

Florida Family Law

Text and Commentary

2013 Statutes

Phyllis Coleman

PROFESSOR OF LAW

NOVA SOUTHEASTERN UNIVERSITY

CAROLINA ACADEMIC PRESS
Durham, North Carolina

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ISBN: 978-1-61163-508-9

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
E-mail: cap@cap-press.com
www.cap-press.com

Printed in the United States of America

Contents

Acknowledgments.....	xi
Preface.....	xiii
Significant Legislative Changes.....	xv
Florida Constitution.....	1
Article I. Declaration of Rights.....	1
Article X. Miscellaneous.....	1
Florida Statutes.....	3
Chapter 20. Organizational Structure.....	3
Chapter 27. State Attorneys; Public Defenders; Related Offices.....	5
Part III. Public Defenders and Other Court-Appointed Counsel.....	5
Chapter 39. Proceedings Relating to Children.....	6
Part I. General Provisions.....	6
Part II. Reporting Child Abuse.....	32
Part III. Protective Investigations.....	45
Part IV. Taking Children Into Custody and Shelter Hearings.....	54
Part V. Petition, Arraignment, Adjudication, and Disposition.....	74
Part VI. Disposition; Postdisposition Change of Custody.....	88
Part VII. Case Plans.....	97
Part VIII. Permanency.....	106
Part IX. Judicial Reviews.....	113
Part X. Termination of Parental Rights.....	121
Part XI. Guardians Ad Litem and Guardian Advocates.....	138
Part XII. Domestic Violence.....	143
Chapter 48. Process and Service of Process.....	145
Chapter 49. Constructive Service of Process.....	146
Chapter 55. Judgments.....	146
Chapter 61. Dissolution of Marriage; Support; Time-sharing.....	147
Chapter 63. Adoption.....	245

Chapter 64.	Partition of Property	304
Chapter 68.	Miscellaneous Proceedings	305
Chapter 88.	Uniform Interstate Family Support Act	307
Part I.	General Provisions	308
Part II.	Jurisdiction	310
Part III.	Civil Provisions of General Application	314
Part IV.	Establishment of Support Order	320
Part V.	Direct Enforcement of Order of Another State Without Registration	320
Part VI.	Enforcement and Modification of Support Order After Registration	322
Part VII.	Determination of Parentage	326
Part VIII.	Interstate Rendition	327
Part IX.	Miscellaneous Provisions	327
Chapter 88.	Uniform Interstate Family Support Act (Amended)	328
Part I.	General Provisions	328
Part II.	Jurisdiction	332
Part III.	Civil Provisions of General Application	336
Part IV.	Establishment of Support Order	343
Part V.	Enforcement of Support Order of Another State Without Registration	344
Part VI.	Registration, Enforcement, and Modification of Support Order	346
Part VII.	Support Proceeding Under Convention	352
Part VIII.	Interstate Rendition	358
Part IX.	Miscellaneous Provisions	359
Chapter 90.	Evidence Code	359
Chapter 92.	Witnesses, Records, and Documents	369
Chapter 95.	Limitations of Actions; Adverse Possession	374
Chapter 193.	Assessments	376
Part I.	General Provisions	376
Chapter 196.	Exemption	377
Chapter 222.	Method of Setting Apart Homestead and Exemptions	378
Chapter 258.	State Parks and Preserves	379
Part I.	Parks	379
Chapter 322.	Drivers' Licenses	379
Chapter 328.	Vessels: Title Certificates; Liens; Registration	381
Chapter 381.	Public Health: General Provisions	381
Chapter 382.	Vital Statistics	387
Chapter 383.	Maternity and Infancy Hygiene	396
Chapter 384.	Sexually Transmissible Diseases	402
Chapter 390.	Termination of Pregnancies	403
Chapter 391.	Children's Medical Services	414
Part I.	General Provisions	414
Chapter 394.	Mental Health	415
Part V.	Involuntary Civil Commitment of Sexually Violent Predators	415
Chapter 402.	Health and Human Services: Miscellaneous Provisions	416

Chapter 409.	Social and Economic Assistance	418
Part I.	Social and Economic Assistance	418
Part II.	Kidcare	465
Chapter 414.	Family Self-Sufficiency	471
Chapter 415.	Protection from Abuse, Neglect, and Exploitation	474
Chapter 440.	Workers' Compensation	486
Chapter 446.	Job Training	486
Chapter 450.	Minority Labor Groups	487
Chapter 456.	Health Professions and Occupations: General Provisions	489
Chapter 624.	Insurance Code: Administration and General Provisions	490
Chapter 627.	Insurance Rates and Contracts	491
Part VI.	Health Insurance Policies	491
Part VII.	Group, Blanket, and Franchise Health Insurance Policies	491
Chapter 641.	Health Care Service Programs	493
Part I.	Health Maintenance Organizations	493
Chapter 689.	Conveyances of Land and Declarations of Trust	493
Chapter 708.	Married Women's Property	494
Chapter 731.	Probate Code: General Provisions	495
Part II.	Definitions	495
Chapter 732.	Probate Code: Intestate Succession and Wills	495
Part I.	Intestate Succession	495
Part II.	Elective Share of Surviving Spouse	497
Part III.	Pretermitted Spouse and Children	498
Part IV.	Exempt Property and Allowances	499
Part V.	Wills	502
Part VI.	Rules of Construction	502
Part VII.	Contractual Arrangements Relating to Death	502
Part VIII.	General Provisions	507
Chapter 741.	Husband and Wife	509
Chapter 742.	Determination of Parentage	539
Chapter 743.	Disability of Nonage of Minors Removed	552
Chapter 744.	Guardianship	564
Part I.	General Provisions	564
Part III.	Types of Guardianship	564
Part IV.	Guardians	569
Chapter 751.	Temporary Custody of Minor Children by Extended Family	570
Chapter 752.	Grandparental Visitation Rights	574
Chapter 753.	Supervised Visitation	575
Chapter 760.	Discrimination in the Treatment of Persons; Minority Representation	577
Chapter 768.	Negligence	577
Chapter 771.	Actions for Alienation of Affections, Criminal Conversation, Seduction, or Breach of Contract to Marry	578
Chapter 775.	Definitions; General Penalties; Registration of Criminals	579
Chapter 782.	Homicide	593
Chapter 784.	Assault; Battery; Culpable Negligence	595
Chapter 787.	Kidnapping; False Imprisonment; Luring or Enticing	

	a Child; Custody Offenses	610
Chapter 790.	Weapons and Firearms	612
Chapter 794.	Sexual Battery	616
Chapter 796.	Prostitution	626
Chapter 797.	Abortion	629
Chapter 798.	Adultery; Cohabitation	629
Chapter 800.	Lewdness; Indecent Exposure	630
Chapter 810.	Burglary and Trespass	632
Chapter 825.	Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults	635
Chapter 826.	Bigamy; Incest	641
Chapter 827.	Abuse of Children	641
Chapter 847.	Obscenity	647
Chapter 856.	Drunkenness; Open House Parties; Loitering; Prowling; Desertion	655
Chapter 874.	Criminal Gang Enforcement and Prevention	656
Chapter 877.	Miscellaneous Crimes	660
Chapter 914.	Witnesses; Criminal Proceedings	662
Chapter 918.	Conduct of Trial	663
Chapter 937.	Missing Person Investigations	664
Chapter 943.	Department of Law Enforcement	669
Chapter 944.	State Correctional System	672
Chapter 960.	Victim Assistance	674
Chapter 1000.	K-20 General Provisions	681
Chapter 1002.	Student and Parental Rights and Educational Choices	686
Part I.	General Provisions	686
Part II.	Student and Parental Rights	686
Part III.	Educational Choice	690
Part IV.	Home Education, Private Schools, Other Education Options	693
Chapter 1003.	Public K-12 Education	695
Part II.	School Attendance	695
Part IV.	Public K-12 Educational Instruction	696
Chapter 1006.	Support for Learning	698
Part I.	Public K-12 Education Support for Learning and Student Services	698
Chapter 1009.	Educational Scholarships, Fees, and Financial Assistance	706
Part II.	Postsecondary Student Fees	706
Chapter 1012.	Personnel	706
Part III.	Public Schools; Personnel	706
Part V.	Professional Development	709
Federal Statutes		711
Abortion		711
Title 18.	Crimes and Criminal Procedure	711
Marriage		712
Title I.	General Provisions	712
Title 28.	Judiciary and Judicial Procedure	713

Domestic Violence	713
Title 18. Crimes and Criminal Procedure	713
Immigration	718
Title 8. Aliens and Nationality	718
Employment	719
Title 29. Labor	719
Children	724
Title 18. Crimes and Criminal Procedure	724
Title 25. Indians	732
Title 28. Judiciary and Judicial Procedure	739
Title 42. The Public Health and Welfare	744
Title 15. Commerce and Trade	750
Taxes	751
Title 26. Internal Revenue Code	751
Bankruptcy	774
Title 11. Bankruptcy	774
Bounds of Advocacy	779
Index	783

Acknowledgments

First, I want to thank my friends and colleagues who have helped me with this project: Robert M. Jarvis, for giving me the push, and confidence, to think I could actually produce this book, in addition to much valuable advice during the creation and revision of the manuscript, Gail Richmond for all her technical help, and Johnny C. Burris for his encouragement and suggestions. Thanks also to Mark Coady for his continuing support and understanding.

Second, Tim Colton at Carolina Academic Press always deserves special mention for being available to help whenever I need him.

Finally, Julia Sturgill provided invaluable assistance.

Preface

This book, which contains selected Florida constitutional provisions and statutes, in addition to federal legislation, can be used as a supplement to all domestic relations casebooks. By using this publication, students will learn current Florida law while they sharpen their ability to read and interpret statutes.

The publication also provides practitioners with a handy desktop research tool.

Department refers to the Department of Children and Families unless otherwise specified.

Helpful websites:

- <http://www.leg.state.fl.us/Welcome/index.cfm> (Florida statutes).
- http://www.flcourts.org/gen_public/family/forms_rules/index.shtml#petsup (Florida family law forms).

A revised edition will be published each year to update the statutes. As a result, I would appreciate receiving your comments and suggestions. Please direct them to:

Professor Phyllis Coleman
Nova Southeastern University Law Center
3305 College Avenue
Fort Lauderdale, Florida 33314-7721
Phone: (954) 262-6166
Fax: (954) 262-3835
E-mail: colemanp@nsu.law.nova.edu

Significant Legislative Changes

During the 2013 session, state legislators amended or created a wide variety of family law statutes. This summary highlights key revisions to the laws in this book and, for easy reference, provides bill (listed chronologically) and statute numbers, as well as effective dates. Sections that merely conform provisions to new terminology, delete obsolete definitions, or make minor corrections are not discussed.

Before reviewing all the individual statutory changes, it is important to at least briefly discuss a few important topics.

Same-sex marriage

On June 26, 2013, the Supreme Court decided *United States v. Windsor*, 133 S. Ct. 2675 (2013). However, in the companion case, *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), it remanded with instructions to dismiss the appeal based on lack of jurisdiction.

In *Windsor*, the Court held the Defense of Marriage Act (DOMA) that defined “marriage” as a legal union between a man and a woman, and “spouse” as a person of the opposite sex, is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment. This decision is likely to have far-reaching effects. Indeed, the opinion notes that, “[t]he particular case at hand concerns the estate tax, but DOMA is more than a simple determination of what should or should not be allowed as an estate tax refund. Among the over 1,000 statutes and numerous federal regulations that DOMA controls are laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans' benefits.” *Windsor*, 133 S. Ct. at 2694.

Although the opinion does not really discuss its potential impact on the continued viability of state DOMA statutes (§ 741.212 in Florida) or state constitutional bans (Art. I, § 27 in Florida which is one of 29 states that currently have such a prohibition), experts predict that *Windsor* will bring significant changes in the months ahead. Indeed, of the more than dozen pending challenges to same-sex marriage laws, nine were filed *post-Windsor*.

In late September, a New Jersey judge became the first to strike down a state’s refusal to legalize same-sex marriage based on *Windsor*. Kate Zernike and Marc Santora, *Judge Orders New Jersey to Allow Gay Marriage*, N.Y. TIMES, Sept. 27, 2013, available at http://www.nytimes.com/2013/09/28/nyregion/new-jersey-judge-rules-state-must-allow-gay-marriage.html?_r=0.

Terminating rapists' parental rights

Similar to a number of other states, Florida legislators decided that statutes should explicitly provide that a rapist should not have parental rights to a child conceived as a result of sexual battery. Although most people would agree with such a law, the statutory language in § 39.806(1)(m) is flawed because it is broad enough to also terminate the victim's parental rights because the child was the product of sexual battery.

Clearly that was not the legislative intent. But it is the plain meaning of the statute. Section 39.811(6)(e), a provision amended in 2013 but only to explicitly cover subsection (m), permits severing only one parent's rights in certain circumstances including sexual battery. However, to resolve the problem with § 39.806(1)(m), it should be amended to say something like (additions are bracketed and bold italics, a strike through indicates deletions):

It is presumed that termination of [*the father's*] parental rights is in the best interest of the child if the child was conceived as a result of ~~the~~ [*his*] unlawful sexual battery [*on the mother*].

Human trafficking

Human trafficking is defined as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.” Fla. Stat. § 787.06 (2013). Victims include men, women, and children subjected to sexual exploitation or compelled labor through force, fraud, or coercion. An estimated 27 million people are enslaved worldwide. This is a particular problem in Florida as, in 2011, we ranked third in the number of calls received by National Human Trafficking Resource Center's hotline.

Victims are frequently coerced into committing crimes such as petty theft, drug possession, and prostitution. Then they are treated as criminals which has a truly negative impact on their lives including their ability to get jobs and rent apartments. As a result, legislators amended the statutes to provide for expunging these records. Fla. Stat. § 943.0583 (2013). Intended to give victims a “fresh start,” lawmakers provided that when their records are expunged, they may “lawfully deny or fail to acknowledge the arrests covered by the expunged record.” *Id.* Notably, however, this protection is not available for people applying to the Florida Bar. Fla. Stat. § 943.085(4)(a)4. (2013).

Education

Several bills addressed changes in education, some focusing particularly on digital or online courses.

Abortion

Concerns about late term and partial-birth abortions seem obvious in the statute which provides that an infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth. The provision also requires that, if possible, health care practitioners preserve life and health of such infant born alive.

Foster children

The legislature directed the department to assist foster care caregivers to achieve quality parenting. Lawmakers also established room and board rates to be paid, effective January 1, 2014, to foster parents. Further, they mandated annual cost of living increases.

In addition, recognizing the importance of “extracurricular, enrichment, and social activities by children in out-of-home care,” the legislature provided for participation in such age-appropriate pastimes. Notably, they also instituted use of a reasonable and prudent parent standard for decision-making in this context.

Sudden Unexpected Infant Death

Each year approximately 4,000 infants die suddenly of no obvious cause. About half of these Sudden Unexpected Infant Deaths (SUID) are due to Sudden Infant Death Syndrome (SIDS), the leading cause of all deaths among infants aged one month to one year old. Notably, although the overall rate of SIDS declined by more than 50% since 1990, rates for non-Hispanic black and American Indian/Alaska Native infants remain disproportionately higher than the general population.

Similar to the rest of the country, Florida has decided that reducing the risk is an important public health priority. Thus, the legislature enacted several statutory provisions focusing on education, training, and developing protocols to attempt to eliminate this problem.

Turning to the individual bills, the following substantively alter or create Florida family law statutes.

2013-21 (Effective July 1, 2013)

An act relating to dependent children and providing a short title “Quality Parenting for Children in Foster Care Act.”

Creates § 39.4091

- Includes legislative findings and intent.
- Defines terms.
- Provides for participation in age-appropriate extracurricular, enrichment, and social activities by children in out-of-home care.
- Incorporates use of a reasonable and prudent parent standard for decision-making about these activities.
- Establishes rulemaking authority.

Amends § 39.522

- Clarifies standard for reunification and for changing custody.

Amends § 409.1451

- Provides for use of reasonable and prudent parent standard in certain decision-making.
- Requires submission of plan for judicial review.
- Defines terms.
- Mandates department adopt rules that provide caregivers flexibility to enable children in their care to participate in normal life experiences. They must reflect the considerations listed in s. 39.4091(3)(b) in connection with the reasonable and prudent parent standard. The department shall (1) engage in appropriate planning to prevent, to the extent possible, a reduction in awards after issuance and (2) adopt rules to govern payments and conditions related to payments for services to youth or young adults provided under this section.

2013-45 (Effective July 1, 2013)

An act relating to education.

Amends § 1006.73

- Revises purposes, duties, and responsibilities of the Florida Virtual Campus.

2013-51 (Effective July 1, 2013)

An act relating to education.

Amends § 39.205

- Requires nonpublic colleges, universities, and schools, as well as state universities, adopt regulations to implement provisions concerning reporting child abuse, abandonment, or neglect.

***Editor's note:** This amendment is obviously in response to the situation at Penn State where a former assistant football coach was convicted of 45 counts of child sexual abuse. Jerry Sandusky, 69, is now serving 30 to 60 years in prison although he is seeking a new trial. The scandal cost the university dearly. As the story broke, it seemed popular long-time coach Joe Paterno, as well the school's president and athletic director, knew about Sandusky but, rather than report the abuse, they covered it up to protect the football program. Subsections (3) through (5) were enacted in 2012. In the 2013 legislative session, lawmakers added (10).*

2013-62 (Effective July 1, 2013)

An act relating to infant death.

Amends § 383.311

- Revises education and orientation requirements for birth centers and their families to incorporate safe sleep practices and causes of Sudden Unexpected Infant Death.

Amends § 383.318

- Modifies instructions on postpartum care for birth center clients and infants to incorporate information on safe sleep practices and causes of Sudden Unexpected Infant Death.

Amends § 383.3362

- Changes legislative findings and intent with respect to the sudden unexpected death of an infant under a specified age.
- Defines term “Sudden Unexpected Infant Death.”
- Alters provisions relating to training requirements for first responders.
- Adjusts requirements relating to autopsies performed by medical examiners.
- Requires Medical Examiners Commission to provide for the development and implementation of a protocol for the forensic investigation of Sudden Unexpected Infant Death.

2013-74 (Effective July 1, 2013)

An act relating to homelessness.

Creates § 414.161

- Establishes homelessness prevention grant program.
- Requires grant applicants to be ranked competitively.
- Provides preference for certain grant applicants.
- Lists eligibility requirements.
- Compiles grant limitations and restrictions.
- Mandates lead agencies for local homeless assistance continuums of care track, monitor, and report on assisted families for a specified period.

Repeals § 414.16

- Transfers funds from emergency assistance program for families with children that have lost shelter or face loss of shelter due to an emergency to homelessness prevention grant program.

2013-75 (Effective October 1, 2013)

An act relating to distributing materials harmful to minors.

Amends § 847.012

- Provides it is third degree felony for any person to knowingly distribute certain materials harmful to minors to a minor or post them on school property.
- Defines term “school property” as the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

- Includes exception for “school-approved instructional materials.”

2013-80 (Effective October 1, 2013)

An act relating to criminal gang prevention.

Amends § 810.0975

- Establishes enhanced criminal penalties for certain trespassing offenses in school safety zones by a person convicted of certain gang-related offenses.

Amends § 874.05

- Provides enhanced criminal penalties for someone “who intentionally causes, encourages, solicits, or recruits another person to become a criminal gang member where a condition of membership or continued membership is the commission of any crime.” The severity of the crime depends on the age of the person induced to become a criminal gang member.

2013-81 (Effective July 1, 2013)

An act relating to children's initiatives.

Amends § 409.147

- Creates New Town Success Zone in Duval County and Parramore Kidz Zone in Orange County.
- Provides for projects to be managed by not for profit corporations not subject to control, supervision, or direction by any state department.
- Requires corporations to be subject to requirements for state public records and meetings as well as procurement of commodities and contractual services.
- Mandates designated children's initiatives to assist in the creation of community-based service networks and programming that provides certain services for children and families residing in disadvantaged areas of the state.
- Establishes evaluation, fiscal management, and oversight of the projects.

2013-87 (Effective July 1, 2013)

An act relating to bullying in the public school system.

Amends § 1006.147

- Revises provisions forbidding bullying or harassment students or school employees through computer-related activities.
- Prohibits bullying or harassment through the use of data or computer software accessed at a nonschool-related location or activity if certain conditions are met.
- Provides bullying includes cyberbullying.
- Defines “cyberbullying” and “within the scope of a public K–12 educational institution.”

- Requires use of computers without web-filtering software or computers with web-filtering software that is disabled when investigating complaints of cyberbullying.
- Mandates that each school district include in its district-wide policy instruction on recognizing behaviors that lead to bullying and harassment and taking appropriate preventive action.

2013-88 (Effective October 1, 2013)

An act relating to electronic benefits transfer cards.

Amends § 402.82

- Gives department enforcement authority.
- Restricts use of electronic benefits transfer cards.
- Prohibits use of electronic benefits transfer card at following places: licensed under the Beverage Law, adult entertainment establishment, a pari-mutuel facility, a slot machine facility, an unauthorized commercial bingo facility, a casino, a gaming or gambling facility, or any gaming activities.

2013-89 (Effective July 1, 2013)

An act relating to certified school counselors.

Amends § 1003.21

- Mandates counselors in elementary, middle, and high schools be certified school counselors.

2013-98 (Effective January 1, 2014)¹

An act relating to victims of human trafficking.

Amends § 90.803

- Changes from 11 to 16 mental, emotional, or developmental age of a child victim whose out-of-court statement describing specified criminal acts is admissible in evidence in certain instances.

Creates § 943.0583

- Defines terms.
- Permits granting petition for expunction of criminal history record of a victim of human trafficking by preponderance of evidence.
- Designates which offenses may be expunged.
- Specifies exceptions.
- Establishes that an expunged conviction is deemed vacated due to a substantive defect in the underlying criminal proceedings.
- Sets time period during which such expungement must be sought.

- Explains official documentation of status as human trafficking victim creates a presumption that participation in the offense result of that status.
- Adopts clear and convincing evidence standard of proof absent official documentation.
- Lists requirements for petitions.
- Notes criminal penalties for false statements on such petitions.
- Provides for appropriate parties and service of such petitions.
- Allows electronic appearances by petitioners and attorneys at hearings.
- Imposes responsibility to forward orders of relief.
- Mandates physical destruction of certain records.
- Authorizes person whose records are expunged to lawfully deny or fail to acknowledge the arrests covered by the expunged record.
- Approves exceptions.
- Clarifies such lawful denial does not constitute perjury or subject the person to liability.

¹Note: However, neither the Department of Law Enforcement nor any other criminal justice agency is required to comply with an order to expunge a criminal history record as required by this act before March 1, 2014.

2013-107 (Effective July 1, 2013)

An act relating to expert testimony.

Amends § 90.702

- Requires state courts to interpret and apply principles of expert testimony in conformity with specified United States Supreme Court decisions.
- Allows expert witness to testify in the form of an opinion “or otherwise,” if: (1) testimony based upon sufficient facts or data; (2) testimony is product of reliable principles and methods; and (3) “witness has applied the principles and methods reliably to the facts of the case as expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case.”

Amends § 90.704

- Provides facts or data otherwise inadmissible in evidence may not be disclosed to the jury by proponent of opinion or inference unless court determines probative value of facts or data in assisting jury to evaluate expert's opinion substantially outweighs prejudicial effect of facts or data.

2013-116 (Effective July 1, 2013)

Amends § 937.021

- Revises provisions relating to missing child and adult reports.

Amends § 937.024

- Modifies provisions relating to birth records of missing children.

Amends § 937.025

- Changes provisions regarding criminal penalties for persons who knowingly give false information concerning a missing child.

Amends § 937.028

- Adjusts provisions relating to fingerprints of missing persons.
- Authorizes retention of such fingerprints entered into statewide biometric identification system.

2013-121 (Effective July 1, 2013)

An act relating to infants born alive.

Amends § 390.011

- Defines “born alive.”

Amends § 390.0111

- Provides infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth.
- Mandates health care practitioners preserve life and health of such infant born alive, if possible.
- Requires transport and admittance to a hospital of infant born alive.
- Directs health care practitioner or certain employees who have knowledge of any violations with respect to infants born alive after an attempted abortion to report those violations to the Department of Health.
- Establishes penalty.

Amends § 390.0112

- Modifies reporting requirement.

2013-123 (Effective July 1, 2013)

An act relating to licensure fee exemptions for military veterans.

Amends § 456.013

- Mandates Department of Health waive certain licensure fees for veterans.
- Requires department to prescribe format of fee waivers.
- Limits time period veteran can apply to 24 months after honorable discharge.

2013-132 (Effective July 1, 2013)¹

An act relating to termination of parental rights.

Amends § 39.806

- Establishes parent's rights may be terminated if the court determines, by clear and convincing evidence, child was conceived during an act of unlawful sexual battery.
- Creates presumption that termination of parental rights in best interest of child if child conceived as a result of unlawful sexual battery.
- Mandates court accept guilty plea or conviction as conclusive proof child conceived by violation of criminal law.
- Permits petition to terminate parental rights to be filed at any time.

Amends § 39.811

- Provides for termination parental rights of only one parent if conception was result of unlawful sexual battery.
- Allows for retroactive application.

¹Note: Applies to all unlawful acts of sexual battery occurring before, on, or after that date.

2013-162 (Effective July 1, 2013)

An act relating to intellectual disabilities.

Amends §§ 39.502, 92.53, 92.54, 92.55, 914.16, 914.17, 918.16

- Substituting Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children and the term (and variations of the term) “intellectual disability” for the term (and variations of the term) “mental retardation.”

2013-172 (Effective October 1, 2013)

An act relating to estates.

Amends § 732.703

- Revises language regarding instruments governed by the laws of a different state.

Creates § 732.806

- Provides any part of written instrument making gift to lawyer or person related to lawyer void if lawyer prepared or supervised execution of instrument, or solicited gift, unless lawyer or other gift recipient related to person making gift.

2013-178 (Effective January 1, 2014)

An act relating to independent living and providing a short title.

Amends § 39.013

- Provides when court obtains jurisdiction over child found to be dependent, court retains jurisdiction until the child reaches 21 rather than, as previously, 18.

- Adds exceptions.

Creates § 39.6035

- Mandates Department of Children and Families, the community-based care provider, and others assist child in developing transition plan after the child reaches 17 and requires meeting to develop plan.
- Specifies requirements and procedures for the transition plan.
- Orders periodic review of transition plan.
- Compels court to approve transition plan before child leaves foster care and the court terminates jurisdiction.

Creates § 39.6251

- Defines terms.
- Permits young adult to remain in foster care under certain circumstances after reaching 18 years of age.
- Establishes criteria for extended foster care.
- States permanency goal for young adult who chooses to remain in care is transition from care to independent living.
- Specifies dates for eligibility for a young adult to remain in extended foster care.
- Provides for supervised living arrangements in extended foster care.
- Allows young adult to return to foster care under certain circumstances.
- Details services that must be provided to young adult.
- Directs court to retain jurisdiction and hold review hearings.

Amends § 39.701

- Modifies judicial review of foster care cases.
- Establishes criteria for review hearings for children younger than 18 years old.
- Specifies criteria for review hearings for children 17 years old.
- Requires department to verify child has certain documents.
- Mandates department update case plan.
- Provides for review hearings for young adults in foster care.

Amends § 409.145

- Compels department to develop and implement system of care for children in foster care.
- Identifies goals of foster care system.
- Directs department to assist foster care caregivers to achieve quality parenting.
- Describes roles and responsibilities of caregivers, the department, and others.

- Provides for transition from caregiver.
- Mandates information sharing.
- Directs adoption and use of a “reasonable and prudent parent” standard.
- Defines terms.
- Establishes “reasonable and prudent parent” as the standard of care.
- Limits liability of caregivers “for harm caused to a child who participates in an activity approved by the caregiver, provided that the caregiver has acted in accordance with the reasonable and prudent parent standard” but notes section “may not be interpreted as removing or limiting any existing liability protection afforded by law.”
- Specifies foster care room and board rates.
- Authorizes community-based care service providers to pay a supplemental monthly room and board payment to foster parents for providing certain services.
- Obligates department to adopt rules.

Amends § 409.1451

- Rewords description of Road-to-Independence program.
- Includes legislative findings and intent.
- Explains postsecondary services and supports.
- Describes aftercare services.
- Permits appeals of eligibility determinations.
- Allows portability of services across county lines and between lead agencies.
- Orders department “to develop outcome measures for the program and other performance measures in order to maintain oversight of the program” and provide accountability.
- Creates Independent Living Services Advisory Council.

2013-215 (Effective October 1, 2013)

An act relating to a review under the Open Government Sunset Review Act.

Amends § 741.313

- Clarifies section regarding personal identifying information contained in records documenting domestic violence or sexual violence and submitted by an agency employee to an agency, is confidential and exempt.
- Removes scheduled repeal of the exemption.

2013-219 (Effective July 1, 2013)

An act relating to residential services for children.

Amends § 39.201

- Limits duty for an officer or law enforcement agency employee to provide notice to Department of Children and Families when reasonable cause to suspect child abuse.
- Restricts Central Abuse Hotline duty to electronically transfer certain calls and reports to the county sheriff's office under certain circumstances.

2013-225 (Effective July 1, 2013)

An act relating to education.

Amends § 1002.321

- Requires Department of Education to develop online catalog of digital learning courses.

2013-236 (Effective July 1, 2013)

An act relating to exceptional student education.

Amends § 1002.20

- Prohibits certain actions with respect to parent meetings with school district personnel.
- Provides requirements for meetings relating to exceptional student education and related services.

Amends § 1002.33

- Provides sponsor shall reimburse charter school monthly for all invoices submitted by charter school for federal funds available to sponsor for benefit of charter school, its students, and its students as public school students in school district.
- Includes requirements for reimbursement.