

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: CS/SB 2188

INTRODUCER: Judiciary Committee and Senator Campbell

SUBJECT: Alternative Dispute Resolution

DATE: March 23, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
2.	_____	_____	<u>JA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Alternative dispute resolution is a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.¹ In mediation, a trained intermediary assists parties to a dispute in reaching agreement. Courts often refer cases to mediation in order to assist the parties and to relieve docket congestion. In 2005, various statutes related to facilitating the unified family court model were updated; however, mediation law was not correspondingly changed. This bill corrects those references.

This bill amends mediation law to conform to the unified family court model. This bill also makes other technical and corrective changes to mediation law.

This bill also modifies the law on voluntary binding arbitration and voluntary trial resolution. The bill would delete all references to voluntary trial resolution from s. 44.104, F.S. The bill would create a new section providing for voluntary trial resolution with almost the identical provisions that exist in current law under s. 44.104, F.S. The current law provides that factual findings determined in the voluntary trial are not subject to appeal.² The primary change provided by the bill is that factual findings and rulings on questions of law made by the trial-resolution judge may be appealed.

This bill creates sections 44.1015 and 44.1041, Florida Statutes. This bill amends the following sections of the Florida Statutes: 44.1011, 44.102, 44.104, 44.108, and 61.183.

¹ Black's Law Dictionary 78 (7th ed. 1999).

² Section 44.104(11), F.S.

II. Present Situation:

Mediation

Mediation is a type of alternative dispute resolution used to resolve legal conflict between parties. Family law is one area where mediation has been widely used by the courts to assist parties in reaching agreement prior to trial. In mediation, parties involved in a dispute meet to work out their differences with the help of a mediator. The mediator assists and guides the parties toward their own solution by helping them to define the important issues and understand each other's interests. The mediator focuses each side on the crucial factors necessary for settlement and on the consequences of not settling. The mediator does not decide the outcome of the case and cannot compel the parties to settle.

In 2005, the Florida Legislature passed SB 348,³ which in part created s. 25.375, F.S. Section 25.375, F.S., authorizes the Supreme Court to create a unique identifier for each person by which to identify all court cases related to that person or his or her family previously or currently in the court system. The unique identifier facilitates the unified family court model that utilizes a unified system of judicial case coordination in the state to identify cases relating to individuals and families. Individuals and families are assigned to a single circuit court judge that handles all of their cases dealing with family law matters. This model alleviates the problem of having different judges presiding over one family's various family law cases. The purpose is to reduce confusion and avoid conflicting court orders.

The act creating s. 25.375, F.S., and other modifications affecting family court and facilitating the unified family court model did not make corresponding changes to related statutes pertaining to mediation.

Voluntary Binding Arbitration and Voluntary Trial Resolution

Voluntary binding arbitration and voluntary trial resolution are types of alternative dispute resolution where a neutral third person or panel considers the facts and arguments presented by the parties and renders a decision. The current law provides that two or more opposing parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration, or voluntary trial resolution, in lieu of litigation of the issues involved, prior to or after a lawsuit has been filed, provided no constitutional issue is involved.⁴ A voluntary binding arbitration decision may be appealed to the circuit court and is limited to review on the record and not de novo, of:

- (a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence;
- (b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party; and
- (c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida.⁵

³ Section 1, ch. 2005-239, L.O.F.

⁴ Section 44.104(1), F.S.

⁵ Section 44.104(10), F.S.

A final decision rendered in a voluntary trial may be appealed to the appropriate appellate court. Issues of law are reviewed de novo; however, factual findings determined in the voluntary trial are not subject to appeal.⁶

III. Effect of Proposed Changes:

Mediation

This bill redefines mediation in ch. 44, F.S., to provide for mediation in the unified family court.

This bill amends s. 44.1011, F.S., to create a definition for “unified family court mediation.” “Unified family court mediation” means mediation of any of the following circuit court matters:

- Dissolution of marriage.
- Division and distribution of property arising out of a dissolution of marriage.
- Annulment.
- Support unconnected with dissolution of marriage.
- Paternity.
- Child support.
- The Uniform Reciprocal Enforcement of Support Act and the Uniform Interstate Family Support Act.
- Custodial care of and access to children.
- Adoption.
- Name changes.
- Declaratory judgment actions related to premarital, marital, or postmarital agreements.
- Civil domestic, repeat, sexual, or dating violence injunctions.
- Child dependency.
- Termination of parental rights.
- Juvenile delinquency.
- Emancipation of a minor.
- Children in need of services.
- Families in need of services.
- Truancy.
- Modification and enforcement of orders entered in these cases.

This bill also amends s. 44.1011, F.S., to remove the definitions for “family mediation” and “dependency or in need of service mediation.”

This bill creates s. 44.1015, F.S. The new section contains substantive law regarding the scope and conduct of mediation that is currently in the definitions section of ch. 44, F.S.⁷

This bill amends s. 44.102, F.S., to provide that a court shall refer to mediation matters that involve disputed custody, visitation, or other parental responsibility issues.⁸ However, a court

⁶ See s. 44.104(11), F.S.; *General Star Indemnity Co. v. West Florida Village Inn, Inc.*, 874 So. 2d 26, 29 (Fla. 2d DCA 2004).

⁷ Section 44.1011, F.S.

⁸ The bill deletes the equivalent provision in the current law that used the pre-unified family court nomenclature.

must not refer to mediation, regardless of any other law, any case dealing with domestic violence, dating violence, or sexual violence injunctions, except pursuant to rules adopted by the Supreme Court of Florida. This bill also provides that a court must not refer to mediation any case where the court finds that there has been a history of violence which would compromise the mediation process or endanger any person's safety. The bill deletes the provision in the current law that concerns mediation related to dependency or in need of services cases, which are subsumed under the general category of "uniform family court mediation" in other provisions.

This bill provides that the Supreme Court is responsible for maintaining a list of certified mediators instead of the chief judge of each judicial circuit. This change reflects current practice.

This bill amends s. 44.108, F.S., related to fees for mediation services. The bill changes responsibility for payment from each "person" in a case to each "party." The bill also changes the references in this section from "family mediation" to "unified family court mediation." The bill adds language providing that no mediation fees shall be assessed in unified family court cases that are limited to one or more of the following issues: child dependency, children in need of services, families in need of services, juvenile delinquency, or issues arising out of judicial findings in relation to injunctions for protection against domestic violence. The Economic Impact and Fiscal Note: Private Sector Impact section below provides a more detailed explanation of how this is accomplished.

Section 61.183(1), F.S., provides that a court "may" refer to mediation any proceeding in which the issues of parental responsibility, primary residence, visitation, or support of a child are contested. However, the current statutory law on "court-ordered mediation," s. 44.102, F.S., provides that a court "must" refer to mediation disputed custody, visitation, or other parental responsibility issues. This bill amends s. 61.183, F.S., to conform to s. 44.102, F.S., requiring that a court refer to mediation cases where the issue of parental responsibility, primary residence, visitation, or support of a child is contested.

Voluntary Binding Arbitration and Voluntary Trial Resolution

This bill modifies the law on voluntary binding arbitration and voluntary trial resolution. The bill would delete all references to voluntary trial resolution from s. 44.104, F.S. The bill would create a new section providing for voluntary trial resolution with almost the identical provisions that exist in current law under s. 44.104, F.S. Under the current law, the facts determined in the voluntary trial resolution proceeding are not subject to appeal.⁹ The bill provides that factual findings and rulings on questions of law made by the trial-resolution judge may be appealed.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ Section 44.104(11), F.S.

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 current law does not authorize fees to be assessed for mediation in dependency or delinquency cases. Under the unified family court model, unified family court mediation services encompass dependency and delinquency. The bill appears to maintain the same fee structure as under the current law by providing that no fees shall be assessed for unified family court cases involving dependency or delinquency.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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