

STORAGE NAME: h0383s1.cf

DATE: January 24, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Children & Families
ANALYSIS**

BILL #: CS/HB 383

RELATING TO: Human Rights

SPONSOR(S): Committee on Children & Families; Representative Littlefield and others

TIED BILL(S): SB 678 (similar) & SB 340 (compare)

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

- (1) Children & Families YEAS 7 NAYS 0
 - (2) Governmental Rules & Regulations
 - (3) Health & Human Services Appropriations
 - (4)
 - (5)
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I. SUMMARY:

House Bill 383 clarifies the duties of the Statewide and District Human Rights Advocacy Committees. It requires the committees to monitor and investigate allegations of human rights abuses or constitutional rights violations by state agencies that serve clients through specified chapters of the Florida Statutes. Reorganization of the Department of Health and Rehabilitative Services (HRS) since 1991 created new agencies to serve clients of the former department. Statutory changes did not provide language addressing the jurisdiction of the Statewide Human Rights Advocacy Committee (SHRAC) or the District Human Rights Advocacy Committees (HRACs). Consequently, the authority of HRAC members to continue to investigate complaints and inspect records of clients in the new agencies is unclear.

House Bill 383 creates s. 402.164, F.S., providing legislative intent for the human rights advocacy committees to monitor, inspect, or investigate conditions or determine the presence of individuals that constitute a threat to the welfare of persons who receive client services. The creation of this section also provides legislative intent for the protection of the rights of persons who are provided services under ch. 39, ch. 393, ch. 394, ch. 397, part III, part V, or part VIII of ch. 400, ch. 409, ch. 411, ch. 414, ch. 415, or ch. 916, F.S. These provisions clarify and restore the statutory authority for the existing responsibility of the committees. The provisions define the populations of clients protected independent of department jurisdiction. The bill establishes a situation somewhat comparable to that in existence prior to the breakup of HRS and provides statutory authority for the committees with ongoing departmental reorganization.

The bill renames the committees to the Governor's Statewide Advocacy Council and the Governor's local advocacy councils. The bill provides for changes in the membership of the committees and reporting to the Governor, and clarifies restrictions on access to adoption records.

The bill continues the requirement for the Department of Children and Family Services to provide the administrative support and service to the committee, to provide for the location of the district committees, and provide the necessary equipment and office supplies.

This act is to take effect on July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Human Rights Advocacy Committee (HRAC) is a consumer protection mechanism for people receiving services from the Department of Children and Families (DCF) and from specific programs of the Department of Health and the Agency for Health Care Administration that are historically protected by the committee. The purpose of the HRACs is to act as advocates for the welfare of individuals who are in the care and custody of DCF, or of private providers under contract of DCF. The HRACs serve as a third-party mechanism to protect the human and constitutional rights of those persons receiving services within a program or facility operated, funded, licensed, or regulated by DCF. The HRACs monitor and investigate complaints about abuse and deprivations of human and constitutional rights; monitor DCF programs and facilities and review research projects involving human subjects. They include the Department of Health and the Agency for Health Care Administration (AHCA) through agreements.

The HRACs specialize in serving clients in three program areas: developmental services, mental illnesses, and a multi program area that handles all other programs, including, foster care, child and adult protective services, and persons receiving welfare services. There are 34 local district HRACs located in all DCF service districts. The Statewide Human Rights Advocacy Committee (SHRAC) is the appellate body for the HRACs. The 14 SHRAC members and over 325 HRAC members are volunteers appointed by the Governor. The SHRAC receives appeals on complaints that the HRACs have not been able to resolve at the local level. Complaints that are a threat to the life, safety or health of individuals or are multi district in scope may be addressed by SHRAC without an appeal. After investigation by SHRAC, issues may be referred to the Secretary of DCF, to the Governor or the Legislature, as appropriate, for action. The SHRAC members also serve as liaisons to the local HRACs and supervise the operation of the HRAC system. In all cases members receive no compensation, but are reimbursed for their travel expenses.

There are three full-time staff housed at the Statewide Human Rights Advocacy Committee, and 15 staff members in the local district HRACs. The number of staff has remained the same while the caseload has increased.

Chapter 75-48, L.O.F., created the HRACs as part of the HRS Reorganization Act of 1975. This act gave committees the authority to act on behalf of all recipients of HRS services. Both local committees (one in each of the 11 service districts) and the statewide committee

(SHRAC) were recognized in this legislation. The SHRAC served as the appellate body for complaints unresolved by the local HRACs, reported to the Legislature, and set policy and procedures for the local HRACs. The expenses of both SHRAC and the local HRACs were to be from the HRS budget, and the organization was housed administratively in HRS.

Reorganization of the Department of Health and Rehabilitative Services beginning in 1991, changed the persons statutorily protected by the HRAC. New agencies were created to serve clients originally under the jurisdiction of HRS. For example, in 1991, the Legislature created the Department of Elderly Affairs; in 1992, the Agency for Health Care Administration; in 1994, the Department of Juvenile Justice; in 1996, the Department of Health. In 1994, the Child Support Enforcement activities of HRS were moved to the Department of Revenue. In 1996 HRS closed officially and the Department of Children and Families (DCF) was created.

Since the HRS reorganization efforts commenced in 1991, and in the process of creating the numerous agencies to service former HRS clients, none of the statutory provisions created or amended provided for language addressing the jurisdiction of the Statewide Human Rights Advocacy Committee (SHRAC) or the District Human Rights Advocacy Committee (HRACs). Consequently, the authority of HRAC members to investigate complaints and inspect records in the new departments is unclear.

Responsibilities of HRACs

Section 401.166, F.S., creates the district human rights advocacy committees (HRACs). The HRACs are responsible for serving as an independent third-party mechanism to protect the constitutional and human rights of any client within a program or facility operated, funded, licensed, or regulated by the Department of Children and Family Services (formerly the Department of Health and Rehabilitative Services). This duty is accomplished by monitoring, through site visits and the inspection of records, the delivery and use of services, programs, or facilities operated, funded, regulated or licensed by the DCF.

Section 402.166(1), F.S., provides that the department's service districts have at least one district HRAC in each of the 15 service districts of DCF and each district may have no more than three committees. Service District II may have four committees. The district committees are subject to direction from and the supervision of the statewide committee. Although not stated in statute, the executive director of the statewide council reports that the reason District II has an additional committee is that one committee was assigned exclusively to Florida State Hospital. The district administrator in each district must assign staff to provide administrative support to the local councils. The staff who are assigned to the local committees must perform the functions required by the local committee without interference from the department.

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

Section 402.166(7), F.S., outlines the responsibilities of a district committee and directs district committees to resolve a complaint with the appropriate local administration, agency, or program. If the district committee fails to resolve the complaint, the matter must be

referred to the statewide committee. The duties and responsibilities of a district committee encompass several of those delegated to the statewide committee. In addition, the district committee must submit an annual report to the statewide committee concerning activities, recommendations, and complaints reviewed or developed by the committee during the year.

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

The HRACs received 22,953 incident and abuse reports and complaints in FY 1998/99. The HRACs reviewed 19,762 of the reports and complaints and investigated 3,191. Of these, the program areas with the largest number of reports and complaints investigated are mental health and substance abuse including institutions (1009), adult services (337), family safety (259) and developmental services (230). Investigations were made in juvenile justice detention centers, training schools and community programs (106), and other programs including unlicensed juvenile programs, AHCA and day care centers (150). The most frequent complaints investigated are violations of human rights (45%) including right to privacy and fair treatment and due process.

In FY 1998/99, the HRACs conducted 964 on-site visits to DCF programs and facilities for the purpose of "seeking to prevent violations of rights." Additionally, members of the HRACs were appointed as third representative for 1,858 persons involuntarily admitted for mental health treatment and attended 2,406 hearings relating to this issue. Finally, the HRACs reviewed and approved proposed research projects.

Responsibilities of the Statewide Human Rights Advocacy Committee

Section 402.165, F.S., creates the Statewide Human Rights Advocacy Committee (SHRAC). The SHRAC receives, investigates, and resolves reports of abuse or deprivation of constitutional and human rights referred by the district committees. The SHRAC also reviews existing programs or services and new or revised programs of DCF and makes recommendations as to how the rights of clients are affected by these programs or services.

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

- One elected public official;
- Two providers who deliver services or programs to clients of DCF;
- Four nonsalaried representatives of nonprofit agencies or civic groups;
- Four representatives of consumer groups who are currently receiving, or have received, services from DCF within the past four years, at least one of whom must be a consumer; and

Four residents of the state who do not represent any of these groups, two of whom represent health-related professions and two of whom represent the legal profession.

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

Section 402.165(7), F.S., provides responsibilities of the Statewide Human Rights Advocacy Committee, which include the following:

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

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

Duties of the Department

Section 402.167, F.S., provides the duties of the department relating to both the statewide and district committees. These duties include providing the following:

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

In addition, the Secretary is directed to ensure the full cooperation and assistance of employees of the department with members and staff of the statewide and district committees so that staff assigned to the statewide and district committees are free of interference from or control by the department.

C. EFFECT OF PROPOSED CHANGES:

The bill renames the statewide and district human rights advocacy committees as the Governor's statewide and local advocacy councils. Provides duties of the councils with respect to monitoring and investigating abuse or deprivation of constitutional or human rights of clients receiving client services from any state agency. "Clients" is defined in section 1 by reference to specified chapters of Florida Statutes. Current law provides for such actions only with respect to clients of the Department of Children and Family Services. Revises statewide and local council membership, appointment, officers, and terms of service. Provides for revision of local council service areas, which are to be determined by the statewide council. Provides duties of state agencies with respect to the statewide and local councils. Provides for local council access to state agency records. Authorizes the state agencies subject to council investigations to adopt rules.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 creates s. 402.164, F.S., and provides legislative intent. Such intent directs district committees to "discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies." As used in ss. 402.164, 402.165, 402.166, and 402.167, F.S., the terms "client" and "client services" are specifically extended to agencies that provide such services under specified chapters. Persons served under the specified chapters include clients of the Work and Gain Economic Self-sufficiency Program (WAGES), the Department of Education, the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Elderly Affairs. Membership of the actual committees is broadened to include those who represent the interests of the public and the clients of the state agencies providing client services.

Section 2 amends s. 402.165, F.S., and expands the Statewide Human Rights Advocacy Committees' jurisdiction from the former Department of Health and Rehabilitative Services (currently the Department of Children and Family Services) to include "any state agency

that provides client services” (defined in section 1 by reference to specified chapters of Florida Statutes).

Section 3 amends s. 402.166, F.S., and expands the District Human Rights Advocacy Committees’ jurisdiction from the former Department of Health and Rehabilitative Services (currently the Department of Children and Family Services) to include “any state agency that provides client services” (defined in section 1 by reference to specified chapters of Florida Statutes).

Section 4 amends s. 402.167, F.S., and directs each state agency that provides client services to adopt rules that are consistent with the law. Outlines procedures to be addressed in the rules. This section is also amended to provide that the secretaries or directors of affected state agencies ensure full cooperation and assistance with the Statewide and District Human Rights Advocacy Committees.

Sections 5 through 26 amend subsections 39.001(7)(a), 39.202(2)(k), 39.302(4), 393.13(4)(g) and (7)(l), 394.459(5)(c), 394.4595, 394.497(2)(d), 394.4598(1), 394.4599(2)(b), 394.4615(5), 400.0067(2)(g), 400.0089, 400.118(2)(a), 400.141(13), 400.419(13), 400.428(2), 415.1034(1)(a), 415.104(1), 415.1055(1)(a)&(l), 415.106(2), 415.107(2)(g), 430.04(3), F.S., to provide technical and conforming language to change the names of the committees in related statutes.

Section 27 provides that this act is to take effect on July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 19, 2000, the Committee on Children and Families adopted the following two amendments.

Amendment 1.

On page 2,

remove from the bill: line 21 or part VIII of chapter 400, chapter 409, chapter 411, chapter

and insert in lieu thereof: part VIII or part XI of chapter 400, section 402.26 through 402.319, section 409.016 through 409.2355, section 409.401 through 409.441 or section 409.801 through 409.942, chapter 411, chapter

This amendment removes from the definition of "client" in the bill reference to sections of chapter 409 that include clients served in programs that are no longer part of the Department of

STORAGE NAME: h0383s1.cf

DATE: January 24, 2000

PAGE 9

Children and Families. This includes Child Support Enforcement that is now a program of the Department of Revenue.

Amendment 2.

Whenever it appears remove: Governor's
and insert: Florida

This amendment replaces the new name of the councils in the bill with Florida Statewide Advocacy Council and Florida local advocacy councils instead of Governor's Statewide Advocacy Council and Governor's local advocacy councils.

The amendments to the bill were incorporated as a committee substitute by the committee.

VII. SIGNATURES:

COMMITTEE ON Children & Families:

Prepared by:

Staff Director:

Glenn A. Mitchell

Bob Barrios