

# SENATE BILL REPORT

## EHB 3041

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As Reported By Senate Committee On:  
Law & Justice, February 26, 1998

**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: 2/25/98, 2/26/98 [DPA].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Hargrove, Kline, Long and Zarelli.

**Staff:** Aldo Melchiori (786-7439)

**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.

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 government agencies do not overlook the needs of abused or neglected children for protection, care, and permanency. 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 if there exists reasonable cause to believe that a child, adult dependent, or developmentally disabled person has suffered abuse or neglect.

**Summary of Amended Bill:** The ombudsman and staff of the office of Family and Children's Ombudsman cannot 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 any judicial or administrative proceedings. The privilege does not apply to the legislative oversight committee.

The testimonial privilege does not apply in four situations: (1) where the ombudsman or staff have direct knowledge of an alleged crime; (2) where the ombudsman or staff are 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; or (4) the ombudsman or staff have 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 or 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 staff member is required to report the matter, or cause a report to be made.

**Amended Bill Compared to Original Bill:** The privilege shall not apply to the legislative oversight committee or when there is direct knowledge of any alleged crime.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** People confiding in the ombudsman need assurances of confidentiality or they will refuse to come forward. This is critical for the office to fulfill its legislative mandate. The legislation is based on a national model.

**Testimony Against:** None.

**Testified:** Representative Cooke, prime sponsor; Vicki Wallen, director of Office of Family and Children's Ombudsman.