

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 2789 (Committee on Judiciary)

Version: March 16, 2026

Hearing Date: June 9, 2026

Fiscal: Yes

Urgency: No

AWM

SUBJECT

Mediation: child custody and visitation

DIGEST

This bill authorizes a court to serve a notice of mediation in a child custody matter through specified means and requires the notice of mediation to state that, where there is a history of domestic violence, the party alleging domestic violence may request that the mediator meet with the parties separately, as specified.

EXECUTIVE SUMMARY

When parents or guardians cannot agree on how to share custody of, or visitation rights to, their minor child, the parties must turn to the courts to work it out. When a petition for custody or visitation is filed, the family court will refer the case to mediation to see if the parties can reach an agreement with the mediator; mediated agreements can reduce the acrimony between the parties and result in less contentious proceedings, which is ultimately better for the parties and the child.

Current law requires a notice of mediation to be served on the parties via certified mail, and requires the notice to state that, if the mediation is a confidential mediation, all communications involving the mediator and the parties will be kept confidential. This bill permits the court to serve a notice of mediation through additional means, including in person when the party is already at the courthouse and electronically, if the party is represented by counsel or has consented to electronic service. This bill also clarifies the confidentiality portion of the notice of mediation and requires the notice to also provide information relating to the right of a victim of domestic violence to request that the mediator meet with parties separately and at separate times. The author has agreed to a minor amendment to correct a cross-reference.

This bill is sponsored by the Judicial Council of California. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the procedures and requirements for custody disputes and the court's award of physical and/or legal custody and visitation of a minor. (Fam. Code, div. 8, §§ 3000 et seq.)
- 2) Provides that, if it appears on the face of a petition, application, or other proceeding to obtain or modify a temporary or permanent custody or visitation order that custody and/or visitation are contested, the court shall set the contested issues for mediation. (Fam. Code, § 3170(a).)
- 3) Requires the Judicial Council of California to adopt a separate written protocol for mediations under 2) in domestic violence cases, as specified. (Fam. Code, § 3170(b).)
- 4) Requires notice of mediation and any hearing to be held pursuant to the mediation to be given to the following persons:
 - a) Where mediation is required to settle a contested issue of custody or visitation, to each party and to each party's counsel of record.
 - b) 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. (Fam. Code, § 3176(a).)
- 5) Requires notice of mediation under 4) to be given by certified mail, return receipt requested, to the last known address. (Fam. Code, § 3176(b).)
- 6) Requires a notice of a confidential mediation, established under 8), below, to state that all communications involving the mediator shall be kept confidential between the mediator and the disputing parties. (Fam. Code, § 3176(c).)
- 7) Provides that, when a court orders a mediation in a custody or visitation dispute and there has been a history of domestic violence between the parties or a protective order is in effect, the mediator shall, at the request of the party alleging domestic violence, meet with the parties separately and at separate times.
 - a) A protective order is defined as a protective order issued under the Domestic Violence Prevention Act (DVPA) (Fam. Code, div. 10, §§ 6200 et seq.), including an ex parte restraining order or a protective order issued after a hearing.
 - b) The requesting party must allege that the domestic violence occurred in a written declaration under penalty of perjury or establish that they are protected by a protective order. (Fam. Code, § 3181.)

- 8) Permits a court, when authorized by the Judicial Council of California, to establish a confidential mediation program through which the mediator makes confidential custody or visitation recommendations only to the disputing parties, except as provided. (Fam. Code, § 3188.)

This bill:

- 1) Permits notice of mediation of a custody or visitation dispute to be given through any of the following means:
 - a) By court staff when all parties are present for a court hearing.
 - b) By court staff when a party is present at the courthouse.
 - c) As part of a notice of hearing or court order filed by the court clerk, provided to a party, and served on the other party.
 - d) By mail, overnight delivery, or facsimile transmission.
 - e) By electronic service on parties who are represented by counsel or who are self-represented and have consented to electronic service.
- 2) Modifies the requirements for the notice of mediation, as follows:
 - a) Each court must develop a notice of mediation that includes the information in (b) and (c).
 - b) The notice must state that, if the mediation is being conducted pursuant to a confidential mediation program, all communications involving the mediator and the parties shall remain confidential, as provided by statute.
 - c) The notice must state that, where there is a history of domestic violence between the parties, including a finding or allegation of domestic violence, or where a protective order under the DVPA is in effect, the party alleging domestic violence may request that the appointed mediator meet with the parties separately and at separate times, as provided by statute and the California Rules of Court.

COMMENTS

1. Author's comment

According to the author:

Existing law requires that notice of child custody mediation be provided by certified mail, return receipt requested, postage prepaid, to the parties' last known address. However, in many circumstances there may be more effective and less costly ways to provide parties in a custody proceeding the required notice of mediation. This straightforward measure seeks to modernize procedures for providing notice of child custody mediation by more cost-effective methods, including electronic delivery.

2. This bill updates the options for the service, and the required contents, of a notice of mediation in a custody or visitation dispute

In custody and visitation disputes, mediation can reduce acrimony between the parties and give them space to devise custody or visitation arrangements that are in the best interests of the child.¹ When a court determines that a request to obtain or modify custody or visitation is contested, the court is required to set the matter for mediation on the contested issues.² Current law requires the notice of such a mediation to be served by certified mail to the parties' last known addresses, and that the notice state that, if the mediation is conducted pursuant to the family court's confidential mediation program, all communications involving the mediator and the parties shall be kept confidential.³

This bill updates the notice of mediation requirements in two ways. First, the bill expands the permissible modes of service for the notice of mediation to include in-person service when the party is at the courthouse, service in connection with a notice of hearing or court order, mail, overnight delivery, facsimile transmission, or electronic service where the party is represented or the party has consented to electronic service. According to the author, these added avenues for service will enable the courts to provide notice through less costly and more reliable means.

Second, the bill modifies the contents of the notice of mediation to include information about confidential mediation in a case where there is a history of domestic violence. Specifically, the notice must inform parties that, if there is a history of domestic violence between the parties or a protective order under the DVPA in place, the party alleging domestic violence can request that the mediator meet with the parties separately and at separate times, as provided for under current law and the California Rules of Court. The current version of the bill refers to the wrong Rule of Court, so the author has agreed to amend the bill to strike "Rule 2.251" and insert "and Rule 5.215, or successor section,".

3. Arguments in support

According to the Judicial Council of California:

Family Code section 3176 currently requires that notice of mediation must be given by certified mail, return receipt requested, postage prepaid, to the last known address. This reliance on certified mail as the sole option is outdated and creates additional costs for courts by placing restrictions on a court's ability to use

¹ Fam. Code, § 3161.

² *Id.*, § 3170.

³ *Id.*, § 3176.

technology to provide notice and potentially inhibits prompt access to court services by increasing waiting times before parties receive notice.

This proposal amends subdivision (b) in Family Code section 1376 to allow courts the ability to choose from one of five methods to provide notice of mediation, including via electronic service if the parties agree. The proposed amendments increase delivery efficiency and reduce reliance on paper. These amendments also increase access to court services and will assist victims of domestic violence to understand their right to meet with a mediator separately in cases involving domestic violence.

SUPPORT

Judicial Council of California (sponsor)

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation: None known.

PRIOR VOTES

Assembly Floor (Ayes 77, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
