

# Consent to Medical Treatment for Youth in the Juvenile Justice System: California Law

## A Guide for Health Care Providers

*Rebecca Gudeman, J.D., M.P.A.  
National Center for Youth Law  
Teen Health Rights Initiative*

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**National Center for Youth Law**  
**405 14<sup>th</sup> St., Suite 1500**  
**Oakland, CA 94612**  
[www.youthlaw.org](http://www.youthlaw.org)  
[www.teenhealthrights.org](http://www.teenhealthrights.org)

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## I. INTRODUCTION

Adolescents involved with the juvenile justice system have significant health care needs and worse health outcomes than their peers not involved with the system.<sup>1</sup>

When youth enter the juvenile justice system,<sup>2</sup> the state becomes involved in providing health care to them in many ways. For example, the juvenile court may order that a probation officer obtain the services of various health experts to determine the appropriate treatment for a minor once a petition has been filed to make a minor a ward of the court.<sup>3</sup> If a minor is taken into state or county custody, the state or county must provide for the youth's basic health care needs.<sup>4</sup> If the minor is placed on probation, the court may impose conditions on the minor, including that the minor participate in health care services such as mental health or substance abuse treatment programs.<sup>5</sup> In all these cases, though, medical services cannot begin without obtaining the appropriate consent to care. Who may consent for that care will vary. Thus, the delivery of health services to youth involved with the juvenile justice system depends in part on understanding health consent law.

This document describes the medical consent rules that apply when minors are involved with the California juvenile justice system -- including minors who have been adjudicated delinquent and minors who have been taken into custody but not yet adjudicated.

Youth come within the jurisdiction of the juvenile court when they either (1) habitually disobey their parents or are truant or (2) engage in criminal behavior. Cal. Welf. & Inst. Code §§ 601, 602. When that happens, they may be taken into temporary custody and detained in a juvenile facility. A probation officer or district attorney may file a petition to declare the minor a ward of the court. The juvenile court, after considering the evidence, may declare the minor a ward of the court or place the minor on probation under the supervision of a probation officer. Cal. Welf. & Inst. Code § 725. If the minor is declared a ward, the court may place the ward in a county facility, a group home or under parent or guardian supervision. A small percentage of wards are committed to the Department of Corrections or Division of Juvenile Facilities (formerly known the Department of the Youth Authority, hereinafter referred to as "DJJ").<sup>6</sup> The document will note when rules apply only to minors at a certain stage of the juvenile court process, for example, only to minors in temporary custody, or only to minors in certain facilities. The rules that apply when children enter the juvenile *dependency* system in California are described in

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<sup>1</sup> See e.g. K. Clark, S. Gehshan, *Meeting the Health Needs of Youth Involved in the Juvenile Justice System*, 2006, Nat. Acad. State Health Policy; Mana Golzari, BA, Stephen J. Hunt, PhD, Arash Anoshiravani, MD, MPH, *The health status of youth in juvenile detention facilities*. *Journal of Adolescent Health*. 38(6):776-782. June 2006. (p.777, 778)

<sup>2</sup> Ca. Legislative Analyst's Office, *California's Criminal Justice System: A Primer* Chapter 5 (January 31, 2007), available at [http://www.lao.ca.gov/2007/cj\\_primer/cj\\_primer\\_013107.aspx#chapter5](http://www.lao.ca.gov/2007/cj_primer/cj_primer_013107.aspx#chapter5).

<sup>3</sup> Cal. Welf. & Inst. Code (hereinafter WIC) § 741.

<sup>4</sup> U.S. Constitution, Fourteenth and Eighth Amendments; see *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *D.B. v. Tewksbury*, 545 F.Supp. 896 (D.Or. 1982); *Alexander S. v. Boyd*, 876 F.Supp. 773, 788, 796 (D.S.C. 1995).

<sup>5</sup> WIC §727(a).

<sup>6</sup> In this document, the term "ward" is used broadly to describe minors from the time they first come under the jurisdiction of the juvenile court due to behavior, as described in WIC §§ 601 or 602, as well as minors who have been adjudicated wards of the juvenile court. The document will point out when specific rules apply y.

“*Consent to Medical Treatment for Foster Youth: California Law*,” available at [www.TeenHealthRights.org](http://www.TeenHealthRights.org).

## II. WHO MAY CONSENT FOR CHILDREN’S HEALTH CARE?

All non-emergency health care requires consent before treatment can be provided. When a patient is a minor child, a parent or legal guardian generally must consent for that child’s medical treatment. There are some exceptions to this rule of course. For example, adult caregivers often may consent to medical treatment for children under their care, even if the caregiver does not have formal legal custody of the child.<sup>7</sup> And minors may consent for their own medical treatment when they meet certain status conditions, such as being married, or when they are seeking certain types of care, such as drug abuse treatment or pregnancy-related services.<sup>8</sup>

## III. WHO CONSENTS FOR CARE WHEN MINORS ARE INVOLVED WITH THE JUVENILE JUSTICE SYSTEM?

### A. General Rule

As a general rule, the same consent rules that apply outside the juvenile justice system apply when services are provided to youth involved in the juvenile justice system. Where parent or guardian consent would have been required for services outside juvenile justice, parent or guardian consent is necessary to receive those services once a minor is involved with the system. And where minor consent would have been required outside, minor consent is required once a minor is within the system. However, the general rule has several important exceptions.

1. First, while entry into the juvenile justice system does not automatically remove a parent’s right to consent to their child’s health care, the juvenile court does have the authority to remove a parent’s right to consent to medical care once a minor is adjudicated a ward of the court.<sup>9</sup> If the court exercises its authority and removes a parent’s right to consent, the court must put that removal in a court order.<sup>10</sup> That same order likely will place primary consent rights with someone else, such as a probation officer.
2. Second, California law allows additional people to consent for a ward’s health care at times. This does not mean the parent or other person who holds primary consent rights has been divested of his or her authority.<sup>11</sup> Rather, the law simply provides additional

<sup>7</sup> Cal. Fam. Code §§ 6550, 6552.

<sup>8</sup> Cal. Fam. Code §§ 6924-6929. For complete information on minor consent services, see *Minor Consent, Confidentiality and Child Abuse Reporting in California*, available at [www.TeenHealthRights.org](http://www.TeenHealthRights.org).

<sup>9</sup> WIC §726(a)(“ In all cases in which a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall in its order, clearly and specifically set forth all those limitations...”).

<sup>10</sup> *Id.*

<sup>11</sup> See e.g. WIC § 739(f)(“Nothing in this section shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis, who has not been deprived of the custody or control of the minor by order of the court, in providing any medical, surgical, dental, or other remedial treatment recognized or permitted under the laws of this state.”).

options to ensure necessary services can be provided in a timely manner. These rules are explained in section (B) below.

3. Third, there are specific consent rules that apply when a minor under court jurisdiction or court proceedings needs care in special circumstances, such as in an emergency. These rules are explained in section (C) below.
4. Fourth, there are some special consent and access rules that apply when a minor is placed in a state or county facility. These rules are explained in section (D) below.
5. Finally, there are specific consent rules that apply when a minor under court jurisdiction or court proceedings needs certain types of specialty care, such as pregnancy care or mental health treatment. These rules are explained in section (E) below.

## B. Additional Persons Who May Consent for Care

In addition to whoever holds primary consent rights, several others may give consent for the health care of a ward or a minor otherwise under the jurisdiction of the juvenile justice system, according to the following:

### 1. The Probation Officer

A probation officer may provide consent for medical treatment in the following situations:

- When a minor is in **temporary custody**,<sup>12</sup> the probation officer may consent for necessary health care, as recommended by an attending doctor or dentist. Before providing authorization, however, the probation officer must notify the parent, guardian or person standing *in loco parentis*. If this person objects, care cannot be provided without a court order authorizing treatment, unless it is an emergency. Cal. Welf. & Inst. Code § 739(a).<sup>13</sup>
- In **emergency**<sup>14</sup> situations, the probation officer may provide consent to necessary medical care for minors under the jurisdiction of the juvenile court; however, before providing authorization, the officer must make reasonable efforts to “obtain the consent of, or to notify, the parent, guardian or person standing *in loco parentis* prior to authorizing care.” Cal. Welf. & Inst. Code § 739(d).<sup>15</sup> See section (C) below for more on consent to emergency care.

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<sup>12</sup> See WIC § 625.

<sup>13</sup> WIC § 739 (a)(“...if the parent, guardian, or person standing in loco parentis objects, the care shall be given only upon order of the court in the exercise of its discretion.”).

<sup>14</sup> WIC §739(d)(“‘Emergency situation,’ for the purposes of this subdivision means a minor requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, or other remedial condition or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.”).

<sup>15</sup> WIC §739(d)(“Whenever it appears that a minor ...requires immediate emergency, medical, surgical, or other remedial care in an emergency situation, that care may be provided by a licensed physician and surgeon, or if the minor needs dental care..., by a licensed dentist, without a court order and upon authorization of a probation officer.

- The court, via a **court order**, may grant the probation officer the right to consent to medical care on a minor's behalf. Before giving this authority to the probation officer, the court must give due notice to the minor's parent, guardian, or person standing *in loco parentis*. Cal. Welf. & Inst. Code § 739(c).<sup>16</sup> A consent order is not the same as a "care, custody and control" order. When children are made wards of the court, the court sometimes orders that "care, custody and control" of the ward be placed under the supervision of the probation officer. The "care, custody and control" order, on its own, does not give the officer the right to consent for medical care. For the probation officer to have the right to consent to care, the court must make a separate consent order.<sup>17</sup> Some counties may have *standing court orders* or *local court rules* giving probation the right to authorize care in certain circumstances. See your local court rules and orders for guidance.

## 2. The Juvenile Court

The juvenile court judge or hearing officer may provide consent for medical treatment in the following situations:

- The **court** may authorize treatment for a minor if a licensed physician recommends treatment, and the juvenile court finds that no parent, guardian, or person standing *in loco parentis* is willing and able to provide consent. Cal. Welf. & Inst. Code § 739(b).<sup>18</sup> In some counties, the courts have issued *standing court orders* or *local court rules* authorizing certain health care providers to deliver specific services to wards. For example, Mendocino County's Juvenile Court has granted community clinics and the Department of Mental Health the right to perform health assessments and provide treatment for all temporarily detained minors via a local court rule.<sup>19</sup> Similarly, Santa Clara's juvenile court has a local court rule that grants "Santa Clara Valley Medical Center medical clinics" the authority to provide a certain range of assessments and treatment to "juveniles confined in the Santa Clara County Probation Department and Department of

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...The probation officer shall make reasonable efforts to obtain the consent of, or to notify, the parent, guardian, or person standing in loco parentis prior to authorizing emergency... care.").

<sup>16</sup> WIC § 739 (c) ("Whenever a ward of the juvenile court is placed by order of the court within the care and custody or under the supervision of the probation officer of the county in which the ward resides and it appears to the court that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the ward, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the probation officer may authorize the medical, surgical, dental, or other remedial care for the ward by licensed practitioners, as may from time to time appear necessary.").

<sup>17</sup> See WIC §§ 726(a); 727(a); 739(c).

<sup>18</sup> WIC § 739 (b) ("Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize the remedial care or treatment for that person, the court, upon the written recommendation of a licensed physician and surgeon or, if the person needs dental care, a licensed dentist, and after due notice to the parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person.").

<sup>19</sup> Mendocino Sup. Ct. R. 16.11.

Family and Children’s Services’ temporary holding facilities.”<sup>20</sup> And Alameda County has a standing court order that authorizes the Alameda County Health Care Service Agency’s Juvenile Justice Health Services or another designee to perform a health assessment for youth confined in a county detention facility.<sup>21</sup> All of these orders and rules limit the health assessment to certain services and establish parameters for attempting to obtain parent consent.

- Certain care requires a court order: for example, a court order is necessary when wards need inpatient psychiatric hospitalization. See section (E) below for more detail.

### 3. Caregivers

A ward not placed in a juvenile institution may be placed in one of several living situations. If a ward is placed with a foster parent or other caregiver, the ward’s caregiver may provide consent for the minor’s medical treatment in the following situations:

- A **licensed caregiver** providing residential foster care may give consent for *ordinary* medical and dental treatment, including but not limited to immunizations, physical exams, and X-rays. Cal. Health & Saf. Code § 1530.6.<sup>22</sup> The caregiver does not need a court order to be able to authorize this care. Ordinary medical care does not include mental health treatment or psychotropic medications. See section (E) for “mental health” and “medication” consent rules.
- Beyond ordinary care, the court may authorize a **relative caregiver** to provide the same legal consent for the minor’s medical, surgical, and dental care as the custodial parent of a minor if the child has been placed in the approved home of a relative. Cal. Welf. & Inst. Code § 727(a)(1).<sup>23</sup>

### 4. The Department of Corrections and Department of Juvenile Justice

The Department of Corrections and Department of Juvenile Justice may authorize necessary medical, surgical or dental care if a minor is under the jurisdiction of said department, and an

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<sup>20</sup> Santa Clara Juv. Ct. R. 1(K).

<sup>21</sup> Alameda Standing Order No. 2007-06.

<sup>22</sup> Cal. Health & Saf. Code §1530.6(“Notwithstanding any other provision of law, persons licensed pursuant to this chapter to provide residential foster care to a child either placed with them pursuant to an order of the juvenile court or voluntarily placed with them by the person or persons having legal custody of such child, may give the same legal consent for that child as a parent except for the following: (1) marriage; (2) entry into the armed forces; (3) medical and dental treatment, except that consent may be given for ordinary medical and dental treatment for such child, including, but not limited to, immunizations, physical examinations, and X-rays; and (4) if the child is voluntarily placed by the parent or parents, those items as are agreed to in writing by the parties to the placement. To this effect, the state department shall prescribe rules and regulations to carry out the intent of this section. This section does not apply to any situation in which a juvenile court order expressly reserves the right to consent to those activities to the court.”).

<sup>23</sup> WIC § 727 (a)(1)(“...When a decision has been made to place the minor in the home of a relative, the court may authorize the relative to give legal consent for the minor’s medical, surgical, and dental care and education as if the relative caretaker were the custodial parent of the minor.”).

attending physician or dentist has recommended the care. Cal. Welf. & Inst. Code § 1755.3.<sup>24</sup> However, a minor under DJJ jurisdiction may refuse the recommended care. In only a few situations may treatment be provided over the minor's objection. 59 Ops. Cal. Atty. Gen 402, 411 (1976).<sup>25</sup> See section (D) below for more on treatment for youth in detention facilities.

### C. Consent Rules in Special Circumstances

In addition to whoever holds primary consent rights, others may consent to a health care for a minor under the jurisdiction of the juvenile court in these special situations:

#### 1. Emergency Care

In addition to whoever holds primary consent rights, the following may consent for care in an emergency<sup>26</sup>:

- The **probation officer** may authorize necessary medical care in an emergency; however, before providing authorization, the officer must make reasonable efforts to "obtain the consent of, or to notify, the parent, guardian or person standing *in loco parentis* prior to authorizing care." Cal. Welf. & Inst. Code § 739(d).<sup>27</sup> Even if the parent or guardian refuses to give consent, though, the probation officer may proceed. A court order is not necessary.
- Alternatively, the **court** may provide the requisite authorization for treatment if a licensed physician, surgeon, or dentist has recommended the treatment, and the minor's parent or guardian, if there is one, has received due notice. Cal. Welf. & Inst. Code § 739(b).<sup>28</sup>

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<sup>24</sup> WIC § 1755.3 ("Whenever any person under the jurisdiction of the Youth Authority, or any minor under the jurisdiction of the Department of Corrections, is in need of medical, surgical, or dental care, the Youth Authority or the Department of Corrections, as applicable, may authorize, upon the recommendation of the attending physician or dentist, as applicable, the performance of that necessary medical, surgical or dental care.").

<sup>25</sup> 59 Ops. Cal. Atty. Gen. 402, 411 (1976) ("The treatment may be compelled against the minor's objections if necessary to prevent the minor's "...death or serious physical disability, or to further a compelling interest of [DJJ]..." Also, in the case of non-critical illness or injury, medical treatment of the minor may be compelled over the minor's objection if "...in the professional opinion of the medical staff, there would be an unwarranted risk to the child if the treatment is not begun at once..." The question of whether treatment should continue notwithstanding the minor's objection can then be resolved.").

<sup>26</sup> WIC § 739(d) ("Emergency situation,' for the purposes of this subdivision means a minor requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, or other remedial condition or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.").

<sup>27</sup> WIC § 739(d) (" Whenever it appears that a minor ...requires immediate emergency, medical, surgical, or other remedial care in an emergency situation, that care may be provided by a licensed physician and surgeon, or if the minor needs dental care..., by a licensed dentist, without a court order and upon authorization of a probation officer. ...The probation officer shall make reasonable efforts to obtain the consent of, or to notify, the parent, guardian, or person standing in loco parentis prior to authorizing emergency... care..." ).

<sup>28</sup> WIC § 739 (b) ("Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize the remedial care or treatment for that person, the court, upon the written recommendation of a licensed physician and surgeon or, if the person needs dental care, a licensed dentist, and after due notice to the parent, guardian, or person standing in loco

- If the emergency requires services to which a minor must consent on his or her own under federal or state law, such as treatment for an ectopic pregnancy, the **minor** must consent to the care on his or her own behalf. See section (E) below “Consent Rules for Special Services.”
- If a **medical provider** is unable to obtain consent in a timely manner, he or she may provide necessary emergency care without obtaining prior consent. Cal. Bus. & Prof. Code § 2397(a).<sup>29</sup>

In addition to state law, each county may have its own policy or procedure that must be followed when obtaining emergency care for a ward. Please see your local court rules for guidance.

## 2. Temporary Custody

When a minor is in **temporary custody**<sup>30</sup>, a parent, guardian or other person acting *in loco parentis* may consent for health care, but in addition:

- A **probation officer** may consent to the provision of health services recommended by an attending physician or dentist. Before providing authorization, however, the probation officer must notify the parent, guardian or person standing *in loco parentis* of the need for health services. If this person objects to the treatment, the minor may not receive care without a court order authorizing treatment. Cal. Welf. & Inst. Code § 739(a).<sup>31</sup>

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parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person.”).

<sup>29</sup> Cal. Bus. & Prof. Code § 2397(a)(“A licensee shall not be liable for civil damages for injury or death caused in an emergency situation occurring in the licensee’s office or in a hospital on account of a failure to inform a patient of the possible consequences of a medical procedure where the failure to inform is caused by any of the following: [. . .] A medical procedure was performed on a person legally incapable of giving consent, and the licensee reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.”).

<sup>30</sup> WIC § 729(a); § 625(“A peace officer may, without a warrant, take into temporary custody a minor: (a) Who is under the age of 18 years when such officer has reasonable cause for believing that such minor is a person described in Section 601 or 602, or (b) Who is a ward of the juvenile court or concerning whom an order has been made under Section 636 or 702, when such officer has reasonable cause for believing that person has violated an order of the juvenile court or has escaped from any commitment ordered by the juvenile court, or (c) Who is under the age of 18 years and who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.”).

WIC § 626.6(“Any peace officer who takes a minor who is 14 years of age or older into temporary custody under section 625.3 shall take the minor without unnecessary delay before the probation officer...and deliver the custody of the minor to the probation officer....”).

WIC § 627(a)(“When an officer takes a minor before a probation officer at a juvenile hall or to any other place of confinement pursuant to this article, he shall take immediate steps to notify the minor’s parent, guardian, or a responsible relative that such minor is in custody and the place where he is being held.”).

WIC § 632(detention hearing in front of judge must occur within one judicial day or in some cases, within 48 hours.)

<sup>31</sup> WIC § 739(a)(“if the parent, guardian, or person standing in loco parentis objects, the care shall be given only upon order of the court in the exercise of its discretion.”).

- The **court** may authorize health care services if a licensed physician, surgeon, or dentist recommends treatment; due notice is given to the minor's parent or guardian; and the juvenile court finds that no parent, guardian or person standing *in loco parentis* is willing and able to provide consent. Cal. Welf. & Inst. Code § 739(b).<sup>32</sup> In some counties, the courts have issued *standing court orders* authorizing certain health care providers to deliver specific services to minors in temporary custody. For example, a standing order in Alameda county allows the County Health Care Agency or its designee to provide a health assessment to youth who have been retained in any type of county facility, but who have not had their first detention hearing.<sup>33</sup>

### 3. Treatment as a Condition of Probation

When the court places a minor on probation, the court “may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition.” Cal. Welf. & Inst. Code § 727(a). In some cases, courts have ordered or conditioned probation on attending mental health counseling.<sup>34</sup> In others, courts have made drug testing and attending substance abuse treatment a probation condition. For example, if the court does not remove a minor from his or her parents’ physical custody, the court may require as a condition of probation that the minor submit to urine alcohol and drug testing upon the request of a peace or probation officer. Cal. Welf. & Inst. Code § 729.3. Similarly, the court may require the minor participate in, and complete, an alcohol or drug education program. See Cal. Welf. & Inst. Code §§ 729.10; 729.12.<sup>35</sup> However, this order making counseling, testing or other treatment a condition of probation is not the same as authorizing or consenting to services. Consent is still necessary to provide treatment, and if the minor’s consent is necessary to provide that treatment, the minor may refuse. However, while a minor may refuse to consent to or choose not to attend treatment, there may be consequences. For example, in one case, a ward’s refusal to participate in court-ordered drug treatment became the basis for the court’s decision to commit the ward to a Youth Authority facility. *In re Anthony M.*, 172 Cal. Rptr. 153, 161 (Cal. App 5<sup>th</sup> Dist., 1981). If minors have concerns about any court-ordered treatment,

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<sup>32</sup> WIC § 739(b)(“ Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize the remedial care or treatment for that person, the court, upon the written recommendation of a licensed physician and surgeon or, if the person needs dental care, a licensed dentist, and after due notice to the parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person.”)

<sup>33</sup> See Alameda County Standing Order No. 2007-06.

<sup>34</sup> For example, the court may order a ward and his or her family to “participate in a program of professional counseling...” Cal. Welf. & Inst. Code § 731(a).

<sup>35</sup> WIC § 729.10(a)(“Whenever, in any county specified in subdivision (b), a judge of a juvenile court or referee of a juvenile court finds a minor to be a person described in Section 602 by reason of the commission of an offense involving the unlawful possession, use, sale, or other furnishing of a controlled substance,...the minor shall be required to participate in, and successfully complete, an alcohol or drug education program, or both of those programs, as designated by the court... the expense of the person’s attendance in the program shall be paid by the person’s parents or guardian so long as the person is under the age of 18 years....(b) This section applies only in those counties that have one or more alcohol or drug education programs certified by the county alcohol program administrator and approved by the board of supervisors.”).

they should discuss these concerns with their public defender or another trusted advocate.

#### **D. Consent and Access Rules when Minor is in a County Facility**

As a general rule, the same consent rules cited in sections A, B, and C apply when services are provided within a county juvenile facility<sup>36</sup>. Thus, if parent consent normally would be required outside the facility, parent consent is also required inside the facility, and if a minor's consent is necessary to provide a particular service outside the facility, a minor's consent is necessary inside.<sup>37</sup> However, there are some special rules and rights that get triggered when minors enter a county juvenile facility, as follows:

##### **1. Rights to Specific Services and Consent Rules while Detained/Committed**

Special rules apply when minors in county facilities need or receive the following services. See the related sections under (E) below for details.

- "HIV/AIDS testing and treatment"
- "Infectious, reportable, communicable diseases"
- "Reproductive health services"
- "Mental Health: Psychotropic Medications"
- "Sexual Assault"

##### **2. Right to Health Care and Screens**

When youth are involuntarily confined by the state or county, that institution has a responsibility to ensure they receive adequate medical services.<sup>38</sup> State laws and regulations specifically provide that minors in state and county custody have a right to certain health care.<sup>39</sup> This includes a right to a health screen and health evaluation.

Immediately after a minor enters a county juvenile detention facility, the facility must conduct a medical health screening.<sup>40</sup> The screening serves two functions: To identify any medical conditions that would need treatment during the minor's detention and to

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<sup>36</sup> The following focuses on the rules when minors are detained in county juvenile facilities. In a few places, it notes related rules for minors in DJJ facilities, but it is not intended as a complete review of the laws related to medical treatment for youth in DJJ facilities.

<sup>37</sup> 15 CCR § 1434 (b) ("There shall be provision for obtaining parental consent and obtaining authorization for health care services from the court when there is no parent/guardian or other person standing in loco parentis."); 15 CCR § 1434 (c) "Policy and procedures shall be consistent with applicable statutes in those instances where the minor's consent for testing or treatment is sufficient or specifically required.")

<sup>38</sup> *Estelle v. Gamble*, 429 U.S. 97 (1976) (Eighth Amendment to the U.S. Constitution obligates prisons to ensure prisoners receive adequate health care); 59 Ops. Cal. Atty. Gen. 402, 406 (1976).

<sup>39</sup> See e.g. Cal. Welf. & Inst. Code §§ 210, 885; 15 CCR § 1400. See also 15 CCR § 1400 (facility administrator of juvenile facility "shall ensure that health care services are provided to all minors."); 15 CCR § 1200 (facility administrator of Type I, II, III and IV local adult detention facilities has responsibility to ensure provision of emergency and basic health care services to all inmates); 15 CCR §§ 4611, 4730 (DJJ diagnostic and treatment services).

<sup>40</sup> 15 CCR § 1430(b) ("The [health] screening shall be conducted immediately upon entry to the facility.")

find out whether the minor has any health conditions that could “pose a hazard” to the minor or anyone else at the facility.<sup>41</sup>

In addition, minors also have a right to a health evaluation within 96 hours of their admission.<sup>42</sup> At a minimum, the evaluation must include a “health history, examination, laboratory and diagnostic testing, and necessary immunizations.”<sup>43</sup> Similar to the health screening, a health evaluation could include an investigation for a wide range of ailments. Examinations could include a blood pressure test, chest exam, and pelvic examination.<sup>44</sup> Laboratory testing could include tests for tuberculosis, STDs, and pregnancy.<sup>45</sup>

Both the health screen and health evaluation require consent. The youth’s consent may be necessary for certain screens and exams, and the parent’s consent for others. See section (E) below for minor consent rules. Because parents may be difficult to locate and consent difficult to obtain within 96 hours, some counties have adopted special protocols and *standing court orders* regarding consent for screening and evaluation to ensure these screens and exams occur in a timely manner. For example, San Francisco’s Juvenile Court has adopted a standing order that authorizes routine medical care delivery for youth for the first three days youth are in temporary custody if consent cannot be obtained from a parent.<sup>46</sup> San Diego County has adopted a special court rule.<sup>47</sup> See your local court rules and standing orders for guidance.

### 3. Right to Refuse Treatment while Detained/Committed

Minors in county juvenile facilities have the right to refuse non-emergency health care. 15 Cal. Code Regs. § 1434.<sup>48</sup> They also have the right to refuse psychotropic medication in most situations. See section (E): “Mental Health: Psychotropic Medications” below.

Minors in the custody of DJJ also have a right to refuse treatment; however, the facility may compel treatment in certain situations as follows. If a minor or the minor’s parent or guardian refuses treatment, “[t]he [DJJ] physician or dentist shall explain the consequences of the refusal to the ward or a parent or guardian if the ward is under 18

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<sup>41</sup> 15 CCR § 1430(b)(1)

<sup>42</sup> 15 CCR § 1432(a) (“The health appraisal/medical examination shall be completed within 96 hours of admission to the facility and result in a compilation of identified problems to be considered in classification, treatment, and the multi-disciplinary management of the minor while in custody and in pre-release planning.”). See also WIC § 1004; 15 CCR § 4732 (evaluations for wards in DYA custody); 15 CCR § 1123 (minors in adult jails).

<sup>43</sup> 15 CCR § 1432.

<sup>44</sup> 15 CCR § 1432(a)(1)(B).

<sup>45</sup> 15 CCR § 1432 (a)(1)(C).

<sup>46</sup> San Francisco Juvenile Court Standing Order No. 306 (“Under this order the court authorizes routine medical or dental care, (excluding surgery, non-routine treatments and prescribing of medications) of all minors during the first three (3) working days following detention of these minors in temporary custody, if such authorization cannot first be obtained from the minor’s parent and/or legal guardian.”).

<sup>47</sup> San Diego Ct. R. 6.9.13 (“Prior medical authorization will not be required for the initial health screening of minors at Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. Initial health screenings must be performed within 96 hours of detention and will include a physical examination, laboratory tests, immunizations, and X-rays. The Probation Department will attempt to obtain parental consent for medical care. If such consent cannot be obtained, the Probation Department will seek a court order authorizing medical care. In an emergency situation, medical care may be delivered to minors in detention without parental consent or a court order.”).

<sup>48</sup> 15 CCR § 1434 (“Minors may refuse, verbally or in writing, non-emergency medical and mental health care.”).

and record the refusal in the medical record, including a statement of the possible consequences if the medical, surgical, mental and/or dental treatment is not administered.” 15 CCR § 4734. At that point, treatment authorization may be sought from the court if certain conditions are met. 15 CCR § 4735.<sup>49</sup> Authorization to administer psychotropic medication in a DJJ facility absent consent must follow the rules in section 4747 of chapter 15 of the Administrative Code. *See also Section (B) above.*

## **E. Consent Rules for Special Services**

Federal and state law grants minors the right to consent to certain types of health care on their own accord. These rights do not change when a minor becomes a ward of the court. *See e.g.* 15 CCR § 1434(c). This section reviews those rights as they apply in the delinquency context. The section also reviews special consent rules that apply when wards need certain other health care.

### **1. Diagnosing Child Abuse**

A health care provider may take skeletal X-rays of a child without the consent of the child’s parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect. Cal. Penal Code § 11171.2(a).<sup>50</sup>

### **2. HIV/AIDS: Testing and Treatment**

When a minor is 12 years old or older, the minor’s consent is necessary to test or treat for HIV. Cal. Family Code § 6926(a).<sup>51</sup> This holds true for minors involved in the juvenile justice system as well. *See* 15 CCR § 1434.<sup>52</sup> For minors less than 12 years of age, the consent rules described in sections A, B and C, *above*, apply.

Under some circumstances, however, minors under the jurisdiction of the juvenile court may be obligated to submit to testing for HIV without their consent. For example, minors may be obligated to submit to a test:

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<sup>49</sup>15 CCR § 4735(“(a)Authorization may be sought from a court to compel necessary medical and/or dental treatment for a ward 18 years of age or older or for a ward under 18, when a parent or guardian refuses to consent or is not available if: (1) In the professional opinion of the treating physician, the treatment is immediately necessary for the prevention of death or severe physical disability to the ward in question, or (2) In the opinion of the chief medical officer and the chief of the health care services division, there would be a resultant danger to the welfare and/or safety of the institution and/or staff or wards as a result of the refusal. (b) Medical or dental treatment, as defined in subsection (a)(1) and (a)(2) may be initiated immediately and continued pending resolution by the court.”).

<sup>50</sup> Cal. Pen. Code § 11171.2(a)(“(a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child’s parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.”).

<sup>51</sup> Cal. Fam. Code § 6926(a)(“A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.”).

<sup>52</sup> 15 CCR § 1434(a)(“All examinations, treatments, and procedures requiring verbal or written informed consent in the community also require that consent for confined minors.”(c) “Policy and procedures shall be consistent with applicable statutes in those instances where the minor’s consent for testing or treatment is sufficient or specifically required.”).

- If the medical officer at a DJJ facility determines that a person under DJJ jurisdiction exhibits clinical symptoms of AIDS or AIDS-related complex. Cal. Welf. & Inst. Code § 1768.9(a).
- If a law enforcement employee or a fellow inmate believes he or she may have come into contact with the bodily fluids of an inmate, or a person arrested or detained for or charged with an offense for which he or she may be made a ward of the court under Section 602, the employee or inmate may request the chief medical officer of the facility to require HIV testing of such person. Cal. Penal Code §§ 7510; 7512.
- If a victim of specific sexual crimes requests testing, based upon a finding of probable cause to believe that a transfer of bodily fluids occurred. Cal. Health & Safety Code § 121055.
- If a peace officer, firefighter or emergency medical technician requests testing of an arrestee, upon a finding of probable cause. Cal. Health & Safety Code § 121060.

### 3. Infectious, Contagious or Communicable Diseases: Testing and Treatment

All youth 12 years old and older, including youth in the juvenile justice system, who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services. Cal. Family Code § 6926(a).<sup>53</sup> See 15 CCR § 1434.<sup>54</sup> Reportable communicable diseases include tuberculosis; hepatitis A, B, C and D; lyme disease; and pertussis, among others. See 17 CCR §§ 2500, 2641-2643 for a complete list.

For youth less than 12 years of age, the consent rules described in sections A, B and C, *above*, apply.

Under some circumstances, wards committed to a detention facility may be obligated to submit to testing for certain infectious or communicable diseases. For example, the medical director of a Department of Corrections or a DJJ institution has the authority to require testing of incarcerated wards for contagious diseases. Cal. Health & Safety Code §1250.4 (c),(f) & (g).<sup>55</sup> An Institution's ability to test for HIV and TB without patient consent

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<sup>53</sup> Cal. Family Code § 6926(a).

<sup>54</sup> 15 CCR § 1434(a)(“All examinations, treatments, and procedures requiring verbal or written informed consent in the community also require that consent for confined minors.”)(c) “Policy and procedures shall be consistent with applicable statutes in those instances where the minor's consent for testing or treatment is sufficient or specifically required.”).

<sup>55</sup> Cal. Health & Safety Code § 1250.4(c)(“The medical director, chief of medical services, chief medical officer, or the physician designated by the department to act in that capacity, shall use every available means to ascertain the existence of, and to immediately investigate, all reported or suspected cases of any communicable, contagious, or infectious disease and to ascertain the source or sources of the infections and prevent the spread of the disease. In carrying out these investigations, the medical director, chief of medical services, chief medical officer, or the physician designated by the department to act in that capacity, is hereby invested with full powers of inspection, examination, and quarantine or isolation of all inmates or wards known to be, or reasonably suspected to be, infected with a communicable, contagious, or infectious disease.”).

are addressed in a different series of statutes – sections 7500 et seq. and 7570 et seq. of the Penal Code. See “HIV Testing” above for more.

If a ward in a state or county facility is found to be infected with certain contagious or communicable diseases, further rules may apply regarding housing. See *e.g.* Cal. Welf. & Inst. Code §733.<sup>56</sup>

#### 4. Mental Health: Assessment and Counseling (Outpatient)

Youth 12 years old and older, including youth involved in the juvenile justice system, may consent for outpatient mental health treatment and counseling if both of the following requirements are satisfied:

1. The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services:  
and
2. The minor (a) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (b) is the alleged victim of incest or child abuse.

Cal. Family Code § 6924(b).<sup>57</sup>

If a youth under the jurisdiction of the juvenile court does not meet the requirements described above, the consent rules described in sections A, B and C, *above*, apply, with one caveat. In some cases, in addition to consent from the parent or other qualified person as outlined above, the provider also may need consent from the ward before certain outpatient mental health care can be provided.<sup>58</sup> For example, if the court refers a minor for a section 712 mental health evaluation, the minor, with approval of his or her counsel, has the right to decline the referral. Cal. Welf & Inst. Code §§ 711,712. Clinicians who work with youth involved in the juvenile justice system should speak to their own legal counsel for further information on when minor consent may be necessary.

Even when a minor’s consent is not legally necessary, seeking the minor’s **assent** to counseling can be helpful for therapeutic purposes. A patient must be a willing participant in treatment for mental health counseling to be fruitful. If a ward is reluctant to participate in counseling, then the minor’s parent, provider, probation officer, attorney or others, as appropriate, should work to identify and attempt to alleviate the minor’s concerns, or respect his or her decision.

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<sup>56</sup>Cal. Welf. & Inst. Code §733 "A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities:  
...(b) The ward is suffering from any contagious, infectious, or other disease that would probably endanger the lives or health of the other inmates of any facility.

<sup>57</sup> Cal. Fam. Code § 6924(b)(“A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied: (1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services. (2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.”).

<sup>58</sup> For example, services under WIC § 6552 require a minor’s application to initiate.

Some counties have implemented *standing court orders* and protocols to help ensure the mental health needs of youth under court jurisdiction are being addressed as soon as possible.<sup>59</sup> See your local court rules and agency protocols for guidance.

Information on mental health counseling as a condition of probation is discussed above in section (C)(3).

## 5. Mental Health: Inpatient Hospitalization

A ward's consent is necessary before the minor may be hospitalized for mental health treatment in all but a few circumstances. Before a delinquent minor may be hospitalized as a voluntary patient, the minor, in consultation with his or her attorney, must make an application for voluntary hospitalization. The court then must approve the application. The court "may authorize the minor to make such application if it is satisfied from the evidence before it that the minor suffers from a mental disorder which may reasonably be expected to be cured or ameliorated by a course of treatment offered by the hospital, facility or program in which the minor wishes to be placed; and that there is no other available hospital, program, or facility which might better serve the minor's medical needs and best interest." Cal. Welf. & Inst. Code § 6552.<sup>60</sup>

In very limited circumstances, a ward may be admitted to a psychiatric hospital against the minor's wishes as an involuntary patient. If the court believes, before or during a hearing on the delinquency petition, that the minor is mentally disordered or may be mentally ill, the court may proceed under section 6550 of the Welfare and Institutions Code or section 4011.6 of the Penal Code. Cal. Welf. & Inst. Code 705.<sup>61</sup> The procedures under Cal. Welf. & Inst. Code §6550 and Penal Code §4011.6 are slightly different, but "...should be considered complimentary, rather than as providing alternative procedures." *In re Robert B.*, 46 Cal. Rptr. 2d 691, 694 (1995). Both laws provide that when it appears to a judge that a ward may be mentally disordered, the judge may order the ward to be taken to an

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<sup>59</sup> For example, San Francisco County has implemented a standing order that gives "members of the Foster Care Mental Health Unit" the authority to execute documents "necessary for the [mental health] assessment and treatment" of dependents and minors whose dependency status is pending before the court. The Unit is authorized to execute these documents in all cases in which the minor's parent or guardian is unavailable, unable, or unwilling to execute such documents themselves. San Francisco County Juvenile Court Standing Order Number 203 - "Authorization for Mental Health Treatment".

<sup>60</sup> WIC § 6552("A minor who has been declared to be within the jurisdiction of the juvenile court may, with the advice of counsel, make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003. Notwithstanding the provisions of subdivision (b) of Section 6000, Section 6002, or Section 6004, the juvenile court may authorize the minor to make such application if it is satisfied from the evidence before it that the minor suffers from a mental disorder which may reasonably be expected to be cured or ameliorated by a course of treatment offered by the hospital, facility or program in which the minor wishes to be placed; and that there is no other available hospital, program, or facility which might better serve the minor's medical needs and best interest. The superintendent or person in charge of any state, county, or other hospital facility or program may then receive the minor as a voluntary patient. Applications and placements under this section shall be subject to the provisions and requirements of the Short-Doyle Act (Part 2 (commencing with Section 5600), Division 5), which are generally applicable to voluntary admissions.").

<sup>61</sup> WIC § 705("Whenever the court, before or during the hearing on the petition, is of the opinion that the minor is mentally disordered or if the court is in doubt concerning the mental health of any such person, the court may proceed as provided in Section 6550 of this code or Section 4011.6 of the Penal Code.").

approved facility for 72-hour treatment and evaluation pursuant to Cal. Welf. & Inst. Code §5150. Of course, at any time, the court also may order a ward held for 72-hour treatment and evaluation if it appears the minor, as a result of mental disorder, is a danger to him or herself or others, or gravely disabled. Cal. Welf. & Inst. Code §5150.<sup>62</sup> For this purpose only, "gravely disabled" is defined in section 5585.25<sup>63</sup> of the Welfare and Institutions Code. Cal. Welf. & Inst. Code § 5585.20.

After the completion of 72 hours, if the professional person in charge of the facility finds that, as the result of mental disorder, the minor is in need of intensive treatment and certain other criteria are met, the minor may be 'certified' for not more than 14 days of additional involuntary treatment. Cal. Welf. & Inst. Code § 5250. However, the minor does have a right to notice and a hearing before the minor can be certified for this additional treatment. Cal. Welf. & Inst. Code § 5252 et seq. At the end of the 14-day period, the professional in charge of the facility may recommend an additional stay of no more than 30 days. In a few circumstances, the professional in charge may be able to recommend an additional stay of no more than 180 days. Again, the minor has a right to notice and a hearing before this additional involuntary treatment can occur. See e.g. Cal. Welf. & Inst. Code §§ 5260, 5270.15, 5300.

Beyond this, further involuntary treatment requires significant due process to initiate, but it is available if the court determines the minor is "gravely disabled."<sup>64</sup> For this purpose, "gravely disabled" means the youth cannot provide for his or her basic personal needs for food, clothing, or shelter, or, the court has found the youth to be mentally incompetent per section 1370 of the Penal code and additional facts exist. See Cal. Welf. & Inst. Code § 5008(h).<sup>65</sup>

In assessing whether a minor is "gravely disabled" under section 5008, the court must distinguish between disability and immaturity: "Immaturity, either physical or mental when not brought about by a mental disorder, is not a disability which would render a minor 'gravely disabled' within the meaning of section 5008." *In re Michael E.*, 15 Cal.3d 183, 193 (1977).

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<sup>62</sup> WIC §5150 ("When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.").

<sup>63</sup> WIC §5585.25 (" 'Gravely disabled minor' " means a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others. Mental retardation, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder.").

<sup>64</sup> Cal. Welf. & Inst. Code §§ 6550, 6551. See Cal. Welf. & Inst. Code §§ 5150, 5250, 5270.15, 5350.

<sup>65</sup> WIC § 5008(h) (" 'Gravely disabled' means either of the following: (A) A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter. or (B) A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist: (i) The indictment or information pending against the defendant at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person. (ii) The indictment or information has not been dismissed. (iii) As a result of mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner.").

The same rules apply when wards committed to a county facility need inpatient treatment. 15 C.C.R. § 1437. Information on use of psychotropic medication in an inpatient facility is below under the section “Mental Health: Psychotropic Medication.”

Special provisions apply to minors confined in state correctional schools. See Cal. Welf. & Inst. Code § 1756.<sup>66</sup>

Admitting a minor for inpatient mental health treatment, whether it is voluntary or involuntary treatment, involves detailed processes. Because this section only provides a simple overview of the issue, providers should speak to their own counsel for more information and advice on the specific procedures that must be followed to admit a ward for inpatient mental health care in their county. For more on foster youth and mental health services, see Youth Law Center, *Mental Health Services for Foster Youth in California*, available at [www.ylc.org](http://www.ylc.org).

## 6. Mental Health: Psychotropic Medications

Unemancipated minors cannot consent to their own psychotropic medication.<sup>67</sup> A parent, guardian or other authority must consent. Who has authority to consent will depend in part on the ward’s placement.

- *When Court Authorization is Necessary*

If a ward remains in the custody of his or her parent or guardian, the **parent or guardian** has the right to consent when the minor needs psychotropic medication, unless the court specifically removed this right. See Cal. Welf. & Inst. Code §§ 726(a); 739(f).

If a ward has been removed from parental custody and placed into foster care, only the **juvenile court** has the authority to consent to the administration of psychotropic medication for the child and may only do so upon a physician’s request. The court may delegate this authority to the **parent** if it finds that the parent poses no danger to the child and has the requisite capacity. Cal. Welf. & Inst. Code § 739.5(a).<sup>68</sup>

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<sup>66</sup> WIC § 1756 (“Notwithstanding any other provision of law, if, in the opinion of the Director of the Youth Authority, the rehabilitation of any mentally disordered, or developmentally disabled person confined in a state correctional school may be expedited by treatment at one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the Director of the Youth Authority shall certify that fact to the director of the appropriate department who may authorize receipt of the person at one of the hospitals for care and treatment. Upon notification from the director that the person will no longer benefit from further care and treatment in the state hospital, the Director of the Youth Authority shall immediately send for, take, and receive the person back into a state correctional school. Any person placed in a state hospital under this section who is committed to the authority shall be released from the hospital upon termination of his or her commitment unless a petition for detention of that person is filed under the provisions of Part 1 (commencing with Section 5000) of Division 5.”).

<sup>67</sup> See Cal. Fam. Code § 6924(f).

<sup>68</sup> WIC § 739.5(a) (“If a minor who has been adjudged a ward of the court under Section 601 or 602 is removed from the physical custody of the parent under Section 726 and placed into foster care, as defined in Section 727.4, only a juvenile court judicial officer shall have authority to make orders regarding the administration of psychotropic medications for that minor. The juvenile court may issue a specific

If the ward has been removed from parent custody but placed in care other than foster care, such as juvenile hall, the person who authorizes psychotropic medication will depend on local court rules. As a starting point, the general rule holds: the parent or guardian retains the right to consent. However, the local juvenile court has the right to retain for itself the power to authorize psychotropic medication for all wards who are not in parent custody. Cal. R. Ct. 5.640.<sup>69</sup> Some counties, such as San Diego, have adopted this rule.<sup>70</sup> Therefore, it is important to know your local court rules.

If a minor is in DJJ custody, psychotropic medication requires informed consent and “shall be ordered and administered only after a psychiatrist, in consultation with the treatment team, has evaluated the ward, arrived at a differential diagnosis, and concluded that the ward would benefit from a psychotropic medication.” 15 CCR § 4746(a)(d). Generally a parent or guardian must provide informed consent for psychotropic medication; however, if DJJ is unable to locate the parent or guardian, “voluntary” medication may be administered if (1) two physicians have reviewed the need and agree that it is medically appropriate, (2) the minor agrees to the administration of psychotropic medication, (3) and an “application for Order for Psychotropic Medication-Juvenile (JV 220) is filed with the juvenile court. 15 CCR § 4746.5. The procedures described in Section 4747 of the California Administrative Code should be followed when a parent or guardian has denied consent or is unavailable. See 15 Cal. Code Regs. § 4747.

- *Emergency Provision of Medication Absent a Court Order*

Even if court authorization generally is necessary, psychotropic medications nevertheless may be administered in emergencies without court authorization. In this context, an emergency situation occurs when:

- (A) A physician finds that the child requires psychotropic medication to treat a psychiatric disorder or illness; and
- (B) The purpose of the medication is:
  - i. To protect the life of the child or others, or
  - ii. To prevent serious harm to the child or others, or
  - iii. To treat current or imminent substantial suffering; and
- (C) It is impractical to obtain authorization from the court before administering the psychotropic medication to the child.

Cal. R. Ct. 5.640(g).

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order delegating this authority to a parent upon making findings on the record that the parent poses no danger to the minor and has the capacity to authorize psychotropic medications. Court authorization for the administration of psychotropic medication shall be based on a request from a physician, indicating the reasons for the request, a description of the minor's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication. On or before July 1, 2008, the Judicial Council shall adopt rules of court and develop appropriate forms for implementation of this section.”).

<sup>69</sup>Cal. R. Ct. 5.640(h)(“A local rule of court may be adopted providing that authorization for the administration of such medication to a child declared a ward of the court under sections 601 and 602 and removed from the custody of the parent or guardian for placement in a facility that is not considered a foster-care placement may be similarly restricted to the juvenile court. If the local court adopts such a local rule, then the procedures under this rule apply; any reference to social worker also applies to probation officer.”).

<sup>70</sup>For example, San Diego County's Juvenile Court adopted such a rule. The San Diego Juvenile Court must authorize any request to put a ward on psychotropic medication. San Diego Ct. R. 6.9.12.

If medication is administered in an emergency, court authorization still must be sought as soon as possible but no later than two court days after the emergency administration of the psychotropic medication.” *Id.*

- *Medication for Wards in Facilities*

Juvenile facilities must make provisions to ensure that minors already on psychotropic medication when they enter a facility are continued on their medication pending re-evaluation. 15 CCR § 1439(a)(4). Except in emergencies, psychotropic medication cannot be administered to minors in facilities absent informed consent from the appropriate person or entity. As part of the informed consent process, the minor must be informed of the expected benefits, potential side effects and alternatives to psychotropic medications. 15 CCR § 1439(b).<sup>71</sup> Minors cannot be administered psychotropic medication as a means of coercion, discipline, convenience or retaliation. 15 CCR § 1439.

- *Right to Refuse Medication*

Minors who have been involuntarily detained or hospitalized pursuant to sections 5150, 5250, 5260 or 5270.15 of the Welfare and Institutions Code have a right to refuse administration of antipsychotic medication. Cal. Welf. & Inst. Code § 5332.<sup>72</sup> Should an involuntary patient object to medication, the hospital must request a hearing to authorize involuntary administration.<sup>73</sup> Only in very limited circumstances may the minor be administered medication over his or her objection.<sup>74</sup>

Wards in county juvenile facilities have the right to refuse medication; however, in emergencies, medication may be administered involuntarily. 15 CCR § 1439(b)(2); (c).<sup>75</sup>

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<sup>71</sup> 15 CCR § 1439(b)(“Psychotropic medications shall not be administered to a minor absent an emergency unless informed consent has been given by the legally authorized person or entity. (1) Minors shall be informed of the expected benefits, potential side effects and alternatives to psychotropic medications. (2) Absent an emergency, minors may refuse treatment”).

<sup>72</sup>WIC § 5332(a)(“Antipsychotic medication, as defined in subdivision (l) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (c) of Section 5152 and subdivision (b) of Section 5213.”).

<sup>73</sup>WIC § 5332(“b) If any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose. (c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.”).

<sup>74</sup>See e.g. WIC § 5332(e)(“In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.”).

<sup>75</sup> 15 CCR § 1439(c)(“Minors found by a physician to be a danger to themselves or others by reason of a mental disorder may be involuntarily given psychotropic medication immediately necessary for the preservation of life or the prevention of serious bodily harm, and when there is insufficient time to obtain consent from the parent, guardian, or

Wards in DJJ custody also may refuse psychotropic medication. 15 CCR § 4734. However, in limited circumstances, they too may be administered psychotropic medication on an involuntary basis. 15 CCR §§ 4735(c); 4747.<sup>76</sup>

Administering psychotropic medication on an involuntary basis requires detailed due process. Because this section only provides a simple overview of the process, providers should speak to their own counsel for more information and advice.<sup>77</sup>

## 7. Pregnancy and other Reproductive Health Care

A minor's consent is required for all pregnancy related care, including contraception, prenatal care, and abortion services. Cal. Family Code § 6925;<sup>78</sup> *American Academy of Pediatrics v. Lungren*, 16 Cal. 4<sup>th</sup> 307, 383 (1997). The consent of no other person is necessary. This rule applies irrespective of the age of the youth; however, if a very young

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court before the threatened harm would occur. It is not necessary for harm to take place or become unavoidable prior to initiating treatment.”).

<sup>76</sup>15 CCR § 4747(“(a)Involuntary psychotropic medication may be administered in an emergency. An emergency exists when: (1) There is a marked change in the ward's condition that indicates that action is immediately necessary for the preservation of life or the prevention of bodily harm to self or others, and (2) It is impracticable or impossible to obtain informed consent. (b) The administration of psychotropic medication in an emergency shall be only that which is required to treat the emergency condition and shall be provided in ways which are the least restrictive to the personal liberty of the ward. (c) The administration of psychotropic medication in an emergency may be continued for 72 hours on the order of the psychiatrist or physician. (d) The chief medical officer at each facility shall ensure that a log is maintained in which each occasion of involuntary psychotropic medication is recorded for each ward. (1) The log shall identify the ward by name and number, and shall include the name of the ordering physician, the reason for medication and the time and date of medication. (2) The log shall be reviewed by the chief medical officer at least monthly and shall be made available for review by the chief of the health care services division upon request. (e) The administration of involuntary psychotropic medication in excess of 72 hours for wards 18 years of age or older or emancipated minors shall be prohibited unless such wards are provided with the protections required in *Keyhea v. Rushen*, Solano County Superior Court No. 67432, Order Granting Plaintiffs Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986. (1) The administration of involuntary psychotropic medication in excess of ten days shall be prohibited unless such wards are provided with the protections required in *Keyhea v. Rushen*, supra. (2) The administration of involuntary psychotropic medication in excess of 24 days shall be prohibited unless such wards are provided with the protections required in *Keyhea v. Rushen*, supra. (A) The judicial hearing for the authorization for the involuntary administration of psychotropic medication provided for in part III of *Keyhea v. Rushen*, supra, shall be conducted by an administrative law judge. (B) The judicial hearing may, at the direction of the director, be conducted at the facility where the ward is located. (f) The administration of involuntary psychotropic medication in excess of the 72 hours for wards under the age of 18 who are not emancipated minors shall be in accordance with the following and shall occur only when a parent or guardian denies consent as defined in Article 1, Section 4733 or when a parent or guardian is not available: (1) If consent is denied by a parent or guardian and the ward meets the criteria identified in *Keyhea v. Rushen*, supra, the procedures in subsection (c)(1) through (c)(4) shall be initiated. (2) If consent is denied by a parent or guardian and the ward does not meet the criteria identified in *Keyhea v. Rushen* supra but has a diagnosed mental health condition that would benefit from psychotropic medication, medication shall not be administered. Psychotherapy shall be initiated and the progress and outcome recorded in the Unified Health Record. (3) If the parent or guardian is not available and the ward meets the criteria identified in *Keyhea v. Rushen*, supra, the procedures in subsection (c)(1) through (c)(4) shall be initiated. (4) If the parent or guardian is not available and the ward does not meet the criteria identified in *Keyhea v. Rushen*, supra, consultation from a community psychiatrist shall be obtained. Administration of psychotropic medication shall be based on the recommendation of the community psychiatrist.”).

<sup>77</sup> For more information, see the California Association of Mental Health Patients' Rights Advocates, *Patients' Rights Manual* available at

[http://camhpra.org/home/index.php?option=com\\_content&task=category&sectionid=3&id=15&Itemid=16](http://camhpra.org/home/index.php?option=com_content&task=category&sectionid=3&id=15&Itemid=16).

<sup>78</sup> Cal. Fam. Code § 6925(“(a) A minor may consent to medical care related to the prevention or treatment of pregnancy.”); *Amer. Academy of Pediatrics v. Lungren*, 16 Cal.4th 307 (1997).

minor is sexually active, practitioners should be sensitive to the possibility of sexual abuse.<sup>79</sup>

Juvenile facilities housing wards are required to develop policies and procedures to assure reproductive health services are available to both male and female wards.<sup>80</sup> Taking it one step further, some counties have implemented specific policies to help ensure the reproductive health needs of all detained and committed are addressed. Please see your local court rules and agency policies for guidance.

## 8. Pregnancy and other Reproductive Health Care for Youth in Juvenile Facilities

In order to ensure females have access to reproductive health services while confine in juvenile facilities<sup>81</sup>, California has passed several laws and regulations to clarify their rights to family planning, abortion, prenatal, and birthing care.

- *Minor Consent*

Minors in juvenile facilities have the right to consent to their own pregnancy-related health care. When a minor's consent is necessary or sufficient for services outside the facility, the minor has the same right to consent to that care when detained in, or committed to, a juvenile facility. 15 CCR § 1434.<sup>82</sup>

- *Birth Control/Family Planning*

State and local juvenile facilities<sup>83</sup> must allow females, upon their request, to continue to use birth control measures as prescribed by a physician and materials necessary for personal hygiene with regard to the menstrual cycle and reproductive system. Welf. & Inst. Code § 221(a).<sup>84</sup>

Family planning services must be offered to every detained and committed female at least 60 days prior to a scheduled release date. Welf. & Inst. Code § 221(c).<sup>85</sup>

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<sup>79</sup> For more information on child abuse and abuse reporting requirements, see *Minor Consent, Confidentiality and Child Abuse Reporting in California*, available at [www.TeenHealthRights.org](http://www.TeenHealthRights.org).

<sup>80</sup> 15 CCR § 1416("For all juvenile facilities, the health administrator, in cooperation with the facility administrator, shall develop written policies and procedures to assure that reproductive health services are available to both male and female minors.").

<sup>81</sup> This section refers to rights of minors incarcerated in state and local juvenile facilities; however similar provisions grant females confined in a DJJ facility similar rights. See Cal. Welf. & Inst. Code §§ 1753.7, 1773, 1774.

<sup>82</sup> 15 CCR § 1434(a){“All examinations, treatments, and procedures requiring verbal or written informed consent in the community also require that consent for confined minors.”(c) “Policy and procedures shall be consistent with applicable statutes in those instances where the minor's consent for testing or treatment is sufficient or specifically required.”).

<sup>83</sup> WIC §221(d){“For the purposes of this section, "local juvenile facility" means any city, county, or regional facility used for the confinement of juveniles for more than 24 hours.”).

<sup>84</sup> WIC § 221{“(a) Any female confined in a state or local juvenile facility shall upon her request be allowed to continue to use materials necessary for (1) personal hygiene with regard to her menstrual cycle and reproductive system and (2) birth control measures as prescribed by her physician.”).

<sup>85</sup> WIC § 221(c){“Family planning services shall be offered to each and every woman inmate at least 60 days prior to a scheduled release date. Upon request any woman inmate shall be furnished by the confining state or local agency with the services of a licensed physician, or she shall be furnished by the confining state or local agency or by any

Upon request any woman inmate shall be furnished by the confining state or local agency with the services of a licensed physician, or she shall be furnished by the confining state or local agency or by any other agency which contracts with the confining state or local agency, with services necessary to meet her family planning needs at the time of her release. Cal. Welf. & Inst. Code § 221(c). She also must be furnished, upon request, with information and education regarding prescription birth control measures. Cal. Welf. & Inst. Code § 221(b).<sup>86</sup>

- *Pregnancy Testing and Pregnancy Care*

Females in custody in county juvenile facilities<sup>87</sup> have the right to the “services of any physician and surgeon of her choice in order to determine whether she is pregnant. If she is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of those services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility shall be borne by the female.” Cal. Welf. & Inst. Code § 222(a). This right must be posted in at least one conspicuous place to which all female wards have access. *Id.* at (d).<sup>88</sup>

- *Abortion*

Juvenile facilities<sup>89</sup> cannot condition or restrict a female’s access to abortion services. If a female in a juvenile facility is pregnant and chooses to abort, the facility must permit her to obtain the abortion. Welf. & Inst. Code § 220.<sup>90</sup> The juvenile facility must post this right in a conspicuous place to which all females have access. *Id.*

- *Childbirth*

Females in juvenile facilities have the following rights during childbirth.

*“A ward shall not be shackled by the wrists, ankles, or both during labor, including during transport to a hospital, during delivery, and while in recovery after giving*

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other agency which contracts with the confining state or local agency, with services necessary to meet her family planning needs at the time of her release.”).

<sup>86</sup> WIC § 221(b)(“Any female confined in a state or local juvenile facility shall upon her request be furnished by the confining state or local agency with information and education regarding prescription birth control measures.”).

<sup>87</sup> WIC § 221(c)(“For purposes of this section, “local juvenile facility” means any city, county, or regional facility used for the confinement of juveniles for more than 24 hours.”).

<sup>88</sup> WIC § 222(d).

<sup>89</sup> WIC § 220(“For the purposes of this section, “local juvenile facility” means any city, county, or regional facility used for the confinement of female juveniles for more than 24 hours.”).

<sup>90</sup> WIC § 220(“No condition or restriction upon the obtaining of an abortion by a female detained in any local juvenile facility, pursuant to the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code), other than those contained in that act, shall be imposed. Females found to be pregnant and desiring abortions, shall be permitted to determine their eligibility for an abortion pursuant to law, and if determined to be eligible, shall be permitted to obtain an abortion. ...The rights provided for females by this section shall be posted in at least one conspicuous place to which all females have access.”).

*birth, subject to the security needs described in this section. Pregnant wards temporarily taken to a hospital outside the facility for the purposes of childbirth shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each ward. Upon arrival at the hospital, once the ward has been declared by the attending physician to be in active labor, the ward shall not be shackled by the wrists, ankles, or both, unless deemed necessary for the safety and security of the ward, the staff, and the public.”* Cal. Welf. & Inst. Code § 222(b).

These rights must be posted in at least one conspicuous place to which all female wards have access.<sup>91</sup>

## 9. Sexually Transmitted Diseases

Minors 12 years old and older, including minors involved with the juvenile justice system, who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services. Cal. Family Code § 6926(a).<sup>92</sup>

For minors less than 12 years of age, the consent rules described in sections (A) and (B), *above*, apply. Some counties have implemented specific policies to insure minors have access to these services as needed.<sup>93</sup> Please see your local rules for guidance.

Minors 12 and older who are in detention have the right to consent to these services; however, under some circumstances, wards committed to a detention facility may be obligated to submit to testing for certain infectious or communicable diseases. See “HIV Testing” and “Infectious, communicable diseases” above.

## 10. Sexual Assault Treatment

A minor of any age, including minors involved with the juvenile justice system, may consent to medical care related to diagnosis and treatment of sexual assault, and the collection of medical evidence with regard to the alleged sexual assault. Cal. Fam. Code § 6928(b).<sup>94</sup>

Sexual assault of a minor is considered child abuse and must be reported to CPS or law enforcement, even if the minor already is under court jurisdiction.<sup>95</sup>

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<sup>91</sup> WIC § 222(d).

<sup>92</sup> Cal. Fam. Code § 6926(a)(“(a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.”).

<sup>93</sup> For example, the County of Nevada encourages screening sexually active minors for venereal disease but only “upon consent of the minor.” See Nevada County Juvenile Court Rule 6.07.1.

<sup>94</sup> Cal. Fam. Code § 6928(b)(“A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.”).

<sup>95</sup> See *California’s Child Abuse and Neglect Reporting Act: Reporting Rules for Health Care Providers*, available at [www.TeenHealthRights.org](http://www.TeenHealthRights.org).

Juvenile facilities must establish policies and procedures to treat victims of sexual assaults and ensure assaults are reported. The evidentiary exam and initial treatment of sexual assault must be conducted at a health facility that is separate from the custodial facility and is properly equipped and staffed with personnel trained and experienced in such procedures. 15 C.C.R. § 1453.

## 11. Substance Abuse: Testing and Treatment

Minors age 12 years old or older, including minors involved with the juvenile justice system, may consent to medical care and counseling relating to the diagnosis and treatment of drug or alcohol related problems. Cal. Family Code § 6929(b).<sup>96</sup> This section of law does not authorize the minor to consent to replacement narcotic abuse treatment (methadone). Cal. Fam. Code § 6929(e).<sup>97</sup>

In the alternative, when a minor does not consent to treatment, a parent, guardian or other person with consent rights also may authorize care on the minor's behalf. Cal. Fam. Code § 6929(f). In these situations, the consent rules described in sections (A) and (B), *above*, apply. As well, the court may order a ward committed to a facility for 72-hour treatment and evaluation if the ward appears to be a danger to himself or herself or others as a result of the use of controlled substances. The law allows for continued involuntary treatment in some circumstances. See Cal. Welf. & Inst. Code § 708.

When a minor is taken into temporary custody by a peace officer under section 625 of the Welfare and Institutions Code, the peace officer may request that the minor submit to voluntary chemical testing of his or her urine for the purpose of determining the presence of alcohol or illegal drugs, but the peace officer must inform the minor that the test is voluntary and the result may be considered by the court. The officer is required to recite specific admonitions to this effect. Cal. Welf. & Inst. Code §§ 625.1; 625.2. (Note: this is different than a chemical test administered pursuant to Vehicle Code § 23157.)

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<sup>96</sup> Cal. Fam. Code § 6929 (“(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem....(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.”).

<sup>97</sup> Cal. Fam. Code § 6929 (e) (“This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.”).