



Consent from children and young people in police custody in England and Wales for medical examinations

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Introduction

The legal position of children and young people under the age of 18 years (the legal upper limit of childhood) is different to that of those over 18 years. This legal difference applies to consent to, and refusal of, treatment and examination by child detainees, i.e. those under the age of 18 years. In this document, the terms 'child' and 'young person' are used interchangeably.

1. Therapeutic examinations

In law, young people over 16 years are entitled to consent to their own medical treatment. However, as for adults, consent will only be valid if it is given

1. voluntarily and they would be able to decline
2. by an appropriately informed patient
3. by a person capable of understanding the particular intervention, its implications and the implications of declining
4. by a person capable of making the decision in question
5. by a person capable of communicating their wishes

Children under the age of 16 years may have the capacity to consent to medical treatment if they have sufficient maturity and intelligence to understand fully the nature and implications of the proposed treatment. This is commonly referred to as 'Gillick' competent.

Where a young person of 16 or 17 years, or a child under 16 years, who is judged to have capacity, 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 can only be exercised on the basis of the best interests of the child.

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 in which case it would be acceptable to undertake treatment to preserve life or prevent serious damage to health without the consent of the child or young person.

2. Forensic medical examinations and the best interests of the child

Aged 16 and 17 years:

It is questionable to assume that young people of this age, while they are capable of consenting to therapeutic examinations, have the capacity to consent to a forensic examination. It is therefore

- a) mandatory that any forensic medical examination on a child or young person of this age be done with the informed consent of the young person, and
- b) recommended that someone with parental responsibility for that child or young person also gives consent.

Children under 16 years:

When a forensic medical examination is going to be carried out on a child of this age, a forensic clinician should **always** inform a person with parental responsibility and obtain their consent for the proposed examination and/or intervention.



3. Police procedure and intimate samples

The forensic clinician needs to be aware that there are additional considerations for the police with regard to forensic examinations of children and young people. These procedures are designed to ensure that evidence obtained from children and young people 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' with regard to children and young people is defined in section 65 of the Police and Criminal Evidence Act (PACE), 1984, as meaning:

- a. in relation to a person between their 14th and 18th birthday, the consent of that person and his parent or guardian; and
- b. 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 for these procedures, 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.

4. The Road Traffic Act

Samples to be taken under the Road Traffic Act are treated differently to those discussed in section 3. For these samples it is not necessary to seek consent from a parent or guardian. Instead the consent of the person under 18 years (i.e. the individual under investigation for the offence) is required for road traffic offences committed under sections 4 to 11 of the Road Traffic Act 1988.

Both the police officer and the forensic clinician need to be to be independently satisfied that the young person has consented to providing a blood sample.

If the young person has the capacity to consent but refuses to do so in respect of providing a blood specimen then (subject to the statutory defence of reasonable excuse) he/she commits the offence contrary to section 7(6) – failing to provide a specimen without reasonable excuse.

Safeguarding

Forensic clinicians are reminded of their safeguarding obligations and responsibilities, and so may wish to make use of this form: [Child safeguarding summary referral](#)

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Send any feedback and comments to forensic.medicine@fflm.ac.uk