
HOUSE BILL 2095

State of Washington 59th Legislature 2005 Regular Session

By Representatives Roach, Ahern, Serben, Holmquist and McCune

Read first time 02/17/2005. Referred to Committee on Health Care.

1 AN ACT Relating to the use of pharmaceutical birth control or tubal
2 ligation in cases of children born alcohol or drug-affected; adding new
3 sections to chapter 13.34 RCW; providing an effective date; and
4 declaring an emergency.

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 from the consequences of alcohol
8 abuse or illegal drug use by the mother during pregnancy. Babies who
9 are born alcohol or drug-affected are more likely to suffer from
10 premature birth and low birth weight, to be shorter, weigh less, and
11 have a smaller head size, and to develop health problems than children
12 born to mothers who did not abuse alcohol or use illegal drugs. The
13 legislature further finds that the state has a compelling interest in
14 protecting unborn children from the harmful effects of alcohol abuse
15 and illegal drug use during pregnancy and that requiring pharmaceutical
16 birth control or tubal ligation for women who are incapable for
17 whatever reason of making long-term decisions in controlling their
18 abuse of alcohol or use of illegal drugs is in the best interest of the
19 mothers and their children.

1 NEW SECTION. **Sec. 2.** (1) If a physician, physician assistant,
2 advanced registered nurse practitioner, including a certified nurse
3 midwife, or licensed midwife is consulting, treating, providing care
4 for, or working with a pregnant woman, and the physician, physician
5 assistant, advanced registered nurse practitioner, including a
6 certified nurse midwife, or licensed midwife discovers or reasonably
7 believes that the woman's unborn child is alcohol or drug-affected or
8 is likely to be alcohol or drug-affected, the physician, physician
9 assistant, advanced registered nurse practitioner, including a
10 certified nurse midwife, or licensed midwife shall inform the woman of
11 the provisions of this act and of available alcohol or drug dependency
12 treatment programs and counseling.

13 (2) A physician licensed under chapter 18.71 RCW primarily
14 responsible for the supervision of the birth of an infant or care of
15 the mother of the infant, or a hospital administrator, who has
16 reasonable cause to believe an infant is alcohol or drug-affected or
17 has been exposed to alcohol abuse or the use of illegal drugs shall:
18 (a) Conduct appropriate tests to determine whether the infant is
19 alcohol or drug-affected; (b) notify the department of the name and
20 address of the parents of an infant who is alcohol or drug-affected;
21 and (c) retain the infant in the birthing facility for medical
22 treatment or place the infant in an appropriate pediatric care facility
23 with the concurrence of the department for sufficient time for the
24 infant to undergo withdrawal from the effects of the alcohol or drug.
25 The withdrawal shall be under the supervision of appropriate medical
26 professionals. In addition, the physician shall, as soon as practical,
27 inform the mother of the alcohol or drug-affected infant of the
28 provisions of this act and of available alcohol or drug dependency
29 treatment programs and counseling.

30 NEW SECTION. **Sec. 3.** (1) The department, upon receipt of a report
31 under section 2 of this act, shall investigate and, in cases where a
32 physician has determined the infant is alcohol or drug-affected, shall
33 file a petition in the superior court requesting the court to issue an
34 order requiring the mother to abstain from alcohol or the
35 nonprescription use of controlled substances, to submit to random
36 testing by the department for such substances, and to attend alcohol or
37 drug dependency treatment programs and counseling as determined

1 appropriate by the department. If the evidence supports the
2 physician's determination that the infant is alcohol or drug-affected
3 and that the infant is alcohol or drug-affected as a result of the
4 ingestion of alcohol or drugs by the mother, the court shall issue the
5 order.

6 (2) If a mother previously has been issued an order under
7 subsection (1) of this section and the department receives another
8 report under section 2 of this act, the department shall investigate
9 and, in cases where a physician has determined the infant is alcohol or
10 drug-affected, shall file a petition in the superior court requesting
11 the court to issue an order requiring the mother to abstain from
12 alcohol or the nonprescription use of controlled substances, to submit
13 to random testing by the department for such substances, to attend
14 alcohol or drug dependency treatment programs and counseling as
15 determined appropriate by the department, and to submit to the
16 involuntary use of the pharmaceutical birth control, Norplant or depo-
17 provera, and it shall be administered not less than once every thirty
18 days, unless an evaluation of the medical and physical consequences to
19 the mother determines such use of Norplant or depo-provera would prove
20 harmful to the physical well-being of the mother. The use of Norplant
21 or depo-provera shall remain in effect until a petition is dismissed or
22 the court determines it is no longer medically appropriate. If the
23 evidence supports the physician's determination that the infant is
24 alcohol or drug-affected, that the infant is alcohol or drug-affected
25 as a result of the ingestion of alcohol or drugs by the mother, and
26 that the mother previously has been issued an order under subsection
27 (1) of this section, the court shall issue the order.

28 (3) If a mother previously has been issued an order under
29 subsection (2) of this section and the department receives another
30 report under section 2 of this act, the department shall investigate
31 and, in cases where a physician has determined the infant is alcohol or
32 drug-affected, shall file a petition in the superior court requesting
33 the court to issue an order requiring the mother to abstain from
34 alcohol or the nonprescription use of controlled substances, to submit
35 to random testing by the department for such substances, to attend
36 alcohol or drug dependency treatment programs and counseling as
37 determined appropriate by the department, and to submit to the
38 involuntary use of tubal ligation, unless an evaluation of the medical

1 and physical consequences to the mother determines that the tubal
2 ligation would prove harmful to the physical well-being of the mother.
3 If the evidence supports the physician's determination that the infant
4 is alcohol or drug-affected, that the infant is alcohol or drug-
5 affected as a result of the ingestion of alcohol or drugs by the
6 mother, and that the mother previously has been issued an order under
7 subsection (2) of this section, the court shall issue the order.

8 (4) The department and the mother may enter an agreement in which
9 the mother agrees to abstain from alcohol abuse or the nonprescription
10 use of controlled substances and undergo random testing for such
11 substances, or to submit to the involuntary use of pharmaceutical birth
12 control or tubal ligation. If the department and the mother enter into
13 an agreement under this subsection that the mother will abstain from
14 alcohol abuse or the nonprescription use of controlled substances,
15 undergo random testing by the department for such substances, and
16 attend alcohol or drug dependency treatment programs and counseling as
17 determined appropriate by the department, the department shall request
18 the court to defer the entry of any order requiring the mother to
19 submit to the involuntary use of pharmaceutical birth control or tubal
20 ligation for as long as the mother continues to comply with the terms
21 of the agreement, subject to the department's monitoring for
22 compliance.

23 NEW SECTION. **Sec. 4.** The department may request the court to
24 dismiss the petition deferred under section 3 of this act at any time,
25 but a petition may not be vacated or dismissed unless the mother
26 demonstrates by clear and convincing evidence that she has not abused
27 alcohol or used controlled substances in a nonprescription manner for
28 at least thirty-six consecutive months.

29 NEW SECTION. **Sec. 5.** The department shall pay for pharmaceutical
30 birth control or tubal ligation administered under section 3 of this
31 act if the mother's income is less than two hundred percent of the
32 federal poverty level. The department shall report by December 1st of
33 each year to the governor and legislature: (1) The number of physician
34 reports under section 2 of this act received by the department; (2) the
35 number of cases where a physician has determined an infant is alcohol
36 or drug-affected; (3) the number of cases where involuntary or

1 voluntary use of pharmaceutical birth control measures or tubal
2 ligation was implemented and whether pharmaceutical birth control or
3 tubal ligation was utilized; and (4) the recidivism rate of subsequent
4 births of alcohol or drug-affected infants.

5 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each
6 added to chapter 13.34 RCW.

7 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 2005.

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