

By Representative Detert

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; providing an effective date.

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

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

17           44.102 Court-ordered mediation.--

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

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

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

26 Upon motion or request of a party, a court shall not refer any  
27 case to mediation if it finds there has been a history of  
28 domestic violence that would compromise the mediation process.

29           (c) Except as prohibited by s. 44.1021, may refer to  
30 mediation, in circuits in which a dependency or in need of  
31 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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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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25 SENATE SUMMARY

26 Provides that a court may not refer a case involving  
27 domestic violence to mediation except under specified  
28 conditions. Provides legislative intent. Requires a court  
29 to assess whether domestic violence is present among the  
30 parties. Provides factors that the court may consider in  
31 such assessment.