

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1080

SPONSOR: Senator Forman

SUBJECT: Human Rights

DATE: March 8, 1999

REVISED: 03/11/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/1 Amend.</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 1080 expands the duties of the Statewide and District Human Rights Advocacy Committees beyond their current authority related to clients of the Department of Children and Family Services, to require that the committees monitor and investigate allegations of human rights abuses or constitutional rights violations by all state agencies which provide client services. The bill also provides legislative intent regarding the efforts and goals of the Statewide and District Human Rights Advocacy Committees.

This act is to take effect on July 1, 1999.

This bill creates section 402.164, Florida Statutes and amends sections 402.165, 402.166, 402.167, Florida Statutes:

II. Present Situation:

Statewide Human Rights Advocacy Committee

A Statewide Human Rights Advocacy Committee ("Statewide Committee") is established within the Department of Health and Rehabilitative Services ("the department") (subsequently redesignated the Department of Children and Family Services in 1996). While the department is directed to provide administrative support and services to the Statewide Committee, the Statewide Committee is not subject to control, supervision, or direction by the department. The Statewide Committee consists of 15 citizens, one from each service district of the department. The statute further specifies membership qualifications and limitations. *See s. 402.165(1), F.S.*

Responsibilities of the Statewide Human Rights Advocacy Committee are stated at s. 402.165(7), F.S. and include:

- Serving as an independent third party to protect the constitutional and human rights of any client within a program or facility operated, funded, licensed, or regulated by the department.
- Monitoring the delivery and use of services, programs and facilities operated, funded, regulated, or licensed by the department to prevent abuse or deprivation of the constitutional and human rights of clients.
- Receiving, investigating, and resolving reports of abuse or deprivation of constitutional and human rights referred to the Statewide Committee by a district human rights advocacy committee.
- Reviewing existing programs or services and new or revised programs of the department and making recommendations about how they affect the rights of clients.
- Submitting an annual report to the Legislature, concerning activities, recommendations, and complaints reviewed or developed by the Statewide Committee.
- Conducting meetings at least six times a year at the call of the chairperson and at other times at the call of the Governor or by written request of six members of the Statewide Committee.
- Developing and adopting uniform procedures to be used to carry out the purpose and responsibilities of the Statewide Committees to include a provision for cooperation with the State Long-Term Care Ombudsman Council, among other things.
- Monitoring the performance and activities of all district committees and providing technical assistance to members and staff of district committees.
- Providing for the development and presentation of a standardized training program for members of district committees.

Investigative authority of the Statewide Human Rights Advocacy Committee is stated at s. 402.165(8). To carry out the responsibilities outlined in the previous subsection, the Statewide Committee is granted the authority to receive, investigate, seek to conciliate, hold hearings on, and act on complaints that allege any abuse or deprivation of constitutional or human rights of clients. The Statewide Committee also has access to all client records, files, and reports from any program, service, or facility operated, funded, licensed, or regulated by the department and any records that are material to its investigations that are in the custody of any other agency or department of government. The Statewide Committee has standing to petition the circuit court for access to confidential client records, but must include specific reasons for seeking the information in the petition. The court may authorize committee access to such records upon a finding that they directly relate such access to an investigation regarding the possible deprivation of constitutional or human rights or the abuse of a client. If the Statewide Committee obtains these records, however, the records and any subsequent actions or communications relating to the records are exempt from the provisions of s. 119.07(1), F.S., relating to open record requirements. The statute specifically prohibits the Statewide Committee from having access to confidential adoption records under ss. 39.411, 63.022, and 63.162, F.S.

District Human Rights Advocacy Committees

Section 402.166(1), F.S., provides that service districts of the department will have at least one, but no more than three, District Human Rights Advocacy Committees (“District Committee”).

District 2 may have four committees. The District Committees are subject to direction from and the supervision of the Statewide Committee.

Section 402.166(2), F.S., outlines the required membership of each District Committee. Each District Committee will have 7-15 members. Of this membership, 25 percent will be past or present clients of the department (within the last 4 years), two will be providers of services or programs to clients of the department, and two will be representatives of professional organizations, one of whom represents a health-related profession and one of whom represents the legal profession. The statute further provides terms of committee member service and methods for filling vacancies.

The responsibilities of a District Committee are outlined at s. 402.166(7), F.S., and include the directive that they attempt to resolve a complaint with the appropriate local administration, agency, or program. If the District Committee fails to resolve the complaint, the matter must be referred to the Statewide Committee. The duties and responsibilities of a District Committee encompass several of those delegated to the Statewide Committee. In addition, the District Committee must submit an annual report to the Statewide Committee concerning activities, recommendations, and complaints reviewed or developed by the committee during the year.

Section 402.166(8), F.S., outlines the investigative authority of the District Human Rights Advocacy Committee, which includes the authority to access all client records, files, and reports from any program, service, or facility operated, funded, licensed, or regulated by the department and any records that are material to its investigations which are in the custody of any other agency or department of government. The District Committee, like the Statewide Committee, has standing to petition the circuit court to access otherwise confidential client records. These records and any related proceedings, however, are exempt from s. 119.07(1), F.S., relating to public records. The statute specifically prohibits the District Committee from having access to confidential adoption records under ss. 39.411, 63.022, and 63.162, F.S.

Duties of the department

The duties of the department relating to both the Statewide and District Committees are designated at s. 402.167, F.S. These duties include providing the following:

- Procedures by which the department's district staff refers reports of abuse to District Committees.
- Procedures by which client information is made available to members of the Statewide and District Committees.
- Procedures by which recommendations made by Statewide and District Committees will be incorporated into the department's policies and procedures.
- Procedures by which Statewide and District Committee members are reimbursed for authorized expenditures.
- Facilities and necessary equipment for District Committees

In addition, the Secretary is directed to ensure the full cooperation and assistance of employees of the department with members and staff of the Statewide and District Committees so that staff

assigned to the Statewide and District Committees are free of interference from or control by the department.

Scope of Responsibility

Currently the scope of responsibility for the Statewide and District Committees includes the Department of Children and Family Services, as well as the Department of Health and the Agency for Health Care Administration (through interagency agreements).

III. Effect of Proposed Changes:

Section 1 creates s. 402.164, F.S., to provide legislative intent relating to the Statewide and District Committees. Specifically the bill states that it is the intent of the Legislature that members of these committees “discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies.” As used in ss. 402.164 through 402.167, F.S., the term “client services” is specifically extended to agencies that provide such services under specified chapters. Persons served under the specified chapters include clients of the Work and Gain Economic Self-sufficiency Program (WAGES), the Department of Education, the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Elderly Affairs. Membership of the actual committees will be broadened to include those who represent the interests of the public and the clients of the state agencies providing client services.

Sections 2 and 3 amend ss. 402.165 and 402.167, F.S., to expand the Statewide and District Human Rights Advocacy Committees’ jurisdiction from the former Department of Health and Rehabilitative Services (or Department of Children and Family Services, depending upon the statutory reference in statute) to include “any state agency that provides client services.”

Section 4 amends s. 402.167, F.S., to reflect the broadened mandate by directing each state agency that provides client services to adopt rules that are consistent with the law. Procedures to be addressed in the rules are outlined. This section is also amended to provide that the Secretaries or Directors of affected state agencies ensure full cooperation and assistance with the Statewide and District Human Rights Advocacy Committees.

Section 5 provides that this act is to take effect on July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Senate Bill 1080 is expected to require the department to absorb increased administrative support costs as the workload of the committees increases with the additional work from other agencies. The exact amount of increase is unknown at this time since the department is unable to estimate how much additional work will be generated from the other affected agencies. In a September 1997 survey of the districts, annual administrative support costs for the district committees was determined to be \$428,074.

The Statewide Human Rights Advocacy Committee has not requested more funding for implementation of this bill. The Statewide Committee believes the fiscal impact will be minimal and will be manageable with current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current interagency agreements between the Human Rights Advocacy Committees and the Long-Term Care Ombudsman Council do exist and vary from district to district on which party will investigate alleged incidences in assisted living facilities.

VIII. Amendments:

#1 by Children and Families:

This amendment defines the terms "client" and "client services" for purposes of this bill. (WITH TITLE AMENDMENT)