

Appendix B: Mandatory mediation in other countries

Jurisdiction	ADR Process	Mandatory requirements	Exceptions	Conduct criteria and assessment
United States	Note: There is a large degree of variation between the states. Mediation is codified in some states, implemented state-wide via administrative rules, and some programs are local to a particular county. Mostly court-based services.			
Alabama		Mandated for all parties upon application by a party, or at the discretion of the court.	Petitions for protection orders or in custody matters where domestic violence alleged. Mediation can be ordered at the request of the victim of violence, and modified practice applies in these cases.	
Alaska	Costs paid by the state in child custody matters when both parties indigent. Otherwise borne equally by the parties unless the court apportions the cost. Court appoints the mediator.		Child custody or visitation matters if a family violence protection order issued or filed, or a party objects on the grounds that domestic violence has occurred.	Unknown. If mediation unsuccessful, mediator must notify the court.
Arizona		Custody disputes mandated. Divorce mediation is at the court's discretion.	Cases may be exempt where mandated mediation would cause undue hardship.	Unknown. If mediation unsuccessful, mediator must notify the court.
Arkansas	Each party pays a share of the cost of mediation. Parties can select a mediator from list provided by the judge.	Mediation at the discretion of the court.	Party may object, and must show good cause to be exempt.	
California	Introduced 1980. Described as having the most rigid statute (Barlow, 2004). Court-based mediation. Court may appoint mediators or parties can choose their own. Moving towards a more adversarial approach (Berenson, 2012). The service is free to parties.	For disputed custody and visitation.	Domestic violence not an exception. Rather, the Judicial Council's written protocol sets out requirements for mediators in matters involving violence. The aim was to create a framework that could accommodate all cases with modified processes.	Court-annexed process, therefore no external assessment process required. If no agreement reached, mediator advises the court whether any further mediation required. Court may order further mediation. Services are free.

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Colorado	Parties pay the cost and may select the mediator. Service provided primarily by private mediators.	Mediation at the discretion of the court, subject to the availability of services.	Where there are claims of physical or psychological abuse.	If agreement reached, it is provided to the court. If no agreement, the matter is set for hearing.
Delaware	Mediation is scheduled as a pre-trial mediation conference with a court staff mediator, primarily to attempt resolution. Confidential process. Court can also order attendance at parental education courses.	Child support, custody and visitation. No trial in the action allowed until completion of the mediation process.	Finding by a court that one of the parties has committed domestic violence.	Court-annexed process, therefore no external assessment process required. Matter referred to court for judicial scheduling if no agreement.
Florida	Only mandated in circuits where a court-based mediation scheme has been developed. Fees can be apportioned between the parties. Option of certified mediator. Confidential process.	All contested family matters, with particular emphasis on custody, visitation, other issues regarding parental responsibility.	Finding of a court of a history of domestic violence that would compromise the mediation process, but only upon request of a party.	If no agreement reached, mediator shall report to the court without comment or recommendation.
Hawaii	Confidential process.	Mediation mandated before divorce trial proceedings.	Domestic abuse allegations or restraining order, unless the victim agrees to proceed.	Motion to set a trial is a declaration that a bona fide attempt to settle issues in dispute has been made, mediation was attempted and was unsuccessful, or that mediation is inappropriate for stated reasons.
Idaho	Parties can select a mediator from a court list.	Contested custody/visitation matters involving minors. Otherwise, mediation at the discretion of the court, if deemed to be in the best interests of the child or otherwise not inappropriate.		Mediator's communication with the court limited to whether agreement reached or whether party failed to attend session.
Maine		Divorce cases involving minors, or where either party disagrees 'about the irreconcilability of the parties' differences.'	Mandatory mediation may be waived in 'extraordinary cases'.	

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North Carolina	Only mandated where a mediation scheme is available.	Child custody and visitation issues in areas where a mediation program has been established.	Requirement may be waived where there is 'good cause' on the motion of either party or of the court. Good cause may include: <ul style="list-style-type: none"> • undue hardship to a party; • agreement between the parties subject to court approval; • allegations of abuse or neglect of the minor; • allegations of alcoholism, drug abuse, or spouse abuse; or • allegations of severe psychological, psychiatric, or emotional problems. • Where a party resides more than fifty miles from the court. 	
Utah	Parties referred to court-approved mediator, and pay for the service. Process is confidential.	Child visitation for at least one session.	Parties with matters that fall under Cohabitant Abuse Act may file an objection to the mediation process.	Mediator files reports with the court. Each party required to complete an evaluation of the process on completion.
Wisconsin	Referred to family court counselling department for 'possible' mediation	Contested legal custody or placement issues.		Court-annexed process, therefore no external assessment process required.
Norway	Introduced 1991 and extended to de facto couples 2004. Mediation occurs outside the court, provided primarily by therapists and social workers within Family Guidance Offices. 7 free sessions available. Increasingly moving away from co-mediation to sole mediator due to high volume of cases (Tjersland et al., 2015).	Mandatory for all separating couples with children under the age of 16 to attend at least one session, regardless of whether there is a dispute. Attendance is a precondition of litigation (choice of litigation or court-based mediation), being awarded a separation, and for de facto couples receiving welfare support.		

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United Kingdom*	Mediation Information and Assessment Meeting (MIAM) provides information and assesses suitability for mediation.	Compulsory for <i>applicant</i> wishing to initiate proceedings to attend a MIAM. In this meeting they are provided with information about mediation and assessed for suitability. Respondent expected to attend but not mandated. Financial incentives: e.g., cutting legal aid – largely only available for mediation, not litigation; offering MIAM and first mediation session free to party without legal aid where the other person is eligible for LA.	Under Pt IV of the Act (Family Homes and Domestic Violence) and under Pts IV and V of the Children Act 1989. An exemption could be claimed if there was no mediator available in the area, or the applicant's partner lived more than two hours away from a service, or a disability prevented attendance.	Certificate from mediator required re: whether mediation attempted, or deemed unsuitable (s 10 Children and Families Act, 2014 UK). Where a certificate is provided, the majority assert that mediation unsuitable (i.e., failure to cooperate, or safety concerns) rather than failed attempt at mediation.

* Private communication with UK informant.