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A bill to be entitled

An act relating to the statewide and local advocacy councils; amending s. 402.164, F.S.; providing legislative intent with respect to the statewide and local advocacy councils; providing additional definitions; amending s. 402.165, F.S.; requiring the Florida Statewide Advocacy Council to be located for administrative purposes in the Executive Office of the Governor; revising the membership of the statewide advocacy council; directing the statewide advocacy council to establish interprogram agreements or operational procedures with certain state agencies to ensure coordination, communication, and cooperation during investigations of abuse, neglect, or exploitation of clients; authorizing the council to adopt rules; providing access to records of facilities and programs and of clients receiving client services; authorizing the statewide advocacy council to seek injunctive relief if denied access to records; authorizing a circuit court to impose a civil fine of up to a specified amount if a person unlawfully denies access to a record; amending s. 402.166, F.S., relating to local advocacy councils; removing certain membership restrictions; providing that the local council has the same authority to access records from facilities, programs, and clients as does the statewide advocacy council; amending s. 402.167, F.S.; directing each state agency to provide client records and information to the statewide advocacy and local councils; directing state agencies to amend the state plans; transferring the local advocacy councils by a type two

HB 1703

2004

30 transfer from the Department of Children and Family  
 31 Services to the Florida Statewide Advocacy Council;  
 32 providing an effective date.  
 33

34 Be It Enacted by the Legislature of the State of Florida:  
 35

36 Section 1. Section 402.164, Florida Statutes, is amended  
 37 to read:

38 402.164 Legislative intent; definitions.--

39 (1)(a) It is the intent of the Legislature to use citizen  
 40 volunteers as members of the Florida Statewide Advocacy Council  
 41 and the Florida local advocacy councils, and to have volunteers  
 42 operate a network of councils that shall, without interference  
 43 by an executive agency, undertake to discover, monitor,  
 44 investigate, and determine the presence of conditions or  
 45 individuals that constitute a threat to the rights, health,  
 46 safety, or welfare of persons who receive services from state  
 47 agencies.

48 (b) It is the further intent of the Legislature that the  
 49 monitoring and investigation shall safeguard the health, safety,  
 50 and welfare of consumers of services provided by these state  
 51 agencies and that the governmental oversight role of the members  
 52 of the Florida Statewide Advocacy Council and its local advocacy  
 53 councils is necessary to ensure the protection and advocacy of  
 54 persons in this state who receive state or federal health and  
 55 human services from state agencies. The Legislature further  
 56 finds that through the performance of vital oversight duties and  
 57 responsibilities by these citizen volunteers, the intent of the  
 58 Florida Health and Human Services Access Act is preserved.

HB 1703

2004

59 (c) It is the further intent of the Legislature that the  
 60 statewide and local advocacy councils shall have routine access  
 61 to protected health information and any other confidential  
 62 information of clients receiving client services. The  
 63 Legislature intends that the legal doctrine known as "the  
 64 mention of one thing is the exclusion of another" is expressly  
 65 renounced if another statute fails to specifically grant the  
 66 statewide or local advocacy council access to the confidential  
 67 information.

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

69 (a) "Access" means a visual inspection or the copying of  
 70 the hard copy or electronic version of the record maintained by  
 71 the state agency, facility, provider, or contractor.

72 (b)(a) "Client" means any person who receives client  
 73 services, including a client as defined in s. 393.063, s.  
 74 394.67, s. 397.311, or s. 400.960, a forensic client or client  
 75 as defined in s. 916.106, a child or youth as defined in s.  
 76 39.01, a child as defined in s. 827.01, a family as defined in  
 77 s. 414.0252, a participant as defined in s. 400.551, a resident  
 78 as defined in s. 400.402, a Medicaid recipient or recipient as  
 79 defined in s. 409.901, a child receiving childcare as defined in  
 80 s. 402.302, a disabled adult as defined in s. 410.032 or s.  
 81 410.603, or a victim as defined in s. 39.01 or s. 415.102 as  
 82 each definition applies within its respective chapter.

83 (c)(b) "Client services" means health and human services  
 84 that ~~which~~ are provided through any health and human service  
 85 program to a client by a state agency or a service provider  
 86 operated, funded, or contracted by the state.

87 (d) "Council" or "statewide council" means the Florida

HB 1703

2004

88 Statewide Advocacy Council.

89 (e) "Local council" or "local advocacy council" means one  
 90 of the local advocacy councils located in this state, under the  
 91 supervision of the Florida Statewide Advocacy Council, created  
 92 to protect the constitutional and human rights of clients.

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

95 402.165 Florida Statewide Advocacy Council; confidential  
 96 records and meetings.--

97 ~~(1) The Statewide Human Rights Advocacy Committee within~~  
 98 ~~the Department of Children and Family Services is redesignated~~  
 99 ~~as~~ The Florida Statewide Advocacy Council shall be located for  
 100 administrative purposes as an independent state agency in the  
 101 Executive Office of the Governor or a state agency that is not a  
 102 provider of client services. Members of the council shall  
 103 represent the interests of clients who are served by state  
 104 agencies that provide client services. The Executive Office of  
 105 the Governor or the appropriate state agency ~~Department of~~  
 106 ~~Children and Family Services~~ shall provide administrative  
 107 support and service to the statewide council ~~to the extent~~  
 108 requested by the executive director ~~within available resources.~~

109 The statewide council is not subject to control, supervision,  
 110 or direction by any state agency ~~the Department of Children and~~  
 111 ~~Family Services~~ in the performance of its duties. The council  
 112 shall consist of not less than 15 and not more than 20 residents  
 113 of this state, one from each service area designated by the  
 114 statewide council, who broadly represent the interests of the  
 115 public and the clients of the state agencies that provide client  
 116 services. The members shall be representative of ~~four~~ groups of

HB 1703

2004

117 state residents as follows: a ~~one~~ provider who delivers client  
 118 services ~~as defined in s. 402.164(2)~~; a ~~two~~ nonsalaried  
 119 representative ~~representatives~~ of nonprofit agencies or civic  
 120 groups; a representative ~~four representatives~~ of consumer groups  
 121 which ~~who~~ are currently receiving, or have received, one or more  
 122 client services within the past 4 years, at least one of which  
 123 ~~whom~~ must be a consumer of one or more client services; and two  
 124 residents of the state who do not represent any of the foregoing  
 125 groups, but may represent a one of whom ~~represents the health-~~  
 126 related profession or professions ~~and one of whom represents the~~  
 127 legal profession. In appointing the representative of the  
 128 health-related professions, the appointing authority shall give  
 129 priority of consideration to a physician licensed under chapter  
 130 458 or chapter 459; and, in appointing the representative of the  
 131 legal profession, the appointing authority shall give priority  
 132 of consideration to a member in good standing of The Florida  
 133 Bar. Of the remaining members, no more than one shall be an  
 134 elected official; ~~no more than one shall be a health~~  
 135 ~~professional; no more than one shall be a legal professional; no~~  
 136 ~~more than one shall be a provider; no more than two shall be~~  
 137 ~~nonsalaried representatives of nonprofit agencies or civic~~  
 138 ~~groups; and no more than one shall be an individual whose~~  
 139 ~~primary area of interest, experience, or expertise is a major~~  
 140 ~~client group of a client services group that is not represented~~  
 141 ~~on the council at the time of appointment.~~ Except for the member  
 142 who is an elected public official, each member of the statewide  
 143 council must be given priority consideration if he or she has  
 144 have served as a member of a Florida local advocacy council,  
 145 ~~with priority consideration given to an applicant who has served~~

HB 1703

2004

146 ~~a full term on a local council.~~ Persons related to each other  
 147 by consanguinity or affinity within the third degree may not  
 148 serve on the statewide council at the same time.

149 (2) Members of the statewide council shall be appointed to  
 150 serve terms of 4 years. A member may not serve more than two  
 151 full consecutive terms.

152 (3) If a member of the statewide council fails to attend  
 153 two-thirds of the regular council meetings during the course of  
 154 a year, the position held by the member may be deemed vacant by  
 155 the council. The Governor shall fill the vacancy according  
 156 ~~pursuant~~ to subsection (4). If a member of the statewide council  
 157 violates this section or procedures adopted under this section,  
 158 the council may recommend to the Governor that the member be  
 159 removed.

160 (4) The Governor may ~~shall~~ fill a ~~each~~ vacancy on the  
 161 statewide council from a list of nominees submitted by the  
 162 statewide council or appoint any qualified person. A list of  
 163 candidates may be submitted to the statewide council by the  
 164 local council in the service area from which the vacancy occurs.

165 Priority of consideration shall be given to the appointment of  
 166 an individual who is receiving one or more client services and  
 167 whose primary interest, experience, or expertise lies with a  
 168 major client group that is not represented on the council at the  
 169 time of the appointment. If an appointment is not made within  
 170 120 ~~60~~ days after a vacancy occurs on the statewide council, the  
 171 vacancy may be filled by a majority vote of the statewide  
 172 council without further action by the Governor. A person who is  
 173 employed by any state agency in client services may not be  
 174 appointed to the statewide council.

HB 1703

2004

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

178 (b) The council shall select an executive director who  
 179 shall serve at the pleasure of the council and shall perform the  
 180 duties delegated to him or her by the council. The compensation  
 181 of the executive director and staff shall be established in  
 182 accordance with the rules of the Selected Exempt Service.

183 (c) The council may apply for, receive, and accept grants,  
 184 gifts, donations, bequests, and other payments including money  
 185 or property, real or personal, tangible or intangible, and  
 186 service from any governmental or other public or private entity  
 187 or person and make arrangements as to the use of same.

188 (d) The statewide council shall annually prepare a budget  
 189 request that, ~~is not to be changed by department staff~~ after it  
 190 is approved by the council, ~~but~~ shall be submitted to the  
 191 Governor ~~for transmittal to the Legislature~~. The budget shall  
 192 include a request for funds to carry out the activities of the  
 193 statewide council and the local councils.

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

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

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

HB 1703

2004

204 (b) Monitoring, by site visit and through access to  
 205 ~~inspection of records,~~ the delivery and use of services,  
 206 programs, or facilities operated, funded, or contracted by any  
 207 state agency that provides client services, for the purpose of  
 208 preventing abuse or deprivation of the constitutional and human  
 209 rights of clients. The statewide council may conduct an  
 210 unannounced site visit or monitoring visit that involves access  
 211 to the inspection of records if the visit is conditioned upon a  
 212 complaint. A complaint may be generated by the council itself,  
 213 after consulting with the Governor's office if information from  
 214 any state agency that provides client services or from other  
 215 sources indicates a situation at the program or facility that  
 216 indicates possible abuse or neglect or deprivation of the  
 217 constitutional and human rights of clients. The statewide  
 218 council shall establish and follow uniform criteria for the  
 219 review of information and generation of complaints. Routine  
 220 program monitoring and reviews that do not require an  
 221 examination of records may be made unannounced.

222 (c) Receiving, investigating, and resolving reports of  
 223 abuse or deprivation of constitutional and human rights referred  
 224 to the statewide council by a local council. If a matter  
 225 constitutes a threat to the life, safety, or health of clients  
 226 or is multiservice area ~~multidistrict~~ in scope, the statewide  
 227 council may exercise the ~~such~~ powers without the necessity of a  
 228 referral from a local council.

229 (d) Reviewing existing programs or services and new or  
 230 revised programs of the state agencies that provide client  
 231 services and making recommendations as to how the rights of  
 232 clients are affected.



HB 1703

2004

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

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

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

244 ~~1. The responsibilities of the statewide council and the~~  
 245 ~~local councils;~~

246 ~~2. The organization and operation of the statewide council~~  
 247 ~~and the local councils, including procedures for replacing a~~  
 248 ~~member, formats for maintaining records of council activities,~~  
 249 ~~and criteria for determining what constitutes a conflict of~~  
 250 ~~interest for purposes of assigning and conducting investigations~~  
 251 ~~and monitoring;~~

252 ~~3. Uniform procedures for the statewide council and the~~  
 253 ~~local councils relating to receiving and investigating reports~~  
 254 ~~of abuse or deprivation of constitutional or human rights;~~

255 ~~4. The responsibilities and relationship of the local~~  
 256 ~~councils to the statewide council;~~

257 ~~5. The relationship of the statewide council to the state~~  
 258 ~~agencies that receive and investigate reports of abuse and~~  
 259 ~~neglect of clients of state agencies, including the way in which~~  
 260 ~~reports of findings and recommendations related to reported~~  
 261 ~~abuse or neglect are given to the appropriate state agency that~~

HB 1703

2004

262 ~~provides client services;~~

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

265 ~~7. Procedures for appeal. An appeal to the statewide~~  
 266 ~~council is made by a local council when a valid complaint is not~~  
 267 ~~resolved at the local level. The statewide council may appeal an~~  
 268 ~~unresolved complaint to the secretary or director of the~~  
 269 ~~appropriate state agency that provides client services. If,~~  
 270 ~~after exhausting all remedies, the statewide council is not~~  
 271 ~~satisfied that the complaint can be resolved within the state~~  
 272 ~~agency, the appeal may be referred to the Governor;~~

273 ~~8. Uniform procedures for gaining access to and~~  
 274 ~~maintaining confidential information; and~~

275 ~~9. Definitions of misfeasance and malfeasance for members~~  
 276 ~~of the statewide council and local councils.~~

277 (h) Supervising the operations of the local councils and  
 278 monitoring the performance and activities of all local councils  
 279 and providing technical assistance to members and staff of local  
 280 councils.

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

283 (j) Developing and maintaining interprogram agreements or  
 284 operational procedures between the council and the appropriate  
 285 departmental programs, the Medicaid Fraud Control Unit of the  
 286 Attorney General's Office, the Governor's Inspector General, and  
 287 other agencies to ensure coordination, communication, and  
 288 cooperation during the monitoring and investigation of the  
 289 health, safety, and welfare of state clients. The interprogram  
 290 agreements or operational procedures must incorporate the

HB 1703

2004

291 appropriate roles and responsibilities of the statewide council  
 292 when identifying and responding to reports regarding the health,  
 293 safety, and welfare of state clients.

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

296 1. Authority to receive, investigate, seek to conciliate,  
 297 hold hearings on, in accordance with chapter 120, including  
 298 issuing declaratory statements, and act on complaints that  
 299 constitute a threat to the rights, health, safety, or welfare  
 300 ~~allege any abuse or deprivation of constitutional or human~~  
 301 ~~rights~~ of persons who receive client services from any state  
 302 agency. The statewide council shall adopt rules for receiving,  
 303 investigating, seeking to conciliate, holding hearings on, and  
 304 acting on complaints.

305 2. Access to all client records, files, and reports from  
 306 any program, service, or facility that is operated, funded, or  
 307 contracted by any state agency that provides client services and  
 308 any records that are material to its investigation and are in  
 309 the custody of any other agency or department of government.  
 310 The council's investigation or monitoring shall not impede or  
 311 obstruct matters under investigation by law enforcement agencies  
 312 or judicial authorities. Access shall not be granted if a  
 313 specific procedure or prohibition for reviewing records is  
 314 required by federal law and regulation that supersedes state  
 315 law. Access shall not be granted to the records of a private  
 316 licensed practitioner who is providing services outside the  
 317 state agency, or outside a state facility, and whose client is  
 318 competent and refuses disclosure.

319 3. Standing to seek injunctive relief in ~~petition~~ the

HB 1703

2004

320 circuit court against service or contract providers for denial  
 321 of access to client records or program or services records to  
 322 members of the council or to a local advocacy council ~~that are~~  
 323 ~~confidential as specified by law. The petition shall state the~~  
 324 ~~specific reasons for which the council is seeking access and the~~  
 325 ~~intended use of such information.~~ The circuit court may impose a  
 326 civil fine of up to \$15,000 against any person who unlawfully  
 327 withheld a client, program, or services record or otherwise  
 328 denied access to any record requested by the council or a local  
 329 advocacy council and may authorize council access to the such  
 330 records upon a finding that ~~such~~ access is directly related to  
 331 an investigation regarding the possible deprivation of  
 332 constitutional or human rights or the abuse of a client.  
 333 Original client files, agency records, and reports ~~may shall~~ not  
 334 be removed from a state agency, but copies shall be provided to  
 335 the council and the local councils at the agency's expense.  
 336 Under no circumstance shall the council have access to  
 337 confidential adoption records once the adoption is finalized by  
 338 a court in accordance with ss. 39.0132, 63.022, and 63.162.  
 339 Upon completion of a general investigation of practices and  
 340 procedures of a state agency, the statewide council shall report  
 341 its findings to that agency.

342 (b) All information obtained or produced by the statewide  
 343 council that is made confidential by law, that relates to the  
 344 identity of any client or group of clients subject to the  
 345 protections of this section, or that relates to the identity of  
 346 an individual who provides information to the council about  
 347 abuse or about alleged violations of constitutional or human  
 348 rights, is confidential and exempt from s. 119.07(1) and s.

HB 1703

2004

349 24(a), Art. I of the State Constitution.

350 (c) Portions of meetings of the statewide council that  
 351 relate to the identity of any client or group of clients subject  
 352 to the protections of this section, that relate to the identity  
 353 of an individual who provides information to the council about  
 354 abuse or about alleged violations of constitutional or human  
 355 rights, or wherein testimony is provided relating to records  
 356 otherwise made confidential by law, are exempt from s. 286.011  
 357 and s. 24(b), Art. I of the State Constitution.

358 (d) All records prepared by members of the statewide  
 359 council that reflect a mental impression, investigative  
 360 strategy, or theory are exempt from s. 119.07(1) and s. 24(a),  
 361 Art. I of the State Constitution until the investigation is  
 362 completed or until the investigation ceases to be active. For  
 363 purposes of this section, an investigation is considered  
 364 "active" while the ~~such~~ investigation is being conducted by the  
 365 statewide council with a reasonable, good faith belief that it  
 366 may lead to a finding of abuse or of a violation of human  
 367 rights. An investigation does not cease to be active so long as  
 368 the statewide council is proceeding with reasonable dispatch and  
 369 there is a good faith belief that action may be initiated by the  
 370 council or other administrative or law enforcement agency.

371 (e) Any person who knowingly and willfully discloses any  
 372 ~~such~~ confidential information commits a misdemeanor of the  
 373 second degree, punishable as provided in s. 775.082 or s.  
 374 775.083.

375 Section 3. Section 402.166, Florida Statutes, is amended  
 376 to read:

377 402.166 Florida local advocacy councils; confidential

HB 1703

2004

378 records and meetings.--

379 (1) Each district human rights advocacy committee within  
 380 each district service area of the Department of Children and  
 381 Family Services is redesignated as the Florida Local Advocacy  
 382 Council. The local councils are subject to direction from and  
 383 the supervision of the statewide council. The statewide council  
 384 ~~Department of Children and Family Services~~ shall assign staff to  
 385 provide administrative support to the local councils, and staff  
 386 assigned to these positions shall perform the functions required  
 387 by the local councils without interference from the department.  
 388 The local councils shall direct the activities of staff assigned  
 389 to them to the extent necessary for the local councils to carry  
 390 out their duties. The number and areas of responsibility of the  
 391 local councils, not to exceed 46 councils statewide, shall be  
 392 determined by the statewide council and shall be consistent with  
 393 judicial circuit boundaries. Local councils shall meet at  
 394 facilities under their jurisdiction whenever possible.

395 (2) Each local council shall have no fewer than 7 members  
 396 and no more than 15 members, no more than 4 of whom are or have  
 397 been recipients of one or more client services within the last 4  
 398 years, except that one member of this group may be an immediate  
 399 relative or legal representative of a current or former client;  
 400 two providers who deliver client services as defined in s.  
 401 402.164(2); and two representatives of professional  
 402 organizations, one of whom represents the health-related  
 403 professions and one of whom represents the legal profession.  
 404 Priority of consideration shall be given to the appointment of  
 405 at least one medical or osteopathic physician, as defined in  
 406 chapters 458 and 459, and one member in good standing of The

HB 1703

2004

407 Florida Bar. Priority of consideration shall also be given to  
408 the appointment of an individual who is receiving client  
409 services and whose primary interest, experience, or expertise  
410 lies with a major client group not represented on the local  
411 council at the time of the appointment. A person who is  
412 employed in client services by any state agency may not be  
413 appointed to the local council. No more than three individuals  
414 who are providing contracted services for clients to any state  
415 agency may serve on the same local council at the same time.  
416 ~~Persons related to each other by consanguinity or affinity~~  
417 ~~within the third degree may not serve on the same local council~~  
418 ~~at the same time.~~ All members of local councils must  
419 successfully complete a standardized training course for local  
420 council members within 3 months after their appointment to a  
421 local council. A member may not be assigned to an investigation  
422 that requires access to confidential information prior to the  
423 completion of the training course. After he or she completes  
424 the required training course, a member of a local council may  
425 not be prevented from participating in any activity of that  
426 local council, including investigations and monitoring, except  
427 due to a conflict of interest as described in the procedures  
428 established by the statewide council under ~~pursuant to~~  
429 subsection (7).

430 (3)(a) With respect to existing local councils, each  
431 member shall serve a term of 4 years. Upon expiration of a term  
432 and in the case of any other vacancy, the local council shall  
433 appoint a replacement by majority vote of the local council,  
434 subject to the approval of the Governor. A member may serve no  
435 more than two full consecutive terms.

HB 1703

2004

436 (b)1. The Governor shall appoint the first four members of  
 437 any newly created local council; and those four members shall  
 438 select the remaining members, subject to approval of the  
 439 Governor. If any of the first four members are not appointed  
 440 within 60 days after a request is submitted to the Governor,  
 441 those members may be appointed by a majority vote of the  
 442 statewide council without further action by the Governor.

443 2. Members shall serve for no more than two full  
 444 consecutive terms of 4 years, except that at the time of initial  
 445 appointment, terms shall be staggered so that approximately one-  
 446 half of the members first appointed shall serve for terms of 4  
 447 years and the remaining members shall serve for terms of 2  
 448 years. Vacancies shall be filled as provided in subparagraph 1.

449 (c) If no action is taken by the Governor to approve or  
 450 disapprove a replacement of a member under ~~pursuant to~~ this  
 451 subsection within 30 days after the local council has notified  
 452 the Governor of the appointment, then the appointment of the  
 453 replacement may be considered approved by the statewide council.

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

458 (5) If a local council member fails to attend two-thirds  
 459 of the regular local council meetings during the course of a  
 460 year, the local council may replace the member. If a member of  
 461 a local council violates this section or procedures adopted  
 462 under this section, the local council may recommend to the  
 463 Governor that the member be removed.

464 (6) A member of a local council shall receive no



HB 1703

2004

465 compensation but is entitled to be reimbursed for per diem and  
 466 travel expenses as provided in s. 112.061. Members may be  
 467 provided reimbursement for long-distance telephone calls if the  
 468 ~~such~~ calls were necessary to an investigation of an abuse or  
 469 deprivation of constitutional or human rights.

470 (7) A local council shall first seek to resolve a  
 471 complaint with the appropriate local administration, agency, or  
 472 program; any matter not resolved by the local council shall be  
 473 referred to the statewide council. A local council shall comply  
 474 with appeal procedures established by the statewide council.  
 475 The duties, actions, and procedures of both new and existing  
 476 local councils shall conform to ss. 402.164-402.167. The duties  
 477 of each local council shall include, but are not limited to:

478 (a) Serving as an independent third-party mechanism for  
 479 protecting the constitutional and human rights of any client  
 480 within a program or facility operated, funded, or contracted by  
 481 a state agency providing client services in the local service  
 482 area.

483 (b) Monitoring by site visit and access to and copying  
 484 ~~inspection~~ of records the delivery and use of services,  
 485 programs, or facilities operated, funded, or contracted by a  
 486 state agency that provides client services, for the purpose of  
 487 preventing abuse or deprivation of the constitutional and human  
 488 rights of clients. A local council may conduct an unannounced  
 489 site visit or monitoring visit that involves access to ~~the~~  
 490 ~~inspection~~ of records if the visit is conditioned upon a  
 491 complaint. A complaint may be generated by the council itself  
 492 if information from a state agency that provides client services  
 493 or from other sources indicates a situation at the program or

HB 1703

2004

494 facility that indicates possible abuse or neglect or deprivation  
 495 of constitutional and human rights of clients. The local  
 496 council shall follow uniform criteria established by the  
 497 statewide council for the review of information and generation  
 498 of complaints. Routine program monitoring and reviews that do  
 499 not require an examination of records may be made unannounced.

500 (c) Receiving, investigating, and resolving reports of  
 501 abuse or deprivation of constitutional and human rights in the  
 502 local service area.

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

507 ~~(e) Reviewing existing programs and proposed new or~~  
 508 ~~revised programs of client services and making recommendations~~  
 509 ~~as to how these programs and services affect or might affect the~~  
 510 ~~constitutional or human rights of clients.~~

511 (e)~~(f)~~ Appealing to the statewide council any complaint  
 512 unresolved at the local level. Any matter that constitutes a  
 513 threat to the life, safety, or health of a client or is  
 514 multidistrict in scope shall automatically be referred to the  
 515 statewide council.

516 (f)~~(g)~~ Submitting an annual report by September 30 to the  
 517 statewide council concerning activities, recommendations, and  
 518 complaints reviewed or developed by the local council during the  
 519 year.

520 (g)~~(h)~~ Conducting meetings at least six times a year at  
 521 the call of the chair and at other times at the call of the  
 522 Governor, at the call of the statewide council, or by written

HB 1703

2004

523 request of a majority of the members of the local council.

524 (8)(a) In the performance of its duties, a local council  
 525 shall have the same authority to access client records, state  
 526 agency files, reports from any program or service, records of  
 527 contractors and providers, and records from any facility  
 528 operated, funded, or under contract with a state agency as  
 529 specified in s. 402.165(8)(a).+

530 ~~1. Access to all client records, files, and reports from~~  
 531 ~~any program, service, or facility that is operated, funded, or~~  
 532 ~~contracted by any state agency that provides client services and~~  
 533 ~~any records that are material to its investigation and are in~~  
 534 ~~the custody of any other agency or department of government.~~  
 535 ~~The council's investigation or monitoring shall not impede or~~  
 536 ~~obstruct matters under investigation by law enforcement agencies~~  
 537 ~~or judicial authorities. Access shall not be granted if a~~  
 538 ~~specific procedure or prohibition for reviewing records is~~  
 539 ~~required by federal law and regulation that supersedes state~~  
 540 ~~law. Access shall not be granted to the records of a private~~  
 541 ~~licensed practitioner who is providing services outside state~~  
 542 ~~agencies and facilities and whose client is competent and~~  
 543 ~~refuses disclosure.~~

544 ~~2. Standing to petition the circuit court for access to~~  
 545 ~~client records that are confidential as specified by law. The~~  
 546 ~~petition shall state the specific reasons for which the council~~  
 547 ~~is seeking access and the intended use of such information. The~~  
 548 ~~court may authorize access to such records upon a finding that~~  
 549 ~~such access is directly related to an investigation regarding~~  
 550 ~~the possible deprivation of constitutional or human rights or~~  
 551 ~~the abuse of a client. Original client files, records, and~~

HB 1703

2004

552 ~~reports shall not be removed from a state agency. Upon no~~  
 553 ~~circumstances shall the council have access to confidential~~  
 554 ~~adoption records once the adoption is finalized in court in~~  
 555 ~~accordance with ss. 39.0132, 63.022, and 63.162. Upon completion~~  
 556 ~~of a general investigation of practices and procedures followed~~  
 557 ~~by a state agency in providing client services, the council~~  
 558 ~~shall report its findings to the appropriate state agency.~~

559 (b) All information obtained or produced by a local  
 560 council that is made confidential by law, that relates to the  
 561 identity of any client or group of clients subject to the  
 562 protection of this section, or that relates to the identity of  
 563 an individual who provides information to the local council  
 564 about abuse or about alleged violations of constitutional or  
 565 human rights, is confidential and exempt from s. 119.07(1) and  
 566 s. 24(a), Art. I of the State Constitution.

567 (c) Portions of meetings of a local council that relate to  
 568 the identity of any client or group of clients subject to the  
 569 protections of this section, that relate to the identity of an  
 570 individual who provides information to the local council about  
 571 abuse or about alleged violations of constitutional or human  
 572 rights, or when ~~wherein~~ testimony is provided relating to  
 573 records otherwise made confidential by law, are exempt from s.  
 574 286.011 and s. 24(b), Art. I of the State Constitution.

575 (d) All records prepared by members of a local council  
 576 that reflect a mental impression, investigative strategy, or  
 577 theory are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 578 State Constitution until the investigation is completed or until  
 579 the investigation ceases to be active. For purposes of this  
 580 section, an investigation is considered "active" while the ~~such~~

HB 1703

2004

581 investigation is being conducted by a local council with a  
 582 reasonable, good faith belief that it may lead to a finding of  
 583 abuse or of a violation of constitutional or human rights. An  
 584 investigation does not cease to be active so long as the local  
 585 council is proceeding with reasonable dispatch and there is a  
 586 good faith belief that action may be initiated by the local  
 587 council or other administrative or law enforcement agency.

588 (e) Any person who knowingly and willfully discloses any  
 589 such confidential information commits a misdemeanor of the  
 590 second degree, punishable as provided in s. 775.082 or s.  
 591 775.083.

592 Section 4. Section 402.167, Florida Statutes, is amended  
 593 to read:

594 402.167 Duties of state agencies that provide client  
 595 services relating to the Florida Statewide Advocacy Council and  
 596 the Florida local advocacy councils.--

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

600 ~~(a) Procedures by which staff of state agencies refer~~  
 601 ~~reports of abuse of clients to the Florida local advocacy~~  
 602 ~~councils.~~

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

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

609 ~~(2) The Department of Children and Family Services shall~~

HB 1703

2004

610 ~~provide for the location of local councils in area offices and~~  
 611 ~~shall provide necessary equipment and office supplies,~~  
 612 ~~including, but not limited to, clerical and word processing~~  
 613 ~~services, photocopiers, telephone services, and stationery and~~  
 614 ~~other necessary supplies, and shall establish the procedures by~~  
 615 ~~which council members are reimbursed for authorized~~  
 616 ~~expenditures.~~

617 (1)(3) The secretaries or directors of the state agencies  
 618 shall ensure the full cooperation and assistance of employees of  
 619 their respective state agencies with members and staff of the  
 620 statewide and local councils. The secretary or director of each  
 621 state agency providing client services shall notify all  
 622 contract, service, and treatment providers of the powers,  
 623 duties, responsibilities, and access-to-information rights  
 624 delegated by law to the statewide and local councils. Further,  
 625 ~~the Secretary of Children and Family Services shall ensure that,~~  
 626 ~~to the extent possible, staff assigned to the statewide council~~  
 627 ~~and local councils are free of interference from or control by~~  
 628 ~~the department in performing their duties relative to those~~  
 629 ~~councils.~~

630 (2) The secretary or director of each state agency  
 631 providing client services shall amend any state plan filed with  
 632 a federal agency which provides funding for client services to  
 633 reflect that the activities of the statewide council and local  
 634 advocacy councils are part of the administration of the  
 635 respective federal program and are incorporated into the state  
 636 plan.

637 Section 5. The local advocacy councils, all staff  
 638 positions assigned to the local councils, and the council's

HB 1703

2004

639 toll-free complaint line are transferred by a type two transfer,  
640 under s. 20.06, Florida Statutes, from the Department of  
641 Children and Family Services to the Florida Statewide Advocacy  
642 Council. On January 1, 2005, the number of full-time equivalent  
643 staff positions transferred shall be equal to the number  
644 assigned to the local advocacy councils on July 1, 2003, and may  
645 not be less than 15 full-time equivalent employees.

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