

HOUSE BILL REPORT

HB 3155

As Reported by House Committee On:
Children & Family Services

Title: An act relating to the office of the ombudsman for persons with developmental disabilities.

Brief Description: Creating an office of the ombudsman for persons with developmental disabilities.

Sponsors: Representatives Roberts, Haler, Kagi, Walsh, Hudgins, Chase, Darneille, Linville, Dickerson, Schual-Berke, Conway, Hasegawa, Simpson and Santos.

Brief History:

Committee Activity:

Children & Family Services: 2/1/06 [DP].

Brief Summary of Bill

- Creates the Office of the Ombudsman for Persons with Developmental Disabilities.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: Do pass. Signed by 9 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Darneille, Dickerson, Dunn, Haler and Pettigrew.

Staff: Sonja Hallum (786-7092).

Background:

The Division of Developmental Disabilities (DDD) within the Department of Social and Health Services (DSHS) assists individuals with developmental disabilities and their families to obtain services and supports.

If a developmentally disabled person, his or her guardian, or other interested party has a complaint regarding potential abuse or neglect, the person may contact the DDD which will investigate and possibly refer a complaint to adult protective services or child protective services for further investigation. Complaints and reports can also be made to the licensor of an out-of-home placement, generally the Department of Health, or to the Washington Protection and Advocacy System. If there is a complaint regarding certain actions by the DDD, there is an appeal process through the Administrative Procedures Act.

An additional option for complaint resolution is through the available ombuds programs. An ombuds program generally focuses on individual complaint resolutions on behalf of individuals and seeks a satisfactory resolution of complaints or grievances by working with provider agencies and state administering agencies.

In Washington, the Long Term Care Ombudsman serves persons with developmental disabilities who live in adult family homes, boarding homes, or nursing homes. The Children and Family Ombudsman serves persons with developmental disabilities who live in foster care. Currently, Washington does not have an ombuds program for individuals with developmental disabilities who receive state-funded community services.

Summary of Bill:

Creation of the Office

An Office of the Ombudsman for Persons with Developmental Disabilities is created within the Office of the Governor. The Ombudsman is appointed by the Governor, subject to confirmation by the Senate, and holds the office for a term of three years. The Ombudsman reports directly to the Governor and is independent from the Department of Social and Health Services (DSHS).

Ombudsman Duties

The Ombudsman performs the following duties:

- provides information as appropriate on the rights and responsibilities of individuals with developmental disabilities receiving services, and on the procedures for providing these services;
- investigates, upon his or her own initiative, or upon receipt of a complaint, an administrative act alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds; however, the ombudsman may decline to investigate any complaint as provided by rules adopted under this chapter;
- monitors the procedures as established, implemented, and practiced by the DSHS to carry out its responsibilities in delivering services to persons with developmental disabilities;
- reviews periodically the facilities and procedures of state institutions serving persons with developmental disabilities, and state licensed facilities or residences;
- recommends changes in the procedures for addressing the needs of persons with developmental disabilities;
- submits annually to the appropriate committees of the Legislature and to the Governor by November 1 a report analyzing the work of the office including recommendations;
- grants the appropriate committees of the Legislature access to all relevant records in the possession of the Ombudsman unless prohibited by law; and
- adopts rules necessary to implement this chapter.

If the Ombudsman has reasonable cause to believe that any public official, employee, or other person acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman must report the information to the appropriate authorities.

Access to Information

When the Ombudsman is carrying out his or her official duties, the DSHS must permit the following:

- the Ombudsman or the Ombudsman's designee to communicate privately with any person with developmental disabilities who is receiving services through the DSHS;
- the Ombudsman or the Ombudsman's designee to have physical access to state institutions serving persons with developmental disabilities, and state-licensed facilities or residences; and
- grant the Ombudsman or the Ombudsman's designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the DSHS that the Ombudsman considers necessary in an investigation.

Confidentiality

The Ombudsman is required to treat all matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as privileged and confidential, except as necessary to enable the Ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. If the Ombudsman receives information that by law is confidential or privileged, the Ombudsman must maintain the confidentiality of the information and not further disclose or disseminate the information, except as provided by law. However, the Ombudsman may not keep information confidential if it is directly related to an alleged crime, there is risk of imminent serious harm to any person, or if it is related to the general operation of the Ombudsman's office.

Investigative records of the Office of the Ombudsman are confidential and are exempt from public disclosure. Identifying information about complainants or witnesses are not subject to any method of legal compulsion and this information cannot be revealed to the Governor except when the complainant or witness waives confidentiality or there is an investigation by the Governor or Legislature for neglect of duty or misconduct by the Ombudsman or Ombudsman's office and the identifying information is necessary to the investigation of the Ombudsman's acts.

Liability

An employee of the Office of the Ombudsman for Persons with Developmental Disabilities is not liable for the good faith performance of his or her official responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken against an employee, family member, or recipient of developmental disability services for any communication or information given to aid the office of the Ombudsman, unless the communication or information is given maliciously or without good faith.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) This issue came from press coverage earlier this year. There are Ombudmen for children, long-term care, and mental health, but there is not an Ombudsman for persons with developmental disabilities. There is a tremendous need for advocacy for people in the developmental disabilities system to help them navigate the system and get the help they need. An Ombudsman would give assistance with paperwork which is hard for persons with developmental disabilities. There is a medicaid match that could bring down the costs. The cost of providing an Ombudsman is small relative to the amount the state pays to care for persons with developmental disabilities.

Testimony Against: None.

Persons Testifying: (In support) Representative Roberts, prime sponsor; Ed Holen, Developmental Disabilities Council; Marcia Mage; Phil Jordan, Washington Protection and Advocacy System; Sue Elliott, Arc of Washington State; and Alene Brede.

Persons Signed In To Testify But Not Testifying: None.