

II. Present Situation:

The Statewide Human Rights Advocacy Committee was created by Florida law in 1975, within the Department of Health and Rehabilitative Services (now DCFS). The SHRAC serves as an independent third-party mechanism for protecting the constitutional and human rights of any client within a program or facility operated, funded, licensed, or regulated by the DCFS.¹

Responsibilities of the Statewide Human Rights Advocacy Committee

Responsibilities of the SHRAC include:

- ◆ monitoring the delivery and use of services, programs, or facilities operated, funded, regulated, or licensed by the department;
- ◆ receiving, investigating, and resolving reports of abuse or deprivation of constitutional and human rights referred by a district HRAC;
- ◆ reviewing existing programs and services and new or revised programs of the department and making recommendations as to how the rights of clients are affected;
- ◆ submitting an annual report to the Legislature, no later than December 30 of each year, concerning activities, recommendations, and complaints reviewed or developed by the SHRAC during the year;
- ◆ conducting meetings at least six times a year;
- ◆ developing and adopting uniform procedures to be used to carry out the purpose and responsibilities of the district HRACs;
- ◆ monitoring the performance and activities of all district HRACs and providing technical assistance to members and staff of district HRACs; and
- ◆ providing for the development and presentation of a standardized training program for members of district HRACs.²

Although the DCFS is responsible for providing administrative support to the SHRAC, the committee is not subject to control, supervision, or direction by the department in the performance of its duties.³

Investigative authority of the SHRAC is provided for in s. 402.165(8), F.S. To carry out the responsibilities outlined above, the SHRAC is granted the authority to receive, investigate, seek to conciliate, hold hearings on, and act on complaints which allege any abuse or deprivation of constitutional or human rights of clients. The SHRAC has access to all client records, files, and reports from any program, service, or facility that is operated, funded, licensed, or regulated by the DCFS. The SHRAC also has access to records in the custody of other government agencies which are material to the SHRAC's investigation. The SHRAC has standing to petition the circuit court for access to confidential client records. If the SHRAC obtains these records, however, the

¹ Section 402.165(7), F.S.

² Section 402.165(7), F.S.

³ Section 402.165(1), F.S.

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 records.

Children in the DCFS's child protective services system are under the authority of the SHRAC, giving the SHRAC and district HRACs access to the child's file, including confidential records pertaining to the investigation of abuse, foster care placement, and termination of the natural parent's rights. However, the statute prohibits the SHRAC and district HRACs from having access to confidential adoption records under ss. 39.0132, 63.022, and 63.162, F.S.

The statutory prohibition against access to adoption records has proven problematic. Under the current process, a child, who is sought to be adopted, is in the official custody of the state until the adoption is final; however, during the trial placement of the child with the would be adoptive parents, the child's record is merged with the would be adoptive parents' record. As a result, despite the fact that the child is still in the state's custody during the trial placement, neither the SHRAC nor district HRACs have any authority to review the child's records when an allegation of abuse or a deprivation of human rights is made.

Scope of Statewide and District Human Rights Advocacy Committee Authority

The responsibilities and investigative authority of both the SHRAC and district HRACs apply to any client served by the DCFS in programs or facilities operated, funded, licensed, or regulated by the department.⁴ Currently, based on the programs delineated in s. 20.19(5)(b), F.S., as the responsibility of the DCFS, this scope of authority includes the following programs: temporary assistance to families with dependent children; food stamps; welfare reform; state supplementation of the supplemental security income program; programs for persons with developmental disabilities; early intervention services for children and families at risk; intake services for protective investigation of abandoned, abused, and neglected children; interstate compact on the placement of children programs; adoption; child care; out-of-home care program; other specialized services for children and families at-risk; and alcohol, drug abuse, and mental health programs. The aging and adult related services currently with the department (primarily protective services for the elderly and disabled adults, Community Care for Disabled Adults, and Home Care for Disabled Adults) are also included in the scope of authority for the SHRAC and the district HRACs.

When the SHRAC and district HRACs were created in 1975, the programs offered by the DCFS and which were, thus, within the SHRAC and district HRAC's scope of authority also included Children's Medical Services, child support enforcement, Medicaid, health programs, vocational rehabilitation, all of aging and adult services, and programs relating to delinquent youth (1975 Florida Statute, s. 20.19(3)(c)2). However, due to the reorganization of DCFS over the years, clients in DCFS programs were shifted into other state agencies, and no longer had access to the services of the SHRAC and district HRACs, as the authority of the committees is limited to DCFS programs and facilities.

⁴ Sections 402.165(7) and 402.166(7), F.S.

Composition of the Statewide Human Rights Advocacy Committee

The SHRAC is composed of 15 citizens appointed by the Governor, one from each service district of the DCFS. With the exception of the elected official, each person must have been a member of a district HRAC. The committee members must be representative of the following five groups of citizens:

- ◆ one elected public official;
- ◆ two providers who deliver services or programs to clients of the DCFS;
- ◆ four non-salaried representatives of non-profit agencies and civic groups;
- ◆ four non-salaried representatives of health and rehabilitative services consumer groups who are currently receiving, or have received, services from the department within the last 4 years, at least one of whom must be a consumer; and
- ◆ four residents of the state who do not represent any of the foregoing groups, two of whom represent health-related professions and two of whom represent the legal profession.

Statewide Human Rights Advocacy Committee members may serve up to two consecutive 3-year terms. A chairperson is elected by the members and may serve up to two consecutive 1-year terms.

District Human Rights Advocacy Committee

Section 402.166(1), F.S., provides for at least one, but no more than three district HRACs in each service district of the DCFS. The only exception is that District 2 may have four HRACs. The district administrator of the DCFS must assign administrative support staff to the district HRACs.

Each district HRAC may consist of seven to 15 members, who are either appointed or approved by the Governor.⁵ District HRAC representation must be as follows:

- ◆ 25 percent of the members must be or have been clients of the DCFS within the last 4 years, except that one member of this group may be an immediate relative or legal representative of a current or former client;
- ◆ two of the members must be providers who deliver services or programs to clients of the DCFS; and
- ◆ two of the members must be representatives of professional organizations, one of whom represents health-related professions and one of whom represents the legal profession.

District HRAC members serve no more than two consecutive terms of 4 years, with the exception of prescribed staggered terms for initial appointments to newly created committees.⁶ A chairperson is elected by the district HRAC for a term of 1 year and may not serve more than two consecutive terms as chairperson.⁷

⁵ Section 402.166(2) and (3), F.S.

⁶ Section 402.166(3), F.S.

⁷ Section 402.166(4), F.S.

Sections 402.166(7) and (8), F.S., provide for the responsibilities and investigative authority of the district HRACs, and this authority generally mirrors that of the SHRAC.

Duties of the Department of Children and Family Services

The duties of the DCFS relating to both the SHRAC and the district HRACs are designated in s. 402.167, F.S. These duties include requiring the DCFS to adopt rules which address procedures by which:

- ◆ the department district staff refers reports of abuse to district HRACs;
- ◆ client information is made available to members of the SHRAC and district HRACs;
- ◆ recommendations made by the SHRAC and the district HRACs are incorporated into the department's policies and procedures; and
- ◆ members of SHRAC and the district HRACs are reimbursed for authorized expenditures.

The DCFS is also required to provide an office location and necessary equipment, office supplies, and clerical services for district HRACs.

III. Effect of Proposed Changes:

The bill creates s. 402.164, F.S., which establishes legislative intent for the SHRAC and district HRACs. 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.”

Responsibilities and Scope of Authority of Statewide and District Human Rights Advocacy Committees

The bill amends s. 402.164, F.S., to provide two new definitions to be used in ss. 402.164 through 402.167, F.S.: “client” and “client services.” “Client” is defined to mean a client as defined in ss. 393.063 (developmental services), 394.67 (mental health services), 397.311 (substance abuse services), or 400.960, F.S., (Intermediate Care Facilities for Developmentally Disabled Persons); forensic client or client as defined in s. 916.106, F.S., (forensic services for persons with mental illness, retardation, and autism); child or youth as defined in s. 39.01, F.S., (proceedings related to children); child as defined in 827.01, F.S., (abuse of children crimes); family as defined in s. 414.0252, F.S., (family self-sufficiency/WAGES); participant as defined in s. 400.551, F.S., (adult day care centers); resident as defined in s. 400.402, F.S., (assisted living facilities); Medicaid recipient or recipient as defined in s. 409.901, F.S., (Medicaid services); a child receiving child care as defined in s. 402.302, F.S., (child care); a disabled adult as defined in s. 410.032 or s. 410.603, F.S., (Home Care for Disabled Adults and Community Care for Disabled Adults); or victim as defined in ss. 39.01 or 415.102, F.S., (proceedings related to children and adult protective services), as each of these definitions applies within its respective chapter. “Client service” is defined to mean services provided to a client by a state agency or a service provider operated, funded, or contracted by the state.

The bill's addition of these definitions results in expanding the SHRAC's and district HRAC's current authority, which is limited to investigations on behalf of DCFS clients only while in programs or facilities operated, funded, licensed, or regulated by DCFS, in two ways:

- ◆ One, by defining client as an individual receiving services pursuant to specified sections of statute, the SHRAC's and district HRACs' authority is expanded to also include clients in the following non-DCFS programs and facilities: Guardian ad litem and guardian advocates (administered through the Office of State Court Administrator); assisted living facilities (licensed by the Agency for Health Care Administration); adult day care centers (licensed by the Agency for Health Care Administration); and Medicaid (administered by the Agency for Health Care Administration).⁸
- ◆ Two, under the definition of "client services" created by the bill, the SHRAC and district HRACs may not only investigate on behalf of clients while they are receiving the statutorily enumerated services, but also while the client is receiving any other service provided by a state agency or a service provider operated, funded, or contracted⁹ by the state. As a result, the SHRAC and district HRACs are permitted to comprehensively examine all circumstances and conditions being experienced by a client in any programs and services provided by a state agency or their service provider.

Furthermore, the bill amends s. 402.165(8)(a), F.S., which prohibits the SHRAC and district HRACs from accessing adoption records under any circumstance. Under the bill, the SHRAC and district HRACs are permitted to access a would be adoptive parent's records, which include home study, background check, and reference information, but only until the adoption is finalized by the court.

The bill also provides that the SHRAC is responsible for submitting its annual budget to the Governor, instead of the department.

Finally, the bill eliminates the ability of the SHRAC to appeal unresolved complaints to the Legislature. The appeal procedure provides that the district HRAC may appeal a valid complaint which cannot be resolved at the local level to the SHRAC. The SHRAC may then appeal an unresolved complaint to the state agency providing the client services. If the SHRAC is not satisfied that the complaint can be resolved within the state agency, the appeal may then only be referred to the Governor, rather than the Governor or Legislature as provided in current law.

Statewide and District Human Rights Advocacy Committees Name and Composition

⁸ By specifying the statutory sections in the definition of "client," the SHRAC's and district HRAC's authority over clients receiving the statutorily enumerated services is preserved, regardless of any future DCFS reorganizations.

⁹ It should be noted that the bill adds that the SHRAC's and district HRACs' authority extends to programs and facilities *contracted* by a state agency providing client services; whereas, current law only refers to programs and facilities operated, funded, regulated, or licensed by the DCFS. Adding contracted programs and facilities will allow the SHRAC's and district HRACs' authority to be continued as state agency services are privatized and contracted out into community based systems.

The bill renames the “Statewide Human Rights Advocacy Committee” and “district human rights advocacy committees” to the “Florida Statewide Advocacy Council” and “Florida local advocacy councils,” respectively. The term “human rights” is removed to prevent confusion with other forms of human rights interests. The change to “council” is consistent with definitions of the terms “committee” and “council” as provided in the statutes. In s. 20.03(8), F.S., the term “committee” refers to an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years, and appointed to study a specific problem. A committee’s existence terminates upon the completion of its assignment. The term “council,” however, is defined as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government.

The bill also changes the geographic alignment of the councils’ districts from the DCFS’s districts to service areas which are designated by the SHRAC and which must be consistent with judicial boundaries.¹⁰ Furthermore, the SHRAC is responsible for designating up to 46 district HRACs statewide, and for determining each HRAC’s areas of responsibility.

The statutory requirements concerning the constitution of the SHRAC continue to provide for 15 members, one from each service area. Other membership requirements are amended, however. Under the bill, nine of the members must be as follows:

- ◆ one provider who delivers a client service;
- ◆ two non-salaried representatives of non-profit agencies or civic groups;
- ◆ four representatives of consumer groups currently receiving or having received client services within the last four years, one of whom must be a consumer of one or more client services; and
- ◆ two residents of the state who do not represent any of the foregoing groups, one of whom represents health-related professions and one of whom represents the legal profession.

Of the remaining six SHRAC members, no more than one may be an elected official, a health professional, a legal professional, a provider and an individual who represents a clients services group not represented on the committee, and no more than two may be non-salaried representatives of non-profit agencies or civic groups.

The term limits for SHRAC members are changed from two consecutive 3-year terms to two consecutive 4-year terms by the bill. Furthermore, the bill provides that staff of the SHRAC are now classified as select exempt service employees.

The statutory requirements concerning the backgrounds of the seven to 15 members of the district HRACs remain the same under the bill, except that current law’s requirement that:

¹⁰ Chapter 99-219, L.O.F., directs the DCFS to develop a proposed plan to realign the districts of the department so that the district boundaries are consistent with the judicial circuit boundaries. If that realignment occurs, the bill’s modification will permit the SHRAC to redesignate the service areas for the district HRACs, as needed.

- ◆ 25 percent of the members must have been recipients of one or more client services is changed to specify that no more than four members may have this background;
- ◆ no member may be an employee of the DCFS is changed to specify that no member may be a employed in client services for a state agency; and
- ◆ no more than 25 percent of the members may be individuals providing contracted services to DCFS to no more than three members may be individuals providing contracted services to any state agency for clients.

The term limits for members of existing district HRACs remain at two consecutive 4-year terms under the bill. However, the term limits applicable to members of newly created HRACs are amended. Under the bill, these members may serve no more than two consecutive 4-year terms, except that at the time of initial appointment, the terms shall be staggered so that approximately one-half of the members first appointed serve terms of four years, while the remaining members serve terms of two years. Furthermore, the bill provides that a district HRAC member who fails to attend two-thirds of the regular council meetings may, rather than must as is provided in current law, replace the member.

For both the SHRAC and district HRACs, a Vice Chair position is added by the bill. The term limits for the Chair and Vice Chair positions is two consecutive 1-year terms. The term for SHRAC Chair and Vice Chair positions expires on the anniversary date of the election; however, the term for district HRACs' Chair and Vice Chair positions expires on September 30 of each year under the bill.

Duties of the DCFS

The bill amends s. 402.167, F.S., which applied solely to the DCFS, to require each state agency that provides client services to adopt rules which address procedures by which:

- ◆ the district state agency staff refer reports of abuse to the district HRACs;
- ◆ client information is made available to members of the SHRAC and the district HRACs; and
- ◆ recommendations made by the SHRAC and the district HRACs are incorporated into the policies and procedures of state agencies.

Duties that remain the responsibility of the DCFS under the bill include the following:

- ◆ providing for the location of district committees;
- ◆ providing for necessary equipment, office supplies, and clerical services; and
- ◆ establishing procedures by which members are reimbursed for authorized expenditures.

Section 402.166(1), F.S., continues the DCFS' responsibility to assign staff to provide administrative support to the district HRACs. However, the section is modified by the bill to shift the responsibility from the district administrator to the department. This shift is intended to accommodate the anticipated reorganization of the department.

The bill provides that this act take effect on July 1, 2000.

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:

The DCFS reports that CS/SB 340 would require the department to absorb additional administrative support costs as it is anticipated that the workload of the district HRACs would increase with the addition of cases from other state agencies. Specifically, the additional administrative support costs anticipated by the department are increases in the travel expenses of the volunteer district HRAC members and time of district staff to process the travel reimbursement requests for any additional cases investigated as a result of the expansion to other state agencies. The exact amount of the increase in administrative costs is indeterminate since the additional number of cases that will be undertaken by the district HRACs is unknown. A September 1997 survey of the districts determined that the administrative support costs for the district HRACs at that time was \$428,074. The department suggests that other state agencies should be required to share in the cost of administrative support to the district HRACs.

When considering the potential for increased travel expenses as a result of the expansion to other state agencies, it should be noted that the travel of the district HRAC members to monitor and investigate cases consists of primarily local travel within their district, which will include local mileage and meals. For example, a trip requiring 150 miles of travel and a meal would total approximately \$50. Any increase in the number of cases that may be undertaken by district HRAC members will not likely result in high cost travel expenses, such as airfare or hotel. The time required to monitor and investigate any additional cases consists of the unpaid time of the volunteer district HRAC members.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As required by s. 400.0067(2)(g), F.S., a Memorandum of Agreement between the SHRAC and the State Long Term Care Ombudsman Council exists to coordinate their activities. Local committees and councils develop similar agreements which can either mirror the state agreement or reflect the agreed upon coordination for that area. These agreements delineate the responsibilities of each committee/council for receiving and investigating complaints regarding residents of long-term care facilities, and in turn, prevent the duplication of their respective services.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
