

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1588

SPONSOR: Senate Judiciary Committee and Senator Grant

SUBJECT: Domestic Violence/Mediation

DATE: March 31, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill provides that a court may not refer a family case involving domestic violence to mediation except under specified conditions. This bill requires a court to assess whether domestic violence is present among the parties and provides factors that the court may consider in making this assessment. The bill also provides that a mediator may notify law enforcement, a victim or intended victim, or the parent or guardian of a victim or intended victim of violence or threats of violence made during the mediation process, notwithstanding the privilege of communications made during mediation.

This bill substantially amends the following sections of the Florida Statutes: §§44.102 and 44.201. This bill also creates s. 44.1021, F.S.

## II. Present Situation:

### **Court-ordered mediation**

Under current law and rules adopted by the Florida Supreme Court, a court may refer to mediation all or any part of a civil action. *See* §44.102, F.S. Additionally, in circuits with established family mediation programs, a court, upon a finding of dispute, must refer to mediation all or part of an action relating to custody, visitation, or other parental responsibility issues as defined in s. 61.13, F.S. However, upon the motion or request of a party, a court may not refer any case to mediation if the court finds that there has been a history of domestic violence which would compromise the mediation process. In circuits with an established dependency or child/family in need of services mediation program, the court may refer to mediation all or any portion of a matter relating to those issues.

All communications made during court-ordered mediation proceedings are privileged and a party may refuse to disclose and prevent another person present from disclosing the communications. All oral or written communications in a mediation proceeding, other than an executed settlement

agreement, are exempt from the requirements of ch.119, F.S., and are confidential and inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

The chief judge of each judicial circuit must maintain a list of certified mediators who have registered for appointment in that circuit. Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed. Volunteer mediators in a mediation program funded under s. 44.108, F.S., are entitled, under s. 112.061, F.S., relating to per diem and travel expenses for public officers, to reimbursement for all actual expenses necessitated by service as a mediator. Nonvolunteer mediators are entitled to be compensated according to rules adopted by the Florida Supreme Court. Such mediator in a mediation program funded under s. 44.108, F.S., may be compensated by the county or by the parties. An indigent or insolvent 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**

The chief judge of a judicial circuit (in 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 and with the approval of the Chief Justice of the Florida Supreme Court) may establish a Citizen Dispute Settlement Center (center) for such county or counties *See* §44.201, F.S. Each center must be administered in accordance with rules adopted by a council composed of at least seven members. The chief judge shall serve as chair of the council and shall appoint all other members. The council's membership 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 center's operations.

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., relating to court-ordered mediation, to conform to other portions of the bill. Additionally, it provides that, upon a motion or request of a party, a court may not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process. As to the privileged communications made during a mediation proceeding, it is clarified that the privilege does not pre-empt other statutory or ethical duties of any person to report abuse, neglect, abandonment, or exploitation occurring during the mediation process. In addition, when violence or a threat of violence is made during the mediation process, the communications privilege does not preclude a mediator from notifying law enforcement<sup>1</sup>, the victim or intended victim, or the parent or guardian of the victim or intended victim of the conduct or threat.

**Section 2** creates s. 44.1021, F.S., relating to court-ordered mediation where 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. It is also stated that the risk of domination and control by one party over the other as in a domestic violence situation, is not only dangerous but may undermine a successful and fair mediation process. It provides for legislative intent that family and other civil cases in which domestic violence may be involved should receive additional screening and consideration. However, cases involving criminal charges of domestic violence shall not be referred to mediation. This provision is somewhat unnecessary as criminal cases would not be referred to mediation as a matter of current law.

This section requires the court to assess whether domestic violence is or has been present among the parties before referring or ordering a family case for mediation. To make this assessment, the court shall require all parties to report the existence of any 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 for violence against 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 can not require mediation if either party objects within 15 days after the order of referral or 24 hours prior to the date mediation is scheduled, whichever is earlier, on the grounds that domestic violence. If neither party objects, the mediation shall be held, provided:

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<sup>1</sup>This somewhat hails back to law prior to 1990 in which the privilege of communications made during the mediation did not apply to “communications made in furtherance of the commission of a crime or a fraud or as part of a plan to commit a crime or a fraud. . .” and did not give anyone “immunity from prosecution for criminal conduct.” See §44.302, F.S. (1989)

- ▶ The mediation is 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., relating to the Citizen Dispute Settlement Centers, to state legislative intent 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 bill may provide added protection to victims or intended victims of domestic violence by precluding their participation in the mediation process during a family law case or other civil case in which there is or has been a history of domestic violence, and by allowing a mediator to notify law enforcement, and victims or intended victims or their parents and guardians, of violence or of threats of violence made during the mediation process.

##### 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:**

None.

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

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