



1-1-1978

Juvenile Law

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Juvenile Law*, 9 PAC. L. J. 604 (1978).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol9/iss1/33>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Juvenile Law

Juvenile Law; minors consent to medical care—sexual assault and drug-alcohol victims

Civil Code §§34.8, 34.9, 34.10 (new).

AB 460 (Egeland); STATS 1977, Ch 979

Support: California Association of County Drug Program Coordinators; California Medical Association; California Nurses Association; California Parent-Teachers' Association; California Venereal Disease Advisory Council

AB 883 (Ryan); STATS 1977, Ch 354

Support: California Medical Association; California Nurses' Association; California Parent-Teachers' Association; National Organization for Women

SB 807 (Holden); STATS 1977, Ch 935

Support: National Women's Political Caucus

Chapters 354, 935, and 979 add Sections 34.8, 34.9 and 34.10 respectively to the Civil Code giving minors the right to consent to medical care and other types of treatment without parental consent if the minor is an alleged victim of rape [CAL. CIV. CODE §34.8] or sexual assault [CAL. CIV. CODE §34.9], or if he or she has an alcohol- or drug-related problem [CAL. CIV. CODE §34.10]. The importance of legally effective consent from a minor appears twofold: (1) it prevents the minor from disaffirming his or her contract and obligation to pay for the services; and (2) it serves to avoid the tort liability (either negligence or battery) from unconsented medical treatment [See B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §275 (8th ed. 1973). *But see* 57 OP. ATT'Y GEN. 555 (1974) (statutes relate to consent required for contractual obligations, but *not necessarily* to the consent that nullifies a battery)]. Generally under common law, a minor was considered incapable of giving legal consent [Cf. Comment, *Medical Care and the Independent Minor*, 10 SANTA CLARA LAW. 334 & nn. 2 & 3 (1970) (California courts have never reviewed the issue, but decisions of other states imposing liability have resulted in physicians within the state acting as if parental consent is required)]. Modern statutes, however, have altered this rule in specified situations, such as for emancipated minors [CAL. CIV. CODE §34.6], married minors [CAL. CIV. CODE §25.6], minors in active duty in the armed services [CAL. CIV. CODE §25.7], minors seeking medical care relating to prevention or treatment of pregnancy [CAL. CIV. CODE §34.5], and minors who have come in contact with contagious, infectious or communicable disease [CAL. CIV. CODE §34.7].

Chapter 354 adds Section 34.8 to the Civil Code to provide a further statutory exception for minors 12 years of age or older alleged to have been raped. Under the new law, such minors may consent without parental concurrence to the furnishing of hospital, medical, and surgical care related to the diagnosis or treatment of the medical condition resulting therefrom [CAL. CIV. CODE §34.8]. The minor may also consent to collection of medical evidence to the alleged crime [CAL. CIV. CODE §34.8]. Section 34.8 further specifies that such consent shall not be subject to disaffirmance because of minority. "Rape" is defined in Penal Code Section 261 as sexual intercourse with a *female* not the wife of the perpetrator, under any of five specified circumstances. Since Section 34.8 uses the technical term "rape," a minor female who is otherwise sexually assaulted is unable to give such consent under Section 34.8, and since a male cannot, by statutory definition, be "raped," the section applies only to females [*Compare* CAL. CIV. CODE §34.8 *with* CAL. PENAL CODE §261].

With the identical rights and responsibilities that are extended by Chapter 354 to alleged minor victims of rape, the legislature, through the enactment of Chapter 935, has now empowered any minor regardless of age, to give consent to similar medical diagnosis and treatment if he or she has been sexually assaulted [*See* CAL. CIV. CODE §34.9]. "Sexually assaulted" as used under this new law, includes but is not limited to, conduct described under provisions of Penal Code Sections 261 (rape), 286 (sodomy), or 288a (oral copulation) [CAL. CIV. CODE §34.9(c)]. Section 34.9 further provides that a professional person rendering medical treatment under *this section* must attempt to contact the minor's parent(s) or guardian, unless the professional reasonably believes that the parent or guardian committed the alleged sexual assault [CAL. CIV. CODE §34.9(b)]. The minor's treatment record is to include the professional's note as to the date and time of the attempted parental contact and whether the attempt was successful [CAL. CIV. CODE §34.9(b)]. The new law does not, however, specify that attempted contact of the parent(s) or guardian must be made prior to treatment, and apparently, the failure to make such an attempt neither renders the minor's consent invalid, nor makes the professional subject to legal sanctions [*Compare* CAL. CIV. CODE §34.9(a) *with* CAL. CIV. CODE §34.9(b)].

Both Sections 34.8 and 34.9, by the nature of their language, apparently would apply to minor rape victims of at least twelve years of age [*Compare* CAL. CIV. CODE §34.8 *with* CAL. CIV. CODE §34.9(a), (c)]. By way of contrast, Section 34.8 does not require that the person rendering medical care attempt to contact the parent(s) or guardian as does Section 34.9(b). Code of Civil Procedure Section 1859 provides that in construing a statute when a general provision and a particular provision are inconsistent, the particular provision will control. Because Section 34.8 applies only to rape victims at

least 12 years of age, while Section 34.9 applies to all minor sexual assault victims, it would appear that Section 34.8 is the most particular and therefore would control in situations where the two statutes are inconsistent. Thus, a person rendering medical care to a minor rape victim at least 12 years of age apparently need not attempt to contact the minor's parent(s) or guardian.

In related legislation, Civil Code Section 34.10 has been added by Chapter 979 to permit minors 12 years of age or older to consent to the furnishing of medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem [CAL. CIV. CODE §34.10(a)]. Such consent is not subject to disaffirmance because of minority [CAL. CIV. CODE §34.10(a)]. "Drug or alcohol" as used in Section 34.10 includes, but is not limited to, substances listed in: (1) Schedule D of Section 4160 of the Business and Professions Code (substances containing toluene, certain glues and cements with toxic substances); (2) Sections 11000 through 11651 of the Health and Safety Code (controlled substances); or (3) Penal Code Section 647(f) (intoxicating liquor, drugs, toluenes, poisons) [CAL. CIV. CODE §34.10(e)]. "Counseling" as used in Section 34.10 means the provision of counseling services by a provider under contract with the state or county to render alcohol or drug abuse counseling services pursuant to Welfare and Institutions Code Sections 5600 through 5769 (community mental health services) or Sections 19900 through 19973 (Office of Alcoholism) [CAL. CIV. CODE §34.10(d)].

An anomaly has arguably been created by the enactment of Chapter 979, since subdivision (b) of Section 34.10 provides that consent by parents or guardians to *hospital care*, medical care, or counseling is no longer required, but subdivision (a) specifically extends to minors the right to consent to medical care and counseling *only*. Presumably, the use of "medical care" in subdivision (a) is broad enough to include "hospital care," however, this inconsistency of language arguably lends itself to the construction that, because "hospital care" was specifically added to subdivision (b) and not to subdivision (a), the legislature intended that minors not be given the right to consent to hospital care under this section. The logical extension of this argument, however, leads to the unlikely result that because parental consent is not necessary and because a minor cannot consent, minors may be treated for drug- or alcohol-related problems without consent from anyone, even in nonemergency situations. Thus, it would appear reasonable that the omission of "hospital care" from Section 34.10(a) was probably not intentional and that minors having drug- or alcohol-related problems may consent to such care [See CAL. CIV. CODE §34.10(a), (b)].

Parents and guardians are specifically exempted from liability for payments for *most* types of care provided to minors under Section 34.10 [CAL.

CIV. CODE §34.10(b)]. This section, however, directs that the treatment plan for such a minor must include "involvement" by the parent(s) or legal guardian if the professional person (physician and surgeon, registered nurse, psychologist, clinical social worker or marriage, family and child counselor) or treatment facility treating the minor determines such involvement is "appropriate" [CAL. CIV. CODE §34.10(c). *See generally* CAL. CIV. CODE §34.10(f)]. The law does not specify what standards are to be considered in determining what is "appropriate," nor does it indicate what is meant by "involvement" as used in Section 34.10. The professional person, however, must state in the minor's treatment record why, if in his or her opinion, contacting the parent or guardian would not be appropriate [CAL. CIV. CODE §34.10(c)]. The record must also indicate whether attempts were made to contact the parents, and whether such attempts were successful [CAL. CIV. CODE §34.10(c)]. Furthermore, the law provides that if the minor's parent(s) or guardian "participates" in a *counseling* program pursuant to this section, then he or she is liable for the cost of services provided to the parent(s) or guardian and the minor [CAL. CIV. CODE §34.10(c)]. In addition, Section 34.10 explicitly states that the provisions of this section are not to be construed to authorize minors to receive methadone treatment without consent of their parent(s) or guardian [CAL. CIV. CODE §34.10(g)].

Since a minor consenting to treatment under Sections 34.8, 34.9, or 34.10(a) is prohibited from disaffirming the consent, he or she is apparently not relieved of responsibility for payment for such service [*Cf.* 57 OP. ATT'Y GEN. 29 (1974) (payment for therapeutic abortions under Civil Code Section 34.5)]. While Chapter 979 expressly exempts parents from liability for payment of most drug- or alcohol-related care to which the minor consented [CAL. CIV. CODE §34.10(b), (c)], there are no such provisions in Chapters 354 and 935 concerning victims of rape and sexual assault, and parents of such minor victims would apparently be responsible for resulting hospital and doctor bills [*See County of Alameda v. Kaiser*, 238 Cal. App. 2d 815, 817-18, 48 Cal. Rptr. 343, 345 (1965) (mother responsible for minor son's hospital bill); CAL. CIV. CODE §196 (parent responsibility to support a child); CAL. PENAL CODE §270 (makes failure of parent to provide medical care to minor a criminal offense); *cf.* 57 OP. ATT'Y GEN. 29-30 (payment for therapeutic abortions under Civil Code Section 34.5)]. Government Code Section 13961.5, however, provides that costs incurred by hospitals or emergency medical facilities for examination of sexual assault victims for evidence in possible prosecutions shall not be charged to the victim. Thus, in a further extension of statutory exceptions to the general rule that minors are incapable of giving legal consent, Chapters 354, 935 and 979 now allow a minor to consent to medical care and other treatment if

he or she is a victim of rape or sexual assault or if he or she is suffering from a drug- or alcohol-related problem.

See Generally:

- 1) B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §§275-80 (minors' consent for medical care) (8th ed. 1973).
- 2) B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §§199-200 (consent for operations) (8th ed. 1973).
- 3) 7 PAC. L.J., REVIEW OF SELECTED 1975 LEGISLATION 461 (contraceptives for minors) (1976).
- 4) Note, *The Minor's Right to Consent To Medical Treatment: A Corollary of the Constitutional Right of Privacy*, 48 S. CAL. L. REV. 1417 (1975).

Juvenile Law; probation officers' recommendations—placement with relatives

Welfare and Institutions Code §281.5 (new).

AB 443 (Wray); STATS 1977, Ch 236

Support: California Department of Health

Section 281 of the Welfare and Institutions Code requires probation officers upon order of any court in any matter involving custody, status, or welfare of a minor, to make designated investigations, reports, and recommendations to be received and considered by the court. Prior to the enactment of Chapter 236, there was no specific requirement that a probation officer recommend that a minor be placed with a relative. Chapter 236 has added Section 281.5 to the Welfare and Institutions Code affecting probation officers' recommendations in cases when a minor is alleged or adjudged to be within the jurisdiction of the juvenile court, to be habitually disobedient or truant, or to have violated laws defined as crimes [*See generally*, CAL. WELF. & INST. CODE §§300, 601, 602]. If the probation officer recommends that the minor be removed from the custody of his or her parent(s) or guardian(s), the probation officer must now give primary consideration to recommending that the minor be placed with a relative, providing such placement is in the best interest of the minor and will be conducive to reunification of the family [CAL. WELF. & INST. CODE §281.5]. This requirement appears to be aimed at furthering the purposes of the Arnold-Kennick Juvenile Court Law [CAL. WELF. & INST. CODE §§200-940], which include the preservation and strengthening of the minor's family ties whenever possible [CAL. WELF. & INST. CODE §202].

See Generally:

- 1) 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §69 (8th ed. 1974).

Juvenile Law; confining youths with adults

Welfare and Institutions Code §208 (amended).

SB 355 (Rains); STATS 1977, Ch 806

Support: California District Attorneys' Association; California Peace Officers' Association; Organization of Police and Sheriffs

Section 208 of the Welfare and Institutions Code provides that all persons under 18 years of age who are detained in, or sentenced to, an institution in which adults are confined may not be permitted to come into or remain in contact with such adults [CAL. WELF. & INST. CODE §208(a)]. Prior to the enactment of Chapter 806, however, the law provided specific exceptions to this isolation of minors confined in adult penal institutions for the purpose of participation in "supervised group therapy or other supervised treatment activities or participation in hospital recreational activities" [CAL. STATS. 1976, c. 1068, §1.5, at —]. With the apparent intent of making more rehabilitative programs available to minors so confined, the legislature has carefully carved an additional exception to the "no contact" provision of Section 208 [*Compare* CAL. WELF. & INST. CODE §208(c) *with* CAL. STATS. 1976, c. 1068, §1.5, at —]; specifically, minors are now permitted to participate in work furlough programs [CAL. WELF. & INST. CODE §208(c)]. Section 208, however, only allows these exceptions as long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations [CAL. WELF. & INST. CODE §208(c)].