

## Committee Substitute for Senate Bill No. 2674

An act relating to the statewide and local advocacy councils; amending s. 402.164, F.S.; providing definitions; amending s. 402.165, F.S.; requiring the Florida Statewide Advocacy Council to be located in the Executive Office of the Governor; removing the requirement for the Department of Children and Family Services to provide administrative support; revising the membership of the statewide advocacy council; providing priority consideration for certain candidates for the statewide council; requiring the Governor to select an executive director; providing that such director shall serve at the pleasure of the Governor; removing a restriction on the preparation of the annual budget; requiring the council to consult with the Governor before generating a complaint; revising council duties and responsibilities; directing the council to establish interagency agreements with certain state agencies; requiring copies of certain files, records, and reports to be provided to the council at the agency's expense; amending s. 402.166, F.S.; deleting references to administration by the department; providing clarification for duties performed by a local council; revising the period in which the Governor may approve or disapprove an appointment; removing authority to review certain programs; 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 that provides client services to provide certain information about the statewide advocacy and local councils; transferring the Florida Statewide Advocacy Council, certain positions, local councils, and a toll-free complaint line by a type two transfer from the Department of Children and Family Services to the Florida Statewide Advocacy Council; directing the department to identify positions to be transferred by a type two transfer to the Florida Statewide Advocacy Council for support of the local councils; providing an effective date.

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

Section 1. Subsection (2) of section 402.164, Florida Statutes, is amended to read:

402.164 Legislative intent; definitions.—

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

(a) "Access" means a visual inspection or the copying of the records maintained by the state agency, facility, provider, or contractor.

~~(b)~~(a) "Client" means a client as defined in s. 393.063, s. 394.67, s. 397.311, or s. 400.960, a forensic client or client as defined in s. 916.106, a child or youth as defined in s. 39.01, a child as defined in s. 827.01, a family as defined in s. 414.0252, a participant as defined in s. 400.551, a resident

as defined in s. 400.402, a Medicaid recipient or recipient as defined in s. 409.901, a child receiving childcare as defined in s. 402.302, a disabled adult as defined in s. 410.032 or s. 410.603, or a victim as defined in s. 39.01 or s. 415.102 as each definition applies within its respective chapter.

(c)(b) “Client services” means health and human services that ~~which~~ are provided to a client by a state agency or a service provider operated, funded, or contracted by the state.

(d) “Council” or “statewide council” means the Florida Statewide Advocacy Council.

(e) “Local council” or “local advocacy council” means one of the local advocacy councils located in this state, under the supervision of the Florida Statewide Advocacy Council.

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

402.165 Florida Statewide Advocacy Council; confidential records and meetings.—

(1) ~~The Statewide Human Rights Advocacy Committee within the Department of Children and Family Services is redesignated as The Florida Statewide Advocacy Council shall be located in the Executive Office of the Governor, but may be assigned by the Governor for administrative support purposes to any Governor’s agency. Members of the council shall represent the interests of clients who are served by state agencies that provide client services. The Department of Children and Family Services shall provide administrative support and service to the statewide council to the extent requested by the executive director within available resources. The statewide council is not subject to control, supervision, or direction by any state agency providing client services the Department of Children and Family Services in the performance of its duties. The council shall consist of not less than 15 and not more than 20 residents of this state, one from each service area designated by the statewide council, who broadly represent the interests of the public and the clients of the state agencies that provide client services. The members shall be representative of four groups of state residents as follows: a one provider who delivers client services as defined in s. 402.164(2); a two nonsalaried representative representatives of nonprofit agencies or civic groups; a representative four representatives of consumer groups who is are currently receiving, or has have received, one or more client services within the past 4 years, at least 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, but may represent a one of whom represents the health-related profession or professions and one of whom represents the legal profession. In appointing the representative of the health-related professions, the appointing authority shall give priority of consideration to a physician licensed under chapter 458 or chapter 459; and, in appointing the representative of the legal profession, the appointing authority shall give priority of consideration to a member in good standing of The Florida Bar. Of the remaining members, no more than one shall be an elected official; no more than one shall be a health professional; no more than one shall be a legal professional; no more than one shall be a provider;~~

~~no more than two shall be nonsalaried representatives of nonprofit agencies or civic groups; and no more than one shall be an individual whose primary area of interest, experience, or expertise is a major client group of a client services group that is not represented on the council at the time of appointment. Except for the member who is an elected public official, each candidate for member of the statewide council must be given priority consideration if he or she has served as a member of a local Florida advocacy council, with priority consideration given to an applicant who has served a full term on a local council. Persons related to each other by consanguinity or affinity within the third degree may not serve on the statewide council at the same time.~~

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

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

(4) The Governor ~~may~~ shall fill ~~a each~~ vacancy on the statewide council from a list of nominees submitted by the statewide council or appoint any qualified person. A list of candidates may be submitted to the statewide council by the local council in the service area from which the vacancy occurs. Priority of consideration shall be given to the appointment of an individual who is receiving one or more client services and whose primary interest, experience, or expertise lies with a major client group that is not represented on the council at the time of the appointment. If an appointment is not made within 60 days after a vacancy occurs on the statewide council, the vacancy may be filled by a majority vote of the statewide council without further action by the Governor. A person who is employed by any state agency in client services may not be appointed to the statewide council.

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

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

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

(d) The statewide council shall annually prepare a budget request that, ~~is not to be changed by department staff after it is approved by the council, but shall be submitted to the Governor for transmittal to the Legislature.~~

The budget shall include a request for funds to carry out the activities of the statewide council and the local councils.

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

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

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

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

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

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

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

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

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

1. ~~The responsibilities of the statewide council and the local councils;~~
  2. ~~The organization and operation of the statewide council and the local councils, including procedures for replacing a member, formats for maintaining records of council activities, and criteria for determining what constitutes a conflict of interest for purposes of assigning and conducting investigations and monitoring;~~
  3. ~~Uniform procedures for the statewide council and the local councils relating to receiving and investigating reports of abuse or deprivation of constitutional or human rights;~~
  4. ~~The responsibilities and relationship of the local councils to the statewide council;~~
  5. ~~The relationship of the statewide council to the state agencies that receive and investigate reports of abuse and neglect of clients of state agencies, including the way in which reports of findings and recommendations related to reported abuse or neglect are given to the appropriate state agency that provides client services;~~
  6. ~~Provision for cooperation with the State Long-Term Care Ombudsman Council;~~
  7. ~~Procedures for appeal. An appeal to the statewide council is made by a local council when a valid complaint is not resolved at the local level. The statewide council may appeal an unresolved complaint to the secretary or director of the appropriate state agency that provides client services. If, after exhausting all remedies, the statewide council is not satisfied that the complaint can be resolved within the state agency, the appeal may be referred to the Governor;~~
  8. ~~Uniform procedures for gaining access to and maintaining confidential information; and~~
  9. ~~Definitions of misfeasance and malfeasance for members of the statewide council and local councils.~~
- (h) Supervising the operations of the local councils and monitoring the performance and activities of all local councils and providing technical assistance to members and staff of local councils.
- (i) Providing for the development and presentation of a standardized training program for members of local councils.
- (j) Developing and maintaining interagency agreements between the council and the state agencies providing client services. The interagency agreements shall address the coordination of efforts and identify the roles and responsibilities of the statewide and local councils and each agency in fulfillment of their responsibilities, including access to records.

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

1. 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 persons who receive client services from any state agency.

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

3. Standing to petition the circuit court for access to client records that are confidential as specified by law. The petition shall state the specific reasons for which the council is seeking access and the intended use of such information. The circuit court may authorize council access to the such records upon a finding that ~~such~~ access is directly related to an investigation regarding the possible deprivation of constitutional or human rights or the abuse of a client. Original client files, agency records, and reports may shall not be removed from a state agency, but copies must be provided to the council and the local councils at the agency's expense. Under no circumstance shall the council have access to confidential adoption records once the adoption is finalized by a court in accordance with ss. 39.0132, 63.022, and 63.162. Upon completion of a general investigation of practices and procedures of a state agency, the statewide council shall report its findings to that agency.

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

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

(d) All records prepared by members of the statewide council that reflect a mental impression, investigative strategy, or theory are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or until the investigation ceases to be active. For purposes of

this section, an investigation is considered “active” while the ~~such~~ investigation is being conducted by the statewide council with a reasonable, good faith belief that it may lead to a finding of abuse or of a violation of human rights. An investigation does not cease to be active so long as the statewide council is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the council or other administrative or law enforcement agency.

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

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

402.166 Florida local advocacy councils; confidential records and meetings.—

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

(2) Each local council shall have no fewer than 7 members and no more than 15 members, no more than 4 of whom are or have been recipients of one or more client services 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 providers who deliver client services as defined in s. 402.164(2); and two representatives of professional organizations, one of whom represents the health-related professions and one of whom represents the legal profession. Priority of consideration shall be given to the appointment of at least one medical or osteopathic physician, as defined in chapters 458 and 459, and one member in good standing of The Florida Bar. Priority of consideration shall also be given to the appointment of an individual who is receiving client services and whose primary interest, experience, or expertise lies with a major client group not represented on the local council at the time of the appointment. A person who is employed in client services by any state agency may not be appointed to the local council. No more than three individuals who are providing contracted services for clients to any state agency may serve on the same local council at the same time. Persons related to each other by consanguinity or affinity within the third degree may not serve on the same local council at the same time. All members of local councils must successfully complete a standardized training course for council members within 3 months after their appointment to

a local council. A member may not be assigned to an investigation that requires access to confidential information prior to the completion of the training course. After he or she completes the required training course, a member of a local council may not be prevented from participating in any activity of that local council, including investigations and monitoring, except due to a conflict of interest as described in the procedures established by the statewide council under ~~pursuant to~~ subsection (7).

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

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

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

(c) If no action is taken by the Governor to approve or disapprove a replacement of a member under ~~pursuant to~~ this subsection within 60 ~~30~~ days after the local council has notified the Governor of the appointment, then the appointment of the replacement may be considered approved by the Governor ~~statewide council~~.

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

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

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

(7) A local council shall first seek to resolve a complaint with the appropriate local administration, agency, or program; any matter not resolved by the local council shall be referred to the statewide council. A local council



shall comply with appeal procedures established by the statewide council. The duties, actions, and procedures of both new and existing local councils shall conform to ss. 402.164-402.167. The duties of each local council shall include, but are not limited to:

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

(b) Monitoring by site visit and ~~access to inspection~~ of records the delivery and use of services, programs, or facilities operated, funded, or contracted by a state agency that provides client services, for the purpose of preventing abuse or deprivation of the constitutional and human rights of clients. A local council may conduct an unannounced site visit or monitoring visit that involves ~~access to the inspection~~ of records if the visit is conditioned upon a complaint. A complaint may be generated by the council itself if information from a state agency that provides client services or from other sources indicates a situation at the program or facility that indicates possible abuse or neglect or deprivation of constitutional and human rights of clients. The local council shall follow uniform criteria established by the statewide council for the review of information and generation of complaints. Routine program monitoring and reviews that do not require an examination of records may be made unannounced.

(c) Receiving, investigating, and resolving reports of abuse or deprivation of constitutional and human rights ~~by a state agency or contracted service provider in the local service area.~~

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

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

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

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

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

(8)(a) In the performance of its duties, a local council shall have ~~the same~~ authority to access client records, state agency files, reports from any pro-

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

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

~~2.— Standing to petition the circuit court for access to client records that are confidential as specified by law. The petition shall state the specific reasons for which the council is seeking access and the intended use of such information. The court may authorize access to such records upon a finding that such access is directly related to an investigation regarding the possible deprivation of constitutional or human rights or the abuse of a client. Original client files, records, and reports shall not be removed from a state agency. Upon no circumstances shall the council have access to confidential adoption records once the adoption is finalized in court in accordance with ss. 39.0132, 63.022, and 63.162. Upon completion of a general investigation of practices and procedures followed by a state agency in providing client services, the council shall report its findings to the appropriate state agency.~~

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

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

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

local council is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the local council or other administrative or law enforcement agency.

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

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

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

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

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

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

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

~~(2) The Department of Children and Family Services shall provide for the location of local councils in area offices and shall provide necessary equipment and office supplies, including, but not limited to, clerical and word processing services, photocopiers, telephone services, and stationery and other necessary supplies, and shall establish the procedures by which council members are reimbursed for authorized expenditures.~~

~~(3) The secretaries or directors of the state agencies shall ensure the full cooperation and assistance of employees of their respective state agencies with members and staff of the statewide and local councils. The secretary or director of each state agency providing client services shall notify its contract, service, and treatment providers of the powers, duties, and responsibilities of the statewide and local councils. Further, the Secretary of Children and Family Services shall ensure that, to the extent possible, staff assigned to the statewide council and local councils are free of interference from or control by the department in performing their duties relative to those councils.~~

Section 5. The Florida Statewide Advocacy Council, its three full-time equivalent positions and associated expense funding, the local councils, and the toll-free complaint line are hereby transferred by a type two transfer, pursuant to section 20.06(2), Florida Statutes, from the Department of Children and Family Services to the Florida Statewide Advocacy Council. The Department of Children and Family Services is directed to identify 10 additional full-time equivalent positions funded from the General Revenue

Fund, which positions are hereby transferred by a type two transfer, pursuant to section 20.06(2), Florida Statutes, to the Florida Statewide Advocacy Council for support of the local councils.

Section 6. This act shall take effect January 1, 2005.

Approved by the Governor June 24, 2004.

Filed in Office Secretary of State June 24, 2004.