

# FINAL BILL REPORT

## EHB 3041

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### PARTIAL VETO

C 288 L 98

Synopsis as Enacted

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

**Sponsors:** Representatives Cooke, Bush, Kastama and Tokuda.

**House Committee on Law & Justice**  
**Senate Committee on Law & Justice**

**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. The common law and statutory law, however, 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: husband and wife; attorney and client; clergy and confessor; physician and patient; psychologist and client; optometrist and client; and 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 and care. 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.

In 1996, the Legislature created the Legislative Children's Oversight Committee. The committee consists of three senators and three representatives appointed by the President of the Senate and the Speaker of the House. The oversight committee may request investigations by the ombudsman.

**Summary:** Certain communications made to the Office of Family and Children's Ombudsman are privileged. The ombudsman and the ombudsman's staff may not be compelled to testify or produce evidence relating to official duties in any judicial or administrative proceeding. All related memoranda, work product, notes, and case files of the ombudsman's office are confidential and are not subject to discovery in any judicial or administrative proceedings. This privilege does not apply to the Legislative Children's Oversight Committee.

Identifying information about a complainant or witness may not be disclosed in judicial or administrative proceedings, to the Governor, or to the Legislative Children's Oversight Committee unless: (1) the claimant or witness waives confidentiality; (2) the information is necessary to investigating the ombudsman's office and there is a legislative subpoena; or (3) the information is necessary to investigating the ombudsman's office and the Governor inquires. Identifying information includes the complainant's or witness's name, location, phone number, likeness, social security number, and other identification number, or identification of immediate family members.

The ombudsman's testimonial privilege does not apply if: (1) the ombudsman or ombudsman's staff has direct knowledge of an alleged crime; (2) the ombudsman or a member of the ombudsman's staff is aware of a threat of imminent serious harm; (3) 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 to appropriate authorities.

The ombudsman must report to the Governor and the Legislative Children's Oversight Committee. The Governor's appointee is subject to confirmation by the Senate.

**Votes on Final Passage:**

House 96 0  
Senate 45 0 (Senate amended)

House (House refused to concur)

Conference Committee

Senate 49 0

House 98 0

**Effective:** April 2, 1998

**Partial Veto Summary:** The Governor vetoed the requirement that the ombudsman report to the legislative oversight committee.