

By Senator Lawson

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1 A bill to be entitled
2 An act relating to litigation; amending s. 39.401,
3 F.S.; prohibiting a person from taking a child alleged
4 to be dependant into custody except in cases involving
5 an immediate threat to the health or safety of the
6 child; providing additional exceptions; amending s.
7 39.702, F.S.; requiring a citizen review panel to be
8 established in each judicial circuit; amending s.
9 39.809, F.S.; providing for recommendations by citizen
10 review panels in hearings or trials on petitions for
11 termination of parental rights; limiting continuances
12 in such cases; providing exceptions; providing that
13 hearings or trials involving termination of parental
14 rights are open to the public; providing an exception;
15 requiring that reports and recommended orders from
16 citizen review panels accompany the written orders in
17 certain proceedings; creating s. 46.061, F.S.;
18 providing that in negligence cases, judgment must be
19 entered on the basis of percentage of fault and not
20 joint and several liability; defining the term
21 "negligence cases"; providing for the application of
22 joint and several liability to certain cases; creating
23 s. 46.071, F.S.; providing that certain privileges and
24 immunities are not valid defenses in certain actions
25 under statute or in other specified actions; providing
26 for construction; creating s. 46.081, F.S.; providing
27 for assignability of claims; providing that claims or
28 rights in injury may be given as a divided part or
29 interest; providing for standing of parties having

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30 executed an assignment or executed a giving of
31 interest; providing for construction of provisions;
32 amending s. 57.105, F.S.; revising requirements
33 concerning motions to obtain sanctions for raising
34 unsupported claims or defenses; providing for
35 construction of provisions; providing that the section
36 creates a substantive right to attorney's fees;
37 providing definitions; providing intent; amending s.
38 59.041, F.S.; providing requirements for court
39 opinions relating to claims of harmless error;
40 providing that neither the court file nor the
41 appellate record requires a transcript or statement of
42 proceedings for a proper, full examination of the case
43 before the court; deleting a provision for liberal
44 construction of harmless error provisions; amending s.
45 59.06, F.S.; revising provision relating to motions
46 for dismissal or summary judgment; providing that an
47 order sustaining a motion for dismissal or summary
48 judgment without leave to amend or with prejudice or
49 absent an allowance for some other further action
50 expressly rendered by the court is an order sufficient
51 to allow an interlocutory appeal to be made within a
52 specified period; amending s. 454.18, F.S.; revising
53 provisions relating to persons allowed to practice
54 law; providing for lay representation in certain
55 proceedings; providing for challenges to such
56 representation; providing for application; amending s.
57 454.23, F.S.; prohibiting specified acts by attorneys;
58 providing criminal penalties; amending s. 768.81,

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59 F.S.; providing for apportionment of damages to
60 nonparties; providing for construction; amending s.
61 839.24, F.S.; prohibiting violations concerning
62 certain procedural rules and laws; providing
63 penalties; amending s. 843.0855, F.S.; prohibiting
64 certain acts relating to obstruction of justice and
65 deprivation of rights under color of law during court
66 proceedings; providing penalties; providing for
67 construction; amending ss. 924.051 and 924.33, F.S.;
68 providing requirements for court opinions in specified
69 cases; providing that neither the court file nor the
70 appellate record requires a transcript or statement of
71 proceedings in order for a proper, full examination of
72 the case before the court; creating s. 939.051, F.S.;
73 providing sanctions for persons found to have abused
74 the judicial system; providing for motions for
75 sanctions; providing for construction; repealing s.
76 924.395, F.S., relating to sanctions; amending s.
77 985.35, F.S.; requiring the Department of Juvenile
78 Justice to adopt rules governing the procedures that
79 may be used to restrain a child upon his or her
80 arrival at the courthouse; prohibiting the use of
81 instruments of restraint on a child after the child
82 arrives at the courthouse; prohibiting subjecting a
83 child to extended periods of isolation; providing
84 specified exemptions; amending s. 985.483, F.S.;
85 conforming a cross-reference; creating s. 985.602,
86 F.S.; prohibiting the use of restraints on a child;
87 providing exceptions; providing an effective date.

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

Section 1. Subsection (1) of section 39.401, Florida Statutes, is amended to read:

39.401 Taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.—

(1) Except in cases involving an immediate threat to the health or safety of a child, a person, including a law enforcement officer, a duly authorized person, or any other officer of the court or of the state, may not take a child ~~may only be taken~~ into custody unless the child is taken into custody:

(a) Pursuant to the provisions of this part, based upon sworn testimony, either before or after a petition is filed resulting in a court order issued after a finding of probable cause by the court authorizing taking a child into custody; or

(b) By a law enforcement officer, or an authorized agent of the department, if the officer or authorized agent has probable cause resulting in a court order issued supporting ~~to support~~ a finding:

1. That the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment;

2. That the parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or

3. That the child has no parent, legal custodian, or

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117 responsible adult relative immediately known and available to
118 provide supervision and care.

119 Section 2. Subsection (1) of section 39.702, Florida
120 Statutes, is amended to read:

121 39.702 Citizen review panels.—

122 (1) Citizen review panels shall ~~may~~ be established in each
123 judicial circuit ~~and shall be authorized by an administrative~~
124 ~~order executed by the chief judge of each circuit.~~ The court
125 shall administer an oath of office to each citizen review panel
126 member which shall authorize the panel member to participate in
127 citizen review panels and make recommendations to the court
128 pursuant to ~~the provisions of this section and s. 39.809.~~

129 Section 3. Section 39.809, Florida Statutes, is amended to
130 read:

131 39.809 Adjudicatory hearing or trial.—

132 (1) In a hearing or trial on a petition for termination of
133 parental rights, the court shall consider, assisted by a report
134 and a recommended order from the citizen review panel, the
135 elements required for termination. Each of these elements must
136 be established by clear and convincing evidence before the
137 petition is granted.

138 (2) The adjudicatory hearing must be held within 120 ~~45~~
139 days after the advisory hearing, but reasonable continuances for
140 the purpose of investigation, discovery, or procuring counsel or
141 witnesses may, when necessary, be granted. Continuances may not
142 extend beyond 1 year after the advisory hearing unless there are
143 compelling reasons or extraordinary circumstances,
144 notwithstanding s. 39.0136.

145 (3) The adjudicatory hearing or trial must be conducted by

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146 the judge without a jury, unless a demand for a jury is made by
147 either party, applying the rules of evidence in use in civil
148 cases and adjourning the case from time to time as necessary.
149 For purposes of the adjudicatory hearing or trial, to avoid
150 unnecessary duplication of expense, the judge may consider in-
151 court testimony previously given at any properly noticed
152 hearing, without regard to the availability or unavailability of
153 the witness at the time of the actual adjudicatory hearing or
154 trial, if the recorded testimony itself is made available to the
155 judge. Consideration of such testimony does not preclude the
156 witness being subpoenaed to answer supplemental questions.

157 (4) All hearings or trials involving termination of
158 parental rights are open ~~confidential and closed~~ to the public,
159 except upon the written motion to the court by the parents or
160 guardian of the child or children who are the subject of the
161 hearing or trial that it be made confidential and closed.

162 Hearings or trials involving more than one child may be held
163 simultaneously when the children involved are related to each
164 other or were involved in the same case. The child and the
165 parents may be examined separately and apart from each other.

166 (5) The judge shall enter a written order with the findings
167 of fact and conclusions of law. The report and recommended order
168 from the citizen review panel must accompany the written order.

169 Section 4. Section 46.061, Florida Statutes, is created to
170 read:

171 46.061 Joint and several liability.—

172 (1) (a) In a negligence case, the court shall enter judgment
173 against each party and nonparty liable on the basis of that
174 party's percentage of fault under s. 768.81 and not, initially,

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175 on the basis of the doctrine of joint and several liability.

176 (b) As used in this section, the term "negligence case"
177 includes, but is not limited to, civil actions for damages based
178 upon theories of negligence, strict liability, products
179 liability, and professional malpractice whether couched in terms
180 of contract or tort or breach of warranty and like theories. In
181 determining whether a case falls within the definition of a
182 negligence case, the court shall look to the substance of the
183 action and not the terms used by the parties to characterize the
184 case.

185 (2) The doctrine of joint and several liability shall apply
186 to any action brought by a party to recover actual economic
187 damages resulting from pollution, to any action based upon an
188 intentional tort, or to any cause of action as to which
189 application of the doctrine of joint and several liability is
190 specifically provided by chapter 403, chapter 498, chapter 517,
191 chapter 542, or chapter 895.

192 Section 5. Section 46.071, Florida Statutes, is created to
193 read:

194 46.071 Privilege and immunity defenses.—

195 (1) Litigation privilege, judicial, qualified, or absolute
196 immunity, and similar defenses or privileges are not valid
197 common law defenses in actions under statutes that provide for
198 rights and claims in injury, tort, or contract liability for
199 acts that may be or are committed, directly or indirectly,
200 involving judicial or administrative proceedings.

201 (2) Litigation privilege, judicial, qualified, or absolute
202 immunity, and the like are not viable or valid defenses in
203 actions on claims and rights for abuse of process, malicious

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204 prosecution, and fraud upon the court, also known as extrinsic
205 fraud.

206 (3) This section shall be strictly construed, enforced, and
207 complied with.

208 Section 6. Section 46.081, Florida Statutes, is created to
209 read:

210 46.081 Assignment of or interest in claims and rights.-

211 (1) All claims or rights in injury, tort, contract, or
212 statute, whether of a commercial or personal nature, are wholly,
213 or partly assignable, and any fiduciary or confidential
214 relationship is waived by implication in such an executed
215 assignment.

216 (2) All claims or rights in injury, tort, contract, or
217 statute, whether of a commercial or personal nature, may be
218 given as a divided or a part interest, and any fiduciary or
219 confidential relationship is waived by implication in such an
220 executed giving of interest.

221 (3) Parties having executed an assignment or executed a
222 giving of interest have standing in all matters applicable to
223 the claims or rights.

224 (4) This section shall be strictly construed, enforced, and
225 complied with.

226 Section 7. Section 57.105, Florida Statutes, is amended to
227 read:

228 57.105 Attorney's fee; sanctions for raising unsupported
229 claims or defenses; service of motions; damages for delay of
230 litigation.-

231 (1) Upon the court's initiative or motion of any party, the
232 court shall award a reasonable attorney's fee to be paid to the

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233 prevailing party in equal amounts by the losing party and the
234 losing party's attorney on any claim or defense at any time
235 during a civil proceeding or action in which the court finds
236 that the losing party or the losing party's attorney knew or
237 should have known that a claim or defense when initially
238 presented to the court or at any time before trial:

239 (a) Was not supported by the material facts necessary to
240 establish the claim or defense; or

241 (b) Would not be supported by the application of then-
242 existing law to those material facts.

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244 However, the losing party's attorney is not personally
245 responsible if he or she has acted in good faith, based on the
246 representations of his or her client as to the existence of
247 those material facts. If the court awards attorney's fees to a
248 claimant pursuant to this subsection, the court shall also award
249 prejudgment interest.

250 (2) Paragraph (1)(b) does not apply if the court determines
251 that the claim or defense was initially presented to the court
252 as a good faith argument for the extension, modification, or
253 reversal of existing law or the establishment of new law, as it
254 applied to the material facts, with a reasonable expectation of
255 success.

256 (3) At any time in any civil proceeding or action in which
257 the moving party proves by a preponderance of the evidence that
258 any action taken by the opposing party, including, but not
259 limited to, the filing of any pleading or part thereof, the
260 assertion of or response to any discovery demand, the assertion
261 of any claim or defense, or the response to any request by any

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262 other party, was taken primarily for the purpose of unreasonable
263 delay, the court shall award damages to the moving party for its
264 reasonable expenses incurred in obtaining the order, which may
265 include attorney's fees, and other loss resulting from the
266 improper delay.

267 (4) A party is entitled to an award of sanctions under this
268 section only if a motion is by a party seeking sanctions under
269 this section must be served by a party seeking sanctions under
270 this section. The motion but may not be filed with or presented
271 to the court unless, within 21 days after service of the motion,
272 the challenged paper, claim, defense, contention, allegation, or
273 denial is not withdrawn or appropriately corrected. Any motion
274 filed with the court which does not comply with this subsection
275 is null and void. This subsection is substantive and may not be
276 waived except in writing. This subsection does not apply to
277 sanctions ordered upon the court's initiative.

278 (5) In administrative proceedings under chapter 120, an
279 administrative law judge shall award a reasonable attorney's fee
280 and damages to be paid to the prevailing party in equal amounts
281 by the losing party and a losing party's attorney or qualified
282 representative in the same manner and upon the same basis as
283 provided in subsections (1)-(4). Such award shall be a final
284 order subject to judicial review pursuant to s. 120.68. If the
285 losing party is an agency as defined in s. 120.52(1), the award
286 to the prevailing party shall be against and paid by the agency.
287 A voluntary dismissal by a nonprevailing party does not divest
288 the administrative law judge of jurisdiction to make the award
289 described in this subsection.

290 (6) ~~The provisions of~~ This section must be strictly

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291 enforced and complied with and is ~~are~~ supplemental to other
292 sanctions or remedies available under law or under court rules.

293 (7) If a contract contains a provision allowing attorney's
294 fees to a party when he or she is required to take any action to
295 enforce the contract, the court may also allow reasonable
296 attorney's fees to the other party when that party prevails in
297 any action, whether as plaintiff or defendant, with respect to
298 the contract. This subsection applies to any contract entered
299 into on or after October 1, 1988.

300 (8) (a) This section creates substantive rights to the award
301 of attorney's fees and any procedural provisions are directly
302 related to the definition of those rights. Any procedural
303 aspects of this section are intended to implement the
304 substantive provisions of the law.

305 (b) For purposes of this section, the term:

306 1. "Attorney" means a lawyer and, where applicable, a lay,
307 qualified, or designated representative appearing for a party.

308 2. "Party" means any person represented by a attorney or
309 appearing pro se.

310 (c) It is the intent of the Legislature that the award of
311 attorney fees, costs, damages, and sanctions under this section
312 apply and are a right to any party, lawyer, or representative
313 equally whether the person is or is not a lawyer.

314 Section 8. Section 59.041, Florida Statutes, is amended to
315 read:

316 59.041 Harmless error; effect.—~~A~~ ~~No~~ judgment may not shall
317 be set aside or reversed, or new trial granted by any court of
318 the state in any cause, civil or criminal, on the ground of
319 misdirection of the jury or the improper admission or rejection

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320 of evidence or for error as to any matter of pleading or
321 procedure, unless first, contrary to binding precedent or stare
322 decisis, and if not, secondly, in the opinion of the court to
323 which application is made, after an examination of the entire
324 case it shall appear that the error complained of has resulted
325 in a miscarriage of justice or manifest injustice. The opinion
326 of the appellate court must be supported by at least one binding
327 authority for each point for review which must be cited in the
328 final order or opinion, absent the setting of any new precedent.
329 Except in the review of criminal cases, neither the court file
330 nor the appellate record requires a transcript or statement of
331 proceedings for a proper and full examination of the case before
332 the court. ~~This section shall be liberally construed.~~

333 Section 9. Subsection (1) of section 59.06, Florida
334 Statutes, is amended to read:

335 59.06 Matters reviewable on appeal.—

336 (1) WHAT MAY BE ASSIGNED AS ERROR.—All judgments and orders
337 made in any action wherein the trial court:

338 (a) May allow or refuse to allow any motion:

- 339 1. For a new trial or rehearing,
- 340 2. For leave to amend pleadings,
- 341 3. For leave to file new or additional pleadings,
- 342 4. To amend the record, or
- 343 5. For continuance of the action; or

344 (b) Shall sustain or overrule any motion to dismiss the
345 action for summary judgment or dismissal of the action or a
346 pleading may be assigned as error upon any appeal from the final
347 judgment or order in the action. For purposes of this
348 subsection, an order sustaining or overruling a motion without

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349 leave to amend, with prejudice, or absent an allowance for some
350 other further action expressly rendered by the court or rule is
351 an order sufficient to allow an interlocutory appeal to be made
352 to the circuit court appellate division within 30 days after the
353 order is rendered. The appellate court shall hear and determine
354 the matter so assigned under like rules as in other actions.

355 Section 10. Section 454.18, Florida Statutes, is amended to
356 read:

357 454.18 Officers and persons authorized or unauthorized ~~not~~
358 ~~allowed~~ to practice.-

359 (1) A ~~Ne~~ sheriff or full-time deputy sheriff may not
360 practice law in this state.

361 (2) A clerk of any court, or full-time deputy clerk of any
362 court may not thereof, shall practice law in this state.7

363 (3) A ~~nor shall any~~ person who is not of good moral
364 character, or who has been convicted of an infamous crime may
365 not be entitled to practice law in this state.

366 (4) Any person who is not licensed or otherwise authorized
367 may not practice law in this state.

368 (5) Any person who has been knowingly disbarred and who has
369 not been lawfully reinstated or is knowingly under suspension
370 from the practice of law by the Florida Supreme Court may not
371 practice law in this state. ~~A person may not be denied the right~~
372 ~~to practice on account of sex, race, or color. And~~

373 (6) Any person, whether an attorney or not, or whether
374 within the exceptions mentioned above or not:7

375 (a) May conduct his or her own cause in any court of this
376 state, or before any public board, committee, or officer,
377 subject to the lawful rules and discipline of such court, board,

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378 committee, or officer.

379 (b) Has a qualified right to lay representation or to be
380 represented by a person of his or her choice as prescribed by:

381 1. Chapter 120, concerning a qualified representative.

382 2. Chapter 44, concerning a designated representative.

383 3. Section 709.08, concerning an attorney in fact.

384 4. Decisions or rules of the Florida Supreme Court
385 concerning representation by a realty property manager.

386 5. Decisions or rules of the Florida Supreme Court
387 concerning a nonlawyer using approved forms.

388 6. Decisions or rules of the Florida Supreme Court
389 concerning representation in county court or small claims court
390 civil proceedings.

391 7. Rule 5-15, Florida Rules Relating to Admissions to the
392 Bar.

393 8. Judicial discretion under the inherent authority
394 doctrine.

395 9. Federal law, or any other clearly expressed rule,
396 statute, or court or administrative decision or order under
397 other federal or state law and authority.

398 (7) (a) Any party, counsel of record, judicial or quasi
399 judicial officer, whether required or not, absent federal
400 preemption, may inquire of and challenge the competence and
401 character of the lay representative upon notice and hearing. The
402 matters in such hearing to be considered shall be in accordance
403 with Rules 28-106.106 and 28-106.107, Florida Administrative
404 Code, paragraph (8) (b), and as applicable as possible where the
405 involvement of the representative pertains to civil or criminal
406 proceedings.

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407 (b) A finding that the lay representative is inadequate in
408 such matters upon disposition of hearing, the lay representative
409 shall be disqualified in conducting the cause; otherwise, the
410 cause shall proceed authorizing and qualifying the lay
411 representative to maintain the cause.

412 (c) Upon rendition of a finding that the lay representative
413 is disqualified from any further direct or indirect
414 participation in the cause absent remedies of paragraph (d) or
415 paragraph (e), the disqualified lay representative may be found
416 in contempt for lack of standing on the cause, reported to The
417 Florida Bar's unlicensed practice of law division, or state
418 attorney for prosecution under s. 454.23. This paragraph may not
419 be construed or executed in violation of the disqualified lay
420 representative's right to the protection from double jeopardy.

421 (d) Review of the determination disqualifying the lay
422 representative shall be by petition for certiorari.

423 (e) Notwithstanding paragraphs (b) and (c), if the
424 disqualified lay representative has a valid interest in the
425 cause or by assignment or some other basis in law, the
426 disqualified lay representative may appear pro se or through
427 counsel only by joinder, to intervene, or by substitution as
428 allowed by law; otherwise, an appearance shall be without
429 standing or the unauthorized practice of law.

430 (8) (a) The provisions of this section restricting the
431 practice of law by a sheriff or clerk, or full-time deputy
432 thereof, do not apply in a case where such person is
433 representing the office or agency in the course of his or her
434 duties as an attorney at law and, as to lay representation,
435 shall be strictly complied with and enforced.

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436 (b) The officers and persons listed in subsections (1),
437 (2), (3), and (5) shall not be otherwise authorized to practice
438 law under paragraph (6)(b) or subsection (7) absent a federal
439 law preempting such provision.

440 (9) A person may not be denied the right to practice law on
441 account of sex, race, or color.

442 (10) This section has retroactive and prospective
443 application in law.

444 Section 11. Section 454.23, Florida Statutes, is amended to
445 read:

446 454.23 Penalties.—

447 (1) Any person not licensed and admitted to The Florida Bar
448 or otherwise authorized as prescribed by s. 454.18(6) to
449 practice law in this state who practices law in this state or
450 holds himself or herself out to the public as qualified to
451 practice law in this state, or who willfully pretends to be, or
452 willfully takes or uses any name, title, addition, or
453 description implying that he or she is qualified, or recognized
454 by law as qualified, to practice law in this state, commits a
455 felony of the third degree, punishable as provided in s.
456 775.082, s. 775.083, or s. 775.084.

457 (2) Any attorney duly admitted or authorized to practice in
458 this state who willfully or intentionally violates, or causes
459 any person to violate, the rules and discipline of any court,
460 tribunal, or officer in any matter of order or procedure in this
461 state, not in conflict with the constitution or laws of this
462 state, commits a misdemeanor of the first degree, punishable as
463 provided in s. 775.082 or s. 775.083.

464 (3) Any attorney duly admitted or authorized to practice in

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465 this state who willfully or intentionally violates the oath of
466 admission to The Florida Bar, or commits or causes any act in
467 violation of 18 U.S.C. s. 241 or 18 U.S.C. s. 242 under federal
468 law before any court, tribunal, or officer in this state,
469 commits a felony of the third degree, punishable as provided in
470 s. 775.082, s. 775.083, or s. 775.084.

471 Section 12. Subsection (3) of section 768.81, Florida
472 Statutes, is amended to read:

473 768.81 Comparative fault.—

474 (3) APPORTIONMENT OF DAMAGES.—In cases to which this
475 section applies, the court shall enter judgment against each
476 party and nonparty liable on the basis of such party's
477 percentage of fault and not, initially, on the basis of the
478 doctrine of joint and several liability.

479 (a) In order to allocate any or all fault to a nonparty, a
480 defendant must affirmatively plead the fault of a nonparty and,
481 absent a showing of good cause, identify the nonparty, if known,
482 or describe the nonparty as specifically as practicable, either
483 by preliminary or joinder motion, ~~or~~ in the initial responsive
484 pleading when the answer and defenses are first due presented,
485 or through third-party practice such as interpleader,
486 contribution, indemnification, or subrogation, subject to
487 amendment any time before trial in accordance with the Florida
488 Rules of Civil Procedure. Absent a voluntary appearance, some
489 form of service of process must be made on the nonparty thereby
490 subjecting the nonparty to the jurisdiction of the court.

491 (b) In order to allocate any or all fault to a nonparty and
492 include the named or unnamed nonparty on the verdict form for
493 purposes of apportioning damages, a defendant must prove at

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494 trial, by a preponderance of the evidence, the fault of the
495 nonparty in causing the plaintiff's injuries; otherwise, the
496 defendant shall be fully liable for the allocation of fault of
497 the nonparty alleged.

498 (c) A nonparty brought into the case who has been, in any
499 way, absolved by a party, is immune, or may invoke a statute of
500 limitations or statute of repose. Such avoidance or defense must
501 be made known to the court with reasonable diligence by motion
502 or pleading of a party or the nonparty, and, if proven, shall be
503 reflected in the judgment with the determined percentage of
504 fault as to liability and damages being nonexecutable against
505 the nonparty. Otherwise, the judgment shall be held fully
506 executable against a nonparty for the allocation of fault
507 determined.

508 (d) This section shall be strictly construed, enforced, and
509 complied with.

510 Section 13. Section 839.24, Florida Statutes, is amended to
511 read:

512 839.24 ~~Penalty for~~ Failure to perform duty required of
513 officer; penalties.—A sheriff, judicial officer, quasi judicial
514 officer ~~county court judge~~, prosecuting officer, court reporter,
515 stenographer, interpreter, or other officer required to perform
516 any ministerial or nondiscretionary duty under any provision of
517 the Florida Rules of Court or chapter 120 ~~the criminal procedure~~
518 ~~law~~ who willfully or negligently fails or corruptly refuses to
519 perform his or her ministerial or nondiscretionary duty commits
520 ~~shall be guilty of~~ a misdemeanor of the first ~~second~~ degree,
521 punishable as provided in s. 775.082 or s. 775.083. This section
522 must be strictly enforced by law enforcement agencies and state

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523 attorneys without discretion.

524 Section 14. Subsection (4) of section 843.0855, Florida
525 Statutes, is amended to read:

526 843.0855 Criminal actions under color of law or through use
527 of simulated legal process.—

528 (4) (a) Any person who falsely under color of law attempts
529 in any way to influence, intimidate, or hinder a public officer
530 or law enforcement officer in the discharge of his or her
531 official duties by means of, but not limited to, threats of or
532 actual physical abuse or harassment, or through the use of
533 simulated legal process, commits a felony of the third degree,
534 punishable as provided in s. 775.082 or s. 775.083.

535 (b) Any public servant or employee who under color of law
536 in any manner intentionally obstructs or attempts to obstruct
537 the due execution of the law, or with the intent to intimidate,
538 hinder, deprive, or interrupt any officer, beverage enforcement
539 agent, or other person or party in the legal performance of his
540 or her duty or the exercise of his or her rights under the
541 constitution or laws of this state or the United States; or in
542 connection with or relating to any legal process, whether such
543 intent is effected or not, commits a felony of the third degree,
544 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
545 This paragraph must be strictly enforced by law enforcement
546 agents and state attorneys.

547 (c) Any public official or employee who under color of law
548 in any manner intentionally renders any ruling, order, or
549 opinion, or any action or inaction adverse or contrary to the
550 doctrines of stare decisis, binding precedent, the supremacy
551 clause of the United States Constitution, or his or her oath of

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552 office; or in connection with or relating to any legal process
553 affecting persons or property, when clearly made apprised of
554 such evidence or information, commits a felony of the second
555 degree, punishable as provided in s. 775.082, s. 775.083, or s.
556 775.084, unless the official or employee has the authority to
557 overrule or recede from such rule of law, or distinguishes such
558 rule of law, or sets forth some other intervening or superseding
559 evidence or information in the ruling, order or opinion, or
560 action or inaction. This paragraph must be strictly enforced by
561 law enforcement and state attorneys without discretion.

562 (d) Any public official or employee or person who commits
563 or causes any act in violation of 18 U.S.C. s. 241 or 18 U.S.C.
564 s. 242; or in connection with or relating to any legal process
565 affecting persons or property commits a felony of the second
566 degree, punishable as provided in s. 775.082, s. 775.083, or s.
567 775.084. This paragraph must be strictly enforced by law
568 enforcement and state attorneys without discretion.

569 Section 15. Subsection (3) of section 924.051, Florida
570 Statutes, is amended to read:

571 924.051 Terms and conditions of appeals and collateral
572 review in criminal cases.—

573 (3) Subject to s. 59.041, an appeal may not be taken from a
574 judgment or order of a trial court unless a prejudicial error is
575 alleged and is properly preserved or, if not properly preserved,
576 would constitute fundamental error. Subject to s. 59.041, a
577 judgment or sentence may be reversed on appeal only when an
578 appellate court determines after a review of the complete record
579 that prejudicial error occurred and was properly preserved in
580 the trial court or, if not properly preserved, would constitute

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581 fundamental error. The opinion of the court must be supported by
582 at least one binding authority for each point for review that
583 must be cited in the rendered final order or opinion, absent the
584 setting of any new precedent. Except for in the review of
585 criminal cases, neither the court file nor the appellate record
586 requires a transcript or statement of proceedings for a proper,
587 full examination of the case before the court.

588 Section 16. Section 924.33, Florida Statutes, is amended to
589 read:

590 924.33 When judgment not to be reversed or modified.—
591 Subject to s. 59.041, A ~~No~~ judgment may not shall be reversed
592 unless the appellate court is of the opinion, after an
593 examination of all the appeal papers, that error was committed
594 that injuriously affected the substantial rights of the
595 appellant. It shall not be presumed that error injuriously
596 affected the substantial rights of the appellant. The opinion of
597 the court must be supported by at least one binding authority
598 for each point for review that must be cited in the rendered
599 final order or opinion, absent the setting of any new precedent.
600 Except in the review of criminal cases, neither the court file
601 nor the appellate record requires a transcript or statement of
602 proceedings for a proper, full examination of the case before
603 the court.

604 Section 17. Section 939.051, Florida Statutes, is created
605 to read:

606 939.051 Sanctions for unfounded offense, defense, or delay;
607 service of motions.—

608 (1) The Legislature strongly encourages the courts, through
609 their inherent powers and pursuant to this section, to impose

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610 sanctions against any person, lawyer, or nonlawyer, including
611 the state, within the court's jurisdiction who is found at any
612 time in any trial court or appellate court proceeding to have
613 abused the judicial system in any way, including, but not
614 limited to, the following:

615 (a) Abused a petition for extraordinary relief or
616 postconviction motion, or an appeal therefrom;

617 (b) Abused or caused unreasonable delay in any pretrial
618 proceeding;

619 (c) Raised a claim that a court has found to be frivolous
620 or procedurally barred or that should have been preserved by
621 objection in the trial court or raised on a direct appeal;

622 (d) Improperly withheld or misleadingly used evidence or
623 testimony;

624 (e) Adversely affected the orderly administration of
625 justice; or

626 (f) Partook in dilatory tactics, sandbagging, or any other
627 improper practices.

628 (2) Sanctions that the court may and should consider, when
629 applicable and appropriate, include, but are not limited to:

630 (a) Dismissal of a pleading or case.

631 (b) Disciplinary sanctions.

632 (c) A fine.

633 (d) Imposition of costs, fees, expenses, or damages.

634 (e) Any other sanction that is available to the court under
635 its inherent powers.

636 (3) A motion seeking sanctions under this section shall be
637 filed by the state, a defendant, whether a lawyer or nonlawyer,
638 if pro se, otherwise by his or her representing lawyer. The

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639 motion must clearly express facts demonstrating conduct as
640 described in subsection (1), be verified, served on all the
641 parties in the case, and filed with the court within 10 days
642 after being subject to and apprised of the misconduct involved.
643 Any motion filed with the court that does not comply with this
644 subsection is void. This subsection is substantive and its
645 requirements may not be waived except in writing. This
646 subsection does not apply to sanctions ordered upon the court's
647 initiative.

648 (4) Sanctions imposed against the state under paragraph
649 (2) (d) shall be awarded and approved by the Chief Financial
650 Officer in accordance with s. 939.13.

651 (5) This section is supplemental to other sanctions or
652 remedies available under law or under court rules.

653 (6) This section must be strictly enforced and complied
654 with.

655 Section 18. Section 924.395, Florida Statutes, is repealed.

656 Section 19. Section 985.35, Florida Statutes, is amended to
657 read:

658 985.35 Adjudicatory hearings; withheld adjudications;
659 orders of adjudication.—

660 (1) The adjudicatory hearing must be held as soon as
661 practicable after the petition alleging that a child has
662 committed a delinquent act or violation of law is filed and in
663 accordance with the Florida Rules of Juvenile Procedure; but
664 reasonable delay for the purpose of investigation, discovery, or
665 procuring counsel or witnesses shall be granted. If the child is
666 being detained, the time limitations in s. 985.26(2) and (3)
667 apply. The department shall adopt by rule procedures for

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668 restraining a child upon his or her arrival at the courthouse.
669 The rules must prohibit the use of mechanical devices and
670 unreasonable restraints. In addition, a child may not be subject
671 to extended periods of isolation.

672 (2) Adjudicatory hearings shall be conducted without a jury
673 by the court, applying in delinquency cases the rules of
674 evidence in use in criminal cases; adjourning the hearings from
675 time to time as necessary; and conducting a fundamentally fair
676 hearing in language understandable, to the fullest extent
677 practicable, to the child before the court.

678 (a) In a hearing on a petition alleging that a child has
679 committed a delinquent act or violation of law, the evidence
680 must establish the findings beyond a reasonable doubt.

681 (b) The child is entitled to the opportunity to introduce
682 evidence and otherwise be heard in the child's own behalf and to
683 cross-examine witnesses.

684 (c) A child charged with a delinquent act or violation of
685 law must be afforded all rights against self-incrimination.
686 Evidence illegally seized or obtained may not be received to
687 establish the allegations against the child.

688 (3) Instruments of restraint, such as handcuffs, chains,
689 irons, or straitjackets, may not be used on a child during any
690 court proceeding and must be removed when the child appears
691 before the court unless the court finds that:

692 (a) Restraints are necessary to prevent physical harm to
693 the child or another person;

694 (b) A less restrictive alternative is not available which
695 would prevent physical harm, including, but not limited to, the
696 presence of personnel of the department, a law enforcement

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697 officer, or a bailiff;

698 (c) The child has a history of disruptive behavior in the
699 courtroom which places others in potentially harmful situations
700 or presents a substantial risk of inflicting bodily harm on
701 others as evidenced by recent behavior;

702 (d) The child is likely to attempt to escape during a
703 transfer or a hearing; or

704 (e) The child is charged with a capital offense. The
705 department must comply with the Protective Action Response
706 policy adopted under s. 985.645(2) whenever mechanical
707 restraints are used.

708 (4)~~(3)~~ If the court finds that the child named in a
709 petition has not committed a delinquent act or violation of law,
710 it shall enter an order so finding and dismissing the case.

711 (5)~~(4)~~ If the court finds that the child named in the
712 petition has committed a delinquent act or violation of law, it
713 may, in its discretion, enter an order stating the facts upon
714 which its finding is based but withholding adjudication of
715 delinquency.

716 (a) Upon withholding adjudication of delinquency, the court
717 may place the child in a probation program under the supervision
718 of the department or under the supervision of any other person
719 or agency specifically authorized and appointed by the court.
720 The court may, as a condition of the program, impose as a
721 penalty component restitution in money or in kind, community
722 service, a curfew, urine monitoring, revocation or suspension of
723 the driver's license of the child, or other nonresidential
724 punishment appropriate to the offense, and may impose as a
725 rehabilitative component a requirement of participation in

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726 substance abuse treatment, or school or other educational
727 program attendance.

728 (b) If the child is attending public school and the court
729 finds that the victim or a sibling of the victim in the case was
730 assigned to attend or is eligible to attend the same school as
731 the child, the court order shall include a finding pursuant to
732 the proceedings described in s. 985.455, regardless of whether
733 adjudication is withheld.

734 (c) If the court later finds that the child has not
735 complied with the rules, restrictions, or conditions of the
736 community-based program, the court may, after a hearing to
737 establish the lack of compliance, but without further evidence
738 of the state of delinquency, enter an adjudication of
739 delinquency and shall thereafter have full authority under this
740 chapter to deal with the child as adjudicated.

741 (6)~~(5)~~ If the court finds that the child named in a
742 petition has committed a delinquent act or violation of law, but
743 elects not to proceed under subsection (5) ~~(4)~~, it shall
744 incorporate that finding in an order of adjudication of
745 delinquency entered in the case, briefly stating the facts upon
746 which the finding is made, and the court shall thereafter have
747 full authority under this chapter to deal with the child as
748 adjudicated.

749 (7)~~(6)~~ Except as the term "conviction" is used in chapter
750 322, and except for use in a subsequent proceeding under this
751 chapter, an adjudication of delinquency by a court with respect
752 to any child who has committed a delinquent act or violation of
753 law shall not be deemed a conviction; nor shall the child be
754 deemed to have been found guilty or to be a criminal by reason

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755 of that adjudication; nor shall that adjudication operate to
756 impose upon the child any of the civil disabilities ordinarily
757 imposed by or resulting from conviction or to disqualify or
758 prejudice the child in any civil service application or
759 appointment, with the exception of the use of records of
760 proceedings under this chapter as provided in s. 985.045(4).

761 (8)~~(7)~~ Notwithstanding any other ~~provision of~~ law, an
762 adjudication of delinquency for an offense classified as a
763 felony shall disqualify a person from lawfully possessing a
764 firearm until the ~~such~~ person reaches 24 years of age.

765 Section 20. Subsection (2) of section 985.483, Florida
766 Statutes, is amended to read:

767 985.483 Intensive residential treatment program for
768 offenders less than 13 years of age.—

769 (2) DETERMINATION.—After a child has been adjudicated
770 delinquent under s. 985.35(6) ~~s. 985.35(5)~~, the court shall
771 determine whether the child is eligible for an intensive
772 residential treatment program for offenders less than 13 years
773 of age under subsection (1). If the court determines that the
774 child does not meet the criteria, ss. 985.435, 985.437, 985.439,
775 985.441, 985.445, 985.45, and 985.455 shall apply.

776 Section 21. Section 985.602, Florida Statutes, is created
777 to read:

778 985.602 Use of restraints during court proceedings
779 prohibited; exceptions.—

780 (1) Instruments of restraint, such as handcuffs, chains,
781 irons, or straitjackets, may not be used on a child during any
782 court proceeding and must be removed when the child appears
783 before the court unless the court finds that:

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784 (a) Restraints are necessary to prevent physical harm to
785 the child or another person;

786 (b) A less restrictive alternative is not available which
787 would prevent physical harm, including, but not limited to, the
788 presence of personnel of the department, a law enforcement
789 officer, or a bailiff;

790 (c) The child has a history of disruptive behavior in the
791 courtroom which places others in potentially harmful situations
792 or presents a substantial risk of inflicting bodily harm on
793 others as evidenced by recent behavior;

794 (d) The child is likely to attempt to escape during a
795 transfer or a hearing; or

796 (e) The child is charged with a capital offense.

797 (2) The department must comply with the Protective Action
798 Response policy adopted under s. 985.645(2) whenever mechanical
799 restraints are used.

800 Section 22. This act shall take effect July 1, 2010.