

# SENATE BILL REPORT

## E2SHB 3008

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As Reported By Senate Committee On:  
Human Services & Corrections, February 26, 1998

**Title:** An act relating to mothers who have given birth to a child with drug addiction.

**Brief Description:** Requiring dependency investigations for infants born drug affected.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Cooke, Dickerson, Boldt, Wolfe, McDonald, Tokuda, Ballasiotes, Kastama, Lambert, Dunshee, Carrell, Cody, Talcott, Cole, Johnson, Wood, Carlson, Lantz, Reams, Costa, L. Thomas, Clements, Zellinsky, Alexander, Dyer, D. Schmidt, Radcliff, Conway and Anderson).

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/25/98, 2/26/98 [DPA].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Kohl, Schow and Stevens.

**Staff:** Joan K. Mell (786-7447)

**Background:** Medical evidence suggests that prenatal drug exposure places the child at high risk of having medical, psychological and social problems after birth. Drug-affected infants are often born prematurely, have low birth weights and other significant medical problems. The long-term effects of drug exposure may lead to learning disabilities, hyperactivity, articulation and socialization problems, including anti-social behavior.

Although drug-affected infants may suffer from serious physical and emotional complications, the fact that the infant is drug-affected, by itself, is not grounds for finding that the child is a dependent child.

Currently, physicians are not required to test newborn infants to discover if the child is drug-affected or suffers from fetal alcohol syndrome.

**Summary of Amended Bill:** A physician who has reasonable cause to believe an infant has been exposed to nonprescription use of controlled substances or alcohol must conduct appropriate tests to determine whether the infant is drug affected; if the test is positive, notify the Department of Social and Health Services (DSHS) of the name and address of the parent of an infant who is drug affected. If the physician suspects an infant is drug affected from alcohol abuse, but has no available test to establish that the child is drug affected, the physician need only notify the department. The physician must inform the mother of a drug affected infant of her right to publically funded tubal ligation surgery, available drug

treatment and counseling, and birth control counseling and education. The physician is only liable for acts of gross negligence or intentional misconduct in the context of the physician making a determination about a drug-affected infant.

DSHS must investigate, and in appropriate cases, file a dependency petition. If testing has established that an infant is drug affected, the department must seek a court order to take the drug-affected infant into custody. Testing establishing an infant is drug affected meets the criteria for issuance of an order to take the child into custody. The department must have the drug affected infant stay in the hospital until the infant undergoes withdrawal from the effects of the drug, or have the infant placed into an appropriate pediatric interim care program. If there is no testing establishing that the child is drug affected from alcohol abuse, the department must determine the risks to the child and may only seek a court order to take custody of the child if there is other evidence of abuse or neglect. In cases where the department does not file a petition, it must refer the mother to available chemical dependency treatment. The dependency petition can be deferred if a parent agrees to treatment, monitored by the department for compliance.

In cases where a mother has given birth to a second drug affected infant, the department can proceed immediately with entry of a dependency for the first drug affected infant and may file a dependency petition on the second drug affected infant. A dependency on the second drug affected infant may be deferred if the mother enters an agreement with the department that she will enter chemical dependency inpatient treatment that includes an after care program. The after care program requires participation in medically appropriate pharmaceutical pregnancy prevention.

In cases where a mother has given birth to a third or subsequent drug affected infant, the department must request the court to proceed immediately with a finding of dependency on all drug affected children born before the third or subsequent birth, unless an order of dependency has been vacated or dismissed, and file a dependency petition on the third or subsequent drug affected infant. The dependency court must order evaluation by a designated chemical dependency specialist for involuntary inpatient drug and/or alcohol treatment.

Dependency petitions in cases of drug affected infants are not to be dismissed or vacated unless the mother demonstrates by clear and convincing evidence that she has not used controlled substances in a nonprescription manner for at least 12 consecutive months and can safely provide for the child's welfare without continuing supervision by the department or court.

The Department of Social and Health Services is to adopt a definition of drug affected infant, which must include infants who are affected by a mother's abuse of alcohol during pregnancy. The department must operate a model project to the extent funds are available to provide services to women who give birth to drug affected infants. The model project must provide family planning, education, counseling, information, and services other than pregnancy termination.

To the extent funds are appropriated, the Washington State Institute for Public Policy (WSIPP) must study the cost effectiveness and report by September 1, 2002. The pilot project terminates on June 30, 2001.

DSHS must report annually on tubal ligations offered and accepted, number of reports filed by physicians, and the pharmaceutical birth control services utilized.

Fact finding hearings in a dependency action can be continued if the parties have agreed to conditions that take more than 75 days to fulfill. In termination proceedings, a third or subsequent drug-affected birth as an aggravating circumstance for the court's consideration.

**Amended Bill Compared to Substitute Bill:** Midwives are not included in the reporting requirements. Physicians are required to test to determine if an infant is drug affected. The department is directed to obtain a court order to take a child into custody, and testing establishing the child is drug affected meets the requirements for obtaining a court order. In alcohol cases where it cannot be established by testing that the infant is drug affected, the department cannot take custody unless there is other evidence of abuse or neglect.

The department's requested changes are made regarding continuances of fact finding hearings and aggravating factors. The Senate bill version language is adopted.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Sections 8 and 12 through 16 take effect ninety days after adjournment of session in which bill is passed. Sections 1 through 7 and 9 through 11 take effect July 1, 1999.

**Testimony For:** Including alcohol is an important component to addressing the issue of drug-affected infants. Services should be made available to children up to age three. Testing criteria should be established by the Department of Health pursuant to the provisions of other legislation.

**Testimony Against:** None.

**Testified:** PRO: Representative Cooke, original prime sponsor; Ken Stark, Jennifer Strus, DSHS/DOH; Sharon Foster, ACOG; Susie Tracy, WA State Medical Association; Laurie Lippold, Children's Home Society.