

2024 CONSENT LAW SEMINAR

GLENDALE

# Minors' Consent



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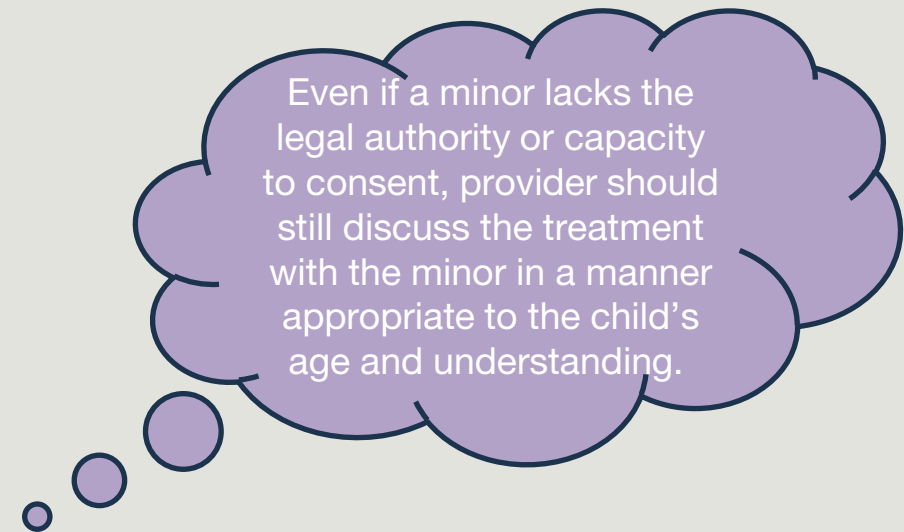
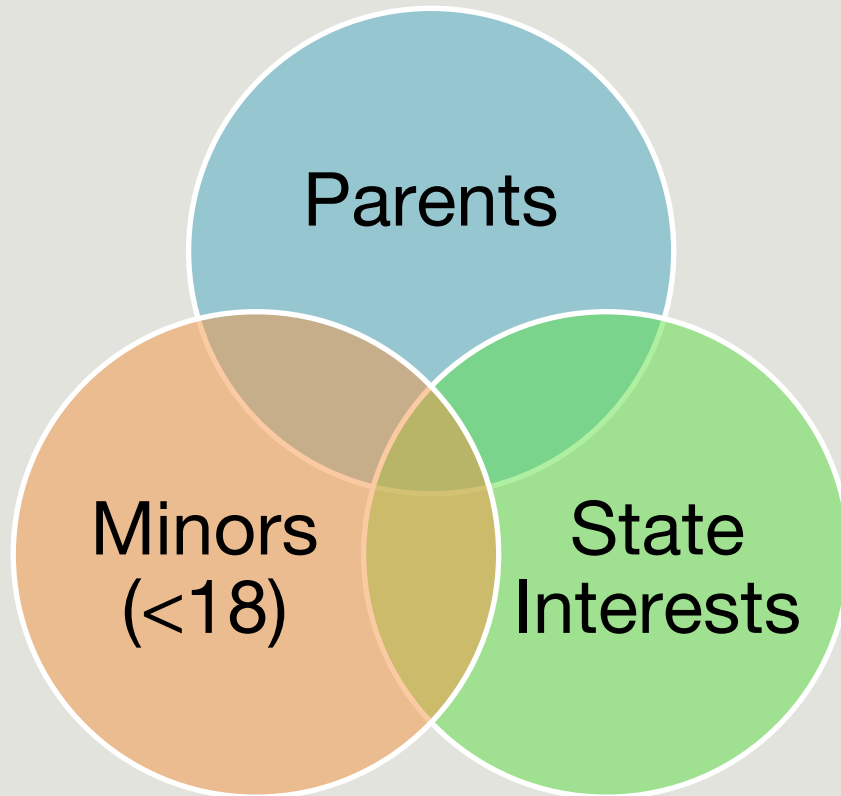
GLENDALE

# Who can consent for minors?



# Who Can Consent for Minors?

Legal presumption that parents/guardians can make important decisions, including health care decisions, for their children. Parents/guardians with legal authority to consent to treatment for a minor also has the legal authority to refuse treatment.



# Parents/Guardians

## Minors with Married Parents

- Either parent can consent.
- Where one parent consents to treatment but other parent is opposed, treatment should not be provided until the conflict is resolved.

## Minors with Divorced Parents

- Both parents should ideally consent.
- If one parent has sole **legal** (different than physical) custody, then that parent can solely consent.
- If joint legal custody, and the parents disagree, parents should obtain court order resolving the dispute.

## Adopted Minors

- Where a minor has been legally adopted (per court order), adoptive parents have same rights as the birth parents would have had.
- Birth parents may not consent or object to medical treatment following a legal adoption.

## Minors Born Out of Wedlock

- Both mother and father have legal authority to consent to medical treatment for minor.
- If reason to doubt status of parent, provider may request copy of birth certificate or other verifiable documentation.

**Note re Conflict:** *Where one parent consents to treatment but other parent opposed, ideally treatment should not be provided until the conflict is resolved, if the treatment can be delayed without jeopardizing the child's health.*

# Parents/Guardians/Third Parties

## Multiple/ Nonbiological Parents

- Registered domestic partners, non-biological parent must (i) legally adopted the child, (ii) have 3<sup>rd</sup> part authorization, or (iii) complete a valid Caregiver's Authorization Affidavit.
- Other situations e.g. woman who donated ovum to birth mother and helped raised acknowledged to have parental rights

## Minors with Guardian(s)

- If a guardian has been legally appointed, the ability of the guardian to consent depends on the specific authority granted by the court and the type of treatment.
- Guardian may not consent to experimental drugs, ECT, sterilization, psychosurgery, aid-in-dying

## Third Parties

- Parents may provide third parties (nanny, school, coach) authorization to consent (See CHA Form 2-3)
- A nonparent adult relative with whom a minor is living may authorize care by completing a "Caregiver's Authorization Affidavit" (See CHA Form 2-2)

## Minors in Custody

- Parents generally retain consent rights while court adjudicates status of child as ward of the state
- Generally, minors in custody of a social worker or probation officer does not have consent rights
- But check the court orders!

*Review documentation supporting adult's decision-making rights for minor; reasonable reliance on a facially valid document is generally acceptable.*

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# When can a minor consent for themselves?



# Minors with Legal Authority to Consent

## Emancipated Minors

- A minor **14+** may petition court for emancipation.
- If court grants, DMV issues ID card that states that the minor is emancipated.
- If a minor does not have ID card, facility should consider whether minor is considered “self-sufficient”

## Self-Sufficient Minors

- A “self-sufficient minor” is (i) **15+**, (ii) living separate from parents/guardian; and (iii) managing his or her financial affairs.
- A self-sufficient minor is legally authorized to consent to care.
- Minor should affirm conditions are met (See CHA Form 2-1)

## Married Minors

- Minor who has entered into a valid marriage or domestic partnership is considered emancipated.
- This is true even if later terminated, or they divorce, or the death of a spouse.

## Minors on Active Duty

- Regardless of age, while serving on active duty, armed services officer is considered on active duty.
- Facility may request military ID card as evidence of minor’s authority to consent.

# Minors Consent Based on Type of Care

## Pregnancy/Contraceptive Care

- **Any** minor may consent to hospital, medical, or surgical care related to treatment or prevention of pregnancy.
- Law doesn't specify the treatments, but generally assumed contraception (incl emergency contraception), abortion, pelvic exams, pregnancy testing, and prenatal care.
- Excludes sterilization

## Communicable Reportable & Sexually Transmitted Diseases

- **12+** who may have come into contact with infectious, contagious or communicable disease that must be reported to the local health officer, or STD may consent to diagnosis and treatment of the disease.
- This includes HIV testing.
- **12+** may consent (or refuse consent) for the HPV vaccine

## Rape/Sexual Assault Victims

- **12+** who has allegedly been raped, may consent to diagnosis and treatment, including withhold consent for the collection of evidence of alleged rape
- **Any** minor who has allegedly been sexually assaulted may consent to diagnosis and treatment (but parents must be contacted **unless suspected perpetrator**)





# Minors Consent Based on Type of Care (cont.)

## Outpatient Mental Health Treatment

- Current law: minors **12+** may consent to mental health treatment counseling on an outpatient basis, or to residential shelter services.
- Effective July 1, 2024: **SB 665** eliminates reqs that minor must be in danger or an alleged victim or rape/incest to review the services and adds req that prof must first consult with minor before determining whether parent/guardian's involvement would be inappropriate

## Substance Abuse Treatment

- Current law: minors **12+** may consent to medical care and counseling related to diagnosis and treatment of a drug- or alcohol-related problem.
- Effective January 1, 2024, **AB 816** permits minors **16+** to receive medications for opioid use disorder from a licensed narcotic treatment program as well as buprenorphine from any other health facility or licensed providers without the consent of their parent/guardian

# Minors Privacy

GENERAL RULE	EXCEPTIONS
<p><b>Where a minor has the right to consent to treatment, the minor may decide who is authorized to see the records related to that treatment.</b></p>	<p><u>Self-Sufficient Minors</u>: Law permits disclosure to a parent with or without consent if they know the “whereabouts” of the parent. CA Family Code 6922.</p>
	<p><u>Victims of Sexual Assault</u>: Law requires “attempt to contact the minor’s parent” except if believe parent committed the assault. CA Family Code 6928.</p>
	<p><u>Outpatient Mental Health</u>: “Shall include involvement of the minor’s parent,” unless <b>after consulting with the minor</b>, determines that involvement would be inappropriate. CA Family Code 6924.</p>
	<p><u>Drug or Alcohol Related Treatment</u>: Law requires disclosure to parent even if minor does not consent <i>if</i> the parent is the one who sought the care. CA Family Code 6929. BUT Part 2 (42 CFR 2.14) only allows disclosure if minor lacks capacity and minor’s situation poses a substantial threat to the life or physical well-being of the minor other person. <i>See also</i> Cal. Health &amp; Safety Code § 11845.5 (DHCS); LPS.</p>
GENERAL RULE	EXCEPTIONS
<p><b>Where minor does not have the right to consent to treatment, then parent/guardian is allowed to see records related to the treatment</b></p>	<p><u>Assents to Confidentiality</u>: HIPAA provides that a parent need not be treated as a minor patient’s personal representative for purposes of PHI disclosures and other requirements if the parent “assents to an agreement of confidentiality” between the covered entity and minor with respect to such health care service. 45 C.F.R. 164.502(g)(3)(i)(C).</p>
	<p><u>Access → Detrimental to Minor</u>: Parent not entitled to minor’s health records if provider determines access would be detrimental minor’s physical safety or psychological well-being or to the provider/patient relationship. This decision shall not attach any liability to the provider, unless the decision is found to be in bad faith. Cal. Health &amp; Safety Code § 123115</p>
	<p><u>Dependent Children</u>: Court may remove birth parents/legal guardian right to access minor’s health information in conjunction with the juvenile court’s removal of the physical custody of the minor where risk of abuse or harm. A psychotherapist may not disclose mental health information to a child who has been removed from physical custody unless authorized by the court. Cal. Health &amp; Safety Code § 123116.</p>



# Payment for Minors Care

**Billing for Services.** If a minor has the legal authority to consent to medical treatment, then the minor is responsible for payment, not the parents. Cal. Welfare & Institutions Code § 14010.

- × Health care providers should establish a system to ensure that they **do not bill parents** for services for which the minor may lawfully consent (unless the minor's authorization to send the bill to the parents is obtained).
- × Health care provider may **bill insurance companies**, but the insurance companies must ensure the EOB forms are not sent to the parents for services the minor can consent to.
- ✓ **Medi-Cal** has a **special program** to pay for some services for which minors may consent regardless of parents' income/assets, insurance status or citizenship, and parents will not be contacted.

# CHA Minors Consent Requirements

## Consent Requirements for MEDICAL TREATMENT OF MINORS

<b>IF MINOR IS:</b>	<i>Is parental consent required?</i>	<i>Are parents responsible for costs? †</i>	<i>Is minor's consent sufficient?</i>	<i>May M.D. inform parents of treatment without minor's consent?</i>
Unmarried, no special circumstances	Yes	Yes	No	Yes
Unmarried, emergency care and parents not available [Business and Professions Code § 2397]	No	Yes	Yes, if capable	Yes
Currently or previously married or in a domestic partnership [Family Code § 7002]	No	No	Yes	No
Emancipated (declaration by court, identification card from DMV) [Family Code §§ 7002, 7050, 7140]	No	Probably Not <sup>2</sup>	Yes	No
Self-sufficient (15 or older, not living at home, manages own financial affairs) [Family Code § 6922]	No	No	Yes	<sup>1</sup>
Not married, care related to prevention or treatment of pregnancy, except sterilization [Family Code § 6925]	No	No	Yes	No
Not married, seeking abortion [Family Code § 6925]	No	No	Yes	No
Not married, pregnant, care not related to prevention or treatment of pregnancy and no other special circumstances	Yes	Yes	No	Yes
On active duty with Armed Forces [Family Code § 7002]	No	No	Yes	No
12 or older, care related to diagnosis or treatment of a communicable reportable disease or to prevention of an STD [Family Code § 6926]	No	No	Yes	No
12 or older, care for rape <sup>2</sup> [Family Code § 6927]	No	No	Yes	Yes, usually <sup>1</sup>
Care for sexual assault or intimate partner violence <sup>2</sup> [Family Code §§ 6928 and 6930]	No	No	Yes	Yes, usually <sup>1</sup>
12 or older, care for alcohol or drug abuse <sup>2</sup> [Family Code § 6929]	No <sup>2</sup>	Only if parents are participating in counseling	Yes	Yes, usually <sup>1</sup>
12 or older, care for mental health treatment, outpatient only <sup>1</sup> [Family Code § 6924, Health and Safety Code § 124260]	No	Only if parents are participating in counseling	Yes	Yes, usually <sup>1</sup>
17 or older, blood donation only [Health and Safety Code § 1607.5]	No	No	Yes	Probably not

<sup>1</sup> Special requirements or exceptions may apply. See Chapter 4 of the Consent Manual or Chapter 3 of Minors & Health Care Law.

<sup>2</sup> Parental consent is required for a minor's participation in replacement narcotic abuse treatment (such as methadone, LAAM or buprenorphine products) in a program licensed pursuant to Health and Safety Code § 11875 (now codified at § 11839 et. seq. [Family Code § 6929(a)]).

Note: Notwithstanding the above information, a psychotherapist may not disclose mental health information to a parent who has lost physical custody of a child in a juvenile court dependency hearing unless the parent has obtained a court order granting access to the information.

<sup>†</sup> Reference: Welfare and Institutions Code § 14010

Minors are defined as all persons under 18 years of age.

# The Sticky Issues

What happens if the parents don't agree?

What if the parents' decision-making could cause harm?

What about when an adolescent disagrees with their parents?



# Gender-Affirming Care (GAC)

## Gender-Affirming Care and Young People

Affirming Care	What is it?	When is it used?	Reversible or not
<b>Social Affirmation</b>	Adopting gender-affirming hairstyles, clothing, name, gender pronouns, and restrooms and other facilities	At any age or stage	Reversible
<b>Puberty Blockers</b>	Using certain types of hormones to pause pubertal development	During puberty	Reversible
<b>Hormone Therapy</b>	Testosterone hormones for those who were assigned female at birth  Estrogen hormones for those who were assigned male at birth	Early adolescence onward	Partially reversible
<b>Gender-Affirming Surgeries</b>	"Top" surgery – to create male-typical chest shape or enhance breasts  "Bottom" surgery – surgery on genitals or reproductive organs  Facial feminization or other procedures	Typically used in adulthood or case-by-case in adolescence	Not reversible



International Journal of Transgender Health



ISSN: (Print) (Online) Journal homepage: [www.tandfonline.com/journals/wijt21](http://www.tandfonline.com/journals/wijt21)

### Standards of Care for the Health of Transgender and Gender Diverse People, Version 8

**Results:** A total of 18 chapters were developed as part of the SOC-8. They contain recommendations for health care professionals who provide care and treatment for TGD people. Each of the recommendations is followed by explanatory text with relevant references. General areas related to transgender health are covered in the chapters Terminology, Global Applicability, Population Estimates, and Education. The chapters developed for the diverse population of TGD people include Assessment of Adults, Adolescents, Children, Nonbinary, Eunuchs, and Intersex Individuals, and people living in Institutional Environments. Finally, the chapters related to gender-affirming treatment are Hormone Therapy, Surgery and Postoperative Care, Voice and Communication, Primary Care, Reproductive Health, Sexual Health, and Mental Health.

**Conclusions:** The SOC-8 guidelines are intended to be flexible to meet the diverse health care needs of TGD people globally. While adaptable, they offer standards for promoting optimal health care and guidance for the treatment of people experiencing gender incongruence. As in all previous versions of the SOC, the criteria set forth in this document for gender-affirming medical interventions are clinical guidelines; individual health care professionals and programs may modify these in consultation with the TGD person.

# Rise in number of transgender minors seeking GAC

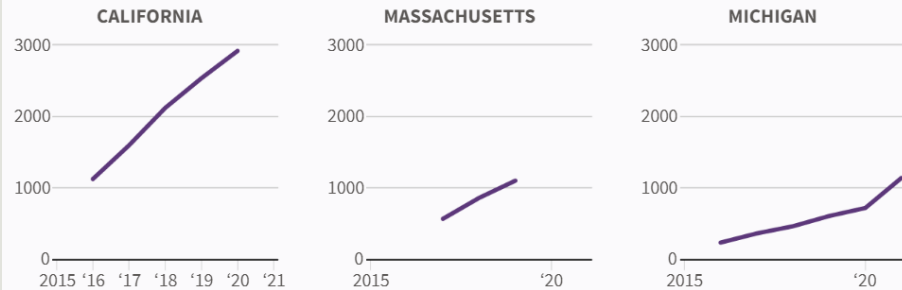
## Diagnoses of youths with gender dysphoria surge

New diagnoses in the United States of patients ages 6-17



Source: Komodo Health Inc

Diagnoses among Medicaid patients in selected states



[Number of transgender children seeking treatment surges in U.S. \(reuters.com/\)](https://www.reuters.com/healthcare/transgender-children-seeking-treatment-surges-in-u-s-2021-04-15/)

Accessed April 18, 2024

## Puberty blockers

U.S. patients ages 6-17 with a prior gender dysphoria diagnosis initiating puberty blocker treatment



Source: Komodo Health Inc

## Hormone therapy

U.S. patients ages 6-17 with a prior gender dysphoria diagnosis initiating hormone treatment



Source: Komodo Health Inc

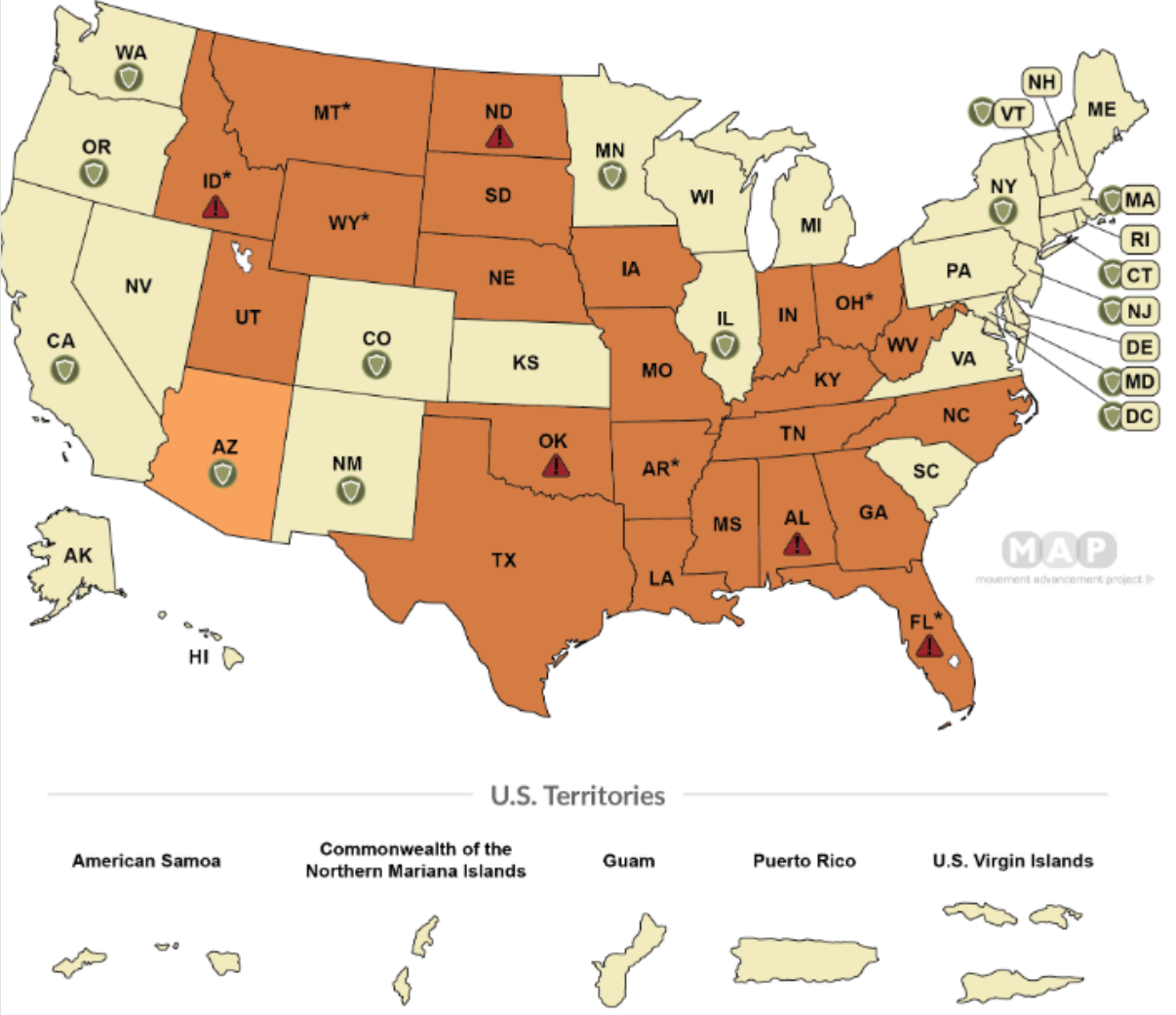
## Top surgeries

U.S. patients ages 13-17 undergoing mastectomy with a prior gender dysphoria diagnosis



Source: Komodo Health Inc

# Restrictions on GAC for Minors



- State has "shield" law protecting access to transgender health care (see this map for more information) (14 states + D.C.)
- State bans best practice medication and surgical care for transgender youth, though ban may not be in effect (see note) (23 states)
- State bans best practice surgical care for transgender youth (1 state)
- State does not ban best practice medical care for transgender youth (26 states, 5 territories + D.C.)
- State ban makes it a felony crime to provide best practice medical care for transgender youth (5 states)





# SCOTUS Review of State Bans on GAC for Minors



## *Labrador v. Poe*

- April 2023 - the Vulnerable Child Protection Act was enacted in **Idaho**, banning minors from receiving GAC.
- July 2023 - **Idaho** is sued for violating the right to equal protection by singling out transgender minors.
- December 2023 - Idaho District Court enjoins enforcement of the law.
- January 2024, 9<sup>th</sup> Circuit affirms.
- April 15, 2024 – U.S. Supreme Court partially grants emergency application for stay, finding the district court cannot facially enjoin Idaho’s Vulnerable Child Protection Act, and prohibit its enforcement against non-parties.



## *United States v. Skrmetti*

- March 2023 – Senate Bill is enacted in **Tennessee** which bans the provision of GAC to minors.
- April 2023 – Tennessee is sued for violating the right to equal protection by singling out transgender minors.
- June 2023 – Tennessee District Court enjoins enforcement of the law.
- July 2023 – 6<sup>th</sup> Circuit overturns District Court’s injunction allowing Tennessee’s ban on GAC for minors to go into effect.
- November 2023 – Petition for a Writ of Certiorari is filed, requesting U.S. Supreme Court review of the 6<sup>th</sup> Circuit’s decisions to allow Tennessee’s ban on GAC for minors to go into effect.



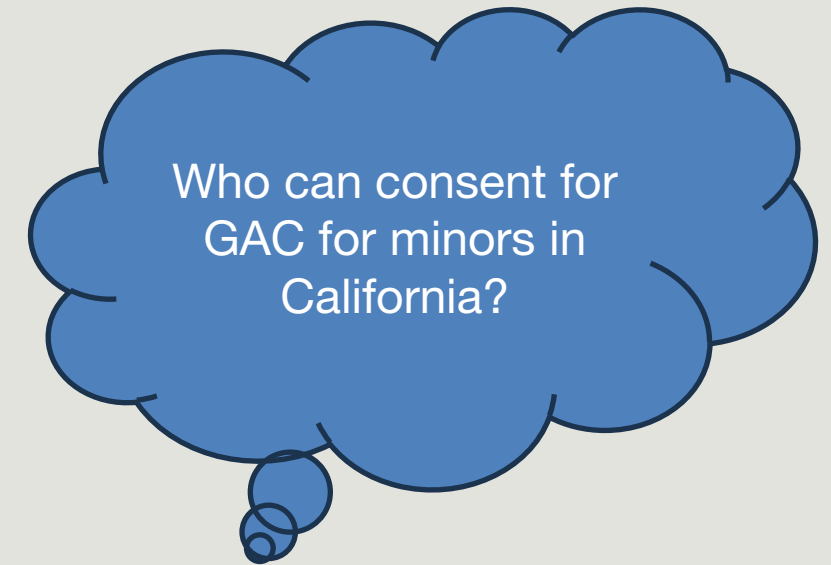
### QUESTION PRESENTED

Whether Tennessee Senate Bill 1 (SB1), which prohibits all medical treatments intended to allow “a minor to identify with, or live as, a purported identity inconsistent with the minor’s sex” or to treat “purported discomfort or distress from a discordance between the minor’s sex and asserted identity,” Tenn. Code Ann. § 68-33-103(a)(1), violates the Equal Protection Clause of the Fourteenth Amendment.

# GAC for Minors in California

## **SB 107 (2022) – Shield Law**

- Prohibits law enforcement participation and the arrest or extradition of an individual for allowing a person to receive or provide gender-affirming care when that care is legal under California and federal law.
- Declares arrest warrants for individuals who allowed their child to receive gender affirming health care the lowest law enforcement priority.
- Bans the enforcement of another state’s law authorizing a state agency to remove a child from their parent or guardian because they allowed their child to receive gender-affirming care.
- Bars compliance with subpoenas seeking medical information related to gender-affirming care that interferes with a person’s right to allow a child to receive that care.



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Questions?



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**Thank you**

