

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: February 10, 1998 Revised: 2/19/98 _____

Subject: Human Rights Committees

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Geraci</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill expands those agencies under the review of the Statewide and District Human Rights Advisory Committees beyond their current authority over the Department of Children and Family Services, to also include the Department of Health and the Agency for Health Care Administration. The bill also provides language of legislative intent regarding the efforts and goals of the Statewide and District Committees.

This act is to take effect on July 1, 1998.

This bill creates section 402.164 and amends the following sections of the Florida Statutes: 402.165, 402.166, 402.167.

II. Present Situation:

A. Statewide Human Rights Advocacy Committee

Section 402.167, F.S., establishes a Statewide Human Rights Advocacy Committee ("Statewide Committee") within the Department of Health and Rehabilitative Services ("the Department"), subsequently redesignated the Department of Children and Family Services and the Department of Health in 1996. While the Department is directed to provide administrative support and services to the Statewide Committee, the Statewide Committee is not subject to control, supervision, or direction by the Department. The Statewide Committee consists of 15 citizens, one from each service district of the Department. The statute further specifies membership qualifications and limitations.

1. Responsibilities of the Statewide Human Rights Advocacy Committee

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

2. Investigative Authority of the Statewide Human Rights Advocacy Committee

To carry out these responsibilities, the Statewide Committee is authorized to conduct unannounced site visits or monitoring visits that involve the inspection of records in response to a complaint. A complaint may be generated by the Statewide Committee itself based on information from the Department or other sources that indicate a situation at the program or facility involving possible abuse or neglect of clients. However, the Statewide Committee is also authorized to conduct routine program monitoring and reviews which do not require prior notice.

In addition, the Statewide Committee is granted the authority to receive, investigate, seek to conciliate, hold hearings on, and act on complaints that allege any abuse or deprivation of constitutional or human rights of clients. The Statewide Committee also has access to all client records, files, and reports from any program, service, or facility operated, funded, licensed, or regulated by the Department and any records that are material to its investigations that are in the custody of any other agency or department of government. The Statewide Committee has standing to petition the circuit court for access to confidential client records, but must include specific reasons for seeking the information in the petition. The court may authorize committee access to such records upon a finding that they directly relate such access to an investigation regarding the possible deprivation of constitutional or human rights or the abuse of a client. If the Statewide Committee obtains these records, however, the records and any subsequent actions or communications relating to the records are exempt from the provisions of s. 119.07(1), F.S.,

relating to open record requirements. However, the statute specifically prohibits the Statewide Committee from having access to confidential adoption records under ss. 39.411, 63.022, and 63.162, F.S.

B. District Human Rights Advocacy Committees

Section 402.166, F.S., provides that each service district of the Department will have at least one, but no more than three, District Human Rights Advocacy Committees (“District Committee”). The District Committees are subject to direction from and the supervision of the Statewide Committee.

Each District Committee is required to have 7-15 members, of which 25 percent are or have been clients of the Department within the last 4 years, two providers, who deliver services or programs to clients of the Department, and two representatives of professional organizations, one of whom represents health-related professions and one of whom represents the legal profession. The statute further provides terms of committee members and methods for filling vacancies.

1. Responsibilities of a District Human Rights Advocacy Committee

District Committees are directed to attempt to resolve a complaint with the appropriate local administration, agency, or program. If the District Committee fails to resolve the complaint, the matter must be referred to the Statewide Committee. The duties and responsibilities of a District Committee encompass several of those delegated to the Statewide Committee. However, while the District Committee is authorized to review complaints, investigate records, and monitor services provided by the Department, the District Committee is required to submit all unresolved complaints and any matter that may constitute a threat to the life, safety, or health of a client or is multi-district in scope to the Statewide Committee. In addition, the District Committee must submit an annual report to the Statewide Committee concerning activities, recommendations, and complaints reviewed or developed by the committee during the year.

2. Investigative Authority of the District Human Rights Advocacy Committee

To carry out its responsibilities, the District Committee has the authority to access all client records, files, and reports from any program, service, or facility operated, funded, licensed, or regulated by the Department and any records that are material to its investigations that are in the custody of any other agency or department of government. The District Committee, like the Statewide Committee, has standing to petition the circuit court to access otherwise confidential client records. These records and any related proceedings, however, are exempt from s. 119.07(1), F.S., relating to public records. However, the statute specifically prohibits the District Committee from having access to confidential adoption records under ss. 39.411, 63.022, and 63.162, F.S.

C. Duties of the Department

Section 402.167, F.S., designates the duties of the Department relating to both Statewide and District Committees. These duties include providing the following:

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

In addition, the secretary is directed to ensure the full cooperation and assistance of employees of the Department with members and staff of the Statewide and District Committees and that staff assigned to the Statewide and District Committees are free of interference from or control by the Department.

III. Effect of Proposed Changes:

The bill amends ss. 402.164 - 402.167, F.S., to create a new definition of state agency to include the Department of Children and Family Services, the Department of Health, and the Agency for Health Care Administration. While this expands the current language of the statute that only includes the former Department of Health and Rehabilitative Services, all three of the entities referenced were initially created by the transfer of duties and resources from the former Department of Health and Rehabilitative Services. The Statewide and District Committees were reinstated after sunset in 1989 before these transfers occurred. Chapter 89-215, Laws of Florida. Both the Department of Children and Family Services and the Department of Health were created in 1996 from the former Department of Health and Rehabilitative Services by Chapter 96-403, Laws of Florida. The Agency for Health Care Administration was created in 1992 from the former Department of Health and Rehabilitative Services by Chapter Law 92-33, Laws of Florida. According to the Statewide Committee, interaction between the committees and the Department of Children and Family Services, the Department of Health, and the Agency for Health Care Administration has continued since the creation of these entities through the transfer of duties and resources from the Department.

The bill creates s. 402.164, F.S., to provide legislative intent relating to Statewide and District Committees. Specifically the bill states that it is the intent of the Legislature that members of these committees "discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies" without interference by an executive agency.

This act is to take effect on July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.