
THIRD SUBSTITUTE SENATE BILL 5278

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Patterson, Hargrove, Winsley, Wood, Benton, Goings, Prince, Bauer, B. Sheldon, Heavey, Long, Anderson, Haugen and Oke)

Read first time 02/10/98.

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; providing an
4 effective date; and providing expiration dates.

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 (3) This section expires June 30, 2001.

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

24 (1) The department, upon receipt of a report under section 2 of
25 this act, shall investigate and, in appropriate cases, file a
26 dependency petition. In the event the department does not file a
27 petition, it shall refer the mother to available chemical dependency
28 treatment programs or a pilot project.

29 (2) The department and the mother may enter an agreement in which
30 the mother agrees to chemical dependency treatment on an inpatient or
31 outpatient basis or be referred to a pilot project created under
32 section 10 of this act.

33 (3) If the department and mother enter an agreement under
34 subsection (2) of this section, the department shall, if a dependency
35 petition has been filed, request the court to defer the entry of an
36 order of dependency for as long as the mother remains in treatment or
37 enrolled in the pilot project, subject to the department's monitoring
38 for compliance. As a condition of deferral of the order of dependency,

1 the parents, if both are available and known, shall stipulate to facts
2 sufficient to constitute a dependency and the court shall order
3 treatment or enrollment in a pilot project and prohibit nonprescription
4 use of controlled substances. In the event that an available parent
5 unreasonably refuses to stipulate to facts constituting a dependency,
6 the court may proceed with the hearing on the petition.

7 (4) This section expires June 30, 2001.

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

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

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

15 (b) Shall investigate and, unless there are compelling reasons to
16 the contrary, file a dependency petition on the second drug-affected
17 infant. If the department does not file a petition, it shall refer the
18 woman to available chemical dependency treatment programs or a pilot
19 project.

20 (2) The department and the mother may enter an agreement in which
21 the mother agrees to: (a) Enter chemical dependency inpatient
22 treatment or a pilot project, together with an aftercare program that
23 includes participation in a pilot project when feasible; and (b)
24 medically appropriate pharmaceutical pregnancy prevention, such as
25 Norplant or depo-provera, that is administered not less than once every
26 thirty days. The selection of the pregnancy prevention method shall be
27 based on an evaluation of the medical and physical consequences to the
28 mother and shall remain in effect until the dependency petition is
29 dismissed or the court determines it is no longer medically
30 appropriate.

31 (3) If the department and the mother enter an agreement under
32 subsection (2) of this section, the department shall request the court
33 to defer the entry of an order of dependency on the second drug-
34 affected infant for as long as the mother remains in treatment or
35 enrolled in the pilot project, subject to the department's monitoring
36 for compliance. As a condition of deferral of the order of dependency,
37 the parents, if both are available and known, shall stipulate to facts
38 sufficient to constitute a dependency and the court shall order

1 treatment or enrollment in a pilot project and prohibit nonprescription
2 use of controlled substances. In the event that an available parent
3 unreasonably refuses to stipulate to facts constituting a dependency,
4 the court may proceed with the hearing on the petition.

5 (4) This section expires June 30, 2001.

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

8 (1) The department may request the court to dismiss the petition
9 deferred under section 3 or 4 of this act at any time. No petition may
10 be vacated or dismissed unless the mother demonstrates by clear and
11 convincing evidence that she has not used controlled substances in a
12 nonprescription manner for at least thirty-six consecutive months and
13 can safely provide for the child's welfare without continuing
14 supervision by the department or court.

15 (2) This section expires June 30, 2001.

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

18 (1) If the department receives a report under section 2 of this act
19 of a mother who has given birth to a third or subsequent drug-affected
20 infant, the department shall:

21 (a) Request the court to proceed immediately with the entry of a
22 finding of dependency on all drug-affected children born before the
23 third or subsequent birth unless an order of dependency has been
24 vacated or dismissed; and

25 (b) File a dependency petition on any drug-affected infant subject
26 to this section as well as any other child born before the third or
27 subsequent birth of a drug-affected infant.

28 (2) This section expires June 30, 2001.

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

31 (1) Following a filing of a petition under section 6 of this act:

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

35 (b) If the court has ordered removal of a child or children, the
36 out-of-home placement order shall remain in effect until the petition

1 is dismissed or the mother has successfully completed inpatient
2 treatment and any aftercare program for controlled substances ordered
3 by the court.

4 (2) This section expires June 30, 2001.

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

7 (1) There is a rebuttable presumption in any petition filed under
8 section 6 of this act that termination of parental rights is in the
9 best interest of the child and it is unreasonable to provide services
10 to reunify the children with the mother. The court shall give great
11 weight to the fact that the mother has given birth to a third or
12 subsequent drug-affected infant.

13 (2) This section expires June 30, 2001.

14 NEW SECTION. **Sec. 9.** By July 1, 1999, the department of social
15 and health services, in consultation with the department of health,
16 shall adopt rules to implement this act, including a definition of
17 "drug-affected infant," which shall be limited to infants who are
18 affected by a mother's nonprescription use of controlled substances.

19 NEW SECTION. **Sec. 10.** To the extent funds are appropriated, the
20 department shall operate a pilot project to provide services to women
21 who give birth to infants exposed to the nonprescription use of
22 controlled substances by the mother during pregnancy. Within available
23 funds, the project may be offered in each of the department's
24 administrative regions. The project shall accept women referred to it
25 by the department following the birth of a drug-affected infant. The
26 pilot project shall be concluded by July 1, 2001.

27 NEW SECTION. **Sec. 11.** To the extent funds are appropriated, the
28 institute for public policy shall study the cost-effectiveness of this
29 act and report to the governor and legislature not later than September
30 1, 2002. The study shall measure the reduction in the birth rate of
31 drug-affected infants among women and shall compare the reduction with
32 the rate of birth of drug-affected infants born to women referred to
33 chemical dependency treatment programs. The study shall identify the
34 factors that promote or discourage the ability of women to avoid giving
35 birth to drug-affected infants.

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

3 (1) Any treatment program or pilot project in which a mother is
4 enrolled under sections 3 through 5 of this act shall provide family
5 planning, education, counseling, information, and services other than
6 pregnancy termination.

7 (2) This section expires June 30, 2001.

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

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

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

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