



CONSENT TO MEDICAL TREATMENT CONTRACEPTIVES AND TESTING

(1) Consent to medical treatment

The current age of consent for medical treatment and surgical operations is 18. However, the proposed Child Care and Protection Act would allow children to give consent to medical treatment if they are at least 14 years old AND mature enough to understand the benefits, risks, and implications of the treatment. In situations where an operation is required, the draft says that a child may also give consent at the age of 14 if he or she is mature enough – but in this case the parent or guardian must also give consent.

What do other countries do?

The age of consent to medical treatment is different in different countries. In South Africa the age of consent for medical treatment is 12, although the child must be sufficiently mature and a parent or guardian must also agree to surgical operations.

In Kenya, the age of consent is 15. Children in New Zealand can consent to treatment at 16, or earlier if they demonstrate sufficient maturity. In Zimbabwe, Mozambique and Zambia, the age of consent is 18.

Is 14 the right age to allow children to give medical consent? Sometimes it might depend on the situation. Consider the examples below:

- ⑨ A 10 year-old boy is dying from cancer. He has one month left to live. Should he be allowed to decide on the treatment that he receives?
- ⑨ A 17 year-old girl wants to have bigger breasts. Should she be allowed to decide to have cosmetic surgery?

There are several different options that could be written into the law:

1. Set a single age for all types of medical consent
2. Base the right to give medical consent on each individual child's capacity to understand.
3. Base the right to give medical consent on the child's age and capacity to understand.
4. Set different ages for different types of medical treatment.

(2) Access to contraceptives

The phrase “medical treatment” probably includes access to most contraceptives. This means that children under the age of 18 must currently get permission from a parent or guardian if they want a contraceptive. Access to male and female condoms may not be covered by this rule, but it does apply to contraceptive pills, injections, intrauterine devices (IUDs) and other forms of contraception. The new law would make 14 the age for access to contraceptives which qualify as “medical treatment”.

Should children be able to access contraceptives without the permission of their parents? At what age should they be able to do this? Some arguments for and against allowing children to have access to contraceptives are shown in the table below.

Young people SHOULD NOT have access to contraceptives

If children do not have access contraceptives, they will not have sex.

If parental consent is required, the parent can use the opportunity to educate the child about the risks associated with sex and help make sure that the child understands the medical risks associated with certain prescribed contraceptives.

Some contraceptives, such as the pill, can have health risks. Children will not understand these risks without parental guidance.

Children will not use contraceptives responsibly – they might forget to take the pill each day or put condoms on inside out.

Young people SHOULD have access to contraceptives

Many children will have sex regardless of whether or not they are able to access contraceptives.

If a child has to ask for parental permission, the child will not use contraception. This means the opportunity to discuss sex will never occur. Instead, the parent or care-giver should talk about safe sex at any suitable time. The child should also be able to get family planning information from the clinic.

The doctor prescribing the pill should explain the risks clearly and should not give the medication unless it is clear that the child understands the risks.

Children are having sex, so something needs to be done to protect them from pregnancy and sexually transmitted infections. They can be educated on contraceptive use through many different channels.

What do other countries do?

The age at which young people can access contraceptives is different in different countries. Ghana's policy is to provide contraceptives and reproductive health services to adolescents and to all couples engaging in sexual activity, regardless of age. In Zimbabwe, clinics are supposed to provide contraceptives to people over the age of 16. In South Africa children may have access to contraceptives from the age of 12; if they visit a clinic to request a prescription for contraceptives, they must also be given medical advice and a medical examination.

(3) Consent to medical testing

The draft Child Care and Protection Act proposes that children who are 14 years of age OR children who are mature enough to understand the implications may have an HIV test. This could mean that a mature 10 year-old would be allowed to consent to an HIV test. The draft law says that the test may only be given if the child receives proper counselling before and after the test.

What do other countries do?

In South Africa, a child over the age of 12 may consent to having an HIV test. In the United States of America, most states allow minors to consent to testing and treatment for all types of sexually transmitted infections. Some states specify that the minor must be a certain age (generally 12 or 14), although most do not set a specific age of consent.

Because Namibia's proposed law says a child can have a test at age 14 OR if the child is mature enough, this means that it is "easier" for a child to consent to having an HIV test than to consent to other medical procedures. Is this the correct approach?

The age of consent for an HIV test will not change the right of a parent or guardian to have a child tested for HIV. For example, even if a 9-year-old girl is not mature enough to make a decision to get tested by herself, her parents could give consent if a test is needed.

ISSUES FOR DISCUSSION

Age of consent for medical treatment

- ⑨ Should the age of consent depend on (1) age (2) the maturity of each individual child (3) age plus maturity (4) type of treatment or (5) some other factor?
- ⑨ If maturity must be assessed, who will decide? for example, will it be the doctor?
- ⑨ If the law sets an age for consent to medical procedures, what should that age be?
- ⑨ Should there be different rules for medical treatment and surgical operations?

Access to contraceptives

- ⑨ At what age is a child old enough to make a decision about using contraceptives without the permission of a parent?
- ⑨ Should there be different rules about access to condoms compared to access to other forms of contraceptives (such as the contraceptive pill)?

Consent to testing

- ⑨ At what age should a child be able to consent to an HIV test without the permission of a parent?
- ⑨ Should it be easier for a child to consent to having an HIV test compared to other medical interventions?
- ⑨ Children may not want their parents to know about any medical issues which relate to sexual activity. Should there be similar provisions on pregnancy testing and testing for other sexually transmitted infections as for HIV testing?

WHAT DO YOU THINK?

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