

By the Committees on Governmental Oversight and Productivity;  
Children and Families; and Senators Forman, Carlton and Grant

302-1964-00

1                                   A bill to be entitled

2           An act relating to human rights; creating s.

3           402.164, F.S., and amending ss. 402.165,

4           402.166, 402.167, F.S.; renaming the statewide

5           and district human rights advocacy committees

6           as the Florida statewide and local advocacy

7           councils; providing legislative intent with

8           respect to the duties and powers of the

9           councils; defining the terms "client" and

10          "client services" as used in ss.

11          402.164-402.167, F.S.; providing for the duties

12          of the councils with respect to monitoring the

13          activities of, and investigating complaints

14          against, state agencies that provide client

15          services; revising council membership,

16          appointment, officers, and terms of service;

17          providing for revision of local council service

18          areas; providing statewide council staff with

19          select exempt service status; providing for

20          access to records of the state agencies subject

21          to council investigations; providing rulemaking

22          authority to such state agencies; amending ss.

23          39.001, 39.202, 39.302, 393.13, 394.459,

24          394.4595, 394.4597, 394.4598, 394.4599,

25          394.4615, 400.0067, 400.0089, 400.118, 400.141,

26          400.419, 400.428, 415.1034, 415.104, 415.1055,

27          415.106, 415.107, 430.04, F.S.; conforming

28          references; providing an effective date.

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

31

1           Section 1. Section 402.164, Florida Statutes, is  
2 created to read:

3           402.164 Legislative intent; definition.--

4           (1)(a) It is the intent of the Legislature to use  
5 citizen volunteers as members of the Florida Statewide  
6 Advocacy Council and the Florida local advocacy councils, and  
7 to have volunteers operate a network of councils that shall,  
8 without interference by an executive agency, undertake to  
9 discover, monitor, investigate, and determine the presence of  
10 conditions or individuals that constitute a threat to the  
11 rights, health, safety, or welfare of persons who receive  
12 services from state agencies.

13           (b) It is the further intent of the Legislature that  
14 the monitoring and investigation shall safeguard the health,  
15 safety, and welfare of consumers of services provided by these  
16 state agencies.

17           (2) As used in ss. 402.164-402.167, the term:

18           (a) "Client" means a client as defined in s. 393.063,  
19 s. 394.67, s. 397.311, or s. 400.960, a forensic client or  
20 client as defined in s. 916.106, a child or youth as defined  
21 in s. 39.01, a child as defined in s. 827.01, a family as  
22 defined in s. 414.0252, a participant as defined in s.  
23 400.551, a resident as defined in s. 400.402, a Medicaid  
24 recipient or recipient as defined in s. 409.901, a child  
25 receiving childcare as defined in s. 402.302, a disabled adult  
26 as defined in s. 410.032 or s. 410.603, or a victim as defined  
27 in s. 39.01 or s. 415.102 as each definition applies within  
28 its respective chapter.

29           (b) "Client services" means services which are  
30 provided to a client by a state agency or a service provider  
31 operated, funded, or contracted by the state.

1 Section 2. Section 402.165, Florida Statutes, is  
2 amended to read:

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

6 (1) ~~The~~ ~~There is created within the Department of~~  
7 ~~Children and Family Services a~~ Statewide Human Rights Advocacy  
8 Committee within the Department of Children and Family  
9 Services is redesignated as the Florida Statewide Advocacy  
10 Council. Members of the council shall represent the interests  
11 of clients who are served by state agencies that provide  
12 client services. ~~The Department of Children and Family~~  
13 ~~Services shall provide administrative support and service to~~  
14 ~~the~~ statewide council ~~committee~~ to the extent requested by the  
15 executive director within available resources. ~~The statewide~~  
16 council is not ~~Human Rights Advocacy Committee shall not be~~  
17 subject to control, supervision, or direction by the  
18 Department of Children and Family Services in the performance  
19 of its duties. ~~The~~ council ~~committee~~ shall consist of 15  
20 residents of this state ~~citizens~~, one from each service area  
21 designated by the statewide council ~~district of the Department~~  
22 ~~of Children and Family Services~~, who broadly represent the  
23 interests of the public and the clients of the state agencies  
24 that provide client services ~~that department~~. The members  
25 shall be representative of four ~~five~~ groups of state residents  
26 ~~citizens~~ as follows: one provider who delivers ~~elected public~~  
27 ~~official;~~ ~~two providers who deliver~~ client services as defined  
28 in s. 402.164(2); ~~two or programs to clients of the Department~~  
29 ~~of Children and Family Services;~~ ~~four~~ nonsalaried  
30 representatives of nonprofit agencies or civic groups; four  
31 representatives of ~~health and rehabilitative services~~ consumer

1 groups who are currently receiving, or have received, client  
2 ~~services from the Department of Children and Family Services~~  
3 within the past 4 years, at least one of whom must be a  
4 consumer of one or more client services; and two ~~four~~  
5 residents of the state who do not represent any of the  
6 foregoing groups, one ~~two~~ of whom represents the ~~represent~~  
7 health-related professions and one ~~two~~ of whom represents  
8 ~~represent~~ the legal profession. In appointing the  
9 representative ~~representatives~~ of the health-related  
10 professions, the appointing authority shall give priority of  
11 consideration to a physician licensed under chapter 458 or  
12 chapter 459; and, in appointing the representative  
13 ~~representatives~~ of the legal profession, the appointing  
14 authority shall give priority of consideration to a member in  
15 good standing of The Florida Bar. Of the remaining members, no  
16 more than one shall be an elected official; no more than one  
17 shall be a health professional; no more than one shall be a  
18 legal professional; no more than one shall be a provider; no  
19 more than two shall be nonsalaried representatives of  
20 nonprofit agencies or civic groups; and no more than one shall  
21 be an individual whose primary area of interest, experience,  
22 or expertise is a major client group of a client services  
23 group that is not represented on the council at the time of  
24 appointment. Except for the member who is an elected public  
25 official, each member of the statewide council ~~Human Rights~~  
26 ~~Advocacy Committee~~ must have served as a member of a Florida  
27 advocacy council, with priority consideration given to an  
28 applicant who has served a full term on a local council  
29 ~~district human rights advocacy committee.~~ Persons related to  
30 each other by consanguinity or affinity within the third  
31

1 degree may not serve on the statewide council ~~Human Rights~~  
2 ~~Advocacy Committee~~ at the same time.

3 (2) Members of the statewide council ~~Human Rights~~  
4 ~~Advocacy Committee~~ shall be appointed to serve terms of 4 ~~3~~  
5 years. A member may not serve more than two full consecutive  
6 terms. ~~The limitation on the number of terms a member may~~  
7 ~~serve applies without regard to whether a term was served~~  
8 ~~before or after October 1, 1989.~~

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

19 (4) The Governor shall fill each vacancy on the  
20 statewide council ~~Human Rights Advocacy Committee~~ from a list  
21 of nominees submitted by the statewide council ~~committee~~. A  
22 list of candidates may ~~shall~~ be submitted to the statewide  
23 council ~~by the local council in the service area~~ ~~committee by~~  
24 ~~the district human rights advocacy committee in the district~~  
25 from which the vacancy occurs. Priority of consideration  
26 shall be given to the appointment of an individual who is  
27 receiving one or more client services and whose primary  
28 interest, experience, or expertise lies with a major client  
29 group that is ~~of the Department of Children and Family~~  
30 ~~Services~~ not represented on the council ~~committee~~ at the time  
31 of the appointment. If an appointment is not made within 60

1 days after a vacancy occurs on the statewide council  
2 ~~committee~~, the vacancy may ~~shall~~ be filled by a majority vote  
3 of the statewide council ~~committee~~ without further action by  
4 the Governor. A ~~No~~ person who is employed by any state agency  
5 in client ~~the Department of Children and Family services~~ may  
6 not be appointed to the statewide council ~~committee~~.

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

11 (b) The council ~~committee~~ shall select an executive  
12 director who shall serve at the pleasure of the council  
13 ~~committee~~ and shall perform the duties delegated to him or her  
14 by the council ~~committee~~. The compensation of the executive  
15 director and staff shall be established in accordance with the  
16 rules of the Selected Exempt Service.

17 (c) The council ~~committee~~ may apply for, receive, and  
18 accept grants, gifts, donations, bequests, and other payments  
19 including money or property, real or personal, tangible or  
20 intangible, and service from any governmental or other public  
21 or private entity or person and make arrangements as to the  
22 use of same.

23 (d) The statewide council ~~Human Rights Advocacy~~  
24 ~~Committee~~ shall annually prepare a budget request that is not  
25 to be changed ~~shall not be subject to change~~ by department  
26 staff after it is approved by the council ~~committee~~, but ~~the~~  
27 ~~budget request~~ shall be submitted to the Governor ~~by the~~  
28 ~~department~~ for transmittal to the Legislature. The budget  
29 shall include a request for funds to carry out the activities  
30 of the statewide council and the local councils ~~Human Rights~~  
31

1 ~~Advocacy Committee and the district human rights advocacy~~  
2 ~~committees.~~

3 (6) The members of the statewide council ~~Human Rights~~  
4 ~~Advocacy Committee~~ shall elect a chair and a vice chair to  
5 terms chairperson to a term of 1 year. A person may not serve  
6 as chair or vice chair ~~chairperson~~ for more than two full  
7 consecutive terms.

8 (7) The responsibilities of the statewide council  
9 ~~committee~~ include, but are not limited to:

10 (a) Serving as an independent third-party mechanism  
11 for protecting the constitutional and human rights of clients  
12 within programs or facilities ~~any client within a program or~~  
13 ~~facility~~ operated, funded, or contracted ~~licensed, or~~  
14 ~~regulated~~ by any state agency that provides client ~~the~~  
15 ~~Department of Children and Family~~ services.

16 (b) Monitoring by site visit and inspection of  
17 records, ~~the~~ delivery and use of services, programs, or  
18 facilities operated, funded, or contracted ~~regulated, or~~  
19 ~~licensed~~ by any state agency that provides client ~~the~~  
20 ~~Department of Children and Family~~ services, for the purpose of  
21 preventing abuse or deprivation of the constitutional and  
22 human rights of clients. The statewide council ~~Human Rights~~  
23 ~~Advocacy Committee~~ may conduct an unannounced site visit or  
24 monitoring visit that involves the inspection of records if  
25 the ~~such~~ visit is conditioned upon a complaint. A complaint  
26 may be generated by the council ~~committee~~ itself if  
27 information from any state agency that provides client  
28 services or from ~~the Department of Children and Family~~  
29 ~~Services~~ or other sources indicates a situation at the program  
30 or facility that indicates possible abuse or neglect or  
31 deprivation of the constitutional and human rights of clients.

1 The statewide council ~~Human Rights Advocacy Committee~~ shall  
2 establish and follow uniform criteria for the review of  
3 information and generation of complaints. Routine program  
4 monitoring and reviews that do not require an examination of  
5 records may be made unannounced.

6 (c) Receiving, investigating, and resolving reports of  
7 abuse or deprivation of constitutional and human rights  
8 referred to the statewide council by a local council ~~Human~~  
9 ~~Rights Advocacy Committee~~ by a ~~district human rights advocacy~~  
10 ~~committee~~. If a matter constitutes a threat to the life,  
11 safety, or health of clients or is multidistrict in scope, the  
12 statewide council ~~Human Rights Advocacy Committee~~ may exercise  
13 such powers without the necessity of a referral from a local  
14 council ~~district committee~~.

15 (d) Reviewing existing programs or services and new or  
16 revised programs of the state agencies that provide client  
17 ~~Department of Children and Family~~ services and making  
18 recommendations as to how the rights of clients are affected.

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

23 (f) Conducting meetings at least six times a year at  
24 the call of the chair ~~chairperson~~ and at other times at the  
25 call of the Governor or by written request of six members of  
26 the council ~~committee~~.

27 (g) Developing and adopting uniform procedures to be  
28 used to carry out the purpose and responsibilities of the  
29 statewide council and the local councils ~~human rights advocacy~~  
30 ~~committees~~, which procedures shall include, but need not be  
31 limited to, the following:



- 1           1. The responsibilities of the statewide council and  
2 the local councils ~~committee~~;
- 3           2. The organization and operation of the statewide  
4 council and the local councils ~~committee and district~~  
5 ~~committees~~, including procedures for replacing a member,  
6 formats for maintaining records of council ~~committee~~  
7 activities, and criteria for determining what constitutes a  
8 conflict of interest for purposes of assigning and conducting  
9 investigations and monitoring;
- 10          3. Uniform procedures for the statewide council and  
11 the local councils relating to receiving and investigating  
12 ~~committee and district committees to receive and investigate~~  
13 reports of abuse or deprivation of constitutional or human  
14 rights;
- 15          4. The responsibilities and relationship of the local  
16 councils ~~district human rights advocacy committees~~ to the  
17 statewide council ~~committee~~;
- 18          5. The relationship of the statewide council to the  
19 state agencies that receive and investigate reports of abuse  
20 and neglect of clients of state agencies ~~committee to the~~  
21 ~~Department of Children and Family Services~~, including the way  
22 in which reports of findings and recommendations related to  
23 reported abuse or neglect are given to the appropriate state  
24 agency that provides client ~~Department of Children and Family~~  
25 services;
- 26          6. Provision for cooperation with the State Long-Term  
27 Care Ombudsman Council;
- 28          7. Procedures for appeal. An appeal to the statewide  
29 council ~~state committee~~ is made by a local council ~~district~~  
30 ~~human rights advocacy committee~~ when a valid complaint is not  
31 resolved at the local ~~district~~ level. The statewide council

1 ~~committee~~ may appeal an unresolved complaint to the secretary  
2 or director of the appropriate state agency that provides  
3 client of the Department of Children and Family services. If,  
4 after exhausting all remedies, the statewide council ~~committee~~  
5 is not satisfied that the complaint can be resolved within the  
6 state agency ~~Department of Children and Family Services~~, the  
7 appeal may be referred to the Governor ~~or the Legislature~~;

8 8. Uniform procedures for gaining access to and  
9 maintaining confidential information; and

10 9. Definitions of misfeasance and malfeasance for  
11 members of the statewide council and local councils ~~committee~~  
12 ~~and district committees~~.

13 (h) Monitoring the performance and activities of all  
14 local councils ~~district committees~~ and providing technical  
15 assistance to members and staff of local councils ~~district~~  
16 ~~committees~~.

17 (i) Providing for the development and presentation of  
18 a standardized training program for members of local councils  
19 ~~district committees~~.

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

22 1. Authority to receive, investigate, seek to  
23 conciliate, hold hearings on, and act on complaints that ~~which~~  
24 allege any abuse or deprivation of constitutional or human  
25 rights of persons who receive client services from any state  
26 agency clients.

27 2. Access to all client records, files, and reports  
28 from any program, service, or facility that is operated,  
29 funded, or contracted licensed, ~~or regulated by any state~~  
30 agency that provides client ~~the Department of Children and~~  
31 ~~Family services~~ and any records that ~~which~~ are material to its

1 investigation and ~~which~~ are in the custody of any other agency  
2 or department of government. The council's ~~committee's~~  
3 investigation or monitoring shall not impede or obstruct  
4 matters under investigation by law enforcement agencies or  
5 judicial authorities. Access 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 shall not be granted to the records of a  
9 private licensed practitioner who is providing services  
10 outside the state agency, or outside a state facility,  
11 ~~agencies and facilities~~ and whose client is competent and  
12 refuses disclosure.

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

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

10           (c) Portions of meetings of the statewide council that  
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, that ~~which~~ relate to the identity of an  
14 individual who provides information to the council ~~committee~~  
15 about abuse or about alleged violations of constitutional or  
16 human rights, or wherein testimony is provided relating to  
17 records otherwise made confidential by law, are exempt from  
18 ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State  
19 Constitution.

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

1 dispatch and there is a good faith belief that action may be  
2 initiated by the council ~~committee~~ or other administrative or  
3 law enforcement agency.

4 (e) Any person who knowingly and willfully discloses  
5 any such confidential information commits ~~is guilty of~~ a  
6 misdemeanor of the second degree, punishable as provided in s.  
7 775.082 or s. 775.083.

8 Section 3. Section 402.166, Florida Statutes, is  
9 amended to read:

10 402.166 Florida local advocacy councils ~~District human~~  
11 ~~rights advocacy committees~~; confidential records and  
12 meetings.--

13 (1) Each ~~At least one~~ district human rights advocacy  
14 committee within ~~is created in~~ each service area ~~district~~ of  
15 the Department of Children and Family Services is redesignated  
16 as the Florida Local Advocacy Council. The local councils are  
17 ~~district human rights advocacy committees~~ shall be subject to  
18 direction from and the supervision of the statewide council  
19 ~~Human Rights Advocacy Committee~~. The Department of Children  
20 and Family Services ~~district administrator~~ shall assign staff  
21 to provide administrative support to the local councils  
22 ~~committees~~, and staff assigned to these positions shall  
23 perform the functions required by the local councils ~~committee~~  
24 without interference from the department. The local councils  
25 ~~district committees~~ shall direct the activities of staff  
26 assigned to them to the extent necessary for the local  
27 councils ~~committees~~ to carry out their duties. The number and  
28 areas of responsibility of the local councils ~~district human~~  
29 ~~rights advocacy committees~~, not to exceed 46 councils  
30 statewide ~~three in any district~~, shall be determined by the  
31 statewide council and shall be consistent with judicial

1 boundaries. Local councils ~~majority vote of district committee~~  
2 ~~members. However, district II may have four committees.~~  
3 ~~District committees~~ shall meet at facilities under their  
4 jurisdiction whenever possible.

5 (2) Each local council ~~district human rights advocacy~~  
6 ~~committee~~ shall have no fewer than 7 members and no more than  
7 15 members, no more than 4 ~~25 percent~~ of whom are or have been  
8 recipients of one or more client ~~clients of the Department of~~  
9 ~~Children and Family~~ services within the last 4 years, except  
10 that one member of this group may be an immediate relative or  
11 legal representative of a current or former client; two  
12 providers, who deliver client services as defined in s.  
13 402.164(2) ~~or programs to clients of the Department of~~  
14 ~~Children and Family Services~~; and two representatives of  
15 professional organizations, one of whom represents the  
16 health-related professions and one of whom represents the  
17 legal profession. Priority of consideration shall be given to  
18 the appointment of at least one medical or osteopathic  
19 physician, as defined in chapters 458 and 459, and one member  
20 in good standing of The Florida Bar. Priority of consideration  
21 shall also be given to the appointment of an individual who is  
22 receiving client services and whose primary interest,  
23 experience, or expertise lies with a major client group ~~of the~~  
24 ~~Department of Children and Family Services~~ not represented on  
25 the committee at the time of the appointment. ~~In no case~~  
26 ~~shall~~ A person who is employed in client services by any state  
27 agency may not be appointed to the council. No more than three  
28 ~~by the Department of Children and Family Services be selected~~  
29 ~~as a member of a committee. At no time shall individuals who~~  
30 are providing contracted services for clients to any state  
31 agency may serve on the same local council at the same time to

1 ~~the Department of Children and Family Services constitute more~~  
2 ~~than 25 percent of the membership of a district committee.~~  
3 Persons related to each other by consanguinity or affinity  
4 within the third degree may ~~shall~~ not serve on the same local  
5 council ~~district human rights advocacy committee~~ at the same  
6 time. All members of local councils ~~district human rights~~  
7 ~~advocacy committees~~ must successfully complete a standardized  
8 training course for council ~~committee~~ members within 3 months  
9 after their appointment to a local council ~~committee~~. A  
10 member may not be assigned to an investigation that ~~which~~  
11 requires access to confidential information prior to the  
12 completion of the training course. After he or she completes  
13 the required training course, a member of a local council may  
14 ~~committee shall~~ not be prevented from participating in any  
15 activity of that local council ~~committee~~, including  
16 investigations and monitoring, except due to a conflict of  
17 interest as described in the procedures established by the  
18 statewide council ~~Human Rights Advocacy Committee~~ pursuant to  
19 subsection (7).

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

27 (b)1. The Governor shall appoint the first four ~~4~~  
28 members of any newly created local council ~~committee~~; and  
29 those four ~~4~~ members shall select the remaining ~~11~~ members,  
30 subject to approval of the Governor. If any of the first four  
31 members are not appointed within 60 days after ~~of~~ a request is

1 ~~being~~ submitted to the Governor, those members ~~may shall~~ be  
2 appointed by a majority vote of the statewide council district  
3 ~~committee~~ without further action by the Governor.

4         2. Members shall serve for no more than two full  
5 consecutive terms of 4 3 years, except that at the time of  
6 initial appointment, terms shall be staggered so that  
7 approximately one-half of the members first ~~the first six~~  
8 ~~members~~ appointed shall serve for terms of 4 2 years and the  
9 remaining ~~five~~ members shall serve for terms of 2 3 years.  
10 Vacancies shall be filled as provided in subparagraph 1.

11         (c) If no action is taken by the Governor to approve  
12 or disapprove a replacement of a member pursuant to this  
13 subsection paragraph within 30 days after the local council  
14 ~~district committee~~ has notified the Governor of the  
15 appointment, then the appointment of the replacement ~~may shall~~  
16 be considered approved by the statewide council.

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

20         (4) Each local council committee shall elect a chair  
21 and a vice chair chairperson for a term of 1 year. A person  
22 may not serve as chair or vice chair chairperson for more than  
23 two consecutive terms. The chair's and vice chair's terms  
24 expire on September 30 of each year chairperson's term expires  
25 on the anniversary of the chairperson's election.

26         (5) If a local council ~~In the event that a committee~~  
27 member fails to attend two-thirds of the regular council  
28 ~~committee~~ meetings during the course of a year, the local  
29 council may ~~it shall be the responsibility of the committee to~~  
30 replace the such member. If a member of a local council  
31 violates this section district committee member is in



1 ~~violation of the provisions of this subsection~~ or procedures  
2 adopted under this section, the local council thereto, a  
3 ~~district committee~~ may recommend to the Governor that the such  
4 member be removed.

5 (6) A member of a local council ~~district committee~~  
6 shall receive no compensation but is ~~shall receive per diem~~  
7 ~~and shall be~~ entitled to be reimbursed for per diem and travel  
8 expenses as provided in s. 112.061. Members may be provided  
9 reimbursement for long-distance telephone calls if such calls  
10 were necessary to an investigation of an abuse or deprivation  
11 of constitutional or human rights.

12 (7) A local council ~~district human rights advocacy~~  
13 ~~committee~~ shall first seek to resolve a complaint with the  
14 appropriate local administration, agency, or program; any  
15 matter not resolved by the local council ~~district committee~~  
16 shall be referred to the statewide council ~~Human Rights~~  
17 ~~Advocacy Committee~~. A local council ~~district human rights~~  
18 ~~advocacy committee~~ shall comply with appeal procedures  
19 established by the statewide council ~~Human Rights Advocacy~~  
20 ~~Committee~~. The duties, actions, and procedures of both new  
21 and existing local councils ~~district human rights advocacy~~  
22 ~~committees~~ shall conform to ss. 402.164-402.167 ~~the provisions~~  
23 ~~of this act~~. The duties of each local council ~~district human~~  
24 ~~rights advocacy committee~~ shall include, but are not limited  
25 to:

26 (a) Serving as an independent third-party mechanism  
27 for protecting the constitutional and human rights of any  
28 client within a program or facility operated, funded, or  
29 contracted licensed, or regulated by a state agency providing  
30 client ~~the Department of Children and Family services~~.

31

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

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

24           (d) Reviewing and making recommendations regarding how  
25 a client's constitutional or human rights might be affected by  
26 the client's participation in a proposed research project,  
27 prior to implementation of the project ~~recommendation with~~  
28 ~~respect to the involvement by clients of the Department of~~  
29 ~~Children and Family Services as subjects for research~~  
30 ~~projects, prior to implementation, insofar as their human~~  
31 ~~rights are affected.~~

1           (e) Reviewing existing programs ~~or services~~ and  
2 proposed new or revised programs of client ~~the Department of~~  
3 ~~Children and Family~~ services and making recommendations as to  
4 how these programs and services affect or might affect the  
5 constitutional or human rights of clients ~~are affected~~.

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

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

16           (h) Conducting meetings at least six times a year at  
17 the call of the chair ~~chairperson~~ and at other times at the  
18 call of the Governor, at the call of the statewide council  
19 ~~Human Rights Advocacy Committee~~, or by written request of a  
20 majority of the members of the council ~~committee~~.

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

23           1. Access to all client records, files, and reports  
24 from any program, service, or facility that is operated,  
25 funded, or contracted licensed, or regulated by any state  
26 agency that provides client ~~the Department of Children and~~  
27 ~~Family~~ services and any records that ~~which~~ are material to its  
28 investigation and ~~which~~ are in the custody of any other agency  
29 or department of government. The council's ~~committee's~~  
30 investigation or monitoring shall not impede or obstruct  
31 matters under investigation by law enforcement agencies or

1 judicial authorities. Access shall not be granted if a  
2 specific procedure or prohibition for reviewing records is  
3 required by federal law and regulation that ~~which~~ supersedes  
4 state law. Access shall not be granted to the records of a  
5 private licensed practitioner who is providing services  
6 outside state agencies and facilities and whose client is  
7 competent and refuses disclosure.

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

27         (b) All information obtained or produced by a local  
28 council that ~~the committee which~~ is made confidential by law,  
29 that ~~which~~ relates to the identity of any client or group of  
30 clients subject to the protection of this section, or that  
31 ~~which~~ relates to the identity of an individual who provides

1 information to the council ~~committee~~ about abuse or about  
2 alleged violations of constitutional or human rights, is  
3 confidential and exempt from ~~the provisions of~~ s. 119.07(1)  
4 and s. 24(a), Art. I of the State Constitution.

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

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

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

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

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

5 402.167 Duties of state agencies that provide client  
6 services relating to the Florida Statewide Advocacy Council  
7 and the Florida local advocacy councils ~~Department duties~~  
8 ~~relating to the Statewide Human Rights Advocacy Committee and~~  
9 ~~the District Human Rights Advocacy Committees.--~~

10 (1) Each state agency that provides client ~~The~~  
11 ~~Department of Children and Family~~ services shall adopt rules  
12 that ~~which~~ are consistent with law, amended to reflect any  
13 statutory changes, and that ~~which~~ rules address at least the  
14 following:

15 (a) Procedures by which ~~Department of Children and~~  
16 ~~Family Services~~ ~~district~~ staff of state agencies refer reports  
17 of abuse of clients to the Florida local advocacy councils  
18 ~~district human rights advocacy committees.~~

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

23 (c) Procedures by which recommendations made by the  
24 statewide and local councils ~~human rights advocacy committees~~  
25 will be incorporated into ~~Department of Children and Family~~  
26 ~~Services~~ policies and procedures of the state agencies.

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

29 (2) The Department of Children and Family Services  
30 shall provide for the location of local councils in area  
31 ~~district human rights advocacy committees in district~~

1 ~~headquarters~~ offices and shall provide necessary equipment and  
2 office supplies, including, but not limited to, clerical and  
3 word processing services, photocopiers, telephone services,  
4 and stationery and other necessary supplies, and shall  
5 establish the procedures by which council members are  
6 reimbursed for authorized expenditures.

7 (3) The secretaries or directors of the state agencies  
8 ~~secretary~~ shall ensure the full cooperation and assistance of  
9 employees of their respective state agencies ~~the Department of~~  
10 ~~Children and Family Services~~ with members and staff of the  
11 statewide and local councils ~~human rights advocacy committees.~~  
12 Further, the Secretary of Children and Family Services shall  
13 ensure that, to the extent possible, staff assigned to the  
14 statewide council and local councils ~~Human Rights Advocacy~~  
15 ~~Committees and District Human Rights Advocacy Committees~~ are  
16 free of interference from or control by the department in  
17 performing their duties relative to those councils ~~committees.~~

18 Section 5. Paragraph (a) of subsection (7) of section  
19 39.001, Florida Statutes, is amended to read:

20 39.001 Purposes and intent; personnel standards and  
21 screening.--

22 (7) PLAN FOR COMPREHENSIVE APPROACH.--

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

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

20 Section 6. Paragraph (k) of subsection (2) of section  
21 39.202, Florida Statutes, is amended to read:

22 39.202 Confidentiality of reports and records in cases  
23 of child abuse or neglect.--

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

28 (k) Any appropriate official of a Florida advocacy  
29 council ~~the human rights advocacy committee~~ investigating a  
30 report of known or suspected child abuse, abandonment, or  
31 neglect, the Auditor General for the purpose of conducting



1 preliminary or compliance reviews pursuant to s. 11.45, or the  
2 guardian ad litem for the child.

3 Section 7. Subsection (4) of section 39.302, Florida  
4 Statutes, is amended to read:

5 39.302 Protective investigations of institutional  
6 child abuse, abandonment, or neglect.--

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

15 Section 8. Paragraphs (g) and (i) of subsection (4)  
16 and subsection (7) of section 393.13, Florida Statutes, are  
17 amended to read:

18 393.13 Personal treatment of persons who are  
19 developmentally disabled.--

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

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

29 1. Treatment programs involving the use of noxious or  
30 painful stimuli shall be prohibited.

31

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

11           3. The department shall promulgate by rule a system  
12 for the oversight of behavioral programs. Such system shall  
13 establish guidelines and procedures governing the design,  
14 approval, implementation, and monitoring of all behavioral  
15 programs involving clients. The system shall ensure statewide  
16 and local review by committees of professionals certified as  
17 behavior analysts pursuant to s. 393.17. No behavioral  
18 program shall be implemented unless reviewed according to the  
19 rules established by the department under this section.  
20 Nothing stated in this section shall prohibit the review of  
21 programs by the Florida statewide or local advocacy councils  
22 ~~district human rights advocacy committee~~.

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

1 physical injury to the client and shall be designed to allow  
2 the greatest possible comfort.

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

9 2. Totally enclosed cribs and barred enclosures shall  
10 be considered restraints.

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

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

28 (7) RESIDENT GOVERNMENT.--Each residential facility  
29 providing services to clients who are desirous and capable of  
30 participating shall initiate and develop a program of resident  
31 government to hear the views and represent the interests of

1 all clients served by the facility. The resident government  
2 shall be composed of residents elected by other residents,  
3 staff advisers skilled in the administration of community  
4 organizations, and a representative of the Florida local  
5 advocacy council ~~district human rights advocacy committee~~. The  
6 resident government shall work closely with the Florida local  
7 advocacy council ~~district human rights advocacy committee~~ and  
8 the district administrator to promote the interests and  
9 welfare of all residents in the facility.

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

13 394.459 Rights of patients.--

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

15 (c) Each facility must permit immediate access to any  
16 patient, subject to the patient's right to deny or withdraw  
17 consent at any time, by the patient's family members,  
18 guardian, guardian advocate, representative, Florida statewide  
19 or local advocacy council ~~human rights advocacy committee~~, or  
20 attorney, unless such access would be detrimental to the  
21 patient. If a patient's right to communicate or to receive  
22 visitors is restricted by the facility, written notice of such  
23 restriction and the reasons for the restriction shall be  
24 served on the patient, the patient's attorney, and the  
25 patient's guardian, guardian advocate, or representative; and  
26 such restriction shall be recorded on the patient's clinical  
27 record with the reasons therefor. The restriction of a  
28 patient's right to communicate or to receive visitors shall be  
29 reviewed at least every 7 days. The right to communicate or  
30 receive visitors shall not be restricted as a means of

31

1 punishment. Nothing in this paragraph shall be construed to  
2 limit the provisions of paragraph (d).

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

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

18 394.4595 Florida statewide and local advocacy  
19 councils; ~~Human Rights Advocacy Committee~~ access to patients  
20 and records.--Any facility designated by the department as a  
21 receiving or treatment facility must allow access to any  
22 patient and the clinical and legal records of any patient  
23 admitted pursuant to the provisions of this act by members of  
24 the Florida statewide and local advocacy councils ~~Human Rights~~  
25 ~~Advocacy Committee~~.

26 Section 11. Paragraph (d) of subsection (2) of section  
27 394.4597, Florida Statutes, is amended to read:

28 394.4597 Persons to be notified; patient's  
29 representative.--

30 (2) INVOLUNTARY PATIENTS.--

31

1 (d) When the receiving or treatment facility selects a  
2 representative, first preference shall be given to a health  
3 care surrogate, if one has been previously selected by the  
4 patient. If the patient has not previously selected a health  
5 care surrogate, the selection, except for good cause  
6 documented in the patient's clinical record, shall be made  
7 from the following list in the order of listing:

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

15 Section 12. Subsection (1) of section 394.4598,  
16 Florida Statutes, is amended to read:

17 394.4598 Guardian advocate.--

18 (1) The administrator may petition the court for the  
19 appointment of a guardian advocate based upon the opinion of a  
20 psychiatrist that the patient is incompetent to consent to  
21 treatment. If the court finds that a patient is incompetent to  
22 consent to treatment and has not been adjudicated  
23 incapacitated and a guardian with the authority to consent to  
24 mental health treatment appointed, it shall appoint a guardian  
25 advocate. The patient has the right to have an attorney  
26 represent him or her at the hearing. If the person is  
27 indigent, the court shall appoint the office of the public  
28 defender to represent him or her at the hearing. The patient  
29 has the right to testify, cross-examine witnesses, and present  
30 witnesses. The proceeding shall be recorded either  
31 electronically or stenographically, and testimony shall be

1 provided under oath. One of the professionals authorized to  
2 give an opinion in support of a petition for involuntary  
3 placement, as described in s. 394.467(2), must testify. A  
4 guardian advocate must meet the qualifications of a guardian  
5 contained in part IV of chapter 744, except that a  
6 professional referred to in this part, an employee of the  
7 facility providing direct services to the patient under this  
8 part, a departmental employee, a facility administrator, or  
9 member of the Florida local advocacy council ~~district human~~  
10 ~~rights advocacy committee~~ shall not be appointed. A person who  
11 is appointed as a guardian advocate must agree to the  
12 appointment.

13 Section 13. Paragraph (b) of subsection (2) of section  
14 394.4599, Florida Statutes, is amended to read:

15 394.4599 Notice.--

16 (2) INVOLUNTARY PATIENTS.--

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

28 Section 14. Subsection (5) of section 394.4615,  
29 Florida Statutes, is amended to read:

30 394.4615 Clinical records; confidentiality.--

31

1           (5) Information from clinical records may be used by  
2 the Agency for Health Care Administration, the department, and  
3 the Florida advocacy councils ~~human rights advocacy committees~~  
4 for the purpose of monitoring facility activity and complaints  
5 concerning facilities.

6           Section 15. Paragraph (g) of subsection (2) of section  
7 400.0067, Florida Statutes, is amended to read:

8           400.0067 Establishment of State Long-Term Care  
9 Ombudsman Council; duties; membership.--

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

11           (g) Enter into a cooperative agreement with the  
12 Florida statewide and local advocacy councils ~~district human~~  
13 ~~rights advocacy committees~~ for the purpose of coordinating  
14 advocacy services provided to residents of long-term care  
15 facilities.

16           Section 16. Section 400.0089, Florida Statutes, is  
17 amended to read:

18           400.0089 Agency reports.--The State Long-Term Care  
19 Ombudsman Council, shall, in cooperation with the Department  
20 of Elderly Affairs, maintain a statewide uniform reporting  
21 system to collect and analyze data relating to complaints and  
22 conditions in long-term care facilities and to residents, for  
23 the purpose of identifying and resolving significant problems.  
24 The council shall submit such data as part of its annual  
25 report required pursuant to s. 400.0067(2)(h) to the Agency  
26 for Health Care Administration, the Department of Children and  
27 Family Services, the Florida Statewide Advocacy Council  
28 ~~Statewide Human Rights Advocacy Committee~~, the Advocacy Center  
29 for Persons with Disabilities, the Commissioner for the United  
30 States Administration on Aging, the National Ombudsman

31



1 Resource Center, and any other state or federal entities that  
2 the ombudsman determines appropriate.

3 Section 17. Paragraph (a) of subsection (2) of section  
4 400.118, Florida Statutes, is amended to read:

5 400.118 Quality assurance; early warning system;  
6 monitoring; rapid response teams.--

7 (2)(a) The agency shall establish within each district  
8 office one or more quality-of-care monitors, based on the  
9 number of nursing facilities in the district, to monitor all  
10 nursing facilities in the district on a regular, unannounced,  
11 aperiodic basis, including nights, evenings, weekends, and  
12 holidays. Priority for monitoring visits shall be given to  
13 nursing facilities with a history of patient care  
14 deficiencies. Quality-of-care monitors shall be registered  
15 nurses who are trained and experienced in nursing facility  
16 regulation, standards of practice in long-term care, and  
17 evaluation of patient care. Individuals in these positions  
18 shall not be deployed by the agency as a part of the district  
19 survey team in the conduct of routine, scheduled surveys, but  
20 shall function solely and independently as quality-of-care  
21 monitors. Quality-of-care monitors shall assess the overall  
22 quality of life in the nursing facility and shall assess  
23 specific conditions in the facility directly related to  
24 patient care. The quality-of-care monitor shall include in an  
25 assessment visit observation of the care and services rendered  
26 to residents and formal and informal interviews with  
27 residents, family members, facility staff, resident guests,  
28 volunteers, other regulatory staff, and representatives of a  
29 long-term care ombudsman council or Florida advocacy council  
30 ~~human rights advocacy committee~~.

31

1           Section 18. Subsection (13) of section 400.141,  
2 Florida Statutes, is amended to read:

3           400.141 Administration and management of nursing home  
4 facilities.--Every licensed facility shall comply with all  
5 applicable standards and rules of the agency and shall:

6           (13) Publicly display a poster provided by the agency  
7 containing the names, addresses, and telephone numbers for the  
8 state's abuse hotline, the State Long-Term Care Ombudsman, the  
9 Agency for Health Care Administration consumer hotline, the  
10 Advocacy Center for Persons with Disabilities, the Florida  
11 Statewide Advocacy Council ~~Statewide Human Rights Advocacy~~  
12 ~~Committee~~, and the Medicaid Fraud Control Unit, with a clear  
13 description of the assistance to be expected from each.

14  
15 Facilities that have been awarded a Gold Seal under the  
16 program established in s. 400.235 may develop a plan to  
17 provide certified nursing assistant training as prescribed by  
18 federal regulations and state rules and may apply to the  
19 agency for approval of its program.

20           Section 19. Subsection (13) of section 400.419,  
21 Florida Statutes, is amended to read:

22           400.419 Violations; administrative fines.--

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

1 district nursing home ombudsman councils. The Department of  
2 Children and Family Services shall disseminate the list to  
3 service providers under contract to the department who are  
4 responsible for referring persons to a facility for residency.  
5 The agency may charge a fee commensurate with the cost of  
6 printing and postage to other interested parties requesting a  
7 copy of this list.

8 Section 20. Subsection (2) of section 400.428, Florida  
9 Statutes, is amended to read:

10 400.428 Resident bill of rights.--

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

25 Section 21. Paragraph (a) of subsection (1) of section  
26 415.1034, Florida Statutes, is amended to read:

27 415.1034 Mandatory reporting of abuse, neglect, or  
28 exploitation of disabled adults or elderly persons; mandatory  
29 reports of death.--

30 (1) MANDATORY REPORTING.--

31 (a) Any person, including, but not limited to, any:

1           1. Physician, osteopathic physician, medical examiner,  
2 chiropractic physician, nurse, or hospital personnel engaged  
3 in the admission, examination, care, or treatment of disabled  
4 adults or elderly persons;

5           2. Health professional or mental health professional  
6 other than one listed in subparagraph 1.;

7           3. Practitioner who relies solely on spiritual means  
8 for healing;

9           4. Nursing home staff; assisted living facility staff;  
10 adult day care center staff; adult family-care home staff;  
11 social worker; or other professional adult care, residential,  
12 or institutional staff;

13           5. State, county, or municipal criminal justice  
14 employee or law enforcement officer;

15           6. Florida advocacy council member ~~Human rights~~  
16 ~~advocacy committee~~ or long-term care ombudsman council member;  
17 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 22. 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 Florida local advocacy council ~~human rights~~  
31 ~~advocacy committee~~, or long-term care ombudsman council, when

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

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

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

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

1 the provision of the required data for the central abuse  
2 registry and tracking system to the fullest extent possible.

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

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

12 Section 23. Paragraphs (a) and (i) of subsection (1)  
13 of section 415.1055, Florida Statutes, are amended to read:

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

17 (1) NOTIFICATION TO ADMINISTRATIVE ENTITIES.--

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

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

1           Section 24. 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 Florida Statewide Advocacy Council ~~Statewide Human Rights~~  
12 ~~Advocacy Committee~~, and other agencies that provide services  
13 to disabled adults or elderly persons. These agreements or  
14 procedures must cover such subjects as the appropriate roles  
15 and responsibilities of the department in identifying and  
16 responding to reports of abuse, neglect, or exploitation of  
17 disabled adults or elderly persons; the provision of services;  
18 and related coordinated activities.

19           Section 25. Paragraph (g) of subsection (2) of section  
20 415.107, Florida Statutes, is amended to read:

21           415.107 Confidentiality of reports and records.--

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

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

31



1           Section 26. Subsection (3) of section 430.04, Florida  
2 Statutes, is amended to read:

3           430.04 Duties and responsibilities of the Department  
4 of Elderly Affairs.--The Department of Elderly Affairs shall:

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

1 appropriate processes shall be utilized by the department to  
2 solicit input for the development and updating of the master  
3 plan from parties including, but not limited to, the  
4 following:

5 (a) Elderly citizens and their families and  
6 caregivers.

7 (b) Local-level public and private service providers,  
8 advocacy organizations, and other organizations relating to  
9 the elderly.

10 (c) Local governments.

11 (d) All state agencies that provide services to the  
12 elderly.

13 (e) University centers on aging.

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

16 Section 27. This act shall take effect July 1, 2000.

17

18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
19 COMMITTEE SUBSTITUTE FOR  
20 CS for SB 340

21 Deletes the terms "licensed" and "regulated" used throughout  
22 the bill; thereby, limiting the councils' jurisdiction to only  
23 those service providers which are operated, funded, or  
24 contracted by the state.

25 Provides that the councils are renamed, rather than recreated.

26 Deletes bill's provision that stated changes in the length of  
27 term limits for statewide council members were retroactive to  
28 members currently in office.

29 Adds that statewide council staff are to be classified as  
30 select exempt employees.  
31