

# SENATE BILL REPORT

## SB 5213

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As of January 29, 2021

**Title:** An act relating to clarifying the authority and role of the office of developmental disabilities ombuds.

**Brief Description:** Clarifying the authority and role of the office of developmental disabilities ombuds.

**Sponsors:** Senators Nguyen, Randall, Darneille, Honeyford, Keiser, Warnick, Wellman, Kuderer, Nobles, Robinson and Wilson, C..

**Brief History:**

**Committee Activity:** Health & Long Term Care: 1/29/21.

**Brief Summary of Bill**

- Authorizes the Developmental Disabilities Ombuds (DD Ombuds) to monitor and investigate services the Health Care Authority (HCA) and the Department of Children Youth and Families (DCYF) provide to individuals with developmental disabilities.
- Requires DCYF, HCA, and the Department of Health to provide necessary information to the DD Ombuds for the DD Ombuds to carry out its duties.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** LeighBeth Merrick (786-7445)

**Background:** In 2016, the Legislature created the Office of the Developmental Disabilities Ombuds (DD Ombuds) as a private independent office with the duty to monitor the services provided to people with developmental disabilities, investigate complaints, and issue reports and recommendations to the Legislature.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Under current law, the DD Ombuds has the authority to monitor the procedures of the Department of Social and Health Services (DSHS) as it relates to the delivery of services for persons with developmental disabilities and periodically review state institutions that serve persons with developmental disabilities as well as state-licensed facilities and residences. The DD Ombuds must treat all matters under investigation as confidential. No discriminatory, disciplinary, or retaliatory action may be taken against a DSHS service recipient, or an employee of DSHS or Department of Commerce, or an employee of a DSHS contracted agency for communicating with the DD Ombuds. DSHS must allow the DD Ombuds to communicate privately with any individuals receiving services from DSHS, access state institutions serving persons with developmental disabilities, and access documents necessary for investigations.

In 2017, the Legislature established the Department of Children, Youth, and Families (DCYF), and moved responsibility for child welfare and juvenile justice programs from DSHS to DCYF. In 2018, the Legislature transferred the oversight and purchasing of behavioral health services from DSHS to the Health Care Authority (HCA) and the responsibilities for certification of behavioral health providers was transferred from DSHS to the Department of Health (DOH).

**Summary of Bill:** In addition to DSHS, the DD Ombuds is authorized to monitor the procedures of DCYF and HCA as it relates to delivery of services for persons with developmental disabilities. The DD Ombuds is authorized to periodically review state institutions and state-licensed facilities that serve individuals with developmental disabilities and the procedures of services people with developmental disabilities receive from the state or state-certified providers. This includes DSHS, DCYF, and HCA services.

In addition to treating all matters under investigation as confidential, the DD Ombuds must treat all records containing identifying information as confidential. No discriminatory, disciplinary, or retaliatory action may be taken against a DSHS, HCA, DCYF or DOH service recipient, or an employee of DSHS, HCA, DCYF, DOH or Department of Commerce, or an employee of an agency contracting with DSHS, HCA, DCYF, DOH, or Department of Commerce for communicating with the DD Ombuds. DSHS, DCYF, HCA, and DOH must allow the DD Ombuds to:

- communicate privately with any individuals receiving services from their respective agencies;
- access state institutions or state-licensed facilities serving persons with developmental disabilities;
- access information in possession of DSHS, DOH, DCYF and HCA for the DD Ombuds to carry out its duties;
- access information about people with developmental disabilities who receive services from state-certified providers or state-contracted providers; and
- access information the DD Ombuds considers necessary for conducting an investigation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The DD Ombuds is vital program to our state and to individuals who receive them. The DD Ombuds needs access to all relevant information in order to fulfill its duties. This bill clarifies scope of the DD Ombuds so it is consistent with the legislative intent that individuals with developmental disabilities have access to DD Ombuds services regardless of the setting or services the individual receives. Individuals with developmental disabilities are at greater risk for abuse, neglect, exploitation and violation of their rights. It is important individuals with developmental disabilities have a watchdog to look out for them and the DD Ombuds serves this role. The DD Ombuds are unable to help many individuals due to the existing barriers they face with accessing information. This bill would eliminate those barriers. Many people are not able to access the DD Ombuds because they live in community settings. People living in community settings experience isolation and deserve the same safety nets people living in state institutions receive. Individuals should be able to access these services regardless of where they live. This bill clarifies state agencies can provide requested information to the DD Ombuds and the DD Ombuds can reach individuals living in state-contracted facilities. We understand there are concerns from the state agencies and are working with them to address their concerns. Some individuals with developmental disabilities are unable to speak. When the DD Ombuds is helping an individual that cannot speak it is necessary for the DD Ombuds to have access to all relevant information about the person.

CON: This bill is well-intended, but there are unforeseen consequences that would impact the individual's civil rights. Granting the DD Ombuds access to all records in every system, including private medical records would violate civil rights. It is also potentially dangerous for the DD Ombuds to have uncontrolled access to information for every person.

OTHER: The state agencies involved have concerns. Medicaid clients and their families already have access to due process rights. DDA must provide clients with information on how to access the DD Ombuds. This bill would allow the DD Ombuds to challenge a client's services without a client's consent or scrutinize clinical services when lacking critical expertise. The lack of definition for "information" in the bill is ambiguous. The disclosures the bill requires could conflict private health care laws. The DD Ombuds should include parents and family members on their advisory board. I am concerned about the impartial aspect of DD Ombuds and whether or not they should be promoting specific pieces of legislation.

**Persons Testifying:** PRO: Senator Joe Nguyen, Prime Sponsor; John Lemus, citizen; Betty

Schwieterman, Developmental Disabilities Ombuds; Adrienne Stuart, Washington State Developmental Disabilities Council; Helen Black; Ivanova Smith, Self Advocates in Leadership Sail; Kyle Matheon, Self Advocate; Robert Wardell, Self Advocate; Darya Farivar, Disability Rights Washington; Patricia Hunter, Washington State LTC Ombuds.

CON: Darla Helt, PEACE.

OTHER: Larita Paulsen, Health Care Authority; Lloyd Baker, Action DD; Linda Hyatt.

**Persons Signed In To Testify But Not Testifying:** No one.