

By Senator Ostalkiewicz

12-138-98

1                                   A bill to be entitled  
2           An act relating to proceedings that involve  
3           juveniles; creating the "Family Bill of Rights  
4           Act"; amending s. 39.401, F.S.; specifying  
5           circumstances under which an agent of the  
6           Department of Children and Family Services or a  
7           law enforcement officer may take a child into  
8           protective custody without a court order;  
9           requiring that the court conduct an emergency  
10          hearing within a specified period after a child  
11          is taken into custody; providing notice  
12          requirements; providing that it is a  
13          first-degree misdemeanor for an agent of the  
14          department to take a child into custody without  
15          a court order except under specified  
16          circumstances; providing for the department to  
17          petition the court by sworn affidavit for an  
18          emergency order for protective custody;  
19          providing that it is a third-degree felony for  
20          an agent of the department to make a false  
21          statement in the affidavit; amending s. 39.402,  
22          F.S.; limiting the period during which a child  
23          may be held in a shelter without a court order;  
24          providing requirements for the emergency  
25          shelter hearing; requiring the appointment of  
26          an attorney to represent the child's parent or  
27          guardian at the emergency shelter hearing;  
28          revising the period during which a child may be  
29          held in a shelter following an emergency  
30          shelter hearing; amending s. 39.404, F.S.;  
31          revising the time within which a petition for

1 dependency must be filed after a child is taken  
2 into custody; requiring that the child's parent  
3 or guardian receive a copy of the petition  
4 before the hearing; amending s. 39.408, F.S.;  
5 revising the time within which an arraignment  
6 hearing must be held; providing that clear and  
7 convincing evidence is required to establish a  
8 child's dependency; amending s. 39.409, F.S.;  
9 providing for the child's parent or guardian or  
10 the county to be awarded attorney's fees and  
11 costs upon dismissal of a case alleging  
12 dependency; amending s. 415.5017, F.S.;  
13 requiring that all interviews with a child who  
14 is the subject of a report alleging abuse be  
15 audio-recorded or videotaped; amending s.  
16 415.504, F.S.; providing additional  
17 requirements for an anonymous report of child  
18 abuse or neglect; amending s. 415.505, F.S.;  
19 requiring that the department show cause prior  
20 to a court order authorizing the department to  
21 examine and interview a child; amending s.  
22 415.51, F.S.; providing for the name of a  
23 person who reports child abuse or neglect and a  
24 copy of the department's file on the case to be  
25 released to certain alleged perpetrators upon  
26 order of the court; amending s. 415.513, F.S.;  
27 providing a civil cause of action for a person  
28 falsely named as a perpetrator against the  
29 person who made the false report; amending s.  
30 933.18, F.S.; deleting a provision authorizing  
31 a law enforcement officer to remove a child

1 from a private dwelling; amending s. 985.211,  
2 F.S., relating to the release of a child from  
3 custody; conforming cross-references to changes  
4 made by the act; amending s. 985.215, F.S.;  
5 providing for the detention hearing for a child  
6 to be held by means of closed-circuit  
7 television; amending s. 39.415, F.S.; limiting  
8 the compensation awarded to an attorney  
9 appointed to represent a child's parent or  
10 guardian at an emergency shelter hearing;  
11 amending s. 57.111, F.S.; providing an award of  
12 attorney's fees to a prevailing parent;  
13 amending s. 61.16, F.S.; allowing an award of  
14 attorney's fees for a successful motion to gain  
15 access to the department's file; providing an  
16 effective date.

17

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

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20 Section 1. This act may be cited as the "Family Bill  
21 of Rights."

22

23 Section 2. Section 39.401, Florida Statutes, as  
24 amended by section 2 of chapter 97-276, Laws of Florida, is  
25 amended to read:

26

27 39.401 Taking a child alleged to be dependent into  
28 custody.--

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30 (1)(a) An agent of the department or law enforcement  
officer may take a child into protective custody without a  
court order if it is necessary for the protection of the  
child:

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1. Due to a medical emergency;

1           2. If, in the judgment of the department's agent or  
2 law enforcement officer, the child is in imminent danger of  
3 illness or injury as a result of abuse, neglect, or  
4 abandonment; or

5           3. If, in the judgment of the department's agent or  
6 law enforcement officer, the child has no parent, legal  
7 guardian, or responsible adult relative immediately known and  
8 available to provide supervision and care.

9           (b) In addition, a law enforcement officer may take a  
10 child into custody without a court order if the officer  
11 believes that the child is a runaway or is truant from school.

12           (c) The court shall hold an emergency hearing within  
13 24 hours after the child is taken into custody to determine  
14 whether protective custody should continue.

15           (d) When the child is taken into protective custody,  
16 an agent of the department must give the child's parent or  
17 guardian actual notice of the date, time, and place of the  
18 emergency shelter hearing; a statement setting forth a summary  
19 of procedures involved in dependency cases; and notification  
20 of the right to obtain an attorney or have one appointed under  
21 this chapter. If the department's agent cannot give actual  
22 notice to the child's parent or guardian at the time the child  
23 is taken into protective custody, the agent of the department  
24 shall file an affidavit with the court stating what reasonable  
25 efforts were made to give actual notice to the child's parent  
26 or guardian of the emergency shelter hearing.

27           (e) Except as provided in this subsection, an agent of  
28 the department who knowingly and willfully takes a child into  
29 custody without a valid court order is guilty of a misdemeanor  
30 of the first degree, punishable as provided in s. 775.082 or  
31 s. 775.083.

1           (2)(a) In the case of an emergency that does not meet  
2 a criterion set out in subsection (1), the department may  
3 petition the court for an emergency order to take the child  
4 into protective custody.

5           (b) The petition must be accompanied by a sworn  
6 affidavit by the department agent having personal knowledge of  
7 the case which includes both an allegation that the child  
8 appears to have been abused, neglected, or abandoned and the  
9 basis for that allegation.

10           (c) An agent of the department who knowingly makes a  
11 false statement in the sworn affidavit, or a person who  
12 knowingly provides false information that is used in making a  
13 false statement in the sworn affidavit, is guilty of a felony  
14 of the third degree, punishable as provided in s. 775.082, s.  
15 775.083, or s. 775.084. Anyone who makes a false statement in  
16 an affidavit or provides false information that is used in  
17 making a false statement in the sworn affidavit and who is  
18 acting in good faith is immune from criminal liability under  
19 this subsection.

20           (d) An order of the court under this subsection is  
21 effective immediately, but the court must hold an emergency  
22 shelter hearing within 24 hours after taking the child into  
23 protective custody to determine whether the protective custody  
24 should continue.

25           (e) When the child is taken into protective custody,  
26 an agent of the department must give the child's parent or  
27 guardian actual notice of the date, time, and place of the  
28 emergency shelter hearing; a statement setting forth a summary  
29 of procedures involved in dependency cases; and notification  
30 of the right to obtain an attorney or have one appointed under  
31 this chapter. If the department's agent cannot give actual

1 notice to the child's parent or guardian at the time the child  
2 is taken into protective custody, the agent of the department  
3 shall file an affidavit with the court stating what reasonable  
4 efforts were made to give actual notice to the child's parent  
5 or guardian of the emergency shelter hearing.

6 (f) If the court under this subsection determines that  
7 emergency shelter placement is necessary until the emergency  
8 shelter hearing, the court shall order the authorized agent of  
9 the department to authorize placement of the child in a  
10 shelter.

11 ~~(1) A child may only be taken into custody:~~

12 ~~(a) Pursuant to an order of the circuit court issued~~  
13 ~~pursuant to the provisions of this part, based upon sworn~~  
14 ~~testimony, either before or after a petition is filed.~~

15 ~~(b) By a law enforcement officer, or an authorized~~  
16 ~~agent of the department, if the officer or agent has probable~~  
17 ~~cause to support a finding of reasonable grounds for removal~~  
18 ~~and that removal is necessary to protect the child. Reasonable~~  
19 ~~grounds for removal are as follows:~~

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

24 ~~2. That the custodian of the child has materially~~  
25 ~~violated a condition of placement imposed by the court; or~~

26 ~~3. That the child has no parent, legal custodian, or~~  
27 ~~responsible adult relative immediately known and available to~~  
28 ~~provide supervision and care.~~

29 (3)(2) If the person taking the child into custody is  
30 not an authorized agent of the department, that person shall:

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1 (a) Release the child to a parent, guardian, legal  
2 custodian, responsible adult approved by the court when  
3 limited to temporary emergency situations, responsible adult  
4 relative who shall be given priority consideration over a  
5 nonrelative placement, or responsible adult approved by the  
6 department; within 3 days following such release, the person  
7 taking the child into custody shall make a full written report  
8 to the department for cases involving allegations of  
9 abandonment, abuse, or neglect or other dependency cases; or

10 (b) Deliver the child to an authorized agent of the  
11 department, stating the facts by reason of which the child was  
12 taken into custody and sufficient information to establish  
13 probable cause that the child is abandoned, abused, or  
14 neglected, or otherwise dependent and make a full written  
15 report to the department within 24 hours ~~3 days~~.

16 ~~(4)(3)~~ Once ~~if~~ the child is taken into custody by, or  
17 is delivered to, an authorized agent of the department, the  
18 authorized agent shall review the facts supporting the removal  
19 with department legal staff prior to the emergency shelter  
20 hearing. The purpose of this review shall be to determine  
21 whether probable cause exists for the filing of an emergency  
22 shelter petition pursuant to s. 39.402(2) ~~s. 39.402(1)~~. If the  
23 facts are not sufficient to support the filing of a petition,  
24 the child shall immediately be returned to the custody of the  
25 parent or legal custodian. If the facts are sufficient to  
26 support the filing of the petition, and the child has not been  
27 returned to the custody of the parent or legal custodian, the  
28 department shall file the petition and schedule a hearing  
29 pursuant to s. 39.402(2) ~~s. 39.402(1)~~, such hearing to be held  
30 within 24 hours after the removal of the child. While awaiting  
31 the emergency shelter hearing, the authorized agent of the

1 department may place the child in licensed shelter care or may  
2 release the child to a parent, guardian, legal custodian,  
3 responsible adult relative who shall be given priority  
4 consideration over a nonrelative placement, or responsible  
5 adult approved by the department. In addition, the department  
6 may authorize placement of a housekeeper/homemaker in the home  
7 of a child alleged to be dependent until the parent or legal  
8 custodian assumes care of the child.

9 (5)~~(4)~~ When a child is taken into custody pursuant to  
10 this section, the Department of Children and Family Services  
11 shall request that the child's parent or custodian disclose  
12 the names, relationships, and addresses of all parents and  
13 prospective parents and all next of kin of the child, so far  
14 as are known.

15 Section 3. Section 39.402, Florida Statutes, as  
16 amended by section 3 of chapter 97-276, Laws of Florida, is  
17 amended to read:

18 39.402 Placement in a shelter.--

19 (1) Except as provided ~~Unless ordered by the court~~  
20 under this chapter, a child taken into custody shall not be  
21 placed in a shelter prior to a court hearing.

22 (2)(a) A child may not be held in a shelter longer  
23 than 24 hours unless an order so directing is entered by the  
24 court after an emergency shelter hearing. ~~unless there are~~  
25 ~~reasonable grounds for removal and removal is necessary to~~  
26 ~~protect the child. Reasonable grounds for removal are as~~  
27 ~~follows:~~

28 ~~(a) The child has been abused, neglected, or~~  
29 ~~abandoned, or is suffering from or is in imminent danger of~~  
30 ~~illness or injury as a result of abuse, neglect, or~~  
31 ~~abandonment.~~



1           ~~(b) The custodian of the child has materially violated~~  
2 ~~a condition of placement imposed by the court; or~~

3           ~~(c) The child has no parent, legal custodian, or~~  
4 ~~responsible adult relative immediately known and available to~~  
5 ~~provide supervision and care.~~

6           ~~(2) A child taken into custody may be placed or~~  
7 ~~continued in a shelter only if one or more of the criteria in~~  
8 ~~subsection (1) applies and the court has made a specific~~  
9 ~~finding of fact regarding the necessity for removal of the~~  
10 ~~child from the home and has made a determination that the~~  
11 ~~provision of appropriate and available services will not~~  
12 ~~eliminate the need for placement.~~

13           ~~(3) Whenever a child is taken into custody, the~~  
14 ~~department shall immediately notify the parents or legal~~  
15 ~~custodians, shall provide the parents or legal custodians with~~  
16 ~~a statement setting forth a summary of procedures involved in~~  
17 ~~dependency cases, and shall notify them of their right to~~  
18 ~~obtain their own attorney.~~

19           ~~(4) If the department determines that placement in a~~  
20 ~~shelter is necessary under subsections (1) and (2), the~~  
21 ~~authorized agent of the department shall authorize placement~~  
22 ~~of the child in a shelter.~~

23           ~~(a) The parents or legal custodians of the child shall~~  
24 ~~be given actual notice of the date, time, and location of the~~  
25 ~~emergency shelter hearing. If the parents are outside the~~  
26 ~~jurisdiction of the court, are not known, or cannot be located~~  
27 ~~or refuse or evade service, they shall be given such notice as~~  
28 ~~best ensures their actual knowledge of the date, time, and~~  
29 ~~location of the emergency shelter hearing. The person~~  
30 ~~providing or attempting to provide notice to the parents or~~  
31 ~~legal custodians shall, if the parents or legal custodians are~~

1 ~~not present at the hearing, advise the court either in person~~  
2 ~~or by sworn affidavit, of the attempts made to provide notice~~  
3 ~~and the results of those attempts.~~

4 ~~(b) At the emergency shelter hearing, the department~~  
5 ~~must establish probable cause that reasonable grounds for~~  
6 ~~removal exist and that the provision of appropriate and~~  
7 ~~available services will not eliminate the need for placement.~~

8 ~~(c) The parents or legal custodians shall be given an~~  
9 ~~opportunity to be heard and to present evidence at the~~  
10 ~~emergency shelter hearing.~~

11 (b)(5)(a) The circuit court, or the county court, if  
12 previously designated by the chief judge of the circuit court  
13 for such purpose, shall hold the emergency shelter hearing.

14 (c)(b) The shelter petition filed with the court must  
15 address each condition required to be determined by the court  
16 in subsection (4)(7).

17 (d) At the emergency shelter hearing, the department  
18 must establish probable cause that reasonable grounds for  
19 protective custody exist and that the provision of appropriate  
20 and available services will not eliminate the need for  
21 placement.

22 (e) The parents or legal guardians must be given an  
23 opportunity to be heard and to present evidence at the  
24 emergency shelter hearing. The court shall appoint an attorney  
25 to represent the child's parent or guardian at the emergency  
26 shelter hearing.

27 (f) At the emergency shelter hearing, the court shall  
28 appoint a guardian ad litem to represent the child unless the  
29 court finds that such representation is unnecessary.  
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1           (g) If it is necessary for the protection of the child  
2 to avoid delay, the petition and order under this subsection  
3 may be oral, provided that:

4           1. The department subsequently files, prior to the  
5 emergency shelter hearing, the written petition and supporting  
6 affidavit required by this subsection, including a statement  
7 explaining the reason why the original request to the court  
8 could not be written;

9           2. The court subsequently reduces its order to writing  
10 prior to the emergency shelter hearing, including the  
11 information from the department upon which the issuance of an  
12 emergency order was based; and

13           3. Copies of any petition, affidavit, and order  
14 subsequently reduced to writing under this subsection are made  
15 available to the child's parent or guardian prior to the  
16 emergency shelter hearing.

17           ~~(3)(6)~~ A child may not be removed from the home or  
18 continued out of the home pending disposition if, with the  
19 provision of appropriate and available services, including  
20 services provided in the home, the child could safely remain  
21 at home. If the child's safety and well-being are in danger,  
22 the child shall be removed from danger and continue to be  
23 removed until the danger has passed. If the child has been  
24 removed from the home and the reasons for his removal have  
25 been remedied, the child may be returned to the home. If the  
26 court finds that the prevention or reunification efforts of  
27 the department will allow the child to remain safely at home,  
28 the court shall allow the child to remain in the home.

29           ~~(7)(a) A child may not be held in a shelter longer~~  
30 ~~than 24 hours unless an order so directing is entered by the~~  
31 ~~court after an emergency shelter hearing. At the emergency~~

1 ~~shelter hearing, the court shall appoint a guardian ad litem~~  
2 ~~to represent the child unless the court finds that such~~  
3 ~~representation is unnecessary. The parents or legal custodians~~  
4 ~~of the child shall be given such notice as best ensures their~~  
5 ~~actual knowledge of the time and place of the hearing and~~  
6 ~~shall be given an opportunity to be heard and to present~~  
7 ~~evidence at the emergency shelter hearing. The court shall~~  
8 ~~require the parents or custodians present at the hearing to~~  
9 ~~provide to the court on the record the names, addresses, and~~  
10 ~~relationships of all parents, prospective parents, and next of~~  
11 ~~kin of the child, so far as are known.~~

12 ~~(4)(b)~~ The order for placement of a child in shelter  
13 care must identify the parties present at the hearing and must  
14 contain written findings:

15 ~~(a)1.~~ That placement in shelter care is necessary  
16 based on evidence that:

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

20 2. The custodian of the child has materially violated  
21 a condition of placement imposed by the court; or

22 3. The child has no parent, legal custodian, or  
23 responsible adult relative immediately known and available to  
24 provide supervision and care.~~the criteria in subsections (1)~~  
25 ~~and (2).~~

26 ~~(b)2.~~ That placement in shelter care is in the best  
27 interest of the child.

28 ~~(c)3.~~ That continuation of the child in the home is  
29 contrary to the welfare of the child because the home  
30 situation presents a substantial and immediate danger to the  
31

1 child which cannot be mitigated by the provision of preventive  
2 services.

3 ~~(d)4.~~ That based upon the allegations of the petition  
4 for placement in shelter care, there is probable cause to  
5 believe that the child is dependent.

6 ~~(e)5.~~ That the department has made reasonable efforts  
7 to prevent or eliminate the need for removal of the child from  
8 the home. A finding of reasonable effort by the department to  
9 prevent or eliminate the need for removal may be made and the  
10 department is deemed to have made reasonable efforts to  
11 prevent or eliminate the need for removal if:

12 ~~1.a.~~ The first contact of the department with the  
13 family occurs during an emergency.

14 ~~2.b.~~ The appraisal of the home situation by the  
15 department indicates that the home situation presents a  
16 substantial and immediate danger to the child which cannot be  
17 mitigated by the provision of preventive services.

18 ~~3.c.~~ The child cannot safely remain at home, either  
19 because there are no preventive services that can ensure the  
20 safety of the child or because, even with appropriate and  
21 available services being provided, the safety of the child  
22 cannot be ensured.

23 ~~(5)(c)~~ The failure to provide notice to a party or  
24 participant does not invalidate an order placing a child in a  
25 shelter if the court finds that the petitioner has made a good  
26 faith effort to provide such notice.

27 (6)(a) If the court at the emergency shelter hearing  
28 determines that placement in a shelter is necessary under this  
29 chapter, the court shall order the authorized agent of the  
30 department to authorize placement of the child in a shelter.

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1           (b) The court shall require the parent or custodian  
2 present at the hearing to provide to the court on the record  
3 the names, addresses, and relationships of all parents,  
4 prospective parents, and next of kin of the child, so far as  
5 are known.

6           ~~(d) In the interval until the shelter hearing is held~~  
7 ~~under paragraph (a), the decision to place the child in a~~  
8 ~~shelter or release the child from a shelter lies with the~~  
9 ~~protective investigator in accordance with subsection (3).~~

10           (7)(8) A child may not be held in a shelter under an  
11 order so directing for more than 14 ~~21~~ days after the  
12 emergency shelter hearing unless an order of adjudication for  
13 the case has been entered by the court. The parent, guardian,  
14 or custodian of the child must be notified of any order  
15 directing placement of the child in an emergency shelter and,  
16 upon request, must be afforded a hearing within 48 hours,  
17 excluding Sundays and legal holidays, to review the necessity  
18 for continued placement in the shelter for any time periods as  
19 provided in this section. At any arraignment hearing or  
20 determination of emergency shelter care, the court shall  
21 determine visitation rights absent a clear and convincing  
22 showing that visitation is not in the best interest of the  
23 child, and the court shall make a written determination as to  
24 whether the department has made a reasonable effort to prevent  
25 or eliminate the need for removal or continued removal of the  
26 child from the home. If the department has not made such an  
27 effort, the court shall order the department to provide  
28 appropriate and available services to assure the protection of  
29 the child in the home when such services are necessary for the  
30 child's safety. Within 5 ~~7~~ days after the child is taken into  
31 custody, a petition alleging dependency must be filed and,

1 within 7 ~~14~~ days after the child is taken into custody, an  
2 arraignment hearing must be held for the child's parent,  
3 guardian, or custodian to admit, deny, or consent to the  
4 findings of dependency alleged in the petition.

5 (8)~~(9)~~ A child may not be held in a shelter for more  
6 than 30 days after the entry of an order of adjudication  
7 unless an order of disposition under s. 39.41 has been entered  
8 by the court.

9 (9)~~(10)~~ The time limitations in subsection(7)~~(8)~~ do  
10 not include:

11 (a) Periods of delay resulting from a continuance  
12 granted at the request or with the consent of the child's  
13 counsel or the child's guardian ad litem, if one has been  
14 appointed by the court, or, if the child is of sufficient  
15 capacity to express reasonable consent, at the request or with  
16 the consent of the child's attorney or the child's guardian ad  
17 litem, if one has been appointed by the court, and the child.

18 (b) Periods of delay resulting from a continuance  
19 granted at the request of the attorney for the department, if  
20 the continuance is granted+

21 ~~+~~ because of an unavailability of evidence material  
22 to the case when the attorney for the department has exercised  
23 due diligence to obtain such evidence and there are  
24 substantial grounds to believe that such evidence will be  
25 available within 30 days. However, if the department is not  
26 prepared to present its case within 30 days, the parent or  
27 guardian may move for issuance of an order to show cause or  
28 the court on its own motion may impose appropriate sanctions,  
29 which may include dismissal of the petition.

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1           ~~2. To allow the attorney for the department additional~~  
2 ~~time to prepare the case and additional time is justified~~  
3 ~~because of an exceptional circumstance.~~

4           (c) Reasonable periods of delay necessary to  
5 accomplish notice of the hearing to the child's parents;  
6 however, the petitioner shall continue regular efforts to  
7 provide notice to the parents during such periods of delay.

8           (d) Reasonable periods of delay resulting from a  
9 continuance granted at the request of the parent or legal  
10 custodian of a subject child.

11           (10)~~(11)~~ The court shall review the necessity for a  
12 child's continued placement in a shelter in the same manner as  
13 the initial placement decision was made and shall make a  
14 determination regarding the continued placement:

15           (a) Within 24 hours after any violation of the time  
16 requirements for the filing of a petition or the holding of an  
17 arraignment hearing as prescribed in subsection(7)~~(8)~~; or

18           (b) Prior to the court's granting any delay as  
19 specified in subsection(9)~~(10)~~.

20           (11)~~(12)~~ When any child is placed in a shelter under a  
21 court order following a shelter hearing, the court shall order  
22 the parents of the child, or the guardian of the child's  
23 estate, if possessed of assets which under law may be  
24 disbursed for the care, support, and maintenance of the child,  
25 to pay, to the department or institution having custody of the  
26 child, fees as established by the department. When the order  
27 affects the guardianship estate, a certified copy of the order  
28 shall be delivered to the judge having jurisdiction of the  
29 guardianship estate.

30           Section 4. Subsection (4) of section 39.404, Florida  
31 Statutes, is amended to read:



1           39.404 Petition for dependency.--

2           (4) When the child has been taken into custody, a  
3 petition alleging dependency must be filed within 5 7 days  
4 after the date the child is taken into custody. In all other  
5 cases, the petition must be filed within a reasonable time  
6 after the date the child was referred to protective  
7 investigation under s. 39.403. The child's parent, guardian,  
8 or custodian must be served with a copy of the petition at  
9 least 48 hours before the arraignment hearing.

10           Section 5. Paragraph (a) of subsection (1) and  
11 paragraph (b) of subsection (2) of section 39.408, Florida  
12 Statutes, are amended to read:

13           39.408 Hearings for dependency cases.--

14           (1) ARRAIGNMENT HEARING.--

15           (a) When a child has been detained by order of the  
16 court, an arraignment hearing must be held, within 7 ~~14~~ days  
17 after ~~from the date~~ the child is taken into custody, for the  
18 parent, guardian, or custodian to admit, deny, or consent to  
19 findings of dependency alleged in the petition. If the parent,  
20 guardian, or custodian admits or consents to the findings in  
21 the petition, the court shall proceed as set forth in the  
22 Florida Rules of Juvenile Procedure. However, if the parent,  
23 guardian, or custodian denies any of the allegations of the  
24 petition, the court shall hold an adjudicatory hearing within  
25 7 days after ~~from~~ the date of the arraignment hearing unless a  
26 continuance is granted under s. 39.402(9) ~~pursuant to s.~~  
27 ~~39.402(11)~~.

28           (2) ADJUDICATORY HEARING.--

29           (b) Adjudicatory hearings shall be conducted by the  
30 judge without a jury, applying the rules of evidence in use in  
31 civil cases and adjourning the hearings from time to time as

1 necessary. In a hearing on a petition in which it is alleged  
2 that the child is dependent, clear and convincing a  
3 ~~preponderance~~ of evidence will be required to establish the  
4 state of dependency. Any evidence presented in the dependency  
5 hearing which was obtained as the result of an anonymous call  
6 must be independently corroborated. In no instance shall  
7 allegations made in an anonymous report of abuse be sufficient  
8 to support an adjudication of dependency in the absence of  
9 corroborating evidence.

10 Section 6. Subsection (1) of section 39.409, Florida  
11 Statutes, is amended to read:

12 39.409 Orders of adjudication.--

13 (1) If the court finds that the child named in a  
14 petition is not dependent, it shall enter an order so finding  
15 and dismissing the case and awarding reasonable attorney's  
16 fees and costs to the parent or guardian of the child under s.  
17 57.111 or to the county if the parent or guardian was  
18 represented by court-appointed counsel. Attorney's fees and  
19 costs shall be paid from the department's budget.

20 Section 7. Subsection (2) of section 415.5017, Florida  
21 Statutes, is amended to read:

22 415.5017 Family services response system;  
23 procedures.--

24 (2) District staff, at a minimum, shall adhere to the  
25 following procedures when requesting family assistance:

26 (a) The purpose of the response shall be explained.

27 (b) The name of the person responding and their office  
28 telephone number shall be provided to the caregiver.

29 (c) The possible outcomes and services of the  
30 department's response shall be explained to the caregiver.

31

1           (d) The caregiver shall be involved to the fullest  
2 extent possible in determining the nature of the allegation  
3 and the nature of any identified problem.

4           (e) An assessment of risk and the perceived needs of  
5 ~~for~~ the child and family shall be conducted in a manner that  
6 is sensitive to the social, economic, and cultural environment  
7 of the family.

8           (f) Based on the information obtained from the  
9 caregiver, the risk assessment instrument must be completed  
10 within 48 hours and, if needed, a case plan developed within a  
11 maximum of 30 days.

12           (g) The department shall document the outcome of its  
13 initial assessment of risk as follows:

14           1. Report closed. Services were not offered to the  
15 family.

16           2. Services were offered to and accepted by the  
17 family.

18           3. Services were offered to, but were rejected by, the  
19 family.

20           4. Either the risk to the child's safety and  
21 well-being cannot be reduced by the provision of services or  
22 the family rejected services, and a protective investigation  
23 under part IV is needed.

24           (h) The district staff shall audio-record or videotape  
25 all interviews with the child.

26           (i) Any agency that interviews a child shall  
27 audio-record or videotape the interview.

28           Section 8. Paragraph (b) of subsection (4) of section  
29 415.504, Florida Statutes, is amended to read:

30           415.504 Mandatory reports of child abuse or neglect;  
31 mandatory reports of death; central abuse hotline.--

1           (4)  
2           (b) Upon receiving an oral or written report of known  
3 or suspected child abuse or neglect, the central abuse hotline  
4 shall determine if the report requires an immediate onsite  
5 protective investigation. For reports requiring an immediate  
6 onsite protective investigation, the central abuse hotline  
7 shall immediately notify the department's designated children  
8 and families district staff responsible for protective  
9 investigations to ensure that an onsite investigation is  
10 promptly initiated. If an anonymous report requires an  
11 immediate protective investigation, the report shall be  
12 referred to the district for investigation within 24 hours.  
13 The investigation must be limited in scope to the original  
14 allegations reported. However, this section does not preclude  
15 the investigator from reporting additional evidence of other  
16 abuse observed while conducting the investigation.For reports  
17 not requiring an immediate onsite protective investigation,  
18 the central abuse hotline shall notify the department's  
19 designated children and families district staff responsible  
20 for protective investigations in sufficient time to allow for  
21 an investigation, or if the district determines appropriate, a  
22 family services response system approach to be commenced  
23 within 24 hours. When a district decides to respond to a  
24 report of child abuse or neglect with a family services  
25 response system approach, the provisions of part III apply.  
26 If, in the course of assessing risk and services or at any  
27 other appropriate time, responsible district staff determines  
28 that the risk to the child requires a child protective  
29 investigation, then the department shall suspend its family  
30 services response system activities and shall proceed with an  
31 investigation as delineated in this part. At the time of

1 notification of district staff with respect to the report, the  
2 central abuse hotline shall also provide information on any  
3 previous report concerning a subject of the present report or  
4 any pertinent information relative to the present report or  
5 any noted earlier reports.

6 Section 9. Paragraphs (c) and (d) of subsection (1) of  
7 section 415.505, Florida Statutes, are amended to read:

8 415.505 Child protective investigations; institutional  
9 child abuse or neglect investigations.--

10 (1)

11 (c) If the department is denied reasonable access to a  
12 child by the parents or other persons responsible for the  
13 child's welfare and the department deems that the best  
14 interests of the child so require, it shall seek an  
15 appropriate court order or other legal authority prior to  
16 examining ~~examine~~ and interviewing ~~interview~~ the child. The  
17 department must show cause to the court that it is necessary  
18 to examine and interview the child. If the department  
19 interviews a child, the interview must be audio-recorded or  
20 videotaped.

21 (d) If the department determines that a child requires  
22 immediate or long-term protection through:

23 1. Medical or other health care;

24 2. Homemaker care, day care, protective supervision,  
25 or other services to stabilize the home environment, including  
26 intensive family preservation services through the Family  
27 Builders Program, the Intensive Crisis Counseling Program, or  
28 both; or

29 3. Foster care, shelter care, or other substitute care  
30 to remove the child from the parents' custody,

31

1 such services shall first be offered for the voluntary  
2 acceptance of the parents or other person responsible for the  
3 child's welfare, who shall be informed of the right to refuse  
4 services as well as the responsibility of the department to  
5 protect the child regardless of the acceptance or refusal of  
6 services. If the services are refused or the department deems  
7 that the child's need for protection so requires, the  
8 department shall ~~take the child into protective custody or~~  
9 petition the court as provided in chapter 39.

10 Section 10. Subsection (4) of section 415.51, Florida  
11 Statutes, is amended to read:

12 415.51 Confidentiality of reports and records in cases  
13 of child abuse or neglect.--

14 (4) The name of any person reporting child abuse,  
15 abandonment, or neglect may not be released to any person  
16 other than employees of the department responsible for child  
17 protective services or the central abuse hotline, the alleged  
18 perpetrator by court order under this subsection, or the  
19 appropriate state attorney or law enforcement agency, without  
20 the written consent of the person reporting. This does not  
21 prohibit the subpoenaing of a person reporting child abuse,  
22 abandonment, or neglect when deemed necessary by the court,  
23 the state attorney, or the department, provided the fact that  
24 such person made the report is not disclosed. Any person who  
25 is a party to an action involving a determination of custody  
26 or visitation of a child brought under chapter 61 or chapter  
27 741 which is pending and who is named as an alleged  
28 perpetrator in a report under this section may move the court  
29 in such action to require the department to give the alleged  
30 perpetrator a copy of the department's file of information  
31 concerning the report. Upon receipt of the motion, the court

1 shall timely conduct an in-camera review of the department's  
2 file at issue and may, for good cause shown, order that a copy  
3 of the file and the name of the person who reported the child  
4 abuse or neglect be released to the alleged perpetrator if the  
5 court finds that doing so creates no danger either to the  
6 person who reported the child abuse or neglect or to the  
7 child.Any person who reports a case of child abuse or neglect  
8 may, at the time he or she makes the report, request that the  
9 department notify him or her that a child protective  
10 investigation occurred as a result of the report. The  
11 department shall mail such a notice to the reporter within 10  
12 days after completing the child protective investigation.

13 Section 11. Section 415.513, Florida Statutes, is  
14 amended to read:

15 415.513 Penalties relating to abuse reporting.--

16 (1) A person who is required by s. 415.504 to report  
17 known or suspected child abuse or neglect and who knowingly  
18 and willfully fails to do so, or who knowingly and willfully  
19 prevents another person from doing so, is guilty of a  
20 misdemeanor of the second degree, punishable as provided in s.  
21 775.082 or s. 775.083. In addition, a person who is named as a  
22 perpetrator in a false report under this subsection and who  
23 has gained access to the entire file under s. 415.51(4) has a  
24 cause of action against the person who made the false report,  
25 and against any person who advised another to make a false  
26 report, for threefold the actual damages sustained and is  
27 entitled to minimum damages in the amount of \$1,000 and  
28 reasonable fees and costs in the trial and appellate courts,  
29 if the plaintiff proves by the greater weight of the evidence  
30 that the report was false and that the plaintiff suffered  
31 damages as a result of the report.

1           (2) A person who knowingly and willfully makes public  
2 or discloses any confidential information contained in the  
3 central abuse registry and tracking system or in the records  
4 of any child abuse or neglect case, except as provided in ss.  
5 415.502-415.514, is guilty of a misdemeanor of the second  
6 degree, punishable as provided in s. 775.082 or s. 775.083.

7           (3) The department shall establish procedures for  
8 determining whether a false report of child abuse or neglect  
9 has been made and for submitting all identifying information  
10 relating to such a report to the appropriate law enforcement  
11 agency and the state attorney for prosecution.

12           (4) A person who knowingly and willfully makes a false  
13 report of child abuse or neglect, or who advises another to  
14 make a false report, is guilty of a misdemeanor of the second  
15 degree, punishable as provided in s. 775.082 or s. 775.083.  
16 Anyone making a report who is acting in good faith is immune  
17 from any liability under this subsection.

18           (5) Each state attorney shall establish procedures to  
19 facilitate the prosecution of persons under this section.

20           Section 12. Section 933.18, Florida Statutes, is  
21 amended to read:

22           933.18 When warrant may be issued for search of  
23 private dwelling.--No search warrant shall issue under this  
24 chapter or under any other law of this state to search any  
25 private dwelling occupied as such unless:

26           (1) It is being used for the unlawful sale,  
27 possession, or manufacture of intoxicating liquor;

28           (2) Stolen or embezzled property is contained therein;

29           (3) It is being used to carry on gambling;

30           (4) It is being used to perpetrate frauds and  
31 swindles;



1           (5) The law relating to narcotics or drug abuse is  
2 being violated therein;

3           (6) A weapon, instrumentality, or means by which a  
4 felony has been committed, or evidence relevant to proving  
5 said felony has been committed, is contained therein;

6           (7) One or more of the following misdemeanor child  
7 abuse offenses is being committed there:

8           (a) Interference with custody, in violation of s.  
9 787.03.

10           (b) Commission of an unnatural and lascivious act with  
11 a child, in violation of s. 800.02.

12           (c) Exposure of sexual organs to a child, in violation  
13 of s. 800.03.

14           (8) It is in part used for some business purpose such  
15 as a store, shop, saloon, restaurant, hotel, or boardinghouse,  
16 or lodginghouse;

17           (9) It is being used for the unlawful sale,  
18 possession, or purchase of wildlife, saltwater products, or  
19 freshwater fish being unlawfully kept therein; or

20           (10) The laws in relation to cruelty to animals have  
21 been or are being violated therein, except that no search  
22 pursuant to such a warrant shall be made in any private  
23 dwelling after sunset and before sunrise unless specially  
24 authorized by the judge issuing the warrant, upon a showing of  
25 probable cause. Property relating to the violation of such  
26 laws may be taken on a warrant so issued from any private  
27 dwelling in which it is concealed or from the possession of  
28 any person therein by whom it shall have been used in the  
29 commission of such offense or from any person therein in whose  
30 possession it may be.

31

1 ~~If, during a search pursuant to a warrant issued under this~~  
2 ~~section, a child is discovered and appears to be in imminent~~  
3 ~~danger, the law enforcement officer conducting such search may~~  
4 ~~remove the child from the private dwelling and take the child~~  
5 ~~into protective custody pursuant to s. 415.506.~~The term  
6 "private dwelling" shall be construed to include the room or  
7 rooms used and occupied, not transiently but solely as a  
8 residence, in an apartment house, hotel, boardinghouse, or  
9 lodginghouse. No warrant shall be issued for the search of  
10 any private dwelling under any of the conditions hereinabove  
11 mentioned except on sworn proof by affidavit of some  
12 creditable witness that he or she has reason to believe that  
13 one of said conditions exists, which affidavit shall set forth  
14 the facts on which such reason for belief is based.

15 Section 13. Paragraph (b) of subsection (2) of section  
16 985.211, Florida Statutes, is amended to read:

17 985.211 Release or delivery from custody.--

18 (2) Unless otherwise ordered by the court pursuant to  
19 s. 985.215, and unless there is a need to hold the child, a  
20 person taking a child into custody shall attempt to release  
21 the child as follows:

22 (b) Contingent upon specific appropriation, to a  
23 shelter approved by the department ~~or to an authorized agent~~  
24 ~~pursuant to s. 39.401(2)(b).~~

25 Section 14. Subsection (2) of section 985.215, Florida  
26 Statutes, is amended to read:

27 985.215 Detention.--

28 (2) Subject to the provisions of subsection (1), a  
29 child taken into custody and placed into nonsecure or home  
30 detention care or detained in secure detention care prior to a  
31 detention hearing may continue to be detained by the court if:

1 (a) The child is alleged to be an escapee or an  
2 absconder from a commitment program, a community control  
3 program, furlough, or aftercare supervision, or is alleged to  
4 have escaped while being lawfully transported to or from such  
5 program or supervision.

6 (b) The child is wanted in another jurisdiction for an  
7 offense which, if committed by an adult, would be a felony.

8 (c) The child is charged with a delinquent act or  
9 violation of law and requests in writing through legal counsel  
10 to be detained for protection from an imminent physical threat  
11 to his or her personal safety.

12 (d) The child is charged with committing an offense of  
13 domestic violence as defined in s. 741.28(1) and is detained  
14 as provided in s. 985.213(2)(b)3.

15 (e) The child is charged with a capital felony, a life  
16 felony, a felony of the first degree, a felony of the second  
17 degree that does not involve a violation of chapter 893, or a  
18 felony of the third degree that is also a crime of violence,  
19 including any such offense involving the use or possession of  
20 a firearm.

21 (f) The child is charged with any second degree or  
22 third degree felony involving a violation of chapter 893 or  
23 any third degree felony that is not also a crime of violence,  
24 and the child:

25 1. Has a record of failure to appear at court hearings  
26 after being properly notified in accordance with the Rules of  
27 Juvenile Procedure;

28 2. Has a record of law violations prior to court  
29 hearings;

30 3. Has already been detained or has been released and  
31 is awaiting final disposition of the case;

1           4. Has a record of violent conduct resulting in  
2 physical injury to others; or

3           5. Is found to have been in possession of a firearm.

4           (g) The child is alleged to have violated the  
5 conditions of the child's community control or aftercare  
6 supervision. However, a child detained under this paragraph  
7 may be held only in a consequence unit as provided in s.  
8 985.231(1)(a)1.c. If a consequence unit is not available, the  
9 child shall be placed on home detention with electronic  
10 monitoring.

11  
12 A child who meets any of these criteria and who is ordered to  
13 be detained pursuant to this subsection shall be given a  
14 hearing within 24 hours after being taken into custody. The  
15 hearing may be conducted by means of closed circuit television  
16 if the child has immediate access to his or her legal  
17 representative and is given the opportunity to confer  
18 privately with his or her legal representative.The purpose of  
19 the detention hearing is to determine the existence of  
20 probable cause that the child has committed the delinquent act  
21 or violation of law with which he or she is charged and the  
22 need for continued detention. Unless a child is detained under  
23 paragraph (d), the court shall utilize the results of the risk  
24 assessment performed by the intake counselor or case manager  
25 and, based on the criteria in this subsection, shall determine  
26 the need for continued detention. A child placed into secure,  
27 nonsecure, or home detention care may continue to be so  
28 detained by the court pursuant to this subsection. If the  
29 court orders a placement more restrictive than indicated by  
30 the results of the risk assessment instrument, the court shall  
31 state, in writing, clear and convincing reasons for such

1 placement. Except as provided in s. 790.22(8) or in  
2 subparagraph (10)(a)2., paragraph (10)(b), paragraph (10)(c),  
3 or paragraph (10)(d), when a child is placed into secure or  
4 nonsecure detention care, or into a respite home or other  
5 placement pursuant to a court order following a hearing, the  
6 court order must include specific instructions that direct the  
7 release of the child from such placement no later than 5 p.m.  
8 on the last day of the detention period specified in paragraph  
9 (5)(b) or paragraph (5)(c), or subparagraph (10)(a)1.,  
10 whichever is applicable, unless the requirements of such  
11 applicable provision have been met or an order of continuance  
12 has been granted pursuant to paragraph (5)(d).

13 Section 15. Section 39.415, Florida Statutes, is  
14 amended to read:

15 39.415 Appointed counsel; compensation.--If counsel is  
16 entitled to receive compensation for representation pursuant  
17 to court appointment in a dependency proceeding, such  
18 compensation shall not exceed \$500 at the emergency shelter  
19 hearing level, \$1,000 at the trial level, and \$2,500 at the  
20 appellate level.

21 Section 16. Section 57.111, Florida Statutes, is  
22 amended to read:

23 57.111 Civil actions and administrative proceedings  
24 initiated by state agencies; attorneys' fees and costs.--

25 (1) This section may be cited as the "Florida Equal  
26 Access to Justice Act."

27 (2) The Legislature finds that certain persons may be  
28 deterred from seeking review of, or defending against,  
29 unreasonable governmental action because of the expense of  
30 civil actions and administrative proceedings. Because of the  
31 greater resources of the state, the standard for an award of

1 attorney's fees and costs against the state should be  
2 different from the standard for an award against a private  
3 litigant. The purpose of this section is to diminish the  
4 deterrent effect of seeking review of, or defending against,  
5 governmental action by providing in certain situations an  
6 award of attorney's fees and costs against the state.

7 (3) As used in this section:

8 (a) The term "attorney's fees and costs" means the  
9 reasonable and necessary attorney's fees and costs incurred  
10 for all preparations, motions, hearings, trials, and appeals  
11 in a proceeding.

12 (b) The term "initiated by a state agency" means that  
13 the state agency:

14 1. Filed the first pleading in any state or federal  
15 court in this state;

16 2. Filed a request for an administrative hearing  
17 pursuant to chapter 120; or

18 3. Was required by law or rule to advise a small  
19 business party of a clear point of entry after some  
20 recognizable event in the investigatory or other free-form  
21 proceeding of the agency.

22 (c) A small business party is a "prevailing small  
23 business party" when:

24 1. A final judgment or order has been entered in favor  
25 of the small business party and such judgment or order has not  
26 been reversed on appeal or the time for seeking judicial  
27 review of the judgment or order has expired;

28 2. A settlement has been obtained by the small  
29 business party which is favorable to the small business party  
30 on the majority of issues which such party raised during the  
31 course of the proceeding; or

1           3. The state agency has sought a voluntary dismissal  
2 of its complaint.

3           (d) The term "small business party" means:

4           1.a. A sole proprietor of an unincorporated business,  
5 including a professional practice, whose principal office is  
6 in this state, who is domiciled in this state, and whose  
7 business or professional practice has, at the time the action  
8 is initiated by a state agency, not more than 25 full-time  
9 employees or a net worth of not more than \$2 million,  
10 including both personal and business investments; or

11           b. A partnership or corporation, including a  
12 professional practice, which has its principal office in this  
13 state and has at the time the action is initiated by a state  
14 agency not more than 25 full-time employees or a net worth of  
15 not more than \$2 million; or

16           2. Either small business party as defined in  
17 subparagraph 1., without regard to the number of its employees  
18 or its net worth, in any action under s. 72.011 or in any  
19 administrative proceeding under that section to contest the  
20 legality of any assessment of tax imposed for the sale or use  
21 of services as provided in chapter 212, or interest thereon,  
22 or penalty therefor.

23           (e) The term "prevailing parent" means the parent or  
24 legal guardian who was a party to a proceeding under chapter  
25 39 which did not result in an adjudication of dependency under  
26 s. 39.409.

27           (f)~~(e)~~ A proceeding is "substantially justified" if it  
28 had a reasonable basis in law and fact at the time it was  
29 initiated by a state agency.

30           (4)(a) Unless otherwise provided by law, an award of  
31 attorney's fees and costs shall be made to a prevailing small

1 business party or a prevailing parent in any adjudicatory  
2 proceeding or administrative proceeding pursuant to chapter  
3 120 initiated by a state agency, unless the actions of the  
4 agency were substantially justified or special circumstances  
5 exist which would make the award unjust.

6 (b)1. To apply for an award under this section, the  
7 attorney for the prevailing small business party or the  
8 prevailing parent must submit an itemized affidavit to the  
9 court which first conducted the adversarial proceeding in the  
10 underlying action, or to the Division of Administrative  
11 Hearings which shall assign an administrative law judge, in  
12 the case of a proceeding pursuant to chapter 120, which  
13 affidavit shall reveal the nature and extent of the services  
14 rendered by the attorney as well as the costs incurred in  
15 preparations, motions, hearings, and appeals in the  
16 proceeding.

17 2. The application for an award of attorney's fees  
18 must be made within 60 days after the date that the small  
19 business party becomes a prevailing small business party or  
20 the parent or guardian becomes a prevailing parent.

21 (c) The state agency may oppose the application for  
22 the award of attorney's fees and costs by affidavit.

23 (d) The court, or the administrative law judge in the  
24 case of a proceeding under chapter 120, shall promptly conduct  
25 an evidentiary hearing on the application for an award of  
26 attorney's fees and shall issue a judgment, or a final order  
27 in the case of an administrative law judge. The final order  
28 of an administrative law judge is reviewable in accordance  
29 with the provisions of s. 120.68. If the court affirms the  
30 award of attorney's fees and costs in whole or in part, it  
31



1 may, in its discretion, award additional attorney's fees and  
2 costs for the appeal.

3 1. No award of attorney's fees and costs shall be made  
4 in any case in which the state agency was a nominal party.

5 2. No award of attorney's fees and costs for an action  
6 initiated by a state agency shall exceed \$15,000.

7 (5) If the state agency fails to tender payment of the  
8 award of attorney's fees and costs within 30 days after the  
9 date that the order or judgment becomes final, the prevailing  
10 small business party or prevailing parent may petition the  
11 circuit court where the subject matter of the underlying  
12 action arose for enforcement of the award by writ of mandamus,  
13 including additional attorney's fees and costs incurred for  
14 issuance of the writ.

15 (6)(a) This section does not apply to any proceeding  
16 involving the establishment of a rate or rule or to any action  
17 sounding in tort.

18 (b) This section only applies to actions initiated by  
19 state agencies after July 1, 1984.

20 Section 17. Section 61.16, Florida Statutes, is  
21 amended to read:

22 61.16 Attorney's fees, suit money, and costs.--

23 (1) The court may from time to time, after considering  
24 the financial resources of both parties, order a party to pay  
25 a reasonable amount for attorney's fees, suit money, and the  
26 cost to the other party of maintaining or defending any  
27 proceeding under this chapter, including enforcement and  
28 modification proceedings and appeals. In those cases in which  
29 an action is brought for enforcement and the court finds that  
30 the noncompliant party is without justification in the refusal  
31 to follow a court order, the court may not award attorney's

1 fees, suit money, and costs to the noncompliant party. An  
2 application for attorney's fees, suit money, or costs, whether  
3 temporary or otherwise, shall not require corroborating expert  
4 testimony in order to support an award under this chapter. The  
5 trial court shall have continuing jurisdiction to make  
6 temporary attorney's fees and costs awards reasonably  
7 necessary to prosecute or defend an appeal on the same basis  
8 and criteria as though the matter were pending before it at  
9 the trial level. In all cases, the court may order that the  
10 amount be paid directly to the attorney, who may enforce the  
11 order in that attorney's name. In determining whether to make  
12 attorney's fees and costs awards at the appellate level, the  
13 court shall primarily consider the relative financial  
14 resources of the parties, unless an appellate party's cause is  
15 deemed to be frivolous. In Title IV-D cases, attorney's fees,  
16 suit money, and costs, including filing fees, recording fees,  
17 mediation costs, service of process fees, and other expenses  
18 incurred by the clerk of the circuit court, shall be assessed  
19 only against the nonprevailing obligor after the court makes a  
20 determination of the nonprevailing obligor's ability to pay  
21 such costs and fees. The Department of Revenue shall not be  
22 considered a party for purposes of this section; however, fees  
23 may be assessed against the department pursuant to s.

24 57.105(1). In the case of a motion filed under s. 415.51(4),  
25 attorney's fees and costs shall be assessed against the person  
26 who made the allegations if that person is a party to an  
27 action under this chapter to which the movant is also a party  
28 and if the court finds that the allegation at issue was false.

29 (2) In an action brought pursuant to Rule 3.840,  
30 Florida Rules of Criminal Procedure, whether denominated  
31

1 direct or indirect criminal contempt, the court shall have  
2 authority to:

3 (a) Appoint an attorney to prosecute said contempt.

4 (b) Assess attorney's fees and costs against the  
5 contemtor after the court makes a determination of the  
6 contemtor's ability to pay such costs and fees.

7 (c) Order that the amount be paid directly to the  
8 attorney, who may enforce the order in his or her name.

9 Section 18. This act shall take effect October 1,  
10 1998.

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SENATE SUMMARY

Creates the Family Bill of Rights Act. Provides that a protective investigator of the Department of Children and Family Services may not take a child into custody without a court order unless the child is in imminent danger, has no parent or guardian to provide care, has run away from home, or is truant from school. Provides that it is a third-degree felony for an agent of the department to make a false statement in a sworn affidavit alleging imminent danger to a child. Requires that the court hold an emergency shelter hearing within 24 hours after a child is taken into custody. Revises the time period within which an arraignment hearing and adjudicatory hearing must be held following the filing of a petition alleging that a child is dependent. Requires that a child's dependency be established by clear and convincing evidence rather than by a preponderance of evidence. Requires that an interview with a child alleged to be dependent be audio-recorded or videotaped. Provides for attorney's fees and costs to be awarded to the parent or guardian of a child alleged to be dependent if the case is dismissed. Revises requirements for the department in investigating an anonymous report of child abuse or neglect. Provides that an alleged perpetrator in a false report of child abuse or neglect may be informed of the name of the person who reported the abuse or neglect and given a copy of the department's file on the report if the court determines there is no danger to the person who made the report or to the child. Provides a civil cause of action for a person falsely named as a perpetrator of child abuse or neglect. Provides that the amount of compensation that may be awarded to an attorney appointed to represent a parent or guardian in a dependency proceeding is limited to \$500. Provides for attorney's fees and costs to be awarded to a parent or guardian who prevails against the department in a case alleging a child's dependency or following a false allegation of child abuse or neglect. (See bill for details.)