

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6001

Chapter 390, Laws of 1999
(partial veto)

56th Legislature
1999 Regular Session

FAMILY AND CHILDREN'S OMBUDSMAN--CONFIDENTIAL INFORMATION

EFFECTIVE DATE: 7/25/99

Passed by the Senate April 22, 1999
YEAS 44 NAYS 0

BRAD OWEN
President of the Senate

Passed by the House April 14, 1999
YEAS 95 NAYS 0

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

FRANK CHOPP
**Speaker of the
House of Representatives**

Approved May 18, 1999, with the
exception of sections 1 and 6, which
are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SUBSTITUTE SENATE BILL 6001 as passed
by the Senate and the House of
Representatives on the dates hereon
set forth.

TONY M. COOK
Secretary

FILED

May 18, 1999 - 3:22 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6001

AS AMENDED BY THE HOUSE

Passed Legislature - 1999 Regular Session

State of Washington 56th Legislature 1999 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Long, Winsley and Rasmussen)

Read first time 03/03/99.

1 AN ACT Relating to the office of the family and children's
2 ombudsman; amending RCW 43.06A.030, 13.34.105, and 13.50.100; adding a
3 new section to chapter 26.12 RCW; adding new sections to chapter 43.06A
4 RCW; and adding a new section to chapter 13.50 RCW.

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

6 **Sec. 1. RCW 43.06A.030 and 1996 c 131 s 4 are each amended to*
7 *read as follows:*

8 *The ombudsman shall perform the following duties:*

9 *(1) Provide information as appropriate on the rights and*
10 *responsibilities of individuals receiving family and children's*
11 *services, and on the procedures for providing these services;*

12 *(2) Investigate, upon his or her own initiative or upon receipt of*
13 *a complaint, an administrative act alleged to be contrary to law, rule,*
14 *or policy, imposed without an adequate statement of reason, or based on*
15 *irrelevant, immaterial, or erroneous grounds; however, the ombudsman*
16 *may decline to investigate any complaint as provided by rules adopted*
17 *under this chapter;*

18 *(3) Monitor the procedures as established, implemented, and*
19 *practiced by the department to carry out its responsibilities in*

1 delivering family and children's services with a view toward
2 appropriate preservation of families and ensuring children's health and
3 safety;

4 ~~(4) ((Review periodically the facilities and procedures of state
5 institutions serving children, and state-licensed facilities or
6 residences;~~

7 ~~(5))~~ Recommend changes in the procedures for addressing the needs
8 of families and children;

9 ~~((6))~~ (5) Submit annually to the committee and to the governor by
10 November 1 a report analyzing the work of the office including
11 recommendations;

12 (6)(a)(i) Receive information from a legislator who is assisting a
13 constituent at the constituent's request; (ii) provide information to
14 a legislator regarding a constituent if the constituent has given his
15 or her written consent that the information be released to the
16 legislator; however, a legislator may be provided only that information
17 the constituent would otherwise be able to obtain under the law; and
18 (iii) notify the legislator that the constituent's case is ready to be
19 closed.

20 (b) Any information a constituent would not otherwise be able to
21 obtain under law, including any confidential information regarding a
22 person other than the constituent, that is contained in the information
23 provided the legislator shall be redacted.

24 (c) A legislator shall maintain the confidentiality of any
25 confidential information regarding a constituent that the legislator
26 may receive.

27 (d) Nothing in this subsection is intended to or may be interpreted
28 as affecting the authority or ability of the legislative children's
29 oversight committee to obtain information otherwise granted the
30 committee under law.

31 (7) Grant the committee access to all relevant records in the
32 possession of the ombudsman unless prohibited by law; and

33 (8) Adopt rules necessary to implement this chapter.

34 *Sec. 1 was vetoed. See message at end of chapter.

35 **Sec. 2.** RCW 13.34.105 and 1993 c 241 s 3 are each amended to read
36 as follows:

37 (1) Unless otherwise directed by the court, the duties of the
38 guardian ad litem include but are not limited to the following:

1 (a) To represent and be an advocate for the best interests of the
2 child;

3 (b) To collect relevant information about the child's situation;

4 (c) To monitor all court orders for compliance and to bring to the
5 court's attention any change in circumstances that may require a
6 modification of the court's order; and

7 (d) To report to the court information on the legal status of a
8 child's membership in any Indian tribe or band.

9 (2) The guardian ad litem shall be deemed an officer of the court
10 for the purpose of immunity from civil liability.

11 (3) Except for information or records specified in RCW
12 13.50.100(~~((4))~~) (5), the guardian ad litem shall have access to all
13 information available to the state or agency on the case. Upon
14 presentation of the order of appointment by the guardian ad litem, any
15 agency, hospital, school organization, division or department of the
16 state, doctor, nurse, or other health care provider, psychologist,
17 psychiatrist, police department, or mental health clinic shall permit
18 the guardian ad litem to inspect and copy any records relating to the
19 child or children involved in the case, without the consent of the
20 parent or guardian of the child, or of the child if the child is under
21 the age of thirteen years, unless such access is otherwise specifically
22 prohibited by law.

23 (4) A guardian ad litem may release confidential information,
24 records, and reports to the office of the family and children's
25 ombudsman for the purposes of carrying out its duties under chapter
26 43.06A RCW.

27 (5) The guardian ad litem shall release case information in
28 accordance with the provisions of RCW 13.50.100.

29 **Sec. 3.** RCW 13.50.100 and 1997 c 386 s 22 are each amended to read
30 as follows:

31 (1) This section governs records not covered by RCW 13.50.050.

32 (2) Records covered by this section shall be confidential and shall
33 be released only pursuant to this section and RCW 13.50.010.

34 (3) Records retained or produced by any juvenile justice or care
35 agency may be released to other participants in the juvenile justice or
36 care system only when an investigation or case involving the juvenile
37 in question is being pursued by the other participant or when that
38 other participant is assigned the responsibility of supervising the

1 juvenile. Records covered under this section and maintained by the
2 juvenile courts which relate to the official actions of the agency may
3 be entered in the state-wide juvenile court information system.

4 (4) A contracting agency or service provider of the department of
5 social and health services that provides counseling, psychological,
6 psychiatric, or medical services may release to the office of the
7 family and children's ombudsman information or records relating to
8 services provided to a juvenile who is dependent under chapter 13.34
9 RCW without the consent of the parent or guardian of the juvenile, or
10 of the juvenile if the juvenile is under the age of thirteen years,
11 unless such release is otherwise specifically prohibited by law.

12 (5) A juvenile, his or her parents, the juvenile's attorney and the
13 juvenile's parent's attorney, shall, upon request, be given access to
14 all records and information collected or retained by a juvenile justice
15 or care agency which pertain to the juvenile except:

16 (a) If it is determined by the agency that release of this
17 information is likely to cause severe psychological or physical harm to
18 the juvenile or his or her parents the agency may withhold the
19 information subject to other order of the court: PROVIDED, That if the
20 court determines that limited release of the information is
21 appropriate, the court may specify terms and conditions for the release
22 of the information; or

23 (b) If the information or record has been obtained by a juvenile
24 justice or care agency in connection with the provision of counseling,
25 psychological, psychiatric, or medical services to the juvenile, when
26 the services have been sought voluntarily by the juvenile, and the
27 juvenile has a legal right to receive those services without the
28 consent of any person or agency, then the information or record may not
29 be disclosed to the juvenile's parents without the informed consent of
30 the juvenile unless otherwise authorized by law; or

31 (c) That the department of social and health services may delete
32 the name and identifying information regarding persons or organizations
33 who have reported alleged child abuse or neglect.

34 ~~((+5))~~ (6) A juvenile or his or her parent denied access to any
35 records following an agency determination under subsection ~~((+4))~~ (5)
36 of this section may file a motion in juvenile court requesting access
37 to the records. The court shall grant the motion unless it finds
38 access may not be permitted according to the standards found in
39 subsections ~~((+4))~~ (5)(a) and (b) of this section.

1 (~~(6)~~) (7) The person making a motion under subsection (~~(5)~~) (6)
2 of this section shall give reasonable notice of the motion to all
3 parties to the original action and to any agency whose records will be
4 affected by the motion.

5 (~~(7)~~) (8) Subject to the rules of discovery in civil cases, any
6 party to a proceeding seeking a declaration of dependency or a
7 termination of the parent-child relationship and any party's counsel
8 and the guardian ad litem of any party, shall have access to the
9 records of any natural or adoptive child of the parent, subject to the
10 limitations in subsection (~~(4)~~) (5) of this section. A party denied
11 access to records may request judicial review of the denial. If the
12 party prevails, he or she shall be awarded attorneys' fees, costs, and
13 an amount not less than five dollars and not more than one hundred
14 dollars for each day the records were wrongfully denied.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 26.12 RCW
16 to read as follows:

17 A guardian ad litem appointed under this chapter may release
18 confidential information, records, and reports to the office of the
19 family and children's ombudsman for the purposes of carrying out its
20 duties under chapter 43.06A RCW.

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

23 The department of social and health services shall:

24 (1) Allow the ombudsman or the ombudsman's designee to communicate
25 privately with any child in the custody of the department for the
26 purposes of carrying out its duties under this chapter;

27 (2) Permit the ombudsman or the ombudsman's designee physical
28 access to state institutions serving children, and state licensed
29 facilities or residences for the purpose of carrying out its duties
30 under this chapter;

31 (3) Upon the ombudsman's request, grant the ombudsman or the
32 ombudsman's designee the right to access, inspect, and copy all
33 relevant information, records, or documents in the possession or
34 control of the department that the ombudsman considers necessary in an
35 investigation; and

36 (4) Grant the office of the family and children's ombudsman
37 unrestricted on-line access to the case and management information

1 system (CAMIS) for the purpose of carrying out its duties under this
2 chapter.

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

5 *With the approval of the legislative oversight committee, the*
6 *office of the family and children's ombudsman shall have the right to*
7 *apply for and accept grants. After notification to the legislative*
8 *oversight committee, the office of the family and children's ombudsman*
9 *shall have the power to subpoena records and documents in the*
10 *possession or control of the department of social and health services*
11 *that the ombudsman considers necessary in an investigation.*

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

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

15 (1) An employee of the office of the family and children's
16 ombudsman is not liable for good faith performance of responsibilities
17 under this chapter.

18 (2) No discriminatory, disciplinary, or retaliatory action may be
19 taken against an employee of the department, an employee of a
20 contracting agency of the department, a foster parent, or a recipient
21 of family and children's services for any communication made, or
22 information given or disclosed, to aid the office of the family and
23 children's ombudsman in carrying out its responsibilities, unless the
24 communication or information is made, given, or disclosed maliciously
25 or without good faith. This subsection is not intended to infringe on
26 the rights of the employer to supervise, discipline, or terminate an
27 employee for other reasons.

28 (3) All communications by an ombudsman, if reasonably related to
29 the requirements of that individual's responsibilities under this
30 chapter and done in good faith, are privileged under RCW 9.58.070 and
31 that privilege shall serve as a defense in any action in libel or
32 slander.

33 **NEW SECTION.** *Sec. 8. A new section is added to chapter 13.50 RCW*
34 *to read as follows:*

35 Any communication or advice privileged under RCW 5.60.060 that is
36 disclosed by the office of the attorney general or the department of

1 social and health services to the office of the family and children's
2 ombudsman may not be deemed to be a waiver of the privilege as to
3 others.

Passed the Senate April 22, 1999.

Passed the House April 14, 1999.

Approved by the Governor May 18, 1999, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 18, 1999.

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

2 "I am returning herewith, without my approval as to sections 1 and
3 6, Substitute Senate Bill No. 6001 entitled:

4 "AN ACT Relating to the office of family and children's ombudsman;"

5 Substitute Senate Bill No. 6001 expands the scope of information
6 available to the Family and Children's Ombudsman. Among other things,
7 it permits guardians ad litem and service providers to give
8 confidential information to the Ombudsman, and requires the Department
9 of Social and Health Services (DSHS) to provide access to institutions
10 and information. It also prohibits retaliatory action against
11 employees of DSHS and others who properly provide information.

12 Section 1 of SSB 6001 includes a requirement that the Ombudsman
13 provide information to a legislator regarding a constituent, if the
14 constituent has given his or her consent to release the information and
15 if the constituent would otherwise be able to obtain the information
16 under law. This provision is apparently intended to require the
17 Ombudsman to provide legislators with DSHS records in the Ombudsman's
18 possession. The provision is unnecessary since, with the above
19 conditions present, legislators are currently able to obtain records
20 directly from DSHS.

21 Section 6 of SSB 6001 would give the Ombudsman the power to
22 subpoena all records and documents in the possession or control of DSHS
23 that the Ombudsman considers necessary in an investigation. Similarly,
24 section 5 of the bill grants the Ombudsman access to all relevant
25 information, records, or documents in the possession or control of DSHS
26 that the Ombudsman considers necessary in an investigation. I am
27 concerned about expanding the subpoena power in the absence of a
28 compelling need. Since the Ombudsman will have statutory access to all
29 necessary records, there is no compelling need. Additionally, there
30 has never been an instance when DSHS, even without a statutory mandate,
31 has refused to give the Ombudsman all requested records.

32 For these reasons, I have vetoed sections 1 and 6 of Substitute
33 Senate Bill No. 6001.

34 With the exception of sections 1 and 6, Substitute Senate Bill No.
35 6001 is approved."