

SB 385 -3 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/6, 3/21

WHAT THE MEASURE DOES:

Directs the presiding judge of each judicial district to establish a voluntary alternative dispute resolution conference procedure for custody and parenting time modification and enforcement. Directs the presiding judge to appoint a conference officer licensed to practice law and trained in mediation to hold these conferences. Requires the parties to be placed under oath during the conference but that the conference be otherwise informal. Ensures that each party has the opportunity to present their position at the conference. Allows each party to have their attorney present at the conference. Requires audio recording of conference. Applies the rules of evidence to the conference. Provides that if, during the conference, the parties reach an agreement, the parties sign a stipulated agreement which will be submitted to the court that heard the underlying case. Provides that if, during the conference the parties do not reach an agreement, the conference officer can develop a stipulated agreement on any resolved issues and/or make recommendations to the court on the contested issues. Allows the court, upon receipt of stipulated agreement or recommendation, to approve the stipulated agreement, approve the recommendation of the conference officer, modify the recommendations of the conference officer, reject the recommendations of the in whole or in part, or set the matter for a hearing and requiring the parties to appear personally in court. Requires a party to object to the court's decision within 30 days. Specifies that the process of this measure is not be used when another state has jurisdiction to determine custody and parenting time, to any modification of joint custody where there has been no change in circumstances and a change would not be in the best interest of the child, to any modification of a parenting plan where the modification would not be in the best interest of the child and the safety of the parties, or to any proceeding where a hearing is required.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 Clarifies that the conferences provided for in this section must occur before the court hearing on modification or enforcement of parenting time and custody. Removes the requirements that parties will be under oath and that the rules of evidence will apply. Ensures that safety concerns are accommodated in any conference meetings. Requires that to participants be notified of the fact that if an agreement is not reached the officer may make a recommendation to the court but that no party loses their right to a hearing. Requires that the court appoint conference officers who are a contract or volunteer attorney or trained mediator or an employee of the Oregon Judicial Department. Mandates that the conference officer complete training in mediation, child development and domestic violence as prescribed by the presiding judge. Designates that relevant forms will be created by the State Court Administrator. Allows for hearings to be set by the conference officers. Permits the admission of the conference officers report into hearings but does not assign those reports specific evidentiary weight. Clarifies that the processes of this measure are available in addition to, rather than instead of, mediation unless mediation has been waived. Clarifies that the process of the measure may not be used in Family Abuse Prevention Act (FAPA) proceedings.

BACKGROUND:

In the 2016 interim, the Senate Committee on Judiciary convened a workgroup to explore concerns related to Oregon custody and parenting time statutes. The work group was composed of advocates, expert practitioners,

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

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

Currently, ORS 107.755 through 107.785 provide for mediation where it appears that custody, parenting time or visitation of a child is contested. The purpose of those proceedings is to reach a workable settlement of any contested issues that would otherwise be litigated. ORS 107.765. For that reason, the current program requires the mediator to report to the court any agreement the parties have reached at the conclusion of the mediation but, if no agreement is reached the mediator may only report that fact to the court. ORS 107.365. Further, the mediator may not provide any recommendations to the court without the written consent of parties. ORS 107.765. Under this model, mediated conversations and communications are confidential. ORS 107.785.

Senate Bill 385 is a product of the interim workgroup on child custody and parenting time. It creates an informal alternative dispute resolution process where if, during the conference, the parties do not reach an agreement, the conference officer can develop a stipulated agreement on any resolved issues and/or make recommendations to the court on the contested issues.