
ENGROSSED THIRD SUBSTITUTE SENATE BILL 5278

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Patterson, Hargrove, Winsley, Wood, Benton, Goings, Prince, Bauer, B. Sheldon, Heavey, Long, Anderson, Haugen and Oke)

Read first time 02/10/98.

1 AN ACT Relating to mothers who have given birth to a child with
2 drug addiction; adding new sections to chapter 13.34 RCW; adding new
3 sections to chapter 70.96A RCW; adding a new section to chapter 18.71
4 RCW; creating new sections; providing an effective date; and providing
5 expiration dates.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that all children
8 have the right to be born healthy and free of the consequences of the
9 nonprescription use of controlled substances by the mother during
10 pregnancy. Individuals who have a drug addiction are unable to make
11 reasoned decisions that help ensure the birth of a healthy infant. The
12 availability of long-term pharmaceutical birth control, when combined
13 with other treatment regimens, may allow women to regain control of
14 their lives and make long-term decisions in the best interest of
15 themselves and their children. The legislature further finds that a
16 third or subsequent drug-affected infant being born to the same mother
17 means it may be unreasonable to attempt to continue efforts to reunify
18 the family and that all reasonable reunification efforts that have

1 previously been made have proven futile and there is no likelihood that
2 future efforts will produce a different outcome.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.34 RCW
4 to read as follows:

5 (1) A physician licensed under chapter 18.71 RCW primarily
6 responsible for the supervision of the birth of an infant who has
7 reasonable cause to believe an infant has been exposed to
8 nonprescription use of controlled substances shall: (a) Conduct
9 appropriate tests to determine whether the infant is drug-affected; (b)
10 notify the department of the name and address of the parents of an
11 infant who is drug-affected; and (c) retain the infant in the birthing
12 facility for medical treatment or place the infant in an appropriate
13 pediatric care facility with the concurrence of the department for
14 sufficient time for the infant to undergo withdrawal from the affects
15 of the controlled substances. The withdrawal shall be under the
16 supervision of appropriate medical professionals.

17 (2) The physician shall, as soon as practical, inform the mother of
18 a drug-affected infant of: (a) Her right to publicly funded tubal
19 ligation surgery as provided under section 13 of this act; (b)
20 available drug treatment and counseling; and (c) birth control
21 counseling and education. The mother may accept the offer of a tubal
22 ligation up to six months following its tender.

23 (3) A physician who makes any determination under this section
24 shall not be liable in any cause of action as a result of his or her
25 determination except for acts of gross negligence or intentional
26 misconduct.

27 (4) This section expires June 30, 2002.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.34 RCW
29 to read as follows:

30 (1) The department, upon receipt of a report under section 2 of
31 this act, shall investigate and, in appropriate cases, file a
32 dependency petition. In the event the department does not file a
33 petition, it shall refer the mother to available chemical dependency
34 treatment programs or a pilot project.

35 (2) The department and the mother may enter an agreement in which
36 the mother agrees to chemical dependency treatment on an inpatient or

1 outpatient basis or be referred to a pilot project created under
2 section 10 of this act.

3 (3) If the department and mother enter an agreement under
4 subsection (2) of this section, the department shall, if a dependency
5 petition has been filed, request the court to defer the entry of an
6 order of dependency for as long as the mother remains in treatment or
7 enrolled in the pilot project, subject to the department's monitoring
8 for compliance. As a condition of deferral of the order of dependency,
9 the parents, if both are available and known, shall stipulate to facts
10 sufficient to constitute a dependency and the court shall order
11 treatment or enrollment in a pilot project and prohibit nonprescription
12 use of controlled substances. In the event that an available parent
13 unreasonably refuses to stipulate to facts constituting a dependency,
14 the court may proceed with the hearing on the petition.

15 (4) This section expires June 30, 2002.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 13.34 RCW
17 to read as follows:

18 (1) If the department receives a report under section 2 of this act
19 of a mother who has given birth to a second drug-affected infant, the
20 department:

21 (a) May request the court to proceed immediately with the entry of
22 a dependency for the first drug-affected infant; and

23 (b) Shall investigate and, unless there are compelling reasons to
24 the contrary, file a dependency petition on the second drug-affected
25 infant. If the department does not file a petition, it shall refer the
26 woman to available chemical dependency treatment programs or a pilot
27 project.

28 (2) The department and the mother may enter an agreement in which
29 the mother agrees to: (a) Enter chemical dependency inpatient
30 treatment or a pilot project, together with an aftercare program that
31 includes participation in a pilot project when feasible; and (b)
32 medically appropriate pharmaceutical pregnancy prevention, such as
33 Norplant or depo-provera, that is administered not less than once every
34 thirty days. The selection of the pregnancy prevention method shall be
35 based on an evaluation of the medical and physical consequences to the
36 mother and shall remain in effect until the dependency petition is
37 dismissed or the court determines it is no longer medically
38 appropriate.

1 (3) If the department and the mother enter an agreement under
2 subsection (2) of this section, the department shall request the court
3 to defer the entry of an order of dependency on the second drug-
4 affected infant for as long as the mother remains in treatment or
5 enrolled in the pilot project, subject to the department's monitoring
6 for compliance. As a condition of deferral of the order of dependency,
7 the parents, if both are available and known, shall stipulate to facts
8 sufficient to constitute a dependency and the court shall order
9 treatment or enrollment in a pilot project and prohibit nonprescription
10 use of controlled substances. In the event that an available parent
11 unreasonably refuses to stipulate to facts constituting a dependency,
12 the court may proceed with the hearing on the petition.

13 (4) This section expires June 30, 2002.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 13.34 RCW
15 to read as follows:

16 (1) The department may request the court to dismiss the petition
17 deferred under section 3 or 4 of this act at any time. No petition may
18 be vacated or dismissed unless the mother demonstrates by clear and
19 convincing evidence that she has not used controlled substances in a
20 nonprescription manner for at least thirty-six consecutive months and
21 can safely provide for the child's welfare without continuing
22 supervision by the department or court.

23 (2) This section expires June 30, 2002.

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 13.34 RCW
25 to read as follows:

26 (1) If the department receives a report under section 2 of this act
27 of a mother who has given birth to a third or subsequent drug-affected
28 infant, the department shall:

29 (a) Request the court to proceed immediately with the entry of a
30 finding of dependency on all drug-affected children born before the
31 third or subsequent birth unless an order of dependency has been
32 vacated or dismissed; and

33 (b) File a dependency petition on any drug-affected infant subject
34 to this section as well as any other child born before the third or
35 subsequent birth of a drug-affected infant.

36 (2) This section expires June 30, 2002.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 13.34 RCW
2 to read as follows:

3 (1) Following a filing of a petition under section 6 of this act:

4 (a) The court shall order evaluation by a designated chemical
5 dependency specialist, as defined in RCW 70.96A.020 who shall undertake
6 the processes described in RCW 70.96A.140.

7 (b) If the court has ordered removal of a child or children, the
8 out-of-home placement order shall remain in effect until the petition
9 is dismissed or the mother has successfully completed inpatient
10 treatment and any aftercare program for controlled substances ordered
11 by the court.

12 (2) This section expires June 30, 2002.

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 13.34 RCW
14 to read as follows:

15 (1) There is a rebuttable presumption in any petition filed under
16 section 6 of this act that termination of parental rights is in the
17 best interest of the child and it is unreasonable to provide services
18 to reunify the children with the mother. The court shall give great
19 weight to the fact that the mother has given birth to a third or
20 subsequent drug-affected infant.

21 (2) This section expires June 30, 2002.

22 NEW SECTION. **Sec. 9.** By July 1, 1999, the department of social
23 and health services, in consultation with the department of health,
24 shall adopt rules to implement this act, including a definition of
25 "drug-affected infant," which shall be limited to infants who are
26 affected by a mother's nonprescription use of controlled substances.

27 NEW SECTION. **Sec. 10.** To the extent funds are appropriated, the
28 department shall operate a pilot project to provide services to women
29 who give birth to infants exposed to the nonprescription use of
30 controlled substances by the mother during pregnancy. Within available
31 funds, the project may be offered in each of the department's
32 administrative regions. The project shall accept women referred to it
33 by the department following the birth of a drug-affected infant. The
34 pilot project shall be concluded by July 1, 2001.

1 NEW SECTION. **Sec. 11.** To the extent funds are appropriated, the
2 institute for public policy shall study the cost-effectiveness of this
3 act and report to the governor and legislature not later than September
4 1, 2002. The study shall measure the reduction in the birth rate of
5 drug-affected infants among women and shall compare the reduction with
6 the rate of birth of drug-affected infants born to women referred to
7 chemical dependency treatment programs. The study shall identify the
8 factors that promote or discourage the ability of women to avoid giving
9 birth to drug-affected infants.

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.96A
11 RCW to read as follows:

12 (1) Any treatment program or pilot project in which a mother is
13 enrolled under sections 3 through 5 of this act shall provide family
14 planning, education, counseling, information, and services other than
15 pregnancy termination.

16 (2) This section expires June 30, 2002.

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

19 The department may make available, or cause to be made available,
20 pharmaceutical birth control services, information, and counseling to
21 any person who enters chemical dependency treatment under section 3 or
22 4 of this act. Within available funds, the department may pay for any
23 tubal ligations requested under section 2 of this act if the mother's
24 income is less than two hundred percent of the federal poverty level.
25 The department shall report by December 1st of each year to the
26 governor and legislature: (1) The number of tubal ligations performed
27 as a result of chapter . . . , Laws of 1998 (this act); (2) the number
28 of women who decline to undergo the surgery; (3) the number of women
29 who obtain pharmaceutical birth control, by type of birth control; and
30 (4) the number of women who are reported to the department.

31 NEW SECTION. **Sec. 14.** A new section is added to chapter 18.71 RCW
32 to read as follows:

33 (1) Nothing in section 2 of this act imposes any additional duties
34 or responsibilities on, or remove any duties or responsibilities from,
35 a physician licensed under this chapter, except as specifically
36 included in chapter 13.34 RCW and sections 12 and 13 of this act.

1 (2) This section expires June 30, 2002.

2 NEW SECTION. **Sec. 15.** Sections 1 through 8 and 10 through 12 of
3 this act take effect July 1, 1999.

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