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HOUSE BILL 2704

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Cooke, Patterson, Mitchell, H. Sommers, Talcott, Morris, Kessler and Silver

Read first time 01/16/96. Referred to Committee on Children & Family Services.

1 AN ACT Relating to involuntary use of long-term pharmaceutical  
2 birth control for mothers who have given birth to a child with fetal  
3 alcohol syndrome or drug addiction; adding a new section to chapter  
4 70.96A RCW; and creating a new 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 long-term pharmaceutical birth control is a breakthrough,  
11 allowing a temporary, mandatory birth control system. This will  
12 provide time for the person to seek and receive treatment.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.96A 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 to  
3 require the use of long-term pharmaceutical birth control for the  
4 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 required to use long-term pharmaceutical birth control has refused to  
8 submit to a medical examination, in which case the fact of refusal  
9 shall be alleged in the petition. The certificate shall set forth the  
10 licensed physician's findings in support of the allegations of the  
11 petition. A licensed physician employed by the department of social  
12 and health services is 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 required to use long-term pharmaceutical birth control, or upon motion  
22 of petitioner with written permission of the woman who may be required  
23 to use long-term pharmaceutical birth control, or her counsel and, upon  
24 good cause shown, extend the date for the hearing. A copy of the  
25 petition and of the notice of the hearing, including the date fixed by  
26 the court, shall be served by the court on the woman who may be  
27 required to use long-term pharmaceutical birth control, or her next of  
28 kin, a parent, or her legal guardian if she is a minor, and any other  
29 person the court believes advisable. A copy of the petition and  
30 certificate shall be delivered to each person notified.

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

1 this chapter. Upon motion by the woman who may be required to use  
2 long-term pharmaceutical birth control, or on its own motion, the court  
3 shall examine a record or testimony sought by a petitioner to determine  
4 whether it is within the scope of the waiver.

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

24 (4) If after hearing all relevant evidence, including the results  
25 of any diagnostic examination, the court finds that the mother has  
26 given birth to a baby with fetal alcohol syndrome or addicted to drugs  
27 by clear, cogent, and convincing proof, it shall make an order  
28 requiring the use of long-term pharmaceutical birth control by the  
29 mother. If this is the mother's first child, the court shall allow the  
30 mother to participate voluntarily in an alcohol or drug treatment  
31 program or be required to use long-term pharmaceutical birth control.  
32 If the court finds that the mother has given birth to a baby with fetal  
33 alcohol syndrome or addicted to drugs and it is not the mother's first  
34 child with fetal alcohol syndrome or drug addiction, the mother shall  
35 be ordered to use long-term pharmaceutical birth control.

36 (5) A woman required to use long-term pharmaceutical birth control  
37 under this section shall not be permitted to terminate the use of long-

1 term pharmaceutical birth control until six months after the court  
2 finds she is clean and sober.

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