



Recommendations

Consent from children and young people in police custody in England and Wales

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The legal position concerning consent and refusal of treatment and examination by detainees under the age of 18 is different to the position of adults. In the following paragraphs the terms 'child' and 'young person' are used interchangeably.

1. Therapeutic examinations

Children become adults for medical, that is therapeutic, purposes at age 16 and are entitled to consent to their own medical treatment. As for adults, consent will only be valid if an appropriately informed patient capable of consenting to the particular intervention gives it voluntarily.

Children under the age of 16 may have the capacity to consent to medical treatment if they have sufficient understanding and intelligence to enable them to understand fully what is involved in the proposed intervention. This is sometimes described as being 'Gillick' competent.

Where a young person of 16 or 17, or a child under 16 but Gillick competent, refuses treatment, such a refusal can be over-ruled either by a person with parental responsibility for the child or by the court. This power to over-rule must be exercised on the basis that the welfare of the young person is paramount.

A life-threatening emergency may arise when consultation with a person with parental responsibility or the court is impossible. If a young person refuses consent in such circumstances any doubt should be resolved in favour of the preservation of life and it is acceptable to undertake treatment to preserve life or prevent serious damage to health.

2. Forensic examinations

Although not decided in law, it is reasonable to assume that young people aged 16 or 17 have the capacity to consent to a forensic examination just as they do to a therapeutic examination.

However, in addition to gaining consent from the juvenile, when a forensic examination is going to be carried out on a child younger than 16 it is good practice to inform and obtain the consent of a person with parental responsibility whenever reasonably practicable. Obtaining such consent is essential if the child is not Gillick competent.

The forensic physician needs to be aware that there are additional procedural considerations with regard to forensic examinations of young people. In the eyes of the Police and Criminal Evidence Act, juveniles become adults at age 17 and thus 17 year olds can give consent. However, when dealing with detainees under this age the police are required to follow certain rules to ensure that evidence obtained from juveniles in custody is legally admissible in court.

The rules with regard to obtaining intimate samples from a detained person require 'appropriate consent' in order for the intimate sample evidence to be admissible. 'Appropriate consent' is defined in section 65 of PACE as meaning:

- a. in relation to a person who has attained the age of 17 years, the consent of that person;
- b. in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- c. in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian.

Where the consent of a parent or guardian is required it is not necessary for the parent or guardian to be at the police station to give that consent. However, where the consent of the juvenile is required it must be obtained in the presence of an appropriate adult, who may be the parent or guardian or some other suitable person over the age of 18 years.

The decision as to which other forensic examinations require the presence of an appropriate adult when consent is obtained from a juvenile is essentially a matter for the police and not the forensic physician.