HOUSE BILL REPORT
E3SSB 5278

As Reported By House Committee On:
Children & Family Services

Title: An act relating to mothers who have given birth to a child with drug addiction.

Brief Description: Requiring dependency investigations for infants born drug affected.

Sponsors: 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).

Brief History:
Committee Activity:
Children & Family Services: 2/24/98, 2/26/98 [DPA].

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: Do pass as amended. Signed by 11 members: Representatives Cooke, Chairman; Boldt, Vice Chairman; Bush, Vice Chairman; Tokuda, Ranking Minority Member; Kastama, Assistant Ranking Minority Member; Ballasiotes; Carrell; Dickerson; Gombosky; McDonald and Wolfe.

Staff: Douglas Ruth (786-7134).

Background: Medical evidence suggests that prenatal drug exposure places the child at high risk of having medical, psychological and social problems after birth. Drug-affected infants are often born prematurely, have low birth weights and other significant medical problems. The long-term effects of drug exposure may lead to learning disabilities, hyperactivity, articulation and socialization problems, including anti-social behavior.

Medical research suggests that early interventions can help reduce the long-term medical impacts on the child from prenatal drug exposure.

Although drug-affected infants may suffer from serious physical and emotional complications, the fact that the infant is drug-affected, by itself, is not grounds for finding that the child is a dependent. However, when the department learns of an infant who is suffering from prenatal exposure to controlled substances they often take custody of the child. Many of these children are placed in pediatric care facilities. Often these

cases ultimately result in a dependency action, though the department may defer CPS action if the mother enters treatment.

Currently, physicians are not required to test newborn infants to discover if the child is drug-affected. Many physicians do report to the department infants which appear drug-affected.

Summary of Amended Bill: The Department of Social and Health Services (DSHS) will create a model project with sites in the three regions with the highest incidence of births of drug-affected babies. The model project shall provide family planning and counseling services to women who give birth to drug-affected infants. The services provided shall not include pregnancy termination.

Physicians, advanced registered nurses, and midwives are required to notify DSHS of a drug- affected infant if they have reasonable cause to believe the newborn has been exposed to drugs or alcohol. Low-income mothers of drug-affected infants may voluntarily obtain publically funded tubal ligations for up to six months after the birth. Physicians are exposed to liability only in cases of gross negligence or intentional misconduct.

The department must investigate all reports. If after an investigation there is reasonable cause to believe the infant is drug-affected, is in need of treatment, and the parents of the infant cannot provide adequate care, the department will take custody of the child. The department will retain custody until a court assumes custody or until the department determines that the parents can care for the infant. The infant shall be placed in a birth facility or pediatric care program and provided services while in the department's custody.

If appropriate, the department may file a dependency petition. If the department does not file a petition, it will refer the mother to a model project or to a chemical dependency treatment program. As part of treatment, the department will make available pharmaceutical birth control services, information, and counseling.

If the department does file a petition, the mother may avoid a dependency order by entering into an agreement with DSHS. As part of the agreement, the mother must obtain chemical dependency treatment or enroll in the model project. The mother must also stipulate to the fact that the child is a dependent child. If the mother enters into an agreement, the department will request that the court defer entry of a dependency order for as long as the mother remains in treatment.

On the second report of the birth of a drug-affected infant, DSHS may request the court proceed with the dependency on the first infant. DSHS must investigate and file a dependency on the second child, absent compelling reasons to the contrary. If

compelling reasons exist, the department will refer the mother to the model project or to a treatment program.

As with the first child, a mother may avoid the filing of a dependency petition by entering into an agreement with DSHS. The mother must agree to participate in inpatient chemical dependency treatment or the model project and submit to medically appropriate pharmaceutical birth control. The birth control is to continue until the court dismisses the dependency petition or finds that the birth control is no longer medically appropriate. The department will request that the dependency petition regarding the second infant be deferred for as long as the mother abides by the agreement. The mother must also stipulate to the fact that her child is a dependent child.

For the third, and any subsequent births of drug-affected infants, DSHS will request the court to enter a dependency order on all drug-affected children if dependency orders have been deferred. If dependency orders are not pending, DSHS will file a dependency petition for all other drug-affected children in the family. The court will order the mother evaluated by a chemical dependency specialist to determine if involuntary commitment for drug treatment is warranted. Birth of a third drug-affected infant also permits a dependency court to order out-of-home placement without first requiring that the department provide reasonable services and efforts to reunify the mother and child.

If a dependency petition has been deferred because a woman has entered into an agreement with the department, a court cannot dismiss the petition until the mother demonstrates by clear and convincing evidence that she has remained drug free for 12 consecutive months and can provide for the child's welfare. If a dependency petition has been entered and a child is removed from the home, the child may not be returned until the mother has successfully completed an inpatient chemical dependency and after-care program or the petition is dismissed.

The department is required to define "drug-affected infant." The definition is to include infants affected by alcohol.

DSHS must report annually on tubal ligations offered and accepted, number of reports filed by physicians, and the pharmaceutical birth control services utilized.

The Department of Health is directed to consult with medical professionals to develop a screening criteria to use in identifying pregnant women who are at risk of conceiving a drug-affected baby. Similarly, the Department of Health will develop training protocols to instruct personnel to use the identification and screening protocols.

The Department of Health shall also investigate the feasibility of protocols for testing or screening of newborns for drug or alcohol exposure. The department shall consider how to improve the current testing practices.

In a separate report, the Department of Health is required to present a plan for providing services to drug-affected babies, their mothers, and women at-risk of conceiving a drug-affected baby. The plan will identify services for these women and make recommendations to the Legislature on new services, funding levels, and implementation of the plan.

Amended Bill Compared to Engrossed Third Substitute Bill: The amended bill changes the procedures for reporting and detaining a drug-affected baby and initiating a dependency proceeding if the baby's mother does not agree to treatment. Alcohol-exposed infants are brought within the scope of the bill. The amended bill also adds registered nurses and midwives to the reporting requirement for physicians.

The department, rather than the physician, is given the authority to take custody of the infant and place the infant in a birthing facility or pediatric care program. The circumstances under which the department can take custody of the infant are outlined.

The provision creating a presumption that termination of parental rights is in the best interest of a child when the mother has had three or more drug-affected babies is removed. It is replaced by a court's option to suspend the requirement that the department make reasonable efforts to reunify a mother and child prior to placing the child out-of home.

Dependency hearing deadlines are stayed when a dependency petition has been deferred while a mother is receiving treatment.

The requirement that any pharmaceutical birth control required after the birth of the mother's second drug-affected child be administered not less than once every 30 days is eliminated.

The time a mother must remain drug and alcohol free before a dependency is dismissed is reduced from 36 to 12 months.

The pilot project is limited to the three administrative regions with the highest incidence of births of drug-affected infants.

A definition of "family planning" is added.

A study by the Washington State Institute for Public Policy (WSIPP) to determine the effectiveness for the model project is eliminated.

Provisions requiring the Department of Health to create screen and testing protocols, as well as, a plan for providing services to drug-affected children, their mothers, and women at risk of conceiving a drug-affected baby are added.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Sections 9 and 13 take effect immediately; sections 1 through 8 and 10 through 12 take effect July 1, 1999.

Testimony For: The bill is an effort to provide safe environments for drug-affected children, and to create an opportunity for mothers of drug-affected infants to enter into treatment. Drug-affected babies are suffering and face a disadvantaged future because these women do not seek treatment. It is important that nurses and midwives are included in the reporting requirement. But requiring testing of infants is unrealistic. Tests do not exist for all controlled substances. Most doctors do the available tests now. The bill creates an effective program for decreasing the births of babies affected by controlled substances, but ignores a significant group of at-risk children, those affected by prenatal alcohol use. The bill's use of the dependency procedures may provide an incentive for these women to enter treatment. The bill's procedures, however, need to be made consistent with the current dependency laws. Requiring that a mother remain drug-free for 36 months is unrealistic and means that the children will be away from their mothers for a significant time.

Testimony Against: The use of long-term pharmaceutical birth-control is unconstitutional. The baby isn't helped by this type of punishment, and it subjects the mother to risk of injury.

Testified: Senator Julia Patterson, prime sponsor; Fred Jensen, interested citizen (con); Susie Tracy, Washington State Medical Association (supports amendment); Jeanette Stehr-Green, MD, Washington State Department of Health (neutral and supports amendment); Jennifer Strus, Director, Division of Program & Policy, Department of Social and Health Services (neutral with concerns); Ken Stark, Director of the Division of Alcohol and Substance Abuse, Department of Social and Health Services (suggestion); Margaret Casey, Washington State Catholic Conference (concern); Laurie Lippold, Children's Home Society of Washington (pro); Cheri R. Tessier, Arc of Washington (pro); and Linda Grant, Association of Alcoholism & Addition Programs (pro with a suggestion).