

Consent Laws that Impact Health Care Services for Justice Involved Youth

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Educational Objectives

- Learning Objective 1: Define consent laws by minors' status and types of health services.
- Learning Objective 2: Recognize legal challenges and limitations to obtaining consent for health services in juvenile justice settings.
- Learning Objective 3: Discuss parental and court involvement in the consent process for justice-involved youth.



Overview

- Several state and federal consent laws impact the provision of health care to youth confined in secure facilities. Consent for treatment, from the administration of vaccines to sexually transmitted infection treatment, is complicated by federal and state law requirements. Parental involvement for treatment consent can also create a challenge for providing health care services. This workshop will identify areas of consent laws relating to this population that impact the provision of health care to youth in secure settings.



Objective 1: Healthcare Consent Laws by Minor's Status and Types of Health Services

- Various states' statutory definition of age of adulthood
- Emancipation requirements
- Specific health services applicable such as pregnancy related services, STI treatment, etc.



Healthcare Consent Laws by Minor's Status



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Consent by Status

- Every state has enacted one or more laws which allow minors to consent to healthcare services based on the status of the minor. The most common status exceptions include emancipated minors, minors living apart, married minors, pregnant minors, and minor parents.



Age of Majority/Adulthood

- Most states' age of majority is 18, but some notable differences are Alabama and Nebraska at 19 and Mississippi at 21. For youth under the age of majority, parental consent is generally required. However, there are numerous exceptions which allow minors to give consent by themselves.



Age of Majority/Adulthood

- One exception to the general rule for consent is the Mature Minor Doctrine which was developed as a part of common law decisions. The Mature Minor Doctrine is where a physician is not liable for providing care without parental consent when the care is within the mainstream of medical opinion, is not high risk, and is provided in a non-negligent manner, as long as the minor is an older adolescent who is capable of giving informed consent to the care and does consent. Some states accept this doctrine while others plainly reject it.



Emancipated Minors

- Emancipated minors are widely accepted to have attained full or partial adult status thereby allowing them to consent to their own healthcare services. The concept of emancipated minors stems from common law and traditionally recognized minors who were married, in military services, or living apart from parents while being self-supporting.



Emancipated Minors

- The following states have laws allowing for emancipated minors to consent to their own healthcare services: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming (as of 2003).



Emancipated Minors

- Although 34 states expressly recognize emancipated minors' ability to provide their own consent, the states without such a law usually recognize these factors of marriage, military service, or minor living apart within individual statutes.



Minors Living Apart from Their Parents

- Minors living apart from their parents may be allowed to consent for their own healthcare, even if not technically emancipated. At least 22 states have enacted laws that allow for this.
- Some of these laws include an extra provision for a minor to qualify such as the minor being financially independent or reaching a certain age. Although, other states include language to keep this intentionally broad, for example language saying that source of income does not matter.



Minors Living Apart from Their Parents

- The following states have laws that allow for a minor living apart to consent to their own healthcare services: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Idaho, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, Oklahoma, Oregon, South Carolina, Texas, and Wyoming (as of 2003).



Married Minors



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Married Minors

- Married minors are generally considered to be emancipated. At least 44 states have enacted laws which allow minors married to consent to their own health care services.
- Even in states where there is not a specific law for married minor's consent, there is a strong argument to allow for common law emancipation which would afford the minor the same ability to consent.



Married Minors

- The following states have laws that allow for married minors to consent to their own healthcare services: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming (as of 2003).



Consent Laws by Types of Health Services



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Consent by Services Sought

- In addition to laws allowing minors to consent to their own healthcare based on their status, each state has also enacted at least one law allowing for minor consent based on the services they are seeking. The most common services that create these exceptions to the general rule of parental consent are emergency care, general medical care, family planning & contraceptive care, pregnancy related care, abortion, STD/VD care, reportable disease care, HIV/AIDS care, drug/alcohol care, and outpatient mental health services. Additionally, some states allow for minors to consent to other services such as sexual assault care.



Pregnant Minors



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Pregnant Minors

- Pregnant minors may consent to their own healthcare services on many bases with 35 states enacting pertinent laws.
- Sometimes these laws specifically prohibit sterilization or abortion.
- Even if there is no specific law to allow pregnant minors to consent to their own healthcare, the constitutional right to privacy may allow this.



Pregnant Minors

- The following states have laws that allow for pregnant minors to consent to their own healthcare services: Alabama, Alaska, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington (as of 2003).



Pregnancy Care

- Numerous states also allow minor consent for pregnancy care. This can be applied in two ways: the pregnant minor can consent to all care or the pregnant minor can consent to pregnancy related care. A total of 35 states have statutes that allow for one of these types of consent. Sometimes these statutes exempt certain types of care like sterilization and abortion.



Pregnancy Care

- The following states have laws that allow for minors to consent for pregnancy related care: Alabama, Alaska, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington (as of 2003).



Minors who are Parents

- Minors who are parents are often allowed to consent to their own healthcare services with 18 states enacting express laws allowing such personal consent and at least 33 states allowing minor parents to consent for their children.

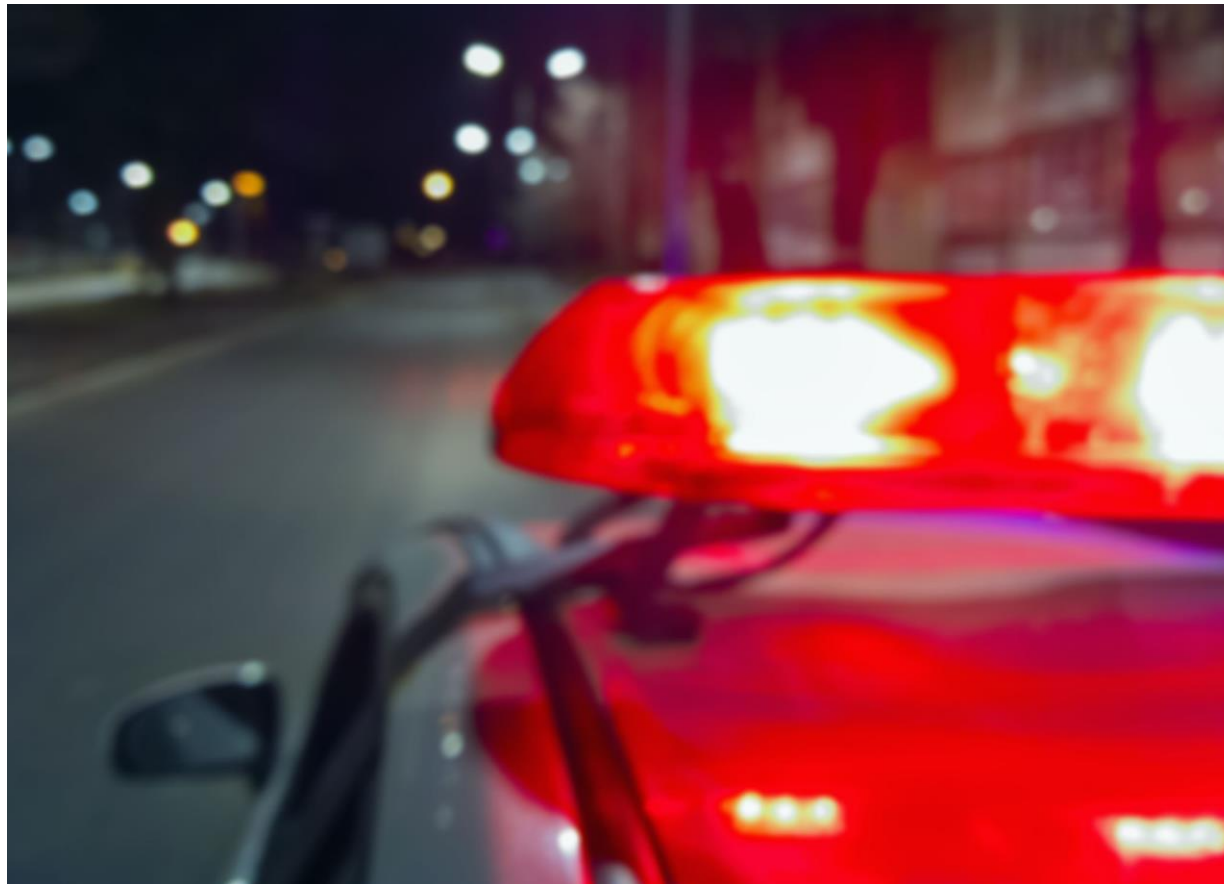


Minors who are Parents

- The following states have laws that allow for minors who are parents to consent to their own healthcare services: Alabama, Alaska, Arkansas, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, Montana, Nevada, New Jersey, New York, Oklahoma, Oregon, and South Carolina (as of 2003).



Emergency Care



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Emergency Care

- Emergency care consent by minors can be applied when a minor's parents cannot be contacted and waiting for parental consent would negatively affect the minor's health. At least 37 states have passed laws pertaining to emergency care. In this situation, notice to the parents is required as soon as possible after the care has been implemented. Even in the absence of a statute, it is reasonable to conclude that emergency care could be legally provided without prior parental consent. Most states that implement an emergency care statute cover medical and dental care, but some states, like Alabama, also include mental health services. Other states, like Kentucky, use broad language that includes "medical, dental, and other health services." Additionally, some states, like Louisiana, provide specific language that does not allow for the sterilization of a minor under the emergency care statute.



Emergency Care

- The following states have laws that allow for minors to consent to emergency care: Alabama, Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wyoming (as of 2003).



General Medical Care



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General Medical Care

- Some states allow minors to consent for general medical care. This statute is much less common as only 14 states have passed these statutes. Many of these statutes use broad language and often involve status of the minor (emancipation, marriage, etc.). One reason these statutes may be less common is they often provide for a very broad application. For example, Kansas statute provides that a minor who is age 16 or older may give consent for hospital, medical, or surgical treatment or procedures, where no parent or guardian is immediately available.



General Medical Care

- The following states have laws that allow for minors to consent to general medical care: Alabama, Alaska, Arkansas, Idaho, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Montana, Nevada, Oregon, Pennsylvania, and South Carolina (as of 2003).



General Medical Care

- Louisiana statute provides that “a minor may consent for the provision of medical or surgical care if he or she believes himself or herself to be afflicted with an illness or disease. Parent or guardian consent is not necessary.” This is also where the “Mature Minor” language may come in, like in Massachusetts where the court decided that “apart from statutory limitations which are constitutional, where the best interest of a minor will be served by not notifying his or her parents of intended medical treatment and where the minor is capable of giving informed consent to that treatment, the mature minor rule applies in this Commonwealth.”



Family Planning/Contraceptive Care



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Family Planning/Contraceptive Care

- Numerous states allow minors to consent for family planning or contraceptive care. The language may vary between statutes, for example, some states may specify this as services to “prevent pregnancy.” There may also be qualifying criteria like the opinion of the healthcare provider. Even without an express statute, there may be an argument that minors can consent to these services under the constitutional right to privacy, the federal Title X Family Planning Program, or if the minor is a Medicaid beneficiary.



Family Planning/Contraceptive Care

- The following states have laws that allow for minors to consent for family planning and contraceptive care: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, and Wyoming (as of 2003).



Abortions

- Many states have laws surrounding whether minors can receive abortions. In the states where parental consent was not needed before performing an abortion, the healthcare provider was allowed, but not required, to tell the parents after the procedure. Some states allow a grandmother or aunt to provide consent instead of the parents. As well, some states allow minor consent with no need to provide the parents with notice in cases of incest or abuse.



Abortions

- The following states have laws surrounding minor's consent for abortion: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (as of 2003).



Sexually Transmitted Infection (STI) Care



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Sexually Transmitted Infections (STI) Care

- Every state allows minors to consent for care related to sexually transmitted diseases. Some of the statutes specify the scope of services such as prevention, diagnosis, and/or treatment. As of 2003, many of these statutes also used the term “venereal disease” rather than “sexually transmitted disease” but both terms apply in the same way. Language commonly used throughout these statutes is that the minor may receive these services if they believe they have been exposed to an STD. Additionally, some states, like California and Illinois, allow for minor consent to services concerning STDs when the minor is the age of 12 or older



Sexually Transmitted Diseases (STD) Care

- Many states have no minimum age requirement. Montana has an interesting law that allows minors to consent to STD testing and treatment but requires the health professional providing the care to provide counseling or refer the minor to another professional for counseling. Similarly, in New Mexico, if the minor tests positive this cannot be revealed to the minor until the minor has been provided or referred to counseling.



HIV/AIDS Treatment Services



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HIV/AIDS Treatment Services

- Most states allow for minors to consent to care involving HIV/AIDS. Although a state may not have a specific HIV/AIDS statute, this will usually fall under a reportable disease or STD statute. As well, many states require the informed consent of the person receiving the HIV/AIDS test before it can be given, thus the minor must give consent to get the test. Where states tend to vary is the privacy of such results. Some states allow the parents to be told by the physician, but this is often allowed but not required. California requires parental consent if the minor is under 12 years old.



HIV/AIDS Treatment Services

- The following states have laws surrounding minor's consent for HIV/AIDS care: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (as of 2003).



Reportable/Communicable Diseases

- Many states allow for minor consent to care related to reportable diseases. These statutes cover STIs as well as other infectious, contagious, or communicable diseases. At least 20 states have enacted such statutes. Some states, like North Carolina, include HIV/AIDS in this definition as well. Additionally, some states, like Delaware, have a minimum age requirement of 12.



Reportable/Communicable Diseases

- The following states have laws surrounding minor's consent for reportable disease care: Alabama, Alaska, Arkansas, California, Delaware, Idaho, Kansas, Louisiana, Maryland, Massachusetts, Montana, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, and Virginia (as of 2003).



Sexual Assault Treatment Services

- Multiple states allow for minors to consent to sexual assault care.
- The following states have laws surrounding minor's consent for sexual assault care: Arizona, California, Colorado, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Missouri, New jersey, North Dakota, Ohio, Texas, and Wyoming (as of 2003).



Alcohol/Drug Treatment Services



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Alcohol/Drug Treatment Services

Almost every state allows for minors to consent to care related to the use of drugs and alcohol. Different restrictions may apply such as a minimum age requirement or the exclusion of methadone maintenance. Some states specify only drugs or only alcohol and then other states uses broader terms like “substance abuse” or “chemical dependance.” As well, some states go with the broad language of “related care” whereas others, like Wisconsin, are more specific allowing for consent to “prevention, diagnostic, assessment, evaluation, and treatment services.”



Alcohol/Drug Treatment Services

- At least 48 states have enacted statutes that relate to minor's consent to drug and alcohol care. Rhode Island requires parental consent except in limited circumstances such as when the healthcare provider feels it would be best to not inform the parents.



Outpatient Mental Health Services



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Outpatient Mental Health Services

- Numerous states allow minors to consent for outpatient mental health services. These statutes contain various limitations such as minimum age, type of care, what healthcare professionals are covered, and the number of visits a minor can attend without parental consent. At least 31 states have enacted relevant statutes. In New York there must be steps taken to involve the parents unless the minor is deemed to be mature enough to make the decision themselves.



Outpatient Mental Health Services

- The following states have laws surrounding minor's consent for outpatient mental health services: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin (as of 2003).



Recognize Legal Challenges and Limitations to Obtaining Consent for Health Services in Juvenile Justice Settings.



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Objective 2: Recognize legal challenges and limitations to obtaining consent for health services in juvenile justice settings.

- Legal status definition's impact on obtaining consent
- Length of stay
- Screening Requirements
- Emergency Services
- Invasive Procedures



Informed Consent

- Informed consent is used in many circumstances where a minor is consenting to healthcare services. Informed consent is where the person giving consent must receive sufficient information in an understandable format so they can make an informed decision on whether to proceed with services. The subject should be aware of the risks and benefits of treatment as well as alternative treatments. Additionally, some states require informed written consent where the subject of treatment would also have to sign acknowledging that they have been sufficiently informed and want to consent.



Services in Detention

- A few states have enacted statutes relevant to minors' consent when in detention. Iowa has a statute that allows minors who were tried and committed to the department of corrections as an adult is deemed to have attained the age of majority for the purpose of consent to medical care, related services, and treatment. Maryland has a statute that allows minors in detention centers to have the same capacity as an adult to consent for initial medical screening and physical examination on or after admission of the minor into a detention center.



Services in Detention

- The following states have laws surrounding minor's consent for minors in detention: Arkansas, Florida, Iowa, and Maryland (as of 2003).
- Ohio has a statute which provides that incarcerated minors shall be deemed emancipated for the purposes of consenting for medical treatment while confined in the state correctional institution.



Parental and Court Involvement in the Consent Process for Justice-Involved Youth.



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Objective 3: Discuss parental and court involvement in the consent process for justice involved youth.

- Identifying and locating legal parent/guardian
- Obtaining and recording consent documents
- Court Orders when applicable



GA DJJ Legal Authority O.C.G.A. § 49-4A-7

- (b) When given legal custody over a child for detention in a juvenile detention facility under court order under Article 6 of Chapter 11 of Title 15, the department shall have:
 - (1) The right of physical possession of such child;
 - (2) The right and duty to protect, train, and discipline such child;
 - (3) The responsibility to provide such child with food, clothing, shelter, and education;
 - (4) The right to determine in which facility such child shall live and to transfer such child as provided in subsection (b) of Code Section 42-5-52; and
 - (5) The right and duty to provide or obtain for such child medical, hospital, psychiatric, surgical, or dental care or services as may be considered appropriate and necessary by competent medical authority without securing prior consent of parents or legal guardians.



DJJ Policy 11.13, Consent Process

- B1. Health care providers will engage in the consent process (assent, informed consent) with youth and, as necessary, parents/guardians before undertaking any medical intervention.
- E. When the parent/guardian cannot be located, the committing court's order may be used in lieu of parental permission.
- F. When the parent/guardian of a non-committed youth cannot be located, a court order authorizing the medical/dental/surgical invasive procedure, treatment, and/or medication is required, except in emergency situations. If there is not an existing court order authorizing treatment, the Juvenile Detention Counselor will contact the Office of Legal Services for assistance.



DJJ Policy 11.13, Consent Process

- G. Invasive Procedures:
 - 1. If surgery or another invasive medical procedure is medically indicated, youth, parents/guardians, and the community case manager will be notified in advance, and a separate consent form (see Attachment C, Consent to Medical, Dental and Surgical Invasive Diagnostic Procedure) specific to the procedure will be completed. Information regarding the procedure, possible consequences, risks, and alternatives will be provided.



DJJ Policy 11.13, Consent Process

- L. Refusal of Treatment:
- 1. Youth and parents/guardians may refuse treatment or procedures except in certain circumstances defined by law. Examples of such exceptions may include but are not limited to:
 - a) An emergency requiring immediate intervention when life, safety, or well-being is threatened;
 - b) Medical procedures required by law, performed to prevent the spread of communicable disease (e.g., tuberculosis) or performed to protect the public health;
 - c) Examinations performed after a use of physical control measures or similar incident as part of an investigation. (Treatment may be refused, but not examination to determine injury or evidence of abusive force); and
 - d) When a youth is impaired, making him/her incapable of informed consent.



DJJ Policy 11.13, Consent Process

- Youth will not be forced to accept any medical intervention(s), including any medications, without the approval of the DJJ Medical Director or Consulting Psychiatrist. In situations where the youth is an imminent danger to self or others, the physician will consult with the DJJ Medical Director or Consulting Psychiatrist prior to the medication being given. In an emergency situation when prior approval is not feasible, approval will be sought within 12 hours. If the DJJ Medical Director or Consulting Psychiatrist does not provide written approval, including via JTS or email, the medication will be discontinued.



References

- The research in Part A is based off the *Center for Adolescent Health & the Law's State Minor Consent Laws: A Summary, Second Edition*. This edition contains laws accurate up until May 2003.



Acknowledgment

- We would like to thank Rachel Borgel, law student at Georgia State University College of Law, for her work on this presentation.

