

STORAGE NAME: h1677a.flc
DATE: April 6, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 1677
RELATING TO: Domestic Violence/Mediation
SPONSOR(S): Representative Detert
COMPANION BILL(S): SB 1588

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW AND CHILDREN YEAS 6 NAYS 0
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I. SUMMARY:

This bill provides that a court may not refer a 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.

There is no fiscal impact anticipated from this bill.

II. SUBSTANTIVE ANALYSIS:

A. 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.

B. EFFECT OF PROPOSED CHANGES:

The bill 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, the victim or intended victim, or the parent or guardian of the victim or intended victim of the conduct or threat.

The bill creates s. 44.1021, F.S., relating to court-ordered mediation where domestic violence may be present. The 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.**

The bill requires that the court assess whether domestic violence is or has been present among the parties before referring or ordering a family case, a case involving a child or a family in need of services, or a dependency case for mediation. Factors that the court is to consider in making this assessment are specified.

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 certain specific criteria are met.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, the courts must provide additional screening and consideration to certain cases involving domestic violence.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 44.102 and 44.201, and creates s. 44.1021, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 44.102, Florida Statutes, to conform to other sections of the bill. In addition, 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 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 s. 44.1021, Florida Statutes, to 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 must not refer the case to mediation unless:

- The mediation is affirmatively requested by all parties;
- 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, Florida Statutes, to provide that it is the intent of Legislature that criminal charges of domestic violence not be referred to mediation.

Section 4. Provides for an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

There is no anticipated fiscal impact from the bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

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.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The **Committee on Family Law and Children** adopted 4 amendments at the April 5, 1999 committee meeting. Two of the amendments are technical and two of the amendments remove dependency and CINS/FINS cases from the assessment process to determine whether or not domestic violence is or has been present among the parties.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

Carol Preston

Carol Preston