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**SENATE BILL 5278**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** Senators Patterson, Hargrove, Winsley, Wood, Benton, Goings, Prince, Bauer, B. Sheldon, Heavey, Long, Anderson, Haugen and Oke

Read first time 01/21/97. Referred to Committee on Human Services & Corrections.

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 drugs are unable to make reasoned  
9 decisions that help ensure the birth of a healthy baby. The creation  
10 of long-term pharmaceutical birth control is a breakthrough, allowing  
11 a temporary, mandatory birth control system. This will provide time  
12 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 drug-addicted women  
18 who give birth to drug-addicted infants. The projects shall provide

1 hospital screening in project communities to identify all babies born  
2 to drug-addicted women.

3 (2) The first referral of a drug-addicted woman who has given birth  
4 to a drug-addicted baby shall result in the offering of:

5 (a) Voluntary chemical dependency treatment, counseling, and  
6 support services, modeled after the successful six-year demonstration  
7 birth-to-three program at the University of Washington; and

8 (b) Voluntary family planning information, education, and  
9 counseling.

10 (3) The second referral of a drug-addicted woman who has given  
11 birth to a drug-addicted baby shall result in the provision of:

12 (a) Mandatory chemical dependency treatment, counseling, and  
13 support services, modeled after the successful six-year demonstration  
14 birth-to-three program at the University of Washington; and

15 (b) Voluntary long-term birth control and related education and  
16 counseling.

17 (4) The third referral of a drug-addicted woman who has given birth  
18 to a drug-addicted baby shall result in the provision of:

19 (a) Mandatory chemical dependency treatment, counseling, and  
20 support services; and

21 (b) Mandatory long-term birth control and related education and  
22 counseling through the procedure established under chapter ..., Laws of  
23 1997 (this act).

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

26 (1) If a designated chemical dependency specialist in a pilot site  
27 established under chapter ..., Laws of 1997 (this act), receives  
28 information alleging that a woman has given birth to a baby who is  
29 addicted to drugs, the designated chemical dependency specialist, after  
30 investigation and evaluation of the specific facts alleged and of the  
31 reliability and credibility of the information, may file a petition  
32 with the superior or district court related to the woman's  
33 participation in chemical dependency treatment, counseling, and support  
34 services and the use of long-term pharmaceutical birth control. The  
35 petition shall be accompanied by a certificate of a licensed physician  
36 who has examined the mother and baby within five days before submission  
37 of the petition, unless the woman who may be required to participate in  
38 mandatory chemical dependency treatment, counseling, and support

1 services and use long-term pharmaceutical birth control has refused to  
2 submit to a medical examination, in which case the fact of refusal  
3 shall be alleged in the petition. The certificate shall set forth the  
4 licensed physician's findings in support of the allegations of the  
5 petition. A licensed physician employed by the department of social  
6 and health services is eligible to be the certifying physician.

7 (2) Upon filing the petition, the court shall fix a date for a  
8 hearing no less than two and no more than seven days after the date the  
9 petition was filed unless the woman petitioned against is presently  
10 being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or  
11 71.34.050, in which case the hearing shall be held within seventy-two  
12 hours of the filing of the petition. The seventy-two hours specified  
13 in this section shall be computed by excluding Saturdays, Sundays, and  
14 holidays, however, the court may, upon motion of the woman who may be  
15 required to participate in mandatory chemical dependency treatment,  
16 counseling, and support services, and use long-term pharmaceutical  
17 birth control, or upon motion of the petitioner with written permission  
18 of the woman, or her counsel and, upon good cause shown, extend the  
19 date for the hearing. A copy of the petition and of the notice of the  
20 hearing, including the date fixed by the court, shall be served by the  
21 court on the woman who may be required to participate in mandatory  
22 chemical dependency treatment, counseling, and support services, and  
23 use long-term pharmaceutical birth control, or her next of kin, a  
24 parent, or her legal guardian if she is a minor, and any other person  
25 the court believes advisable. A copy of the petition and certificate  
26 shall be delivered to each person notified.

27 (3) At the hearing the court shall hear all relevant testimony,  
28 including, if possible, the testimony, that may be telephonic, of at  
29 least one licensed physician who has examined the mother and baby.  
30 Communications otherwise deemed privileged under the laws of this state  
31 are deemed to be waived in proceedings under this section if a court of  
32 competent jurisdiction in its discretion determines that the waiver is  
33 necessary to protect either the woman or the public. The waiver of a  
34 privilege under this section is limited to records or testimony  
35 relevant to evaluation of the woman for purposes of a proceeding under  
36 this section. Upon motion by the woman who may be required to  
37 participate in mandatory chemical dependency treatment, counseling, and  
38 support services, and to use long-term pharmaceutical birth control, or  
39 on its own motion, the court shall examine a record or testimony sought

1 by a petitioner to determine whether it is within the scope of the  
2 waiver.

3 The record maker shall not be required to testify in order to  
4 introduce medical, nursing, or psychological records of women as long  
5 as the requirements of RCW 5.45.020 are met, except that portions of  
6 the record that contain opinions as to whether the woman is addicted to  
7 drugs, or in the case of a minor incapacitated by drug addiction, and  
8 has given birth to her third drug-addicted baby shall be deleted from  
9 the records unless the person offering the opinions is available for  
10 cross-examination. The woman shall be present unless the court  
11 believes that her presence is likely to be injurious to her; in this  
12 event the court may deem it appropriate to appoint a guardian ad litem  
13 to represent her throughout the proceeding. If deemed advisable, the  
14 court may examine the woman out of the courtroom. If the woman has  
15 refused to be examined by a licensed physician, she shall be given an  
16 opportunity to be examined by a court-appointed licensed physician. If  
17 she refuses and there is sufficient evidence to believe that the  
18 allegations of the petition are true, or if the court believes that  
19 more medical evidence is necessary, the court may make a temporary  
20 order committing her to the department of social and health services  
21 for a period of not more than five days for purposes of a diagnostic  
22 examination.

23 (4) If after hearing all relevant evidence, including the results  
24 of any diagnostic examination, the court finds that the mother has  
25 given birth to a baby addicted to drugs by clear, cogent, and  
26 convincing proof, it shall make an order requiring a disposition under  
27 this section.

28 (a) If this is the woman's first child, the court shall allow the  
29 mother to participate voluntarily in a drug treatment program and  
30 voluntarily use family planning services, education, and counseling.

31 (b) If the court finds that the woman has given birth to a second  
32 baby addicted to drugs, the woman shall be ordered to participate in  
33 mandatory chemical dependency treatment, counseling, and support  
34 services and, at the woman's choice, to use long-term pharmaceutical  
35 birth control.

36 (c) If the court finds that the woman has given birth to a third  
37 baby addicted to drugs, the woman shall be ordered to participate in  
38 mandatory chemical dependency treatment, counseling, and support

1 services, and, in addition, to use long-term pharmaceutical birth  
2 control.

3 (5) A woman required to use long-term pharmaceutical birth control  
4 under this section shall not be permitted to terminate the use of long-  
5 term pharmaceutical birth control until six months after the court  
6 finds she is drug free.

7 NEW SECTION. **Sec. 4.** The University of Washington shall conduct  
8 an outcome evaluation of the pilot sites, including the voluntary and  
9 mandatory service components and the related legal procedures  
10 established by chapter ..., Laws of 1997 (this act).

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