

# HOUSE BILL REPORT

## HB 1202

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**As Reported by House Committee On:**  
Human 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, Walsh, O'Brien, Dickerson, Haler, Pettigrew, Darneille, Green, Appleton, McDermott, Kagi, Miloscia, McCoy, Hudgins, P. Sullivan, Conway, Wood, Santos, Schual-Berke, Simpson, Lantz, Hasegawa, Kenney, Haigh and Morrell.

**Brief History:**

**Committee Activity:**

Human Services: 1/25/07, 1/30/07 [DP].

**Brief Summary of Bill**

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

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### HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** Do pass. Signed by 6 members: Representatives Dickerson, Chair; Roberts, Vice Chair; Walsh, Assistant Ranking Minority Member; Darneille, McCoy and O'Brien.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Ahern, Ranking Minority Member and Bailey.

**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.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

If an individual with a developmental disability, 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 the 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 resolution 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 Family and Children Ombudsman serves persons with developmental disabilities who live in foster care. The Mental Health Ombudsman serves individuals with mental health issues. Currently, Washington does not have an ombuds program for individuals with developmental disabilities who receive state-funded community services.

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## **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 from a list of six to ten candidates certified by the Developmental Disabilities Council as qualified for the position and holds the position for five 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 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 and follows through on behalf of a complainant if the findings of the investigation favor the complainant with a developmental disability;
- 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 procedures for providing services and supports to 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 of the Ombudsman 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 the laws relating to the Ombudsman's office.

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 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 is 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.

Information in the control of the Ombudsman is not confidential if it is direct knowledge of an alleged crime, it involves a threat or risk of imminent serious harm to any person, or relates to the general operation of the Ombudsman's office.

### 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 of the DSHS or employee of any agency contracting with the DSHS, or a 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.

### Consumer Advisory Committee

A Developmental Disabilities Ombudsman Consumer Advisory Committee (Advisory Committee) is created. The Advisory Committee is comprised of nine people, with the majority of the members being individuals with developmental disabilities or family members. The Advisory Committee is required to submit a written evaluation of the Ombudsman program to the Governor by August 31 of each year. Three months prior to the end of the Ombudsman's term, the Advisory Council shall submit a recommendation to the Governor and Developmental Disabilities Council regarding whether the Ombudsman should be reappointed.

### Collaboration

The Developmental Disabilities Ombudsman is required to collaborate with the Long-Term Care Ombudsman, the Family and Children Ombudsman, the Washington Protection and Advocacy System, and the Special Education Ombudsman to clarify authority when their mandates overlap.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony:**

(In support) People with developmental disabilities need the Ombudsman in order to have their voices heard. They are vulnerable people who need assistance dealing with the system. An independent review is needed when dealing with the Department. This doesn't overlap with what is already out there. It serves a different population. People with developmental disabilities who live in the community do not have anywhere to turn when they need help

resolving an individual issue with the Department. The advocacy programs out there now are so overburdened they can't deal with individual problems.

(Concerns) The Long-Term Care Ombudsman is a better model than the Family and Children's Ombudsman. The bill needs to address more issues to avoid duplication. The Mental Health Ombudsman should be mentioned.

(Opposed) None.

**Persons Testifying:** (In Support) Representative Roberts, prime sponsor; Representative Walsh; Emily Rogers, Association of Retarded Citizens of Washington; Mike Raymond, Dale Colin, and Robert Wardell, Self Advocates in Leadership and Self Advocates of Washington; Loren M. Freeman, Freeman & Associates; Ed Holen, Developmental Disabilities Council; Louise Ryan, Long Term Care Ombudsman Program; and Mark Stroh, Washington Protection & Advocacy System.

(Concerns) Kathy Leitch, Aging and Disability Services Administration, Department of Social and Health Services.

**Persons Signed In To Testify But Not Testifying:** None.