

HOUSE BILL REPORT

EHB 3041

As Amended by the Senate

Title: An act relating to the exemption of the office of the family and children's ombudsman from certain judicial and administrative proceedings.

Brief Description: Exempting the office of the family and children's ombudsman from certain proceedings.

Sponsors: Representatives Cooke, Bush, Kastama and Tokuda.

Brief History:

Committee Activity:

Law & Justice: 2/4/98 [DP].

Floor Activity:

Passed House: 2/13/98, 96-0.
Senate Amended.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 12 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Robertson and Sherstad.

Minority Report: Without recommendation. Signed by 1 member: Representative Mulliken.

Staff: Elizabeth Chambers (786-7291); Trudes Hutcheson (786-7384).

Background: The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. However, the common law and statutory law recognize exceptions to compelled testimony in some circumstances, including "testimonial privileges." Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they are to be protected.

Under the common law, four criteria must be satisfied to find a privilege: (1) the communication must be made in confidence; (2) the element of confidentiality must be

essential to the relationship; (3) the relationship is one that should be fostered; and (4) the injury of disclosing the communication must be greater than the benefit of disclosure.

Washington statutory law establishes a number of privileges, including communications between the following persons: (1) husband and wife; (2) attorney and client; (3) clergy and confessor; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; and (7) law enforcement peer support counselor and a law enforcement officer in certain circumstances.

The Office of the Family and Children's Ombudsman is an independent office within the Office of the Governor that is responsible for ensuring that the Department of Social and Health Services (DSHS) or other appropriate government agencies do not overlook the needs of abused or neglected children for protection, care, and permanency. The office is charged with improving the state system that serves families and children who are under state supervision by articulating their interests and needs to government officials. Among other statutory duties, the ombudsman or any volunteer in the ombudsman's office is required to report, or cause a report to be made, to the proper law enforcement agency when he or she has reasonable cause to believe that a child, adult dependent, or developmentally disabled person has suffered abuse or neglect. The director-ombudsman reports only to the Governor, and is appointed to a three-year term that can be terminated only for cause.

Summary of Bill: A testimonial privilege is created for communications made to the Office of Family and Children's Ombudsman. This privilege protects the ombudsman and the ombudsman's staff from being compelled to testify or produce evidence relating to official duties in any judicial or administrative proceeding. As such, all related memoranda, work product, notes, and case files of the ombudsman's office are confidential and are not subject to any judicial proceedings.

The ombudsman's testimonial privilege does not apply in four situations: (1) where the ombudsman or ombudsman's staff has direct knowledge of an alleged felony; (2) where the ombudsman or a member of the ombudsman's staff is aware of a threat of imminent serious harm; (3) where the ombudsman is asked to provide general information regarding the operation of his or her office; and, (4) the ombudsman or ombudsman's staff has direct knowledge that someone, including anyone in the ombudsman's office, has failed to comply with the statutory duty to report a reasonable belief that a child, adult dependent, or developmentally disabled person has suffered abuse or neglect.

When the ombudsman's or ombudsman's staff member has reasonable cause to believe that any public official, employee or other person has acted in a way to warrant disciplinary proceedings, the ombudsman or ombudsman's staff member is required to report the matter, or cause a report to be made to appropriate authorities.

This chapter shall not be interpreted to conflict with the ombudsman's duty to report, or cause a report to be made, to the proper law enforcement agency when he or she has reasonable cause to believe that a child, adult dependent, or developmentally disabled person has suffered abuse or neglect.

EFFECT OF SENATE AMENDMENT(S): The Senate amendment clarifies that the testimonial privilege protects the ombudsman and his or her staff from any judicial or administrative subpoena. The privilege does not apply to the legislative oversight committee.

The amendment broadens the first exception to the testimonial privilege by exempting the ombudsman or staff member who has direct knowledge of an alleged crime, rather than an alleged felony.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: By guaranteeing privacy and confidentiality, this bill will encourage people to come forward and work with the Office of Family & Children's Ombudsman. It is common for states with ombudsman offices to have this kind of testimonial privilege, and this bill is based on model legislation.

Testimony Against: None.

Testified: Representative Suzette Cooke (pro); D. Fowler, King County Ombudsman (pro); Vickie Waller, Family and Children's Ombudsman (pro); and Margaret Casey, Washington State Catholic Conference (with concerns).