

By Senator Forman

32-320-00

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

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

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

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

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

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

26 (2) Members of the statewide council ~~Human Rights~~  
27 ~~Advocacy Committee~~ shall be appointed to serve terms of 4 ~~3~~  
28 years, retroactive to the members in office on July 1, 2000.  
29 A member may not serve more than two full consecutive terms.  
30 The limitation on the number of terms a member may serve  
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1 applies without regard to whether a term was served before or  
2 after October 1, 1989.

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

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

30 (5)(a) Members of the statewide council ~~Human Rights~~  
31 ~~Advocacy Committee~~ shall receive no compensation, but are

1 ~~shall be~~ entitled to be reimbursed for per diem and travel  
2 expenses in accordance with s. 112.061.

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

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

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

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

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

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

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

24           (c) Receiving, investigating, and resolving reports of  
25 abuse or deprivation of constitutional and human rights  
26 referred to the statewide council ~~Human Rights Advocacy~~  
27 ~~Committee~~ by a local council ~~district human rights advocacy~~  
28 ~~committee~~. If a matter constitutes a threat to the life,  
29 safety, or health of clients or is multidistrict in scope, the  
30 statewide council ~~Human Rights Advocacy Committee~~ may exercise  
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1 such powers without the necessity of a referral from a local  
2 council district committee.

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

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

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

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

20 1. The responsibilities of the statewide council and  
21 the local councils committee;

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

29 3. Uniform procedures by which ~~for~~ the statewide  
30 council committee and the local councils shall ~~district~~

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1 ~~committees~~ to receive and investigate reports of abuse of  
2 constitutional or human rights;

3 4. The responsibilities and relationship of the local  
4 councils ~~district human rights advocacy committees~~ to the  
5 statewide council ~~committee~~;

6 5. The relationship of the statewide council ~~committee~~  
7 to the Department of Children and Family Services, including  
8 the way in which reports of findings and recommendations  
9 related to reported abuse are given to the Department of  
10 Children and Family Services;

11 6. Provision for cooperation with the State Long-Term  
12 Care Ombudsman Council;

13 7. Procedures for appeal. An appeal to the statewide  
14 council ~~state committee~~ is made by a local council ~~district~~  
15 ~~human rights advocacy committee~~ when a valid complaint is not  
16 resolved at the local ~~district~~ level. The statewide council  
17 ~~committee~~ may appeal an unresolved complaint to the secretary  
18 of the Department of Children and Family Services. If, after  
19 exhausting all remedies, the statewide council ~~committee~~ is  
20 not satisfied that the complaint can be resolved within the  
21 Department of Children and Family Services, the appeal may be  
22 referred to the Governor ~~or the Legislature~~;

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

25 9. Definitions of misfeasance and malfeasance for  
26 members of the statewide council ~~committee~~ and local councils  
27 ~~district committees~~.

28 (h) Monitoring the performance and activities of all  
29 local councils ~~district committees~~ and providing technical  
30 assistance to members and staff of local councils ~~district~~  
31 ~~committees~~.

1 (i) Providing for the development and presentation of  
2 a standardized training program for members of local councils  
3 ~~district committees~~.

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

6 1. Authority to receive, investigate, seek to  
7 conciliate, hold hearings on, and act on complaints that ~~which~~  
8 allege any abuse or deprivation of constitutional or human  
9 rights of clients.

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

25 3. Standing to petition the circuit court for access  
26 to client records that ~~which~~ are confidential as specified by  
27 law. The petition must ~~shall~~ state the specific reasons for  
28 which the council ~~committee~~ is seeking access and the intended  
29 use of such information. The court may authorize ~~committee~~  
30 access to such records upon a finding that such access is  
31 directly related to an investigation regarding the possible

1 deprivation of constitutional or human rights or the abuse of  
2 a client. Original client files, records, and reports shall  
3 not be removed from the Department of Children and Family  
4 Services or agency facilities. The statewide council may not  
5 ~~Under no circumstance shall the committee~~ have access to  
6 confidential adoption records in accordance with ~~the~~  
7 ~~provisions of~~ ss. 39.0132, 63.022, and 63.162. Upon  
8 completion of a general investigation of practices and  
9 procedures of the Department of Children and Family Services,  
10 the statewide council ~~committee~~ shall report its findings to  
11 that department.

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

21 (c) Portions of meetings of the statewide council  
22 ~~Human Rights Advocacy Committee~~ which relate to the identity  
23 of any client or group of clients subject to the protections  
24 of this section, which relate to the identity of an individual  
25 who provides information to the council ~~committee~~ about abuse  
26 or alleged violations of constitutional or human rights, or  
27 wherein testimony is provided relating to records otherwise  
28 made confidential by law, are exempt from the provisions of s.  
29 286.011 and s. 24(b), Art. I of the State Constitution.

30 (d) All records prepared by members of the statewide  
31 council ~~committee~~ which reflect a mental impression,

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

14 |         (e) Any person who knowingly and willfully discloses  
15 | any such confidential information is guilty of a misdemeanor  
16 | of the second degree, punishable as provided in s. 775.082 or  
17 | s. 775.083.

18 |         Section 2. Section 402.166, Florida Statutes, is  
19 | amended to read:

20 |             402.166 Local ~~District~~ human rights advocacy councils  
21 | ~~committees~~; confidential records and meetings.--

22 |             (1) At least one local ~~district~~ human rights advocacy  
23 | council ~~committee~~ is created in each service district of the  
24 | Department of Children and Family Services. The local  
25 | ~~district~~ human rights advocacy councils ~~committees~~ shall be  
26 | subject to direction from and the supervision of the Statewide  
27 | Human Rights Advocacy Council ~~Committee~~. The district  
28 | administrator shall assign staff to provide administrative  
29 | support to the local councils ~~committees~~, and staff assigned  
30 | to these positions shall perform the functions required by the  
31 | local councils ~~committee~~ without interference from the

1 department. The local councils ~~district committees~~ shall  
2 direct the activities of staff assigned to them to the extent  
3 necessary for the councils ~~committees~~ to carry out their  
4 duties. The number and areas of responsibility of the local  
5 councils ~~district human rights advocacy committees~~, not to  
6 exceed three in any district, shall be determined by the  
7 majority vote of local council ~~district committee~~ members.  
8 However, district II may have four councils, and any district  
9 that has a developmental services institution as defined in s.  
10 393.063 or a state mental health hospital may, by a majority  
11 vote of the local council members, petition the statewide  
12 council to establish a separate council to serve this  
13 population ~~committees~~. Local councils ~~District Committees~~  
14 shall meet at facilities under their jurisdiction whenever  
15 possible.

16 (2) Each local council ~~district human rights advocacy~~  
17 ~~committee~~ shall have no fewer than 7 members and no more than  
18 15 members, 25 percent of whom are or have been clients of the  
19 Department of Children and Family Services within the last 4  
20 years, except that one member of this group may be an  
21 immediate relative or legal representative of a current or  
22 former client; two providers, who deliver services or programs  
23 to clients of the Department of Children and Family Services;  
24 and two representatives of professional organizations, one of  
25 whom represents health-related professions and one of whom  
26 represents the legal profession. Priority of consideration  
27 shall be given to the appointment of at least one medical or  
28 osteopathic physician, as defined in chapters 458 and 459, and  
29 one member in good standing of The Florida Bar. Priority of  
30 consideration shall also be given to the appointment of an  
31 individual whose primary interest, experience, or expertise

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

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

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

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

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

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

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

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

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

17           (7) A local council ~~district human rights advocacy~~  
18 ~~committee~~ shall first seek to resolve a complaint with the  
19 appropriate local administration, agency, or program. ~~Any~~  
20 matter not resolved by the local council ~~district committee~~  
21 shall be referred to the statewide council ~~Human Rights~~  
22 ~~Advocacy Committee~~. A local council ~~district human rights~~  
23 ~~advocacy committee~~ shall comply with appeal procedures  
24 established by the statewide council ~~Human Rights Advocacy~~  
25 ~~Committee~~. The duties, actions, and procedures of both new  
26 and existing local councils ~~district human rights advocacy~~  
27 ~~committees~~ shall conform to ss. 402.164-402.167 ~~the provisions~~  
28 ~~of this act~~. The duties of each local council ~~district human~~  
29 ~~rights advocacy committee~~ shall include, but are not limited  
30 to:  
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1           (a) Serving as an independent third-party mechanism  
2 for protecting the constitutional and human rights of any  
3 client within a program or facility operated, funded,  
4 licensed, or regulated by the Department of Children and  
5 Family Services.

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

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

27           (d) Reviewing and making recommendations  
28 ~~recommendation~~ with respect to the involvement by clients of  
29 the Department of Children and Family Services as subjects for  
30 research projects, prior to implementation, insofar as their  
31 human rights are affected.

1           (e) Reviewing existing programs or services and new or  
2 revised programs of the Department of Children and Family  
3 Services and making recommendations as to how the rights of  
4 clients are affected.

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

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

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

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

22           1. Access to all client records, files, and reports  
23 from any program, service, or facility that is operated,  
24 funded, licensed, or regulated by the Department of Children  
25 and Family Services and any records that ~~which~~ are material to  
26 its investigation and ~~which are~~ in the custody of any other  
27 agency or department of government. The council's ~~committee's~~  
28 investigation or monitoring may ~~shall~~ not impede or obstruct  
29 matters under investigation by law enforcement agencies or  
30 judicial authorities. Access may ~~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 may ~~shall~~ not be granted to the records of  
3 a 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 must ~~shall~~ state the specific reasons for  
9 which the council ~~committee~~ is seeking access and the intended  
10 use of such information. The court may authorize ~~committee~~  
11 access to such records upon a finding that such access is  
12 directly related to an investigation regarding the possible  
13 deprivation of constitutional or human rights or the abuse of  
14 a client. Original client files, records, and reports shall  
15 not be removed from Department of Children and Family Services  
16 or agency facilities. The local council may not ~~Upon no~~  
17 ~~circumstances shall the committee~~ have access to confidential  
18 adoption records in accordance with ~~the provisions of~~ ss.  
19 39.0132, 63.022, and 63.162. Upon completion of a general  
20 investigation of practices and procedures of the Department of  
21 Children and Family Services, the council ~~committee~~ shall  
22 report its findings to that department.

23           (b) All information obtained or produced by a local  
24 council ~~the committee~~ which is made confidential by law, which  
25 relates to the identity of any client or group of clients  
26 subject to the protection of this section, or which relates to  
27 the identity of an individual who provides information to the  
28 council ~~committee~~ about abuse or alleged violations of  
29 constitutional or human rights, ~~is~~ confidential and exempt  
30 from the provisions of s. 119.07(1) and s. 24(a), Art. I of  
31 the State Constitution.

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

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

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

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

31

1           402.167 Department duties relating to the Statewide  
2 Human Rights Advocacy Council ~~Committee~~ and the local ~~District~~  
3 human rights advocacy councils ~~Committees~~.--

4           (1) The Department of Children and Family Services  
5 shall adopt rules that ~~which~~ are consistent with law, amended  
6 to reflect any statutory changes, and that ~~which~~ rules address  
7 at least the following:

8           (a) Procedures by which Department of Children and  
9 Family Services district staff refer reports of abuse to local  
10 councils ~~district human rights advocacy committees~~.

11           (b) Procedures by which client information is made  
12 available to members of the statewide council ~~Human Rights~~  
13 ~~Advocacy Committee~~ and the local councils ~~district human~~  
14 ~~rights advocacy committees~~.

15           (c) Procedures by which recommendations made by the  
16 councils ~~human rights advocacy committees~~ will be incorporated  
17 into Department of Children and Family Services policies and  
18 procedures.

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

21           (2) The Department of Children and Family Services  
22 shall provide for the location of local councils ~~district~~  
23 ~~human rights advocacy committees~~ in district headquarters  
24 offices and shall provide necessary equipment and office  
25 supplies, including, but not limited to, clerical and word  
26 processing services, photocopiers, telephone services, and  
27 stationery and other necessary supplies.

28           (3) The secretary shall ensure the full cooperation  
29 and assistance of employees of the Department of Children and  
30 Family Services with members and staff of the human rights  
31 advocacy councils ~~committees~~. Further, the secretary shall

1 ensure that to the extent possible, staff assigned to the  
2 Statewide Human Rights Advocacy Council ~~Committees~~ and local  
3 ~~District~~ human rights advocacy councils ~~Committees~~ are free of  
4 interference from or control by the department in performing  
5 their duties relative to those councils ~~committees~~.

6 Section 4. Paragraph (k) of subsection (2) of section  
7 39.202, Florida Statutes, is amended to read:

8 39.202 Confidentiality of reports and records in cases  
9 of child abuse or neglect.--

10 (2) Access to such records, excluding the name of the  
11 reporter which shall be released only as provided in  
12 subsection (4), shall be granted only to the following  
13 persons, officials, and agencies:

14 (k) Any appropriate official of the human rights  
15 advocacy council ~~committee~~ investigating a report of known or  
16 suspected child abuse, abandonment, or neglect, the Auditor  
17 General for the purpose of conducting preliminary or  
18 compliance reviews pursuant to s. 11.45, or the guardian ad  
19 litem for the child.

20 Section 5. Paragraph (a) of subsection (7) of section  
21 39.001, Florida Statutes, is amended to read:

22 39.001 Purposes and intent; personnel standards and  
23 screening.--

24 (7) PLAN FOR COMPREHENSIVE APPROACH.--

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

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

22 Section 6. Subsection (4) of section 39.302, Florida  
23 Statutes, is amended to read:

24 39.302 Protective investigations of institutional  
25 child abuse, abandonment, or neglect.--

26 (4) The department shall notify the human rights  
27 advocacy council ~~committee~~ in the appropriate district of the  
28 department as to every report of institutional child abuse,  
29 abandonment, or neglect in the district in which a client of  
30 the department is alleged or shown to have been abused,  
31 abandoned, or neglected, which notification shall be made

1 within 48 hours after the department commences its  
2 investigation.

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

6 393.13 Personal treatment of persons who are  
7 developmentally disabled.--

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

12 (g) No client shall be subjected to a treatment  
13 program to eliminate bizarre or unusual behaviors without  
14 first being examined by a physician who in his or her best  
15 judgment determines that such behaviors are not organically  
16 caused.

17 1. Treatment programs involving the use of noxious or  
18 painful stimuli shall be prohibited.

19 2. All alleged violations of this paragraph shall be  
20 reported immediately to the chief administrative officer of  
21 the facility or the district administrator, the department  
22 head, and the local district human rights advocacy council  
23 ~~committee~~. A thorough investigation of each incident shall be  
24 conducted and a written report of the finding and results of  
25 such investigation shall be submitted to the chief  
26 administrative officer of the facility or the district  
27 administrator and to the department head within 24 hours of  
28 the occurrence or discovery of the incident.

29 3. The department shall promulgate by rule a system  
30 for the oversight of behavioral programs. Such system shall  
31 establish guidelines and procedures governing the design,

1 approval, implementation, and monitoring of all behavioral  
2 programs involving clients. The system shall ensure statewide  
3 and local review by committees of professionals certified as  
4 behavior analysts pursuant to s. 393.17. No behavioral  
5 program shall be implemented unless reviewed according to the  
6 rules established by the department under this section.  
7 Nothing stated in this section shall prohibit the review of  
8 programs by the local ~~district~~ human rights advocacy council  
9 ~~committee~~.

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

21 1. Mechanical supports used in normative situations to  
22 achieve proper body position and balance shall not be  
23 considered restraints, but shall be prescriptively designed  
24 and applied under the supervision of a qualified professional  
25 with concern for principles of good body alignment,  
26 circulation, and allowance for change of position.

27 2. Totally enclosed cribs and barred enclosures shall  
28 be considered restraints.

29 3. Daily reports on the employment of physical,  
30 chemical, or mechanical restraints by those specialists  
31 authorized in the use of such restraints shall be made to the

1 appropriate chief administrator of the facility, and a monthly  
2 summary of such reports shall be relayed to the district  
3 administrator and the local ~~district~~ human rights advocacy  
4 council ~~committee~~. The reports shall summarize all such cases  
5 of restraints, the type used, the duration of usage, and the  
6 reasons therefor. Districts shall submit districtwide  
7 quarterly reports of these summaries to the state  
8 Developmental Services Program Office.

9           4. The department shall post a copy of the rules  
10 promulgated under this section in each living unit of  
11 residential facilities. A copy of the rules promulgated under  
12 this section shall be given to all staff members of licensed  
13 facilities and made a part of all preservice and inservice  
14 training programs.

15           (7) RESIDENT GOVERNMENT.--Each residential facility  
16 providing services to clients who are desirous and capable of  
17 participating shall initiate and develop a program of resident  
18 government to hear the views and represent the interests of  
19 all clients served by the facility. The resident government  
20 shall be composed of residents elected by other residents,  
21 staff advisers skilled in the administration of community  
22 organizations, and a representative of the local ~~district~~  
23 human rights advocacy council ~~committee~~. The resident  
24 government shall work closely with the local ~~district~~ human  
25 rights advocacy council ~~committee~~ and the district  
26 administrator to promote the interests and welfare of all  
27 residents in the facility.

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

31           394.459 Rights of patients.--

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

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

20 (12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each  
21 facility shall post a notice listing and describing, in the  
22 language and terminology that the persons to whom the notice  
23 is addressed can understand, the rights provided in this  
24 section. This notice shall include a statement that  
25 provisions of the federal Americans with Disabilities Act  
26 apply and the name and telephone number of a person to contact  
27 for further information. This notice shall be posted in a  
28 place readily accessible to patients and in a format easily  
29 seen by patients. This notice shall include the telephone  
30 numbers of the local human rights advocacy council ~~committee~~  
31 and Advocacy Center for Persons with Disabilities, Inc.

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

3           394.4595 Human Rights Advocacy Council ~~Committee~~  
4 access to patients and records.--Any facility designated by  
5 the department as a receiving or treatment facility must allow  
6 access to any patient and the clinical and legal records of  
7 any patient admitted pursuant to the provisions of this act by  
8 members of the Human Rights Advocacy Council ~~Committee~~.

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

11           394.4597 Persons to be notified; patient's  
12 representative.--

13           (2) INVOLUNTARY PATIENTS.--

14           (d) When the receiving or treatment facility selects a  
15 representative, first preference shall be given to a health  
16 care surrogate, if one has been previously selected by the  
17 patient. If the patient has not previously selected a health  
18 care surrogate, the selection, except for good cause  
19 documented in the patient's clinical record, shall be made  
20 from the following list in the order of listing:

- 21           1. The patient's spouse.
- 22           2. An adult child of the patient.
- 23           3. A parent of the patient.
- 24           4. The adult next of kin of the patient.
- 25           5. An adult friend of the patient.
- 26           6. The appropriate human rights advocacy council  
27 ~~committee~~ as provided in s. 402.166.

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

30           394.4598 Guardian advocate.--

31

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

26           Section 12. Paragraph (b) of subsection (2) of section  
27 394.4599, Florida Statutes, is amended to read:

28           394.4599 Notice.--

29           (2) INVOLUNTARY PATIENTS.--

30           (b) A receiving facility shall give prompt notice of  
31 the whereabouts of a patient who is being involuntarily held

1 for examination, by telephone or in person within 24 hours  
2 after the patient's arrival at the facility, unless the  
3 patient requests that no notification be made. Contact  
4 attempts shall be documented in the patient's clinical record  
5 and shall begin as soon as reasonably possible after the  
6 patient's arrival. Notice that a patient is being admitted as  
7 an involuntary patient shall be given to the local human  
8 rights advocacy council ~~committee~~ no later than the next  
9 working day after the patient is admitted.

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

12 394.4615 Clinical records; confidentiality.--

13 (5) Information from clinical records may be used by  
14 the Agency for Health Care Administration, the department, and  
15 the human rights advocacy councils ~~committees~~ for the purpose  
16 of monitoring facility activity and complaints concerning  
17 facilities.

18 Section 14. Paragraph (g) of subsection (2) of section  
19 400.0067, Florida Statutes, is amended to read:

20 400.0067 Establishment of State Long-Term Care  
21 Ombudsman Council; duties; membership.--

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

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

27 Section 15. Section 400.0089, Florida Statutes, is  
28 amended to read:

29 400.0089 Agency reports.--The State Long-Term Care  
30 Ombudsman Council, shall, in cooperation with the Department  
31 of Elderly Affairs, maintain a statewide uniform reporting

1 system to collect and analyze data relating to complaints and  
2 conditions in long-term care facilities and to residents, for  
3 the purpose of identifying and resolving significant problems.  
4 The council shall submit such data as part of its annual  
5 report required pursuant to s. 400.0067(2)(h) to the Agency  
6 for Health Care Administration, the Department of Health and  
7 Rehabilitative Services, the Statewide Human Rights Advocacy  
8 Council Committee, the Advocacy Center for Persons with  
9 Disabilities, the Commissioner for the United States  
10 Administration on Aging, the National Ombudsman Resource  
11 Center, and any other state or federal entities that the  
12 ombudsman determines appropriate.

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

15 400.419 Violations; administrative fines.--

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

31

1           Section 17. Subsection (2) of section 400.428, Florida  
2 Statutes, is amended to read:

3           400.428 Resident bill of rights.--

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

17           Section 18. Paragraph (a) of subsection (1) of section  
18 415.1034, Florida Statutes, is amended to read:

19           415.1034 Mandatory reporting of abuse, neglect, or  
20 exploitation of disabled adults or elderly persons; mandatory  
21 reports of death.--

22           (1) MANDATORY REPORTING.--

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

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

28           2. Health professional or mental health professional  
29 other than one listed in subparagraph 1.;

30           3. Practitioner who relies solely on spiritual means  
31 for healing;

1           4. Nursing home staff; assisted living facility staff;  
2 adult day care center staff; adult family-care home staff;  
3 social worker; or other professional adult care, residential,  
4 or institutional staff;

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

7           6. Human rights advocacy council member ~~committee~~ or  
8 long-term care ombudsman council member; or

9           7. Bank, savings and loan, or credit union officer,  
10 trustee, or employee,

11  
12 who knows, or has reasonable cause to suspect, that a disabled  
13 adult or an elderly person has been or is being abused,  
14 neglected, or exploited shall immediately report such  
15 knowledge or suspicion to the central abuse registry and  
16 tracking system on the single statewide toll-free telephone  
17 number.

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

20           415.104 Protective services investigations of cases of  
21 abuse, neglect, or exploitation of aged persons or disabled  
22 adults; transmittal of records to state attorney.--

23           (1) The department shall, upon receipt of a report  
24 alleging abuse, neglect, or exploitation of an aged person or  
25 disabled adult, commence, or cause to be commenced within 24  
26 hours, a protective services investigation of the facts  
27 alleged therein. If, upon arrival of the protective  
28 investigator at the scene of the incident, a caregiver refuses  
29 to allow the department to begin a protective services  
30 investigation or interferes with the department's ability to  
31 conduct such an investigation, the appropriate law enforcement

1 agency shall be contacted to assist the department in  
2 commencing the protective services investigation. If, during  
3 the course of the investigation, the department has reason to  
4 believe that the abuse, neglect, or exploitation is  
5 perpetrated by a second party, the appropriate criminal  
6 justice agency and state attorney shall be orally notified in  
7 order that such agencies may begin a criminal investigation  
8 concurrent with the protective services investigation of the  
9 department. In an institutional investigation, the alleged  
10 perpetrator may be represented by an attorney, at his or her  
11 own expense, or accompanied by another person, if the person  
12 or the attorney executes an affidavit of understanding with  
13 the department and agrees to comply with the confidentiality  
14 provisions of s. 415.107. The absence of an attorney or other  
15 person does not prevent the department from proceeding with  
16 other aspects of the investigation, including interviews with  
17 other persons. The department shall make a preliminary  
18 written report to the criminal justice agencies within 5  
19 working days after the oral report. The department shall,  
20 within 24 hours after receipt of the report, notify the  
21 appropriate human rights advocacy council ~~committee~~, or  
22 long-term care ombudsman council, when appropriate, that an  
23 alleged abuse, neglect, or exploitation perpetrated by a  
24 second party has occurred. Notice to the human rights  
25 advocacy council ~~committee~~ or long-term care ombudsman council  
26 may be accomplished orally or in writing and shall include the  
27 name and location of the aged person or disabled adult alleged  
28 to have been abused, neglected, or exploited and the nature of  
29 the report. For each report it receives, the department shall  
30 perform an onsite investigation to:

31

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

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

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

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

27          (e) Determine the protective, treatment, and  
28 ameliorative services necessary to safeguard and ensure the  
29 aged person's or disabled adult's well-being and cause the  
30 delivery of those services through the early intervention of  
31

1 the departmental worker responsible for service provision and  
2 management of identified services.

3 Section 20. Paragraphs (a) and (i) of subsection (1)  
4 of section 415.1055, Florida Statutes, are amended to read:

5 415.1055 Notification to administrative entities,  
6 subjects, and reporters; notification to law enforcement and  
7 state attorneys.--

8 (1) NOTIFICATION TO ADMINISTRATIVE ENTITIES.--

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

18 (i) At the conclusion of a protective investigation at  
19 a facility, the department shall notify either the human  
20 rights advocacy council ~~committee~~ or long-term care ombudsman  
21 council of the results of the investigation. This  
22 notification must be in writing.

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

25 415.106 Cooperation by the department and criminal  
26 justice and other agencies.--

27 (2) To ensure coordination, communication, and  
28 cooperation with the investigation of abuse, neglect, or  
29 exploitation of disabled adults or elderly persons, the  
30 department shall develop and maintain interprogram agreements  
31 or operational procedures among appropriate departmental

1 programs and the State Long-Term Care Ombudsman Council, the  
2 Statewide Human Rights Advocacy Council ~~Committee~~, and other  
3 agencies that provide services to disabled adults or elderly  
4 persons. These agreements or procedures must cover such  
5 subjects as the appropriate roles and responsibilities of the  
6 department in identifying and responding to reports of abuse,  
7 neglect, or exploitation of disabled adults or elderly  
8 persons; the provision of services; and related coordinated  
9 activities.

10 Section 22. Paragraph (g) of subsection (2) of section  
11 415.107, Florida Statutes, is amended to read:

12 415.107 Confidentiality of reports and records.--

13 (2) Access to all records, excluding the name of the  
14 reporter which shall be released only as provided in  
15 subsection (6), shall be granted only to the following  
16 persons, officials, and agencies:

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

21 Section 23. This act shall take effect July 1, 2000.

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23 \*\*\*\*\*

24 SENATE SUMMARY

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