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**SECOND SUBSTITUTE SENATE BILL 5278**

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**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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