



Consent from Children and Young People in Police Custody in England and Wales for Medical Examinations

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Introduction

Consent is required for all medical examinations, including the forensic examination of suspects in custody.

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, sometimes using the abbreviation 'CYP'.

The *GMC Guidance* requires doctors to: 'Listen to children and young people and consider their views when making decisions'.¹

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 (see exception below)
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 sometimes 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.

NB, The law differs across the UK,² see *0-18 years: guidance for all doctors*.

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 CYP.

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

The forensic clinician must heed the voice of the child or young person, particularly if they refuse consent for a forensic medical examination, despite the person with parental responsibility providing consent. Restraint and/or coercion must not be used unless there is an imminent threat to life and should only use supportive techniques or measures.

Formerly, a CYP aged 17 years was treated as an adult, but within the last 10 years, due to changes in legislation, and a recognition this was incompatible with the rights of a child, anyone under the age of 18 is now managed as a CYP; the term 'juvenile' is used in the Police and Criminal Evidence (PACE) Code C.³

Aged 16 and 17 years:

The capacity to consent to therapeutic examinations in this age-group does not necessarily imply the capacity to consent to forensic examinations. Specific consent is required, and the examiner must be satisfied that the CYP understands the purpose and nature of the examination and any samples obtained. It is recommended that someone with parental responsibility for the CYP also gives informed consent.

Therefore, it is:

- a. mandatory that any forensic medical examination of a child or young person of this age be done with the informed consent of the young person, and
- b. good practice that someone with parental responsibility for that child or young person should also give consent.

N.B. PACE uses the term parent or guardian.

Children under 16 years:

When a forensic medical examination is going to be undertaken on a child of this age, a forensic clinician must **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 must be aware 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 regarding 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) 1984,⁴ 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.

N.B. PACE uses the term 'juvenile', which applies to anyone under the age of 18 years, but clinicians must keep in mind this is a child or young person.

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, the forensic clinician should encourage it as part of the support for the young person.

Where the consent of the CYP 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.

Whilst an appropriate adult who does not have parental responsibility may support the child or young person in providing their consent, they cannot substitute for the consent of someone with parental responsibility.

Paragraph 2.12 of PACE Code D states the consent of the 'juvenile is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right.'⁵

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, however, where practicable, the forensic clinician should encourage the presence of a parent or guardian as part of the support of the young person.

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 the relevant sections of 3 to 11 of the Road Traffic Act 1988.

Both the police officer and the forensic clinician need to be independently satisfied that the CYP 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) they commit 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,⁶ and so may wish to make use of this form: [Child safeguarding summary referral](#).

Even if the person with parental responsibility has been informed, additional support may be needed for the child or young person.

For any child or young person under the age of 18 years it is recommended that a safeguarding referral should be made, in line with the local Integrated Care System (ICS) procedures. Whilst there may be no apparent safeguarding concerns arising from the review in custody, it is best practice to share information as there may be wider safeguarding issues for that child or young person.

References

1. [Protecting children and young people: 'The Responsibilities of all doctors'](#)
GMC
2. [0-18 years: guidance for all doctors](#)
GMC
3. [Pace Code C, 2019](#)
4. [Police and Criminal Evidence Act 1984 s65](#)
5. [Pace Code D, 2017](#)
6. [Safeguarding Children & Young People: Roles and Competencies for Healthcare Staff](#)
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