
SUBSTITUTE HOUSE BILL 1697

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Dickerson, Ballasiotes, Cooke, Sheldon, Ogden, O'Brien, Sullivan, Scott, Anderson, Kessler, H. Sommers and Costa)

Read first time 03/05/97.

1 AN ACT Relating to involuntary use of long-term pharmaceutical
2 birth control for mothers who have given birth to a child with drug
3 addiction; adding new sections to chapter 70.96A RCW; and creating new
4 sections.

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 controlled substances are unable to
9 make reasoned decisions that help ensure the birth of a healthy baby.
10 The creation of long-term pharmaceutical birth control is a
11 breakthrough, allowing a temporary, mandatory birth control system.
12 This will 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) The department of social and health services shall operate four
16 pilot projects in communities served by the parent and child assistance
17 program. The projects shall provide services to women addicted to
18 controlled substances who give birth to drug-addicted infants. The

1 projects shall provide hospital screening in project communities to
2 identify all babies born to women addicted to controlled substances.
3 A licensed physician who believes, based on the physician's reasonable
4 medical judgment, that an infant is drug-affected shall conduct
5 appropriate test to determine whether the infant is drug-affected. If
6 the appropriate tests establish that the baby is drug-affected, the
7 physician shall notify the designated chemical dependency specialist in
8 the pilot site established under this section and the department of the
9 name and address of the parents of the infant.

10 (2) Upon the first referral of a woman addicted to controlled
11 substances who has given birth to a drug-addicted baby, the designated
12 chemical dependency specialist in a pilot site shall:

13 (a) Initiate the procedures under section 3 of this act to require
14 the mother to participate in chemical dependency treatment, counseling,
15 and support services, modeled after the successful six-year
16 demonstration birth-to-three program at the University of Washington;
17 and

18 (b) Notify the mother of the opportunity for voluntary, publicly
19 funded tubal ligation surgery as provided under section 4 of this act.

20 The department shall make available, or cause to be made available,
21 birth control services, information, and counseling to a mother
22 referred under this subsection.

23 (3) Upon the second, and any subsequent, referral of a woman
24 addicted to controlled substances who has given birth to a drug-
25 addicted baby, the designated chemical dependency specialist shall
26 notify the mother of the opportunity for voluntary, publicly funded
27 tubal ligation surgery as provided under section 4 of this act. The
28 designated chemical dependency specialist in a pilot site shall
29 initiate the procedures under section 3 of this act to:

30 (a) Require the mother to participate in chemical dependency
31 treatment, counseling, and support services; and

32 (b) Require the mother to participate in mandatory long-term
33 pharmaceutical birth control and related education and counseling
34 unless a physician makes a written finding that, based on an evaluation
35 of the medical and physical consequences to the mother, long-term
36 pharmaceutical birth control would be medically harmful to the mother.

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

1 (1) If a designated chemical dependency specialist in a pilot site
2 established under section 2 of this act receives information alleging
3 that a woman has given birth to a baby who is addicted to drugs, the
4 designated chemical dependency specialist, after investigation and
5 evaluation of the specific facts alleged and of the reliability and
6 credibility of the information, may file a petition with the superior
7 or district court related to the woman's participation in chemical
8 dependency treatment, counseling, and support services and the use of
9 long-term pharmaceutical birth control. The petition shall be
10 accompanied by a certificate of a licensed physician who has examined
11 the mother and baby within five days before submission of the petition,
12 unless the woman who may be required to participate in mandatory
13 chemical dependency treatment, counseling, and support services and use
14 long-term pharmaceutical birth control has refused to submit to a
15 medical examination, in which case the fact of refusal shall be alleged
16 in the petition. The certificate shall set forth the licensed
17 physician's findings in support of the allegations of the petition. A
18 licensed physician employed by the department of social and health
19 services is eligible to be the certifying physician.

20 (2) Upon filing the petition, the court shall fix a date for a
21 hearing no less than two and no more than seven days after the date the
22 petition was filed unless the woman petitioned against is presently
23 being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or
24 71.34.050, in which case the hearing shall be held within seventy-two
25 hours of the filing of the petition. The seventy-two hours specified
26 in this section shall be computed by excluding Saturdays, Sundays, and
27 holidays, however, the court may, upon motion of the woman who may be
28 required to participate in mandatory chemical dependency treatment,
29 counseling, and support services, and use long-term pharmaceutical
30 birth control, or upon motion of the petitioner with written permission
31 of the woman, or her counsel and, upon good cause shown, extend the
32 date for the hearing. A copy of the petition and of the notice of the
33 hearing, including the date fixed by the court, shall be served by the
34 court on the woman who may be required to participate in mandatory
35 chemical dependency treatment, counseling, and support services, and
36 use long-term pharmaceutical birth control, or her next of kin, a
37 parent, or her legal guardian if she is a minor, and any other person
38 the court believes advisable. A copy of the petition and certificate
39 shall be delivered to each person notified.

1 (3) At the hearing the court shall hear all relevant testimony,
2 including, if possible, the testimony, that may be telephonic, of at
3 least one licensed physician who has examined the mother and baby.
4 Communications otherwise deemed privileged under the laws of this state
5 are deemed to be waived in proceedings under this section if a court of
6 competent jurisdiction in its discretion determines that the waiver is
7 necessary to protect either the woman or the public. The waiver of a
8 privilege under this section is limited to records or testimony
9 relevant to evaluation of the woman for purposes of a proceeding under
10 this section. Upon motion by the woman who may be required to
11 participate in mandatory chemical dependency treatment, counseling, and
12 support services, and to use long-term pharmaceutical birth control, or
13 on its own motion, the court shall examine a record or testimony sought
14 by a petitioner to determine whether it is within the scope of the
15 waiver.

16 The record maker shall not be required to testify in order to
17 introduce medical, nursing, or psychological records of women as long
18 as the requirements of RCW 5.45.020 are met, except that portions of
19 the record that contain opinions as to whether the woman is addicted to
20 a controlled substance, or in the case of a minor incapacitated by drug
21 addiction, and has given birth to her second drug-addicted baby shall
22 be deleted from the records unless the person offering the opinions is
23 available for cross-examination. The woman shall be present unless the
24 court believes that her presence is likely to be injurious to her; in
25 this event the court may deem it appropriate to appoint a guardian ad
26 litem to represent her throughout the proceeding. If deemed advisable,
27 the court may examine the woman out of the courtroom. If the woman has
28 refused to be examined by a licensed physician, she shall be given an
29 opportunity to be examined by a court-appointed licensed physician. If
30 she refuses and there is sufficient evidence to believe that the
31 allegations of the petition are true, or if the court believes that
32 more medical evidence is necessary, the court may make a temporary
33 order committing her to the department of social and health services
34 for a period of not more than five days for purposes of a diagnostic
35 examination including evaluation of the medical and physical
36 consequences of long-term pharmaceutical birth control use by the
37 mother.

38 (4) If after hearing all relevant evidence, including the results
39 of any diagnostic examination, the court finds that the mother has

1 given birth to a baby addicted to a controlled substance by clear,
2 cogent, and convincing proof, it shall make an order requiring a
3 disposition under this section.

4 (a) If this is the woman's first child addicted to a controlled
5 substance, the court shall require the mother to participate in
6 chemical dependency treatment, counseling, and support services,
7 modeled after the successful six-year demonstration birth-to-three
8 program at the University of Washington program. The court shall refer
9 the mother to voluntary family planning services, education, and
10 counseling.

11 (b) If the court finds that the woman has given birth to a second
12 or subsequent baby addicted to a controlled substance, the woman shall
13 be ordered to participate in mandatory chemical dependency treatment,
14 counseling, and support services. The court shall order the mother to
15 use long-term pharmaceutical birth control unless a physician makes a
16 written finding that, based on an evaluation of the medical and
17 physical consequences to the mother, long-term pharmaceutical birth
18 control would be medically harmful to the mother.

19 (5) A woman required to use long-term pharmaceutical birth control
20 under this section shall not be permitted to terminate the use of long-
21 term pharmaceutical birth control until six months after the court
22 finds she is not using nonprescription controlled substances.

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

25 Within available funds, the department shall arrange and pay for
26 any tubal ligation surgery requested under section 2 of this act if the
27 mother's income is less than two hundred percent of the federal poverty
28 level. Refusal to obtain a tubal ligation under section 2 of this act
29 shall not subject a mother to any procedures established under chapter
30 . . . , Laws of 1997 (this act) or otherwise diminish her rights.

31 NEW SECTION. **Sec. 5.** The University of Washington shall conduct
32 an outcome evaluation of the pilot sites, including the voluntary and
33 mandatory service components and the related legal procedures
34 established by chapter . . . , Laws of 1997 (this act).

--- END ---