

## Senate Bill No. 174

### CHAPTER 1077

An act to amend Sections 3176, 3183, and 3184 of, and to add Section 3188 to, the Family Code, relating to mediation.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 174, Kuehl. Mediation proceedings.

Existing law governs mediation proceedings for child custody and visitation issues, including the notice of mediation. These provisions also authorize a mediator to make specified recommendations to a court regarding custody investigations and protective orders if the parties have not reached agreement as a result of the mediation proceedings. Existing law also authorizes a mediator to submit a recommendation to the court regarding the custody of or visitation with the child. Existing law provides that these provisions do not prohibit a mediator from recommending to the court that counsel be appointed to represent a minor child. In making this recommendation, existing law requires the mediator to inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

This bill would enact alternative provisions applicable to courts in 4 or more counties selected by the Judicial Council, as specified, that would become operative only upon the appropriation of funds in the annual Budget Act, as specified. The bill would authorize a selected court to voluntarily adopt a confidential mediation program that would prohibit the mediator from making a recommendation as to custody or visitation to anyone other than the disputing parties, except as specified. These alternative provisions would also authorize a mediator to report to the court whether total or partial agreement is reached in mediation. The alternative provisions would also provide that the mediator may not inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed when making that recommendation to the court. The bill would also make related, conforming changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3176 of the Family Code is amended to read:

3176. (a) Notice of mediation and of any hearing to be held pursuant to this chapter shall be given to the following persons:

(1) Where mediation is required to settle a contested issue of custody or visitation, to each party and to each party's counsel of record.

(2) Where a stepparent or grandparent seeks visitation rights, to the stepparent or grandparent seeking visitation rights, to each parent of the child, and to each parent's counsel of record.

(b) Notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address.

(c) Notice of mediation pursuant to Section 3188 shall state that all communications involving the mediator shall be kept confidential between the mediator and the disputing parties.

SEC. 2. Section 3183 of the Family Code is amended to read:

3183. (a) Except as provided in Section 3188, the mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child.

(b) Where the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110) or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.

(c) In appropriate cases, the mediator may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

SEC. 3. Section 3184 of the Family Code is amended to read:

3184. Except as provided in Section 3188, nothing in this chapter prohibits the mediator from recommending to the court that counsel be appointed, pursuant to Chapter 10 (commencing with Section 3150), to represent the minor child. In making this recommendation, the mediator shall inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

SEC. 4. Section 3188 is added to the Family Code, to read:

3188. (a) Any court selected by the Judicial Council under subdivision (c) may voluntarily adopt a confidential mediation program that provides for all of the following:

(1) The mediator may not make a recommendation as to custody or visitation to anyone other than the disputing parties, except as otherwise provided in this section.

(2) If total or partial agreement is reached in mediation, the mediator may report this fact to the court. If both parties consent in writing, where there is a partial agreement, the mediator may report to the court a description of the issues still in dispute, without specific reference to either party.



(3) In making the recommendation described in Section 3184, the mediator may not inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

(4) If the parties have not reached agreement as a result of the initial mediation, this section does not prohibit the court from requiring subsequent mediation that may result in a recommendation as to custody or visitation with the child if the subsequent mediation is conducted by a different mediator with no prior involvement with the case or knowledge of any communications, as defined in Section 1040 of the Evidence Code, with respect to the initial mediation. The court, however, shall inform the parties that the mediator will make a recommendation to the court regarding custody or visitation in the event that the parties cannot reach agreement on these issues.

(5) If an initial screening or intake process indicates that the case involves serious safety risks to the child, such as domestic violence, sexual abuse, or serious substance abuse, the court may provide an initial emergency assessment service that includes a recommendation to the court concerning temporary custody or visitation orders in order to expeditiously address those safety issues.

(b) This section shall become operative upon the appropriation of funds in the annual Budget Act sufficient to implement this section.

(c) This section shall apply only in four or more counties selected by the Judicial Council that currently allow a mediator to make custody recommendations to the court and have more than 1,000 family law case filings per year. The Judicial Council may also make this section applicable to additional counties that have fewer than 1,000 family law case filings per year.

