

By the Committee on Children & Families and  
 Representatives Littlefield, Alexander, Hart, Ogles, Wallace,  
 Byrd, Flanagan, Bradley and Murman

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, and 402.167, F.S.; renaming the  
 5           statewide and district human rights advocacy  
 6           committees as the Florida statewide and local  
 7           advocacy councils; providing legislative intent  
 8           with 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 for access to records of the  
 19          state agencies subject to council  
 20          investigations; providing rulemaking authority  
 21          to such state agencies; amending ss. 39.001,  
 22          39.202, 39.302, 393.13, 394.459, 394.4595,  
 23          394.4597, 394.4598, 394.4599, 394.4615,  
 24          400.0067, 400.0089, 400.118, 400.141, 400.419,  
 25          400.428, 415.1034, 415.104, 415.1055, 415.106,  
 26          415.107, and 430.04, F.S.; correcting  
 27          references to conform to the act; providing an  
 28          effective date.  
 29  
 30   Be It Enacted by the Legislature of the State of Florida:  
 31

1 Section 1. Section 402.164, 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 person who receives one or more  
19 of the services provided to individuals described in chapter  
20 39, chapter 393, chapter 394, chapter 397, part III, part V,  
21 part VIII, or part XI of chapter 400, ss. 402.26-402.319, ss.  
22 409.016-409.2355, ss. 409.401-409.441, ss. 409.801-409.942,  
23 chapter 411, chapter 414, chapter 415, or chapter 916, which  
24 service is provided by a state agency or a service provider  
25 operated, funded, licensed, contracted, or regulated by a  
26 state agency.

27 (b) "Client services" means services or programs  
28 provided to a client.

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

31

1           402.165 Florida Statewide Advocacy Council ~~Statewide~~  
2 ~~Human Rights Advocacy Committee~~; confidential records and  
3 meetings.--  
4           (1) There is created within the Department of Children  
5 and Family Services a Florida Statewide Advocacy Council  
6 ~~Statewide Human Rights Advocacy Committee~~. Members of the  
7 council shall represent the interests of clients who are  
8 served by state agencies that provide client services.The  
9 Department of Children and Family Services shall provide  
10 administrative support and service to the statewide council  
11 ~~committee~~ to the extent requested by the executive director  
12 within available resources. The statewide council is not  
13 ~~Human Rights Advocacy Committee shall not be~~ subject to  
14 control, supervision, or direction by the Department of  
15 Children and Family Services in the performance of its duties.  
16 The council ~~committee~~ shall consist of 15 residents of this  
17 state citizens, one from each service area designated by the  
18 statewide council ~~district of the Department of Children and~~  
19 ~~Family Services~~, who broadly represent the interests of the  
20 public and the clients of the state agencies that provide  
21 client services ~~that department~~. The members shall be  
22 representative of four ~~five~~ groups of state residents ~~citizens~~  
23 as follows: one provider who delivers ~~elected public~~  
24 ~~official; two providers who deliver~~ client services as defined  
25 in s. 402.164(2); two ~~or programs to clients of the Department~~  
26 ~~of Children and Family Services; four~~ nonsalaried  
27 representatives of nonprofit agencies or civic groups; four  
28 representatives of ~~health and rehabilitative services~~ consumer  
29 groups who are currently receiving, or have received, client  
30 ~~services from the Department of Children and Family Services~~  
31 within the past 4 years, at least one of whom must be a

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

1 years, retroactive to the members in office on July 1, 2000.  
2 A member may not serve more than two full consecutive terms.  
3 ~~The limitation on the number of terms a member may serve~~  
4 ~~applies without regard to whether a term was served before or~~  
5 ~~after October 1, 1989.~~

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

16 (4) The Governor shall fill each vacancy on the  
17 statewide council ~~Human Rights Advocacy Committee~~ from a list  
18 of nominees submitted by the statewide council ~~committee~~. A  
19 list of candidates may ~~shall~~ be submitted to the statewide  
20 council ~~by the local council in the service area~~ ~~committee by~~  
21 ~~the district human rights advocacy committee in the district~~  
22 from which the vacancy occurs. Priority of consideration  
23 shall be given to the appointment of an individual who is  
24 receiving one or more client services and whose primary  
25 interest, experience, or expertise lies with a major client  
26 group that is ~~of the Department of Children and Family~~  
27 ~~Services~~ not represented on the council ~~committee~~ at the time  
28 of the appointment. If an appointment is not made within 60  
29 days after a vacancy occurs on the statewide council  
30 ~~committee~~, the vacancy may ~~shall~~ be filled by a majority vote  
31 of the statewide council ~~committee~~ without further action by

1 the Governor. ~~A~~ No person who is employed by any state agency  
2 in client ~~the Department of Children and Family~~ services may  
3 not be appointed to the statewide council ~~committee~~.

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

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

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

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

30 (6) The members of the statewide council ~~Human Rights~~  
31 ~~Advocacy Committee~~ shall elect a chair and a vice chair to

1 ~~terms chairperson to a term~~ of 1 year. A person may not serve  
2 as chair or vice chair ~~chairperson~~ for more than two full  
3 consecutive terms.

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

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

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

1 monitoring and reviews that do not require an examination of  
2 records may be made unannounced.

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

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

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

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

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

29 1. The responsibilities of the statewide council and  
30 the local councils ~~committee~~;

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

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

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

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

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

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

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

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

25 2. Access to all client records, files, and reports  
26 from any program, service, or facility that is operated,  
27 funded, licensed, contracted, or regulated by any state agency  
28 that provides client ~~the Department of Children and Family~~  
29 services and any records that ~~which~~ are material to its  
30 investigation and ~~which~~ are in the custody of any other agency  
31 or department of government. The council's ~~committee's~~

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

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

30 (b) All information obtained or produced by the  
31 statewide council ~~that committee which~~ is made confidential by

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

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

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

31

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

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

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

9 402.166 Florida local advocacy councils ~~District human~~  
10 ~~rights advocacy committees~~; confidential records and  
11 meetings.--

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

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

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

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

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

1 appointed by a majority vote of the statewide council ~~district~~  
2 ~~committee~~ without further action by the Governor.

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

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

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

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

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



1 adopted under this section, the local council ~~thereto, a~~  
2 ~~district committee~~ may recommend to the Governor that the ~~such~~  
3 member be removed.

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

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

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

30 (b) Monitoring by site visit and inspection of  
31 records, ~~the~~ delivery and use of services, programs, or

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

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

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

30 (e) Reviewing existing programs ~~or services~~ and  
31 proposed new or revised programs of client ~~the Department of~~

1 ~~Children and Family~~ services and making recommendations as to  
2 how these programs and services affect or might affect the  
3 constitutional or human rights of clients ~~are affected~~.

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

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

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

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

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

1 required by federal law and regulation that ~~which~~ supersedes  
2 state law. Access shall not be granted to the records of a  
3 private licensed practitioner who is providing services  
4 outside state agencies and facilities and whose client is  
5 competent and refuses disclosure.

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

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

1 confidential and exempt from ~~the provisions of~~ s. 119.07(1)  
2 and s. 24(a), Art. I of the State Constitution.

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

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

28 (e) Any person who knowingly and willfully discloses  
29 any such confidential information commits ~~is guilty of~~ a  
30 misdemeanor of the second degree, punishable as provided in s.  
31 775.082 or s. 775.083.

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

3 402.167 Duties of state agencies that provide client  
4 services relating to the Florida Statewide Advocacy Council  
5 and the Florida local advocacy councils ~~Department duties~~  
6 ~~relating to the Statewide Human Rights Advocacy Committee and~~  
7 ~~the District Human Rights Advocacy Committees.--~~

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

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

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

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

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

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

1 word processing services, photocopiers, telephone services,  
2 and stationery and other necessary supplies, and shall  
3 establish the procedures by which council members are  
4 reimbursed for authorized expenditures.

5 (3) The secretaries or directors of the state agencies  
6 ~~secretary~~ shall ensure the full cooperation and assistance of  
7 employees of their respective state agencies ~~the Department of~~  
8 ~~Children and Family Services~~ with members and staff of the  
9 statewide and local councils ~~human rights advocacy committees.~~

10 Further, the Secretary of Children and Family Services shall  
11 ensure that, to the extent possible, staff assigned to the  
12 statewide council and local councils ~~Human Rights Advocacy~~  
13 ~~Committees and District Human Rights Advocacy Committees~~ are  
14 free of interference from or control by the department in  
15 performing their duties relative to those councils ~~committees.~~

16 Section 5. Paragraph (a) of subsection (7) of section  
17 39.001, Florida Statutes, is amended to read:

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

20 (7) PLAN FOR COMPREHENSIVE APPROACH.--

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

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

18 Section 6. Paragraph (k) of subsection (2) of section  
19 39.202, Florida Statutes, is amended to read:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 394.459 Rights of patients.--

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

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

31

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

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

16           394.4595 Florida statewide and local advocacy  
17 councils; ~~Human Rights Advocacy Committee~~ access to patients  
18 and records.--Any facility designated by the department as a  
19 receiving or treatment facility must allow access to any  
20 patient and the clinical and legal records of any patient  
21 admitted pursuant to the provisions of this act by members of  
22 the Florida statewide and local advocacy councils ~~Human Rights~~  
23 ~~Advocacy Committee~~.

24           Section 11. Paragraph (d) of subsection (2) of section  
25 394.4597, Florida Statutes, is amended to read:

26           394.4597 Persons to be notified; patient's  
27 representative.--

28           (2) INVOLUNTARY PATIENTS.--

29           (d) When the receiving or treatment facility selects a  
30 representative, first preference shall be given to a health  
31 care surrogate, if one has been previously selected by the

1 patient. If the patient has not previously selected a health  
2 care surrogate, the selection, except for good cause  
3 documented in the patient's clinical record, shall be made  
4 from the following list in the order of listing:

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

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

14 394.4598 Guardian advocate.--

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

1 guardian advocate must meet the qualifications of a guardian  
2 contained in part IV of chapter 744, except that a  
3 professional referred to in this part, an employee of the  
4 facility providing direct services to the patient under this  
5 part, a departmental employee, a facility administrator, or  
6 member of the Florida local advocacy council ~~district human~~  
7 ~~rights advocacy committee~~ shall not be appointed. A person who  
8 is appointed as a guardian advocate must agree to the  
9 appointment.

10 Section 13. Paragraph (b) of subsection (2) of section  
11 394.4599, Florida Statutes, is amended to read:

12 394.4599 Notice.--

13 (2) INVOLUNTARY PATIENTS.--

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

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

27 394.4615 Clinical records; confidentiality.--

28 (5) Information from clinical records may be used by  
29 the Agency for Health Care Administration, the department, and  
30 the Florida advocacy councils ~~human rights advocacy committees~~  
31

1 for the purpose of monitoring facility activity and complaints  
2 concerning facilities.

3 Section 15. Paragraph (g) of subsection (2) of section  
4 400.0067, Florida Statutes, is amended to read:

5 400.0067 Establishment of State Long-Term Care  
6 Ombudsman Council; duties; membership.--

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

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

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

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

30 Section 17. Paragraph (a) of subsection (2) of section  
31 400.118, Florida Statutes, is amended to read:



1           400.118 Quality assurance; early warning system;  
2 monitoring; rapid response teams.--

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

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

29           400.141 Administration and management of nursing home  
30 facilities.--Every licensed facility shall comply with all  
31 applicable standards and rules of the agency and shall:

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

9  
10 Facilities that have been awarded a Gold Seal under the  
11 program established in s. 400.235 may develop a plan to  
12 provide certified nursing assistant training as prescribed by  
13 federal regulations and state rules and may apply to the  
14 agency for approval of its program.

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

17           400.419 Violations; administrative fines.--

18           (13) The agency shall develop and disseminate an  
19 annual list of all facilities sanctioned or fined \$5,000 or  
20 more for violations of state standards, the number and class  
21 of violations involved, the penalties imposed, and the current  
22 status of cases. The list shall be disseminated, at no charge,  
23 to the Department of Elderly Affairs, the Department of  
24 Health, the Department of Children and Family Services, the  
25 area agencies on aging, the Florida Statewide Advocacy Council  
26 ~~Statewide Human Rights Advocacy Committee~~, and the state and  
27 district nursing home ombudsman councils. The Department of  
28 Children and Family Services shall disseminate the list to  
29 service providers under contract to the department who are  
30 responsible for referring persons to a facility for residency.  
31 The agency may charge a fee commensurate with the cost of

1 printing and postage to other interested parties requesting a  
2 copy of this list.

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

5 400.428 Resident bill of rights.--

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

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

22 415.1034 Mandatory reporting of abuse, neglect, or  
23 exploitation of disabled adults or elderly persons; mandatory  
24 reports of death.--

25 (1) MANDATORY REPORTING.--

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

27 1. Physician, osteopathic physician, medical examiner,  
28 chiropractic physician, nurse, or hospital personnel engaged  
29 in the admission, examination, care, or treatment of disabled  
30 adults or elderly persons;

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- 1           2. Health professional or mental health professional  
2 other than one listed in subparagraph 1.;
- 3           3. Practitioner who relies solely on spiritual means  
4 for healing;
- 5           4. Nursing home staff; assisted living facility staff;  
6 adult day care center staff; adult family-care home staff;  
7 social worker; or other professional adult care, residential,  
8 or institutional staff;
- 9           5. State, county, or municipal criminal justice  
10 employee or law enforcement officer;
- 11           6. Florida advocacy council member ~~Human rights~~  
12 ~~advocacy committee~~ or long-term care ombudsman council member;  
13 or
- 14           7. Bank, savings and loan, or credit union officer,  
15 trustee, or employee,  
16  
17 who knows, or has reasonable cause to suspect, that a disabled  
18 adult or an elderly person has been or is being abused,  
19 neglected, or exploited shall immediately report such  
20 knowledge or suspicion to the central abuse registry and  
21 tracking system on the single statewide toll-free telephone  
22 number.
- 23           Section 22. Subsection (1) of section 415.104, Florida  
24 Statutes, is amended to read:
- 25           415.104 Protective services investigations of cases of  
26 abuse, neglect, or exploitation of aged persons or disabled  
27 adults; transmittal of records to state attorney.--
- 28           (1) The department shall, upon receipt of a report  
29 alleging abuse, neglect, or exploitation of an aged person or  
30 disabled adult, commence, or cause to be commenced within 24  
31 hours, a protective services investigation of the facts

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

1 or in writing and shall include the name and location of the  
2 aged person or disabled adult alleged to have been abused,  
3 neglected, or exploited and the nature of the report. For  
4 each report it receives, the department shall perform an  
5 onsite investigation to:

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

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

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

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

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

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

9           415.1055 Notification to administrative entities,  
10 subjects, and reporters; notification to law enforcement and  
11 state attorneys.--

12           (1) NOTIFICATION TO ADMINISTRATIVE ENTITIES.--

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

22           (i) At the conclusion of a protective investigation at  
23 a facility, the department shall notify either the Florida  
24 local advocacy council ~~human rights advocacy committee~~ or  
25 long-term care ombudsman council of the results of the  
26 investigation. This notification must be in writing.

27           Section 24. Subsection (2) of section 415.106, Florida  
28 Statutes, is amended to read:

29           415.106 Cooperation by the department and criminal  
30 justice and other agencies.--

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

15           Section 25. Paragraph (g) of subsection (2) of section  
16 415.107, Florida Statutes, is amended to read:

17           415.107 Confidentiality of reports and records.--

18           (2) Access to all records, excluding the name of the  
19 reporter which shall be released only as provided in  
20 subsection (6), shall be granted only to the following  
21 persons, officials, and agencies:

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

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

29           430.04 Duties and responsibilities of the Department  
30 of Elderly Affairs.--The Department of Elderly Affairs shall:

31



1           (3) Prepare and submit to the Governor, each Cabinet  
2 member, the President of the Senate, the Speaker of the House  
3 of Representatives, the minority leaders of the House and  
4 Senate, and chairpersons of appropriate House and Senate  
5 committees a master plan for policies and programs in the  
6 state related to aging. The plan must identify and assess the  
7 needs of the elderly population in the areas of housing,  
8 employment, education and training, medical care, long-term  
9 care, preventive care, protective services, social services,  
10 mental health, transportation, and long-term care insurance,  
11 and other areas considered appropriate by the department. The  
12 plan must assess the needs of particular subgroups of the  
13 population and evaluate the capacity of existing programs,  
14 both public and private and in state and local agencies, to  
15 respond effectively to identified needs. If the plan  
16 recommends the transfer of any program or service from the  
17 Department of Children and Family Services to another state  
18 department, the plan must also include recommendations that  
19 provide for an independent third-party mechanism, as currently  
20 exists in the Florida advocacy councils ~~human rights advocacy~~  
21 ~~committees~~ established in ss. 402.165 and 402.166, for  
22 protecting the constitutional and human rights of recipients  
23 of departmental services. The plan must include policy goals  
24 and program strategies designed to respond efficiently to  
25 current and projected needs. The plan must also include policy  
26 goals and program strategies to promote intergenerational  
27 relationships and activities. Public hearings and other  
28 appropriate processes shall be utilized by the department to  
29 solicit input for the development and updating of the master  
30 plan from parties including, but not limited to, the  
31 following:

- 1           (a) Elderly citizens and their families and  
2 caregivers.
- 3           (b) Local-level public and private service providers,  
4 advocacy organizations, and other organizations relating to  
5 the elderly.
- 6           (c) Local governments.
- 7           (d) All state agencies that provide services to the  
8 elderly.
- 9           (e) University centers on aging.
- 10          (f) Area agency on aging and community care for the  
11 elderly lead agencies.

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

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HOUSE SUMMARY

Renames the statewide and district human rights advocacy committees as the Florida statewide and local advocacy councils. Provides legislative intent. Defines "client" and "client services." 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. 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.