

STORAGE NAME: h2009a.cf

DATE: April 5, 1999

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILDREN & FAMILIES
ANALYSIS

BILL #: HB 2009

RELATING TO: Human rights

SPONSOR(S): Representative Littlefield & others

COMPANION BILL(S): SB 1080 (Similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CHILDREN & FAMILIES YEAS 5 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The effort to dismantle HRS (Department of Health & Rehabilitative Services) began in 1991 with the creation of the Department of Elder Affairs. This trend continued with the creation of the agency for Health Care Administration in 1992, the Department of Juvenile Justice in 1994, and the Department of Health in 1996. Additionally, the Child Support Enforcement activities of HRS were moved to the Department of Revenue in 1994. **None of the statutes creating the new departments from the old HRS addressed the jurisdiction of the Statewide Human Rights Advocacy Committee (SHRAC) or the District Human Rights Advocacy Committee (HRACs).** Consequently, the authority of HRAC members to investigate complaints and inspect records in the new departments is unclear.

House Bill 2009 clarifies the duties of the Statewide and District Human Rights Advocacy Committees by requiring that the committees monitor and investigate allegations of human rights abuses or constitutional rights violations by state agencies that provide client services through specified chapters of the Florida Statutes. 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. 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.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Scope of Responsibility

The effort to dismantle HRS began in 1991 with the creation of the Department of Elder Affairs. This trend continued with the creation of the Agency for Health Care Administration in 1992, the Department of Juvenile Justice in 1994, and the Department of Health in 1996. Additionally, the Child Support Enforcement activities of HRS were moved to the Department of Revenue in 1994. **None of the statutes creating the new departments from the old HRS addressed the jurisdiction of the Statewide Human Rights Advocacy Committee (SHRAC) or the District Human Rights Advocacy Committee (HRACs).** Consequently, the authority of HRAC members to investigate complaints and inspect records in the new departments is unclear.

Currently the scope of responsibility for the statewide and district committees includes the Department of Children and Family Services, and, through interagency agreements, the Department of Health and the Agency for Health Care Administration.

Evolution of SHRAC and the HRACs

The roots of the committees go to a Blue Ribbon Jury organized at Miami Sunland, a developmental services institution, in 1972 as the result of reports of abuse of clients at that facility. The local Association for Retarded Citizens (ARC) formed a citizen's committee for the purposes of discovering abuse and deprivations of client rights and of helping management find solutions with input from the public. The committee was called the Human Rights Committee, and was similar to committees being formed around the country in response to concerns about poor conditions in institutions treating developmentally disabled persons.

In 1973, the Florida ARC entered into an agreement with the Division of Retardation of the (then) Department of Rehabilitative Services to organize human rights committees in all 11 service districts of the department. This was the first time in the state that private citizen-watchdogs had access to government-operated facilities to investigate living conditions and allegations of deprivations of human rights. While the proposal included a general committee for each service district, the emphasis was on protecting individuals with mental retardation.

The HRACs were first recognized in state law in 1975, when they were officially created as part of the HRS Reorganization Act. 1975 Fla. Laws 48. It was at this point that the committees were given authority to act on behalf of **all** recipients of HRS services. Both local committees (one in each of the 11 service districts) and the statewide committee (SHRAC) were recognized in this legislation. SHRAC was to serve as the appellate body for complaints unresolved by the local HRACs, to report to the Legislature, and to set policy and procedures for the local HRACs. The expenses of both SHRAC and the local HRACs were to be from the HRS budget, and the organization was housed administratively in HRS.

In 1981, the Legislature conducted a Sunset Review of the HRAC legislation. The report of this review recommended continuing the committees, but separate legislation transferred the HRACs to the Department of Administration. This transfer, however, was never accomplished.

In 1984, the HRACs were statutorily granted access to records of HRS clients in outside agencies of government and in provider agencies.

The 1989 Sunset Review of the HRAC system resulted in revisions of the membership and training requirements for the committee. The report also discussed moving the SHRAC and the HRACs to the Joint Legislative Auditing Committee or the Attorney General's office, but no action was taken.

In 1990 and 1991, bills were introduced to create an Office of the Public Advocate, locating the HRAC with that advocate under the Joint Legislative Auditing Committee. These proposals never passed out of a legislative committee.

Development of Other Advocacy Organizations Since 1973

According to the Clearinghouse on Human Services, a partial listing of the advocacy organizations which now represent clients of the former HRS (including the current DCF) includes Florida Legal Services, The Advocacy Center for Persons with Disabilities, Inc., the Florida Developmental Disabilities Council, and the Florida Alliance for the Mentally Ill.

Other groups representing these persons include the Offices of the Public Defender in the Judicial Circuits, the Offices of Inspector General in state departments and agencies, the Patient Legal Services Attorney at Florida State Hospital, and the Long Term Care Ombudsman Council. None of these bodies provided significant advocacy efforts to HRS clients at the time the HRACs and SHRAC were created.

Additionally, Bills of Rights for the following, lists persons who would have been clients of the former HRS since 1973:

- Adult family-care home residents, s. 400.628, F.S.
- Assisted living facilities, s. 400.428, F.S.
- Continuing care facilities, s. 651.083, F.S.
- Developmentally disabled persons, s. 393.13, F.S.

The rights of mental health patients are set forth in s. 394.459, F.S.

The statewide toll-free number for the Florida Abuse Hotline was established in 1988 for the purposes of receiving reports of abuse to children and vulnerable adults, including elders and the developmentally disabled.

Current Status of the HRAC System

The HRACs are responsible for serving as an independent third-party mechanism to protect the constitutional and human rights of any client within a program or facility operated, funded, licensed, or regulated by the Department of Children and Family Services (formerly the Department of Health and Rehabilitative Services). This duty is accomplished by monitoring, through site visits and the inspection of records, the delivery and use of services, programs, or facilities operated, funded, regulated or licensed by the DCF.

SHRAC receives, investigates, and resolves reports of abuse or deprivation of constitutional and human rights that have been referred by the district committees. SHRAC also reviews existing programs or services and new or revised programs of DCF and makes recommendations as to how the rights of clients are affected by these programs or services.

Although DCF is responsible for providing administrative support to both SHRAC and the local committees, these committees are not subject to control, supervision or direction by DCF in the performance of their duties.

The membership of SHRAC consists of 15 citizens, one representing each service district of DCF, and except for the elected official, each person must have been a member of the district committee. These members must represent five groups of citizens:

- One elected public official;
- Two providers who deliver services or programs to clients of DCF;
- Four nonsalaried representatives of nonprofit agencies or civic groups;
- Four representatives of consumer groups who are currently receiving, or have received, services from DCF within the past four years, at least one of whom must be a consumer; and
- Four residents of the state who do not represent any of these groups, two of whom represent health-related professions and two of whom represent the legal profession.

SHRAC members are appointed to serve a 3-year term and may serve for two terms.

At least one district HRAC in each of the 15 service districts of DCF and each district may have no more than three committees. Service District II, however, is permitted to have four committees. Although not stated in statute, the executive director of the statewide council reports that the reason District II has an additional committee is that one committee is assigned exclusively to Florida State Hospital. The district administrator in each district must assign staff to provide administrative support

to the local councils. The staff who are assigned to the local committees must perform the functions required by the local committee without interference from the department.

HRACs receive copies of all reports investigated by DCF protective investigators. The committees then have the discretion to either review and adopt the DCF findings or to conduct their own investigation. In FY 1996/97, the HRACs received 10,963 of these reports and investigated 1,299 of them.

The HRACs also receive complaints, usually filed through the DCF district client relations offices, reviews these complaints, and then votes on whether to recommend changes to DCF policies and procedures. In FY 1996/97, HRACs received and reviewed 2,796 complaints directly from consumers, reviewed 8,499 consumer complaints which were reported to the client relations office, received 129 death reports, and 10,963 internal reports from the Department of Children and Families, for a total of 22,387 complaints or reports. Of these, the 34 HRAC's opened and conducted investigations on 4,083 cases.

Also in FY 1996/97, the HRACs conducted 534 on-site visits to DCF programs and facilities for the purpose of "seeking to prevent violations of rights." Additionally, members of the HRACs were appointed as third representative for 1,772 persons involuntarily admitted for mental health treatment and attended 1,988 hearings relating to this issue. Finally, the HRACs reviewed 37 proposed research projects, approving 34.

Statutory provisions

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), F.S. 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.

B. EFFECT OF PROPOSED CHANGES:

The effect of the bill is basically to clarify and restore the domain of the committees to a situation somewhat comparable to that in existence prior to the breakup of HRS. See Section-by-Section Analysis for more details.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 402.164, F.S., is created and sections 402.165 through 402.167 are amended.

E. SECTION-BY-SECTION ANALYSIS:

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 terms “client” and “client services” are 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.

Section 2 amends s. 402.165 F.S., to expand the Statewide 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 3 amends s. 402.166, F.S., to expand the 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.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

Section 402.165, F.S., provides that the department provide administrative support and services to the HRAC "to the extent requested by the executive director within available resources." As noted above, the effect of the bill is basically to clarify and restore the domain of the committees to one somewhat comparable to that in existence prior to the breakup of HRS.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. **COMMENTS:**

N/A

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

N/A

VII. **SIGNATURES:**

COMMITTEE ON CHILDREN AND FAMILIES:

Prepared by:

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