

- SUBJECT:** Exemption from court-required mediation for family violence victims
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 8 ayes — Goodman, Pickett, Isett, P. King, Morrison, Naishtat, E. Reyna, Truitt
0 nays
1 absent — A. Reyna
- WITNESSES:** For —Eugene C. Brown, Family Violence Prevention Services, Inc.; Bree Buchanan, Shannon Noble, Texas Council on Family Violence; Paige Flink, The Family Place; Marci Spivey, Hays-Caldwell Women’s Center; Jean J. Anderson, Highland Lakes Family Crisis Center; Donna Hoffman, National Organization for Women in Texas; Jennifer Margulies; Gina Martinot Jeana Lungwitz; Elizabeth Earle; Bess Green
Against —None
On —Robert L. Green, Jr., Texas Father’s Alliance
- BACKGROUND:** Mediation is a form of alternative dispute resolution used either when both parties agree to the process or a court orders it. A court-supervised arbitrator facilitates the negotiation of an agreement acceptable to both parties. It is signed by both parties and their attorneys, if present, and then approved by the court. Courts in many urban counties require mediation in divorce and custody matters.
- DIGEST:** CSHB 819 would allow a party to a divorce proceeding or a child custody suit to file a written objection to court-ordered mediation when that individual had been a victim of family violence at any point during the preceding two years or during the lawsuit.
Once the objection was filed with the court, the court could not refer the suit to mediation. However, on the request of a party to the suit or by a motion of the court itself, a hearing could be held on the credibility of the allegation. The court could allow the suit to be referred to mediation if the court

determined there was no credible evidence of family violence.

CSHB 819 would amend Family Code sections 6.602 and 153.0071, which deal respectively with mediation between parties to divorce proceedings and suits affecting the parent-child relationship. Family violence would have the same definition as in sec. 71.004 of the Family Code, that is, an act of by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or poses a threat that reasonably places the family member in fear that such harm will occur to the member.

A party who was a family violence victim could file the written objection to the mediation with the court at any point in the proceeding.

CSHB 819 would not apply to Family Code, sec. 262, which relates to emergency actions to be taken by a government agency, usually the Department of Child Protective Services, to remove children from their home.

CSHB 819 would apply the Family Code, sec. 71.004 definition of family violence to Family Code, chapter 101, which relates to suits affecting the parent-child relationship.

CSHB 819 would take effect September 1, 1999, and apply to divorces and child custody cases filed on or after that date. If a suit was filed before September 1, 1999, the law in effect when the suit is filed would apply.

**SUPPORTERS
SAY:**

CSHB 819 would prevent the mediation process from being used as unfair leverage by a batterer. The victim of family violence often is psychologically intimidated by the batterer, burdened with acute fears, and suffering from psychological scars. In the mediation process, the victim may be pressured into granting unfavorable concessions. Many victims cave in to the batterer's demands simply to end the agony of having to negotiate for extended periods of time in the presence of the batterer.

The victim, who statistically is more likely to be female, may wind up forfeiting claims to assets that she potentially would share with the spouse under community property law.

Mediation is intended to resolve disputes. In this process, both parties are

assumed to be negotiating on equal footing. There can be no such equality in mediation between an abusive spouse and a victim. In cases involving family violence, there may be little hope of reaching an amicable understanding between the parties. In fact, the abuser may well use the mediation process as an additional tool for manipulating the victim.

The batterer may continue to be emotionally abusive, especially in the immediate period after separation when there is a strong risk that violence will resurface. It is counterproductive to require a victim of family violence to attempt a peaceful resolution or even a reconciliation with a spouse who uses violence to solve problems.

Mediation also may be costly and burdensome for victims of family violence of limited means.

It is important that a victim of family abuse the opportunity be able to object to mediation at any time during the proceedings. Victims may not realize what the mediation process involves, and the psychological toll of facing the abuser in person for the duration of the process, until after the process has begun. Many attorneys representing victims of family violence state that their clients do not reveal such abuse until the proceeding are well under way.

CSHB 819 also would ensure that the court continues to have discretion to review whether mediation would be advisable. The court would be able to review the credibility of the evidence of family violence in determine the need for mediation.

OPPONENTS
SAY:

Mediation is a useful tool for resolving disagreements outside the formalities of a full court proceeding. Courts order mediation because it expedites resolution of disputes that can best be dealt with by the parties themselves. CSHB 819 would do much to remove the discretion a court needs to exercise in family law cases. The result could be to increase the load for the family law docket, and to increase costs to the courts.

Family violence victims can never fully isolate themselves from abusers when legal action is in progress. If a divorce or child custody proceeding is involved, the victim still has to deal with the batterer in court.

OTHER

CSHB 819 would not go far enough to make sure family violence victims

OPPONENTS
SAY: know their rights, especially if they have no legal counsel and are ordered to mediation by a court. Specific procedures should be established to ensure that parties are informed by the court or the mediator that they may file an objection on grounds of family violence.

NOTES: The committee substitute would require that the violence must have occurred within the preceding two years for the victim to object to mediation. The substitute also would change the requirement for determining whether family violence had occurred from a “reasonable basis” to “credible evidence.”

The substitute added that the court, as well as the party alleged to have committed the family violence, may cause a hearing be held to determine whether the allegations are true.

The substitute also deleted a provision concerning the protection of parties involved, as well as children, during mediation proceedings and deleted from the original bill allowing a child subject to family violence to object to mediation.