
SECOND SUBSTITUTE SENATE BILL 5278

State of Washington**55th Legislature****1998 Regular Session**

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

Read first time 02/05/98.

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; creating new sections; and providing an
4 effective date.

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 the consequences of the
8 nonprescription use of controlled substances by the mother during
9 pregnancy. Individuals who have a drug addiction are unable to make
10 reasoned decisions that help ensure the birth of a healthy infant. The
11 availability of long-term pharmaceutical birth control, when combined
12 with other treatment regimens, may allow women to regain control of
13 their lives and make long-term decisions in the best interest of
14 themselves and their children. The legislature further finds that a
15 third or subsequent drug-affected infant being born to the same mother
16 means it may be unreasonable to attempt to continue efforts to reunify
17 the family and that all reasonable reunification efforts that have
18 previously been made have proven futile and there is no likelihood that
19 future efforts will produce a different outcome.

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

3 (1) A physician licensed under chapter 18.71 RCW primarily
4 responsible for the supervision of the birth of an infant, or a
5 hospital administrator, who has reasonable cause to believe an infant
6 has been exposed to nonprescription use of controlled substances shall:

7 (a) Conduct appropriate tests to determine whether the infant is drug-
8 affected; (b) notify the department of the name and address of the
9 parents of an infant who is drug-affected; and (c) retain the infant in
10 the birthing facility for medical treatment or place the infant in an
11 appropriate pediatric care facility with the concurrence of the
12 department for sufficient time for the infant to undergo withdrawal
13 from the affects of the controlled substances. The withdrawal shall be
14 under the supervision of appropriate medical professionals.

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

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

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

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

32 (3) If the department and mother enter an agreement under
33 subsection (2) of this section, the department shall, if a dependency
34 petition has been filed, request the court to defer the entry of an
35 order of dependency 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. 4.** A new section is added to chapter 13.34 RCW
7 to read as follows:

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

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

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

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

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

1 unreasonably refuses to stipulate to facts constituting a dependency,
2 the court may proceed with the hearing on the petition.

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

5 The department may request the court to dismiss the petition
6 deferred under section 3 or 4 of this act at any time. No petition may
7 be vacated or dismissed unless the mother demonstrates by clear and
8 convincing evidence that she has not used controlled substances in a
9 nonprescription manner for at least thirty-six consecutive months and
10 can safely provide for the child's welfare without continuing
11 supervision by the department or court.

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

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

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

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

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

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

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

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

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

3 There is a rebuttable presumption in any petition filed under
4 section 6 of this act that termination of parental rights is in the
5 best interest of the child and it is unreasonable to provide services
6 to reunify the children with the mother. The court shall give great
7 weight to the fact that the mother has given birth to a third or
8 subsequent drug-affected infant.

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

14 NEW SECTION. **Sec. 10.** The department shall operate a pilot
15 project to provide services to women who give birth to infants exposed
16 to the nonprescription use of controlled substances by the mother
17 during pregnancy. The project shall be offered in one site in each of
18 the department's administrative regions. The project shall accept
19 women referred to it by the department following the birth of a drug-
20 affected infant. The pilot project shall be concluded by July 1, 2003.

21 NEW SECTION. **Sec. 11.** The institute for public policy shall study
22 the effectiveness of the pilot project created under section 10 of this
23 act and report to the governor and legislature not later than September
24 1, 2002. The study shall measure the reduction in the birth rate of
25 drug-affected infants among women referred to the pilot project and
26 shall compare the reduction with the rate of birth of drug-affected
27 infants born to women referred to chemical dependency treatment
28 programs. The study shall identify the factors that promote or
29 discourage the ability of women referred to the pilot project to avoid
30 giving birth to drug-affected infants.

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

33 Any treatment program or pilot project in which a mother is
34 enrolled under sections 3 through 5 of this act shall provide family

1 planning, education, counseling, information, and services other than
2 pregnancy termination.

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

5 The department shall make available, or cause to be made available,
6 pharmaceutical birth control services, information, and counseling to
7 any person who enters chemical dependency treatment under section 3 or
8 4 of this act. The department shall pay for any tubal ligations
9 requested under section 2 of this act if the mother's income is less
10 than two hundred percent of the federal poverty level. The department
11 shall report by December 1st of each year to the governor and
12 legislature: (1) The number of tubal ligations performed as a result
13 of chapter . . ., Laws of 1998 (this act); (2) the number of women who
14 decline to undergo the surgery; (3) the number of women who obtain
15 pharmaceutical birth control, by type of birth control; and (4) the
16 number of women who are reported to the department.

17 NEW SECTION. **Sec. 14.** The department of social and health
18 services shall study the costs and benefits associated with including
19 mothers of children born affected by alcohol or with fetal alcohol
20 syndrome in the services and responsibilities established in this act.
21 The study shall include a review of appropriate medical and social
22 science research. The department shall report to the governor and
23 legislature by December 1, 1998.

24 NEW SECTION. **Sec. 15.** Sections 1 through 8 and 10 through 13 of
25 this act take effect July 1, 1999.

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