
SENATE BILL 6363

State of Washington

63rd Legislature

2014 Regular Session

By Senators Kohl-Welles, Darneille, O'Ban, Hargrove, and Keiser

Read first time 01/22/14. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to creating a statewide ombuds for behavioral
2 health services; and adding a new chapter to Title 43 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** There is hereby created an office of the
5 behavioral health ombuds within the office of the governor for the
6 purpose of promoting public awareness and understanding of state-funded
7 behavioral health services, identifying system issues and responses for
8 the governor and the legislature to act upon, and monitoring and
9 ensuring compliance with administrative acts, relevant statutes, rules,
10 contract terms, and policies pertaining to provision of behavioral
11 health services, and the placement, supervision, and treatment of
12 adults and children in state hospitals or in state-licensed facilities.
13 The ombuds shall report directly to the governor and shall exercise his
14 or her powers and duties independently of the secretary of the
15 department of social and health services and the director of the health
16 care authority.

17 NEW SECTION. **Sec. 2.** (1) Subject to confirmation by the senate,
18 the governor shall appoint an ombuds who is a person of recognized

1 judgment, independence, objectivity, and integrity, and is qualified by
2 training or experience, or both, in behavioral health service law,
3 contracts, and policy.

4 (2)(a) Before the appointment of the behavioral health ombuds, the
5 governor shall share information regarding the appointment to a six-
6 person legislative committee, to consist of three senators and three
7 members of the house of representatives from the legislature.

8 (b) The president of the senate shall appoint the senate members of
9 the committee. No more than two members may represent the same party.

10 (c) The speaker of the house of representatives shall appoint the
11 house of representatives members of the committee. No more than two
12 members may represent the same party.

13 (3) The person appointed ombuds shall hold office for a term of
14 three years and shall continue to hold office until reappointed or
15 until his or her successor is appointed. The governor may remove the
16 ombuds only for neglect of duty, misconduct, or inability to perform
17 duties. Any vacancy must be filled by similar appointment for the
18 remainder of the unexpired term.

19 NEW SECTION. **Sec. 3.** The ombuds shall perform the following
20 duties:

21 (1) Provide information as appropriate on the rights and
22 responsibilities of individuals receiving behavioral health services,
23 and on the procedures for providing these services;

24 (2) Investigate, upon his or her own initiative or upon receipt of
25 a complaint, an administrative act alleged to be contrary to law, rule,
26 or policy, imposed without an adequate statement of reason, or based on
27 irrelevant, immaterial, or erroneous grounds; however, the ombuds may
28 decline to investigate any complaint as provided by rules adopted under
29 this chapter;

30 (3) Monitor the procedures as established, implemented, and
31 practiced by state agencies to carry out their responsibilities in
32 delivering behavioral health services, regulating behavioral health
33 service providers, or monitoring contracts for provision of behavioral
34 health services with a view toward accomplishment of objectives
35 delineated in applicable statutes, polices, and procedures to promote
36 health and safety;

1 (4) Review periodically the facilities and procedures of state
2 hospitals, and state-licensed facilities or agencies providing
3 behavioral health services to adults and children;

4 (5) Recommend changes in the procedures for addressing the
5 behavioral health needs of adults and children;

6 (6) Submit annually to the committee established in section 2 of
7 this act and to the governor by November 1st a report analyzing the
8 work of the office, including recommendations;

9 (7) Grant the committee access to all relevant records in the
10 possession of the ombuds unless prohibited by law; and

11 (8) Adopt rules necessary to implement this chapter.

12 NEW SECTION. **Sec. 4.** The ombuds shall treat all matters under
13 investigation, including the identities of service recipients,
14 complainants, and individuals from whom information is acquired, as
15 confidential, except as far as disclosures may be necessary to enable
16 the ombuds to perform the duties of the office and to support any
17 recommendations resulting from an investigation. Upon receipt of
18 information that by law is confidential or privileged, the ombuds shall
19 maintain the confidentiality of such information and may not further
20 disclose or disseminate the information except as provided by
21 applicable state or federal law. Investigative records of the office
22 of the ombuds are confidential and are exempt from public disclosure
23 under chapter 42.56 RCW.

24 NEW SECTION. **Sec. 5.** Neither the ombuds nor the ombuds's staff
25 may be compelled, in any judicial or administrative proceeding, to
26 testify or to produce evidence regarding the exercise of the official
27 duties of the ombuds or of the ombuds's staff. All related memoranda,
28 work product, notes, and case files of the ombuds's office are
29 confidential, are not subject to discovery, judicial or administrative
30 subpoena, or other method of legal compulsion, and are not admissible
31 in evidence in a judicial or administrative proceeding. This section
32 does not apply to the legislative committee under section 2 of this
33 act.

34 NEW SECTION. **Sec. 6.** (1) Subject to section 7 of this act,
35 identifying information about complainants or witnesses is not subject

1 to any method of legal compulsion, nor may such information be revealed
2 to the legislative committee or the governor except under the following
3 circumstances: (a) The complainant or witness waives confidentiality;
4 (b) under a legislative subpoena when there is a legislative
5 investigation for neglect of duty or misconduct by the ombuds or
6 ombuds's office when the identifying information is necessary to the
7 investigation of the ombuds's acts; or (c) under an investigation or
8 inquiry by the governor as to neglect of duty or misconduct by the
9 ombuds or ombuds's office when the identifying information is necessary
10 to the investigation of the ombuds's acts.

11 (2) For the purposes of this section, "identifying information"
12 includes the complainant's or witness's name, location, telephone
13 number, likeness, social security number or other identification
14 number, or identification of immediate family members.

15 NEW SECTION. **Sec. 7.** The privilege described under section 6 of
16 this act does not apply when:

17 (1) The ombuds or ombuds's staff member has direct knowledge of an
18 alleged crime, and the testimony, evidence, or discovery sought is
19 relevant to that allegation;

20 (2) The ombuds or a member of the ombuds's staff has received a
21 threat of, or becomes aware of a risk of, imminent serious harm to any
22 person, and the testimony, evidence, or discovery sought is relevant to
23 that threat or risk;

24 (3) The ombuds has been asked to provide general information
25 regarding the general operation of, or the general processes employed
26 at, the ombuds's office; or

27 (4) The ombuds or ombuds's staff member has direct knowledge of a
28 failure by any person specified in RCW 26.44.030, including the state
29 family and children's ombuds or any volunteer in the ombuds's office,
30 to comply with RCW 26.44.030.

31 NEW SECTION. **Sec. 8.** (1) An employee of the office of the
32 behavioral health ombuds is not liable for good faith performance of
33 responsibilities under this chapter.

34 (2) No discriminatory, disciplinary, or retaliatory action may be
35 taken against an employee of the department, an employee of a
36 contracting agency of the department, a guardian, or a recipient of

1 behavioral health services for any communication made, or information
2 given or disclosed, to aid the office of the behavioral health ombuds
3 in carrying out its responsibilities, unless the communication or
4 information is made, given, or disclosed maliciously or without good
5 faith. This subsection is not intended to infringe on the rights of
6 the employer to supervise, discipline, or terminate an employee for
7 other reasons.

8 (3) All communications by an ombuds, if reasonably related to the
9 requirements of that individual's responsibilities under this chapter
10 and done in good faith, are privileged and that privilege is a defense
11 in any action in libel or slander.

12 NEW SECTION. **Sec. 9.** When the ombuds or ombuds's staff member has
13 reasonable cause to believe that any public official, employee, or
14 other person has acted in a manner warranting criminal or disciplinary
15 proceedings, the ombuds or ombuds's staff member shall report the
16 matter, or cause a report to be made, to the appropriate authorities.

17 NEW SECTION. **Sec. 10.** The department of social and health
18 services, state hospitals, the health care authority, regional support
19 networks, and behavioral health service providers under contract shall:

20 (1) Allow the ombuds or the ombuds's designee to communicate
21 privately with any person in the custody of the state for the purposes
22 of carrying out his or her duties under this chapter;

23 (2) Permit the ombuds or the ombuds's designee physical access to
24 state institutions serving persons with behavioral health disorders and
25 state-licensed facilities or residences for the purpose of carrying out
26 his or her duties under this chapter;

27 (3) Upon the ombuds's request, grant the ombuds or the ombuds's
28 designee the right to access, inspect, and copy all relevant
29 information, records, or documents in their possession or control that
30 the ombuds considers necessary in an investigation; and

31 (4) Grant the office of the behavioral health ombuds unrestricted
32 online access to electronic databases for the purpose of carrying out
33 its duties under this chapter.

1 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
2 constitute a new chapter in Title 43 RCW.

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