

The chief judge of each judicial circuit shall maintain a list of mediators who have been certified by the Florida Supreme Court and who have registered for appointment in that circuit. Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed. If a mediation program is funded pursuant to s. 44.108, F.S., volunteer mediators shall be entitled to reimbursement pursuant to s. 112.061, F.S., for all actual expenses necessitated by service as a mediator. Nonvolunteer mediators shall be compensated according to rules adopted by the Florida Supreme Court. If a mediation program is funded pursuant to s. 44.108, F.S., a mediator may be compensated by the county or by the parties. When a party has been declared indigent or insolvent, that party's pro rata share of a mediator's compensation shall be paid by the county at the rate set by administrative order of the chief judge of the circuit.

Citizen Dispute Settlement Centers:

Section 44.201, F.S., regarding Citizen Dispute Settlement Centers, provides that the chief judge of a judicial circuit, after consultation with the board of county commissioners of a county or with two or more boards of county commissioners of counties within the judicial circuit, may establish a Citizen Dispute Settlement Center (center) for such county or counties, with the approval of the Chief Justice of the Florida Supreme Court. Each center shall be administered in accordance with rules adopted by a council composed of at least seven members. The chief judge of the judicial circuit shall serve as chair of the council and shall appoint all other members. The membership of the council shall include a representative of the state attorney, each county's sheriff, a county court judge, and each board of county commissioners within the geographical jurisdiction of the center. In addition, council membership shall include two members of the general public who are not representatives of such officers or boards. The membership of the council also may include other interested persons. The council shall establish qualifications for and appoint a director of the center; the director shall administer the operations of the center.

The center, subject to the approval of the council and the Chief Justice, shall formulate and implement a plan for creating an informal forum for the mediation and settlement of disputes. Such plan shall prescribe:

- The objectives and purposes of the center;
- Procedures for filing complaints with the center and for scheduling informal mediation sessions with the parties to a complaint;
- Screening procedures to ensure that each dispute mediated by the center meets the criteria of fitness for mediation as set by the council;
- Procedures for rejecting any dispute which does not meet the established criteria of fitness for mediation;
- Procedures for giving notice of the time, place, and nature of the mediation session to the parties and for conducting mediation sessions;
- Procedures to ensure that participation by all parties is voluntary; and

- Procedures by which any dispute that was referred to the center by a law enforcement agency, state attorney, court, or other agency and that fails at mediation, or that reaches settlement that is later breached, is reported to the referring agency.

Each mediation session conducted by a center shall be nonjudicial and informal. No adjudication, sanction, or penalty may be made or imposed by the mediator or the center. A center may refer the parties to judicial or nonjudicial supportive service agencies.

III. Effect of Proposed Changes:

Section 1 amends s. 44.102, F.S., court-ordered mediation, to conform to other portions of the bill as well as to provide that, upon a motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process. Under the subsection regarding privilege, this bill provides that this privilege does not negate the statutory or ethical duties of any person to report abuse, neglect, abandonment, or exploitation nor does it prevent a mediator from notifying law enforcement of any violence or threats of violence occurring during the mediation process.

Section 2 creates a new section of law, s. 44.1021, F.S., titled court-ordered mediation when domestic violence may be present. This new section recognizes that the existence of domestic violence poses serious risk to all involved in the mediation process. This section also articulates that the risk of domination and control by one party over the other, as is the case in a domestic violence situation, is not only dangerous but may undermine a successful and fair mediation process. Because issues of domestic violence may exist in family and dependency cases, it is the intent of the Legislature that these cases receive additional screening and consideration. Since issues of domestic violence can occur in other civil cases, as well, other civil cases should not be excluded from this process. It is the further intent of the Legislature that criminal charges of domestic violence not be referred to mediation.

This section requires that, before referring or ordering a family case, dependency case, or case involving a child in need of services or a family in need of services to mediation, the court assess whether domestic violence is or has been present among the parties. To make this assessment, the court shall require all parties to report the existence of domestic violence among the parties. In addition, the court may consider other factors, including:

- Whether there is an injunction for protection against domestic violence or repeat violence by or against any party or the children of any party;
- Any criminal history of domestic violence; and
- Further information regarding domestic violence which has come to the attention of the court and would inform its decision on whether the case could proceed to mediation.

If the court has reason to believe that domestic violence is or has been present, the court must not refer the case to mediation unless:

- The mediation is affirmatively requested by the parties;

- The mediation will be provided by a certified mediator who is sufficiently trained in domestic violence cases;
- The mediator or mediation service has procedures to protect the victim from the alleged perpetrator in accordance with rules adopted by the Florida Supreme Court; and
- The court has forwarded the results of its assessment to the mediator for review.

Section 3 amends s. 44.201, F.S., regarding the Citizen Dispute Settlement Centers, to provide that it is the intent of the Legislature that criminal charges of domestic violence not be referred to mediation.

Section 4 provides that this act shall take effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Office of State Court Administrator reports no fiscal impact at this time.

C. Government Sector Impact:

The Office of State Court Administrator reports no fiscal impact at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Children and Families

This is a technical amendment to the newly created s. 44.1021, F.S., regarding court-ordered mediation, and replaces the term “treat” with “threat.”

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
