

# **Florida Family Law**



# **Florida Family Law**

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*Text and Commentary*

2017 Statutes

**Phyllis Coleman**

PROFESSOR OF LAW

NOVA SOUTHEASTERN UNIVERSITY

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

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ISBN: 978-1-5310-0858-1

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Durham, North Carolina 27701  
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Printed in the United States of America

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## Acknowledgments

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First, much gratitude to my friend and colleague, Robert M. Jarvis (who, 20 years ago, gave me the push and confidence to think I could actually produce this book), and my family, Mark Coady and Susan Melian, for their continuing support understanding.

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

Third, thanks also to the Shepard Broad College of Law research librarians, Robert Beharriell, Becka Rich, and Alison Rosenberg, who also eagerly lend a hand whenever asked.

Finally, I want to express appreciation to my research assistants, Candace Lerman and Thomas Sternberg, for their invaluable aid.



## Preface

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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/statutes> (Florida statutes)
- <http://www.flcourts.org/resources-and-services/court-improvement/family-law-self-help-information/family-law-forms.shtml> (Florida family law forms).
- <http://www.flcourts.org/resources-and-services/family-courts/family-law-self-help-information/family-law-rules-opinions.shtml> (Family Law Rules and recent opinions).

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:

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## Significant Legislative Changes

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State legislators amended or created a wide variety of family law statutes in 2017. This section 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. Amendments that merely conform provisions to new terminology, delete obsolete definitions, or make minor corrections are not discussed although, of course, they have been made.

Before reviewing individual statutory changes, this summary briefly explains several of the noteworthy modifications.

Interestingly, children seem to have been the focus of many of the important changes.

### ***Driver's licenses for teens in out-of-home care***

Recognizing that foster kids and those in out-of-home placements were at a serious disadvantage in learning to drive safely and obtaining a driver's license, in 2014 Florida became the first state to endorse the Keys to Independence concept when legislators established a pilot program. It was so successful that, in 2017, lawmakers passed 2017-8 unanimously to make it permanent. The law provides, *inter alia*, for access to driver's education classes, money for fees associated with obtaining a license as well as insurance, and protection from liability for those who sign to allow the teen to learn to drive. FLA. STAT. § 409.1454 (2017); Les Neuhaus,, *New Law Gives Thousands of Foster Care Teens Big Boost In Acquiring Driver's Privileges*, FLORIDA POLITICS, Feb. 16, 2017, <http://floridapolitics.com/archives/232261-new-law-gives-thousands-foster-care-teens-big-boost-acquiring-drivers-privileges>.

### ***Disposition orders for children in out-of-home placements***

Concerns about minors in out-of-home placements led legislators to require such a disposition order include a written determination that the kids could not remain at home even with an in-home safety plan and if, after removal, the department made a reasonable effort to reunify parent and child. In 2017-151, legislators added new requirements for family functioning assessments including:

1. Evidence of maltreatment and circumstances accompanying maltreatment.
2. Identification of all danger threats active in the home.

3. Assessment of adult functioning of parents.
4. Assessment of parents' general parenting practices and parents' disciplinary approach and behavior management methods.
5. Assessment of the parents' behavioral, emotional, and cognitive protective capacities.
6. Assessment of child functioning.
7. A safety analysis describing capacity for in-home safety plan to control conditions that result in child being unsafe and specific actions necessary to keep child safe.
8. Identification of conditions for return which would allow child to be placed safely back into the home with an in-home safety plan and any safety management services necessary to ensure the child's safety.
9. Child welfare history from department's Statewide Automated Child Welfare Information System (SACWIS) and criminal records check for all caregivers, family members, and individuals residing within the household from which the child was removed. FLA. STAT. § 39.521 (2017).

To reunify the child, the court must review the conditions for return and determine whether the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied so that return home with an in-home safety plan prepared or approved by the department will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health. In addition, where the issue is whether a child placed in the custody of a parent should be reunited with the other parent upon a finding that the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied to the extent that the return of the child to the home of the other parent with an in-home safety plan prepared or approved by the department will not be detrimental to the child, the standard shall be that the safety, well-being, and physical, mental, and emotional health of the child would not be endangered by reunification and that reunification would be in the best interest of the child. FLA. STAT. § 39.521 (2017).

Perhaps most importantly, the bill provided legislative findings and intent including:

1. It is a basic tenet of practice and law that children be put in the least restrictive, most family-like setting available, close to home, that meets their needs, and they be placed in permanent homes in a timely manner.
2. The Legislature finds an association between placements that do not meet the needs of the child and adverse outcomes for the child, that mismatching placements to children's needs has been identified as a factor that negatively impacts placement stability, and that identifying the right placement for each child requires effective assessment.
3. Whenever a child is unable to safely remain at home with a parent, the Legislature intends the most appropriate available out-of-home placement shall be

chosen after an assessment of the child's needs and the availability of caregivers qualified to meet the child's needs. FLA. STAT. § 39.523 (2017).

#### ***Medicinal marijuana for children in schools***

After lengthy, hard-fought battles and disappointments, a constitutional amendment in Florida finally made is possible for children with serious conditions for which medical marijuana would provide relief to be able to obtain the drug. The measure became effective January 3, 2017. To further ensure convenient access to their medication, 2017-232 mandated district school boards adopt policies and procedures for access in school to the drug for students who are qualified patients. Unfortunately, some school administrators fear that federal government officials may disagree with state law and that might mean criminal prosecution of the individuals as well as loss of federal funds for school districts. "The expansion of marijuana use policies in the states has largely gone unchecked by federal officials; however, the expansion into schools presents a different set of issues and could meet some federal pushback," according to a report by the Education Commission of the States (a group that studies education policy). FLA. STAT. § 1006.062 (2017). Scott Travis, *Medical Marijuana's Legal, But Schools Fear Crackdown If Students Use It*, SUNSENTINEL (Fort Lauderdale, FL), Aug. 11, 2017, <http://www.sun-sentinel.com/news/education/fl-medical-marijuana-florida-schools-20170810-story.html>.

#### ***"Title IV-D Standard Parenting Time Plan"***

In 2017-117, legislators created a "Title IV-D Standard Parenting Time Plan." Noting that "[t]he best interest of the child is the primary consideration of the parenting plan and special consideration should be given to the age and needs of each child," the statute mimics the general time-sharing provisions and states "[t]here is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when a parenting time plan is created." Because the parent who owes support is still entitled to parenting time with his child, if there is no agreed-upon signed parenting plan, the statute provides a detailed proposed schedule for the parties to consider. Notably, the law provides the plan "not intended for the use by, and may not be provided to, parents and families with domestic or family violence concerns." And, if after incorporation of an agreed-upon plan one parent becomes concerned about the child's safety during his time with the other parent, he may seek modification through an appropriate court. FLA. STAT. § 409.25633 (2017).

#### ***When children abuse their parents***

Although the incidence of parental abuse is not known but considered to be underreported, it is clear that it does happen and may be a growing problem. In fact, there are two different circumstances under which such mistreatment occurs. One is teenagers who have gotten bigger and stronger than their parents and terrorize them physically and/or verbally. The second is adult children (who may even be caregivers) but who intimidate their elderly, generally frail mother and/or father. Either way, this is a crime and should be reported. In 2017-123, lawmakers recognized it is a problem and added "the issues involved in child-to-parent cases" to the types of basic domestic violence skills training law enforcement officers must obtain. FLA. STAT. § 943.171.

***Religious freedom for children***

In a chapter about student and parent rights, the “Florida Student and School Personnel Religious Liberties Act” is not limited to children although the main emphasis is on the kids. Nevertheless, 2017-74 prohibits school districts from discriminating against students, parents, or school personnel on the basis of religious viewpoints or expression. The statute is comprehensive and, among other rights, allows students to express their beliefs through “coursework, artwork, and other written or oral assignments free from discrimination.” In addition, students may wear clothing, accessories and jewelry that display their religious messages. In fact, the other sections make it clear that religious minors are entitled to the same rights and privileges as their secular classmates. FLA. STAT. § 1002.206 (2017).

***“Grieving Families Act”***

Adding to the procedure for death and fetal death certificates, the 2017-38 created a system for acknowledging nonviable fetal birth. Defined as “an unintentional, spontaneous fetal demise occurring after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified . . .” parent(s) may request the involved health care practitioner or facility register the occurrence. FLA. STAT. §§ 382.002, 382.008 (2017).

At this point, it is appropriate to turn to an overview of amendments and new statutory provisions.

**2017-8 (Effective upon becoming a law)**

An act relating to children obtaining driver licenses.

***Amends § 409.1454***

- Revises legislative findings.
- Makes pilot program permanent.
- Includes children in out-of-home care.
- Authorizes program to pay for child to complete driver education program and obtain driver license or related costs under certain circumstances.

***Amends § 39.6035***

- Modifies child’s transition plan to include choices for obtaining driver license under certain circumstances.

***Amends § 39.701***

- Empowers court to determine if appropriate steps being taken to obtain license for child 15 or older to obtain license or learner’s permit.

***Amends § 322.09***

- Provides guardian ad litem authorized by a minor’s caregiver to sign for minor’s learner’s driver license does not assume any obligation or liability for any resulting damages.

**2017-13** (Effective July 1, 2017)

An act relating to proceedings involving minors or certain other persons.

***Amends § 92.55***

- Provides judges may allow the use of certain therapy animals or facility dogs in proceedings involving abuse, abandonment, or neglect.
- Permits such animals to be used when taking testimony of certain other persons including a “victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness.”
- Provides definitions of “facility dog” and “therapy animal.”

**2017-23** (Effective October 1, 2017)

An act relating to human trafficking.

***Amends § 39.524***

- Requires Department of Children and Families or a sheriff’s office to conduct multidisciplinary staffing on child victims of commercial sexual exploitation to determine child’s service and placement needs.

***Amends § 92.565***

- Adds commercial sexual activity as a crime in which the defendant’s admission can be introduced during trial.

***Amends § 409.016***

- Adds definition for “commercial sexual exploitation.”

***Amends. 409.1678***

- Deletes term “sexually exploited child.”

***Amends 409.1754***

- Mandates department or sheriff’s office conduct multidisciplinary staffings for child victims.
- Requires service plan for victims of child commercial sexual exploitation.
- Directs the department or sheriff’s office to follow up on all victims of child commercial sexual exploitation within six months of completion of the child abuse investigation.
- Provides “the followup for nondependent victims and their families is voluntary, and the victim, family, or legal guardian is not required to respond.”

**2017-27** (Effective July 1, 2017)

An act relating to state park fees.

***Creates § 258.0142***

- Provides certain discounts on state park fees to specified foster and adoptive families.

**2017-38** (Effective July 1, 2017)

An act relating to certificates of nonviable birth.

***Amends § 382.002***

- Adds definitions of “nonviable birth.”

***Creates § 382.0086***

- Requires Department of Health to issue a certificate of nonviable birth within a specified timeframe upon the request of a parent.
- Mandates person registering nonviable birth advise parent that certificate of nonviable birth is available, that it is public record, and that certain information is exempt from disclosure.
- Directs request for certificate of nonviable birth be on form prescribed by department and include certain information.
- Provides requirements for the certificate of nonviable birth.
- Authorizes parent to request a certificate of nonviable birth regardless of date of nonviable birth.
- Designates refusal to issue certificate of nonviable birth to certain persons as final agency action not subject to administrative review.
- Prohibits use of certificates of nonviable birth to calculate live birth statistics.
- Excludes specified provisions from being used in certain civil actions.

**2017-74** (Effective July 1, 2017)

An act relating to religious expression in public schools.

***Creates § 1002.206***

- Provides short title, “Florida Student and School Personnel Religious Liberties Act.”
- Prohibits school district from discriminating against students, parents, or school personnel on the basis of religious viewpoints or expression.
- Forbids penalty or reward for a student’s religious expression in coursework, artwork, or other specified assignments.
- Authorizes student to wear clothing, accessories, and jewelry displaying religious messages or symbols.
- Permits students to pray or engage in religious activities or expression.

- Allows students to organize prayer groups, religious clubs, and other religious gatherings.
- Precludes school district from preventing school personnel from participating in voluntary, student-initiated religious activities on school grounds “if such activities are voluntary and do not conflict with the responsibilities or assignments of such personnel.”
- Requires school district comply with federal requirements in Title VII of the Civil Rights Act of 1964.
- Mandates school district provide religious groups with equal access to school facilities.
- Establishes religious groups can advertise or announce meetings in the same manner and to the same extent as secular groups.
- Commands school district adopt a limited public forum policy and deliver a disclaimer at school events.
- Decrees Department of Education develop and publish a model policy regarding limited public forum and religious expression.
- Directs school district adopt policy establishing limited public forum for student speakers at any school event at which a student is to speak publicly. This requires school district:
  1. Provide forum in a way that does not discriminate against student’s voluntary expression of religious viewpoint on an otherwise permissible subject;
  2. Provide a method based on neutral criteria for the selection of student speakers at school events, activities, and graduation ceremonies;
  3. Ensure that student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and
  4. State in written or oral form that the student’s speech does not reflect endorsement, sponsorship, position, or expression of the school district.

**2017- 80** (Effective July 1, 2017)

An act relating to child protection.

***Amends § 61.13***

- Prohibits time-sharing plan from requiring or being interpreted to require visitation at a recovery residence between 9 p.m. and 7 a.m.
- Provides exception if court “makes a specific finding that such visitation is in the best interest of the child.”
- Requires court to consider certain factors, “including, but not limited to, whether the parent resides in a specialized residence for pregnant women or parents whose children reside with them, the number of adults living in the recovery residence, and the parent’s level of recovery[,]” to determine the best interest of the child.

- Forbids court from ordering visitation at a recovery residence if the time-sharing plan did not mention a recovery residence or if any resident in the facility is currently required to register as a sexual predator.

**2017-116** (Effective July 1, 2017)

An act relating to education.

***Amends § 1011.78***

- Revises school district and charter school uniform requirements to qualify for a standard student attire incentive payment.

***Amends § 1002.455***

- Authorizes all students, including home education and private school students, to participate in specified virtual instruction options.
- Deletes eligibility criteria for student to participate in virtual instruction.

***Amends § 1002.20***

- Revises requirements for notifying a parent of a student with a substantial reading deficiency.

**2017-117** (Effective January 1, 2018)

An act relating to child support and parenting time plans.

***Amends § 409.2551***

- Provides legislative intent to encourage frequent contact between child and each parent.

***Amends § 409.2554***

- Defines terms including “Title IV-D Standard Parenting Time Plan.”

***Amends § 409.2557***

- Authorizing Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions.

***Amends § 409.2563***

- Mandates department mail Title IV-D Standard Parenting Time Plan with proposed administrative support orders.
- Provides requirements for including parenting time plans in certain administrative orders.

***Creates § 409.25633***

- Provides purpose and requirements for Title IV-D Standard Parenting Time Plan.
- Requires department refer parents who do not agree on a parenting time plan to a circuit court.

- Directs the department create and provide form for petition to establish parenting time plan under certain circumstances.
- Specifies parents are not required to pay a fee to file the petition.
- Mandates enforcement or modification of an established parenting time plan to be sought through a court of appropriate jurisdiction.

***Amends § 409.2564***

- Authorizes department to incorporate either signed, agreed-upon parenting time plan or signed Title IV-D Standard Parenting Time Plan in a child support order.

**2017-123** (Effective July 1, 2017)

An act relating to support for parental victims of child domestic violence.

***Amends § 943.171***

- Requires domestic violence training for law enforcement officers to include training concerning child-to-parent cases.

**2017-140** (Effective July 1, 2017)

An act relating to adoption benefits.

***Amends § 409.1664***

- Revises definition of term “qualifying adoptive employee” to include employees of charter schools and the Florida Virtual School for the purpose of extending state employee adoption benefits to such employees.
- Provide for retroactive application.

**2017-151** (Effective July 1, 2017)

An act relating to child welfare.

***Amends § 39.01***

Defines term “legal father.”

Redefines terms “parent” and “permanency goal.”

***Amends § 39.013***

- Extends court jurisdiction to 22 years of age for young adults with disabilities in foster care.

***Amends § 39.202***

- Provides confidential records held by the Department of Children and Families concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, may be accessed for employment screening of residential group home caregivers.
- Changes time period for releasing records to certain individuals.

***Amends § 39.301***

- Requires safety plan to be issued for a perpetrator of domestic violence only if the perpetrator can be located.
- Specifies what constitutes reasonable efforts.
- Mandates child new to a family under investigation be added to the investigation and assessed for safety.

***Amends § 39.402***

- Requires court to inquire as to identity and location of child's legal father at the shelter hearing.
- Specifies types of information that fall within scope of such inquiry.

***Amending s. 39.503***

- Requires court conduct the inquiry under oath to determine the identity or location of an unknown parent.
- Mandates court seek additional information relating to a father's identity in such inquiry.
- Orders diligent search to determine parent's or prospective parent's location to include a search of the Florida Putative Father Registry.

***Amends § 39.504***

- Directs that, if there is a pending dependency proceeding regarding a child for whom an injunction is sought to protect, the same judge must hear both proceedings.
- Provides that the court may enter an injunction based on specified evidence.

***Amends § 39.507***

- Requires court consider maltreatment allegations against a parent in an evidentiary hearing relating to a dependency petition.

***Amends § 39.5085***

- Revises eligibility guidelines for the Relative Caregiver Program with respect to relative and nonrelative caregivers.
- Prohibits relative or nonrelative caregiver from receiving payments under the Relative Caregiver Program under certain circumstances.

***Amends § 39.521***

- Substitutes new time guidelines for filing with the court and providing copies of case plans and family functioning assessments.
- Requires assessment and program compliance for a parent who caused harm to a child by exposing the child to a controlled substance.

- Mandates leaving child at home if in-home safety plan allows him to do so safely.
- Establishes requirements for family functioning assessments.
- Adds at least six months supervision after reunification.

***Amends § 39.522***

- Provides conditions for returning a child to the home with an in-home safety plan.

***Amends § 39.523***

- Provides legislative findings and intent.
- Requires children placed in out-of-home care be assessed to determine the least restrictive placement that meets the needs of the child.
- Mandates specified entities document placement assessments and decisions.
- Directs court to review and approve placements.

***Amends § 39.6011***

Provides requirements for confidential information in a case planning conference.

Permits discussing confidential information during case planning conference.

***Amends § 39.6012***

- Requires that, if a parent caused harm to a child by exposing the child to a controlled substance, the case plan include as a required task that the parent submit to a certain assessment and comply with any treatment and services identified as necessary.

***Amends § 39.6035***

- Requires transition plan to be approved before a child reaches 18 years of age.

***Amends § 39.621***

- Specifies circumstances under which permanency goal of maintaining and strengthening placement with parent may be used.

***Amends § 39.6221***

- Provides relocation requirements for parents in dissolution proceedings do not apply to certain permanent guardianships.

***Amends § 39.701***

- Provides safety assessment requirements for children coming into a home under court jurisdiction.

***Amends § 39.801***

- Provides exception to the notice requirement regarding the advisory hearing for a petition to terminate parental rights.

***Amends § 39.803***

- Requires court to conduct inquiry under oath to determine identity or location of unknown parent after the filing of a termination of parental rights petition.
- Mandates court seek additional information relating to a legal father's identity in such inquiry.
- Revises minimum requirements for the diligent search to determine the location of a parent or prospective parent.
- Authorizes court to schedule an adjudicatory hearing regarding a petition for termination of parental rights if a diligent search fails to identify and locate a prospective parent.

***Amends § 39.806***

- Changes circumstances under which grounds for the termination of parental rights may be established to include when the child has been placed in out-of-home case.

***Amends § 39.811***

- Revises circumstances under which rights of one parent may be terminated without terminating the rights of the other parent.

***Creates § 409.16742***

- Provides legislative findings and intent.
- Establishes shared family care residential services pilot program for substance-exposed newborns.

***Amends § 743.067***

- Revises term "unaccompanied homeless youth" to "certified unaccompanied homeless youth."
- Requires State Office on Homelessness within Department of Children and Families develop standardized form to be used in certification of unaccompanied homeless youth.
- Provides information that must be included in the certification form.
- Authorizes certified unaccompanied homeless youth to apply to the Department of Highway Safety and Motor Vehicles for an identification card.

***Amends § 1009.25***

- Revises exemption from the payment of tuition and fees for homeless students which "includes a student who would otherwise meet the requirements of this paragraph, as determined by a college or university, but for his or her residence in college or university dormitory housing."

**2017-152** (Effective July 1, 2017)

An act relating to the rights and responsibilities of patients.

***Amends § 381.026***

- Requires health care facilities and providers to authorize patients to bring in any person of the patients' choosing to specified areas of the facilities or providers' offices under certain circumstances.
- Provides an exception if "doing so would risk the safety or health of the patient, other patients, or staff of the facility or office or cannot be reasonably accommodated by the facility or provider."
- Mandates health care facilities and providers include such authorization as an additional patient standard in the statement of rights and responsibilities made available to patients by health care providers.

**2017-156** (Effective October 1, 2017)

An act relating to domestic violence.

***Amends § 741.281***

- Specifies that person must complete a batterers' intervention program ordered as a condition of probation in certain circumstances.

***Amends § 741.283***

- Increases minimum terms of imprisonment for domestic violence.
- Provides enhanced minimum terms when "the person has intentionally caused bodily harm to another person, and the crime of domestic violence takes place in the presence of a child under 16 years of age who is a family or household member . . . of the victim or the perpetrator."

***Amend § 741.30***

- Prohibits award of attorney fees in specified domestic violence proceedings.

***Amends 775.08435***

- Forbids withholding of adjudication for specified domestic violence offenses.
- Provides exceptions if state attorney submits written request or court makes written findings that withholding of adjudication "is reasonably justified" based on circumstances.

**2017-170** (Effective upon becoming a law)

An act relating to Internet identifiers.

***Amends § 775.21***

- Revises definition of term "Internet identifier."
- Defines term "social Internet communication."
- Requires sexual predator to register each Internet identifier's corresponding website homepage or application software name with the Department of Law Enforcement through the sheriff's office.

- Mandates sexual predator report any change to certain information after initial in-person registration in a specified manner.
- Establishes that department's sexual predator registration list is a public record, unless otherwise made exempt or confidential and exempt.
- Provides penalties for failure to supply Internet identifiers and corresponding website homepage or application software name.

**2017-181** (Effective July 1, 2017)

An act relating to laboratory screening.

***Amends § 383.14***

- Authorizes State Public Health Laboratory to release the results of a newborn's hearing and metabolic tests to certain individuals.

**2017-186** (Effective July 1, 2017)

An act relating to private school student participation in extracurricular activities.

***Amends § 1006.15***

- Revises eligibility requirements for certain private school students to participate in interscholastic or intrascholastic sports at public schools to which they would be assigned or could choose.

**2017-232** (Effective upon becoming a law)

An act relating to medical use of marijuana.

***Amends § 1006.062***

- Requires district school boards to adopt policies and procedures for access to medical marijuana by students who are qualified patients.

**2017-233** (Effective July 1, 2017)

An act relating to economic development.

***Repeals §§ 446.50, 446.51, 446.52***

- Repeals §§ 446.50, 446.51, 446.52 relating to displaced homemaker programs, prohibited discrimination and confidentiality of information related to such programs, and the Displaced Homemaker Trust Fund.

***Amends § 741.01***

- Reduces fees charged for a marriage license to reflect that \$7.50 will no longer be deposited in the Displaced Homemaker Trust Fund.