

By Senator Forman

32-443A-99

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, F.S.; conforming terminology  
27          to changes made by the act; providing an  
28          effective date.

29  
30 Be It Enacted by the Legislature of the State of Florida:  
31

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 four ~~five~~ groups of citizens as  
22 follows: one provider ~~elected public official~~; ~~two providers~~  
23 who 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 representative ~~representatives~~ of the health-related  
5 professions, the appointing authority shall give priority of  
6 consideration to a physician licensed under chapter 458 or  
7 chapter 459; and, in appointing the representative  
8 ~~representatives~~ of the legal profession, the appointing  
9 authority shall give priority of consideration to a member in  
10 good standing of The Florida Bar. Of the remaining members, no  
11 more than one shall be an elected official; no more than one  
12 shall be a health professional; no more than one shall be a  
13 legal professional; no more than one shall be a provider; no  
14 more than two shall be nonsalaried representatives of  
15 nonprofit agencies or civic groups; and no more than one shall  
16 be an individual whose primary area of interest, experience,  
17 or expertise is a major client group of the Department of  
18 Children and Family Services which is not represented on the  
19 council at the time of appointment. Except for the member who  
20 is an elected public official, each member of the statewide  
21 council ~~Human Rights Advocacy Committee~~ must have served as a  
22 member of a local ~~district~~ human rights advocacy council, with  
23 priority consideration given to an applicant who has served a  
24 full term on a local council ~~committee~~. Persons related to  
25 each other by consanguinity or affinity within the third  
26 degree may not serve on the statewide council ~~Human Rights~~  
27 ~~Advocacy Committee~~ at the same time.

28 (2) Members of the statewide council ~~Human Rights~~  
29 ~~Advocacy Committee~~ shall be appointed to serve terms of 4 ~~3~~  
30 years, retroactive to the members in office on July 1, 1999.  
31 A member may not serve more than two full, consecutive terms.

1 The limitation on the number of terms a member may serve  
2 applies without regard to whether a term was served before or  
3 after October 1, 1989.

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

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

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;

31

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 shall  
7 | not be removed from the Department of Children and Family  
8 | Services or agency facilities. The statewide council may not  
9 | ~~Under no circumstance shall the committee~~ have access to  
10 | 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 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 councils ~~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 health  
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 not represented  
8 on the committee at the time of the appointment. ~~In no case~~  
9 ~~shall~~ A person who is employed by the Department of Children  
10 and Family ~~Health and Rehabilitative~~ Services may not be  
11 selected as a member of a council ~~committee~~. ~~At no time shall~~  
12 Individuals who are providing contracted services to the  
13 Department of Children and Family ~~Health and Rehabilitative~~  
14 Services may not constitute more than 25 percent of the  
15 membership of a local council ~~district committee~~. Persons  
16 related to each other by consanguinity or affinity within the  
17 third degree may ~~shall~~ not serve on the same local council  
18 ~~district human rights advocacy committee~~ at the same time.  
19 All members of local councils ~~district human rights advocacy~~  
20 ~~committees~~ must successfully complete a standardized training  
21 course for council ~~committee~~ members within 3 months after  
22 their appointment to a council ~~committee~~. A member may not be  
23 assigned an investigation that ~~which~~ requires access to  
24 confidential information prior to the completion of the  
25 training course. After he or she completes the required  
26 training course, a member of a council ~~may~~ ~~committee~~ ~~shall~~ not  
27 be prevented from participating in any activity of that  
28 council ~~committee~~, including investigations and monitoring,  
29 except due to a conflict of interest as described in the  
30 procedures established by the Statewide Human Rights Advocacy  
31 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 3 years. Vacancies  
21 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 for a term of 1 year. A person may not serve as chairperson  
3 or vice chairperson for more than two consecutive terms. The  
4 chairperson's and vice chairperson's terms expire ~~term expires~~  
5 on the anniversary of their ~~the chairperson's~~ election.

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

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

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

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

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

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

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



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

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

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

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

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

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

28           1. Access to all client records, files, and reports  
29 from any program, service, or facility that is operated,  
30 funded, licensed, or regulated by the Department of Children  
31 and Family Services and any records that ~~which~~ are material to

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

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

29 |         (b) All information obtained or produced by a local  
30 | council ~~the committee~~ which is made confidential by law, which  
31 | relates to the identity of any client or group of clients

1 subject to the protection of this section, or which relates to  
2 the identity of an individual who provides information to the  
3 council ~~committee~~ about abuse or alleged violations of  
4 constitutional or human rights, is confidential and exempt  
5 from the provisions of s. 119.07(1) and s. 24(a), Art. I of  
6 the State Constitution.

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

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

30 (e) Any person who knowingly and willfully discloses  
31 any such confidential information is guilty of a misdemeanor

1 of the second degree, punishable as provided in s. 775.082 or  
2 s. 775.083.

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

5 402.167 Department duties relating to the Statewide  
6 Human Rights Advocacy Council ~~Committee~~ and the Local District  
7 Human Rights Advocacy Councils ~~Committees~~.--

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

12 (a) Procedures by which Department of Children and  
13 Family Health and ~~Rehabilitative~~ Services district staff refer  
14 reports of abuse to local councils ~~district human rights~~  
15 ~~advocacy committees~~.

16 (b) Procedures by which client information is made  
17 available to members of the statewide council ~~Human Rights~~  
18 ~~Advocacy Committee~~ and the local councils ~~district human~~  
19 ~~rights advocacy committees~~.

20 (c) Procedures by which recommendations made by the  
21 councils ~~human rights advocacy committees~~ will be incorporated  
22 into Department of Children and Family Health and  
23 ~~Rehabilitative~~ Services policies and procedures.

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

26 (2) The Department of Children and Family Health and  
27 ~~Rehabilitative~~ Services shall provide for the location of  
28 local councils ~~district human rights advocacy committees~~ in  
29 district headquarters offices and shall provide necessary  
30 equipment and office supplies, including, but not limited to,  
31

1 clerical and word processing services, photocopiers, telephone  
2 services, and stationery and other necessary supplies.

3 (3) The secretary shall ensure the full cooperation  
4 and assistance of employees of the Department of Children and  
5 Family Health and Rehabilitative Services with members and  
6 staff of the human rights advocacy councils ~~committees~~.  
7 Further, the secretary shall ensure that to the extent  
8 possible, staff assigned to the Statewide Human Rights  
9 Advocacy Council ~~Committees~~ and Local District Human Rights  
10 Advocacy Councils ~~Committees~~ are free of interference from or  
11 control by the department in performing their duties relative  
12 to those councils ~~committees~~.

13 Section 4. Paragraph (a) of subsection (7) of section  
14 39.001, Florida Statutes, 1998 Supplement, is amended to read:

15 39.001 Purposes and intent; personnel standards and  
16 screening.--

17 (7) PLAN FOR COMPREHENSIVE APPROACH.--

18 (a) The department shall develop a state plan for the  
19 prevention of abuse, abandonment, and neglect of children and  
20 shall submit the plan to the Speaker of the House of  
21 Representatives, the President of the Senate, and the Governor  
22 no later than January 1, 1983. The Department of Education and  
23 the Division of Children's Medical Services of the Department  
24 of Health shall participate and fully cooperate in the  
25 development of the state plan at both the state and local  
26 levels. Furthermore, appropriate local agencies and  
27 organizations shall be provided an opportunity to participate  
28 in the development of the state plan at the local level.  
29 Appropriate local groups and organizations shall include, but  
30 not be limited to, community mental health centers; guardian  
31 ad litem programs for children under the circuit court; the

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

15 Section 5. Paragraph (k) of subsection (2) of section  
16 39.202, Florida Statutes, 1998 Supplement, is amended to read:  
17 39.202 Confidentiality of reports and records in cases  
18 of child abuse or neglect.--

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

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

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

31

1           39.302 Protective investigations of institutional  
2 child abuse, abandonment, or neglect.--

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

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

14           393.13 Personal treatment of persons who are  
15 developmentally disabled.--

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

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

25           1. Treatment programs involving the use of noxious or  
26 painful stimuli shall be prohibited.

27           2. All alleged violations of this paragraph shall be  
28 reported immediately to the chief administrative officer of  
29 the facility or the district administrator, the department  
30 head, and the local ~~district~~ human rights advocacy council  
31 ~~committee~~. A thorough investigation of each incident shall be

1 conducted and a written report of the finding and results of  
2 such investigation shall be submitted to the chief  
3 administrative officer of the facility or the district  
4 administrator and to the department head within 24 hours of  
5 the occurrence or discovery of the incident.

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

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

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

29 1. Mechanical supports used in normative situations to  
30 achieve proper body position and balance shall not be  
31 considered restraints, but shall be prescriptively designed



1 and applied under the supervision of a qualified professional  
2 with concern for principles of good body alignment,  
3 circulation, and allowance for change of position.

4 2. Totally enclosed cribs and barred enclosures shall  
5 be considered restraints.

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

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

23 (7) RESIDENT GOVERNMENT.--Each residential facility  
24 providing services to clients who are desirous and capable of  
25 participating shall initiate and develop a program of resident  
26 government to hear the views and represent the interests of  
27 all clients served by the facility. The resident government  
28 shall be composed of residents elected by other residents,  
29 staff advisers skilled in the administration of community  
30 organizations, and a representative of the local district  
31 human rights advocacy council committee. The resident

1 government shall work closely with the local ~~district~~ human  
2 rights advocacy council ~~committee~~ and the district  
3 administrator to promote the interests and welfare of all  
4 residents in the facility.

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

8 394.459 Rights of patients.--

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

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

28 (12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each  
29 facility shall post a notice listing and describing, in the  
30 language and terminology that the persons to whom the notice  
31 is addressed can understand, the rights provided in this

1 section. This notice shall include a statement that  
2 provisions of the federal Americans with Disabilities Act  
3 apply and the name and telephone number of a person to contact  
4 for further information. This notice shall be posted in a  
5 place readily accessible to patients and in a format easily  
6 seen by patients. This notice shall include the telephone  
7 numbers of the local human rights advocacy council ~~committee~~  
8 and Advocacy Center for Persons with Disabilities, Inc.

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

11 394.4595 Human Rights Advocacy Council ~~Committee~~  
12 access to patients and records.--Any facility designated by  
13 the department as a receiving or treatment facility must allow  
14 access to any patient and the clinical and legal records of  
15 any patient admitted pursuant to the provisions of this act by  
16 members of the Human Rights Advocacy Council ~~Committee~~.

17 Section 10. Paragraph (d) of subsection (2) of section  
18 394.4597, Florida Statutes, is amended to read:

19 394.4597 Persons to be notified; patient's  
20 representative.--

21 (2) INVOLUNTARY PATIENTS.--

22 (d) When the receiving or treatment facility selects a  
23 representative, first preference shall be given to a health  
24 care surrogate, if one has been previously selected by the  
25 patient. If the patient has not previously selected a health  
26 care surrogate, the selection, except for good cause  
27 documented in the patient's clinical record, shall be made  
28 from the following list in the order of listing:

- 29 1. The patient's spouse.
- 30 2. An adult child of the patient.
- 31 3. A parent of the patient.

- 1           4. The adult next of kin of the patient.  
2           5. An adult friend of the patient.  
3           6. The appropriate human rights advocacy council  
4 ~~committee~~ as provided in s. 402.166.

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

7           394.4598 Guardian advocate.--

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

1 ~~committee shall~~ not be appointed. A person who is appointed as  
2 a guardian advocate must agree to the appointment.

3 Section 12. Paragraph (b) of subsection (2) of section  
4 394.4599, Florida Statutes, is amended to read:

5 394.4599 Notice.--

6 (2) INVOLUNTARY PATIENTS.--

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

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

20 394.4615 Clinical records; confidentiality.--

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

26 Section 14. Paragraph (g) of subsection (2) of section  
27 400.0067, Florida Statutes, is amended to read:

28 400.0067 Establishment of State Long-Term Care  
29 Ombudsman Council; duties; membership.--

30 (2) The State Long-Term Care Ombudsman Council shall:  
31

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

5 Section 15. Section 400.0089, Florida Statutes, is  
6 amended to read:

7 400.0089 Agency reports.--The State Long-Term Care  
8 Ombudsman Council, shall, in cooperation with the Department  
9 of Elderly Affairs, maintain a statewide uniform reporting  
10 system to collect and analyze data relating to complaints and  
11 conditions in long-term care facilities and to residents, for  
12 the purpose of identifying and resolving significant problems.  
13 The council shall submit such data as part of its annual  
14 report required pursuant to s. 400.0067(2)(h) to the Agency  
15 for Health Care Administration, the Department of Health and  
16 Rehabilitative Services, the Statewide Human Rights Advocacy  
17 Council ~~Committee~~, the Advocacy Center for Persons with  
18 Disabilities, the Commissioner for the United States  
19 Administration on Aging, the National Ombudsman Resource  
20 Center, and any other state or federal entities that the  
21 ombudsman determines appropriate.

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

24 400.419 Violations; administrative fines.--

25 (13) The agency shall develop and disseminate an  
26 annual list of all facilities sanctioned or fined \$5,000 or  
27 more for violations of state standards, the number and class  
28 of violations involved, the penalties imposed, and the current  
29 status of cases. The list shall be disseminated, at no charge,  
30 to the Department of Elderly Affairs, the Department of  
31 Health, the Department of Children and Family Services, the

1 area agencies on aging, the Statewide Human Rights Advocacy  
2 Council ~~Committee~~, and the state and district nursing home  
3 ombudsman councils. The Department of Children and Family  
4 Services shall disseminate the list to service providers under  
5 contract to the department who are responsible for referring  
6 persons to a facility for residency. The agency may charge a  
7 fee commensurate with the cost of printing and postage to  
8 other interested parties requesting a copy of this list.

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

11 400.428 Resident bill of rights.--

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

25 Section 18. Paragraph (a) of subsection (1) of section  
26 415.1034, Florida Statutes, 1998 Supplement, is amended to  
27 read:

28 415.1034 Mandatory reporting of abuse, neglect, or  
29 exploitation of disabled adults or elderly persons; mandatory  
30 reports of death.--

31 (1) MANDATORY REPORTING.--

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

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

29 415.104 Protective services investigations of cases of  
30 abuse, neglect, or exploitation of aged persons or disabled  
31 adults; transmittal of records to state attorney.--



1           (1) The department shall, upon receipt of a report  
2 alleging abuse, neglect, or exploitation of an aged person or  
3 disabled adult, commence, or cause to be commenced within 24  
4 hours, a protective services investigation of the facts  
5 alleged therein. If, upon arrival of the protective  
6 investigator at the scene of the incident, a caregiver refuses  
7 to allow the department to begin a protective services  
8 investigation or interferes with the department's ability to  
9 conduct such an investigation, the appropriate law enforcement  
10 agency shall be contacted to assist the department in  
11 commencing the protective services investigation. If, during  
12 the course of the investigation, the department has reason to  
13 believe that the abuse, neglect, or exploitation is  
14 perpetrated by a second party, the appropriate criminal  
15 justice agency and state attorney shall be orally notified in  
16 order that such agencies may begin a criminal investigation  
17 concurrent with the protective services investigation of the  
18 department. In an institutional investigation, the alleged  
19 perpetrator may be represented by an attorney, at his or her  
20 own expense, or accompanied by another person, if the person  
21 or the attorney executes an affidavit of understanding with  
22 the department and agrees to comply with the confidentiality  
23 provisions of s. 415.107. The absence of an attorney or other  
24 person does not prevent the department from proceeding with  
25 other aspects of the investigation, including interviews with  
26 other persons. The department shall make a preliminary  
27 written report to the criminal justice agencies within 5  
28 working days after the oral report. The department shall,  
29 within 24 hours after receipt of the report, notify the  
30 appropriate human rights advocacy council ~~committee~~, or  
31 long-term care ombudsman council, when appropriate, that an

1 alleged abuse, neglect, or exploitation perpetrated by a  
2 second party has occurred. Notice to the human rights  
3 advocacy council ~~committee~~ or long-term care ombudsman council  
4 may be accomplished orally or in writing and shall include the  
5 name and location of the aged person or disabled adult alleged  
6 to have been abused, neglected, or exploited and the nature of  
7 the report. For each report it receives, the department shall  
8 perform an onsite investigation to:

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

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

18 (c) Determine whether there is an indication that any  
19 aged person or disabled adult is abused, neglected, or  
20 exploited, including a determination of harm or threatened  
21 harm to any aged person or disabled adult; the nature and  
22 extent of present or prior injuries, abuse, or neglect, and  
23 any evidence thereof; and a determination as to the person or  
24 persons apparently responsible for the abuse, neglect, or  
25 exploitation, including the name, address, date of birth,  
26 social security number, sex, and race of each person to be  
27 classified as an alleged perpetrator in a proposed confirmed  
28 report. An alleged perpetrator named in a proposed confirmed  
29 report of abuse, neglect, or exploitation shall cooperate in  
30 the provision of the required data for the central abuse  
31 registry and tracking system to the fullest extent possible.

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

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

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

13 415.1055 Notification to administrative entities,  
14 subjects, and reporters; notification to law enforcement and  
15 state attorneys.--

16 (1) NOTIFICATION TO ADMINISTRATIVE ENTITIES.--

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

26 (i) At the conclusion of a protective investigation at  
27 a facility, the department shall notify either the human  
28 rights advocacy council ~~committee~~ or long-term care ombudsman  
29 council of the results of the investigation. This  
30 notification must be in writing.

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

3           415.106 Cooperation by the department and criminal  
4 justice and other agencies.--

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

19           Section 22. Paragraph (g) of subsection (2) of section  
20 415.107, Florida Statutes, 1998 Supplement, is amended to  
21 read:

22           415.107 Confidentiality of reports and records.--

23           (2) Access to all records, excluding the name of the  
24 reporter which shall be released only as provided in  
25 subsection (6), shall be granted only to the following  
26 persons, officials, and agencies:

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

31           Section 23. This act shall take effect July 1, 1999.

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SENATE SUMMARY

Renames the Statewide Human Rights Advocacy Committee and the district human rights advocacy committees as the Statewide Human Rights Advocacy Council and the local human rights advocacy councils, respectively. Provides for the statewide council and local councils to monitor and investigate allegations of abuse of human or constitutional rights by the Department of Children and Family Services. Revises the membership of the statewide council. Provides for the establishment of additional local human rights advocacy councils.