

By the Committee on Judiciary and Senator Grant

308-1979A-99

1 A bill to be entitled
2 An act relating to mediation; creating s.
3 44.1021, F.S.; providing that a court may not
4 refer a case involving domestic violence to
5 mediation except under specified conditions;
6 providing legislative intent; requiring a court
7 to assess whether domestic violence is present
8 among the parties; providing factors that the
9 court may consider in such assessment; amending
10 ss. 44.102, 44.201, F.S.; conforming
11 provisions; clarifying application of privilege
12 of communications made in mediation; providing
13 an effective date.

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

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

19 44.102 Court-ordered mediation.--

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

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

23 (b) Except as prohibited by s. 44.1021, shall refer to
24 mediation, in circuits in which a family mediation program has
25 been established and upon a court finding of a dispute, ~~shall~~
26 ~~refer to mediation~~ all or part of custody, visitation, or
27 other parental responsibility issues as defined in s. 61.13.
28 Upon motion or request of a party, a court shall not refer any
29 case to mediation if it finds there has been a history of
30 domestic violence that would compromise the mediation process.

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

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

24 Section 2. Section 44.1021, Florida Statutes, is
25 created to read:

26 44.1021 Court-ordered mediation when domestic violence
27 may be present.--

28 (1) The existence of domestic violence poses serious
29 and significant challenges to participants, mediators, and the
30 courts. Violence and the threat of violence, as well as
31 elements of domination and control by one party over another

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

12 (2) Before referring or ordering a family case to
13 mediation, the court shall assess whether domestic violence is
14 or has been present among the parties. To make such an
15 assessment, the court shall require all parties to report the
16 existence of domestic violence among the parties. In addition,
17 the court 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 shall require
27 mediation only if:

28 (a) The mediation is not objected to by any party on
29 the grounds of domestic violence within 15 days after the
30 order of referral to mediation or 24 hours before the date
31 mediation is scheduled, whichever is earlier;

1 (b) The mediation will be provided by a certified
2 mediator who is sufficiently trained in domestic violence
3 cases;

4 (c) The mediator or mediation service has procedures
5 to protect the victim from the alleged perpetrator in
6 accordance with rules adopted by the Supreme Court; and

7 (d) The court has forwarded the results of its
8 assessment to the mediator for review.

9 Section 3. Subsection (4) of section 44.201, Florida
10 Statutes, is amended to read:

11 44.201 Citizen Dispute Settlement Centers;
12 establishment; operation; confidentiality.--

13 (4)(a) Each mediation session conducted by a Citizen
14 Dispute Settlement Center shall be nonjudicial and informal.
15 No adjudication, sanction, or penalty may be made or imposed
16 by the mediator or the center. It is the intent of the
17 Legislature that criminal charges of domestic violence not be
18 referred to mediation.

19 (b) A Citizen Dispute Settlement Center may refer the
20 parties to judicial or nonjudicial supportive service
21 agencies.

22 Section 4. This act shall take effect July 1, 1999.

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24 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
25 COMMITTEE SUBSTITUTE FOR
26 SB 1588

27 Removes unnecessary reference to dependency cases or cases
28 involving children or families in need.

29 Revises basis for referral of certain cases to mediation to
30 allow a party the opportunity to object on the grounds of
domestic violence within 15 days after referral or 24 hours
before mediation, whichever is earlier.

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