2021

Capacity and a Minor's Right to Consent to Mental Health Treatment

Jieshi Chen

CAPACITY AND A MINOR'S RIGHT TO CONSENT TO MENTAL HEALTH TREATMENT

Table of Contents

INTRODUCTION

Children are a more vulnerable segment of the population. As a result of their vulnerability, they are offered more protection by the law than adults. For example, in *Prince v. Massachusetts*, a parent allowed two minors to skip school to help her distribute religious materials after they begged to do so.[1] The United States Supreme Court held that the state of Massachusetts did not violate the parent's constitutional rights of freedom of religion and the right to make parental decisions by prohibiting her from allowing her children to help distribute religious materials during school hours. The court reasoned that states have a particular interest in the welfare of children, and that its authority in that respect is broader than its authority over adults. As a result, the state may constitutionally act in parens patriae to require that children go to school and that their employment be prohibited. [2] This case shows that states may even pierce constitutional rights to protect minors.

In another case, *Schleifer v. City of Charlottesville*, an ordinance prohibited "unemancipated persons under seventeen, from remaining in any public place, motor vehicle, or establishment within city . . . at 12:01 a.m. on Monday through Friday, at 1:00 a.m. on Saturday and Sunday, . . . [until] at 5:00 a.m. each morning."[3] The minor Plaintiffs brought action alleging that the ordinance violated their fundamental constitutional rights and that strict scrutiny should be applied.[4] Applying strict scrutiny meant that there must have been a compelling state interest behind the ordinance, and the ordinance must have been narrowly tailored to achieve its result.[5]

---

[1] Prince v. Massachusetts, 321 U.S. 158, 160 (1944).
[2] *Id.* at 166.
[3] Schleifer v. City of Charlottesville, 159 F.3d 843, 846 (4th Cir. 1998).
[4] *Id.* at 847.
[5] Bernal v. Fainter, 467 U.S. 216 (1984) ("In order to withstand strict scrutiny, the law must advance a compelling state interest by the least restrictive means available").

The court in *Schleifer* decided to only apply intermediate scrutiny, which only requires the ordinance to be substantially related to a governmental interest, because "children's rights are not coextensive with those of adults".[6] It upheld the ordinance as substantially related to the governmental interests of promoting the general welfare, safety and well-being of the minors by keeping them away from violence and gang activity.[7] This case illustrates that states may go as far as abridging minors' fundamental constitutional rights in order to promote minors' safety and welfare.

In order to protect minors, states often forget that children are members of society and have individual rights. As a result of this, children still face many hurdles in order to obtain mental health treatment or to refuse mental institutionalization.[8] The United Nations Convention on the Rights of the Child (CRC) is an international human rights treaty enacted in 1990. The CRC tries to balance children's need for protection with their rights as individuals within our society. Article 12 of the CRC states the following:

> 1. That Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.[9]

---

[6] *Schleifer*, 159 F.3d at 847.
[7] *Id.* at 851.
[8] *See, e.g.*, DEL. CODE ANN. Tit. 13, § 707 ("Consent to the performance upon or for any minor by any licensed medical, surgical, dental, psychological . . . practitioner . . . may be given by . . . [p]arent or guardian of any minor for such minor"); MO. Rev. Stat. § 632.110 (2011) ("The parent or legal custodian who applied for the admission of the minor shall have the right to authorize his evaluation, care, treatment and rehabilitation and the right to refuse permission to medicate the minor"); KY. REV. STAT. ANN. § 214.185 (West 2019) (Minors under the age of sixteen cannot obtain mental health treatment without parental consent).
[9] *United Nations Convention on the Rights of the Child*, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

Despite state laws granting children greater rights over the years[10], the United States has still not ratified the CRC.[11]

This paper argues that minors should be given more of an opportunity to prove that they have the mental capacity to consent to mental health treatment without parental consent. It also suggests possible legal procedures and statutory guidelines that will help give mature minors an opportunity to receive or refuse mental health treatment.

Part I of this paper will look at the history of reliance on parents to make decisions for children. Part II will look at how parents may not be the best at making decisions for their children. Part III will look at modern research on children's capacity to make decisions. Part IV will look at and analyze how the law currently decides children's ability to consent to mental health treatment in different states. Part V will look at the problems and flaws with how children's ability to consent to mental health treatment is determined and decided. Lastly, Part VI will provide legal suggestions that aim to offer more protections to minors seeking to obtain or refuse mental health treatment.

I. History of Children and Decision Making Demonstrates a Reliance on Parents

To avoid legal action, health care professionals must obtain informed consent from the patient before treatment.[12] To establish informed consent, healthcare professionals must disclose the risks that might affect a patient's treatment decision.[13] They must also disclose any

[10] *See, e.g.*, In re E.G., 549 N.E.2d 322, 328 (1989) (holding that a mature minor may exercise a common law right to consent to or refuse medical care if he or she understands the benefits and consequences); *see also* Bellotti v. Baird, 443 U.S. 622, 647 (1979) (holding that minors are entitled to a judicial hearing to determine if they are mature enough to obtain an abortion without parental consent).

[11] James Scherrer, *The United Nations Convention on the Rights of the Child as policy and strategy for social work action in child welfare in the United States*, 57 SOC. WORK 11, 14 (2012).

[12] *See, e.g.*, Canterbury v. Spence, 464 F.2d 772 (D.C. Cir. 1972) (Paralyzed patient sued hospital because it failed to inform him about a procedure's one percent risk of paralysis); *see also* Bryan Murray, *Informed Consent: What Must a Physician Disclose to a Patient?*, 14, 7 AMA J. ETHICS 563, 563 (2012).

[13] *Canterbury*, 464 F.2d at 786 (holding that risks potentially affecting medical decisions must be disclosed).

information that a reasonable person in the patient's position would find important in helping make a treatment decision.[14] Adult patients with mental illnesses or other mental disabilities might not be able to give informed consent.[15] In these situations, the patient's capacity to consent must be assessed.[16] If they are deemed incapable of giving informed consent, consent must be obtained from a legally authorized representative.[17]

In contrast, minors are generally considered incompetent to make many legal decisions.[18] Unlike adults suspected of lacking capacity, most states assume that minors cannot give informed consent and require parental consent for treatment.[19] Parents have generally been considered the ones best to make decisions for minors.[20] In *Parham v. J.R.*, the United States Supreme Court rejected the claims from a group of minors against Georgia's procedures for committing children to state mental hospitals. The minors argued that the procedures were

---

[14] Nixdorf v. Hicken, 612 P.2d 348, 354 (Utah 1980) (holding that "[i]f a reasonable person in the position of the plaintiff would consider the information important in choosing a course of treatment then the information is material and disclosure [is] required").

[15] *See, e.g.*, Zinermon v. Burch, 494 U.S. 113, 133 (1990) (holding that mental illness makes it foreseeable that a patient will be unable to give informed consent); *see also* Ahmed B. Amer, *Informed consent in adult psychiatry*, 28, 4 OMAN MED. J. 228, 228 (2013).

[16] Amer, *supra* note 15, at 229-30; *see, e.g.*, *Zinermon*, 494 U.S. at 138-39 (holding that a patient's procedural due process was violated because he was admitted to a mental health facility without the facility first determining if he could give proper informed consent).

[17] Amer, *supra* note 15, at 228.

[18] Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 221 (1995). *see, e.g.*, *Zinermon*, 494 U.S. at 123 (Supreme Court of the United States supporting Florida law that stated "If the court determines that the patient meets the criteria for involuntary placement, it then decides whether the patient is competent to consent to treatment. If not, the court appoints a guardian advocate to make treatment decisions").

[19] Ann McNary, *Consent to treatment of minors*, 11, 3-4 INNOVATIONS IN CLINICAL NEUROSCIENCE 43, 43 (2014); *see, e.g.*, N.Y. PUB. HEALTH LAW § 2504 (2020) (Minors cannot give consent except for emergencies and other specified circumstances); DEL. CODE ANN. Tit. 13, § 707 ("Consent to the performance upon or for any minor by any licensed medical, surgical, dental, psychological . . . practitioner . . . may be given by . . . [p]arent or guardian of any minor for such minor"); MO. REV. STAT. § 632.110 (2011) ("The parent or legal custodian who applied for the admission of the minor shall have the right to authorize his evaluation, care, treatment and rehabilitation and the right to refuse permission to medicate the minor"); KY. REV. STAT. ANN. § 214.185 (West 2019) (Minors under the age of sixteen cannot obtain mental health treatment without parental consent).

[20] Parham v. J. R., 442 U.S. 584, 604 (1979) ("parents to retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse, and that the traditional presumption that the parents act in the best interests of their child should apply"); *see also* Scott, *supra* note 18, at 226-27 (describing how the theory of minors' lack of "capacity for understanding and reasoning" supports limiting their legal autonomy in favor of parental decision making).

insufficient and allowed parents to use state mental hospitals as a "dumping ground" for children.[21] The majority held that absent a finding of neglect or abuse, it should be presumed that parents act in the best interest of their children.[22] The majority also rejected the idea of a full hearing by an administrative fact finder to determine the appropriateness of commitment.[23] The decision in *Parham* highlights the disconnect between the traditional belief that parents will act in the best interest for their children and what modern day reality suggests. The purpose of this section is to show that parents have been relied upon to make decisions for minors because they have historically been considered incompetent to make many legal decisions, including the capacity to give consent.[24] The next section will illustrate why parents may not always be the best ones to make decisions for their children.

II. Parents May not Always Act in the Best Interest of the Child

Courts have historically believed that parents act in the best interest of their children because of their natural bond and affection.[25] Although this might be true in many cases, legal history has shown that this assumption is not always the case. For example, in *Troxel v. Granville,* the United States Supreme Court held that a mother's due process rights are violated when there is court ordered visitation by the paternal grandparents over her objection[26], even though the trial court determined that it would be in the best interest of the child to maintain a relationship with the grandparents.[27] *Troxel* demonstrates that a parent's desires may not always align with what is the best interest of the child.

---

[21] *Parham*, 442 U.S. at 598.
[22] *Id.* at 604.
[23] *Id.* at 609-10.
[24] Scott, *supra* note 18, at 226-27 (describing how the theory of minors' lack of "capacity for understanding and reasoning" supports limiting their legal autonomy in favor of parental decision making).
[25] *Parham*, 442 U.S. at 602.
[26] Troxel v. Granville, 530 U.S. 57, 65 (2000).
[27] *Id.* at 61.

Additionally, there is also an increase in the number of unvaccinated children in the United States.[28] Although vaccines are safe, effective, and may save a child's life[29] many parents still do not vaccinate their children due to "religious reasons, personal beliefs or philosophical reasons, safety concerns, and a desire for more information from healthcare providers."[30] Many parents refuse vaccination for their children based on sensationalized news stories spotlighting rare incidents in which a child may suffer as a result of an unforeseen side effect of a vaccine.[31] Consequently, parents overestimate the dangers of vaccines and refuse to vaccinate their children in an ill-advised attempt to protect them.[32] An increase in unvaccinated children shows that even parents who love and want to protect their children might not always act in the children's best interests due to the parents' own beliefs. We can no longer assume that parents do in fact act in the best interests of their children.[33] The rest of this section will go more into depth on different circumstances that may cause parents to not act in their children's best interests.

a. Addiction and Other Mental Problems May Prevent Parents from Acting in the Best Interest of their Children

Addiction and other mental problems can affect a parent's ability to act in the best interest of their children. For example, in *Dep't of Human Servs. v. E.N.*, a mother's parental rights were terminated because she was mentally ill and addicted to drugs.[34] The mother in this

[28] Anthony Rivas, *Number of unvaccinated children increasing in US despite overall high coverage*, ABC NEWS (Oct. 23, 2018), https://abcnews.go.com/Health/number-unvaccinated-children-increasing-us-high-coverage/story?id=58692605 ("The percentage of children who were unvaccinated increased from 0.3 percent in 2001 to 1.3 percent in 2017, according to the Centers for Disease Control and Prevention").
[29] Vaccines.gov, *Five Important Reasons to Vaccinate Your Child*, U.S. DEPT. OF HEALTH & HUMAN SERVICES (Jan. 2018), https://www.vaccines.gov/getting/for_parents/five_reasons.
[30] Chephra McKee & Kristin Bohannon, *Exploring the Reasons Behind Parental Refusal of Vaccines*, 21, 2 J. PEDIATRIC PHARMACOLOGY AND THERAPEUTICS 104, 104 (2016).
[31] *Id.* at 107.
[32] *Id.*
[33] Rebecca M. Stahl, *"Don't Forget About Me": Implementing Article 12 of the United Nations Convention on the Rights of the Child*, 24 ARIZ. J. INT'L & COMP. L. 803, 820-21 (2007) ("The U.S. presumption that parents act in the best interests of their children fails to adequately protect the child because parents have no duty to protect their children's best interests").
[34] Dep't of Human Servs. v. E.N., 273 Or. App. 134, 139 (2015).

case had a history of marijuana and methamphetamine abuse and was diagnosed with anxiety disorder, mixed personality disorder, and borderline personality disorder.[35] She did not get treatment for her conditions, made no real effort to seek employment, and continued to use marijuana on a regular basis, which made her ADHD worse.[36] Her addiction and mental condition also created a chaotic and unstable life style and she was not able to provide stable housing, or provide a source of support for her and her child.[37] The court in this case held that the mother's conduct and condition was seriously detrimental to her child and terminated the mother's parental rights.[38] *Dep't of Human Servs. v. E.N.*, illustrates how addiction and mental illness can affect a parent's ability to care for and act in the best interest of their children.

In another case, *Matter of B.K.*, an infant was removed from the custody of her schizophrenic mother.[39] The mother was diagnosed with a "classic case of schizophrenia" and psychiatrists predicted that she would be unable to comprehend her child's emotional and physical needs.[40] The mother in this case also had sporadic behavior and there were instances where she appeared intoxicated or disoriented.[41] "There was one specific instance where "[c]ustomers and employees in a restaurant had observed [the] mother, seated at a table, swinging [the child] through the air. With each swing, [the child]'s head came perilously close to colliding with the table top."[42] Additionally, the mother's house was also described as dangerous and a health hazard. [43] The court in this case held that there was enough evidence to affirm the

[35] *Id.* at 140.
[36] *Id.* at 146.
[37] *Id.* at 151.
[38] *Id.* at 154.
[39] In re B.K., 429 A.2d 1331, 1331 (D.C. App. 1981).
[40] *Id.* at 1332.
[41] *Id.*
[42] *Id.*
[43] *Id.* ("[T]he premises were, to put it mildly, not very pleasant. There was plaster falling from holes in the ceiling, cracks in the walls, no adequate kitchen facilities, dirty pampers strewn all over the floor, profuse odors, human and

removal of the child from her mother.[44] *Matter of B.K.* further illustrates how mental illness may make it almost impossible for some parents to act in the best interest of their children.

Mental illness and addiction are not the only factors that might hinder parents' ability to act in the best interest of the children. Even mentally fit parents face challenges in acting for their children's best interest. Parents might have their own interests that might not align with their children's. The rest of this section will look at parents' interests that may hinder their ability to act in their children's best interest.

b. Parents' Own Interests and Cultural Beliefs May Compromise their Ability to Act in Their Children's Best Interest

Parents' own interests may also compromise their ability to act in the best interest of their children. In *State ex rel. L.M.*, a mother who was on public assistance sold her food stamps to get money for bingo.[45] The mother played bingo three to four times a week and left her five children home alone.[46] Although she had an adequate income from public assistance, the mother was unable to budget causing the family to run out of money and food.[47] She also frequently failed to dress the children properly[48], get them to school regularly[49], feed them[50], or provide them with a clean living environment.[51] The mother showed no signs of improving her habits even though the government repeatedly attempted to help her budget.[52] The court held that it was in the children's

animal feces on the first and second floors, broken windows in the bathroom and, due to a structural defect, water was leaking on exposed wiring").
[44] *Id.* at 1333.
[45] State *ex rel.* L.M., 57 So. 3d 518, 521 (2011).
[46] *Id.* at 525.
[47] *Id.* at 521.
[48] *Id.* at 522.
[49] *Id.* at 525.
[50] *Id.*
[51] *Id.* at 523.
[52] *Id.* at 522-23.

best interest to be removed from the mother's custody.[53] This case illustrates that a mother's own interests and habits may compromise her ability to act in her children's best interests.

Financial hardship was a backdrop in *State ex rel. L.M.* However, a conflict of interest between parents and children can occur in other instances too. For example, "parents can [try to] institutionalize a child under the guise of mental health 'treatment` because they disapprove of the child's lifestyle choices."[54] In *In re Sippy,* a mother tried to have her seventeen-year-old daughter committed to psychiatric school because they both had strong tempers and wills and had difficulty avoiding clashes. The mother's claim for committing the daughter was that her daughter was "habitually beyond her control."[55] The court in this case held that it was not in the daughter's best interest to be committed.[56] Although, this is an old case, it demonstrates that parents may try to institutionalize their children for simply being disobedient. The mother in this case had an interest in controlling her daughter, which was not in her daughter's best interest.

An emerging topic that has pitted parents' interests against the best interest of their children is sexual orientation conversion therapy. In 1995, fifteen-year-old Lyn Duff was institutionalized and subjected to conversion therapy against her will by her mother.[57] Despite existing research showing that conversion therapy is ineffective, some parents still support its use.[58] In *Pickup v. Brown*, parents and therapist bought a suit to stop a passed bill from going into effect that would ban sexual orientation change efforts (SOCE) with minors in California.[59]

---

[53] *Id.* at 534.
[54] Beth Molnar, *Juveniles and Psychiatric Institutionalization: Toward Better Due Process and Treatment Review in the United States*, HEALTH AND HUM. RTS., HARV. C. 98, 98 (1996).
[55] In re Sippy, 97 A.2d 455, 456 (D.C. 1953).
[56] *Id.* at 459.
[57] Molnar, *supra* note 54, at 103.
[58] SAMHSA, ENDING CONVERSION THERAPY: SUPPORTING AND AFFIRMING LGBTQ YOUTH at 11 (Oct. 2015) (No existing research supports the effectiveness of conversion therapy and conversion therapy can be harmful to the subject child).
[59] Pickup v. Brown, 42 F. Supp. 3d 1347, 1349 (E.D. Cal. 2012).

The court in this case upheld the bill based on expert testimony stating that SOCE "may cause or exacerbate distress and poor mental health in some individuals, including depression and suicidal thoughts" and that there was "no empirical evidence that providing any type of therapy in childhood can alter adult same-sex orientation."[60]

Lyn Duff's situation and *Pickup v. Brown* illustrate that parents may not act in the best interest of their children because of their own personal interests and beliefs. Although, we like to believe that parents act in the best interest for their children, it is not always true. Parents will be motivated by their own interests at times. Parents may also be influenced by deeply ingrained cultural beliefs that might also play a part in compromising their ability to act in their children's best interest.

There are many different cultures and religions across the United States. Some cultures do not place a strong emphasis on mental health and view mental illness as weakness.[61] Other cultures view individuals with mental illnesses as being more dangerous.[62] Because of the stigma involved, parents may want to hide their children's mental illness to avoid stigma within their culture.[63] Research has also shown that parents might sometimes be the cause of a child's mental problems.[64]

---

[60] *Id.* at 1376; *see also* Doe *ex rel.* Doe v. Governor of New Jersey, 783 F.3d 150 (3d Cir. 2015) (upholding statute banning SOCE in NJ because of the potential for harm from SOCE counseling and the lack of evidence that such counseling is effective).
[61] Tahirah Abdullah & Tamara L. Brown, *Mental illness stigma and ethnocultural beliefs, values, and norms: an integrative review*, 31 CLINICAL PSYCHOLOGY REV. 934, 943 (2011).
[62] *Id.* at 938.
[63] *Id.* at 943 (study showing that stigma prevented subjects from seeking mental health treatment because they feared being socially rejected, ridiculed, or subject of gossip).
[64] Nonghong Liu, *Communication, Conflict and Mental Health: Chinese Immigrant Parents and Their Children*, U. WINDSOR (Nov. 7, 2015), https://scholar.uwindsor.ca/cgi/viewcontent.cgi?article=6487&context=etd (Chinese parents' high expectation was positively correlated with depression).

In contrast, some cultures might also view disobedience as something that requires mental health treatment, leading to unnecessary or ineffective treatment.[65] Although people are more aware and understanding of mental illness today, many cultures still stigmatize mental illness.[66] This may cause parents to sometimes try to hide mental illness, overtreat their children, or choose the wrong treatment for their children. Parents' deep-rooted cultural beliefs might prevent them from making decisions in the best interest of their children.

III. Modern Research on Children's Capacity to Make Decisions

Unlike what was previously believed, minors are capable of making informed medical decisions.[67] Research shows that involving children and adolescents in their own medical decision-making is increasingly recognized around the world.[68] Allowing involvement in their medical care also helps foster moral growth and development of autonomy in young patients.[69] Research has shown that children as young as nine years old have the capacity to make informed choices and that some children at age fourteen or fifteen are as competent as adults.[70] "Children

---

[65] Tania Roy et al., *Culturally Relevant Family Therapy Practice with Parents of Children and Adolescents*, 39, 2 INDIAN J. PSYCHOL MED. 137, 137 (2017) ("Usually, children are brought for therapy on issues of disobedience and poor academic performance"); *see also* SAVITA MALHOTRA, CHILD AND ADOLESCENT PSYCHIATRY 47 (2016) (Parents requesting doctors to counsel son with ADHD to "behave better" and went with counseling instead of medication).

[66] Abdullah, *supra* note 61, at 938.

[67] Doriane Lambelet Coleman & Philip M. Rosoff, *The Legal Authority of Mature Minors to Consent to General Medical Treatment*, 131 PEDIATRICS 786, 786 (2013) (Research confirming that minors have the ability to make rational decisions over time and that older minors have substantially similar cognitive capacity to young adults); *see also* Laurence Steinberg et. al., *Are Adolescents Less Mature Than Adults?*, 64 AM. PSYCHOL. 583, 591-592 (2009) (studies showing that by age 15, adolescents were similar to adults in cognitive capacity to make decisions involving deliberation, including medical decisions); Lawrence Schlam & Joseph Wood, *Informed Consent to the Medical Treatment of Minors: Law and Practice*, 10 HEALTH MATRIX 141, 154 (2000) (indicating that minors are capable of giving informed consent); LAURENCE STEINBERG, 10 ADOLESCENCE 57-64 (2013) (adolescence are capable of information processing, working memory, and hypothetical thinking).

[68] Aviva L. Katz & Sally A. Webb, *Informed Consent in Decision Making in Pediatric Practice*, 138, 2 PEDIATRICS 1. (2016).

[69] *Id.* at 2.

[70] Petronella Grootens-Wiegers et al., *Medical decision-making in children and adolescents: developmental and neuroscientific aspects*, BMC PEDIATRICS 2 (May 8, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5422908/pdf/12887_2017_Article_869.pdf; *see also* Lois A. Weithorn & Susan B. Campbell, *The Competency of Children and Adolescents to Make Informed Treatment Decisions*, 53 CHILD DEVELOPMENT 1589, 1589 (1982) (a study showing that 14-year-old subjects did not differ

over the age of twelve also tend to demonstrate more internal locus of control, which is correlated with decision making traits such as the ability to delay one's response, attention to details, and the gathering of information to assist the reasoning process."[71] A recent study even shows that children older than 11.2 years old may be competent enough to consent to clinical research.[72]

Traditional psychology broke down what is normal mentally for children at different ages into four stages.[73] More recently, new theories have emerged that show that child development is much more complicated, that many of the traditional stages might overlap.[74] Children develop differently and the law should take that into consideration when determining a child's capacity to consent to mental health treatment. Current research shows that many minors are most likely capable of making informed medical decisions. However, many of them still cannot obtain or reject mental health treatment because of state legislation. The next section will look at how different states currently handle the issue of minors and their ability to consent to mental health treatment.

IV. Current Legal Landscape for Children's Consent for Mental Health Treatment

Parental and adolescent decision-making for substance use and mental health treatment is regulated by state law. Although many states require a child's consent, some states still only

from adults in making decisions about treatment for diabetes, depression, or enuresis); Laurence Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?*, 38 J. MED. PHILOS. 256 (2013) ("adolescents aged 15 and older are just as mature as adults when emotional arousal is minimized and when they are not under the influence of peers, conditions that typically characterize medical decision-making").

[71] Preston A. Britner et al., *Evaluating Juveniles' Competence to Make Abortion Decisions: How Social Science Can Inform the Law*, 5 U. CHI. L. SCH. ROUNDTABLE 1, 44 (1996).

[72] Grootens-Wiegers, *supra* note 70, at 2.

[73] Patricia H. Miller, *Piaget's theory: Past, present, and future*, THE WILEY-BLACKWELL HANDBOOK OF CHILDHOOD COGNITIVE DEVELOPMENT 649, 652 (2011).

[74] *Id.* at 664-68 (a list of modern theories of child development based off Piaget's traditional approach).

require parental consent for mental health treatment.[75] According to research done in 2015, parental consent is sufficient in 53% to 61% of states for inpatient treatment.[76] States also give minors more decision power for outpatient mental treatment because parental consent is sufficient in only 39% to 46% of states for outpatient treatment.[77] This makes sense because inpatient treatment like institutionalization carries more risks than outpatient treatment. Young children with a history of institutional care "often show poor attention, hyperactivity, difficulty with emotion regulation, elevated levels of anxiety, increased rates of attachment disorders, and indiscriminate friendliness."[78] They are also at increased risk for a syndrome described by Rutter and colleagues as "quasi-autism."[79] Some research has even shown that a history of institutionalization may negatively affect a child's physical brain development.[80] The following analysis of different state statutes will paint a clearer picture on how different states handle the issue of minors and mental health treatment.

a. California

In California, "a minor who is 12 years of age or older may consent to mental health treatment or counseling services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling

[75] *See, e.g.*, DEL. CODE ANN. TIT. 13, § 707 ("Consent to the performance upon or for any minor by any licensed medical, surgical, dental, psychological . . . practitioner . . . may be given by . . . [p]arent or guardian of any minor for such minor"); MO. REV. STAT. § 632.110 (2011) ("The parent or legal custodian who applied for the admission of the minor shall have the right to authorize his evaluation, care, treatment and rehabilitation and the right to refuse permission to medicate the minor").

[76] MaryLouise E. Kerwin et al., *What Can Parents Do? A Review of State Laws Regarding Decision Making for Adolescent Drug Abuse and Mental Health Treatment*, 24, 3 J. CHILD & ADOLESCENT SUBSTANCE ABUSE 166, 166 (2015).

[77] *Id.*

[78] Karen Bos et al., *Psychiatric outcomes in young children with a history of institutionalization*, 19, 1 HARV. REV. PSYCHIATRY 15, 16 (2011).

[79] *Id.* ("a pattern of features similar to autism but marked by more flexibility in communication than would normally be expected with autism, more substantial social approach, and increased incidence of indiscriminately friendly behavior").

[80] *Id.* (one study using MRI identified diminished white matter connectivity in certain areas of the brain involved in higher cognitive and emotional function (such as the amygdala and frontal lobe) in adopted children with a history of institutionalization).

services."[81] Mental health treatment or counseling services is defined as "the provision of outpatient mental health treatment or counseling by a professional person."[82] California allows for children 12 years or older to consent to outpatient mental health treatment and counseling but not inpatient treatment. A minor's ability to consent to treatment and counseling is also based on the opinion of an attending professional. Under California law, the treating professional must also involve the parents of the minor unless he or she thinks it is inappropriate under his or her professional judgment.

b. Kentucky

In Kentucky, "[a]ny physician may provide outpatient mental health counseling to any child age sixteen (16) or older upon request of such child without the consent of a parent, parents, or guardian of such child."[83] "The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, informing the parent or guardian would benefit the health of the minor patient."[84] Unlike California, Kentucky raises the age of consent to sixteen years old. Kentucky also allows children sixteen and older to consent to mental health counseling without discretion from the health care professional. Like California, Kentucky allows professionals to inform parents about minors' treatment and counseling based on their professional judgment.

[81] CAL. HEALTH & SAFETY CODE § 124260 (West 2019).
[82] *Id*.
[83] KY. REV. STAT. ANN. § 214.185 (West 2019).
[84] *Id*.

c. Rhode Island

Rhode Island does not have laws in place to give minors the ability to consent to mental health treatment. As a result, minors in states like Rhode Island can only obtain mental health treatment and counseling through the consent of their parents.[85]

d. Washington

In Washington State, a minor can consent to mental health treatment if they are thirteen years old or older.[86] Additionally, parents will also not be notified without minor consent. [87] Washington is one of the most lenient states in allowing minors to consent to mental health treatment. It not only allows for children thirteen years old or older to consent to mental health treatment without professional discretion, but it also allows children to decide if they want to notify and involve their parents

The law in California and Kentucky helps frame the age range that states will allow a minor to consent to mental health treatment without parental consent. For states that set an age limit for consent California has the youngest age at twelve and Kentucky has the highest with sixteen.[88] The law in Rhode Island demonstrates that some states do not have laws in place that would allow minors to consent to mental health treatment. Lastly, the law in Washington is unique because it is the only state that allows minors to consent without the input of health professionals.

---

[85] NATIONAL DISTRICT ATTORNEYS ASSOCIATION, MINOR CONSENT TO MEDICAL TREATMENT LAWS 17-24, 72, 78-85, 90-91 (2013) (see laws in Rhode Island, Arizona, Arkansas, Mississippi, Nevada, New Jersey, North Dakota, and more do not allow minors to consent to mental health treatment).

[86] WASH. REV. CODE ANN. § 71.34.530 (West 2019).

[87] *Id.; see also Providing Health Care to Minors under Washington Law: A summary of health care services that can be provided to minors without parental consent*, WASHINGTON LAW HELP 2 (Nov. 2017) https://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/392AA11E-B7CF-083D-B5DC-911ACC8EF7A7/5934en_when-can-minor-access-health-care-wout-parental-consent.pdf.

[88] NATIONAL DISTRICT ATTORNEYS ASSOCIATION, MINOR CONSENT TO MEDICAL TREATMENT LAWS 1-164 (2013) (compilation of state laws pertaining to minor consent to treatment).

Most state statutes on minor consent fall somewhere within the spectrum of the laws discussed above. Some states give more rights to younger children than other states give to older children. Most states also allow treating professionals to use their discretion to inform parents, which might make some minors more reluctant to get help. There is currently no universal test or procedure in place to determine minors' capacity and many states still rely on the sole discretion of health professionals to determine capacity. The current process for determining minors' capacity to consent to mental health treatment is flawed and makes it difficult for minors to prove such capacity. The next section will go into more detail on the problems with how minors' capacity is assessed and who makes the assessment and determination.

V. Problems with How Minors' Capacity is Determined

There does not appear to be a uniform test for minors' capacity. Many states still rely on treating professionals to determine if a minor has the capacity to consent to mental health treatment.[89] By relying on the discretion of a treating professional, a state does not have to implement any actual test or procedures itself. This section will explain why there are problems and flaws with relying on a health professional's sole discretion when determining a child's capacity.

Over the years some tests have been developed by the medical community and ethics boards to determine a child's capacity to consent to medical treatment.

In order to give informed consent, a minor must be aware of the following:

1. The nature of the proposed treatment

[89] *See, e.g.*, CAL. HEALTH & SAFETY CODE § 124260 (West 2019) ("a minor who is 12 years of age or older may consent to mental health treatment or counseling services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services"); *see also* GA. CODE ANN. § 37-7-8 (2010); HAW. REV. STAT. ANN. § 577A-3 (2013).

2. The risks and benefits of the proposed treatment

3. The alternatives to the proposed treatment

4. The risks and benefits of the alternative treatments,

5. The risks and benefits of doing nothing[90]

It is the treating physicians' duty to assess a minor's understanding of the above risks and benefits.[91] In order to do this, he or she must inform and educate the minor patient with explanations regarding treatment and the risk and benefits of the treatment in a way that is appropriate to the minor's personal circumstances.[92] The treating physician should take into account the minor's development, culture, and language.[93]

A minor may give informed consent if a treating physician believes that the minor understands the nature of the proposed treatment, the risks and benefits of the proposed treatment, the alternatives to the proposed treatment, the risks and benefits of the alternative treatments, and the risks and benefits of doing nothing.[94] Minors' ability to give informed consent appears to rely on the opinion of whomever they are seeking treatment from. This could be a problem because health professionals may not be properly equipped to assess a minor's capacity and best interest. A health professional may also not understand a minor's unique personal circumstances like his or her development, culture, and language.

Minors' capacity to make decisions involves more than just being aware of the nature of their proposed treatment, the risks and benefits of the proposed treatment, the alternatives to the proposed treatment, the risks and benefits of the alternative treatments, and the risks and benefits

[90] McNary, *supra* note 19, at 53-55.
[91] *Id.*
[92] Christine Harrison, *Treatment decisions regarding infants, children and adolescents*, 9, 2 PAEDIATRICS & CHILD HEALTH 99, 101 (2004).
[93] *Id.*
[94] *Id.* at 101-102.

of doing nothing. Minors must also understand their legal rights to give proper informed consent to mental health treatment regardless of what their parents might want.

Since health professionals most likely do not have the legal knowledge to properly inform minors about their legal rights, they should work with attorneys when assessing minors' capacity. Attorneys can make sure that minors' legal rights are accurately explained to them and that they understand their rights while health professionals can assess the minors' understanding of the risk and benefits.[95] Health professionals might also be able to obtain valuable information about minors' capacity and their understanding of the risks and benefits of treatment by observing their conversations with attorneys.[96] The current process for determining a minors' capacity to consent to mental health treatment is flawed because it does not incorporate attorneys, and relies on the sole discretion of treating health professionals.

Even with attorney guidance, a treating healthcare professional may still not be properly trained to determine a minor's capacity to give informed consent. The United States currently faces a growing shortage of mental health professionals trained to work with young people.[97] According to data from American Academy of Child & Adolescent Psychiatry, there are only around 8,300 practicing child and adolescent psychiatrist in the United States and 15 million

[95] William E. Foote & Daniel W. Shuman, *Consent, Disclosure, and Waiver for the Forensic Psychological Evaluation: Rethinking the Roles of Psychologist and Lawyer*, 37, 5 PROFESSIONAL PSYCHOL.: RES. & PRAC. 437, 437-45 (2006) (article describing the importance of psychologist and lawyers working together to obtain informed consent from a client in the context of a forensics evaluation for litigation); *see also* Thomas G. Gutheil et al., *Participation in Competency Assessment and Treatment Decisions: The Role of a Psychiatrist-Attorney Team*, 11 MENTAL DISABILITY L. REP. 446. 446-49 (1987) (case study illustrating the importance of collaboration between a psychiatrist and attorney in determining competence to consent).

[96] Paul S. Appelbaum et al., *Assessing Patients' Capacities to Consent to Treatment*, 319 NEW ENG. J. MED. 1635, 1637 (1988).

[97] Bernard J. Wolfson, *Why parents are struggling to find mental health care for their children*, PBS (May 7, 2019, 8:42 AM), https://www.pbs.org/newshour/health/why-parents-are-struggling-to-find-mental-health-care-for-their-children (mother struggles finding a therapist to treat her teenage daughter's symptoms of depression and debilitating panic attacks).

minors in need of the special expertise of a child and adolescent psychiatrist.[98] This data shows that many minors may not have access to a psychiatrist or health professional with the expertise and experience to accurately assess their capacity. Psychiatrists and health professionals without child or adolescent experience may not be able to explain and educate the minor patient with clarifications regarding treatment and the risks and benefits of the treatment in a way that is appropriate to the minor's personal circumstances.

Overall, it is optimal for a treating health professional to work with attorneys when determining minors' capacity to give informed consent. The process that determines minors' capacity must be reformed to offer them adequate protection. The next section will suggest legal procedures and statutory guidelines that aim to offer minors more protection.

VI. Possible Legal Procedure and Statutory Guidelines to Offer More Protection to Minors

This paper suggests new legal procedures and statutory guidelines that take modern research into account when determining minors' capacity to consent to mental health treatment. As discussed earlier, some states allow minors of a certain age to consent to mental health treatment without an assessment of their capacity.[99] However, even in states where a minor can consent, health professionals still have the discretion to inform the minors' parents.[100] As a result, many minors cannot obtain mental health treatment without the consent of their parents if their health professional determines that they do not have the capacity to consent. There are currently no procedures in place for minors to appeal their treating health professional's decision to deny mental health treatment and inform minors' parents. There should be procedures put into

[98] AACAP, *Workforce Issues* (Apr. 2019), https://www.aacap.org/aacap/resources_for_primary_care/workforce_issues.aspx.
[99] *See* CAL. HEALTH & SAFETY CODE § 124260 (West 2019); KY. REV. STAT. ANN. § 214.185 (West 2019).
[100] *Id*.

place to allow minors to appeal a capacity determination because many health professionals may not be able to properly explain and educate minor patients with clarifications regarding treatment and the risks and benefits of the treatment.

Current statutes either do not allow minors to consent to mental health treatment at all or sets what seem to be arbitrary ages for consent. The age at which minors can consent to mental health treatment ranges from twelve years old to sixteen years old depending on the state.[101] Additionally, most states do not have statutes in place to allow minors to consent to inpatient treatment or institutionalization.[102] In most states, the decision for inpatient treatment and to institutionalize a minor is still in the hands of parents and health care professionals.[103] As a result, many minors cannot consent to inpatient treatment or refuse inpatient treatment if their parents and health providers agree that they need it. In contrast, mentally ill adults are always given a commitment hearing before institutionalization.[104]

Recent psychological theories show that child development is complicated and that children develop differently depending on many different factors.[105] Even children who are the same age develop differently and the law involving mental health treatment consent should reflect that. There should also be two standards for handling the issue of minors' capacity to

---

[101] *Id*.

[102] NATIONAL DISTRICT ATTORNEYS ASSOCIATION, MINOR CONSENT TO MEDICAL TREATMENT LAWS 1-164 (compilation of state laws pertaining to minor consent to treatment).

[103] *Id.; see, e.g*., DEL. CODE ANN. TIT. 13, § 707 ("Consent to the performance upon or for any minor by any licensed medical, surgical, dental, psychological . . . practitioner . . . may be given by . . . [p]arent or guardian of any minor for such minor"); MO. REV. STAT. § 632.110 (2011) ("The parent or legal custodian who applied for the admission of the minor shall have the right to authorize his evaluation, care, treatment and rehabilitation and the right to refuse permission to medicate the minor"); *see also* John A. Menninger, *Involuntary treatment: Hospitalization and medications*, 2 J. JACOBSON & A. JACOBSON: PSYCHIATRIC SECRETS 477, 482 (2001) ("Most states continue to allow a child's parent or guardian to approve admission to a psychiatric hospital regardless of the child's wishes")

[104] *Zinermon*, 494 U.S. at 133 (1990) (Supreme Court holding that due process is violated when a patient is involuntarily placed in a mental health facility without a judicial hearing); *see also* Menninger, *supra* note 103, at 679-82 (article outlining the rights of adults when involuntary hospitalization is sought, including commitment proceedings).

[105] Miller, *supra* note 73, at 664-68.

consent to mental health treatment. One standard for institutionalization and inpatient treatment and another for outpatient treatment because institutionalization has significant negative effects.[106] Minors should also be given an opportunity to appeal a health care professional's capacity determination.

a. Legal Procedure Suggestion

In Bellotti v. Baird, the Supreme Court said:

> [E]very minor must have the opportunity . . . to go directly to a court without first consulting with or notifying her parents. If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent.[107]

As a result of this case, states must allow minors to have a court hearing to determine if they are mature enough to get an abortion without parental consent. If a court determines that a minor is mature and well informed enough to make an intelligent decision, then she may get an abortion without any parental involvement. Like abortions, the right to medical treatment is also a protected constitutional right.[108] Although states may abridge minors' fundamental constitutional rights in order to promote minors' safety and welfare[109], *Bellotti* shows that minors are still entitled to a hearing to protect his or her constitutional rights.

Similar to abortions, minors should be allowed to go directly to a court to prove that they are mature and well enough informed to make an intelligent decision about mental health treatment without parental consultation or consent. Having a court proceeding takes sole

---

[106] Bos, *supra* note 78 (journal article highlighting the negative side effects of institutionalizing children).
[107] *Bellotti*, 443 U.S. at 647.
[108] Roe v. Wade, 410 U.S. 113, 93 (1973) (holding that the constitution protects the right to abortion); Parran v. Hopkins, 873 F.2d 1440 (4th Cir. 1989) (holding that the constitution protects the right to medical treatment).
[109] *See, e.g.*, *Schleifer*, 159 F.3d at 847 (upholding state curfew ordinance even though it infringed on minors' constitutional rights).

discretion out of the hands of a single treating health professional. Court proceedings usually involve experts and attorneys, which will ensure that the minor is properly informed about his or her legal rights and the risks and benefits of the treatment he or she is seeking. Being able to have the proceeding without informing parents is also positive because minors might not want to have parents involved due to culture or other personal family circumstances. Minors will be more likely to seek mental health treatment if they know that their treating health professional cannot inform their parents before a legal proceeding happens. Having a court decision alternative like the ones for abortions will allow more minors to obtain mental health treatment without parental consent. This creates an actual process of capacity determination and does not rely on the judgment of one individual health professional.

Minors should also be given a commitment hearing before institutionalization. Adults who are suspected of lacking mental capacity are given a commitment hearing before they can be institutionalized while many minors are assumed to lack the capacity without a hearing.[110] Since being institutionalized has severe circumstances[111], minors should be afforded the same opportunity as adults before commitment.

b. Statutory Guideline Suggestion

The statutory blueprint below offers a more uniform guideline on what ages minors should be allowed to consent to mental health treatment. It also offers guidance on what burden of proof should be applied by courts for minors of different ages in the legal procedure suggested above. The statutory guidelines below consider what children at different ages are capable of and attempts to give minors more independence without stripping parental control completely.

[110] Menninger, *supra* note 103, at 679-82.
[111] Bos, *supra* note 78, at 16.

Outpatient treatment:

Outpatient treatment is less risky than inpatient treatment because it does not involve commitment and institutionalization. As a result, many states already give minors the capacity to consent at different ages.[112] The blueprint below attempts to create a more uniform guideline on minors' capacity to consent at different ages.

Minors ages 14 and over should be allowed to consent to outpatient mental health treatment without a capacity assessment from their treating health professional.

Traditionally, children have been considered capable of thinking logically, hypothetically, and about the future by age eleven.[113] Recent research has shown that some children at age fourteen or fifteen may be as competent as adults.[114] These facts combined with the high potential benefits and low risks of outpatient mental health treatment, makes it reasonable to allow minors 14 years old and over to consent.

Minors ages 11 to 13 should be allowed to consent to outpatient mental health treatment if their treating health professional decides that they have proper capacity based on his or her professional opinion.

Although traditional psychology believes that eleven-year-old children have the ability for advanced thinking and thinking about the future[115], there does not appear to be recent

---

[112] *See, e. g.* CAL. HEALTH & SAFETY CODE § 124260 (West 2019); WASH. REV. CODE ANN. § 71.34.530 (West 2019); KY. REV. STAT. ANN. § 214.185 (West 2019).
[113] Miller, *supra* note 73, at 652.
[114] Grootens-Wiegers, *supra* note 70, at 2; *see also* Weithorn, *supra* note 70, at 1589 (study showing that 14-year-old subjects did not differ from adults in making decisions about treatment for diabetes, depression, or enuresis); Steinberg, *supra* note 70, at 256 ("adolescents aged 15 and older are just as mature as adults when emotional arousal is minimized and when they are not under the influence of peers, conditions that typically characterize medical decision-making").
[115] Miller, *supra* note 73, at 652.

literature that supports eleven to thirteen-year olds being as competent as adults. Research shows that children older than 11.2 years may be competent to consent to clinical research.[116] This shows that children in this age group are mentally competent even if it is not comparable to adults like older adolescence.

Children ages eleven to thirteen may not be as competent as adults like children ages fourteen and fifteen. However, they still may be capable of advanced cognitive thinking. As a result of this, they require slightly more protection. The high potential benefit compared to low risks with mental health treatment, makes it reasonable to give children ages eleven to thirteen an opportunity to proof their capacity. Children ages eleven to thirteen should only have to prove their capacity by a preponderance of the evidence during the earlier suggested legal proceeding.

Minors ages 10 and below should not be able to consent to outpatient mental health treatment without a legal proceeding.

Even early psychology says that children do not reach their peak operational thinking until age 11.[117] Although recent research has shown that children as young as nine might be able to make informed decisions[118], it puts health professionals in a tough spot to have to decide on the capacity of children so young.

Although children are members of society and have individual rights, they still need to be protected. Younger children can still benefit from mental health treatment, but they are also more at risk of being unnecessarily treated. Given this fact, children ages ten and under should have to

[116] Grootens-Wiegers, *supra* note 70, at 2.
[117] Miller, *supra* note 73, at 652.
[118] Grootens-Wiegers, *supra* note 70, at 2.

prove their capacity by clear and convincing evidence during the earlier suggested legal proceeding.

Inpatient Treatment:

Inpatient treatment is riskier than outpatient treatment because it could involve long-term commitment and institutionalization.

Minors ages 14 and older should be allowed to consent to inpatient mental health treatment if their treating health professional decides that they have proper capacity based on his or her professional opinion.

It should be more difficult for minors in this age group to consent to inpatient than outpatient treatment because of the serious negative side effects caused by institutionalization.[119]

Since minors ages fourteen and older are more capable of making rational decisions than younger children, their burden of proof for appealing their health care professional's decision should be lower. Minors in this older age group should only have to prove their capacity by a preponderance of the evidence during the earlier suggested legal proceeding. Additionally, they should also be allowed to overrule their parents' decision for inpatient treatment unless the parents can disprove capacity with clear and convincing evidence. In order to commit a child to inpatient treatment, parents should also prove with clear and convincing evidence that the treatment is for the best interest of the minor. This standard is set high because of the high risk involved with involuntary inpatient treatment.

[119] Bos, *supra* note 78 (journal article highlighting the negative side effects of institutionalizing children).

Minors ages 11 to 13 should not be allowed to consent to inpatient mental health treatment.

Minors in this age group are less developed and should be afforded more protection. Given the risks involved[120], it is probably best to only allow treatment after judicial review.

The burden of proof for capacity should be higher in this situation because there does not appear to be recent literature that supports children ages eleven to thirteen-year being as competent as children fourteen years and older.

Children in this group should have to prove their capacity by clear and convincing evidence during the earlier suggested legal proceeding. Additionally, they should also be allowed to overrule their parents' decision for inpatient treatment unless the parents can disprove capacity with clear and convincing evidence. In order to commit a child to inpatient treatment, parents should also prove with clear and convincing evidence that the treatment is for the best interest of the minor. This standard is set high because of the high risk involved with involuntary inpatient treatment.

Minors ages 10 and below should not be able to consent to inpatient mental health treatment.

Children ages ten and under have not reach their peak operational reasoning skills and should not be relied upon to consent to a decision as paramount as inpatient mental treatment.

[120] *Id*.

Research has shown that younger children are at higher risk of the negative side effects of institutionalization.[121]

Minors in this group should not be able to obtain inpatient treatment without notification to their parents. Children ages ten and under are vulnerable and should be offered more protection. Since their brains are less developed, they may not be able to understand the risks involved with inpatient care. However, they should still be allowed to overrule a parents' decision for inpatient treatment unless the parents can disprove capacity with clear and convincing evidence. In order to commit a child to inpatient treatment, parents should also prove with clear and convincing evidence that the treatment is for the best interest of the minor. This standard is set high because of the high risk involved with involuntary inpatient treatment.

CONCLUSION

Legislation and society have given minors more autonomy and decision-making power than ever.[122] Although not discussed in this paper, many states allow minors to consent to substance abuse treatment without a determination of capacity or parental consent.[123] Substance abuse treatment is often related to mental health treatment because people who need mental health treatment often have substance abuse problems.[124] With this being said, there are still

---

[121] Robert B. McCall, *The consequences of early institutionalization: can institutions be improved? – should they?* 18, 4 CHILD AND ADOLESCENT MENTAL HEALTH 193, 194 (2013) (research highlighting the developmental issues faced by infants and young children subjected to institutional care).

[122] *See*, *e.g.*, *Bellotti*, 443 U.S. at 647 (holding that minors are entitled to a court hearing to determine if she has the capacity to consent to an abortion without parental involvement).

[123] *See*, *e.g.*, ALA. CODE § 22-8-6 (2012) ("Any minor may give effective consent for any legally authorized medical, health or mental health services to . . . treat . . . drug dependency . . . and the consent of no other person shall be deemed necessary."); COLO. REV. STAT. § 13-22-102 (2016) ("any physician . . . with the consent of [a] minor patient, may examine, prescribe for, and treat such minor patient for addiction to or use of drugs without the consent of or notification to the parent, parents, or legal guardian of such minor patient"); NATIONAL DISTRICT ATTORNEYS ASSOCIATION, MINOR CONSENT TO MEDICAL TREATMENT LAWS 1-164 (compilation of state laws pertaining to minor consent to treatment).

[124] NATIONAL INSTITUTE ON DRUG ABUSE, COMMON COMORBIDITIES WITH SUBSTANCE USE DISORDERS 4 (2020) ("Multiple national population surveys have found that about half of those who experience a mental illness during their lives will also experience a substance use disorder and vice versa.").

many holes that need to be filled regarding minors' ability to consent to mental health treatment. Current state statutes either do not allow minors to consent, places the decision of minor consent on one individual health professional, or sets what seem to be arbitrary ages for consent. Minors seeking mental health treatment should be afforded the opportunity to have their capacity reviewed through some form of legal procedure similar to abortions. Minors should also be entitled to hearings like adults for mental commitment or institutionalization. More importantly, statutes should consider psychology developments and modern research when determining what age minor can consent.