

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.; providing that no person may take a child
4 alleged to be dependant into custody except in cases
5 involving an immediate threat to the health or safety
6 of the child; providing additional exceptions;
7 amending s. 39.702, F.S.; deleting a requirement that
8 a citizen review panel be authorized through an
9 administrative order by the chief judge of the
10 circuit; authorizing citizen review panels to make
11 recommendations in adjudicatory hearings under a
12 specified provision; amending s. 39.809, F.S.;
13 providing for recommendations by citizen review panels
14 in hearings or trials on petitions for termination of
15 parental rights; limiting continuances; providing an
16 exception; providing that hearings or trials involving
17 termination of parental rights are open to the public;
18 providing an exception; requiring that reports and
19 recommended orders from citizen review panels
20 accompany written orders in certain proceedings;
21 creating s. 46.061, F.S.; providing that in negligence
22 cases, judgment must be entered on the basis of
23 percentage of fault and not joint and several
24 liability; defining the term "negligence cases";
25 providing for the application of joint and several
26 liability to certain cases; creating s. 46.071, F.S.;
27 providing that certain privileges and immunities are
28 not valid defenses in certain actions under statute or
29 in other specified actions; providing for

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30 construction; creating s. 46.081, F.S.; providing for
31 assignability of claims; providing that claims or
32 rights in injury may be given as a divided part or
33 interest; providing for standing of parties having
34 executed an assignment or executed a giving of
35 interest; providing for construction of provisions;
36 amending s. 57.105, F.S.; revising requirements
37 concerning motions to obtain sanctions for raising
38 unsupported claims or defenses; providing for
39 construction of provisions; providing that the section
40 creates a substantive right to attorney's fees;
41 providing definitions; providing intent; amending s.
42 59.041, F.S.; providing requirements for court
43 opinions relating to claims of harmless error;
44 providing that neither the court file nor the
45 appellate record requires a transcript or statement of
46 proceedings for a proper, full examination of the case
47 before the court; deleting a provision for liberal
48 construction of harmless error provisions; amending s.
49 59.06, F.S.; revising provision relating to motions
50 for dismissal or summary judgment; providing that an
51 order sustaining a motion for dismissal or summary
52 judgment without leave to amend or with prejudice or
53 absent an allowance for some other further action
54 expressly rendered by the court is an order sufficient
55 to allow an interlocutory appeal to be made within a
56 specified period; amending s. 454.18, F.S.; revisions
57 provisions relating to persons allowed to practice
58 law; providing for lay representations in certain

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59 proceedings; providing for challenges to such
60 representation; providing for application; amending s.
61 454.23, F.S.; prohibiting specified acts by attorneys;
62 providing criminal penalties; amending s. 768.81,
63 F.S.; providing for apportionment of damages to
64 nonparties; providing for construction; amending s.
65 839.24, F.S.; prohibiting violations concerning
66 certain procedural rules and laws; providing
67 penalties; amending s. 843.0855, F.S.; prohibiting
68 certain acts relating to obstruction of justice and
69 deprivation of rights under color of law during court
70 proceedings; providing penalties; providing for
71 construction; amending ss. 924.051 and 924.33, F.S.;
72 providing requirements for court opinions in specified
73 cases; providing that neither the court file nor the
74 appellate record requires a transcript or statement of
75 proceedings in order for a proper, full examination of
76 the case before the court; creating s. 939.051, F.S.;
77 providing sanctions for persons found to have abused
78 the judicial system; providing for motions for
79 sanctions; providing for construction; repealing s.
80 924.395, F.S., relating to sanctions; amending s.
81 985.35, F.S.; requiring the Department of Juvenile
82 Justice to adopt rules governing the procedures that
83 may be used to restrain a child upon his or her
84 arrival at the courthouse; prohibiting the use of
85 instruments of restraint on a child after the child
86 arrives at the courthouse; prohibiting subjecting a
87 child to extended periods of isolation; providing

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88 specified exemptions; amending s. 985.483, F.S.;

89 conforming a cross-reference; creating s. 985.602,

90 F.S.; prohibiting use of restraints on a child;

91 providing exceptions; providing an effective date.

92

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

94

95 Section 1. Subsection (1) of section 39.401, Florida

96 Statutes, is amended to read:

97 39.401 Taking a child alleged to be dependent into custody;

98 law enforcement officers and authorized agents of the

99 department.—

100 (1) Except in cases involving an immediate threat to the

101 health or safety of a child, no person, including a law

102 enforcement officer, a duly authorized person, any other officer

103 of the court or of the state, may take a child ~~may only be taken~~

104 into custody unless:

105 (a) Pursuant to the provisions of this part, based upon

106 sworn testimony, either before or after a petition is filed

107 resulting in a court order issued after a finding of probable

108 cause by the court authorizing such; or

109 (b) By a law enforcement officer, or an authorized agent of

110 the department, if the officer or authorized agent has probable

111 cause resulting in a court order issued supporting such ~~to~~

112 ~~support~~ a finding:

113 1. That the child has been abused, neglected, or abandoned,

114 or is suffering from or is in imminent danger of illness or

115 injury as a result of abuse, neglect, or abandonment;

116 2. That the parent or legal custodian of the child has

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117 materially violated a condition of placement imposed by the
118 court; or

119 3. That the child has no parent, legal custodian, or
120 responsible adult relative immediately known and available to
121 provide supervision and care.

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

124 39.702 Citizen review panels.—

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

132 Section 3. Section 39.809, Florida Statutes, is amended to
133 read:

134 39.809 Adjudicatory hearing.—

135 (1) In a hearing or trial on a petition for termination of
136 parental rights, the court, assisted by a report and recommended
137 order from the citizen review panel as established under s.
138 39.702, shall consider the elements required for termination.
139 Each of these elements must be established by clear and
140 convincing evidence before the petition is granted. Continuances
141 as a whole shall not extend beyond 1 year after the advisory
142 hearing unless there are compelling reasons or extraordinary
143 circumstances.

144 (2) The adjudicatory hearing must be held within 45 days
145 after the advisory hearing, but reasonable continuances for the

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146 purpose of investigation, discovery, or procuring counsel or
147 witnesses may, when necessary, be granted.

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

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

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

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

171 Section 4. Section 46.061, Florida Statutes, is created to
172 read:

173 46.061 Joint and several liability.-

174 (1) (a) In negligence cases, the court shall enter judgment

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175 against each party and nonparty liable on the basis of that
176 party's percentage of fault under s. 768.81 and not, initially,
177 on the basis of the doctrine of joint and several liability.

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

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

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

195 46.071 Privilege and immunity defenses.-

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

202 (2) Litigation privilege, judicial, qualified, or absolute
203 immunity, and the like are not viable or valid defenses in

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204 actions on claims and rights for abuse of process, malicious
205 prosecution, and fraud upon the court, also known as extrinsic
206 fraud.

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

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

211 46.081 Assignment of or interest in claims and rights.-

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

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

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

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

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

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

232 (1) Upon the court's initiative or motion of any party, the

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

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

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

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

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

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

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

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

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

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291 described in this subsection.

292 (6) The provisions of this section must be strictly
293 enforced and complied with and are supplemental to other
294 sanctions or remedies available under law or under court rules.

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

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

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

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

310 2. "Party" means any person represented by a lawyer or
311 appearing pro se.

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

316 Section 8. Section 59.041, Florida Statutes, is amended to
317 read:

318 59.041 Harmless error; effect.—No judgment shall be set
319 aside or reversed, or new trial granted by any court of the

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320 state in any cause, civil or criminal, on the ground of
321 misdirection of the jury or the improper admission or rejection
322 of evidence or for error as to any matter of pleading or
323 procedure, unless in the opinion of the court to which
324 application is made, after an examination of the entire case it
325 shall appear that the error complained of has resulted in a
326 miscarriage of justice. The opinion of the court must be
327 supported by at least one binding authority for each point for
328 review that must be cited in the rendered final order or
329 opinion. Neither the court file nor the appellate record
330 requires a transcript or statement of proceedings for a proper,
331 full examination of the case before the court. ~~This section~~
332 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 for
345 dismissal or summary judgment ~~the action~~

346
347 may be assigned as error upon any appeal from the final judgment
348 or order in the action. For purposes of paragraph (b), an order

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349 sustaining a motion therein without leave to amend or with
350 prejudice or absent an allowance for some other further action
351 expressly rendered by the court is an order sufficient to allow
352 an interlocutory appeal to be made within 30 days after the
353 order. The appellate court shall hear and determine the matter
354 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 to
358 not allowed to practice.-

359 (1) No sheriff or full-time deputy sheriff may practice law
360 in this state.

361 (2) No ~~or~~ clerk of any court~~,~~ or full-time deputy clerk of
362 any court may ~~thereof,~~ shall practice law in this state.

363 (3) ~~, 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 not licensed or otherwise authorized may not
367 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.

372 (6) A person may not be denied the right to practice on
373 account of sex, race, or color. And Any person, whether an
374 attorney at law or not, or whether within the exceptions
375 mentioned above or not:~~,~~

376 (a) May conduct his or her own cause.

377 (b) Has a qualified right to lay representation or to be

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378 represented by a person of his or her choice as prescribed by:

379 1. Chapter 120, concerning a qualified representative,

380 2. Chapter 44, concerning a designated representative,

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

382 4. Decisions of the Florida Supreme Court concerning
383 representation by a realty property manager,

384 5. Decisions of the Florida Supreme Court concerning a
385 nonlawyer using approved forms,

386 6. Decisions of the Florida Supreme Court concerning
387 appearances in county court or small claims court civil
388 proceedings,

389 7. Rule 5-15, Florida Rules Relating to Admissions to the
390 Bar,

391 8. Judicial discretion under the inherent authority of the
392 courts doctrine, and

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

396
397 in any court of this state, or before any public board,
398 committee, or officer, subject to the lawful rules and
399 discipline of such court, board, committee, or officer.

400 (7) (a) Any party, counsel of record, judicial or quasi-
401 judicial court or officer, whether required or not, absent
402 federal preemption, may inquire and challenge the competence and
403 character of the lay representative upon notice and hearing. The
404 matters in such hearing to be considered shall be in accordance
405 with Rules 28-106.106 and 28-106.107, Florida Administrative
406 Code.

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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, the lay representative may be found in contempt
414 or reported to The Florida Bar's unlicensed practice of law
415 division or state attorney for prosecution under s. 454.23. This
416 paragraph may not be construed or executed in violation of lay
417 representative's right to protection from double jeopardy.

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

420 (e) Notwithstanding paragraphs (b) and (c), if the
421 disqualified lay representative has a valid interest in the
422 cause or by assignment, the disqualified lay representative may
423 appear pro se only to intervene or by substitution as allowed by
424 law; otherwise, an appearance shall be the unauthorized practice
425 of law.

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

432 (b) The officers and persons listed in subsections (1),
433 (2), (3), and (5) shall not be otherwise authorized to practice
434 law under paragraph (6) (b) or subsection (7) absent a federal
435 law preempting such provision.

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436 (9) No person shall be denied the right to practice law on
437 account of sex, race, or color.

438 (10) This section has retroactive and prospective
439 application in law.

440 Section 11. Section 454.23, Florida Statutes, is amended to
441 read:

442 454.23 Penalties.—

443 (1) Any person not licensed or otherwise authorized to
444 practice law in this state who practices law in this state or
445 holds himself or herself out to the public as qualified to
446 practice law in this state, or who willfully pretends to be, or
447 willfully takes or uses any name, title, addition, or
448 description implying that he or she is qualified, or recognized
449 by law as qualified, to practice law in this state, commits a
450 felony of the third degree, punishable as provided in s.
451 775.082, s. 775.083, or s. 775.084.

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

459 (3) Any attorney duly admitted or authorized to practice in
460 this state who willfully or intentionally violates the oath of
461 admission to The Florida Bar, or commits or causes any act in
462 violation of 18 U.S.C. s. 241 or 18 U.S.C. s. 242 under federal
463 law before any court, tribunal, or officer in this state,
464 commits a felony of the third degree, punishable as provided in

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465 s. 775.082, s. 775.083, or s. 775.084.

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

468 768.81 Comparative fault.—

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

474 (a) In order to allocate any or all fault to a nonparty, a
475 defendant must affirmatively plead the fault of a nonparty and,
476 absent a showing of good cause, identify the nonparty, if known,
477 or describe the nonparty as specifically as practicable, either
478 by preliminary motion, ~~or~~ in the initial responsive pleading
479 when the answer and defenses are first due presented, or through
480 third-party practice such as interpleader, contribution,
481 indemnification, or subrogation, subject to amendment any time
482 before trial in accordance with the Florida Rules of Civil
483 Procedure.

484 (b) In order to allocate any or all fault to a nonparty and
485 include the named or unnamed nonparty on the verdict form for
486 purposes of apportioning damages, a defendant must have filed
487 with the court and served process on the nonparty with all
488 pertinent motions and pleadings, thereby subjecting the nonparty
489 to the jurisdiction of the court, and prove at trial, by a
490 preponderance of the evidence, the fault of the nonparty in
491 causing the plaintiff's injuries; otherwise, the defendant shall
492 be fully liable for the allocation of fault of the nonparty
493 alleged.

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

504 (d) This section shall be strictly construed, enforced, and
505 complied with.

506 Section 13. Section 839.24, Florida Statutes, is amended to
507 read:

508 839.24 ~~Penalty for Failure to perform duty required of~~
509 ~~officer; penalties.~~ Any A sheriff, judicial officer, quasi-
510 judicial officer county court judge, prosecuting officer, court
511 reporter, stenographer, interpreter, or other officer required
512 to perform any duty under any provision of the Florida Rules of
513 Court or chapter 120 the criminal procedure law who willfully or
514 negligently fails or corruptly refuses to perform his or her
515 duty thereunder commits shall be guilty of a misdemeanor of the
516 first ~~second~~ degree, punishable as provided in s. 775.082 or s.
517 775.083. This section must be strictly enforced by law
518 enforcement agencies and state attorneys without discretion.

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

521 843.0855 Criminal actions under color of law or through use
522 of simulated legal process.-

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

530 (b) Any public servant or employee who under color of law
531 in any manner intentionally obstructs or attempts to obstruct
532 the due execution of the law, or with the intent to intimidate,
533 hinder, deprive, or interrupt any officer, beverage enforcement
534 agent, or other person or party in the legal performance of his
535 or her duty or the exercise of his or her rights under the
536 constitution or laws of this state or the United States, in
537 connection with or relating to any legal process, whether such
538 intent is effected or not, commits a felony of the third degree,
539 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
540 This paragraph must be strictly enforced by law enforcement and
541 state attorneys without discretion.

542 (c) Any public servant or employee who under color of law
543 in any manner intentionally renders any ruling, order, or
544 opinion, or any action or inaction adverse or contrary to the
545 doctrines of stare decisis, binding precedent, the supremacy
546 clause of the United States Constitution, or his or her oath of
547 office in connection with or relating to any legal process
548 affecting persons and property, when clearly made apprised of
549 such evidence or information, commits a felony of the second
550 degree, punishable as provided in s. 775.082, s. 775.083, or s.
551 775.084, unless the servant or employee has the authority to

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552 overrule or recede from such rule of law, or distinguishes such
553 rule of law or sets forth some other intervening or superseding
554 evidence or information and does in ruling, order or opinion, or
555 action or inaction. This paragraph must be strictly enforced by
556 law enforcement and state attorneys without discretion.

557 (d) Any public servant or employee or person who commits or
558 causes any act in violation of 18 U.S.C. s. 241 or 18 U.S.C. s.
559 242 in connection with or relating to any legal process
560 affecting persons and property commits a felony of the second
561 degree, punishable as provided in s. 775.082, s. 775.083, or s.
562 775.084. This paragraph must be strictly enforced by law
563 enforcement and state attorneys without discretion.

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

566 924.051 Terms and conditions of appeals and collateral
567 review in criminal cases.—

568 (3) An appeal may not be taken from a judgment or order of
569 a trial court unless a prejudicial error is alleged and is
570 properly preserved or, if not properly preserved, would
571 constitute fundamental error. A judgment or sentence may be
572 reversed on appeal only when an appellate court determines after
573 a review of the complete record that prejudicial error occurred
574 and was properly preserved in the trial court or, if not
575 properly preserved, would constitute fundamental error. The
576 opinion of the court must be supported by at least one binding
577 authority for each point for review that must be cited in the
578 rendered final order or opinion. Neither the court file nor the
579 appellate record requires a transcript or statement of
580 proceedings for a proper, full examination of the case before

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581 the court.582 Section 16. Section 924.33, Florida Statutes, is amended to
583 read:584 924.33 When judgment not to be reversed or modified.—No
585 judgment shall be reversed unless the appellate court is of the
586 opinion, after an examination of all the appeal papers, that
587 error was committed that injuriously affected the substantial
588 rights of the appellant. It shall not be presumed that error
589 injuriously affected the substantial rights of the appellant.
590 The opinion of the court must be supported by at least one
591 binding authority for each point for review that must be cited
592 in the rendered final order or opinion. Neither the court file
593 nor the appellate record requires a transcript or statement of
594 proceedings for a proper, full examination of the case before
595 the court.596 Section 17. Section 939.051, Florida Statutes, is created
597 to read:598 939.051 Sanctions for unfounded offense, defense, or delay;
599 service of motions.—600 (1) The Legislature strongly encourages the courts, through
601 their inherent powers and pursuant to this section, to impose
602 sanctions against any person, lawyer or nonlawyer, including the
603 state, within the court's jurisdiction who is found at any time
604 in any trial court or appellate court proceeding to have abused
605 the judicial system in any way, including, but not limited to,
606 the following:607 (a) Abused a petition for extraordinary relief or
608 postconviction motion, or an appeal therefrom;609 (b) Abused or caused unreasonable delay in any pretrial

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610 proceeding;

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

614 (d) Improperly withheld or misleadingly uses evidence or
615 testimony;

616 (e) Adversely affected the orderly administration of
617 justice; or

618 (f) Partook in dilatory tactics, sandbagging, or any other
619 improper practices.

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

622 (a) Dismissal of a pleading or case.

623 (b) Disciplinary sanctions.

624 (c) A fine.

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

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

628 (3) A motion seeking sanctions under this section shall be
629 by the state, a defendant, whether a lawyer or nonlawyer, if pro
630 se, otherwise by his or her representing lawyer. The motion must
631 clearly express facts demonstrating conduct as described in
632 subsection (1), be verified, served on all the parties in the
633 case, and filed with the court within 10 days after being
634 subject to and apprised of the misconduct involved. Any motion
635 filed with the court that does not comply with this subsection
636 is void. This subsection is substantive and its requirements may
637 not be waived except in writing. This subsection does not apply
638 to sanctions ordered upon the court's initiative.

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

642 (5) The provisions of this section are supplemental to
643 other sanctions or remedies available under law or under court
644 rules.

645 (6) This section must be strictly enforced and complied
646 with.

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

648 Section 19. Section 985.35, Florida Statutes, is amended to
649 read:

650 985.35 Adjudicatory hearings; withheld adjudications;
651 orders of adjudication.—

652 (1) The adjudicatory hearing must be held as soon as
653 practicable after the petition alleging that a child has
654 committed a delinquent act or violation of law is filed and in
655 accordance with the Florida Rules of Juvenile Procedure; but
656 reasonable delay for the purpose of investigation, discovery, or
657 procuring counsel or witnesses shall be granted. If the child is
658 being detained, the time limitations in s. 985.26(2) and (3)
659 apply. The department shall adopt by rule procedures for
660 restraining a child upon his or her arrival at the courthouse.
661 The rules must prohibit the use of mechanical devices and
662 unreasonable restraints. In addition, a child may not be subject
663 to extended periods of isolation.

664 (2) Adjudicatory hearings shall be conducted without a jury
665 by the court, applying in delinquency cases the rules of
666 evidence in use in criminal cases; adjourning the hearings from
667 time to time as necessary; and conducting a fundamentally fair

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668 hearing in language understandable, to the fullest extent
669 practicable, to the child before the court.

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

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

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

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

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

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

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

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

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

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697
698 The department must comply with the Protective Action Response
699 policy adopted under s. 985.645(2) whenever mechanical
700 restraints are used.

701 (4)~~(3)~~ If the court finds that the child named in a
702 petition has not committed a delinquent act or violation of law,
703 it shall enter an order so finding and dismissing the case.

704 (5)~~(4)~~ If the court finds that the child named in the
705 petition has committed a delinquent act or violation of law, it
706 may, in its discretion, enter an order stating the facts upon
707 which its finding is based but withholding adjudication of
708 delinquency.

709 (a) Upon withholding adjudication of delinquency, the court
710 may place the child in a probation program under the supervision
711 of the department or under the supervision of any other person
712 or agency specifically authorized and appointed by the court.
713 The court may, as a condition of the program, impose as a
714 penalty component restitution in money or in kind, community
715 service, a curfew, urine monitoring, revocation or suspension of
716 the driver's license of the child, or other nonresidential
717 punishment appropriate to the offense, and may impose as a
718 rehabilitative component a requirement of participation in
719 substance abuse treatment, or school or other educational
720 program attendance.

721 (b) If the child is attending public school and the court
722 finds that the victim or a sibling of the victim in the case was
723 assigned to attend or is eligible to attend the same school as
724 the child, the court order shall include a finding pursuant to
725 the proceedings described in s. 985.455, regardless of whether

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726 adjudication is withheld.

727 (c) If the court later finds that the child has not
728 complied with the rules, restrictions, or conditions of the
729 community-based program, the court may, after a hearing to
730 establish the lack of compliance, but without further evidence
731 of the state of delinquency, enter an adjudication of
732 delinquency and shall thereafter have full authority under this
733 chapter to deal with the child as adjudicated.

734 (6)~~(5)~~ If the court finds that the child named in a
735 petition has committed a delinquent act or violation of law, but
736 elects not to proceed under subsection (5) ~~(4)~~, it shall
737 incorporate that finding in an order of adjudication of
738 delinquency entered in the case, briefly stating the facts upon
739 which the finding is made, and the court shall thereafter have
740 full authority under this chapter to deal with the child as
741 adjudicated.

742 (7)~~(6)~~ Except as the term "conviction" is used in chapter
743 322, and except for use in a subsequent proceeding under this
744 chapter, an adjudication of delinquency by a court with respect
745 to any child who has committed a delinquent act or violation of
746 law shall not be deemed a conviction; nor shall the child be
747 deemed to have been found guilty or to be a criminal by reason
748 of that adjudication; nor shall that adjudication operate to
749 impose upon the child any of the civil disabilities ordinarily
750 imposed by or resulting from conviction or to disqualify or
751 prejudice the child in any civil service application or
752 appointment, with the exception of the use of records of
753 proceedings under this chapter as provided in s. 985.045(4).

754 (8)~~(7)~~ Notwithstanding any other provision of law, an

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755 adjudication of delinquency for an offense classified as a
756 felony shall disqualify a person from lawfully possessing a
757 firearm until such person reaches 24 years of age.

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

760 985.483 Intensive residential treatment program for
761 offenders less than 13 years of age.—

762 (2) DETERMINATION.—After a child has been adjudicated
763 delinquent under s. 985.35 (6) ~~(5)~~, the court shall determine
764 whether the child is eligible for an intensive residential
765 treatment program for offenders less than 13 years of age under
766 subsection (1). If the court determines that the child does not
767 meet the criteria, ss. 985.435, 985.437, 985.439, 985.441,
768 985.445, 985.45, and 985.455 shall apply.

769 Section 21. Section 985.602, Florida Statutes, is created
770 to read:

771 985.602 Use of restraints during court proceedings
772 prohibited; exceptions.—

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

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

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

783 (c) The child has a history of disruptive behavior in the

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784 courtroom which places others in potentially harmful situations
785 or presents a substantial risk of inflicting bodily harm on
786 others as evidenced by recent behavior;

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

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

790 (2) The department must comply with the Protective Action
791 Response policy adopted under s. 985.645(2) whenever mechanical
792 restraints are used.

793 Section 22. This act shall take effect July 1, 2009.