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**SUBSTITUTE SENATE BILL 5278**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Patterson, Hargrove, Winsley, Wood, Benton, Goings, Prince, Bauer, Sheldon, Heavey, Long, Anderson, Haugen and Oke)

Read first time 03/05/97.

1 AN ACT Relating to involuntary use of long-term pharmaceutical  
2 birth control for mothers who have given birth to a child with drug  
3 addiction; adding new sections to chapter 13.34 RCW; adding new  
4 sections to chapter 70.96A RCW; creating new sections; and providing an  
5 effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that all children have  
8 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 is unreasonable to attempt to continue efforts to reunify the  
18 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, or a  
7 hospital administrator, who has reasonable cause to believe an infant  
8 has been exposed to nonprescription use of controlled substances shall:  
9 (a) Conduct appropriate tests to determine whether the infant is drug-  
10 affected; (b) notify the department of the name and address of the  
11 parents of an infant who is drug-affected; and (c) retain the infant in  
12 the birthing facility for medical treatment or place the infant in an  
13 appropriate pediatric care facility with the concurrence of the  
14 department for sufficient time for the infant to undergo withdrawal  
15 from the affects of the controlled substances. The withdrawal shall be  
16 under the 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 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.34 RCW  
24 to read as follows:

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

30 (2) The department and the mother may enter an agreement in which  
31 the mother agrees to chemical dependency treatment on an inpatient or  
32 outpatient basis or be referred to a pilot project created under  
33 section 10 of this act.

34 (3) If the department and mother enter an agreement under  
35 subsection (2) of this section, the department shall, if a dependency  
36 petition has been filed, request the court to defer the entry of an  
37 order of dependency for as long as the mother remains in treatment or

1 enrolled in the pilot project, subject to the department's monitoring  
2 for compliance. As a condition of deferral of the order of dependency,  
3 the parents, if both are available and known, shall stipulate to facts  
4 sufficient to constitute a dependency and the court shall order  
5 treatment or enrollment in a pilot project and prohibit nonprescription  
6 use of controlled substances. In the event that an available parent  
7 unreasonably refuses to stipulate to facts constituting a dependency,  
8 the court may proceed with the hearing on the petition.

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

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

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

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

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

32 (3) If the department and the mother enter an agreement under  
33 subsection (2) of this section, the department shall request the court  
34 to defer the entry of an order of dependency on the second drug-  
35 affected infant for as long as the mother remains in treatment or  
36 enrolled in the pilot project, subject to the department's monitoring  
37 for compliance. As a condition of deferral of the order of dependency,  
38 the parents, if both are available and known, shall stipulate to facts

1 sufficient to constitute a dependency and the court shall order  
2 treatment or enrollment in a pilot project and prohibit nonprescription  
3 use of controlled substances. In the event that an available parent  
4 unreasonably refuses to stipulate to facts constituting a dependency,  
5 the court may proceed with the hearing on the petition.

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

8 The department may request the court to dismiss the petition  
9 deferred under section 3 or 4 of this act at any time, but a petition  
10 may not be vacated or dismissed unless the mother demonstrates by clear  
11 and convincing evidence that she has not used controlled substances in  
12 a nonprescription manner for at least thirty-six consecutive months and  
13 can safely provide for the child's welfare without continuing  
14 supervision by the department or court.

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

17 If the department receives a report under section 2 of this act of  
18 a mother who has given birth to a third or subsequent drug-affected  
19 infant, the department shall:

20 (1) Request the court to proceed immediately with the entry of a  
21 finding of dependency on all drug-affected children born before the  
22 third or subsequent birth unless an order of dependency has been  
23 vacated or dismissed; and

24 (2) File a dependency petition on any drug-affected infant subject  
25 to this section as well as any other child born before the third or  
26 subsequent birth of a drug-affected infant.

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

29 Following a filing of a petition under section 6 of this act:

30 (1) The court shall order medically appropriate pharmaceutical  
31 pregnancy prevention, such as Norplant or depo-provera, that is  
32 administered not less than once every thirty days. The selection of  
33 the pregnancy prevention method shall be based on an evaluation of the  
34 medical and physical consequences to the mother and shall remain in  
35 effect until the petition is dismissed or the court determines it is no  
36 longer medically appropriate.

1 (2) If the court has ordered removal of a child or children, the  
2 out-of-home placement order shall remain in effect until the petition  
3 is dismissed or the mother has successfully completed inpatient  
4 treatment and any aftercare program for controlled substances ordered  
5 by the court.

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

8 There is a rebuttable presumption in any petition filed under  
9 section 6 of this act that termination of parental rights is in the  
10 best interest of the child and it is unreasonable to provide services  
11 to reunify the children with the mother.

12 NEW SECTION. **Sec. 9.** By July 1, 1998, the department of social  
13 and health services, in consultation with the department of health,  
14 shall adopt rules to implement this act, including a definition of  
15 "drug-affected infant," which shall be limited to infants who are  
16 affected by a mother's nonprescription use of controlled substances.

17 NEW SECTION. **Sec. 10.** The department shall operate a pilot  
18 project to provide services to women who give birth to infants exposed  
19 to the nonprescription use of controlled substances by the mother  
20 during pregnancy. The project shall be offered in one site in each of  
21 the department's administrative regions. The project shall accept  
22 women referred to it by the department following the birth of a drug-  
23 affected infant. The pilot project shall be concluded by July 1, 2002.

24 NEW SECTION. **Sec. 11.** The institute for public policy shall study  
25 the effectiveness of the pilot project created under section 10 of this  
26 act and report to the governor and legislature not later than September  
27 1, 2001. The study shall measure the reduction in the birth rate of  
28 drug-affected infants among women referred to the pilot project and  
29 shall compare the reduction with the rate of birth of drug-affected  
30 infants born to women referred to chemical dependency treatment  
31 programs. The study shall identify the factors that promote or  
32 discourage the ability of women referred to the pilot project to avoid  
33 giving birth to drug-affected infants.

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

3        Any treatment program or pilot project in which a mother is  
4    enrolled under sections 3 through 5 of this act shall provide family  
5    planning, education, counseling, information, and services other than  
6    pregnancy termination.

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

9        The department shall make available, or cause to be made available,  
10    pharmaceutical birth control services, information, and counseling to  
11    any person who enters chemical dependency treatment under section 3 or  
12    4 of this act.    The department shall pay for any tubal ligations  
13    requested under section 2 of this act if the mother's income is less  
14    than two hundred percent of the federal poverty level.    The department  
15    shall report by December 1st of each year to the governor and  
16    legislature:    (1) The number of tubal ligations performed as a result  
17    of chapter . . ., Laws of 1997 (this act); (2) the number of women who  
18    decline to undergo the surgery; (3) the number of women who obtain  
19    pharmaceutical birth control, by type of birth control; and (4) the  
20    number of women who are reported to the department.

21        NEW SECTION.    **Sec. 14.**    The department of social and health  
22    services shall study the costs and benefits associated with including  
23    mothers of children born affected by alcohol or with fetal alcohol  
24    syndrome in the services and responsibilities established in this act.  
25    The study shall include a review of appropriate medical and social  
26    science research.    The department shall report to the governor and  
27    legislature by December 1, 1997.

28        NEW SECTION.    **Sec. 15.**    Sections 1 through 8 and 10 through 13 of  
29    this act take effect July 1, 1998.

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