



New York State Dispute Resolution Association, Inc.

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NYS DRA Supports

The Child Custody Reform Act (CCRA) (S659/A3252)

2009

The New York State Dispute Resolution Association, Inc. (NYS DRA) is a nonprofit professional membership organization committed to the promotion of quality conflict management and peaceful dispute resolution, including mediation. Mediation is a voluntary process which focuses on the common interests of individuals, such as the mutual love of parents for their children, rather than on combative legal positions.

In child custody and support litigation, the natural love of parents is often overshadowed by fear and insecurity generated through adversarial proceedings. Children unfairly suffer severe emotional, financial and educational harm when placed in the middle of adult conflict which is beyond their understanding and not of their own making.

Child-centered mediation is a proven method of returning the focus to where it belongs—the best interests of children. The CCRA would assure that parents involved in child custody and support litigation are informed of their option to voluntarily participate in the mediation process, where such participation would be safe. Accordingly, NYSDRA strongly supports the measure.

Highlights of the CCRA

If enacted, the CCRA would amend the Domestic Relations Law by adding a new section 242 to the statute. In essence, this new section would:

- (1) Require all judges hearing child custody and support disputes to screen for domestic violence and other factors which would make the dispute unsuitable for mediation;
- (2) Require that the parties to suitable disputes be referred to a mediation information session, during which the mediation process is explained;
- (3) Protect the voluntary nature of mediation by leaving the choice to engage in that process entirely to the discretion of the parties;
- (4) Establish uniform protocols for judicially-connected mediation of child custody and support disputes; and
- (5) Protect the confidentiality of child custody and support mediation proceedings.

Addressing Concerns About the CCRA

The sponsors and supporters of the CCRA, including NYSDRA, have worked very hard to listen effectively to all concerns. The bill has been amended several times in response to these concerns, which are addressed briefly below. NYSDRA welcomes a dialogue regarding any concerns.

1. “Mandated” Mediation Concerns: Far from “mandating” mediation, the CCRA protects the voluntary nature of mediation by requiring *only* that parties be informed of the process. It would facilitate the availability of New York’s quality public and private mediation communities to provide an optional alternative to adversarial litigation.

2. Domestic Violence Concerns: The CCRA protects domestic violence victims by defining “unsuitability” for mediation and requiring approved screening throughout the entire process. A failure to legislatively enact reasonable controls would be far more harmful to domestic violence victims than formally recognizing the value of safe mediation.

3. “Bureaucracy” Concerns: Mediation has been shown capable of resolving fully contested divorce and family matters within several months or less, sometimes in one session. Mediation does not “add” a layer of bureaucracy to the judicial system. Rather, it streamlines resolutions.



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Child Custody Reform Act (CCRA) Summary¹

Prepared by New York State Dispute Resolution Association (NYSdra)

The CCRA is a bill which, if enacted, would amend the Domestic Relations Law relative to the child custody and support decision-making process. Its primary goal is to inform parents involved in *suitably safe* Supreme or Family Court parenting disputes of their option to participate in the mediation process. This procedure would include an initial planning conference at which the presiding judge would screen for such factors as domestic violence and refer suitable cases to mediation. Currently, the bill is being sponsored by Assemblyman Mark Weprin (A3252 [2009] [referred to the Judiciary Committee]) and Senator William J. Larkin, Jr. (S659 [2009][referred to the Social Services, Children and Families Committee]). The full text of the bill can be accessed at either the Senate website (www.senate.state.ny.us) or the Assembly website (www.assembly.state.ny.us).

Definitions: There is a lengthy definition section to the CCRA. Three of the important definitions are as follows:

“Custody” means the right and responsibility of a parent of a child to make decisions about the health, welfare, and physical care of a child and to participate in the making and implementation of a parenting plan.

“Mediation” means a confidential informal procedure in which a neutral third person helps parents to communicate and make decisions with each other regarding the best interests and support of their child, and to formulate a parenting plan.

“Unsuitable” [for mediation] refers to disputes where domestic violence, abuse, severe power imbalances or other factors in the participants’ relationship render the mediation process inappropriate. . . .

Pretrial Procedure, Initial Planning Conference: Under the CCRA, a custody dispute should be handled by a single judge who is to oversee all proceedings. The judge must hold an initial planning conference during which, among other things, she or he must decide if a dispute is suitable for mediation. If so, a referral is made and the parties must attend a mediation information session where the mediation process is fully explained. However, they may thereafter decline mediation services.

Mediation: If the parties decide to proceed with mediation, all mediation proceedings are confidential; communications between the mediator and the parties, as well as documents created in the mediation process, are privileged (they cannot be disclosed in any court or administrative proceedings); and the mediator may neither be subpoenaed nor compelled to give information of substance to the court or any party.

Mediator Qualifications: Mediators participating in this court-connected program must comply with qualifications and standards of practice to be developed by the chief administrator of the courts.

Fee Schedules: Participants who voluntarily elect to proceed with mediation will be required to pay for these services, if financially able, pursuant to a fee schedule devised by the chief administrator of the courts. Free or low cost services will be provided to persons who are indigent or unable to pay the full fee.

Advisory Committee: A statewide advisory committee would be established to render advice to the chief administrator of the courts on the development of standards and administrative practices. This committee must include, among others, two members of an organization dedicated to domestic violence issues; and two members of an organization dedicated to alternative dispute resolution.

¹ This sheet was prepared by NYSDRA to be a quick summary of the major provisions of the CCRA. It cannot substitute for a detailed reading of those provisions.