

By Senator Grant

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A bill to be entitled
An act relating to mediation; creating s.
44.1021, F.S.; providing that a court may not
refer a case involving domestic violence to
mediation except under specified conditions;
providing legislative intent; requiring a court
to assess whether domestic violence is present
among the parties; providing factors that the
court may consider in such assessment; amending
ss. 44.102, 44.201, F.S.; conforming
provisions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (3) of section 44.102,
Florida Statutes, are amended to read:

44.102 Court-ordered mediation.--

(2) A court, under rules adopted by the Supreme Court:

(a) May refer to mediation all or any part of a filed
civil action, except as prohibited by s. 44.1021.

(b) Except as prohibited by s. 44.1021, shall refer to
mediation,in circuits in which a family mediation program has
been established and upon a court finding of a dispute, ~~shall~~
~~refer to mediation~~ all or part of custody, visitation, or
other parental responsibility issues as defined in s. 61.13.

Upon 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.

(c) Except as prohibited by s. 44.1021, may refer to
mediation,in circuits in which a dependency or in need of
services mediation program has been established, ~~may refer to~~

1 ~~mediation~~ all or any portion of a matter relating to
2 dependency or to a child in need of services or a family in
3 need of services. Upon motion or request of a party, a court
4 shall not refer any case to mediation if it finds there has
5 been a history of domestic violence which would compromise the
6 mediation process.

7 (3) Each party involved in a court-ordered mediation
8 proceeding has a privilege to refuse to disclose, and to
9 prevent any person present at the proceeding from disclosing,
10 communications made during such proceeding. This privilege
11 does not negate statutory or ethical duties of any person to
12 report abuse, neglect, abandonment, or exploitation; nor does
13 it prevent a mediator from notifying law enforcement agencies,
14 the intended victim, or the intended victim's parent or
15 guardian of any violence or threats of violence occurring
16 during mediation. All oral or written communications in a
17 mediation proceeding, other than an executed settlement
18 agreement, shall be exempt from the requirements of chapter
19 119 and shall be confidential and inadmissible as evidence in
20 any subsequent legal proceeding, unless all parties agree
21 otherwise.

22 Section 2. Section 44.1021, Florida Statutes, is
23 created to read:

24 44.1021 Court-ordered mediation when domestic violence
25 may be present.--

26 (1) The existence of domestic violence poses serious
27 and significant challenges to participants, mediators, and the
28 courts. Violence and the treat of violence, as well as
29 elements of domination and control by one party over another
30 party, can endanger participants, mediators, and court
31 personnel, as well as undermine a successful and fair

1 mediation process. Because issues of domestic violence appear
2 to be most prevalent in family and dependency cases, it is the
3 intent of the Legislature that these cases receive additional
4 screening and consideration. However, it is recognized that
5 the same dynamics can occur in other civil cases, and thus a
6 focus on family and dependency cases should not be interpreted
7 to exclude other civil cases. It is the further intent of the
8 Legislature that criminal charges of domestic violence not be
9 referred to mediation.

10 (2) Before referring or ordering a family case, a
11 dependency case, or a case involving a child in need of
12 services or a family in need of services to mediation, the
13 court shall assess whether domestic violence is or has been
14 present among the parties. To make such an assessment, the
15 court shall require all parties to report the existence of
16 domestic violence among the parties. In addition, the court
17 may consider whether there is:

18 (a) An injunction for protection against domestic
19 violence or repeat violence by or against any party or the
20 children of any party;

21 (b) A criminal history of domestic violence; and

22 (c) Further information regarding domestic violence
23 which has come to the attention of the court and would inform
24 its decision on whether the case could proceed to mediation.

25 (3) If the court has reason to believe that domestic
26 violence is or has been present, the court must not refer the
27 case to mediation unless:

28 (a) The mediation is affirmatively requested by the
29 parties;

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