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HOUSE BILL 2909

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State of Washington

52nd Legislature

1992 Regular Session

By Representatives Brekke, Paris and Winsley

Read first time 01/31/92. Referred to Committee on Health Care/Judiciary.

1 AN ACT Relating to involuntarily inserting Norplant in mothers who  
2 have given birth to a child with fetal alcohol syndrome; adding a new  
3 section to chapter 70.96 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that all children  
6 have the right to be born healthy and free of preventable birth  
7 defects. Individuals who are addicted to drugs or alcohol are unable  
8 to make reasoned decisions that help ensure the birth of a healthy  
9 baby. The creation of Norplant is a breakthrough, allowing a  
10 temporary, mandatory birth control system. This will provide time for  
11 the person to seek and receive treatment.

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

1 (1) If a designated chemical dependency specialist receives  
2 information alleging that a woman has given birth to a baby with fetal  
3 alcohol syndrome or addicted to drugs, the designated chemical  
4 dependency specialist, after investigation and evaluation of the  
5 specific facts alleged and of the reliability and credibility of the  
6 information, may file a petition with the superior or district court  
7 for the involuntary insertion of birth control known as Norplant into  
8 the woman. The petition shall be accompanied by a certificate of a  
9 licensed physician who has examined the mother and baby within five  
10 days before submission of the petition, unless the woman who may be  
11 involuntarily inserted with Norplant has refused to submit to a medical  
12 examination, in which case the fact of refusal shall be alleged in the  
13 petition. The certificate shall set forth the licensed physician's  
14 findings in support of the allegations of the petition. A licensed  
15 physician employed by the department of social and health services is  
16 eligible to be the certifying physician.

17 (2) Upon filing the petition, the court shall fix a date for a  
18 hearing no less than two and no more than seven days after the date the  
19 petition was filed unless the woman petitioned against is presently  
20 being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or  
21 71.34.050, in which case the hearing shall be held within seventy-two  
22 hours of the filing of the petition. The seventy-two hours specified  
23 in this section shall be computed by excluding Saturdays, Sundays, and  
24 holidays, however, the court may, upon motion of the woman who may be  
25 involuntarily inserted with Norplant, or upon motion of petitioner with  
26 written permission of the woman who may be involuntarily inserted with  
27 Norplant, or her counsel and, upon good cause shown, extend the date  
28 for the hearing. A copy of the petition and of the notice of the  
29 hearing, including the date fixed by the court, shall be served by the  
30 court on the woman who may be involuntarily inserted with Norplant, or

1 her next of kin, a parent, or her legal guardian if she is a minor, and  
2 any other person the court believes advisable. A copy of the petition  
3 and certificate shall be delivered to each person notified.

4 (3) At the hearing the court shall hear all relevant testimony,  
5 including, if possible, the testimony, that may be telephonic, of at  
6 least one licensed physician who has examined the mother and baby.  
7 Communications otherwise deemed privileged under the laws of this state  
8 are deemed to be waived in proceedings under this section if a court of  
9 competent jurisdiction in its discretion determines that the waiver is  
10 necessary to protect either the woman or the public. The waiver of a  
11 privilege under this section is limited to records or testimony  
12 relevant to evaluation of the woman for purposes of a proceeding under  
13 this chapter. Upon motion by the woman who may be involuntarily  
14 inserted with Norplant, or on its own motion, the court shall examine  
15 a record or testimony sought by a petitioner to determine whether it is  
16 within the scope of the waiver.

17 The record maker shall not be required to testify in order to  
18 introduce medical, nursing, or psychological records of women as long  
19 as the requirements of RCW 5.45.020 are met, except that portions of  
20 the record that contain opinions as to whether the woman is an  
21 alcoholic, or in the case of a minor incapacitated by alcoholism or  
22 other drug addiction, shall be deleted from the records unless the  
23 person offering the opinions is available for cross-examination. The  
24 woman shall be present unless the court believes that her presence is  
25 likely to be injurious to her; in this event the court may deem it  
26 appropriate to appoint a guardian ad litem to represent her throughout  
27 the proceeding. If deemed advisable, the court may examine the woman  
28 out of courtroom. If the woman has refused to be examined by a  
29 licensed physician, she shall be given an opportunity to be examined by  
30 a court-appointed licensed physician. If she refuses and there is

1 sufficient evidence to believe that the allegations of the petition are  
2 true, or if the court believes that more medical evidence is necessary,  
3 the court may make a temporary order committing her to the department  
4 of social and health services for a period of not more than five days  
5 for purposes of a diagnostic examination.

6 (4) If after hearing all relevant evidence, including the results  
7 of any diagnostic examination, the court finds that the mother has  
8 given birth to a baby with fetal alcohol syndrome or addicted to drugs  
9 by clear, cogent, and convincing proof, it shall make an order of  
10 involuntary insertion of Norplant into the mother.

11 (5) A woman involuntarily inserted with Norplant under this section  
12 shall not have the Norplant implant removed from her body until six  
13 months after the court finds she is clean and sober.