

By Senator Wise

5-1422A-04

1 A bill to be entitled
2 An act relating to the statewide and local
3 advocacy councils; amending s. 402.164, F.S.;
4 providing legislative intent with respect to
5 the statewide and local advocacy councils;
6 providing additional definitions; amending s.
7 402.165, F.S.; requiring the Florida Statewide
8 Advocacy Council to be located for
9 administrative purposes in the Executive Office
10 of the Governor; revising the membership of the
11 statewide advocacy council; directing the
12 statewide advocacy council to establish
13 interprogram agreements or operational
14 procedures with certain state agencies to
15 ensure coordination, communication, and
16 cooperation during investigations of abuse,
17 neglect, or exploitation of clients;
18 authorizing the council to adopt rules;
19 providing access to records of facilities and
20 programs and of clients receiving client
21 services; authorizing the statewide advocacy
22 council to seek injunctive relief if denied
23 access to records; authorizing a circuit court
24 to impose a civil fine of up to a specified
25 amount if a person unlawfully denies access to
26 a record; amending s. 402.166, F.S., relating
27 to local advocacy councils; removing certain
28 membership restrictions; providing that the
29 local council has the same authority to access
30 records from facilities, programs, and clients
31 as does the statewide advocacy council;

1 amending s. 402.167, F.S.; directing each state
2 agency to provide client records and
3 information to the statewide advocacy and local
4 councils; directing state agencies to amend the
5 state plans; transferring the local advocacy
6 councils by a type two transfer from the
7 Department of Children and Family Services to
8 the Florida Statewide Advocacy Council;
9 providing an effective date.

10

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

12

13 Section 1. Section 402.164, Florida Statutes, is
14 amended to read:

15 402.164 Legislative intent; definitions.--

16 (1)(a) It is the intent of the Legislature to use
17 citizen volunteers as members of the Florida Statewide
18 Advocacy Council and the Florida local advocacy councils, and
19 to have volunteers operate a network of councils that shall,
20 without interference by an executive agency, undertake to
21 discover, monitor, investigate, and determine the presence of
22 conditions or individuals that constitute a threat to the
23 rights, health, safety, or welfare of persons who receive
24 services from state agencies.

25 (b) It is the further intent of the Legislature that
26 the monitoring and investigation shall safeguard the health,
27 safety, and welfare of consumers of services provided by these
28 state agencies and that the governmental oversight role of the
29 members of the Florida Statewide Advocacy Council and its
30 local advocacy councils is necessary to ensure the protection
31 and advocacy of persons in this state who receive state or

1 federal health and human services from state agencies. The
2 Legislature further finds that through the performance of
3 vital oversight duties and responsibilities by these citizen
4 volunteers, the intent of the Florida Health and Human
5 Services Access Act is preserved.

6 (c) It is the further intent of the Legislature that
7 the statewide and local advocacy councils shall have routine
8 access to protected health information and any other
9 confidential information of clients receiving client services.
10 The Legislature intends that the legal doctrine known as "the
11 mention of one thing is the exclusion of another" is expressly
12 renounced if another statute fails to specifically grant the
13 statewide or local advocacy council access to the confidential
14 information.

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

16 (a) "Access" means a visual inspection or the copying
17 of the hard copy or electronic version of the record
18 maintained by the state agency, facility, provider, or
19 contractor.

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

1 (c)(b) "Client services" means health and human
2 services that which are provided through any health and human
3 service program to a client by a state agency or a service
4 provider operated, funded, or contracted by the state.

5 (d) "Council" or "statewide council" means the Florida
6 Statewide Advocacy Council.

7 (e) "Local council" or "local advocacy council" means
8 one of the local advocacy councils located in this state,
9 under the supervision of the Florida Statewide Advocacy
10 Council, created to protect the constitutional and human
11 rights of clients.

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

14 402.165 Florida Statewide Advocacy Council;
15 confidential records and meetings.--

16 (1) ~~The Statewide Human Rights Advocacy Committee~~
17 ~~within the Department of Children and Family Services is~~
18 ~~redesignated as~~ The Florida Statewide Advocacy Council shall
19 be located for administrative purposes as an independent state
20 agency in the Executive Office of the Governor or a state
21 agency that is not a provider of client services. Members of
22 the council shall represent the interests of clients who are
23 served by state agencies that provide client services. The
24 Executive Office of the Governor or the appropriate state
25 agency ~~Department of Children and Family Services~~ shall
26 provide administrative support and service to the statewide
27 council ~~to the extent~~ requested by the executive director
28 ~~within available resources.~~ The statewide council is not
29 subject to control, supervision, or direction by any state
30 agency ~~the Department of Children and Family Services~~ in the
31 performance of its duties. The council shall consist of not

1 less than 15 and not more than 20 residents of this state, one
2 from each service area designated by the statewide council,
3 who broadly represent the interests of the public and the
4 clients of the state agencies that provide client services.
5 The members shall be representative of ~~four~~ groups of state
6 residents as follows: a one provider who delivers client
7 services ~~as defined in s. 402.164(2); a two~~ nonsalaried
8 representative ~~representatives~~ of nonprofit agencies or civic
9 groups; a representative ~~four representatives~~ of consumer
10 groups who are currently receiving, or have received, one or
11 more client services within the past 4 years, at least one of
12 whom must be a consumer of one or more client services; and
13 two residents of the state who do not represent any of the
14 foregoing groups, but may represent a one of whom represents
15 the health-related profession or professions ~~and one of whom~~
16 ~~represents~~ the legal profession. In appointing the
17 representative of the health-related professions, the
18 appointing authority shall give priority of consideration to a
19 physician licensed under chapter 458 or chapter 459; and, in
20 appointing the representative of the legal profession, the
21 appointing authority shall give priority of consideration to a
22 member in good standing of The Florida Bar. Of the remaining
23 members, no more than one shall be an elected official; ~~no~~
24 ~~more than one shall be a health professional; no more than one~~
25 ~~shall be a legal professional; no more than one shall be a~~
26 ~~provider; no more than two shall be nonsalaried~~
27 ~~representatives of nonprofit agencies or civic groups; and no~~
28 ~~more than one shall be an individual whose primary area of~~
29 ~~interest, experience, or expertise is a major client group of~~
30 ~~a client services group that is not represented on the council~~
31 ~~at the time of appointment.~~ Except for the member who is an

1 | elected public official, each member of the statewide council
2 | must be given priority consideration if he or she has ~~have~~
3 | served as a member of a Florida local ~~advocacy~~ council, ~~with~~
4 | ~~priority consideration given to an applicant who has served a~~
5 | ~~full term on a local council~~. Persons related to each other
6 | by consanguinity or affinity within the third degree may not
7 | serve on the statewide council at the same time.

8 | (2) Members of the statewide council shall be
9 | appointed to serve terms of 4 years. A member may not serve
10 | more than two full consecutive terms.

11 | (3) If a member of the statewide council fails to
12 | attend two-thirds of the regular council meetings during the
13 | course of a year, the position held by the member may be
14 | deemed vacant by the council. The Governor shall fill the
15 | vacancy according ~~pursuant~~ to subsection (4). If a member of
16 | the statewide council violates this section or procedures
17 | adopted under this section, the council may recommend to the
18 | Governor that the member be removed.

19 | (4) The Governor may ~~shall~~ fill a ~~each~~ vacancy on the
20 | statewide council from a list of nominees submitted by the
21 | statewide council or appoint any qualified person. A list of
22 | candidates may be submitted to the statewide council by the
23 | local council in the service area from which the vacancy
24 | occurs. Priority of consideration shall be given to the
25 | appointment of an individual who is receiving one or more
26 | client services and whose primary interest, experience, or
27 | expertise lies with a major client group that is not
28 | represented on the council at the time of the appointment. If
29 | an appointment is not made within 120 ~~60~~ days after a vacancy
30 | occurs on the statewide council, the vacancy may be filled by
31 | a majority vote of the statewide council without further

1 action by the Governor. A person who is employed by any state
2 agency in client services may not be appointed to the
3 statewide council.

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

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

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

19 (d) The statewide council shall annually prepare a
20 budget request that ~~is not to be changed by department staff~~
21 after it is approved by the council, but shall be submitted to
22 the Governor ~~for transmittal to the Legislature~~. The budget
23 shall include a request for funds to carry out the activities
24 of the statewide council and the local councils.

25 (6) The members of the statewide council shall elect a
26 chair and a vice chair to terms of 2 years ~~1 year~~. A person
27 may not serve as chair or vice chair for more than two full
28 consecutive terms.

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

31

1 (a) Serving as an independent third-party mechanism
2 for protecting the constitutional and human rights of clients
3 within programs or facilities operated, funded, or contracted
4 by any state agency that provides client services.

5 (b) Monitoring, by site visit and through access to
6 ~~inspection of records,~~ the delivery and use of services,
7 programs, or facilities operated, funded, or contracted by any
8 state agency that provides client services, for the purpose of
9 preventing abuse or deprivation of the constitutional and
10 human rights of clients. The statewide council may conduct an
11 unannounced site visit or monitoring visit that involves
12 access to ~~the inspection of~~ records if the visit is
13 conditioned upon a complaint. A complaint may be generated by
14 the council itself, after consulting with the Governor's
15 office if information from any state agency that provides
16 client services or from other sources indicates a situation at
17 the program or facility that indicates possible abuse or
18 neglect or deprivation of the constitutional and human rights
19 of clients. The statewide council shall establish and follow
20 uniform criteria for the review of information and generation
21 of complaints. Routine program monitoring and reviews that do
22 not require an examination of records may be made unannounced.

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

30 (d) Reviewing existing programs or services and new or
31 revised programs of the state agencies that provide client

1 services and making recommendations as to how the rights of
2 clients are affected.

3 (e) Submitting an annual report to the Legislature, no
4 later than December 30 of each calendar year, concerning
5 activities, recommendations, and complaints reviewed or
6 developed by the council during the year.

7 (f) Conducting meetings at least six times a year at
8 the call of the chair and at other times at the call of the
9 Governor or by written request of six members of the council.

10 (g) Developing and adopting uniform procedures to be
11 used to carry out the purpose and responsibilities of the
12 statewide council and the local councils, which procedures
13 ~~shall include, but need not be limited to, the following:~~

14 1. ~~The responsibilities of the statewide council and~~
15 ~~the local councils;~~

16 2. ~~The organization and operation of the statewide~~
17 ~~council and the local councils, including procedures for~~
18 ~~replacing a member, formats for maintaining records of council~~
19 ~~activities, and criteria for determining what constitutes a~~
20 ~~conflict of interest for purposes of assigning and conducting~~
21 ~~investigations and monitoring;~~

22 3. ~~Uniform procedures for the statewide council and~~
23 ~~the local councils relating to receiving and investigating~~
24 ~~reports of abuse or deprivation of constitutional or human~~
25 ~~rights;~~

26 4. ~~The responsibilities and relationship of the local~~
27 ~~councils to the statewide council;~~

28 5. ~~The relationship of the statewide council to the~~
29 ~~state agencies that receive and investigate reports of abuse~~
30 ~~and neglect of clients of state agencies, including the way in~~
31 ~~which reports of findings and recommendations related to~~

1 ~~reported abuse or neglect are given to the appropriate state~~
2 ~~agency that provides client services;~~

3 ~~6. Provision for cooperation with the State Long-Term~~
4 ~~Care Ombudsman Council;~~

5 ~~7. Procedures for appeal. An appeal to the statewide~~
6 ~~council is made by a local council when a valid complaint is~~
7 ~~not resolved at the local level. The statewide council may~~
8 ~~appeal an unresolved complaint to the secretary or director of~~
9 ~~the appropriate state agency that provides client services.~~
10 ~~If, after exhausting all remedies, the statewide council is~~
11 ~~not satisfied that the complaint can be resolved within the~~
12 ~~state agency, the appeal may be referred to the Governor;~~

13 ~~8. Uniform procedures for gaining access to and~~
14 ~~maintaining confidential information; and~~

15 ~~9. Definitions of misfeasance and malfeasance for~~
16 ~~members of the statewide council and local councils.~~

17 (h) Supervising the operations of the local councils
18 and monitoring the performance and activities of all local
19 councils and providing technical assistance to members and
20 staff of local councils.

21 (i) Providing for the development and presentation of
22 a standardized training program for members of local councils.

23 (j) Developing and maintaining interprogram agreements
24 or operational procedures between the council and the
25 appropriate departmental programs, the Medicaid Fraud Control
26 Unit of the Attorney General's Office, the Governor's
27 Inspector General, and other agencies to ensure coordination,
28 communication, and cooperation during the monitoring and
29 investigation of the health, safety, and welfare of state
30 clients. The interprogram agreements or operational procedures
31 must incorporate the appropriate roles and responsibilities of

1 the statewide council when identifying and responding to
2 reports regarding the health, safety, and welfare of state
3 clients.

4 (8)(a) In the performance of its duties, the statewide
5 council shall have:

6 1. Authority to receive, investigate, seek to
7 conciliate, hold hearings on, in accordance with chapter 120,
8 including issuing declaratory statements,and act on
9 complaints that constitute a threat to the rights, health,
10 safety, or welfare ~~allege any abuse or deprivation of~~
11 ~~constitutional or human rights~~ of persons who receive client
12 services from any state agency. The statewide council shall
13 adopt rules for receiving, investigating, seeking to
14 conciliate, holding hearings on, and acting on complaints.

15 2. Access to all client records, files, and reports
16 from any program, service, or facility that is operated,
17 funded, or contracted by any state agency that provides client
18 services and any records that are material to its
19 investigation and are in the custody of any other agency or
20 department of government. The council's investigation or
21 monitoring shall not impede or obstruct matters under
22 investigation by law enforcement agencies or judicial
23 authorities. Access shall not be granted if a specific
24 procedure or prohibition for reviewing records is required by
25 federal law and regulation that supersedes state law. Access
26 shall not be granted to the records of a private licensed
27 practitioner who is providing services outside the state
28 agency, or outside a state facility, and whose client is
29 competent and refuses disclosure.

30 3. Standing to seek injunctive relief in ~~petition~~ the
31 circuit court against service or contract providers for denial

1 of access to client records or program or services records to
2 members of the council or to a local advocacy council that are
3 ~~confidential as specified by law. The petition shall state the~~
4 ~~specific reasons for which the council is seeking access and~~
5 ~~the intended use of such information.~~The circuit court may
6 impose a civil fine of up to \$15,000 against any person who
7 unlawfully withheld a client, program, or services record or
8 otherwise denied access to any record requested by the council
9 or a local advocacy council and may authorize council access
10 to the ~~such~~ records upon a finding that ~~such~~ access is
11 directly related to an investigation regarding the possible
12 deprivation of constitutional or human rights or the abuse of
13 a client. Original client files, agency records, and reports
14 may ~~shall~~ not be removed from a state agency, but copies shall
15 be provided to the council and the local councils at the
16 agency's expense. Under no circumstance shall the council
17 have access to confidential adoption records once the adoption
18 is finalized by a court in accordance with ss. 39.0132,
19 63.022, and 63.162. Upon completion of a general
20 investigation of practices and procedures of a state agency,
21 the statewide council shall report its findings to that
22 agency.

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

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

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

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

28 Section 3. Section 402.166, Florida Statutes, is
29 amended to read:

30 402.166 Florida local advocacy councils; confidential
31 records and meetings.--

1 (1) Each district human rights advocacy committee
2 within each district ~~service area~~ of the Department of
3 Children and Family Services is redesignated as the Florida
4 Local Advocacy Council. The local councils are subject to
5 direction from and the supervision of the statewide council.
6 The statewide council ~~Department of Children and Family~~
7 ~~Services~~ shall assign staff to provide administrative support
8 to the local councils, ~~and staff assigned to these positions~~
9 ~~shall perform the functions required by the local councils~~
10 ~~without interference from the department. The local councils~~
11 ~~shall direct the activities of staff assigned to them to the~~
12 ~~extent necessary for the local councils to carry out their~~
13 ~~duties.~~ The number and areas of responsibility of the local
14 councils, not to exceed 46 councils statewide, shall be
15 determined by the statewide council and shall be consistent
16 with judicial circuit boundaries. Local councils shall meet at
17 facilities under their jurisdiction whenever possible.

18 (2) Each local council shall have no fewer than 7
19 members and no more than 15 members, no more than 4 of whom
20 are or have been recipients of one or more client services
21 within the last 4 years, except that one member of this group
22 may be an immediate relative or legal representative of a
23 current or former client; two providers who deliver client
24 services as defined in s. 402.164(2); and two representatives
25 of professional organizations, one of whom represents the
26 health-related professions and one of whom represents the
27 legal profession. Priority of consideration shall be given to
28 the appointment of at least one medical or osteopathic
29 physician, as defined in chapters 458 and 459, and one member
30 in good standing of The Florida Bar. Priority of consideration
31 shall also be given to the appointment of an individual who is

1 receiving client services and whose primary interest,
2 experience, or expertise lies with a major client group not
3 represented on the local council at the time of the
4 appointment. A person who is employed in client services by
5 any state agency may not be appointed to the local council. No
6 more than three individuals who are providing contracted
7 services for clients to any state agency may serve on the same
8 local council at the same time. ~~Persons related to each other~~
9 ~~by consanguinity or affinity within the third degree may not~~
10 ~~serve on the same local council at the same time.~~All members
11 of local councils must successfully complete a standardized
12 training course for local council members within 3 months
13 after their appointment to a local council. A member may not
14 be assigned to an investigation that requires access to
15 confidential information prior to the completion of the
16 training course. After he or she completes the required
17 training course, a member of a local council may not be
18 prevented from participating in any activity of that local
19 council, including investigations and monitoring, except due
20 to a conflict of interest as described in the procedures
21 established by the statewide council under ~~pursuant to~~
22 subsection (7).

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

29 (b)1. The Governor shall appoint the first four
30 members of any newly created local council; and those four
31 members shall select the remaining members, subject to

1 approval of the Governor. If any of the first four members
2 are not appointed within 60 days after a request is submitted
3 to the Governor, those members may be appointed by a majority
4 vote of the statewide council without further action by the
5 Governor.

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

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

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

23 (5) If a local council member fails to attend
24 two-thirds of the regular local council meetings during the
25 course of a year, the local council may replace the member.
26 If a member of a local council violates this section or
27 procedures adopted under this section, the local council may
28 recommend to the Governor that the member be removed.

29 (6) A member of a local council shall receive no
30 compensation but is entitled to be reimbursed for per diem and
31 travel expenses as provided in s. 112.061. Members may be

1 provided reimbursement for long-distance telephone calls if
2 the ~~such~~ calls were necessary to an investigation of an abuse
3 or deprivation of constitutional or human rights.

4 (7) A local council shall first seek to resolve a
5 complaint with the appropriate local administration, agency,
6 or program; any matter not resolved by the local council shall
7 be referred to the statewide council. A local council shall
8 comply with appeal procedures established by the statewide
9 council. The duties, actions, and procedures of both new and
10 existing local councils shall conform to ss. 402.164-402.167.
11 The duties of each local council shall include, but are not
12 limited to:

13 (a) Serving as an independent third-party mechanism
14 for protecting the constitutional and human rights of any
15 client within a program or facility operated, funded, or
16 contracted by a state agency providing client services in the
17 local service area.

18 (b) Monitoring by site visit and access to and copying
19 ~~inspection~~ of records the delivery and use of services,
20 programs, or facilities operated, funded, or contracted by a
21 state agency that provides client services, for the purpose of
22 preventing abuse or deprivation of the constitutional and
23 human rights of clients. A local council may conduct an
24 unannounced site visit or monitoring visit that involves
25 access to ~~the inspection of~~ records if the visit is
26 conditioned upon a complaint. A complaint may be generated by
27 the council itself if information from a state agency that
28 provides client services or from other sources indicates a
29 situation at the program or facility that indicates possible
30 abuse or neglect or deprivation of constitutional and human
31 rights of clients. The local council shall follow uniform

1 criteria established by the statewide council for the review
2 of information and generation of complaints. Routine program
3 monitoring and reviews that do not require an examination of
4 records may be made unannounced.

5 (c) Receiving, investigating, and resolving reports of
6 abuse or deprivation of constitutional and human rights in the
7 local service area.

8 (d) Reviewing and making recommendations regarding how
9 a client's constitutional or human rights might be affected by
10 the client's participation in a proposed research project,
11 prior to implementation of the project.

12 ~~(e) Reviewing existing programs and proposed new or~~
13 ~~revised programs of client services and making recommendations~~
14 ~~as to how these programs and services affect or might affect~~
15 ~~the constitutional or human rights of clients.~~

16 (e)(f) Appealing to the statewide council any
17 complaint unresolved at the local level. Any matter that
18 constitutes a threat to the life, safety, or health of a
19 client or is multidistrict in scope shall automatically be
20 referred to the statewide council.

21 (f)(g) Submitting an annual report by September 30 to
22 the statewide council concerning activities, recommendations,
23 and complaints reviewed or developed by the local council
24 during the year.

25 (g)(h) Conducting meetings at least six times a year
26 at the call of the chair and at other times at the call of the
27 Governor, at the call of the statewide council, or by written
28 request of a majority of the members of the local council.

29 (8)(a) In the performance of its duties, a local
30 council shall have the same authority to access client
31 records, state agency files, reports from any program or

1 service, records of contractors and providers, and records
2 from any facility operated, funded, or under contract with a
3 state agency as specified in s. 402.165(8)(a).+

4 ~~1. Access to all client records, files, and reports~~
5 ~~from any program, service, or facility that is operated,~~
6 ~~funded, or contracted by any state agency that provides client~~
7 ~~services and any records that are material to its~~
8 ~~investigation and are in the custody of any other agency or~~
9 ~~department of government. The council's investigation or~~
10 ~~monitoring shall not impede or obstruct matters under~~
11 ~~investigation by law enforcement agencies or judicial~~
12 ~~authorities. Access shall not be granted if a specific~~
13 ~~procedure or prohibition for reviewing records is required by~~
14 ~~federal law and regulation that supersedes state law. Access~~
15 ~~shall not be granted to the records of a private licensed~~
16 ~~practitioner who is providing services outside state agencies~~
17 ~~and facilities and whose client is competent and refuses~~
18 ~~disclosure.~~

19 ~~2. Standing to petition the circuit court for access~~
20 ~~to client records that are confidential as specified by law.~~
21 ~~The petition shall state the specific reasons for which the~~
22 ~~council is seeking access and the intended use of such~~
23 ~~information. The court may authorize access to such records~~
24 ~~upon a finding that such access is directly related to an~~
25 ~~investigation regarding the possible deprivation of~~
26 ~~constitutional or human rights or the abuse of a client.~~
27 ~~Original client files, records, and reports shall not be~~
28 ~~removed from a state agency. Upon no circumstances shall the~~
29 ~~council have access to confidential adoption records once the~~
30 ~~adoption is finalized in court in accordance with ss. 39.0132,~~
31 ~~63.022, and 63.162. Upon completion of a general investigation~~

1 ~~of practices and procedures followed by a state agency in~~
2 ~~providing client services, the council shall report its~~
3 ~~findings to the appropriate state agency.~~

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

12 (c) Portions of meetings of a local council that
13 relate to the identity of any client or group of clients
14 subject to the protections of this section, that relate to the
15 identity of an individual who provides information to the
16 local council about abuse or about alleged violations of
17 constitutional or human rights, or when ~~wherein~~ testimony is
18 provided relating to records otherwise made confidential by
19 law, are exempt from s. 286.011 and s. 24(b), Art. I of the
20 State Constitution.

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

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

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

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

10 402.167 Duties of state agencies that provide client
11 services relating to the Florida Statewide Advocacy Council
12 and the Florida local advocacy councils.--

13 ~~(1) Each state agency that provides client services~~
14 ~~shall adopt rules that are consistent with law, amended to~~
15 ~~reflect any statutory changes, and that address at least the~~
16 ~~following:~~

17 ~~(a) Procedures by which staff of state agencies refer~~
18 ~~reports of abuse of clients to the Florida local advocacy~~
19 ~~councils.~~

20 ~~(b) Procedures by which client information is made~~
21 ~~available to members of the Florida Statewide Advocacy Council~~
22 ~~and the Florida local advocacy councils.~~

23 ~~(c) Procedures by which recommendations made by the~~
24 ~~statewide and local councils will be incorporated into~~
25 ~~policies and procedures of the state agencies.~~

26 ~~(2) The Department of Children and Family Services~~
27 ~~shall provide for the location of local councils in area~~
28 ~~offices and shall provide necessary equipment and office~~
29 ~~supplies, including, but not limited to, clerical and word~~
30 ~~processing services, photocopiers, telephone services, and~~
31 ~~stationery and other necessary supplies, and shall establish~~

1 ~~the procedures by which council members are reimbursed for~~
2 ~~authorized expenditures.~~

3 (1)(3) The secretaries or directors of the state
4 agencies shall ensure the full cooperation and assistance of
5 employees of their respective state agencies with members and
6 staff of the statewide and local councils. The secretary or
7 director of each state agency providing client services shall
8 notify all contract, service, and treatment providers of the
9 powers, duties, responsibilities, and access-to-information
10 rights delegated by law to the statewide and local councils.
11 ~~Further, the Secretary of Children and Family Services shall~~
12 ~~ensure that, to the extent possible, staff assigned to the~~
13 ~~statewide council and local councils are free of interference~~
14 ~~from or control by the department in performing their duties~~
15 ~~relative to those councils.~~

16 (2) The secretary or director of each state agency
17 providing client services shall amend any state plan filed
18 with a federal agency which provides funding for client
19 services to reflect that the activities of the statewide
20 council and local advocacy councils are part of the
21 administration of the respective federal program and are
22 incorporated into the state plan.

23 Section 5. The local advocacy councils, all staff
24 positions assigned to the local councils, and the council's
25 toll-free complaint line are transferred by a type two
26 transfer, under section 20.06, Florida Statutes, from the
27 Department of Children and Family Services to the Florida
28 Statewide Advocacy Council. On January 1, 2005, the number of
29 full-time equivalent staff positions transferred shall be
30 equal to the number assigned to the local advocacy councils on
31

1 July 1, 2003, and may not be less than 15 full-time equivalent
2 employees.

3 Section 6. This act shall take effect July 1, 2004.
4

5 *****

6 SENATE SUMMARY

7 Provides for the Florida Statewide Advocacy Council to be
8 administratively housed in the Executive Office of the
9 Governor. Directs the statewide advocacy council to
10 initiate interprogram agreements or operational
11 procedures with certain state agencies to ensure
12 coordination, communication, and cooperation during
13 investigations of abuse, neglect, or exploitation of
14 clients. Provides access to records of facilities and
15 programs and of clients receiving client services.
16 Authorizes the statewide advocacy council to seek
17 injunctive relief. Authorizes a circuit court to impose a
18 civil fine. Provides that the local council has the same
19 authority to access records from facilities, programs,
20 and clients as does the statewide advocacy council.
21 Directs each state agency to provide client records and
22 information to the statewide advocacy and local councils.
23 Transfers the local advocacy councils from the Department
24 of Children and Family Services to the Florida Statewide
25 Advocacy Council.
26
27
28
29
30
31