
SENATE BILL 5978

State of Washington 65th Legislature 2017 3rd Special Session
By Senators McCoy and Hunt

1 AN ACT Relating to creating an office of the state ombuds;
2 amending RCW 43.03.028, 43.06A.010, 43.06B.010, 43.190.030,
3 43.382.005, and 51.14.300; reenacting and amending RCW 42.56.240;
4 adding a new chapter to Title 43 RCW; repealing RCW 43.06A.020,
5 51.14.310, and 51.14.320; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
8 establish, in addition to other remedies or rights of appeal of any
9 person under state law, an independent, impartial, state office,
10 readily available to the public, responsible to the legislature,
11 empowered to investigate the acts of state administrative agencies
12 and to recommend appropriate changes toward the goals of safeguarding
13 the rights of persons and of promoting higher standards of
14 competency, efficiency, and justice in the administration of state
15 laws.

16 Therefore, the legislature finds it necessary to create an office
17 of the state ombuds within the office of the governor to foster
18 confidence in government and improve government services.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

4 (1)(a) "Administrative act" means an action, decision, failure to
5 act, omission, rule or regulation, interpretation, recommendation,
6 practice, policy, or procedure of an agency.

7 (b) "Administrative act" does not include the preparation or
8 presentation of legislation, the substantive content of a judicial
9 order, decision, or opinion, or an agency's actions under chapter
10 42.30 or 42.56 RCW.

11 (2) "Agency" means every state department, division, bureau,
12 board, commission, or other state agency.

13 (3) "Confidential information" means (a) specific information,
14 rather than generalized knowledge, that is not available to the
15 general public on request or (b) information made confidential by
16 law.

17 (4) "Record" means all records, documents, books, papers, files,
18 photographs, microfilms, sound recordings, video recordings, magnetic
19 storage media, computer data, and all other materials, regardless of
20 physical form or characteristics, created, generated, recorded,
21 received, possessed, or controlled by or on behalf of any agency.

22 NEW SECTION. **Sec. 3.** (1) The office of the state ombuds is
23 created.

24 (2) The state ombuds must be a person of recognized judgment,
25 independence, objectivity, and integrity, and who is qualified in
26 training and experience.

27 (3) A candidate for state ombuds must be nominated by the
28 affirmative vote of a majority of the ombuds nomination committee.
29 The governor shall either affirm or return for reconsideration the
30 nomination of the committee. The ombuds nomination committee is
31 composed of the following members:

32 (a) One member from each of the two largest caucuses in the house
33 of representatives, appointed by the speaker of the house of
34 representatives; and

35 (b) One member from each of the two largest caucuses in the
36 senate, appointed by the president of the senate.

37 (4) The legislature, by a vote of two-thirds of the members of
38 each house present and voting, may remove the ombuds from office, but
39 only for mental or physical incapacity to perform the duties of

1 office, or other grounds sufficient for removal of a judge from any
2 state court. If the position of state ombuds becomes vacant for any
3 reason, the deputy ombuds shall serve as acting ombuds until an
4 ombuds has been appointed to serve the remainder of the unexpired
5 term.

6 (5) The state ombuds may employ a deputy ombuds and a
7 confidential secretary and such staff as are necessary, or contract
8 with another state agency pursuant to chapter 39.34 RCW, for support
9 in carrying out the purposes of this chapter.

10 (6) The person appointed ombuds shall hold office for a term of
11 five years and shall continue to hold office until reappointed or
12 until his or her successor is appointed. He or she may be appointed
13 to a second term, but for no additional terms thereafter. The
14 governor may remove the ombuds only for neglect of duty, misconduct,
15 or inability to perform duties. Any vacancy must be filled by similar
16 appointment for the remainder of the unexpired term.

17 (7) A person may not serve as state ombuds within one year of
18 having served as an elected officer. During his or her tenure, the
19 state ombuds is prohibited from engaging in any of the following
20 activities, either within or outside the state of Washington:

21 (a) Holding or campaigning for elective office;

22 (b) Serving as an officer of any political party or political
23 committee;

24 (c) Permitting his or her name to be used in support of or in
25 opposition to a candidate or proposition;

26 (d) Soliciting or making contributions to a candidate or in
27 support of or in opposition to any candidate or proposition;

28 (e) Participating in any way in any election campaign; or

29 (f) Lobbying, employing, or assisting a lobbyist, except that the
30 staff of the office may lobby to the limited extent permitted by RCW
31 42.17A.635 on matters directly affecting this chapter.

32 (8) Salaries for staff of the state ombuds must be equitable
33 across departmental assignments, if any, and based solely on
34 qualification and experience. The salary of the state ombuds may not
35 be diminished during the state ombuds's term of office, unless by
36 general law applying to all salaried officers of the state.

37 NEW SECTION. **Sec. 4.** The state ombuds shall perform the
38 following duties:

1 (1) Investigate, upon his or her own initiative or upon receipt
2 of a complaint, an administrative act of any agency alleged to meet
3 any of the grounds for investigation set forth in section 5 of this
4 act, without regard to the finality of the administrative act.

5 (2) Undertake, participate in, or cooperate with persons and
6 agencies in such conferences, inquiries, meetings, or studies which
7 might improve the functioning of agencies or lessen the risks that
8 objectionable administrative acts will occur.

9 (3) Make such inquiries and obtain such assistance and
10 information from any agency or person as the ombuds shall require for
11 the discharge of its duties.

12 (4) Notwithstanding any other provision of state law, have access
13 to and to examine and copy, without payment of a fee, any agency
14 records, including records which are confidential by state law.

15 (5) Refer matters to the attorney general for civil or criminal
16 enforcement.

17 (6) Submit annually to the legislature and the governor, by
18 December 31st of each year, a report that contains a summary of the
19 office's activities during the previous year. This report must
20 include the following:

21 (a) The state ombuds's mission statement;

22 (b) The number of matters investigated, and the number of matters
23 in which the state ombuds recommended each course of action in
24 section 7(2) of this act;

25 (c) Legislative issues affecting the state ombuds;

26 (d) Selected case studies illustrating the work of the state
27 ombuds and reasons for complaints;

28 (e) Staff contact information; and

29 (f) Any other information the state ombuds determines may be of
30 interest or assistance in fulfilling the purposes of this chapter.

31 (7) Notify the director or administrator of the agency in writing
32 of the office's intention to investigate a complaint unless
33 notification would unduly hinder the investigation, make the
34 investigation ineffective, or otherwise frustrate the purposes of
35 this chapter.

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

37 NEW SECTION. **Sec. 5.** (1) Upon receiving a complaint, the state
38 ombuds shall conduct an investigation of a complaint that is an
39 appropriate subject for an investigation. An appropriate subject for

1 investigation by the state ombuds includes any administrative act
2 which the state ombuds has reason to believe may be:

3 (a) Contrary to law, rule, or regulation;

4 (b) Unreasonable, unfair, oppressive, arbitrary, capricious, an
5 abuse of discretion, unnecessarily discriminatory, or otherwise
6 objectionable, even though in accordance with law;

7 (c) Based on a mistake of fact;

8 (d) Based on improper or irrelevant grounds;

9 (e) Unsupported by an adequate statement of reasons;

10 (f) Performed in an inefficient or discourteous manner; or

11 (g) Otherwise erroneous.

12 (2) Nothing in this section affects the responsibilities or
13 powers of the joint administrative rules review committee under
14 chapter 34.05 RCW.

15 (3) Upon receiving a complaint, the state ombuds may refuse to
16 investigate an administrative act of an agency that otherwise
17 qualifies for investigation under this section if:

18 (a) The complainant could reasonably be expected to use another
19 remedy or channel for resolving the complaint;

20 (b) The complaint relates to a matter that is outside the duties
21 of the state ombuds;

22 (c) The complaint relates to an administrative act that the
23 complainant has had knowledge of for at least one year before filing
24 the complaint;

25 (d) The complainant does not have a sufficient personal interest
26 in the subject matter of the complaint; or

27 (e) The complaint is trivial, frivolous, vexatious, or made in
28 bad faith.

29 (4) The ombuds declining to investigate a complaint does not bar
30 the ombuds from proceeding on his or her own initiative to
31 investigate an administrative act, whether or not included in the
32 complaint.

33 (5) On receiving a complaint that involves confidential
34 information, the state ombuds shall either:

35 (a) Obtain a power of attorney from the complainant to access
36 confidential information specific to the complainant from the
37 relevant state agency; or

38 (b) Work with an employee of the relevant state agency who is
39 authorized to access confidential information.

1 NEW SECTION. **Sec. 6.** (1) All complaints must be addressed to
2 the state ombuds. If an agency receives correspondence between a
3 complainant and the state ombuds, it shall hold that correspondence
4 in trust and shall promptly forward the correspondence, unopened, to
5 the state ombuds.

6 (2) If requested by the complainant, the ombuds shall suitably
7 report the status of his or her investigation to the complainant.

8 (3) Within thirty days of receipt of the complaint, the state
9 ombuds shall notify the complainant of the decision to investigate or
10 not to investigate the complaint. If the state ombuds decides not to
11 investigate and if requested by the complainant, the state ombuds
12 shall provide the reasons for not investigating in writing.

13 (4) The state ombuds shall not charge any fees for investigations
14 or complaints.

15 (5) In an investigation, the state ombuds may:

16 (a) Make inquires and obtain information considered necessary,
17 subject to the restrictions in section 5(5) of this act;

18 (b) Enter without notice to inspect agency premises with agency
19 staff on the premises;

20 (c) Have access to all state agency records, including
21 confidential records, except the following records:

22 (i) Sealed court records, unless the state ombuds obtains a
23 subpoena;

24 (ii) Active criminal investigation records;

25 (iii) Records that could lead to disclosure of the identity of
26 confidential police informants;

27 (iv) Attorney work product and communications protected under
28 attorney-client privilege;

29 (v) Confidential taxpayer information under RCW 82.32.330;

30 (vi) Information protected by section 6103(d), 6103(p)(8), or
31 7213 of the internal revenue code; and

32 (vii) Health care information protected from disclosure under RCW
33 70.02.020; and

34 (d) Issue subpoenas if necessary to compel the attendance and
35 testimony of witnesses and the production of books, records,
36 documents, and other evidence to which the state ombuds may have
37 access pursuant to this section. The state ombuds may only issue a
38 subpoena if the state ombuds has previously requested testimony or
39 evidence and the person or agency to which the request was made has
40 failed to comply with the request in a reasonable amount of time.

1 (5) If requested by the complainants or witnesses, the state
2 ombuds shall maintain confidentiality with respect to those matters
3 necessary to protect the identities of the complainants or witnesses.
4 The state ombuds shall ensure that confidential records are not
5 disclosed. The state ombuds shall maintain the confidentiality of an
6 agency record.

7 NEW SECTION. **Sec. 7.** (1) After investigation of a complaint,
8 the state ombuds shall suitably inform the complainant of his or her
9 conclusion or recommendation and, if appropriate, any action taken or
10 to be taken by the agency involved.

11 (2) The state ombuds shall report the state ombuds's opinion and
12 recommendations to an agency, if the state ombuds finds, after
13 investigation, that:

14 (a) A matter should be further considered by that agency;

15 (b) A statute or rule on which an administrative act is based
16 should be amended;

17 (c) An administrative act should be modified or canceled;

18 (d) Reasons should be given for an administrative act;

19 (e) There are no grounds or there are insufficient grounds for
20 action by the agency;

21 (f) Any other action should be taken by the agency; or

22 (g) The agency's action was arbitrary or capricious, constituted
23 an abuse of discretion or was not according to law.

24 (3) If an opinion or recommendation of the state ombuds is
25 critical of a person or agency, the state ombuds shall first consult
26 with the person or agency before rendering the opinion or
27 recommendation and permit the agency reasonable time to reply. A
28 preliminary opinion or preliminary recommendation is confidential and
29 may not be publicly disclosed by any party.

30 (4) The state ombuds may request the agency to notify the office
31 within a specified time of any action taken on the ombuds's
32 recommendations.

33 (5) The state ombuds shall notify the complainant of the ombuds's
34 recommendations and the actions taken by the agency.

35 (6) If the state ombuds believes there is a breach of duty or
36 misconduct by an officer or employee of an agency in the conduct of
37 the officer's or employee's duty, the state ombuds shall refer the
38 matter to the director or administrator of the agency or to the
39 attorney general without notice to that officer or employee.

1 (7) After a reasonable time has elapsed, the state ombuds may
2 issue his or her conclusions or recommendations to the legislature,
3 the governor, the public, or any other appropriate authority. The
4 state ombuds shall include any brief statement the agency may provide
5 if an opportunity to reply is required by this act.

6 (8) If the state ombuds believes that an action has been dictated
7 by laws whose results are unfair or otherwise objectionable, and
8 could be revised by legislative action, the state ombuds shall notify
9 both houses of the legislature and the agency of desirable statutory
10 change.

11 NEW SECTION. **Sec. 8.** (1) The substantive content of any
12 finding, conclusion, recommendation, or report of the state ombuds or
13 member of his or her staff are not reviewable in any court.

14 (2) The state ombuds and his or her staff have the same
15 immunities from civil and criminal liabilities as a judge of this
16 state.

17 (3) The state ombuds and his or her staff may not be compelled to
18 testify or produce evidence in any judicial or administrative
19 proceeding with respect to any matter involving the exercise of their
20 official duties except as may be necessary to enforce this chapter.

21 (4) Records and files maintained by the state ombuds, other than
22 final investigation reports, are exempt from disclosure under chapter
23 42.56 RCW. The information contained in these records and files that
24 were prepared pursuant to an investigation conducted under this
25 chapter are not subject to disclosure except to the attorney general
26 or the director or administrator of an agency in connection with an
27 investigation that has been referred to the attorney general or the
28 director or administrator of an agency.

29 (5) Any person who provides information under this act may be
30 accompanied and advised by counsel of his or her choice and must be
31 paid the same fees and travel allowances and accorded the same
32 privileges and immunities as witnesses whose attendance has been
33 required in Thurston county superior court. However, a representative
34 of an agency providing information under this act during business
35 hours is not entitled to receive such fees and allowances.

36 NEW SECTION. **Sec. 9.** (1) No person who files a complaint or
37 participates in any investigation or proceeding pursuant to this
38 chapter is subject to any penalties, sanctions, or restrictions in

1 connection with his or her employment, nor may any person be denied
2 any right, privilege, or benefit because of such action. A person who
3 alleges a violation of this part may bring a civil action for
4 appropriate injunctive relief, actual damages, and punitive damages.
5 Punitive damages may not exceed ten thousand dollars.

6 (2) A person who knowingly hinders the lawful actions of the
7 state ombuds or the staff of the state ombuds or who knowingly
8 refuses to comply with their lawful demands is guilty of a gross
9 misdemeanor.

10 NEW SECTION. **Sec. 10.** The provisions of this chapter are in
11 addition to and do not in any manner limit or affect any other
12 provisions of law under which any remedy or right of appeal is
13 provided for any person, or any procedure is provided for the inquiry
14 into or investigation of any matter. The powers conferred on the
15 state ombuds may be exercised notwithstanding any provision of law to
16 the effect that any administrative action shall be final or
17 unappealable.

18 **Sec. 11.** RCW 42.56.240 and 2017 c 261 s 7 and 2017 c 72 s 3 are
19 each reenacted and amended to read as follows:

20 The following investigative, law enforcement, and crime victim
21 information is exempt from public inspection and copying under this
22 chapter:

23 (1) Specific intelligence information and specific investigative
24 records compiled by investigative, law enforcement, and penology
25 agencies, and state agencies vested with the responsibility to
26 discipline members of any profession, the nondisclosure of which is
27 essential to effective law enforcement or for the protection of any
28 person's right to privacy;

29 (2) Information revealing the identity of persons who are
30 witnesses to or victims of crime or who file complaints with
31 investigative, law enforcement, or penology agencies, other than the
32 commission, if disclosure would endanger any person's life, physical
33 safety, or property. If at the time a complaint is filed the
34 complainant, victim, or witness indicates a desire for disclosure or
35 nondisclosure, such desire shall govern. However, all complaints
36 filed with the commission about any elected official or candidate for
37 public office must be made in writing and signed by the complainant
38 under oath;

1 (3) Any records of investigative reports prepared by any state,
2 county, municipal, or other law enforcement agency pertaining to sex
3 offenses contained in chapter 9A.44 RCW or sexually violent offenses
4 as defined in RCW 71.09.020, which have been transferred to the
5 Washington association of sheriffs and police chiefs for permanent
6 electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

7 (4) License applications under RCW 9.41.070; copies of license
8 applications or information on the applications may be released to
9 law enforcement or corrections agencies;

10 (5) Information revealing the identity of child victims of sexual
11 assault who are under age eighteen. Identifying information means the
12 child victim's name, address, location, photograph, and in cases in
13 which the child victim is a relative or stepchild of the alleged
14 perpetrator, identification of the relationship between the child and
15 the alleged perpetrator;

16 (6) Information contained in a local or regionally maintained
17 gang database as well as the statewide gang database referenced in
18 RCW 43.43.762;

19 (7) Data from the electronic sales tracking system established in
20 RCW 69.43.165;

21 (8) Information submitted to the statewide unified sex offender
22 notification and registration program under RCW 36.28A.040(6) by a
23 person for the purpose of receiving notification regarding a
24 registered sex offender, including the person's name, residential
25 address, and email address;

26 (9) Personally identifying information collected by law
27 enforcement agencies pursuant to local security alarm system programs
28 and vacation crime watch programs. Nothing in this subsection shall
29 be interpreted so as to prohibit the legal owner of a residence or
30 business from accessing information regarding his or her residence or
31 business;

32 (10) The felony firearm offense conviction database of felony
33 firearm offenders established in RCW 43.43.822;

34 (11) The identity of a state employee or officer who has in good
35 faith filed a complaint with an ethics board, as provided in RCW
36 42.52.410, or who has in good faith reported improper governmental
37 action, as defined in RCW 42.40.020, to the auditor or other public
38 official, as defined in RCW 42.40.020;

39 (12) The following security threat group information collected
40 and maintained by the department of corrections pursuant to RCW

1 72.09.745: (a) Information that could lead to the identification of a
2 person's security threat group status, affiliation, or activities;
3 (b) information that reveals specific security threats associated
4 with the operation and activities of security threat groups; and (c)
5 information that identifies the number of security threat group
6 members, affiliates, or associates;

7 (13) The global positioning system data that would indicate the
8 location of the residence of an employee or worker of a criminal
9 justice agency as defined in RCW 10.97.030;

10 (14) Body worn camera recordings to the extent nondisclosure is
11 essential for the protection of any person's right to privacy as
12 described in RCW 42.56.050, including, but not limited to, the
13 circumstances enumerated in (a) of this subsection. A law enforcement
14 or corrections agency shall not disclose a body worn camera recording
15 to the extent the recording is exempt under this subsection.

16 (a) Disclosure of a body worn camera recording is presumed to be
17 highly offensive to a reasonable person under RCW 42.56.050 to the
18 extent it depicts:

19 (i)(A) Any areas of a medical facility, counseling, or
20 therapeutic program office where:

21 (I) A patient is registered to receive treatment, receiving
22 treatment, waiting for treatment, or being transported in the course
23 of treatment; or

24 (II) Health care information is shared with patients, their
25 families, or among the care team; or

26 (B) Information that meets the definition of protected health
27 information for purposes of the health insurance portability and
28 accountability act of 1996 or health care information for purposes of
29 chapter 70.02 RCW;

30 (ii) The interior of a place of residence where a person has a
31 reasonable expectation of privacy;

32 (iii) An intimate image as defined in RCW 9A.86.010;

33 (iv) A minor;

34 (v) The body of a deceased person;

35 (vi) The identity of or communications from a victim or witness
36 of an incident involving domestic violence as defined in RCW
37 10.99.020 or sexual assault as defined in RCW 70.125.030, or
38 disclosure of intimate images as defined in RCW 9A.86.010. If at the
39 time of recording the victim or witness indicates a desire for

1 disclosure or nondisclosure of the recorded identity or
2 communications, such desire shall govern; or

3 (vii) The identifiable location information of a community-based
4 domestic violence program as defined in RCW 70.123.020, or emergency
5 shelter as defined in RCW 70.123.020.

6 (b) The presumptions set out in (a) of this subsection may be
7 rebutted by specific evidence in individual cases.

8 (c) In a court action seeking the right to inspect or copy a body
9 worn camera recording, a person who prevails against a law
10 enforcement or corrections agency that withholds or discloses all or
11 part of a body worn camera recording pursuant to (a) of this
12 subsection is not entitled to fees, costs, or awards pursuant to RCW
13 42.56.550 unless it is shown that the law enforcement or corrections
14 agency acted in bad faith or with gross negligence.

15 (d) A request for body worn camera recordings must:

16 (i) Specifically identify a name of a person or persons involved
17 in the incident;

18 (ii) Provide the incident or case number;

19 (iii) Provide the date, time, and location of the incident or
20 incidents; or

21 (iv) Identify a law enforcement or corrections officer involved
22 in the incident or incidents.

23 (e)(i) A person directly involved in an incident recorded by the
24 requested body worn camera recording, an attorney representing a
25 person directly involved in an incident recorded by the requested
26 body worn camera recording, a person or his or her attorney who
27 requests a body worn camera recording relevant to a criminal case
28 involving that person, or the executive director from either the
29 Washington state commission on African-American affairs, Asian
30 Pacific American affairs, or Hispanic affairs, has the right to
31 obtain the body worn camera recording, subject to any exemption under
32 this chapter or any applicable law. In addition, an attorney who
33 represents a person regarding a potential or existing civil cause of
34 action involving the denial of civil rights under the federal or
35 state Constitution, or a violation of a United States department of
36 justice settlement agreement, has the right to obtain the body worn
37 camera recording if relevant to the cause of action, subject to any
38 exemption under this chapter or any applicable law. The attorney must
39 explain the relevancy of the requested body worn camera recording to

1 the cause of action and specify that he or she is seeking relief from
2 redaction costs under this subsection (14)(e).

3 (ii) A law enforcement or corrections agency responding to
4 requests under this subsection (14)(e) may not require the requesting
5 individual to pay costs of any redacting, altering, distorting,
6 pixelating, suppressing, or otherwise obscuring any portion of a body
7 worn camera recording.

8 (iii) A law enforcement or corrections agency may require any
9 person requesting a body worn camera recording pursuant to this
10 subsection (14)(e) to identify himself or herself to ensure he or she
11 is a person entitled to obtain the body worn camera recording under
12 this subsection (14)(e).

13 (f)(i) A law enforcement or corrections agency responding to a
14 request to disclose body worn camera recordings may require any
15 requester not listed in (e) of this subsection to pay the reasonable
16 costs of redacting, altering, distorting, pixelating, suppressing, or
17 otherwise obscuring any portion of the body worn camera recording
18 prior to disclosure only to the extent necessary to comply with the
19 exemptions in this chapter or any applicable law.

20 (ii) An agency that charges redaction costs under this subsection
21 (14)(f) must use redaction technology that provides the least costly
22 commercially available method of redacting body worn camera
23 recordings, to the extent possible and reasonable.

24 (iii) In any case where an agency charges a requestor for the
25 costs of redacting a body worn camera recording under this subsection
26 (14)(f), the time spent on redaction of the recording shall not count
27 towards the agency's allocation of, or limitation on, time or costs
28 spent responding to public records requests under this chapter, as
29 established pursuant to local ordinance, policy, procedure, or state
30 law.

31 (g) For purposes of this subsection (14):

32 (i) "Body worn camera recording" means a video and/or sound
33 recording that is made by a body worn camera attached to the uniform
34 or eyewear of a law enforcement or corrections officer from a covered
35 jurisdiction while in the course of his or her official duties and
36 that is made on or after June 9, 2016, and prior to July 1, 2019; and

37 (ii) "Covered jurisdiction" means any jurisdiction that has
38 deployed body worn cameras as of June 9, 2016, regardless of whether
39 or not body worn cameras are being deployed in the jurisdiction on

1 June 9, 2016, including, but not limited to, jurisdictions that have
2 deployed body worn cameras on a pilot basis.

3 (h) Nothing in this subsection shall be construed to restrict
4 access to body worn camera recordings as otherwise permitted by law
5 for official or recognized civilian and accountability bodies or
6 pursuant to any court order.

7 (i) Nothing in this section is intended to modify the obligations
8 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,
9 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*
10 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and
11 the relevant Washington court criminal rules and statutes.

12 (j) A law enforcement or corrections agency must retain body worn
13 camera recordings for at least sixty days and thereafter may destroy
14 the records;

15 (15) Any records and information contained within the statewide
16 sexual assault kit tracking system established in RCW 43.43.545;
17 ((and))

18 (16)(a) Survivor communications with, and survivor records
19 maintained by, campus-affiliated advocates.

20 (b) Nothing in this subsection shall be construed to restrict
21 access to records maintained by a campus-affiliated advocate in the
22 event that:

23 (i) The survivor consents to inspection or copying;

24 (ii) There is a clear, imminent risk of serious physical injury
25 or death of the survivor or another person;

26 (iii) Inspection or copying is required by federal law; or

27 (iv) A court of competent jurisdiction mandates that the record
28 be available for inspection or copying.

29 (c) "Campus-affiliated advocate" and "survivor" have the
30 definitions in RCW 28B.112.--- (section 2, chapter 72, Laws of 2017);
31 ((and))

32 (17) Information and records prepared, owned, used, or retained
33 by the Washington association of sheriffs and police chiefs and
34 information and records prepared, owned, used, or retained by the
35 Washington state patrol pursuant to chapter 261, Laws of 2017; and

36 (18) Records and files maintained by the state ombuds, other than
37 final investigation reports.

38 **Sec. 12.** RCW 43.03.028 and 2011 1st sp.s. c 43 s 451 are each
39 amended to read as follows:

1 (1) The office of financial management shall study the duties and
2 salaries of the directors of the several departments and the members
3 of the several boards and commissions of state government, who are
4 subject to appointment by the governor or whose salaries are fixed by
5 the governor, and of the chief executive officers of the following
6 agencies of state government:

7 The arts commission; the human rights commission; the board of
8 accountancy; the eastern Washington historical society; the
9 Washington state historical society; the recreation and conservation
10 office; the criminal justice training commission; the traffic safety
11 commission; the horse racing commission; the public disclosure
12 commission; the state conservation commission; the commission on
13 Hispanic affairs; the commission on Asian Pacific American affairs;
14 the state board for volunteer firefighters and reserve officers; the
15 transportation improvement board; the public employment relations
16 commission; ~~((and))~~ the energy facilities site evaluation council;
17 and the state ombuds.

18 (2) The office of financial management shall report to the
19 governor or the chairperson of the appropriate salary fixing
20 authority at least once in each fiscal biennium on such date as the
21 governor may designate, but not later than seventy-five days prior to
22 the convening of each regular session of the legislature during an
23 odd-numbered year, its recommendations for the salaries to be fixed
24 for each position.

25 **Sec. 13.** RCW 43.06A.010 and 2013 c 23 s 71 are each amended to
26 read as follows:

27 ~~((There is hereby created an))~~ The functions and duties of the
28 office of the family and children's ombuds ~~((within the office of the~~
29 ~~governor for the purpose of promoting public awareness and~~
30 ~~understanding of family and children services, identifying system~~
31 ~~issues and responses for the governor and the legislature to act~~
32 ~~upon, and monitoring and ensuring compliance with administrative~~
33 ~~acts, relevant statutes, rules, and policies pertaining to family and~~
34 ~~children's services and the placement, supervision, and treatment of~~
35 ~~children in the state's care or in state-licensed facilities or~~
36 ~~residences. The ombuds shall report directly to the governor and~~
37 ~~shall exercise his or her powers and duties independently of the~~
38 ~~secretary)) shall be performed by the office of the state ombuds.~~

1 **Sec. 14.** RCW 43.06B.010 and 2013 c 23 s 82 are each amended to
2 read as follows:

3 (1) ~~((There is hereby created))~~ The functions and duties of the
4 office of the education ombuds ~~((within the office of the governor~~
5 ~~for the purposes of providing information to parents, students, and~~
6 ~~others regarding their rights and responsibilities with respect to~~
7 ~~the state's public elementary and secondary education system, and~~
8 ~~advocating on behalf of elementary and secondary students.~~

9 ~~(2)(a) The governor shall appoint an ombuds who shall be a person~~
10 ~~of recognized judgment, independence, objectivity, and integrity and~~
11 ~~shall be qualified by training or experience or both in the following~~
12 ~~areas:~~

13 ~~(i) Public education law and policy in this state;~~

14 ~~(ii) Dispute resolution or problem resolution techniques,~~
15 ~~including mediation and negotiation; and~~

16 ~~(iii) Community outreach.~~

17 ~~(b) The education ombuds may not be an employee of any school~~
18 ~~district, the office of the superintendent of public instruction, or~~
19 ~~the state board of education while serving as an education ombuds.~~

20 ~~(3) Before the appointment of the education ombuds, the governor~~
21 ~~shall share information regarding the appointment to a six-person~~
22 ~~legislative committee appointed and comprised as follows:~~

23 ~~(a) The committee shall consist of three senators and three~~
24 ~~members of the house of representatives from the legislature.~~

25 ~~(b) The senate members of the committee shall be appointed by the~~
26 ~~president of the senate. Two members shall represent the majority~~
27 ~~caucus and one member the minority caucus.~~

28 ~~(c) The house of representatives members of the committee shall~~
29 ~~be appointed by the speaker of the house of representatives. Two~~
30 ~~members shall represent the majority caucus and one member the~~
31 ~~minority caucus))~~ shall be performed by the office of the state
32 ombuds.

33 ~~((4))~~ (2) If sufficient appropriations are provided, the
34 ~~((education))~~ state ombuds shall delegate and certify regional
35 education ombuds. The ~~((education))~~ state ombuds shall ensure that
36 the regional ombuds selected are appropriate to the community in
37 which they serve ~~((and hold the same qualifications as in subsection~~
38 ~~(2)(a) of this section)).~~ The ~~((education))~~ state ombuds may not
39 contract with the superintendent of public instruction, or any
40 school, school district, or current employee of a school, school

1 district, or the office of the superintendent of public instruction
2 for the provision of regional ombuds services.

3 **Sec. 15.** RCW 43.190.030 and 2013 c 23 s 89 are each amended to
4 read as follows:

5 There is created the office of the state long-term care ombuds.
6 The (~~department of commerce~~) state ombuds shall contract with a
7 private nonprofit organization to provide long-term care ombuds
8 services as specified under, and consistent with, the federal older
9 Americans act as amended, federal mandates, the goals of the state,
10 and the needs of its citizens. The (~~department of commerce~~) state
11 ombuds shall ensure that all program and staff support necessary to
12 enable the ombuds to effectively protect the interests of residents,
13 patients, and clients of all long-term care facilities is provided by
14 the nonprofit organization that contracts to provide long-term care
15 ombuds services. The (~~department of commerce~~) state ombuds shall
16 adopt rules to carry out this chapter and the long-term care ombuds
17 provisions of the federal older Americans act, as amended, and
18 applicable federal regulations. The long-term care ombuds program
19 shall have the following powers and duties:

20 (1) To provide services for coordinating the activities of long-
21 term care ombuds throughout the state;

22 (2) Carry out such other activities as the (~~department of~~
23 ~~commerce~~) state ombuds deems appropriate;

24 (3) Establish procedures consistent with RCW 43.190.110 for
25 appropriate access by long-term care ombuds to long-term care
26 facilities and patients' records, including procedures to protect the
27 confidentiality of the records and ensure that the identity of any
28 complainant or resident will not be disclosed without the written
29 consent of the complainant or resident, or upon court order;

30 (4) Establish a statewide uniform reporting system to collect and
31 analyze data relating to complaints and conditions in long-term care
32 facilities for the purpose of identifying and resolving significant
33 problems, with provision for submission of such data to the
34 department of social and health services and to the federal
35 department of health and human services, or its successor agency, on
36 a regular basis; and

37 (5) Establish procedures to assure that any files maintained by
38 ombuds programs shall be disclosed only at the discretion of the
39 ombuds having authority over the disposition of such files, except

1 that the identity of any complainant or resident of a long-term care
2 facility shall not be disclosed by such ombuds unless:

3 (a) Such complainant or resident, or the complainant's or
4 resident's legal representative, consents in writing to such
5 disclosure; or

6 (b) Such disclosure is required by court order.

7 **Sec. 16.** RCW 43.382.005 and 2016 c 172 s 5 are each amended to
8 read as follows:

9 (1) There is created an office of the developmental disabilities
10 ombuds. The (~~department of commerce~~) state ombuds shall contract
11 with a private, independent nonprofit organization to provide
12 developmental disability ombuds services. The (~~department of~~
13 ~~commerce~~) state ombuds shall designate, by a competitive bidding
14 process, the nonprofit organization that will contract to operate the
15 ombuds. The selection process must include consultation of
16 stakeholders in the development of the request for proposals and
17 evaluation of bids. The selected organization must have experience
18 and the capacity to effectively communicate regarding developmental
19 disabilities issues with policymakers, stakeholders, and the general
20 public and must be prepared and able to provide all program and staff
21 support necessary, directly or through subcontracts, to carry out all
22 duties of the office.

23 (2) The contracting organization and its subcontractors, if any,
24 are not state agencies or departments, but instead are private,
25 independent entities operating under contract with the state.

26 (3) The governor or state may not revoke the designation of the
27 organization contracted to provide the services of the ombuds except
28 upon a showing of neglect of duty, misconduct, or inability to
29 perform duties.

30 (4) The (~~department of commerce~~) state ombuds shall ensure that
31 the ombuds staff has access to sufficient training or experience with
32 issues relating to persons with developmental disabilities and the
33 program and staff support necessary to enable the ombuds to
34 effectively protect the interests of persons with developmental
35 disabilities. The office of the developmental disabilities ombuds
36 shall have the powers and duties to do the following:

37 (a) Provide information as appropriate on the rights and
38 responsibilities of persons receiving developmental (~~disability~~

1 ~~{disabilities}~~) disabilities administration services or other state
2 services, and on the procedures for providing these services;

3 (b) Investigate, upon its own initiative or upon receipt of a
4 complaint, an administrative act related to a person with
5 developmental disabilities alleged to be contrary to law, rule, or
6 policy, imposed without an adequate statement of reason, or based on
7 irrelevant, immaterial, or erroneous grounds; however, the ombuds may
8 decline to investigate any complaint;

9 (c) Monitor the procedures as established, implemented, and
10 practiced by the department to carry out its responsibilities in the
11 delivery of services to a person with developmental disabilities,
12 with a view toward appropriate preservation of families and ensuring
13 health and safety;

14 (d) Review periodically the facilities and procedures of state
15 institutions which serve persons with developmental disabilities and
16 state-licensed facilities or residences;

17 (e) Recommend changes in the procedures for addressing the needs
18 of persons with developmental disabilities;

19 (f) Submit annually, by November 1st, to the governor and
20 appropriate committees of the legislature a report analyzing the work
21 of the office, including recommendations;

22 (g) Establish procedures to protect the confidentiality of
23 records and sensitive information to ensure that the identity of any
24 complainant or person with developmental disabilities will not be
25 disclosed without the written consent of the complainant or person,
26 or upon court order;

27 (h) Maintain independence and authority within the bounds of the
28 duties prescribed by this chapter, insofar as this independence and
29 authority is exercised in good faith and within the scope of
30 contract; and

31 (i) Carry out such other activities as determined by the
32 (~~department of commerce~~) state ombuds within the scope of this
33 chapter.

34 (5) The developmental disabilities ombuds must consult with
35 stakeholders to develop a plan for future expansion of the ombuds
36 into a model of individual ombuds services akin to the operations of
37 the long-term care ombuds. The developmental disabilities ombuds
38 shall report its progress and recommendations related to this
39 subsection to the governor and appropriate committees of the
40 legislature by November 1, 2019.

1 **Sec. 17.** RCW 51.14.300 and 2013 c 23 s 105 are each amended to
2 read as follows:

3 The functions and duties of the office of the ombuds for workers
4 of industrial insurance self-insured employers (~~is created. The~~
5 ~~ombuds shall be appointed by the governor and report directly to the~~
6 ~~director of the department. The office of the ombuds may be openly~~
7 ~~and competitively contracted by the governor in accordance with~~
8 ~~chapter 39.26 RCW but shall not be physically housed within the~~
9 ~~industrial insurance division)) shall be performed by the office of
10 the state ombuds.~~

11 NEW SECTION. **Sec. 18.** The following acts or parts of acts are
12 each repealed:

13 (1) RCW 43.06A.020 (Ombuds—Appointment, term of office) and 2013
14 c 23 s 72, 1998 c 288 s 7, & 1996 c 131 s 3;

15 (2) RCW 51.14.310 (Ombuds—Term of office—Removal—Vacancies) and
16 2013 c 23 s 106 & 2007 c 281 s 2; and

17 (3) RCW 51.14.320 (Ombuds—Training or experience qualifications)
18 and 2013 c 23 s 107 & 2007 c 281 s 3.

19 NEW SECTION. **Sec. 19.** Sections 1 through 10 of this act
20 constitute a new chapter in Title 43 RCW.

21 NEW SECTION. **Sec. 20.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 21.** This act takes effect January 1, 2019.

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