S-0331.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5213**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2021 Regular Session**

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

AN ACT Relating to clarifying the authority and role of the office of developmental disabilities ombuds; and amending RCW 43.382.005, 43.382.010, 43.382.040, 43.382.070, and 43.382.090.

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

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

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

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

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

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

(a) Provide information as appropriate on the rights and responsibilities of persons receiving developmental ((~~disability [disabilities]~~)) disabilities administration services or other state services, and on the procedures for providing these services;

(b) Investigate, upon its own initiative or upon receipt of a complaint, an ((~~administrative~~)) act related to a person with developmental disabilities 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 ombuds may decline to investigate any complaint;

(c) Monitor the procedures as established, implemented, and practiced by the department of social and health services, the department of children, youth, and families, and the health care authority to carry out its responsibilities in the delivery of services to a person with developmental disabilities, with a view toward appropriate preservation of families and ensuring health and safety;

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

(e) Review periodically the procedures of services that people with developmental disabilities receive from state-certified providers or the state of Washington including through the department of social and health services, the department of children, youth, and families, and the health care authority;

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

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

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

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

((~~(i)~~)) (j) Carry out such other activities as determined by the department of commerce within the scope of this chapter.

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

**Sec.**  RCW 43.382.010 and 2016 c 172 s 6 are each amended to read as follows:

((~~The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.~~

~~(1) "Administration" means the developmental disabilities administration of the department of social and health services.~~

~~(2) "Department" means the department of social and health services.~~

~~(3) "Ombuds"~~)) For the purpose of this chapter, "ombuds" means the office of the developmental disabilities ombuds.

**Sec.**  RCW 43.382.040 and 2016 c 172 s 9 are each amended to read as follows:

The ombuds shall treat all records containing identifying information and matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the ombuds to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that by law is confidential or privileged, the ombuds shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law. Investigative records of the office of the ombuds are confidential and are exempt from public disclosure under chapter 42.56 RCW.

**Sec.**  RCW 43.382.070 and 2016 c 172 s 12 are each amended to read as follows:

(1) An employee of the office of the developmental disabilities ombuds is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against ((~~an~~)) the following:

(a) An employee of the department((~~, an employee of~~)) of social and health services, the department of health, the department of children, youth, and families, the health care authority, or the department of commerce((~~, an~~));

(b) An employee of ((~~a contracting~~)) an agency ((~~of~~)) with the department((~~, a~~)) of social and health services, the department of health, the department of children, youth, and families, the health care authority, or the department of commerce;

(c) A provider of developmental disabilities services((~~,~~)); or ((~~a~~))

(d) A service recipient of the department ((~~services~~)) of social and health services, the department of health, the department of children, youth, and families, the health care authority, or the department of commerce for any communication made, or information given or disclosed, to aid the office of the developmental disabilities ombuds in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

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

**Sec.**  RCW 43.382.090 and 2016 c 172 s 14 are each amended to read as follows:

The department ((~~and~~)) of social and health services, the department of health, the department of children, youth, and families, and the health care authority shall:

(1) Allow the ombuds or the ombuds' designee to communicate privately with any person receiving services from the department of social and health services, the department of health, the department of children, youth, and families, the health care authority, or the department of commerce, or any person who is part of a fatality or near fatality investigation involving a person with developmental disabilities, for the purposes of carrying out its duties under this chapter;

(2) Permit the ombuds or the ombuds' designee physical access to state institutions and state-licensed facilities serving persons with developmental disabilities ((~~and information in the possession of the department concerning state-licensed facilities or residences~~)) for the purpose of carrying out its duties under this chapter;

(3) Permit the ombuds or the ombuds' designee access to information in the possession of the department of social and health services, the department of health, the department of children, youth, and families, and the health care authority concerning people with developmental disabilities for the purpose of carrying out its duties under this chapter;

(4) Permit the ombuds or the ombuds' designee access to information concerning people with developmental disabilities who receive services from state-certified providers or state-contracted providers for the purpose of carrying out its duties under this chapter; and

(5) Upon the ombuds' request, grant the ombuds or the ombuds' designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the department ((~~or~~)) of social and health services the department of health, the department of children, youth, and families, or the health care authority that the ombuds considers necessary in an investigation.

**--- END ---**