HOUSE DOCKET, NO. 3447 FILED ON: 1/21/2011

HOUSE . . . . . No. 2851

The Commonwealth of Massachusetts

PRESENTED BY:

Alice Hanlon Peisch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to mediation of divorce cases involving children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Alice Hanlon Peisch	*14th Norfolk*

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HOUSE . . . . . No. 2851

By Ms. Peisch of Wellesley, a petition (accompanied by bill, House, No. 2851) of Alice Hanlon Peisch relative to mediation of divorce cases involving children. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to mediation of divorce cases involving children.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 28A the following new section:-

SECTION 28B. Mediation of cases involving children

The general purpose of this section is to:

(a) Manage conflict and decrease acrimony between parties in a dispute concerning parental rights and responsibilities for minor children;

(b) Promote the best interest of children;

(c) Improve the parties' satisfaction with the outcome of disputes concerning parental rights and responsibilities;

(d) Increase the parties' participation in making decisions for themselves and their children.

(e) Increase compliance with court orders;

(f) Reduce the number and frequency of cases returning to court; and

(g) Improve court efficiency.

In all cases involving disputed parental rights and responsibilities or grandparents' visitation rights, including requests for modification of prior orders, the court may order the parties to participate in mediation. If the parties are ordered to participate in mediation under this section, all issues relevant to their case, including but not limited to child support and issues relative to property settlement and alimony, shall also be mediated unless the court orders otherwise.

21 The mediator has no authority to make a decision or impose a settlement upon the parties.
22 The mediator shall attempt to focus the attention of the parties upon their needs and interests
23 rather than upon their positions. Any settlement is entirely voluntary. In the absence of
24 settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

25 Reasons that the court may choose not to order mediation include, but are not limited to,
26 the following:

27 (a) A showing of undue hardship to a party;

28 (b) An agreement between the parties for alternate dispute resolution procedures;

29 (c) An allegation of abuse or neglect of the minor child;

30 (d) A finding of alcoholism or drug abuse, unless all parties agree to mediation;

31 (e) An allegation of serious psychological or emotional abuse; and

32 (f) Lack of an available, suitable mediator within a reasonable time period.

33 The court shall not order mediation if there is a finding of domestic violence, unless all
34 parties agree to mediation.

35 Either party may move to have the mediator replaced for good cause. Mediation
36 proceedings shall be held in private, and all communications, oral or written, made during the
37 proceedings, which relate to the issues being mediated, whether made by the mediator or a party,
38 or any other person present, shall be privileged and confidential and shall not be disclosed and
39 shall not be admissible in court.

40 Any mediated agreement reached by the parties on any or all of the disputed issues shall
41 be reduced to writing, signed by each party, and filed with the court as soon as is practicable.

42 The parties shall participate at mediation in good faith. If the mediator determines that
43 mediation is not helpful in resolving the dispute, the mediator shall report that fact to the court
44 and return the matter to the court for adjudication of the underlying issues.

45 In the event both parties are indigent, the mediator shall be paid a set fee for his or her
46 services. The amount of the fee shall be set annually by the Probate Court. The court may order
47 each party to pay a proportional amount of said fee.

48 The Probate Court shall establish rules and take such action as necessary to effectuate the
49 purpose of this section.