

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 3041

Chapter 288, Laws of 1998

(partial veto)

55th Legislature
1998 Regular Session

OFFICE OF THE FAMILY AND CHILDREN'S OMBUDSMAN--EXEMPTIONS FROM
CERTAIN PROCEEDINGS--CONFIRMATION OF OMBUDSMAN

EFFECTIVE DATE: 4/2/98

Passed by the House March 12, 1998
Yeas 98 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 12, 1998
Yeas 49 Nays 0

BRAD OWEN
President of the Senate

Approved April 2, 1998, with the
exception of section 6, which is
vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 3041** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 2, 1998 - 2:28 p.m.

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 3041

AS RECOMMENDED BY CONFERENCE COMMITTEE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Representatives Cooke, Bush, Kastama and Tokuda

Read first time 01/27/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to the exemption of the office of the family and
2 children's ombudsman from certain judicial and administrative
3 proceedings; amending RCW 43.06A.010 and 43.06A.020; adding new
4 sections to chapter 43.06A RCW; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.06A RCW
7 to read as follows:

8 Neither the ombudsman nor the ombudsman's staff may be compelled,
9 in any judicial or administrative proceeding, to testify or to produce
10 evidence regarding the exercise of the official duties of the ombudsman
11 or of the ombudsman's staff. All related memoranda, work product,
12 notes, and case files of the ombudsman's office are confidential, are
13 not subject to discovery, judicial or administrative subpoena, or other
14 method of legal compulsion, and are not admissible in evidence in a
15 judicial or administrative proceeding. This section shall not apply to
16 the legislative oversight committee.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06A RCW
18 to read as follows:

1 Identifying information about complainants or witnesses shall not
2 be subject to any method of legal compulsion, nor shall such
3 information be revealed to the legislative oversight committee or the
4 governor except under the following circumstances: (1) The complainant
5 or witness waives confidentiality; (2) under a legislative subpoena
6 when there is a legislative investigation for neglect of duty or
7 misconduct by the ombudsman or ombudsman's office when the identifying
8 information is necessary to the investigation of the ombudsman's acts;
9 or (3) under an investigation or inquiry by the governor as to neglect
10 of duty or misconduct by the ombudsman or ombudsman's office when the
11 identifying information is necessary to the investigation of the
12 ombudsman's acts.

13 For the purposes of this section, "identifying information"
14 includes the complainant's or witness's name, location, telephone
15 number, likeness, social security number or other identification
16 number, or identification of immediate family members.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.06A RCW
18 to read as follows:

19 The privilege described in section 1 of this act does not apply
20 when:

21 (1) The ombudsman or ombudsman's staff member has direct knowledge
22 of an alleged crime, and the testimony, evidence, or discovery sought
23 is relevant to that allegation;

24 (2) The ombudsman or a member of the ombudsman's staff has received
25 a threat of, or becomes aware of a risk of, imminent serious harm to
26 any person, and the testimony, evidence, or discovery sought is
27 relevant to that threat or risk;

28 (3) The ombudsman has been asked to provide general information
29 regarding the general operation of, or the general processes employed
30 at, the ombudsman's office; or

31 (4) The ombudsman or ombudsman's staff member has direct knowledge
32 of a failure by any person specified in RCW 26.44.030, including the
33 state family and children's ombudsman or any volunteer in the
34 ombudsman's office, to comply with RCW 26.44.030.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.06A RCW
36 to read as follows:

1 When the ombudsman or ombudsman's staff member has reasonable cause
2 to believe that any public official, employee, or other person has
3 acted in a manner warranting criminal or disciplinary proceedings, the
4 ombudsman or ombudsman's staff member shall report the matter, or cause
5 a report to be made, to the appropriate authorities.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.06A RCW
7 to read as follows:

8 Nothing in this chapter shall be construed to conflict with the
9 duty to report specified in RCW 26.44.030.

10 **Sec. 6. RCW 43.06A.010 and 1996 c 131 s 2 are each amended to*
11 *read as follows:*

12 *There is hereby created an office of the family and children's*
13 *ombudsman within the office of the governor for the purpose of*
14 *promoting public awareness and understanding of family and children*
15 *services, identifying system issues and responses for the governor and*
16 *the legislature to act upon, and monitoring and ensuring compliance*
17 *with administrative acts, relevant statutes, rules, and policies*
18 *pertaining to family and children's services and the placement,*
19 *supervision, and treatment of children in the state's care or in state-*
20 *licensed facilities or residences. The ombudsman shall report directly*
21 *to the governor and the legislative oversight committee and shall*
22 *exercise his or her powers and duties independently of the secretary.*

23 **Sec. 6 was vetoed. See message at end of chapter.*

24 **Sec. 7.** RCW 43.06A.020 and 1996 c 131 s 3 are each amended to read
25 as follows:

26 (1) Subject to confirmation by the senate, the governor shall
27 appoint an ombudsman who shall be a person of recognized judgment,
28 independence, objectivity, and integrity, and shall be qualified by
29 training or experience, or both, in family and children's services law
30 and policy. Prior to the appointment, the governor shall consult with,
31 and may receive recommendations from the committee, regarding the
32 selection of the ombudsman.

33 (2) The person appointed ombudsman shall hold office for a term of
34 three years and shall continue to hold office until reappointed or
35 until his or her successor is appointed. The governor may remove the
36 ombudsman only for neglect of duty, misconduct, or inability to perform

1 duties. Any vacancy shall be filled by similar appointment for the
2 remainder of the unexpired term.

3 NEW SECTION. **Sec. 8.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 immediately.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 2, 1998, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 6,
3 Engrossed House Bill No. 3041, entitled:

4 "AN ACT Relating to the exemption of the office of the family and
5 children's ombudsman from certain judicial and administrative
6 proceedings;"

7 Engrossed House Bill No. 3041 provides the Office of the Family and
8 Children's Ombudsman (OFCO) an exemption from disclosure of certain
9 information related to its inquiries. The purpose of the exemption is
10 to enable the OFCO to conduct and complete its inquiries in a manner
11 that elicits as much useful information as possible. The possibility
12 of premature disclosure, or the inability of the office to maintain
13 reasonable confidences, could compromise the work of the office. This
14 bill places limits on the exemption that assure that the OFCO is
15 obligated to report child abuse, or the threat of child abuse, as well
16 as other criminal behavior.

17 The OFCO currently reports directly to the Governor. Section 6 of
18 EHB 3041 would have the OFCO also reporting to the legislative
19 oversight committee. I do not support such a dilution of
20 accountability. The work of the office is too important to subject it
21 to an ambiguous and untested administrative arrangement.

22 For this reason, I have vetoed section 6 of Engrossed House Bill
23 No. 3041.

24 With the exception of section 6, Engrossed House Bill No. 3041 is
25 approved."