

HB 3139 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 02/28/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 7.70.065 and 2005 c 440 s 2 are each amended to read  
4 as follows:

5 (1) Informed consent for health care for a patient who is not  
6 competent, as defined in RCW 11.88.010(1)(e), to consent may be  
7 obtained from a person authorized to consent on behalf of such patient.

8 (a) Persons authorized to provide informed consent to health care  
9 on behalf of a patient who is not competent to consent, based upon a  
10 reason other than incapacity as defined in RCW 11.88.010(1)(d), shall  
11 be a member of one of the following classes of persons in the following  
12 order of priority:

13 (i) The appointed guardian of the patient, if any;

14 (ii) The individual, if any, to whom the patient has given a  
15 durable power of attorney that encompasses the authority to make health  
16 care decisions;

17 (iii) The patient's spouse;

18 (iv) Children of the patient who are at least eighteen years of  
19 age;

20 (v) Parents of the patient; and

21 (vi) Adult brothers and sisters of the patient.

22 (b) If the health care provider seeking informed consent for  
23 proposed health care of the patient who is not competent to consent  
24 under RCW 11.88.010(1)(e), other than a person determined to be  
25 incapacitated because he or she is under the age of majority and who is  
26 not otherwise authorized to provide informed consent, makes reasonable  
27 efforts to locate and secure authorization from a competent person in  
28 the first or succeeding class and finds no such person available,  
29 authorization may be given by any person in the next class in the order

1 of descending priority. However, no person under this section may  
2 provide informed consent to health care:

3 (i) If a person of higher priority under this section has refused  
4 to give such authorization; or

5 (ii) If there are two or more individuals in the same class and the  
6 decision is not unanimous among all available members of that class.

7 (c) Before any person authorized to provide informed consent on  
8 behalf of a patient not competent to consent under RCW 11.88.010(1)(e),  
9 other than a person determined to be incapacitated because he or she is  
10 under the age of majority and who is not otherwise authorized to  
11 provide informed consent, exercises that authority, the person must  
12 first determine in good faith that that patient, if competent, would  
13 consent to the proposed health care. If such a determination cannot be  
14 made, the decision to consent to the proposed health care may be made  
15 only after determining that the proposed health care is in the  
16 patient's best interests.

17 (2) Informed consent for health care, including mental health care,  
18 for a patient who is not competent, as defined in RCW 11.88.010(1)(e),  
19 because he or she is under the age of majority and who is not otherwise  
20 authorized to provide informed consent, may be obtained from a person  
21 authorized to consent on behalf of such a patient.

22 (a) Persons authorized to provide informed consent to health care,  
23 including mental health care, on behalf of a patient who is  
24 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is  
25 under the age of majority and who is not otherwise authorized to  
26 provide informed consent, shall be a member of one of the following  
27 classes of persons in the following order of priority:

28 (i) The appointed guardian, or legal custodian authorized pursuant  
29 to Title 26 RCW, of the minor patient, if any;

30 (ii) A person authorized by the court to consent to medical care  
31 for a child in out-of-home placement pursuant to chapter 13.32A or  
32 13.34 RCW, if any;

33 (iii) Parents of the minor patient;

34 (iv) The individual, if any, to whom the minor's parent has given  
35 a signed authorization to make health care decisions for the minor  
36 patient; and

37 (v) A competent adult representing himself or herself to be a  
38 relative responsible for the health care of such minor patient or a

1 competent adult who has signed and dated a declaration under penalty of  
2 perjury pursuant to RCW 9A.72.085 stating that the adult person is a  
3 relative responsible for the health care of the minor patient. Such  
4 declaration shall be effective for up to six months from the date of  
5 the declaration.

6 (b) A health care provider may, but is not required to, rely on the  
7 representations or declaration of a person claiming to be a relative  
8 responsible for the care of the minor patient, under (a)(v) of this  
9 subsection, if the health care provider does not have actual notice of  
10 the falsity of any of the statements made by the person claiming to be  
11 a relative responsible for the health care of the minor patient.

12 (c) A health care facility or a health care provider may, in its  
13 discretion, require documentation of a person's claimed status as being  
14 a relative responsible for the health care of the minor patient.  
15 However, there is no obligation to require such documentation.

16 (d) The health care provider or health care facility where services  
17 are rendered shall be immune from suit in any action, civil or  
18 criminal, or from professional or other disciplinary action when such  
19 reliance is based on a declaration signed under penalty of perjury  
20 pursuant to RCW 9A.72.085 stating that the adult person is a relative  
21 responsible for the health care of the minor patient under (a)(v) of  
22 this subsection.

23 (3) For the purposes of this section, "health care," "health care  
24 provider," and "health care facility" shall be defined as established  
25 in RCW 70.02.010.

26 **Sec. 2.** RCW 71.34.020 and 1998 c 296 s 8 are each amended to read  
27 as follows:

28 Unless the context clearly requires otherwise, the definitions in  
29 this section apply throughout this chapter.

30 (1) "Child psychiatrist" means a person having a license as a  
31 physician and surgeon in this state, who has had graduate training in  
32 child psychiatry in a program approved by the American Medical  
33 Association or the American Osteopathic Association, and who is board  
34 eligible or board certified in child psychiatry.

35 (2) "Children's mental health specialist" means:

36 (a) A mental health professional who has completed a minimum of one

1 hundred actual hours, not quarter or semester hours, of specialized  
2 training devoted to the study of child development and the treatment of  
3 children; and

4 (b) A mental health professional who has the equivalent of one year  
5 of full-time experience in the treatment of children under the  
6 supervision of a children's mental health specialist.

7 (3) "Commitment" means a determination by a judge or court  
8 commissioner, made after a commitment hearing, that the minor is in  
9 need of inpatient diagnosis, evaluation, or treatment or that the minor  
10 is in need of less restrictive alternative treatment.

11 (4) "~~((County--))~~ Designated mental health professional" means a  
12 mental health professional designated by one or more counties to  
13 perform the functions of a ~~((county--))~~ designated mental health  
14 professional described in this chapter.

15 (5) "Department" means the department of social and health  
16 services.

17 (6) "Evaluation and treatment facility" means a public or private  
18 facility or unit that is certified by the department to provide  
19 emergency, inpatient, residential, or outpatient mental health  
20 evaluation and treatment services for minors. A physically separate  
21 and separately-operated portion of a state hospital may be designated  
22 as an evaluation and treatment facility for minors. A facility which  
23 is part of or operated by the department or federal agency does not  
24 require certification. No correctional institution or facility,  
25 juvenile court detention facility, or jail may be an evaluation and  
26 treatment facility within the meaning of this chapter.

27 (7) "Evaluation and treatment program" means the total system of  
28 services and facilities coordinated and approved by a county or  
29 combination of counties for the evaluation and treatment of minors  
30 under this chapter.

31 (8) "Gravely disabled minor" means a minor who, as a result of a  
32 mental disorder, is in danger of serious physical harm resulting from  
33 a failure to provide for his or her essential human needs of health or  
34 safety, or manifests severe deterioration in routine functioning  
35 evidenced by repeated and escalating loss of cognitive or volitional  
36 control over his or her actions and is not receiving such care as is  
37 essential for his or her health or safety.

1 (9) "Inpatient treatment" means twenty-four-hour-per-day mental  
2 health care provided within a general hospital, psychiatric hospital,  
3 or residential treatment facility certified by the department as an  
4 evaluation and treatment facility for minors.

5 (10) "Less restrictive alternative" or "less restrictive setting"  
6 means outpatient treatment provided to a minor who is not residing in  
7 a facility providing inpatient treatment as defined in this chapter.

8 (11) "Likelihood of serious harm" means either: (a) A substantial  
9 risk that physical harm will be inflicted by an individual upon his or  
10 her own person, as evidenced by threats or attempts to commit suicide  
11 or inflict physical harm on oneself; (b) a substantial risk that  
12 physical harm will be inflicted by an individual upon another, as  
13 evidenced by behavior which has caused such harm or which places  
14 another person or persons in reasonable fear of sustaining such harm;  
15 or (c) a substantial risk that physical harm will be inflicted by an  
16 individual upon the property of others, as evidenced by behavior which  
17 has caused substantial loss or damage to the property of others.

18 (12) "Medical necessity" for inpatient care means a requested  
19 service which is reasonably calculated to: (a) Diagnose, correct,  
20 cure, or alleviate a mental disorder; or (b) prevent the worsening of  
21 mental conditions that endanger life or cause suffering and pain, or  
22 result in illness or infirmity or threaten to cause or aggravate a  
23 handicap, or cause physical deformity or malfunction, and there is no  
24 adequate less restrictive alternative available.

25 (13) "Mental disorder" means any organic, mental, or emotional  
26 impairment that has substantial adverse effects on an individual's  
27 cognitive or volitional functions. The presence of alcohol abuse, drug  
28 abuse, juvenile criminal history, antisocial behavior, or mental  
29 retardation alone is insufficient to justify a finding of "mental  
30 disorder" within the meaning of this section.

31 (14) "Mental health professional" means a psychiatrist,  
32 psychologist, psychiatric nurse, or social worker, and such other  
33 mental health professionals as may be defined by rules adopted by the  
34 secretary under this chapter.

35 (15) "Minor" means any person under the age of eighteen years.

36 (16) "Outpatient treatment" means any of the nonresidential  
37 services mandated under chapter 71.24 RCW and provided by licensed  
38 services providers as identified by RCW 71.24.025((+3)).

- 1 (17) "Parent" means:
- 2 (a) A biological or adoptive parent who has legal custody of the
- 3 child, including either parent if custody is shared under a joint
- 4 custody agreement; or
- 5 (b) A person or agency judicially appointed as legal guardian or
- 6 custodian of the child.
- 7 (18) "Professional person in charge" or "professional person" means
- 8 a physician or other mental health professional empowered by an
- 9 evaluation and treatment facility with authority to make admission and
- 10 discharge decisions on behalf of that facility.
- 11 (19) "Psychiatric nurse" means a registered nurse who has a
- 12 bachelor's degree from an accredited college or university, and who has
- 13 had, in addition, at least two years' experience in the direct
- 14 treatment of mentally ill or emotionally disturbed persons, such
- 15 experience gained under the supervision of a mental health
- 16 professional. "Psychiatric nurse" shall also mean any other registered
- 17 nurse who has three years of such experience.
- 18 (20) "Psychiatrist" means a person having a license as a physician
- 19 in this state who has completed residency training in psychiatry in a
- 20 program approved by the American Medical Association or the American
- 21 Osteopathic Association, and is board eligible or board certified in
- 22 psychiatry.
- 23 (21) "Psychologist" means a person licensed as a psychologist under
- 24 chapter 18.83 RCW.
- 25 (22) "Responsible other" means the minor, the minor's parent or
- 26 estate, or any other person legally responsible for support of the
- 27 minor.
- 28 (23) "Secretary" means the secretary of the department or
- 29 secretary's designee.
- 30 (24) "Start of initial detention" means the time of arrival of the
- 31 minor at the first evaluation and treatment facility offering inpatient
- 32 treatment if the minor is being involuntarily detained at the time.
- 33 With regard to voluntary patients, "start of initial detention" means
- 34 the time at which the minor gives notice of intent to leave under the
- 35 provisions of this chapter.

36 **Sec. 3.** RCW 71.34.500 and 2005 c 371 s 2 are each amended to read

37 as follows:

1 (1) A minor thirteen years or older may admit himself or herself to  
2 an evaluation and treatment facility for inpatient mental treatment,  
3 without parental consent. The admission shall occur only if the  
4 professional person in charge of the facility concurs with the need for  
5 inpatient treatment. Parental authorization, or authorization from a  
6 person who may consent on behalf of the minor pursuant to RCW 7.70.065,  
7 is required for inpatient treatment of a minor under the age of  
8 thirteen.

9 (2) When, in the judgment of the professional person in charge of  
10 an evaluation and treatment facility, there is reason to believe that  
11 a minor is in need of inpatient treatment because of a mental disorder,  
12 and the facility provides the type of evaluation and treatment needed  
13 by the minor, and it is not feasible to treat the minor in any less  
14 restrictive setting or the minor's home, the minor may be admitted to  
15 an evaluation and treatment facility.

16 (3) Written renewal of voluntary consent must be obtained from the  
17 applicant no less than once every twelve months. The minor's need for  
18 continued inpatient treatments shall be reviewed and documented no less  
19 than every one hundred eighty days.

20 **Sec. 4.** RCW 71.34.530 and 1998 c 296 s 12 are each amended to read  
21 as follows:

22 Any minor thirteen years or older may request and receive  
23 outpatient treatment without the consent of the minor's parent.  
24 Parental authorization, or authorization from a person who may consent  
25 on behalf of the minor pursuant to RCW 7.70.065, is required for  
26 outpatient treatment of a minor under the age of thirteen."

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27 On page 1, line 2 of the title, after "minors;" strike the  
28 remainder of the title and insert "and amending RCW 7.70.065,  
29 71.34.020, 71.34.500, and 71.34.530."

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