CERTIFICATION OF ENROLLMENT

## HOUSE BILL 3139

Chapter 93, Laws of 2006

59th Legislature 2006 Regular Session

MENTAL HEALTH CARE--MINORS--CAREGIVER CONSENT

EFFECTIVE DATE: 6/7/06

Passed by the House March 4, 2006 Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate February 28, 2006 Yeas 47 Nays 0 I, Richard Nafziger, Chief Clerk

of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 3139** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CERTIFICATE

RICHARD NAFZIGER

Chief Clerk

BRAD OWEN

President of the Senate

Approved March 17, 2006.

FILED

March 17, 2006 - 10:53 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

Secretary of State State of Washington

## HOUSE BILL 3139

## AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

## State of Washington 59th Legislature 2006 Regular Session

**By** Representatives Pettigrew, Haler, Dickerson, Kagi, Dunn, Walsh, Darneille, Roberts, Hinkle, Morrell and Kenney

Read first time 01/23/2006. Referred to Committee on Children & Family Services.

AN ACT Relating to kinship caregivers' consent for mental health care of minors; and amending RCW 7.70.065, 71.34.020, 71.34.500, and 71.34.530.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 Sec. 1. RCW 7.70.065 and 2005 c 440 s 2 are each amended to read 6 as follows:

7 (1) Informed consent for health care for a patient who is not 8 competent, as defined in RCW 11.88.010(1)(e), to consent may be obtained from a person authorized to consent on behalf of such patient. 9 10 (a) Persons authorized to provide informed consent to health care 11 on behalf of a patient who is not competent to consent, based upon a 12 reason other than incapacity as defined in RCW 11.88.010(1)(d), shall be a member of one of the following classes of persons in the following 13 order of priority: 14

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

16 (ii) The individual, if any, to whom the patient has given a 17 durable power of attorney that encompasses the authority to make health 18 care decisions;

19 (iii) The patient's spouse;

1 (iv) Children of the patient who are at least eighteen years of 2 age;

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(v) Parents of the patient; and

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(vi) Adult brothers and sisters of the patient.

5 (b) If the health care provider seeking informed consent for proposed health care of the patient who is not competent to consent 6 7 under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is 8 9 not otherwise authorized to provide informed consent, makes reasonable efforts to locate and secure authorization from a competent person in 10 the first or succeeding class and finds no such person available, 11 authorization may be given by any person in the next class in the order 12 of descending priority. However, no person under this section may 13 provide informed consent to health care: 14

(i) If a person of higher priority under this section has refusedto give such authorization; or

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

(c) Before any person authorized to provide informed consent on 19 20 behalf of a patient not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is 21 22 under the age of majority and who is not otherwise authorized to provide informed consent, exercises that authority, the person must 23 24 first determine in good faith that that patient, if competent, would 25 consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made 26 27 only after determining that the proposed health care is in the patient's best interests. 28

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

(a) Persons authorized to provide informed consent to health care,
 <u>including mental health care</u>, on behalf of a patient who is
 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is
 under the age of majority and who is not otherwise authorized to

provide informed consent, shall be a member of one of the following
 classes of persons in the following order of priority:

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

5 (ii) A person authorized by the court to consent to medical care 6 for a child in out-of-home placement pursuant to chapter 13.32A or 7 13.34 RCW, if any;

8

(iii) Parents of the minor patient;

9 (iv) The individual, if any, to whom the minor's parent has given 10 a signed authorization to make health care decisions for the minor 11 patient; and

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

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

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

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

36 (3) For the purposes of this section, <u>"health care,"</u> "health care
37 provider," and "health care facility" shall be defined as established
38 in RCW 70.02.010.

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

3 Unless the context clearly requires otherwise, the definitions in 4 this section apply throughout this chapter.

5 (1) "Child psychiatrist" means a person having a license as a 6 physician and surgeon in this state, who has had graduate training in 7 child psychiatry in a program approved by the American Medical 8 Association or the American Osteopathic Association, and who is board 9 eligible or board certified in child psychiatry.

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

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

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

18 (3) "Commitment" means a determination by a judge or court 19 commissioner, made after a commitment hearing, that the minor is in 20 need of inpatient diagnosis, evaluation, or treatment or that the minor 21 is in need of less restrictive alternative treatment.

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

26 (5) "Department" means the department of social and health 27 services.

(6) "Evaluation and treatment facility" means a public or private 28 facility or unit that is certified by the department to provide 29 emergency, inpatient, residential, or outpatient mental 30 health evaluation and treatment services for minors. A physically separate 31 32 and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which 33 is part of or operated by the department or federal agency does not 34 require certification. No correctional institution or facility, 35 juvenile court detention facility, or jail may be an evaluation and 36 37 treatment facility within the meaning of this chapter.

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1 (7) "Evaluation and treatment program" means the total system of 2 services and facilities coordinated and approved by a county or 3 combination of counties for the evaluation and treatment of minors 4 under this chapter.

5 (8) "Gravely disabled minor" means a minor who, as a result of a 6 mental disorder, is in danger of serious physical harm resulting from 7 a failure to provide for his or her essential human needs of health or 8 safety, or manifests severe deterioration in routine functioning 9 evidenced by repeated and escalating loss of cognitive or volitional 10 control over his or her actions and is not receiving such care as is 11 essential for his or her health or safety.

12 (9) "Inpatient treatment" means twenty-four-hour-per-day mental 13 health care provided within a general hospital, psychiatric hospital, 14 or residential treatment facility certified by the department as an 15 evaluation and treatment facility for minors.

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

(11) "Likelihood of serious harm" means either: (a) A substantial 19 risk that physical harm will be inflicted by an individual upon his or 20 21 her own person, as evidenced by threats or attempts to commit suicide 22 or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as 23 24 evidenced by behavior which has caused such harm or which places 25 another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an 26 27 individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others. 28

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

36 (13) "Mental disorder" means any organic, mental, or emotional 37 impairment that has substantial adverse effects on an individual's 38 cognitive or volitional functions. The presence of alcohol abuse, drug

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1 abuse, juvenile criminal history, antisocial behavior, or mental 2 retardation alone is insufficient to justify a finding of "mental 3 disorder" within the meaning of this section.

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

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

9 (16) "Outpatient treatment" means any of the nonresidential 10 services mandated under chapter 71.24 RCW and provided by licensed 11 services providers as identified by RCW 71.24.025((<del>(3)</del>)).

12 (17) "Parent" means:

13 (a) A biological or adoptive parent who has legal custody of the 14 child, including either parent if custody is shared under a joint 15 custody agreement; or

16 (b) A person or agency judicially appointed as legal guardian or 17 custodian of the child.

18 (18) "Professional person in charge" or "professional person" means 19 a physician or other mental health professional empowered by an 20 evaluation and treatment facility with authority to make admission and 21 discharge decisions on behalf of that facility.

(19) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of mentally ill or emotionally disturbed persons, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(20) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

34 (21) "Psychologist" means a person licensed as a psychologist under35 chapter 18.83 RCW.

36 (22) "Responsible other" means the minor, the minor's parent or 37 estate, or any other person legally responsible for support of the 38 minor. (23) "Secretary" means the secretary of the department or
 secretary's designee.

3 (24) "Start of initial detention" means the time of arrival of the
4 minor at the first evaluation and treatment facility offering inpatient
5 treatment if the minor is being involuntarily detained at the time.
6 With regard to voluntary patients, "start of initial detention" means
7 the time at which the minor gives notice of intent to leave under the
8 provisions of this chapter.

9 **Sec. 3.** RCW 71.34.500 and 2005 c 371 s 2 are each amended to read 10 as follows:

11 (1) A minor thirteen years or older may admit himself or herself to 12 an evaluation and treatment facility for inpatient mental treatment, The admission shall occur only if the 13 without parental consent. professional person in charge of the facility concurs with the need for 14 inpatient treatment. Parental authorization, or authorization from a 15 16 person who may consent on behalf of the minor pursuant to RCW 7.70.065, 17 is required for inpatient treatment of a minor under the age of thirteen. 18

19 (2) When, in the judgment of the professional person in charge of 20 an evaluation and treatment facility, there is reason to believe that 21 a minor is in need of inpatient treatment because of a mental disorder, 22 and the facility provides the type of evaluation and treatment needed 23 by the minor, and it is not feasible to treat the minor in any less 24 restrictive setting or the minor's home, the minor may be admitted to 25 an evaluation and treatment facility.

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

30 **Sec. 4.** RCW 71.34.530 and 1998 c 296 s 12 are each amended to read 31 as follows:

Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization, or authorization from a person who may consent

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- 1 <u>on behalf of the minor pursuant to RCW 7.70.065</u>, is required for
- 2 outpatient treatment of a minor under the age of thirteen.

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