

By Representative Wilson

1 A bill to be entitled
2 An act relating to human rights; amending s.
3 402.165, F.S.; redesignating the Statewide
4 Human Rights Advocacy Committee as the
5 Statewide Human Rights Advocacy Council;
6 revising membership of the statewide council;
7 increasing the term of appointment to the
8 statewide council; amending s. 402.166, F.S.;
9 redesignating the district human rights
10 advocacy committees as the local human rights
11 advocacy councils; providing for additional
12 local councils to be established; increasing
13 the term of appointment to a local council;
14 providing for appointing a vice chairperson to
15 each local council; providing for local
16 councils to monitor the activities of, and
17 investigate complaints against, the Department
18 of Children and Family Services; amending s.
19 402.167, F.S.; revising provisions to reflect
20 the redesignation of the human rights advocacy
21 committees as human rights advocacy councils;
22 amending ss. 39.001, 39.202, 39.302, 393.13,
23 394.459, 394.4595, 394.4597, 394.4598,
24 394.4599, 394.4615, 400.0067, 400.0089,
25 400.419, 400.428, 415.1034, 415.104, 415.1055,
26 415.106, 415.107, and 430.04, F.S.; conforming
27 terminology to changes made by the act;
28 providing an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 402.165, Florida Statutes, 1998
2 Supplement, is amended to read:

3 402.165 Statewide Human Rights Advocacy Council
4 ~~Committee~~; confidential records and meetings.--

5 (1) There is created within the Department of Children
6 and Family Health and Rehabilitative Services a Statewide
7 Human Rights Advocacy Council ~~Committee~~. Members of the
8 council shall represent the interests of clients who are
9 served by the department. The department of ~~Health and~~
10 ~~Rehabilitative Services~~ shall provide administrative support
11 and service to the statewide council ~~committee~~ to the extent
12 requested by the executive director within available
13 resources. The statewide council is ~~Human Rights Advocacy~~
14 ~~Committee shall not be~~ subject to control, supervision, or
15 direction by the Department of Children and Family Health and
16 ~~Rehabilitative Services~~ in the performance of its duties. The
17 council ~~committee~~ shall consist of 15 citizens, one from each
18 service district of the department of ~~Health and~~
19 ~~Rehabilitative Services~~, who broadly represent the interests
20 of the public and the clients of that department. The members
21 shall be representative of five groups of citizens as follows:
22 one provider ~~one elected public official; two providers~~ who
23 delivers ~~deliver~~ services or programs to clients of the
24 Department of Children and Family Health and Rehabilitative
25 Services; two ~~four~~ nonsalaried representatives of nonprofit
26 agencies or civic groups; four representatives of ~~health and~~
27 ~~rehabilitative services~~ consumer groups who are currently
28 receiving, or have received, services from the Department of
29 Children and Family Health and Rehabilitative Services within
30 the past 4 years, at least one of whom must be a consumer; and
31 two ~~four~~ residents of the state who do not represent any of

1 the foregoing groups, one ~~two~~ of whom represents ~~represent~~
2 health-related professions and one ~~two~~ of whom represents
3 ~~represent~~ the legal profession. In appointing the
4 representatives of the health-related professions, the
5 appointing authority shall give priority of consideration to a
6 physician licensed under chapter 458 or chapter 459; and, in
7 appointing the representatives of the legal profession, the
8 appointing authority shall give priority of consideration to a
9 member in good standing of The Florida Bar. Priority shall
10 also be given to appointing at least one elected official; one
11 additional health professional; one additional legal
12 professional; one additional provider; two additional
13 nonsalaried representatives of nonprofit agencies or civic
14 groups; and an individual whose primary area of interest,
15 experience, or expertise is a major client group of the
16 Department of Children and Family Services which is not
17 represented on the council at the time of appointment. Except
18 for the member who is an elected public official, each member
19 of the statewide council ~~Human Rights Advocacy Committee~~ must
20 have served as a member of a local ~~district~~ human rights
21 advocacy council, with priority consideration given to an
22 applicant who has served a full term on a local council
23 committee. Persons related to each other by consanguinity or
24 affinity within the third degree may not serve on the
25 statewide council ~~Human Rights Advocacy Committee~~ at the same
26 time.

27 (2) Members of the statewide council ~~Human Rights~~
28 ~~Advocacy Committee~~ shall be appointed to serve terms of 4 ~~3~~
29 years, retroactive to the members in office on July 1, 1998.
30 A member may not serve more than two full, consecutive terms.
31 The limitation on the number of terms a member may serve

1 applies without regard to whether a term was served before or
2 after October 1, 1989.

3 (3) If a member of the statewide council ~~Human Rights~~
4 ~~Advocacy Committee~~ fails to attend two-thirds of the regular
5 council ~~committee~~ meetings during the course of a year, the
6 position held by such member may be deemed vacant by the
7 council ~~committee~~. The Governor shall fill the vacancy
8 pursuant to subsection (4). If a member of the statewide
9 council ~~violates~~ ~~Human Rights Advocacy Committee~~ is in
10 ~~violation of the provisions of~~ this section or procedures
11 adopted under this section ~~thereto~~, the council ~~committee~~ may
12 recommend to the Governor that such member be removed.

13 (4) The Governor shall fill each vacancy on the
14 statewide council ~~Human Rights Advocacy Committee~~ from a list
15 of nominees submitted by the statewide council ~~committee~~. A
16 list of candidates shall be submitted to the statewide council
17 ~~committee~~ by the local council ~~district human rights advocacy~~
18 ~~committee~~ in the district from which the vacancy occurs.
19 Priority of consideration shall be given to the appointment of
20 an individual whose primary interest, experience, or expertise
21 lies with a major client group of the Department of Children
22 and Family ~~Health and Rehabilitative Services~~ which is not
23 represented on the council ~~committee~~ at the time of the
24 appointment. If an appointment is not made within 60 days
25 after a vacancy occurs on the council ~~committee~~, the vacancy
26 shall be filled by a majority vote of the statewide council
27 ~~committee~~ without further action by the Governor. A ~~No~~ person
28 who is employed by the Department of Children and Family
29 ~~Health and Rehabilitative Services~~ may not be appointed to the
30 council ~~committee~~.

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1 (5)(a) Members of the statewide council ~~Human Rights~~
2 ~~Advocacy Committee~~ shall receive no compensation, but are
3 ~~shall be~~ entitled to be reimbursed for per diem and travel
4 expenses in accordance with s. 112.061.

5 (b) The council ~~committee~~ shall select an executive
6 director who shall serve at the pleasure of the council
7 ~~committee~~ and shall perform the duties delegated to him or her
8 by the council ~~committee~~. The compensation of the executive
9 director shall be established in accordance with the rules of
10 the Selected Exempt Service.

11 (c) The council ~~committee~~ may apply for, receive, and
12 accept grants, gifts, donations, bequests, and other payments
13 including money or property, real or personal, tangible or
14 intangible, and service from any governmental or other public
15 or private entity or person and make arrangements as to the
16 use of same.

17 (d) The statewide council ~~Human Rights Advocacy~~
18 ~~Committee~~ shall annually prepare a budget request that is
19 ~~shall not be~~ subject to change by department staff after it is
20 approved by the council ~~committee~~, but the budget request
21 shall be submitted to the Governor by the department for
22 transmittal to the Legislature. The budget must ~~shall~~ include
23 a request for funds to carry out the activities of the
24 statewide council ~~Human Rights Advocacy Committee~~ and the
25 local councils ~~district human rights advocacy committees~~.

26 (6) The members of the statewide council ~~Human Rights~~
27 ~~Advocacy Committee~~ shall elect a chairperson and vice
28 chairperson to terms ~~a term~~ of 1 year. A person may not serve
29 as chairperson or vice chairperson for more than two full,
30 consecutive terms.

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1 (7) The responsibilities of the council ~~committee~~
2 include, but are not limited to:

3 (a) Serving as an independent third-party mechanism
4 for protecting the constitutional and human rights of any
5 client within a program or facility operated, funded,
6 licensed, or regulated by the Department of Children and
7 Family ~~Health and Rehabilitative~~ Services.

8 (b) Monitoring by site visit and inspection of
9 records, the delivery and use of services, programs, or
10 facilities operated, funded, regulated, or licensed by the
11 Department of Children and Family ~~Health and Rehabilitative~~
12 Services for the purpose of preventing abuse or deprivation of
13 the constitutional and human rights of clients. The statewide
14 council ~~Human Rights Advocacy Committee~~ may conduct an
15 unannounced site visit or monitoring visit that involves the
16 inspection of records if such visit is conditioned upon a
17 complaint. A complaint may be generated by the council
18 ~~committee~~ itself if information from the Department of
19 Children and Family ~~Health and Rehabilitative~~ Services or
20 other sources indicates a situation at the program or facility
21 which ~~that~~ indicates possible abuse or neglect of clients.
22 The statewide council ~~Human Rights Advocacy Committee~~ shall
23 establish and follow uniform criteria for the review of
24 information and generation of complaints. Routine program
25 monitoring and reviews that do not require an examination of
26 records may be made unannounced.

27 (c) Receiving, investigating, and resolving reports of
28 abuse or deprivation of constitutional and human rights
29 referred to the statewide council ~~Human Rights Advocacy~~
30 ~~Committee~~ by a local council ~~district human rights advocacy~~
31 ~~committee~~. If a matter constitutes a threat to the life,

1 safety, or health of clients or is multidistrict in scope, the
2 statewide council ~~Human Rights Advocacy Committee~~ may exercise
3 such powers without the necessity of a referral from a local
4 council ~~district committee~~.

5 (d) Reviewing existing programs or services and new or
6 revised programs of the Department of Children and Family
7 ~~Health and Rehabilitative~~ Services and making recommendations
8 as to how the rights of clients are affected.

9 (e) Submitting an annual report to the Legislature, no
10 later than December 30 of each calendar year, concerning
11 activities, recommendations, and complaints reviewed or
12 developed by the council ~~committee~~ during the year.

13 (f) Conducting meetings at least six times a year at
14 the call of the chairperson and at other times at the call of
15 the Governor or by written request of six members of the
16 council ~~committee~~.

17 (g) Developing and adopting uniform procedures to be
18 used to carry out the purpose and responsibilities of the
19 statewide council and the local councils ~~human rights advocacy~~
20 ~~committees~~, which procedures must ~~shall~~ include, but need not
21 be limited to, the following:

22 1. The responsibilities of the statewide council and
23 the local councils ~~committee~~;

24 2. The organization and operation of the statewide
25 council ~~committee~~ and the local councils ~~district committees~~,
26 including procedures for replacing a member, formats for
27 maintaining records of council ~~committee~~ activities, and
28 criteria for determining what constitutes a conflict of
29 interest for purposes of assigning and conducting
30 investigations and monitoring;

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- 1 3. Uniform procedures for the statewide council
2 ~~committee~~ and the local councils ~~district committees~~ to
3 receive and investigate reports of abuse of constitutional or
4 human rights;
- 5 4. The responsibilities and relationship of the local
6 councils ~~district human rights advocacy committees~~ to the
7 statewide council ~~committee~~;
- 8 5. The relationship of the statewide council ~~committee~~
9 to the Department of Children and Family ~~Health and~~
10 ~~Rehabilitative~~ Services, including the way in which reports of
11 findings and recommendations related to reported abuse are
12 given to the Department of Children and Family ~~Health and~~
13 ~~Rehabilitative~~ Services;
- 14 6. Provision for cooperation with the State Long-Term
15 Care Ombudsman Council;
- 16 7. Procedures for appeal. An appeal to the statewide
17 council ~~state committee~~ is made by a local council ~~district~~
18 ~~human rights advocacy committee~~ when a valid complaint is not
19 resolved at the local ~~district~~ level. The statewide council
20 ~~committee~~ may appeal an unresolved complaint to the Secretary
21 of Children and Family ~~the Department of Health and~~
22 ~~Rehabilitative~~ Services. If, after exhausting all remedies,
23 the statewide council ~~committee~~ is not satisfied that the
24 complaint can be resolved within the Department of Children
25 and Family ~~Health and Rehabilitative~~ Services, the appeal may
26 be referred to the Governor or the Legislature;
- 27 8. Uniform procedures for gaining access to and
28 maintaining confidential information; and
- 29 9. Definitions of misfeasance and malfeasance for
30 members of the statewide council ~~committee~~ and local councils
31 ~~district committees~~.

1 (h) Monitoring the performance and activities of all
2 local councils ~~district committees~~ and providing technical
3 assistance to members and staff of local councils ~~district~~
4 ~~committees~~.

5 (i) Providing for the development and presentation of
6 a standardized training program for members of local councils
7 ~~district committees~~.

8 (8)(a) In the performance of its duties, the statewide
9 council ~~Human Rights Advocacy Committee~~ shall have:

10 1. Authority to receive, investigate, seek to
11 conciliate, hold hearings on, and act on complaints that ~~which~~
12 allege any abuse or deprivation of constitutional or human
13 rights of clients.

14 2. Access to all client records, files, and reports
15 from any program, service, or facility that is operated,
16 funded, licensed, or regulated by the Department of Children
17 and Family Services and any records that ~~which~~ are material to
18 its investigation and ~~which are~~ in the custody of any other
19 agency or department of government. The council's ~~committee's~~
20 investigation or monitoring may ~~shall~~ not impede or obstruct
21 matters under investigation by law enforcement agencies or
22 judicial authorities. Access may ~~shall~~ not be granted if a
23 specific procedure or prohibition for reviewing records is
24 required by federal law and regulation that ~~which~~ supersedes
25 state law. Access may ~~shall~~ not be granted to the records of a
26 private licensed practitioner who is providing services
27 outside state agencies and facilities and whose client is
28 competent and refuses disclosure.

29 3. Standing to petition the circuit court for access
30 to client records that ~~which~~ are confidential as specified by
31 law. The petition must ~~shall~~ state the specific reasons for

1 which the council ~~committee~~ is seeking access and the intended
2 use of such information. The court may authorize ~~committee~~
3 access to such records upon a finding that such access is
4 directly related to an investigation regarding the possible
5 deprivation of constitutional or human rights or the abuse of
6 a client. Original client files, records, and reports may
7 ~~shall~~ not be removed from the Department of Children and
8 Family Services or agency facilities. The statewide council
9 may not ~~Under no circumstance shall the committee~~ have access
10 to confidential adoption records in accordance with ~~the~~
11 ~~provisions of~~ ss. 39.0132, 63.022, and 63.162. Upon
12 completion of a general investigation of practices and
13 procedures of the Department of Children and Family Services,
14 the statewide council ~~committee~~ shall report its findings to
15 that department.

16 (b) All information obtained or produced by the
17 statewide council ~~committee~~ which is made confidential by law,
18 which relates to the identity of any client or group of
19 clients subject to the protections of this section, or which
20 relates to the identity of an individual who provides
21 information to the council ~~committee~~ about abuse or alleged
22 violations of constitutional or human rights, ~~is confidential~~
23 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),
24 Art. I of the State Constitution.

25 (c) Portions of meetings of the statewide council
26 ~~Human Rights Advocacy Committee~~ which relate to the identity
27 of any client or group of clients subject to the protections
28 of this section, which relate to the identity of an individual
29 who provides information to the council ~~committee~~ about abuse
30 or alleged violations of constitutional or human rights, or
31 wherein testimony is provided relating to records otherwise

1 made confidential by law, are exempt from ~~the provisions of~~ s.
2 286.011 and s. 24(b), Art. I of the State Constitution.

3 (d) All records prepared by members of the statewide
4 council committee which reflect a mental impression,
5 investigative strategy, or theory are exempt from ~~the~~
6 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
7 Constitution until the investigation is completed or until the
8 investigation ceases to be active. For purposes of this
9 section, an investigation is considered "active" while such
10 investigation is being conducted by the statewide council
11 committee with a reasonable, good faith belief that it may
12 lead to a finding of abuse or of a violation of human rights.
13 An investigation does not cease to be active so long as the
14 statewide council committee is proceeding with reasonable
15 dispatch and there is a good faith belief that action may be
16 initiated by the council committee or other administrative or
17 law enforcement agency.

18 (e) Any person who knowingly and willfully discloses
19 any such confidential information is guilty of a misdemeanor
20 of the second degree, punishable as provided in s. 775.082 or
21 s. 775.083.

22 Section 2. Section 402.166, Florida Statutes, 1998
23 Supplement, is amended to read:

24 402.166 Local District human rights advocacy councils
25 ~~committees~~; confidential records and meetings.--

26 (1) At least one local district human rights advocacy
27 council committee is created in each service district of the
28 Department of Children and Family Health and Rehabilitative
29 Services. The local district human rights advocacy councils
30 ~~are committees shall be~~ subject to direction from and the
31 supervision of the Statewide Human Rights Advocacy Council

1 ~~Committee~~. The district administrator shall assign staff to
2 provide administrative support to the local councils
3 ~~committees~~, and staff assigned to these positions shall
4 perform the functions required by the local council committee
5 without interference from the department. The local councils
6 ~~district committees~~ shall direct the activities of staff
7 assigned to them to the extent necessary for the councils
8 ~~committees~~ to carry out their duties. The number and areas of
9 responsibility of the local councils ~~district human rights~~
10 ~~advocacy committees~~, not to exceed three in any district,
11 shall be determined by the majority vote of local council
12 ~~district committee~~ members. However, district II may have four
13 councils, and any district that has a developmental services
14 institution, as defined in s. 393.063, or a state mental
15 hospital may, by a majority vote of the local council members,
16 petition the statewide council to establish a separate council
17 to serve this population ~~committees~~. Local councils ~~District~~
18 ~~committees~~ shall meet at facilities under their jurisdiction
19 whenever possible.

20 (2) Each local council ~~district human rights advocacy~~
21 ~~committee~~ shall have no fewer than 7 members and no more than
22 15 members, 25 percent of whom are or have been clients of the
23 Department of Children and Family ~~Health and Rehabilitative~~
24 Services within the last 4 years, except that one member of
25 this group may be an immediate relative or legal
26 representative of a current or former client; two providers,
27 who deliver services or programs to clients of the Department
28 of Children and Family ~~Health and Rehabilitative~~ Services; and
29 two representatives of professional organizations, one of whom
30 represents health-related professions and one of whom
31 represents the legal profession. Priority of consideration

1 shall be given to the appointment of at least one medical or
2 osteopathic physician, as defined in chapters 458 and 459, and
3 one member in good standing of The Florida Bar. Priority of
4 consideration shall also be given to the appointment of an
5 individual whose primary interest, experience, or expertise
6 lies with a major client group of the Department of Children
7 and Family ~~Health and Rehabilitative~~ Services which is not
8 represented on the council committee at the time of the
9 appointment. ~~In no case shall~~ A person who is employed by the
10 Department of Children and Family ~~Health and Rehabilitative~~
11 Services may not be selected as a member of a council
12 committee. ~~At no time shall~~ Individuals who are providing
13 contracted services to the Department of Children and Family
14 ~~Health and Rehabilitative~~ Services may not constitute more
15 than 25 percent of the membership of a local council district
16 committee. Persons related to each other by consanguinity or
17 affinity within the third degree may ~~shall~~ not serve on the
18 same local council district human rights advocacy committee at
19 the same time. All members of local councils district human
20 rights advocacy committees must successfully complete a
21 standardized training course for council committee members
22 within 3 months after their appointment to a council
23 committee. A member may not be assigned an investigation that
24 ~~which~~ requires access to confidential information prior to the
25 completion of the training course. After he or she completes
26 the required training course, a member of a council may
27 ~~committee shall~~ not be prevented from participating in any
28 activity of that council committee, including investigations
29 and monitoring, except due to a conflict of interest as
30 described in the procedures established by the Statewide Human
31 Rights Advocacy Council Committee pursuant to subsection (7).

1 (3)(a) With respect to existing councils ~~committees~~,
2 each member shall serve a term of 4 years. Upon expiration of
3 a term and in the case of any other vacancy, the local council
4 ~~district committee~~ shall appoint a replacement by majority
5 vote of the council ~~committee~~, subject to the approval of the
6 Governor. A member may serve no more than two full,
7 consecutive terms.

8 (b)1. The Governor shall appoint the first 4 members
9 of any newly created council ~~committee~~; and those 4 members
10 shall select the remaining 11 members, subject to approval of
11 the Governor. If any of the first four members are not
12 appointed within 60 days after ~~of~~ a request being submitted to
13 the Governor, those members shall be appointed by a majority
14 vote of the local council ~~district committee~~ without further
15 action by the Governor.

16 2. Members shall serve for no more than two full,
17 consecutive terms of 4 ~~3~~ years, except that at the time of
18 initial appointment, terms shall be staggered so that the
19 first six members appointed serve for terms of 2 years and the
20 remaining five members serve for terms of 4 ~~3~~ years.
21 Vacancies shall be filled as provided in subparagraph 1.

22 (c) If no action is taken by the Governor to approve
23 or disapprove a replacement of a member pursuant to this
24 paragraph within 30 days after the local council ~~district~~
25 ~~committee~~ has notified the Governor of the appointment, then
26 the appointment of the replacement shall be considered
27 approved.

28 (d) The limitation on the number of terms a member may
29 serve applies without regard to whether a term was served
30 before or after October 1, 1989.

31

1 (4) Each council ~~committee~~ shall elect a chairperson
2 and vice chairperson for a term of 1 year. A person may not
3 serve as chairperson or vice chairperson for more than two
4 consecutive terms. The chairperson's and vice chairperson's
5 terms expire ~~term expires~~ on the anniversary of their ~~the~~
6 ~~chairperson's~~ election.

7 (5) ~~If in the event that~~ a council ~~committee~~ member
8 fails to attend two-thirds of the regular council ~~committee~~
9 meetings during the course of a year, the council shall ~~it~~
10 ~~shall be the responsibility of the committee to~~ replace such
11 member. If a local council ~~district committee~~ member violates
12 ~~is in violation of the provisions of this section subsection~~
13 ~~or procedures adopted under this section thereto,~~ a local
14 council ~~district committee~~ may recommend to the Governor that
15 such member be removed.

16 (6) A member of a local council ~~district committee~~
17 shall receive no compensation but is ~~shall receive per diem~~
18 ~~and shall be~~ entitled to reimbursement ~~be reimbursed~~ for per
19 diem and travel expenses as provided in s. 112.061. Members
20 may be provided reimbursement for long-distance telephone
21 calls if such calls were necessary to an investigation of an
22 abuse or deprivation of human rights.

23 (7) A local council ~~district human rights advocacy~~
24 ~~committee~~ shall first seek to resolve a complaint with the
25 appropriate local administration, agency, or program. ~~Any~~
26 matter not resolved by the local council ~~district committee~~
27 shall be referred to the statewide council ~~Human Rights~~
28 ~~Advocacy Committee~~. A local council ~~district human rights~~
29 ~~advocacy committee~~ shall comply with appeal procedures
30 established by the statewide council ~~Human Rights Advocacy~~
31 ~~Committee~~. The duties, actions, and procedures of both new

1 and existing local councils ~~district human rights advocacy~~
2 ~~committees~~ shall conform to the provisions of ss.
3 402.164-402.167 ~~this act~~. The duties of each local council
4 ~~district human rights advocacy committee shall~~ include, but
5 are not limited to:

6 (a) Serving as an independent third-party mechanism
7 for protecting the constitutional and human rights of any
8 client within a program or facility operated, funded,
9 licensed, or regulated by the Department of Children and
10 Family Health and Rehabilitative Services.

11 (b) Monitoring by site visit and inspection of
12 records, the delivery and use of services, programs or
13 facilities operated, funded, regulated or licensed by the
14 Department of Children and Family Health and Rehabilitative
15 Services for the purpose of preventing abuse or deprivation of
16 the constitutional and human rights of clients. A local
17 council ~~district human rights advocacy committee~~ may conduct
18 an unannounced site visit or monitoring visit that involves
19 the inspection of records if such visit is conditioned upon a
20 complaint. A complaint may be generated by the council
21 ~~committee~~ itself if information from the Department of
22 Children and Family Health and Rehabilitative Services or
23 other sources indicates a situation at the program or facility
24 which that indicates possible abuse or neglect of clients.
25 The local council ~~district human rights advocacy committees~~
26 shall follow uniform criteria established by the statewide
27 council Human Rights Advocacy Committee for the review of
28 information and generation of complaints. Routine program
29 monitoring and reviews that do not require an examination of
30 records may be made unannounced.
31

1 (c) Receiving, investigating, and resolving reports of
2 abuse or deprivation of constitutional and human rights.

3 (d) Reviewing and making recommendations
4 ~~recommendation~~ with respect to the involvement by clients of
5 the Department of Children and Family Health and
6 ~~Rehabilitative~~ Services as subjects for research projects,
7 prior to implementation, insofar as their human rights are
8 affected.

9 (e) Reviewing existing programs or services and new or
10 revised programs of the Department of Children and Family
11 ~~Health and Rehabilitative~~ Services and making recommendations
12 as to how the rights of clients are affected.

13 (f) Appealing to the statewide council ~~state committee~~
14 any complaint unresolved at the local ~~district~~ level. Any
15 matter that constitutes a threat to the life, safety, or
16 health of a client or is multidistrict in scope shall
17 automatically be referred to the statewide council ~~Human~~
18 ~~Rights Advocacy Committee~~.

19 (g) Submitting an annual report by September 30 to the
20 statewide council ~~Human Rights Advocacy Committee~~ concerning
21 activities, recommendations, and complaints reviewed or
22 developed by the council ~~committee~~ during the year.

23 (h) Conducting meetings at least six times a year at
24 the call of the chairperson and at other times at the call of
25 the Governor, at the call of the statewide council ~~Human~~
26 ~~Rights Advocacy Committee~~, or by written request of a majority
27 of the members of the council ~~committee~~.

28 (8)(a) In the performance of its duties, a local
29 council ~~district human rights advocacy committee~~ shall have:

30 1. Access to all client records, files, and reports
31 from any program, service, or facility that is operated,

1 funded, licensed, or regulated by the Department of Children
2 and Family Services and any records that ~~which~~ are material to
3 its investigation and ~~which are~~ in the custody of any other
4 agency or department of government. The council's ~~committee's~~
5 investigation or monitoring may ~~shall~~ not impede or obstruct
6 matters under investigation by law enforcement agencies or
7 judicial authorities. Access may ~~shall~~ not be granted if a
8 specific procedure or prohibition for reviewing records is
9 required by federal law and regulation that ~~which~~ supersedes
10 state law. Access may ~~shall~~ not be granted to the records of
11 a private licensed practitioner who is providing services
12 outside state agencies and facilities and whose client is
13 competent and refuses disclosure.

14 2. Standing to petition the circuit court for access
15 to client records that ~~which~~ are confidential as specified by
16 law. The petition must ~~shall~~ state the specific reasons for
17 which the council ~~committee~~ is seeking access and the intended
18 use of such information. The court may authorize ~~committee~~
19 access to such records upon a finding that such access is
20 directly related to an investigation regarding the possible
21 deprivation of constitutional or human rights or the abuse of
22 a client. Original client files, records, and reports may
23 ~~shall~~ not be removed from Department of Children and Family
24 Services or agency facilities. ~~Upon no circumstances shall~~
25 The local council may not ~~committee~~ have access to
26 confidential adoption records in accordance with ~~the~~
27 ~~provisions of~~ ss. 39.0132, 63.022, and 63.162. Upon completion
28 of a general investigation of practices and procedures of the
29 Department of Children and Family Services, the council
30 ~~committee~~ shall report its findings to that department.

31

1 (b) All information obtained or produced by a local
2 council ~~the committee~~ which is made confidential by law, which
3 relates to the identity of any client or group of clients
4 subject to the protection of this section, or which relates to
5 the identity of an individual who provides information to the
6 council ~~committee~~ about abuse or alleged violations of
7 constitutional or human rights, is confidential and exempt
8 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of
9 the State Constitution.

10 (c) Portions of meetings of a local council ~~district~~
11 ~~human rights advocacy committee~~ which relate to the identity
12 of any client or group of clients subject to the protections
13 of this section, which relate to the identity of an individual
14 who provides information to the council ~~committee~~ about abuse
15 or alleged violations of constitutional or human rights, or
16 wherein testimony is provided relating to records otherwise
17 made confidential by law, are exempt from ~~the provisions of~~ s.
18 286.011 and s. 24(b), Art. I of the State Constitution.

19 (d) All records prepared by members of a local council
20 ~~the committee~~ which reflect a mental impression, investigative
21 strategy, or theory are exempt from ~~the provisions of~~ s.
22 119.07(1) and s. 24(a), Art. I of the State Constitution until
23 the investigation is completed or until the investigation
24 ceases to be active. For purposes of this section, an
25 investigation is considered "active" while such investigation
26 is being conducted by a local council ~~the committee~~ with a
27 reasonable, good faith belief that it may lead to a finding of
28 abuse or of a violation of human rights. An investigation
29 does not cease to be active so long as the council ~~committee~~
30 is proceeding with reasonable dispatch and there is a good
31

1 faith belief that action may be initiated by the council
2 ~~committee~~ or other administrative or law enforcement agency.

3 (e) Any person who knowingly and willfully discloses
4 any such confidential information is guilty of a misdemeanor
5 of the second degree, punishable as provided in s. 775.082 or
6 s. 775.083.

7 Section 3. Section 402.167, Florida Statutes, is
8 amended to read:

9 402.167 Department duties relating to the Statewide
10 Human Rights Advocacy Council ~~Committee~~ and the Local ~~District~~
11 Human Rights Advocacy Councils ~~Committees~~.--

12 (1) The Department of Children and Family ~~Health and~~
13 ~~Rehabilitative~~ Services shall adopt rules that ~~which~~ are
14 consistent with law, amended to reflect any statutory changes,
15 and that ~~which rules~~ address at least the following:

16 (a) Procedures by which Department of Children and
17 Family ~~Health and Rehabilitative~~ Services district staff refer
18 reports of abuse to local councils ~~district human rights~~
19 ~~advocacy committees~~.

20 (b) Procedures by which client information is made
21 available to members of the statewide council ~~Human Rights~~
22 ~~Advocacy Committee~~ and the local councils ~~district human~~
23 ~~rights advocacy committees~~.

24 (c) Procedures by which recommendations made by the
25 councils ~~human rights advocacy committees~~ will be incorporated
26 into Department of Children and Family ~~Health and~~
27 ~~Rehabilitative~~ Services policies and procedures.

28 (d) Procedures by which council ~~committee~~ members are
29 reimbursed for authorized expenditures.

30 (2) The Department of Children and Family ~~Health and~~
31 ~~Rehabilitative~~ Services shall provide for the location of

1 ~~local councils district human rights advocacy committees~~ in
2 district headquarters offices and shall provide necessary
3 equipment and office supplies, including, but not limited to,
4 clerical and word processing services, photocopiers, telephone
5 services, and stationery and other necessary supplies.

6 (3) The secretary shall ensure the full cooperation
7 and assistance of employees of the Department of Children and
8 Family Health and Rehabilitative Services with members and
9 staff of the human rights advocacy councils ~~committees~~.

10 Further, the secretary shall ensure that to the extent
11 possible, staff assigned to the Statewide Human Rights
12 Advocacy Council ~~Committees~~ and Local ~~District~~ Human Rights
13 Advocacy Councils ~~Committees~~ are free of interference from or
14 control by the department in performing their duties relative
15 to those councils ~~committees~~.

16 Section 4. Paragraph (a) of subsection (7) of section
17 39.001, Florida Statutes, 1998 Supplement, is amended to read:

18 39.001 Purposes and intent; personnel standards and
19 screening.--

20 (7) PLAN FOR COMPREHENSIVE APPROACH.--

21 (a) The department shall develop a state plan for the
22 prevention of abuse, abandonment, and neglect of children and
23 shall submit the plan to the Speaker of the House of
24 Representatives, the President of the Senate, and the Governor
25 no later than January 1, 1983. The Department of Education and
26 the Division of Children's Medical Services of the Department
27 of Health shall participate and fully cooperate in the
28 development of the state plan at both the state and local
29 levels. Furthermore, appropriate local agencies and
30 organizations shall be provided an opportunity to participate
31 in the development of the state plan at the local level.

1 Appropriate local groups and organizations shall include, but
2 not be limited to, community mental health centers; guardian
3 ad litem programs for children under the circuit court; the
4 school boards of the local school districts; the local
5 ~~district~~ human rights advocacy councils ~~committees~~; private or
6 public organizations or programs with recognized expertise in
7 working with children who are sexually abused, physically
8 abused, emotionally abused, abandoned, or neglected and with
9 expertise in working with the families of such children;
10 private or public programs or organizations with expertise in
11 maternal and infant health care; multidisciplinary child
12 protection teams; child day care centers; law enforcement
13 agencies, and the circuit courts, when guardian ad litem
14 programs are not available in the local area. The state plan
15 to be provided to the Legislature and the Governor shall
16 include, as a minimum, the information required of the various
17 groups in paragraph (b).

18 Section 5. Paragraph (k) of subsection (2) of section
19 39.202, Florida Statutes, 1998 Supplement, is amended to read:

20 39.202 Confidentiality of reports and records in cases
21 of child abuse or neglect.--

22 (2) Access to such records, excluding the name of the
23 reporter which shall be released only as provided in
24 subsection (4), shall be granted only to the following
25 persons, officials, and agencies:

26 (k) Any appropriate official of the human rights
27 advocacy council ~~committee~~ investigating a report of known or
28 suspected child abuse, abandonment, or neglect, the Auditor
29 General for the purpose of conducting preliminary or
30 compliance reviews pursuant to s. 11.45, or the guardian ad
31 litem for the child.

1 Section 6. Subsection (4) of section 39.302, Florida
2 Statutes, 1998 Supplement, is amended to read:

3 39.302 Protective investigations of institutional
4 child abuse, abandonment, or neglect.--

5 (4) The department shall notify the human rights
6 advocacy council ~~committee~~ in the appropriate district of the
7 department as to every report of institutional child abuse,
8 abandonment, or neglect in the district in which a client of
9 the department is alleged or shown to have been abused,
10 abandoned, or neglected, which notification shall be made
11 within 48 hours after the department commences its
12 investigation.

13 Section 7. Paragraphs (g) and (i) of subsection (4)
14 and subsection (7) of section 393.13, Florida Statutes, are
15 amended to read:

16 393.13 Personal treatment of persons who are
17 developmentally disabled.--

18 (4) CLIENT RIGHTS.--For purposes of this subsection,
19 the term "client," as defined in s. 393.063, shall also
20 include any person served in a facility licensed pursuant to
21 s. 393.067.

22 (g) No client shall be subjected to a treatment
23 program to eliminate bizarre or unusual behaviors without
24 first being examined by a physician who in his or her best
25 judgment determines that such behaviors are not organically
26 caused.

27 1. Treatment programs involving the use of noxious or
28 painful stimuli shall be prohibited.

29 2. All alleged violations of this paragraph shall be
30 reported immediately to the chief administrative officer of
31 the facility or the district administrator, the department

1 head, and the local ~~district~~ human rights advocacy council
2 ~~committee~~. A thorough investigation of each incident shall be
3 conducted and a written report of the finding and results of
4 such investigation shall be submitted to the chief
5 administrative officer of the facility or the district
6 administrator and to the department head within 24 hours of
7 the occurrence or discovery of the incident.

8 3. The department shall promulgate by rule a system
9 for the oversight of behavioral programs. Such system shall
10 establish guidelines and procedures governing the design,
11 approval, implementation, and monitoring of all behavioral
12 programs involving clients. The system shall ensure statewide
13 and local review by committees of professionals certified as
14 behavior analysts pursuant to s. 393.17. No behavioral
15 program shall be implemented unless reviewed according to the
16 rules established by the department under this section.

17 Nothing stated in this section shall prohibit the review of
18 programs by the local ~~district~~ human rights advocacy council
19 ~~committee~~.

20 (i) Clients shall have the right to be free from
21 unnecessary physical, chemical, or mechanical restraint.
22 Restraints shall be employed only in emergencies or to protect
23 the client from imminent injury to himself or herself or
24 others. Restraints shall not be employed as punishment, for
25 the convenience of staff, or as a substitute for a
26 habilitative plan. Restraints shall impose the least possible
27 restrictions consistent with their purpose and shall be
28 removed when the emergency ends. Restraints shall not cause
29 physical injury to the client and shall be designed to allow
30 the greatest possible comfort.

31

1 1. Mechanical supports used in normative situations to
2 achieve proper body position and balance shall not be
3 considered restraints, but shall be prescriptively designed
4 and applied under the supervision of a qualified professional
5 with concern for principles of good body alignment,
6 circulation, and allowance for change of position.

7 2. Totally enclosed cribs and barred enclosures shall
8 be considered restraints.

9 3. Daily reports on the employment of physical,
10 chemical, or mechanical restraints by those specialists
11 authorized in the use of such restraints shall be made to the
12 appropriate chief administrator of the facility, and a monthly
13 summary of such reports shall be relayed to the district
14 administrator and the local ~~district~~ human rights advocacy
15 council ~~committee~~. The reports shall summarize all such cases
16 of restraints, the type used, the duration of usage, and the
17 reasons therefor. Districts shall submit districtwide
18 quarterly reports of these summaries to the state
19 Developmental Services Program Office.

20 4. The department shall post a copy of the rules
21 promulgated under this section in each living unit of
22 residential facilities. A copy of the rules promulgated under
23 this section shall be given to all staff members of licensed
24 facilities and made a part of all preservice and inservice
25 training programs.

26 (7) RESIDENT GOVERNMENT.--Each residential facility
27 providing services to clients who are desirous and capable of
28 participating shall initiate and develop a program of resident
29 government to hear the views and represent the interests of
30 all clients served by the facility. The resident government
31 shall be composed of residents elected by other residents,

1 staff advisers skilled in the administration of community
2 organizations, and a representative of the local district
3 human rights advocacy council committee. The resident
4 government shall work closely with the local district human
5 rights advocacy council committee and the district
6 administrator to promote the interests and welfare of all
7 residents in the facility.

8 Section 8. Paragraph (c) of subsection (5) and
9 subsection (12) of section 394.459, Florida Statutes, are
10 amended to read:

11 394.459 Rights of patients.--

12 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

13 (c) Each facility must permit immediate access to any
14 patient, subject to the patient's right to deny or withdraw
15 consent at any time, by the patient's family members,
16 guardian, guardian advocate, representative, human rights
17 advocacy council committee, or attorney, unless such access
18 would be detrimental to the patient. If a patient's right to
19 communicate or to receive visitors is restricted by the
20 facility, written notice of such restriction and the reasons
21 for the restriction shall be served on the patient, the
22 patient's attorney, and the patient's guardian, guardian
23 advocate, or representative; and such restriction shall be
24 recorded on the patient's clinical record with the reasons
25 therefor. The restriction of a patient's right to communicate
26 or to receive visitors shall be reviewed at least every 7
27 days. The right to communicate or receive visitors shall not
28 be restricted as a means of punishment. Nothing in this
29 paragraph shall be construed to limit the provisions of
30 paragraph (d).

31

1 (12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each
2 facility shall post a notice listing and describing, in the
3 language and terminology that the persons to whom the notice
4 is addressed can understand, the rights provided in this
5 section. This notice shall include a statement that
6 provisions of the federal Americans with Disabilities Act
7 apply and the name and telephone number of a person to contact
8 for further information. This notice shall be posted in a
9 place readily accessible to patients and in a format easily
10 seen by patients. This notice shall include the telephone
11 numbers of the local human rights advocacy council ~~committee~~
12 and Advocacy Center for Persons with Disabilities, Inc.

13 Section 9. Section 394.4595, Florida Statutes, is
14 amended to read:

15 394.4595 Human Rights Advocacy Council ~~Committee~~
16 access to patients and records.--Any facility designated by
17 the department as a receiving or treatment facility must allow
18 access to any patient and the clinical and legal records of
19 any patient admitted pursuant to the provisions of this act by
20 members of the Human Rights Advocacy Council ~~Committee~~.

21 Section 10. Paragraph (d) of subsection (2) of section
22 394.4597, Florida Statutes, is amended to read:

23 394.4597 Persons to be notified; patient's
24 representative.--

25 (2) INVOLUNTARY PATIENTS.--

26 (d) When the receiving or treatment facility selects a
27 representative, first preference shall be given to a health
28 care surrogate, if one has been previously selected by the
29 patient. If the patient has not previously selected a health
30 care surrogate, the selection, except for good cause
31

1 documented in the patient's clinical record, shall be made
2 from the following list in the order of listing:

- 3 1. The patient's spouse.
- 4 2. An adult child of the patient.
- 5 3. A parent of the patient.
- 6 4. The adult next of kin of the patient.
- 7 5. An adult friend of the patient.
- 8 6. The appropriate human rights advocacy council
9 ~~committee~~ as provided in s. 402.166.

10 Section 11. Subsection (1) of section 394.4598,
11 Florida Statutes, is amended to read:

12 394.4598 Guardian advocate.--

13 (1) The administrator may petition the court for the
14 appointment of a guardian advocate based upon the opinion of a
15 psychiatrist that the patient is incompetent to consent to
16 treatment. If the court finds that a patient is incompetent to
17 consent to treatment and has not been adjudicated
18 incapacitated and a guardian with the authority to consent to
19 mental health treatment appointed, it shall appoint a guardian
20 advocate. The patient has the right to have an attorney
21 represent him or her at the hearing. If the person is
22 indigent, the court shall appoint the office of the public
23 defender to represent him or her at the hearing. The patient
24 has the right to testify, cross-examine witnesses, and present
25 witnesses. The proceeding shall be recorded either
26 electronically or stenographically, and testimony shall be
27 provided under oath. One of the professionals authorized to
28 give an opinion in support of a petition for involuntary
29 placement, as described in s. 394.467(2), must testify. A
30 guardian advocate must meet the qualifications of a guardian
31 contained in part IV of chapter 744, except that a

1 professional referred to in this part, an employee of the
2 facility providing direct services to the patient under this
3 part, a departmental employee, a facility administrator, or
4 member of the local district human rights advocacy council may
5 ~~committee shall~~ not be appointed. A person who is appointed as
6 a guardian advocate must agree to the appointment.

7 Section 12. Paragraph (b) of subsection (2) of section
8 394.4599, Florida Statutes, is amended to read:

9 394.4599 Notice.--

10 (2) INVOLUNTARY PATIENTS.--

11 (b) A receiving facility shall give prompt notice of
12 the whereabouts of a patient who is being involuntarily held
13 for examination, by telephone or in person within 24 hours
14 after the patient's arrival at the facility, unless the
15 patient requests that no notification be made. Contact
16 attempts shall be documented in the patient's clinical record
17 and shall begin as soon as reasonably possible after the
18 patient's arrival. Notice that a patient is being admitted as
19 an involuntary patient shall be given to the local human
20 rights advocacy council ~~committee~~ no later than the next
21 working day after the patient is admitted.

22 Section 13. Subsection (5) of section 394.4615,
23 Florida Statutes, is amended to read:

24 394.4615 Clinical records; confidentiality.--

25 (5) Information from clinical records may be used by
26 the Agency for Health Care Administration, the department, and
27 the human rights advocacy councils ~~committees~~ for the purpose
28 of monitoring facility activity and complaints concerning
29 facilities.

30 Section 14. Paragraph (g) of subsection (2) of section
31 400.0067, Florida Statutes, is amended to read:

1 400.0067 Establishment of State Long-Term Care
2 Ombudsman Council; duties; membership.--

3 (2) The State Long-Term Care Ombudsman Council shall:

4 (g) Enter into a cooperative agreement with the
5 statewide and local ~~district~~ human rights advocacy councils
6 ~~committees~~ for the purpose of coordinating advocacy services
7 provided to residents of long-term care facilities.

8 Section 15. Section 400.0089, Florida Statutes, is
9 amended to read:

10 400.0089 Agency reports.--The State Long-Term Care
11 Ombudsman Council, shall, in cooperation with the Department
12 of Elderly Affairs, maintain a statewide uniform reporting
13 system to collect and analyze data relating to complaints and
14 conditions in long-term care facilities and to residents, for
15 the purpose of identifying and resolving significant problems.
16 The council shall submit such data as part of its annual
17 report required pursuant to s. 400.0067(2)(h) to the Agency
18 for Health Care Administration, the Department of Health and
19 Rehabilitative Services, the Statewide Human Rights Advocacy
20 Council ~~Committee~~, the Advocacy Center for Persons with
21 Disabilities, the Commissioner for the United States
22 Administration on Aging, the National Ombudsman Resource
23 Center, and any other state or federal entities that the
24 ombudsman determines appropriate.

25 Section 16. Subsection (13) of section 400.419,
26 Florida Statutes, 1998 Supplement, is amended to read:

27 400.419 Violations; administrative fines.--

28 (13) The agency shall develop and disseminate an
29 annual list of all facilities sanctioned or fined \$5,000 or
30 more for violations of state standards, the number and class
31 of violations involved, the penalties imposed, and the current

1 status of cases. The list shall be disseminated, at no charge,
2 to the Department of Elderly Affairs, the Department of
3 Health, the Department of Children and Family Services, the
4 area agencies on aging, the Statewide Human Rights Advocacy
5 Council ~~Committee~~, and the state and district long-term care
6 ~~nursing home~~ ombudsman councils. The Department of Children
7 and Family Services shall disseminate the list to service
8 providers under contract to the department who are responsible
9 for referring persons to a facility for residency. The agency
10 may charge a fee commensurate with the cost of printing and
11 postage to other interested parties requesting a copy of this
12 list.

13 Section 17. Subsection (2) of section 400.428, Florida
14 Statutes, 1998 Supplement, is amended to read:

15 400.428 Resident bill of rights.--

16 (2) The administrator of a facility shall ensure that
17 a written notice of the rights, obligations, and prohibitions
18 set forth in this part is posted in a prominent place in each
19 facility and read or explained to residents who cannot read.
20 This notice shall include the name, address, and telephone
21 numbers of the district ombudsman council and adult abuse
22 registry and, when applicable, the Advocacy Center for Persons
23 with Disabilities, Inc., and the local ~~district~~ human rights
24 advocacy council ~~committee~~, where complaints may be lodged.
25 The facility must ensure a resident's access to a telephone to
26 call the district ombudsman council, adult abuse registry,
27 Advocacy Center for Persons with Disabilities, Inc., and local
28 ~~district~~ human rights advocacy council ~~committee~~.

29 Section 18. Paragraph (a) of subsection (1) of section
30 415.1034, Florida Statutes, 1998 Supplement, is amended to
31 read:

1 415.1034 Mandatory reporting of abuse, neglect, or
2 exploitation of disabled adults or elderly persons; mandatory
3 reports of death.--
4 (1) MANDATORY REPORTING.--
5 (a) Any person, including, but not limited to, any:
6 1. Physician, osteopathic physician, medical examiner,
7 chiropractic physician, nurse, or hospital personnel engaged
8 in the admission, examination, care, or treatment of disabled
9 adults or elderly persons;
10 2. Health professional or mental health professional
11 other than one listed in subparagraph 1.;
12 3. Practitioner who relies solely on spiritual means
13 for healing;
14 4. Nursing home staff; assisted living facility staff;
15 adult day care center staff; adult family-care home staff;
16 social worker; or other professional adult care, residential,
17 or institutional staff;
18 5. State, county, or municipal criminal justice
19 employee or law enforcement officer;
20 6. Human rights advocacy council member ~~committee~~ or
21 long-term care ombudsman council member; or
22 7. Bank, savings and loan, or credit union officer,
23 trustee, or employee,
24
25 who knows, or has reasonable cause to suspect, that a disabled
26 adult or an elderly person has been or is being abused,
27 neglected, or exploited shall immediately report such
28 knowledge or suspicion to the central abuse registry and
29 tracking system on the single statewide toll-free telephone
30 number.
31

1 Section 19. Subsection (1) of section 415.104, Florida
2 Statutes, is amended to read:

3 415.104 Protective services investigations of cases of
4 abuse, neglect, or exploitation of aged persons or disabled
5 adults; transmittal of records to state attorney.--

6 (1) The department shall, upon receipt of a report
7 alleging abuse, neglect, or exploitation of an aged person or
8 disabled adult, commence, or cause to be commenced within 24
9 hours, a protective services investigation of the facts
10 alleged therein. If, upon arrival of the protective
11 investigator at the scene of the incident, a caregiver refuses
12 to allow the department to begin a protective services
13 investigation or interferes with the department's ability to
14 conduct such an investigation, the appropriate law enforcement
15 agency shall be contacted to assist the department in
16 commencing the protective services investigation. If, during
17 the course of the investigation, the department has reason to
18 believe that the abuse, neglect, or exploitation is
19 perpetrated by a second party, the appropriate criminal
20 justice agency and state attorney shall be orally notified in
21 order that such agencies may begin a criminal investigation
22 concurrent with the protective services investigation of the
23 department. In an institutional investigation, the alleged
24 perpetrator may be represented by an attorney, at his or her
25 own expense, or accompanied by another person, if the person
26 or the attorney executes an affidavit of understanding with
27 the department and agrees to comply with the confidentiality
28 provisions of s. 415.107. The absence of an attorney or other
29 person does not prevent the department from proceeding with
30 other aspects of the investigation, including interviews with
31 other persons. The department shall make a preliminary

1 written report to the criminal justice agencies within 5
2 working days after the oral report. The department shall,
3 within 24 hours after receipt of the report, notify the
4 appropriate human rights advocacy council ~~committee~~, or
5 long-term care ombudsman council, when appropriate, that an
6 alleged abuse, neglect, or exploitation perpetrated by a
7 second party has occurred. Notice to the human rights
8 advocacy council ~~committee~~ or long-term care ombudsman council
9 may be accomplished orally or in writing and shall include the
10 name and location of the aged person or disabled adult alleged
11 to have been abused, neglected, or exploited and the nature of
12 the report. For each report it receives, the department shall
13 perform an onsite investigation to:

14 (a) Determine that the person is an aged person or
15 disabled adult as defined in s. 415.102.

16 (b) Determine the composition of the family or
17 household, including the name, address, date of birth, social
18 security number, sex, and race of each aged person or disabled
19 adult named in the report; any others in the household or in
20 the care of the caregiver, or any other persons responsible
21 for the aged person's or disabled adult's welfare; and any
22 other adults in the same household.

23 (c) Determine whether there is an indication that any
24 aged person or disabled adult is abused, neglected, or
25 exploited, including a determination of harm or threatened
26 harm to any aged person or disabled adult; the nature and
27 extent of present or prior injuries, abuse, or neglect, and
28 any evidence thereof; and a determination as to the person or
29 persons apparently responsible for the abuse, neglect, or
30 exploitation, including the name, address, date of birth,
31 social security number, sex, and race of each person to be

1 classified as an alleged perpetrator in a proposed confirmed
2 report. An alleged perpetrator named in a proposed confirmed
3 report of abuse, neglect, or exploitation shall cooperate in
4 the provision of the required data for the central abuse
5 registry and tracking system to the fullest extent possible.

6 (d) Determine the immediate and long-term risk to each
7 aged person or disabled adult through utilization of
8 standardized risk assessment instruments.

9 (e) Determine the protective, treatment, and
10 ameliorative services necessary to safeguard and ensure the
11 aged person's or disabled adult's well-being and cause the
12 delivery of those services through the early intervention of
13 the departmental worker responsible for service provision and
14 management of identified services.

15 Section 20. Paragraphs (a) and (i) of subsection (1)
16 of section 415.1055, Florida Statutes, 1998 Supplement, are
17 amended to read:

18 415.1055 Notification to administrative entities,
19 subjects, and reporters; notification to law enforcement and
20 state attorneys.--

21 (1) NOTIFICATION TO ADMINISTRATIVE ENTITIES.--

22 (a) The department shall, within 24 hours after
23 receipt of a report of abuse, neglect, or exploitation of a
24 disabled adult or an elderly person within a facility,
25 excluding Saturdays, Sundays, and legal holidays, notify the
26 appropriate human rights advocacy council ~~committee~~ and the
27 long-term care ombudsman council, in writing, that the
28 department has reasonable cause to believe that a disabled
29 adult or an elderly person has been abused, neglected, or
30 exploited at the facility.

31

1 (i) At the conclusion of a protective investigation at
2 a facility, the department shall notify either the human
3 rights advocacy council ~~committee~~ or long-term care ombudsman
4 council of the results of the investigation. This
5 notification must be in writing.

6 Section 21. Subsection (2) of section 415.106, Florida
7 Statutes, is amended to read:

8 415.106 Cooperation by the department and criminal
9 justice and other agencies.--

10 (2) To ensure coordination, communication, and
11 cooperation with the investigation of abuse, neglect, or
12 exploitation of disabled adults or elderly persons, the
13 department shall develop and maintain interprogram agreements
14 or operational procedures among appropriate departmental
15 programs and the State Long-Term Care Ombudsman Council, the
16 Statewide Human Rights Advocacy Council ~~Committee~~, and other
17 agencies that provide services to disabled adults or elderly
18 persons. These agreements or procedures must cover such
19 subjects as the appropriate roles and responsibilities of the
20 department in identifying and responding to reports of abuse,
21 neglect, or exploitation of disabled adults or elderly
22 persons; the provision of services; and related coordinated
23 activities.

24 Section 22. Paragraph (g) of subsection (2) of section
25 415.107, Florida Statutes, 1998 Supplement, is amended to
26 read:

27 415.107 Confidentiality of reports and records.--

28 (2) Access to all records, excluding the name of the
29 reporter which shall be released only as provided in
30 subsection (6), shall be granted only to the following
31 persons, officials, and agencies:

1 (g) Any appropriate official of the human rights
2 advocacy council ~~committee~~ or long-term care ombudsman council
3 investigating a report of known or suspected abuse, neglect,
4 or exploitation of a disabled adult or an elderly person.

5 Section 23. Subsection (3) of section 430.04, Florida
6 Statutes, 1998 Supplement, is amended to read:

7 430.04 Duties and responsibilities of the Department
8 of Elderly Affairs.--The Department of Elderly Affairs shall:

9 (3) Prepare and submit to the Governor, each Cabinet
10 member, the President of the Senate, the Speaker of the House
11 of Representatives, the minority leaders of the House and
12 Senate, and chairpersons of appropriate House and Senate
13 committees a master plan for policies and programs in the
14 state related to aging. The plan must identify and assess the
15 needs of the elderly population in the areas of housing,
16 employment, education and training, medical care, long-term
17 care, preventive care, protective services, social services,
18 mental health, transportation, and long-term care insurance,
19 and other areas considered appropriate by the department. The
20 plan must assess the needs of particular subgroups of the
21 population and evaluate the capacity of existing programs,
22 both public and private and in state and local agencies, to
23 respond effectively to identified needs. If the plan
24 recommends the transfer of any program or service from the
25 Department of Children and Family ~~Health and Rehabilitative~~
26 Services to another state department, the plan must also
27 include recommendations that provide for an independent
28 third-party mechanism, as currently exists in the human rights
29 advocacy councils ~~committees~~ established in ss. 402.165 and
30 402.166, for protecting the constitutional and human rights of
31 recipients of departmental services. The plan must include

1 policy goals and program strategies designed to respond
2 efficiently to current and projected needs. The plan must also
3 include policy goals and program strategies to promote
4 intergenerational relationships and activities. Public
5 hearings and other appropriate processes shall be utilized by
6 the department to solicit input for the development and
7 updating of the master plan from parties including, but not
8 limited to, the following:

9 (a) Elderly citizens and their families and
10 caregivers.

11 (b) Local-level public and private service providers,
12 advocacy organizations, and other organizations relating to
13 the elderly.

14 (c) Local governments.

15 (d) All state agencies that provide services to the
16 elderly.

17 (e) University centers on aging.

18 (f) Area agency on aging and community care for the
19 elderly lead agencies.

20 Section 24. This act shall take effect July 1, 1999.

21 *****

22
23 HOUSE SUMMARY

24 Renames the Statewide Human Rights Advocacy Committee and
25 the district human rights advocacy committees as the
26 Statewide Human Rights Advocacy Council and the local
27 human rights advocacy councils, respectively. Provides
28 for the statewide council and local councils to monitor
29 and investigate allegations of abuse of human or
30 constitutional rights by the Department of Children and
31 Family Services. Increases council members' term of
appointment. Revises the membership of the statewide
council. Provides for appointment of a vice chairperson
to each local council. Provides for the establishment of
additional local human rights advocacy councils.