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SENATE BILL 5249

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State of Washington

53rd Legislature

1993 Regular Session

By Senator Winsley

Read first time 01/19/93. Referred to Committee on Health & Human Services.

1 AN ACT Relating to involuntarily inserting Norplant in mothers who  
2 have given birth to a child with fetal alcohol syndrome or addicted to  
3 drugs; adding a new section to chapter 70.96 RCW; and creating a new  
4 section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that all children have  
7 the right to be born healthy and free of preventable birth defects.  
8 Individuals who are addicted to drugs or alcohol are unable to make  
9 reasoned decisions that help ensure the birth of a healthy baby. The  
10 creation of Norplant is a breakthrough, allowing a temporary, mandatory  
11 birth control system. This will provide time for the person to seek  
12 and receive treatment.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.96 RCW  
14 to read as follows:

15 (1) If a designated chemical dependency specialist receives  
16 information alleging that a woman has given birth to a baby with fetal  
17 alcohol syndrome or addicted to drugs, the designated chemical  
18 dependency specialist, after investigation and evaluation of the

1 specific facts alleged and of the reliability and credibility of the  
2 information, may file a petition with the superior or district court  
3 for the involuntary insertion of birth control known as Norplant into  
4 the woman. The petition shall be accompanied by a certificate of a  
5 licensed physician who has examined the mother and baby within five  
6 days before submission of the petition, unless the woman who may be  
7 involuntarily inserted with Norplant has refused to submit to a medical  
8 examination, in which case the fact of refusal shall be alleged in the  
9 petition. The certificate shall set forth the licensed physician's  
10 findings in support of the allegations of the petition. A licensed  
11 physician employed by the department of social and health services is  
12 eligible to be the certifying physician.

13 (2) Upon filing the petition, the court shall fix a date for a  
14 hearing no less than two and no more than seven days after the date the  
15 petition was filed unless the woman petitioned against is presently  
16 being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or  
17 71.34.050, in which case the hearing shall be held within seventy-two  
18 hours of the filing of the petition. The seventy-two hours specified  
19 in this section shall be computed by excluding Saturdays, Sundays, and  
20 holidays, however, the court may, upon motion of the woman who may be  
21 involuntarily inserted with Norplant, or upon motion of petitioner with  
22 written permission of the woman who may be involuntarily inserted with  
23 Norplant, or her counsel and, upon good cause shown, extend the date  
24 for the hearing. A copy of the petition and of the notice of the  
25 hearing, including the date fixed by the court, shall be served by the  
26 court on the woman who may be involuntarily inserted with Norplant, or  
27 her next of kin, a parent, or her legal guardian if she is a minor, and  
28 any other person the court believes advisable. A copy of the petition  
29 and certificate shall be delivered to each person notified.

30 (3) At the hearing the court shall hear all relevant testimony,  
31 including, if possible, the testimony, that may be telephonic, of at  
32 least one licensed physician who has examined the mother and baby.  
33 Communications otherwise deemed privileged under the laws of this state  
34 are deemed to be waived in proceedings under this section if a court of  
35 competent jurisdiction in its discretion determines that the waiver is  
36 necessary to protect either the woman or the public. The waiver of a  
37 privilege under this section is limited to records or testimony  
38 relevant to evaluation of the woman for purposes of a proceeding under  
39 this chapter. Upon motion by the woman who may be involuntarily

1 inserted with Norplant, or on its own motion, the court shall examine  
2 a record or testimony sought by a petitioner to determine whether it is  
3 within the scope of the waiver.

4 The record maker shall not be required to testify in order to  
5 introduce medical, nursing, or psychological records of women as long  
6 as the requirements of RCW 5.45.020 are met, except that portions of  
7 the record that contain opinions as to whether the woman is an  
8 alcoholic, or in the case of a minor incapacitated by alcoholism or  
9 other drug addiction, shall be deleted from the records unless the  
10 person offering the opinions is available for cross-examination. The  
11 woman shall be present unless the court believes that her presence is  
12 likely to be injurious to her; in this event the court may deem it  
13 appropriate to appoint a guardian ad litem to represent her throughout  
14 the proceeding. If deemed advisable, the court may examine the woman  
15 out of courtroom. If the woman has refused to be examined by a  
16 licensed physician, she shall be given an opportunity to be examined by  
17 a court-appointed licensed physician. If she refuses and there is  
18 sufficient evidence to believe that the allegations of the petition are  
19 true, or if the court believes that more medical evidence is necessary,  
20 the court may make a temporary order committing her to the department  
21 of social and health services for a period of not more than five days  
22 for purposes of a diagnostic examination.

23 (4) If after hearing all relevant evidence, including the results  
24 of any diagnostic examination, the court finds that the mother has  
25 given birth to a baby with fetal alcohol syndrome or addicted to drugs  
26 by clear, cogent, and convincing proof, it shall make an order of  
27 involuntary insertion of Norplant into the mother.

28 (5) A woman involuntarily inserted with Norplant under this section  
29 shall not have the Norplant implant removed from her body until six  
30 months after the court finds she is clean and sober.

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