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JUVENILE RIGHTS

ADVOCACY PROJECT

Consent to medical treatment by minors in Massachusetts

**A guide for
practitioners**



JRA
guide

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This guide is designed
for healthcare providers,
social service agency
employees, and other
practitioners who connect

young people with the medical care they need. While the age of consent for all medical treatment in Massachusetts is generally 18, those younger than 18 may consent to a wide range of services—even without parental authorization—depending on the circumstances. This guide also highlights the special consent issues that may arise for youth who are involved with the Department of Social Services and / or the Department of Youth Services. While these issues may seem complicated at first glance, the governing laws and regulations are, for the most part, surprisingly clear. We hope you find this guide and compilation of resources helpful. June 2006.

The Juvenile Rights Advocacy Project (JRAP) is a clinical program at Boston College Law School in which supervised law students represent teen-agers in juvenile systems. The JRAP also develops initiatives aimed at improving education, healthcare, and other services for youth with a primary focus on girls in the juvenile justice system.

At what age can a person in Massachusetts **consent** to all medical procedures? 18 is the age of majority in Massachusetts for all purposes, including consent to medical treatment. Children under 18 are minors and the permission of their parents or guardians is required before they receive many kinds of medical treatment.¹

Must parents or guardians consent for minors to receive **emergency medical treatment**? No, if withholding such treatment would endanger the minor.²

What is an emancipated or **mature minor**? Emancipation is a legal status that reduces parents' rights and duties toward their child and gives the child some adult rights. Massachusetts does not have a formal procedure for granting emancipation, but minors may petition for this status in the appropriate court. However, Massachusetts does recognize a mature minor rule, which means that minors can consent to medical treatment—except for abortion—if the doctor believes the minor can give informed consent to the treatment and it is in the minor's best interest not to notify his or her parents.³

What treatment can be consented to by minors who are or have been **married**?

Any treatment, including abortion for minor women who are divorced or widowed.⁴

●●● RESOURCES

- > **The General Laws of Massachusetts**
 - > > <http://www.mass.gov/legis/laws/mgl/>
- > **Dept. of Youth Services (DYS)**
 - > > <http://www.mass.gov/dys/>
- > **Dept. of Social Services (DSS)**
 - > > <http://www.mass.gov/dss/>
- > Official copies of DYS and DSS regulations can be ordered on-line at <http://www.sec.state.ma.us/spr/sprcat/contents.htm> or by contacting
State Bookstore
State House, Room 116
Boston, MA 02133
(617) 727-2834

What treatment can be consented to by minors who are **living separate and apart** from their parents or guardians and are managing their own affairs?

Any treatment, except abortion.⁵

What treatment can be consented to by minors who are the **parents** of a child?

Any treatment for the minor or the minor's child, except abortion.⁶

What treatment can be consented to by minors who are **pregnant** or who believe themselves to be pregnant?

Any treatment, except abortion.⁷

May minors consent to **abortion**?

In some cases.

A minor who is married, divorced, or widowed can obtain an abortion without parental consent.

A minor who has not married must obtain consent of one parent or guardian. If she is unable to obtain consent from one parent/guardian or chooses not to ask for consent from a parent/guardian, she may petition a judge of the Superior Court to obtain consent.⁸



May minors consent to **family planning** services?

Yes. Sexually active minors of childbearing age may access family planning services offered through the Department of Public Health.⁹

The Department's Bureau of Family and Community Health maintains a list of family planning agencies statewide at <http://www.mass.gov/dph/fch/famplan.htm>.

May minors consent to treatment for HIV and **sexually transmitted diseases**?



Yes. Minors who reasonably believe they are suffering from or have been exposed to diseases classified as dangerous by the Department of Public Health may seek treatment. HIV is included among these diseases. Minors who are unable to pay for private medical care may consent to treatment for venereal diseases at public health clinics that provide comprehensive family planning services.¹⁰

May minors consent to treatment for **substance abuse**?

Yes. Minors 12 or older who have been found drug dependent by at least two doctors may consent to substance abuse treatment, except for methadone maintenance therapy.¹¹

May minors consent to **mental health treatment**?

Yes. Minors aged 16 or 17 may consent to admission at a mental health treatment facility.

In light of Massachusetts' mature minor rule, a provider may choose to provide mental health treatment without notifying a minor's parents.¹²

Definitions

DSS: Department of Social Services, the Massachusetts agency charged with preventing child abuse and neglect.

CHINS (Child In Need of Services): a parent, guardian, school, or the police may file a CHINS petition in the Juvenile Court on a child who regularly runs away from home, constantly disobeys parents or guardians, or who regularly is absent or fails to follow school rules.

DSS Custody: placement in the Department of Social Services through court order or adoption surrender.¹³

DSS Care: receipt of services from the Department pursuant to a Voluntary Placement Agreement. This also includes CHINS youth committed to DSS custody pursuant to a CHINS proceeding. Parents or guardians of CHINS youth retain the right to determine what extraordinary medical care their children receive.¹⁴

DSS Ward: a person who has been adjudicated incompetent and for whom a guardian has been appointed by a Probate Court in accordance with M.G.L. c. 201.¹⁵

Whose consent is required for minors to receive **emergency medical treatment**?

No consent is required. However, in determining whether a medical emergency exists, the relevant time period begins when the claimed emergency arises and ends when the individual who seeks to act in the emergency could, with reasonable diligence, obtain parental consent or judicial review.¹⁶



What is **routine medical treatment** for minors in DSS care or custody?

Anything that is not extraordinary treatment. Extraordinary treatment includes sterilization, no-code orders, life-prolonging treatment, electroconvulsive therapy, and antipsychotic drugs.

Routine medical treatment includes treatment for drug dependency, pregnancy (except abortion and sterilization), family planning services, and treatment for diseases dangerous to the public health. Routine treatment also includes screenings, such as a hearing test, nutritional status assessment, psychiatric assessment, and vision test.¹⁷

See Appendix

Who may consent to **routine medical treatment** for minors in DSS care or custody?

DSS may consent to routine medical treatment for minors in its custody or care or for children who are wards of DSS.

In all cases where DSS has the right to consent to medical care for a ward or a child in its care or in its custody, DSS shall consider exclusively what will serve the child's best interests.¹⁸

If parents refuse to sign a **Voluntary Placement Agreement** because they do not want DSS to consent to routine medical treatment for their child on the basis that such treatment conflicts with the parents' religious beliefs, the parents may add a statement to the Voluntary Placement Agreement limiting the treatment to which DSS may consent. Alternatively, DSS may determine whether the parents' refusal to delegate to DSS the power to consent constitutes medical neglect, and if so, institute appropriate court action on that basis.¹⁹



The consent of the minor alone is sufficient—DSS or parental/guardian consent is not required—for the treatment of drug dependency (for minors 12 and over), pregnancy (except abortion and sterilization), family planning services, and treatment for a venereal disease or a disease dangerous to the public health.

If a minor refuses to consent to the treatment of any of the above conditions, DSS may consent.²⁰



Who may consent to **extraordinary medical treatment** for minors in DSS care or custody?

DSS may never consent if the treatment is extraordinary but must obtain parental consent for children in the care of the DSS and prior judicial approval for wards and children in DSS custody.²¹

Who may consent to **commitment to a mental health facility** of minors in DSS care or custody?

Any child who has attained the age of 16 may apply for voluntary admission to a mental health facility. In the case of such an application by the child, no additional consent either from DSS or from parents is necessary.

A parent may consent to the admission of his/her child to a mental health facility when:

(a) the child is in the care of DSS and is under 16 years of age; or (b) the child is in the care of the DSS and is between 16 and 18 years of age and does not consent to admission to a mental health facility.

DSS (by an Area or Regional Director only) may consent to the admission of a person to a mental health facility for an initial period of time not to exceed a maximum of 90 days: (a) in the custody of DSS; (b) in the care of DSS if that person's parent(s) is unavailable for consultation or if that person's parent(s) after consultation consent or authorize DSS to consent; or (c) who is a ward of DSS only if DSS as guardian has the specific power to consent to the admission of the ward.²²



Who may consent to an **abortion** for minors in DSS care or custody?

DSS may not consent to abortions for minors in its custody.

Minors must obtain parental/guardian or judicial consent to an abortion pursuant to M.G.L. c. 112, § 12S.

If the minor requests assistance from DSS in seeking court authorization for an abortion, or if DSS social work staff decides such minor has a need for this information, DSS social work and legal staff shall provide her with the necessary information on how to go to court to file a petition or motion. However, DSS attorneys shall not represent pregnant minors in their petition or motion.²³

Whose consent is required for minors to receive **emergency medical treatment**?

When there is a medical emergency, no one's consent is required in order to allow a child to receive necessary medical care.²⁴

Who can consent to **routine medical treatment** for **DYS clients**?

What constitutes routine medical care is defined on page 5 in relation to minors in DSS care or custody.

Routine treatment also includes screenings, such as a comprehensive physical examination, hearing test, nutritional status assessment, and vision test.

Consent to routine medical care may be given by either the client solely, the client and the parent or guardian, or the client and **DYS**.²⁶ *See Appendix*

Definitions

DYS: Department of Youth Services, the Massachusetts juvenile justice agency charged with addressing and preventing criminal activity by youth.

DYS Client: a child placed in the custody of **DYS** under the provisions of M.G.L. c. 119, §§ 58 or 68, following detention—for further examination, indictment, trial or continuance—or upon being adjudicated delinquent.²⁵

Who may consent to medical treatment for **pregnant** minors in **DYS** custody?

A client who is pregnant or believes herself to be pregnant may give consent to her own medical and dental care (except abortion or sterilization). The consent of **DYS** is not necessary for any such client.²⁷

Who may consent to an **abortion** for pregnant **DYS** clients?

DYS may not consent to an abortion for minors in its care.

Minors must obtain parental/guardian or judicial consent to an abortion pursuant to M.G.L. c. 112, § 12S.²⁸

May DYS clients consent to treatment for **substance abuse**?

Yes. A client 12 years of age or older who is found to be drug dependent by a physician may give his/her consent to the furnishing of hospital and medical care related to the diagnosis or treatment of such drug dependency. The consent of the parent or guardian is not necessary to authorize hospital or medical care related to drug dependency of any such minor.²⁹

May DYS clients consent to treatment for **HIV and sexually transmitted diseases**?

Consent for treatment of diseases dangerous to the public health—such as HIV—may be given by either the client solely, the client and parent or guardian, or the client and DYS.

Clients who refuse treatment for these diseases shall be subject to court proceedings to force treatment.

If any client reasonably believes himself or herself to be suffering from or to have come in contact with any sexually transmitted disease, such client may consent to his or her own medical care related to the diagnosis or treatment of such disease.

The consent of DYS, parent or guardian is not necessary to authorize medical care related to the diagnosis or treatment of sexually transmitted diseases for any client.³⁰



Family Planning Services offered by the Massachusetts Department of Public Health

Uninsured Massachusetts residents under 20 years of age, regardless of income, are eligible for free family planning services at more than 90 locations throughout the state. Comprehensive family planning services include the following medical services:

- gynecological and breast exams and cervical cancer screening
- diagnosis and treatment of sexually transmitted diseases
- emergency contraception, birth control, preconception care, and pregnancy testing
- HIV counseling and testing

A list of providers is available at: <http://www.mass.gov/dph/fch/famplan.htm>, or contact one of the agencies below.

BOSTON

ABCD/Boston Family
Planning Program
<http://www.bostonabcd.org>
(617) 357-6000 x6251

Planned Parenthood/Preterm Health
Services of Greater Boston
<http://www.pplm.org/>
(617) 616-1660

CAMBRIDGE

Cambridge Economic Opportunity
Committee, Inc.
(617) 868-2900

Cambridge Health Alliance/Somerville
Family Planning Program
<http://www.challiance.org/>
(617) 591-6735

BEVERLY

Health Quarters
<http://www.healthq.org/>
(978) 927-9824 or (800) 892-0234

LOWELL

Lowell Community Health Center
<http://www.lchealth.org/>
(978) 446-0236

FALL RIVER

Citizens for Citizens
<http://www.cfcinc.org/>
(508) 675-2882

BROCKTON

Health Care of Southeastern
Massachusetts, Inc.
<http://www.hcsm.org/>
(508) 583-3005

FITCHBURG

ProHealth/Montachusett Opportunity
Council Program
(978) 343-6259

WORCESTER

Health Awareness Services of Central
Massachusetts
<http://www.hascm.org/>
(508) 756-7123

Planned Parenthood of
Central Massachusetts
<http://www.pplm.org/>
(508) 854-3300

Great Brook Valley Health Center
(508) 852-1805

FLORENCE

Tapestry Health Systems
<http://www.tapestryhealth.org/>
(413) 586-2016

SPRINGFIELD

Caring Health Center
(413) 739-1100

Diseases Dangerous to Public Health (partial list)

Diseases Reportable Directly to the Department of Public Health

Source: 105 CMR 300.180

AIDS
Chlamydial infection (genital)
Genital warts
Gonorrhea
Herpes simplex infection, neonatal
Lymphogranuloma venereum
Pelvic inflammatory disease
Syphilis

Diseases Reportable to Local Boards of Health

Source: 105 CMR 300.100

Arbovirus infection
Brucellosis
Campylobacteriosis
Cholera
Creutzfeldt-Jakob disease
Cryptococcosis
Cryptosporidiosis
E. coli O157:H7
Encephalitis
Food poisoning and toxicity
Giardiasis
Group A and Group B streptococcus
Guillain Barre syndrome
Haemophilus influenzae

Hantavirus infection
Hemolytic uremic syndrome (HUS)
Hepatitis A,B, C and unspecified
Influenza
Legionellosis
Listeriosis
Lyme disease
Malaria
Measles
Meningitis
Meningococcal disease
Mumps
Pertussis
Rabies in humans
Reye syndrome
Rheumatic fever
Rocky Mountain spotted fever
Rubella
Salmonellosis
Severe Acute Respiratory Syndrome (SARS)
Shigellosis
Shiga toxin-producing organisms
Smallpox
Streptococcus pneumoniae
Tetanus
Toxic shock syndrome
Toxoplasmosis
Trichinosis
Tularemia
Varicella (chickenpox)
Viral hemorrhagic fevers

Routine Medical Care (DSS) Source: 110 CMR 11.04

(1) “Routine medical care” shall include but is not limited to the following:

(a) Allergy Shots; (b) Blood Pressure Test; (c) Comprehensive Physical Examination—documenting the finding of an unclothed physical examination including a complete system review pertinent to the age of the child, fundoscopic examination of the eyes for children over five years of age, and observation of the teeth and gums for children three years of age or older; (d) Dental care; (e) Developmental Assessment—the child’s current levels of functioning in the below-listed areas, as appropriate to the child’s age.

1. gross motor development, including strength, balance, locomotion
2. fine motor development, including eye-hand coordination
3. language development, including expression, comprehensive and articulation

4. self-help and self-care skills

5. social interaction and emotional development

6. cognitive skills, including problem-solving and reasoning abilities.

(f) Diseases dangerous to the public health, treatment of. See, M.G.L. c. 112, § 12F and 105 CMR 300.100; (g) Drug dependency treatment. See, M.G.L. c. 112, § 12E; (h) Family planning services. See, 106 CMR 421.401 et seq.; (i) Fractures, treatment of; (j) Hearing Test. See, 106 CMR 421.445(K); (k) Immunizations; (l) Laboratory tests and special medical studies when necessary; (m) Lead Poisoning Test. See, 106 CMR 421.445(P); (n) Nutritional Status Assessment; (o) Pelvic Examination; (p) Pregnancy Treatment - except abortion or sterilization. See, M.G.L. c. 112, § 12F; (q) Preventive health services; (r) Psychiatric assessment, evaluation, or treatment on out-patient basis or up to 90 days on in-patient basis; (s) Treatment—commonly prescribed for a specific physical illness, which treatment does not pose risks of permanent serious side effects or risk of death, See, Custody of a Minor, 375 Mass. 733, (1978) or is determined not to be extraordinary medical treatment by using the analysis outlined in 110 CMR 11.00; (t) Tubercular skin test or chest x- ray; (u) Venereal Disease Treatment. See, M.G.L. c. 112, § 12F; 105 CMR 300.140; (v) Vision Test. See, 106 CMR 421.445(L).

Routine Medical Care (DYS) Source: 109 CMR 11.05

(1) Routine medical care may include but is not limited to the following:

(a) Allergy Treatment; (b) Blood Pressure Test; (c) Comprehensive Physical Examination documenting the finding of an unclothed physical examination including a complete system review pertinent to the age of the child, fundoscopic examination of the eyes and observation of the teeth and gums; (d) Dental Care —routine examination, prophylactic treatment, and all restorations except when use of general anesthesia is required; (e) Diseases dangerous to the public health; (f) Drug dependency treatment; (g) Fractures, treatment of; (h) Hearing Test; (i) Immunizations; (j) Non-Invasive Laboratory tests and special medical studies—when determined by the examining physician to be necessary; (k) Lead Poisoning Test; (l) Nutritional Status Assessment; (m) Pelvic Examination; (n) Pregnancy Treatment -- except abortion or sterilization; (o) Preventive health services; (p) Treatment—commonly prescribed for a specific physical illness, when treatment does not pose risks of permanent serious side effects or risk of death or is determined not to be extraordinary medical treatment by using the analysis outlined in 109 CMR 11.00; (q) Tubercular skin test and follow-up diagnostic tests and treatment as indicated; (r) Sexually Transmitted diseases; (s) Vision Test.

References

M.G.L. = *Massachusetts General Laws*

CMR = *Code of Massachusetts Regulations*

- ¹ M.G.L. c. 231, § 85P
- ² M.G.L. c. 112, § 12F
- ³ Baird v. Attorney Gen., 371 Mass. 741 (1977)
- ⁴ M.G.L. c. 112, § 12F
- ⁵ M.G.L. c. 112, § 12F
- ⁶ M.G.L. c. 112, § 12F
- ⁷ M.G.L. c. 112, § 12F
- ⁸ M.G.L. c. 112, § 12S; Bellotti v. Baird, 443 U.S. 622 (1979);
Planned Parenthood League v. AG, 424 Mass. 586 (1997)
- ⁹ M.G.L. c. 111, § 24E
- ¹⁰ M.G.L. c. 112, § 12F; M.G.L. c. 111, § 117 (treatment at public health
clinics); 105 CMR 300.100 (for disease listings)
- ¹¹ M.G.L. c. 112, § 12E
- ¹² M.G.L. c. 123, § 10; 104 CMR 27.05; 104 CMR 25.04
- ¹³ 110 CMR 11.02
- ¹⁴ 110 CMR 11.02
- ¹⁵ 110 CMR 2.00
- ¹⁶ 110 CMR 11.03
- ¹⁷ 110 CMR 11.04
- ¹⁸ 110 CMR 11.04 to 11.10; 110 CMR 11.24
- ¹⁹ 110 CMR 11.04
- ²⁰ 110 CMR 11.04
- ²¹ 110 CMR 11.01; 110 CMR 11.11 to 11.15; 110 CMR 11.17
- ²² 110 CMR 11.16; Parham v. J.R., 442 U.S. 584 (1979);
D.L. v. Commissioner of Social Services, 412 Mass. 558 (1992)
- ²³ 110 CMR 11.07
- ²⁴ 109 CMR 11.04
- ²⁵ 109 CMR 11.03
- ²⁶ 109 CMR 11.05
- ²⁷ 109 CMR 11.06
- ²⁸ 109 CMR 11.07
- ²⁹ 109 CMR 11.08
- ³⁰ 109 CMR 11.09; 109 CMR 11.10



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