

SENATE FILE **487**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 350)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the implementation of a court-annexed family
2 mediation pilot project and providing for an appropriation.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 487

1 Section 1. COURT-ANNEXED FAMILY MEDIATION PILOT PROJECT.

2 1. As used in this section, unless the context otherwise
3 requires:

4 a. "Court-annexed mediation" means mediation provided by
5 mediators employed by the district court.

6 b. "Court-annexed mediation services" includes court-
7 annexed mediation, marriage assessment, and any other services
8 provided through the court-annexed mediation pilot project to
9 parties involved in domestic relations matters.

10 c. "Court-annexed mediator" means a person employed by the
11 district court to provide mediation services.

12 d. "Court-ordered mediation" means mediation in which
13 participation is required by the court for any party to a
14 dissolution of marriage proceeding before the court and for
15 any party in any other proceeding before the court for which
16 the court determines mediation is necessary.

17 e. "Intake fact sheet" means the form developed by the
18 chief judge of the judicial district to be completed by any
19 party requesting participation in or ordered by the court to
20 participate in mediation services, to determine the necessity
21 for and types of services needed by a party in resolving an
22 issue in dispute.

23 f. "Marriage assessment" means an evaluation of the
24 possibility of reconciliation of the parties to a marriage,
25 which is performed by a mediator.

26 g. "Mediation" means the process in which a neutral third
27 party acts to encourage and facilitate the resolution of a
28 dispute between two or more parties, in an informal and
29 nonadversarial manner, with the objective of assisting the
30 disputing parties in reaching a mutually acceptable and
31 voluntary agreement regarding the issue in dispute. Mediation
32 may include, but is not limited to, assisting parties to the
33 mediation in identifying issues, fostering joint problem-
34 solving, and exploring settlement alternatives.

35 h. "Mediator" means a person providing mediation services.

1 If a person is providing court-annexed or court-ordered
2 mediation services, the person shall meet the qualifications
3 established by the chief judge of the judicial district.

4 2. The state court administrator, in consultation with the
5 judicial council, shall develop and implement a court-annexed
6 mediation pilot project in each judicial district. The pilot
7 project shall be implemented by January 1, 1998. The judicial
8 council shall submit a report to the governor and to the
9 general assembly which provides an evaluation of the pilot
10 projects by January 15, 1999.

11 3. The pilot projects shall be based upon all of the
12 following:

13 a. Court-annexed mediation services are to be used for the
14 mediation of family matters, marriage assessment, and related
15 domestic relations issues. All domestic relations matters
16 which come before the court, with the exception of child
17 support recovery, shall be directed to court-annexed mediation
18 services. Additionally, any party wishing assistance in
19 resolution of a domestic relations matter may request
20 participation in court-annexed mediation services. The
21 services shall include assistance and mediation that are
22 specific to the individual family situation, with a focus on
23 primary interventions that promote family unity and parental
24 decision-making, to the extent possible. The purposes of
25 mediation are to reduce acrimony between the parties and to
26 develop parental responsibility.

27 b. Court-annexed mediation services shall be accessible to
28 all parties to a domestic relations matter regardless of
29 financial or marital status. Parties who do not have a
30 domestic relations matter pending before the court for which
31 the court orders mediation services, may request and be
32 provided court-annexed mediation services at a cost which is
33 based on a sliding-fee schedule.

34 c. Following the filing of a petition for dissolution of
35 marriage, all of the following shall apply:

1 (1) All parties shall complete an intake fact sheet and a
2 marriage assessment. The court-annexed mediator shall review
3 the intake fact sheet to schedule a marriage assessment,
4 mediation of temporary matters, and mediation of permanent
5 residential arrangements and parenting responsibilities. The
6 mediator who reviews the intake fact sheet shall not mediate
7 the matters of the parties identified in the intake fact
8 sheet.

9 (2) A joint marriage assessment shall be conducted to
10 determine if the marriage is reconcilable and the mediator
11 shall recommend community resources that the parties may
12 utilize to reconcile the marriage. The joint marriage
13 assessment shall be completed within thirty days of the filing
14 of the answer to the petition. The parties may request that
15 the marriage assessment be performed by a private mediator in
16 lieu of provision of services by a court-annexed mediator. If
17 an assessment with a private mediator has not been scheduled
18 by the parties within thirty days of the filing of the answer
19 to the petition, the court shall schedule an assessment with a
20 court-annexed mediator.

21 (3) A certificate of completion of the marriage assessment
22 shall be filed by the mediator with the clerk of district
23 court. Following filing of the certificate, the court shall
24 determine whether a stay of the proceedings or mediation shall
25 be ordered. Additionally, a stay of the proceedings may be
26 requested by the parties at any time. If a stay is requested,
27 a schedule shall be established to allow for utilization of
28 community resources and mediation services. The court may
29 also stay the proceedings at any time until a date certain.

30 (4) A joint marriage assessment may be waived by the court
31 for good cause, if the court identifies a history of domestic
32 abuse between the parties, or if a party requests waiver of
33 the joint marriage assessment.

34 (5) Prior to a hearing on the petition and following
35 completion of the joint marriage assessment, unless mediation

1 is waived by the court, the parties shall participate in
2 mediation. The parties may request, within forty days of the
3 filing of the answer to the petition, that mediation be
4 provided by a private mediator at the expense of the parties,
5 in lieu of provision of mediation services by the court-
6 annexed mediator. However, if private mediation services are
7 provided, the court may also require participation of the
8 parties in additional mediation provided by a court-annexed
9 mediator.

10 (6) Court-ordered mediation may be waived by the court for
11 good cause, if the court determines that a history of domestic
12 abuse exists between the parties, if a party requests waiver
13 of court-ordered mediation, or if the court-annexed mediator
14 determines that the case is inappropriate for mediation. The
15 court order for mediation may include a schedule for
16 participation in mediation and may require the mediator to
17 file reports with the court. Additionally, if the court or
18 the mediator determines that joint sessions are not in the
19 best interest of the parties, the parties may participate in
20 mediation separately until such time as the mediator
21 determines that joint sessions are in the best interest of the
22 parties. Failure to participate in court-ordered mediation
23 may result in dismissal or stay of the proceedings.

24 (7) The costs of court-ordered mediation including the
25 costs of the services of the mediator shall be taxed as court
26 costs. If the court determines that the parties are unable to
27 pay all or a portion of the costs of court-ordered mediation,
28 the court may waive or reduce the costs of the mediation
29 services. The parties may resolve the issue of payment of
30 mediation costs during mediation. The costs of court-ordered
31 mediation shall not exceed one hundred dollars per party.

32 (8) During court-ordered mediation, the parties shall
33 disclose all relevant information. However, evidence of the
34 conduct or statements made in the course of court-ordered
35 mediation shall be inadmissible in court to the extent that

1 such conduct or statements are inadmissible pursuant to the
2 Iowa rule of evidence regarding compromise and offers to
3 compromise.

4 (9) A mediator shall maintain the confidentiality of the
5 court-ordered mediation proceedings unless otherwise required
6 by law to disclose the information including adherence to the
7 confidential communication provisions under section 622.10. A
8 party participating in court-ordered mediation may refuse to
9 disclose and may prevent any other person present at the court
10 proceeding from disclosing communications made during the
11 mediation proceedings. Any oral or written communications
12 resulting from court-ordered mediation proceedings, with the
13 exception of any settlement agreement, shall remain
14 confidential and are inadmissible as evidence in any
15 subsequent legal proceeding. A mediator shall not be called
16 upon to testify or to make recommendations during the court
17 proceedings. However, confidential information may be
18 disclosed in a disciplinary proceeding involving the mediator
19 for the internal use of the examining board investigating any
20 complaint against a mediator, and any information relating to
21 the disciplinary action shall not be released to the public
22 until all references to privileged information are removed.

23 (10) Any attorney of a party may appear with the party
24 during the court-ordered mediation proceedings. However, at
25 the discretion of the mediator, and with the agreement of the
26 parties, court-ordered mediation proceedings may take place in
27 the absence of the attorneys.

28 (11) Court-ordered mediation shall be completed within
29 seventy-five days of the initial meeting for court-ordered
30 mediation services unless otherwise ordered by the court.

31 (12) Following court-ordered mediation, if an agreement is
32 reached on any issue or matter, the mediator shall reduce the
33 agreement to writing and shall provide a copy of the agreement
34 to the clerk of the district court. The clerk shall forward a
35 copy of the agreement to any attorneys of record or to any

1 party appearing pro se. If no written objections or suggested
2 alternatives to the agreement are received by the clerk within
3 twenty days of the mailing of the agreement, the document
4 shall be forwarded to the court by the clerk for review. The
5 court shall enter the agreement as proposed or shall schedule
6 a hearing. The agreement shall be made part of the final
7 judgment or order in the case. A copy of the final judgment
8 or order shall be sent by the clerk to any attorney of record
9 or to any party appearing pro se.

10 (13) If the parties fail to reach an agreement on any
11 issue or matter of court-ordered mediation, the mediator shall
12 report the lack of agreement to the court. The mediator's
13 report shall identify any unresolved issues and any
14 outstanding issues which might facilitate settlement, if
15 resolved. Any issue or matter unresolved through court-
16 ordered mediation shall be presumed to require court
17 intervention and shall be addressed at a hearing before the
18 court. The mediator's report shall also indicate whether both
19 parties attended any mediation sessions, whether the issues
20 were completely or partially settled, and any recommendations
21 for review by the court.

22 (14) During the period of court-ordered mediation, the
23 court may appoint an attorney, guardian ad litem, or court-
24 appointed special advocate to represent the interests of any
25 minor child or to perform investigations pursuant to section
26 598.12.

27 (15) Unless stipulated by the parties or ordered by the
28 court, discovery shall not be suspended during the court-
29 ordered mediation process.

30 d. Parties who do not have a matter pending before the
31 court who wish to participate in court-annexed mediation
32 services, may request participation in these services.
33 Services shall be provided to the parties based upon a
34 sliding-fee schedule. Any agreements reached by the parties
35 shall be reduced to writing by the mediator and copies of any

1 written agreement shall be provided to the parties.

2 e. The court may also order participation in court-annexed
3 mediation services for parties to proceedings before the court
4 in addition to divorce proceedings.

5 f. The chief judge of each judicial district shall do all
6 of the following:

7 (1) Establish the qualifications for mediators who are to
8 provide court-annexed or court-ordered mediation.

9 (2) Establish a sliding fee schedule for the provision of
10 court-annexed mediation services to parties who do not have
11 domestic relations matters pending before the court.

12 (3) Employ court-annexed mediators.

13 (4) Develop an intake fact sheet to be completed by the
14 parties who are subject to participation in court-ordered
15 mediation and parties who request participation in court-
16 annexed mediation services.

17 Sec. 2. MEDIATION PILOT PROJECT -- APPROPRIATION. There
18 is appropriated from the general fund of the state to the
19 judicial department for the fiscal year beginning July 1,
20 1997, and ending June 30, 1998, the following amount, or so
21 much thereof as is necessary, for the following purpose:

22 For implementation of a court-annexed family mediation
23 pilot project in each judicial district of the state:

24 \$ 1,608,000

25 EXPLANATION

26 This bill establishes a court-annexed family mediation
27 pilot project to be established in each judicial district.
28 The project provides for mediation and other services to
29 parties involved in domestic relations matters. Participation
30 in mediation and other services is required for parties to
31 dissolution proceedings. Following the filing of a petition
32 for a dissolution of marriage, the parties are required to
33 complete an intake fact sheet and a marriage assessment. The
34 parties then participate in a marriage assessment with a
35 mediator to determine if the marriage is reconcilable.

1 Following these steps, the parties are required to participate
2 in mediation unless mediation is waived by the court. The
3 costs of mediation are to be paid by the parties unless they
4 are unable to pay and the cost of court-ordered mediation is
5 not to exceed \$100 per party. Confidentiality provisions
6 apply to information provided during mediation. Following
7 mediation, any agreements between the parties are to be
8 submitted in writing to the court, following a period for
9 review by the parties and attorneys of the parties. The
10 marriage assessment and mediation may be waived for several
11 reasons including good cause or if a history of domestic abuse
12 exists. The bill also directs the chief judge of each
13 judicial district to establish certain requirements for the
14 projects.

15 The bill also provides an appropriation of \$1,608,000
16 (approximately \$201,000 for each judicial district) for
17 implementation of the pilot project in each judicial district.

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