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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3008

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State of Washington

55th Legislature

1998 Regular Session

By 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)

Read first time 02/07/98. Referred to Committee on .

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 and/or the abuse of  
9 alcohol by the mother during pregnancy. Individuals who have a drug or  
10 alcohol addiction are unable to make reasoned decisions that help  
11 ensure the birth of a healthy infant. The availability of long-term  
12 pharmaceutical birth control, when combined with other treatment  
13 regimens, may allow women to regain control of their lives and make  
14 long-term decisions in the best interest of themselves and their  
15 children. The legislature further finds that a third or subsequent  
16 drug-affected infant being born to the same mother means it may be  
17 unreasonable to attempt to continue efforts to reunify the family and  
18 that all reasonable reunification efforts that have previously been

1 made have proven futile and there is no likelihood that future efforts  
2 will produce a different outcome.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.34 RCW  
4 to read as follows:

5 (1) A physician licensed under chapter 18.71 or 18.57 RCW primarily  
6 responsible for the care of a newborn infant, an advanced registered  
7 nurse who practices midwifery licensed under chapter 18.79 RCW, or a  
8 midwife licensed under chapter 18.50 RCW, who has reasonable cause to  
9 believe an infant has been exposed to nonprescription use of controlled  
10 substances or alcohol must notify the department of the name and  
11 address of the parent or parents of an infant who is drug-affected.

12 (2) The physician or midwife responsible for the delivery of the  
13 infant must, as soon as practical, inform the mother of a drug-affected  
14 infant of: (a) Her right to publicly funded tubal ligation surgery as  
15 provided under section 12 of this act; (b) available drug treatment and  
16 counseling; and (c) birth control counseling and education. The mother  
17 may accept the offer of a tubal ligation up to six months following its  
18 tender.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.34 RCW  
20 to read as follows:

21 (1) The department, upon receipt of a report under section 2 of  
22 this act, shall investigate and, if the department has reasonable cause  
23 to believe that the infant is drug-affected, is in need of treatment  
24 for conditions related to the infant's exposure to nonprescription use  
25 of controlled substances or alcohol including withdrawal, and the  
26 parents of the child cannot adequately care for the child's conditions,  
27 the department shall take custody of the child for the purpose of  
28 obtaining treatment for the child. Where medically indicated, the  
29 department may place the infant in an appropriate birth facility or  
30 pediatric care program, and access services for the treatment of the  
31 child's drug-affected condition. The child's withdrawal shall be under  
32 the supervision of appropriate medical professionals. The department  
33 shall retain custody of the child until the court assumes custody,  
34 until the department upon a documented and substantiated record  
35 determines that the child's parents can adequately care for the  
36 infant's condition, or until the department decides not to file a  
37 dependency petition under subsection (2) of this section.

1 (2) After an investigation in response to a receipt of a report  
2 under section 2 of this act, the department shall, in appropriate  
3 cases, file a dependency petition under this chapter. In the event the  
4 department does not file a petition, it shall refer the mother to  
5 available chemical dependency treatment programs or a model project.

6 (3) The department and the mother may enter an agreement in which  
7 the mother agrees to chemical dependency treatment on an inpatient or  
8 outpatient basis or be referred to a model project created under  
9 section 10 of this act.

10 (4) If the department and mother enter an agreement under  
11 subsection (3) of this section, the department shall, if a dependency  
12 petition has been filed, request the court to defer the entry of an  
13 order of dependency for as long as the mother remains in treatment or  
14 enrolled in the model project, subject to the department's monitoring  
15 for compliance. As a condition of deferral of the order of dependency,  
16 the parents, if both are available and known, shall stipulate to facts  
17 sufficient to constitute a dependency and the court shall order  
18 treatment or enrollment in a model project and prohibit nonprescription  
19 use of controlled substances. In the event that an available parent  
20 unreasonably refuses to stipulate to facts constituting a dependency,  
21 the court may proceed with the hearing on the petition.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 13.34 RCW  
23 to read as follows:

24 (1) If the department receives a report under section 2 of this act  
25 of a mother who has given birth to a second drug-affected infant, the  
26 department:

27 (a) May request the court to proceed immediately with the entry of  
28 a dependency for the first drug-affected infant; and

29 (b) Shall investigate and, unless there are compelling reasons to  
30 the contrary, file a dependency petition on the second drug-affected  
31 infant. If the department does not file a petition, it shall refer the  
32 woman to available chemical dependency treatment programs or a model  
33 project.

34 (2) The department and the mother may enter an agreement in which  
35 the mother agrees to: (a) Enter chemical dependency inpatient  
36 treatment or a model project, together with an aftercare program that  
37 includes participation in a model project when feasible; and (b)  
38 medically appropriate pharmaceutical pregnancy prevention. The

1 selection of the pregnancy prevention method shall be based on an  
2 evaluation of the medical and physical consequences to the mother and  
3 shall remain in effect until the dependency petition is dismissed or  
4 the court determines it is no longer medically appropriate.

5 (3) If the department and the mother enter an agreement under  
6 subsection (2) of this section, the department shall request the court  
7 to defer the entry of an order of dependency on the second drug-  
8 affected infant for as long as the mother remains in treatment or  
9 enrolled in the model project, subject to the department's monitoring  
10 for compliance. As a condition of deferral of the order of dependency,  
11 the parents, if both are available and known, shall stipulate to facts  
12 sufficient to constitute a dependency and the court shall order  
13 treatment or enrollment in a model project and prohibit nonprescription  
14 use of controlled substances. In the event that an available parent  
15 unreasonably refuses to stipulate to facts constituting a dependency,  
16 the court may proceed with the hearing on the petition.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 13.34 RCW  
18 to read as follows:

19 The department may request the court to dismiss the petition  
20 deferred under section 3 or 4 of this act at any time, but a petition  
21 may not be vacated or dismissed unless the mother demonstrates by clear  
22 and convincing evidence that she has not used controlled substances in  
23 a nonprescription manner for at least twelve consecutive months and can  
24 safely provide for the child's welfare without continuing supervision  
25 by the department or court.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 13.34 RCW  
27 to read as follows:

28 If the department receives a report under section 2 of this act of  
29 a mother who has given birth to a third or subsequent drug-affected  
30 infant, the department shall:

31 (1) Request the court to proceed immediately with the entry of a  
32 finding of dependency on all drug-affected children born before the  
33 third or subsequent birth unless an order of dependency has been  
34 vacated or dismissed; and

35 (2) File a dependency petition on any drug-affected infant subject  
36 to this section as well as any other child born before the third or  
37 subsequent birth of a drug-affected infant.

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 13.34 RCW  
2 to read as follows:

3        Following a filing of a petition under section 6 of this act:

4        (1) The court shall order evaluation by a designated chemical  
5 dependency specialist, as defined in RCW 70.96A.020 who shall undertake  
6 the processes described in RCW 70.96A.140.

7        (2) If the court has ordered removal of a child or children, the  
8 out-of-home placement order shall remain in effect until the petition  
9 is dismissed or the mother has successfully completed inpatient  
10 treatment and any aftercare program for controlled substances ordered  
11 by the court.

12       NEW SECTION.    **Sec. 8.**    A new section is added to chapter 13.34 RCW  
13 to read as follows:

14       There is a rebuttable presumption in any petition filed under  
15 section 6 of this act that termination of parental rights is in the  
16 best interest of the child and it is unreasonable to provide services  
17 to reunify the children with the mother. The court shall give great  
18 weight to the fact that the mother has given birth to a third or  
19 subsequent drug-affected infant.

20       NEW SECTION.    **Sec. 9.**    By July 1, 1999, the department of social  
21 and health services, in consultation with the department of health,  
22 shall adopt rules to implement this act, including a definition of  
23 "drug-affected infant," which shall include infants who are affected by  
24 a mother's abuse of alcohol during pregnancy.

25       NEW SECTION.    **Sec. 10.**    The department shall operate a model  
26 project to provide services to women who give birth to infants exposed  
27 to the nonprescription use of controlled substances by the mother  
28 during pregnancy. The project shall be offered in one site in each of  
29 three of the department's administrative regions which have the highest  
30 incidence of drug-affected babies annually. The project shall accept  
31 women referred to it by the department following the birth of a drug-  
32 affected infant. The model project shall be concluded by July 1, 2003.

33       NEW SECTION.    **Sec. 11.**    A new section is added to chapter 70.96A  
34 RCW to read as follows:

1 Any treatment program or model project in which a mother is  
2 enrolled under sections 3 through 5 of this act shall provide family  
3 planning, education, counseling, information, and services other than  
4 pregnancy termination. "Family planning services" means the process of  
5 limiting or spacing the birth of children. The process may include the  
6 provision of acceptable and effective education, counseling,  
7 reproductive health care, and testing.

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

10 The department shall make available, or cause to be made available,  
11 pharmaceutical birth control services, information, and counseling to  
12 any person who enters chemical dependency treatment under section 3 or  
13 4 of this act. The department shall pay for any tubal ligations  
14 requested under section 2 of this act if the mother's income is less  
15 than two hundred percent of the federal poverty level. The department  
16 shall report by December 1st of each year to the governor and  
17 legislature: (1) The number of tubal ligations performed as a result  
18 of chapter . . ., Laws of 1998 (this act); (2) the number of women who  
19 decline to undergo the surgery; (3) the number of women who obtain  
20 pharmaceutical birth control, by type of birth control; and (4) the  
21 number of women who are reported to the department.

22 NEW SECTION. **Sec. 13.** The department of social and health  
23 services shall study the costs and benefits associated with including  
24 mothers of children born affected by alcohol or with fetal alcohol  
25 syndrome in the services and responsibilities established in this act.  
26 The study shall include a review of appropriate medical and social  
27 science research. The department shall report to the governor and  
28 legislature by December 1, 1998.

29 NEW SECTION. **Sec. 14.** Sections 1 through 8 and 10 through 12 of  
30 this act take effect July 1, 1999.

31 NEW SECTION. **Sec. 15.** If specific funding for the purposes of  
32 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 1998, in the omnibus appropriations act, this act  
2 is null and void.

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