

# HOUSE BILL ANALYSIS

## HB 3041

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**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.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**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. 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 three situations: (1) where the ombudsman or ombudsman's staff is witness to an alleged felony; (2) where the ombudsman or a member of the ombudsman's staff is aware of a threat of imminent serious harm; and (3) where the ombudsman is asked to provide general information regarding the operation of his or her office.

**Fiscal Note:** Not requested.

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

Office of Program Research