 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>

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			<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>
Arizona	Yes	Yes	<p><i>Ariz. Fam. Law Proc. R. 67 (2007). [see also Rule 68]</i></p> <p>2. Commencement of Mediation. 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.</p> <p>3. Domestic Violence.</p> <p>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, 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.</p> <p>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.</p> <p>c. The mediator shall reject for mediation or terminate mediation in any case the mediator deems mediation to be inappropriate because of domestic violence.</p>
Arkansas			
California	No	Yes	<p><i>Cal. Fam. Code §3170 (2007). Setting matters for mediation; guidelines for handling domestic violence cases</i></p> <p>(a) If it appears on the face of a petition, application, or other pleading to obtain or modify a temporary or permanent custody or visitation order that custody, visitation, or both are contested, the court shall set the contested issues for mediation.</p> <p>(b) Domestic violence cases shall be handled by Family Court Services in accordance with a separate written protocol approved by the Judicial Council. The Judicial Council shall adopt guidelines for services, other than services provided under this chapter, that counties may offer to parents who have been unable to resolve their disputes. These services may include, but are not limited to, parent education programs, booklets, videotapes, or referrals to additional community resources. [see <i>Cal. Rules of Ct. Rule 5.215 (2007), Domestic Violence Protocol for Family Court Services</i>]</p> <p><i>Cal. Fam. Code §3181. Domestic violence history between the parties; separate meetings; intake forms</i></p>

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			<p>(a) In a proceeding in which mediation is required pursuant to this chapter, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the mediator appointed pursuant to this chapter shall meet with the parties separately and at separate times.</p> <p>(b) Any intake form that an agency charged with providing family court services requires the parties to complete before the commencement of mediation shall state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the mediator will meet with the parties separately and at separate times.</p> <p><i>Cal. Fam. Code §3182. Authority of mediators; exclusion of counsel; exclusion of domestic violence support person</i></p> <p>(a) The mediator has authority to exclude counsel from participation in the mediation proceedings pursuant to this chapter if, in the mediator's discretion, exclusion of counsel is appropriate or necessary.</p> <p>(b) The mediator has authority to exclude a domestic violence support person from a mediation proceeding as provided in Section 6303.</p>
Colorado			
Connecticut			
Delaware (yes)	Yes	No	<p><i>13 Del.C. §711A (2007). Ordered mediation prohibited</i></p> <p>Notwithstanding any other provision of law to the contrary, Family Court mediation conferences shall be prohibited in any child custody or visitation 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>
D.C.			
Florida	Yes	No	<p><i>Fla. Stat. §44.102 (2007). Court-ordered mediation</i></p> <p>(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 §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.</p>
Georgia	No (but see local rule)	No (but see local rule)	<p><i>Superior Court of Gwinnett County Internal Operating Procedures</i></p> <p>C. Criminal cases that involve domestic violence shall not be referred to ADR from any court. Divorce and other civil actions which include allegations of domestic violence will be screened for their appropriateness.</p> <p>(1) The judge's office will review the pleadings and other courts records regarding the case. Cases involving issues of serious domestic violence (systematic use of force or threat of force, use of a weapon, or serious injury) and cases involving allegations of child abuse shall not be referred to mediation.</p>

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			<p>(2) All <i>orders</i> and <i>notices</i> regarding mediation will include a statement that any allegations of domestic violence shall be reported to the Gwinnett County Office of Dispute Resolution (GCODR). Cases in which allegations are reported will be returned to the assigned judge to determine whether the case is appropriate for mediation.</p> <p>(3) To be eligible/appropriate for mediation, domestic violence cases must meet the following criteria:</p> <ul style="list-style-type: none"> (a) The parties are living separately; (b) The victim agrees to mediation after being informed about the nature of mediation; (c) The victim has an advocate and/ or attorney available for the mediation; and (d) The case is assigned to a mediator with specialized training in the area of domestic violence.
Guam (yes)	Yes	Yes	<p><i>19 Guam Code Ann. §7111 (2007). Court Ordered and Court Referred Conciliation or Mediation of Cases Prohibited.</i></p> <p>The Superior Court of Guam shall not order parties into conciliation or mediation when either party asserts that family violence has occurred. 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:</p> <ul style="list-style-type: none"> (a) conciliation or mediation is requested by the victim of the alleged family violence; and conciliation or mediation is deemed appropriate after screening by a licensed Individual Marriage and Family Therapist, clinical psychologist or psychiatrist trained in family violence issues; and (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 (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 (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.
Hawaii (yes)	Yes	Yes	<p><i>Haw. Rev. Stat. Ann. §580-41.5 (2007). Battered spouses; exemption from mediation in divorce proceedings.</i></p> <ul style="list-style-type: none"> (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. (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: <ul style="list-style-type: none"> (1) Mediation is authorized by the victim of the alleged family violence;

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			<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>(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.</p> <p>(d) In a proceeding concerning the custody or visitation of a child, if there is an allegation of family violence and a protective order is not in effect, the court may order mediation or refer either party to mediation only if:</p> <p>(1) Mediation is authorized by 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>
Idaho			
Illinois	Yes	No	<p><i>750 ILCS 5/607.1 (2008). Enforcement of visitation orders; visitation abuse</i></p> <p>(c) After hearing all of the evidence, the court may order one or more of the following:</p> <p>(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, occurring between the parties.</p> <p><i>Several, but not all IL Circuit Courts have adopted the following local rule:</i></p> <p><i>Rule 1. Definitions</i></p> <p>A. Mediation. When the word "mediation" is used herein, it means a cooperative process for resolving conflict with the assistance of a trained court-appointed, neutral third party, whose role is to facilitate communication, to help define issues, and to assist the parties in identifying and negotiating fair solutions that are mutually agreeable. Fundamental to the mediation process, described herein, are principles of safety, self determination, procedural informality, privacy, confidentiality, and full disclosure of relevant information between the parties.</p> <p>B. Impediment. When the word "impediment" is used herein, it means any condition, including but not limited to domestic violence or intimidation, substance abuse, or mental illness, the existence of which, in an individual or in a relationship, may hinder the ability of any party to negotiate safely, competently, and in good faith. The identification of forms of impediment is designed not to require treatment, but to insure that only parties having a present, undiminished ability to negotiate are directed by court order to mediate. Mediation is based on a full disclosure of all facts related to the disputes so that a fair and equitable agreement can be achieved by the parties</p>

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Indiana	Yes (but only in CPO cases)	No	<p><i>Ind. Code 34-26-5-15 (2007). Mediation</i></p> <p>Sec. 15. A court may not:</p> <p style="margin-left: 20px;">(1) order parties into mediation; or</p> <p style="margin-left: 20px;">(2) refer parties to mediation;</p> <p>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.</p>
Iowa	Yes	No	<p><i>Iowa Code Ann. §598.7 (2006). Mediation</i></p> <p>1. The district court may, on its own motion or on the motion of any party, order the parties to participate in mediation in any 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 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 section 598.41, subsection 3, paragraph "j".</p>
Kansas			
Kentucky	Yes	Yes	<p><i>Ky. Rev. Stat. §403.036 (2008). Mediation not to be ordered unless conditions are met</i></p> <p>In any court proceeding conducted pursuant to KRS 403.010 to 403.350, if there is a finding of domestic violence and abuse, as defined in KRS 403.720, the court shall not order mediation unless requested by the victim of the alleged domestic violence and abuse, and the court finds that:</p> <p style="margin-left: 20px;">(1) The victim's request is voluntary and not the result of coercion; and</p> <p style="margin-left: 20px;">(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.</p> <p><i>Ky. Rev. Stat § 403.725. Petition, who may file; protective orders</i></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>
Louisiana	Yes	No	<p><i>La. Rev. Stat. Ann. §9:363 (2007). Ordered mediation prohibited</i></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 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.</p>
Maine			
Maryland			
Massachusetts			
Michigan			

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Minnesota	Yes	Yes	<p><i>Minn. Stat. Ann. §518.1751 (2007). Parenting Time Dispute Resolution</i></p> <p>Subdivision 1. Parenting time expeditor.</p> <p>Upon request of either party, the parties' stipulation, or upon the court's own motion, the court may appoint a parenting time expeditor to resolve parenting time disputes that occur under a parenting time order while a matter is pending under this chapter, chapter 257 or 518D, or after a decree is entered.</p> <p>Subd. 1a. Exceptions.</p> <p>A party may not be required to refer a parenting time dispute to a parenting time expeditor under this section if:</p> <p>(1) one of the parties claims to be the victim of domestic abuse by the other party;</p> <p>(2) the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party; or</p> <p>(3) the party is unable to pay the costs of the expeditor, as provided under subdivision 2a.</p> <p>If the court is satisfied that the parties have been advised by counsel and have agreed to use the parenting time expeditor process and the process does not involve face-to-face meeting of the parties, the court may direct that the parenting time expeditor process be used.</p> <p>Subd. 2c. Training and continuing education requirements.</p> <p>To qualify for listing on a court administrator's roster of parenting time expeditors, an individual shall complete a minimum of 40 hours of family mediation training that has been certified by the Minnesota supreme court, which must include certified training in domestic abuse issues as required under Rule 114 of the Minnesota General Rules of Practice for the District Courts. To maintain one's listing on a court administrator's roster of parenting time expeditors, an individual shall annually attend three hours of continuing education about alternative dispute resolution subjects.</p>
Mississippi			
Missouri	Yes	No	<p><i>Mo. Ann. Stat. §452.372 (2007). Mandatory educational sessions, when--alternative dispute resolution, when</i></p> <p>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.</p> <p><i>Mo. R. 7 Cir. Rule 68.8. Custody/Visitation Mediation</i></p> <p>68.8.5. Some cases may be inappropriate for mediation, which may include those with a history of child abuse or neglect or domestic violence. The Court appointed mediator, and the Office of Dispute Resolution Services in the case of matters participating in the court sponsored mediation program, shall screen the parties prior to conducting mediation sessions. If the case is deemed inappropriate for mediation, the mediator or program director shall immediately file the Notice of Mediation Compliance form with the Court.</p>

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Montana	Yes	No (but see appellate rule)	<p><i>Mont. Code Ann. §40-4-301 (2005). Family law mediation -- exception.</i></p> <p>(2) 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.</p> <p><i>Mont. R. App. P., Rule 7</i></p> <p>b. Domestic relations. Appeals in domestic relations cases, including but not limited to all dissolution issues, child custody and support issues, maintenance issues and modifications of orders entered with respect to those issues; but excluding proceedings regarding abused or neglected children, paternity disputes, adoptions, and all juvenile and contempt proceedings when the excluded matters constitute the only issues on appeal. In addition, if there has been a finding by a district court that one of the parties has been a victim of domestic violence, the appellate mediation may be conducted by telephone upon motion submitted to the mediator by either party.</p>
Nebraska	No ban, but diversion	Yes	<p><i>R.R.S. Neb. §43-2939 (2007). Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.</i></p> <p>(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 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 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> <ul style="list-style-type: none"> (a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan; (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 (c) Mediation will otherwise fail to serve the best interests of the child.

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Nevada	No ban, but discretionary opt-out	No	<p><i>Nev. Rev. Stat. Ann. § 3.500 (2007). Establishment of programs of mandatory mediation in county whose population is 100,000 or more but less than 400,000; report to legislature</i></p> <p>1. In a county whose population is more than 100,000 and less than 400,000, 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 100,000 or less 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 100,000 or less 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, ongoing private mediation or residency of one of the parties out of the jurisdiction of the court.</p>
New Hampshire	Yes	Yes	<p><i>N.H. Fam. Div. 2.13 (2007). Mediation</i></p> <p>A. In divorce actions and legal separation actions in which there are minor children, and in parenting petition cases, parties shall be ordered to participate in mediation unless the Court finds that mediation would not be appropriate due to factor(s) listed in RSA 461-A:7 [see below].</p> <p>B. Participation in mediation may be ordered in new divorces and legal separations without minor children and in those divorce, legal separation, or parenting cases in which final orders have been issued if those cases return to court for further Court orders.</p> <p>C. If there is a finding of domestic violence as defined in RSA 173-B:1, and if the parties agree to mediate despite the existence of the protective order, all mediation sessions shall occur at the courthouse.</p> <p><i>461-A:7 Mediation of Cases Involving Children.</i></p> <p>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.</p> <p><i>N.H. Rev. Stat. § 458:15-c [Divorce]</i></p> <p>IV. 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.</p> <p><i>173-B:5 Relief. [Civil Protection Orders]</i></p> <p>(8) Directing the abuser to engage in a batterer's intervention program or personal counseling. If available, such intervention and counseling program shall focus on alternatives to aggression. The court shall not direct the plaintiff to engage in joint counseling services with the defendant. Court-ordered and court-referred mediation of cases involving domestic violence shall be prohibited.</p>

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New Jersey	Yes	No	<p><i>N.J. Court Rules, R. 1:40-5 (2007). Mediation in Family Part Matters</i></p> <p>(a) Mediation of Custody and Parenting Time Actions</p> <p>(1) Screening and Referral. All complaints or motions involving a custody or parenting time issue shall be screened to determine whether the issue is genuine and substantial, and if such a determination is made, the matter shall be referred to mediation for resolution in the child's best interests. 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 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. The mediator or either party may petition the court for removal of the case from mediation based upon a determination of good cause.</p> <p><i>N.J.S.A. 2C:25-29. Hearing; factors considered; orders for relief</i></p> <p>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. 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>
New Mexico (yes)	Yes	Yes	<p><i>N.M. Stat. Ann. § 40-4-8 (2007). Contested custody; appointment of guardian ad litem</i></p> <p>B. When custody is contested, the court:</p> <p>(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:</p> <p>(a) the following three conditions are satisfied:</p> <p>1) the 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 from an imbalance of 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 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>
New York			

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North Carolina	Yes	No	<p><i>N.C. Gen. Stat. Ann. §7A-38.4A (2007). Settlement procedures in district court actions</i></p> <p>(d) The parties to a district court action where a mediated settlement conference or other settlement procedure is ordered, their attorneys, and other persons or entities with authority, by law or contract, to settle a party's claim, shall attend the mediated settlement conference or other settlement procedure, unless the rules ordering the settlement procedure provide otherwise. No party or other participant in a mediated settlement conference or other settlement procedure is required to make a settlement offer or demand that the party or participant deems contrary to that party's or participant's best interests. 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.</p> <p><i>N.C. Gen. Stat. Ann. §50-13.1. Action or proceeding for custody of minor child</i></p> <p>(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause.</p>
North Dakota			
Ohio			
Oklahoma (yes)	Yes	Yes	<p><i>43 Okl. Stat. §107.3 (2007).</i></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 style="margin-left: 20px;">a. the following three conditions are satisfied:</p> <p style="margin-left: 40px;">(1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,</p> <p style="margin-left: 40px;">(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 power as a result of the alleged domestic violence, and</p> <p style="margin-left: 40px;">(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 style="margin-left: 20px;">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>

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Oregon	Yes	Yes	<p><i>Ore. Rev. Stat. §107.755 (2005).</i></p> <p>(1) Each judicial district shall:</p> <p>(d) Have developed a plan that addresses domestic violence issues and other power imbalance issues in the context of mediation orientation sessions and mediation of any issue in accordance with the following guidelines:</p> <p>(A) All mediation programs and mediators must recognize that mediation is not an appropriate process for all cases and that agreement is not necessarily the appropriate outcome of all mediation;</p> <p>(B) Neither the existence of nor the provisions of a restraining order issued under ORS 107.718 may be mediated;</p> <p>(C) All mediation programs and mediators must develop and implement:</p> <p style="padding-left: 20px;">(i) A screening and ongoing evaluation process of domestic violence issues for all mediation cases;</p> <p style="padding-left: 20px;">(ii) A provision for opting out of mediation that allows a party to decline mediation after the party has been informed of the advantages and disadvantages of mediation or at any time during the mediation; and</p> <p style="padding-left: 20px;">(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>(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>(2) Notwithstanding any other provision of law, mediation under ORS 107.755 to 107.795, including the mediation orientation session described in subsection (1)(a) of this section, may not be encouraged or provided in proceedings under ORS 30.866, 107.700 to 107.735, 124.005 to 124.040 or 163.738.</p>
Pennsylvania	Yes	No	<p><i>23 Pa.C.S.A. §3901 (2007). Mediation programs</i></p> <p>(c) Local rules.--</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 action under this part.</p> <p>(d) Model guidelines.--The Supreme Court shall develop model guidelines for implementation of this section and shall consult with experts on mediation and domestic violence in this Commonwealth in the development thereof. The effective date of this chapter shall not be delayed by virtue of this subsection.</p> <p><i>Pa. R. Civ. Pro. No. 1940.3 (2007). Order for Orientation Session and Mediation. Selection of Mediator</i></p> <p>(b) The court may not order an orientation session if a party or a child of either party is or has been the subject of domestic violence or child abuse either during the pendency of the action or within 24 months preceding the filing of the action.</p>

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Rhode Island			
South Carolina			
South Dakota			
Tennessee (yes)	Yes	Yes	<p> <i>Tenn. Code Ann. §36-4-131 (2007) [divorce].</i> <i>Tenn. Code Ann. §36-6-107 (2007) [custody].</i> <i>Tenn. Code Ann. §36-6-305 (2007) [visitation].</i> <i>Tenn. Code Ann. §36-6-409 (2007) [ADR procedures].</i> </p> <p> <i>Mediation in cases involving domestic abuse.</i> In any proceeding for [...], if an order of protection issued in or recognized by this state is in effect or 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 [...], the court may order mediation or refer either party to mediation, only if: </p> <ul style="list-style-type: none"> (A) Mediation is agreed to by the victim of the alleged domestic or family violence; (B) 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 (C) 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. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation.
Texas	Yes (but subject to evidentiary hearing)	Yes (unspecified)	<p> <i>Tex. Fam. Code Ann. §6.602 (2007). Mediation Procedures [divorce]</i> </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 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> <i>Tex. Fam. Code Ann. §153.0071 (2007). Alternate Dispute Resolution Procedures [custody]</i> </p> <p> (e-1) Notwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that: </p> <ul style="list-style-type: none"> (1) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; and (2) the agreement is not in the child's best interest. <p> (f) A party may at any time prior to the final mediation order file a written objection to the referral of a suit affecting the parent-child relationship to mediation on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, the suit may not be referred to mediation unless, on the request of a party, a hearing is held and the court finds that a 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>

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Utah			
Vermont			
Virginia			
Washington	Yes	Yes	<p><i>Rev. Code. Wash 26.09.016 (2007). Mediation in cases involving domestic violence or child abuse</i></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>
West Virginia	Yes	Yes	<p><i>W. Va. Code, §48-9-202 (2007). Court-ordered services</i></p> <p>(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 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>(c) A mediator shall not make a recommendation to the court and may not reveal information that either parent has disclosed during mediation under a reasonable expectation of confidentiality, except that a mediator may reveal to the court credible information that he or she has received concerning domestic violence or child abuse.</p>
Wisconsin	Yes	No	<p><i>Wis. Stat. Ann. §767.405 (2006). Family court services</i></p> <p>(5) MEDIATION REFERRALS.</p> <p>(a) 2. ...the court may waive the requirement to attend at least one mediation session if the court determines that attending the session will cause undue hardship or would endanger the health or safety of one of the parties and the bases on which the court may make its determination.</p> <p>(6) ACTION UPON REFERRAL.</p> <p>(a) Whenever a court refers a party to the director of family court services for possible mediation, the director shall assign a mediator to the case. The mediator shall provide mediation if he or she determines that it is appropriate. If the mediator determines that mediation is not appropriate, he or she shall so notify the court. Whenever a court refers a party to the director of family court services for any other family court service, the director shall take appropriate action to provide the service.</p>

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			<p>(b) Any intake form that the family court services requires the parties to complete before commencement of mediation shall ask each party whether either of the parties has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am)</p> <p>(8) INITIAL SESSION OF MEDIATION REQUIRED.</p> <p>(b) A court may, in its discretion, hold a trial or hearing without requiring attendance at the session under par. (a) if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the parties. In making its determination of whether attendance at the session would endanger the health or safety of one of the parties, the court shall consider evidence of the following:</p> <ol style="list-style-type: none"> 1. That a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2) 2. Interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am) 3. That either party has a significant problem with alcohol or drug abuse. 4. Any other evidence indicating that a party's health or safety will be endangered by attending the session. <p>(c) The initial session under par. (a) shall be a screening and evaluation mediation session, including screening for domestic abuse, to determine whether mediation is appropriate and whether both parties wish to continue in mediation.</p> <p>(10) POWERS AND DUTIES OF MEDIATOR.</p> <p>A mediator assigned under sub. (6) (a) shall be guided by the best interest of the child and may do any of the following, at his or her discretion:</p> <p>(d) Suspend mediation when necessary to enable a party to obtain an appropriate court order or appropriate therapy.</p> <p>(e) Terminate mediation if a party does not cooperate or if mediation is not appropriate or if any of the following facts exist:</p> <ol style="list-style-type: none"> 1. There is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2) 2. There is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am) 3. Either party has a significant problem with alcohol or drug abuse. 4. Other evidence which indicates one of the parties health or safety will be endangered if mediation is not terminated.
Wyoming			