S T A T E O F T E N N E S S E E
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Opinion No. 03-087

Medical treatment of certain prisoners in county facilities

QUESTION

In the event of a bioterrorism attack, who is authorized to provide consent for the vaccination and/or treatment of juveniles, the mentally ill, and federal detainees in the county jail?

OPINION

Counties have a duty to provide medical care for all prisoners confined in their facilities including juveniles, the mentally ill and developmentally disabled, and federal detainees. Competent adults may consent or withhold consent to medical treatment. A court appointed conservator may be sought to authorize medical treatment for an incompetent adult. Certain mature minors may consent to medical treatment, and medical treatment may be provided to minors in the absence of consent in certain emergency circumstances. In all other circumstances, consent must be sought from the minor's legal custodian, parents or guardian.

ANALYSIS

Counties have an obligation to provide medical care for all prisoners confined in their facilities. Tenn. Code Ann. §41-4-115(a); *Estelle v. Gamble*, 429 U.S. 97, 104-05, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976); *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 103 S.Ct. 2979, 2983, 77 L.Ed.2d 605, 611 (1983). There is no restriction on the duty to provide medical care based on prisoners' age, mental condition, or legal status.

As a general rule, competent adults may refuse medical treatment. *Northern v. State of Tennessee, Dept. of Human Services*, 575 S.W.2d 946 (Tenn. 1978); *San Juan-Torregosa v. Garcia*, 80 S.W.3d 539 (Tenn. App. 2002). Tenn. Code Ann. §§ 34-3-101, *et seq.*, embodies the statutory scheme developed by the General Assembly for obtaining consent to medical care for disabled adults. A conservator can be appointed for a disabled adult, and such conservator can be vested with the right to give or refuse consent to medical treatment. Tenn. Code Ann. §34-3-104(8).

Minors have the capacity to consent to medical treatment without their parents' approval if they are able to fully understand and appreciate the risks and probable consequences of their conduct. Minors between the ages of seven and fourteen are presumed to lack capacity. Minors between the ages of fourteen and eighteen are presumed to have capacity to consent but these presumptions can be rebutted. A minor's competency depends on his age, ability, experience,

education, training, degree of maturity or judgment as well as upon the minor's conduct and demeanor at the time consent is requested. *Cardwell v. Bechtol*, 724 S.W.2d 739 (Tenn. 1987). In addition, any licensed physician may perform emergency medical or surgical treatment on a minor despite the absence of parental consent or court order under certain circumstances. Tenn. Code Ann. §63-6-222. If a minor lacks capacity, consent must be sought from his legal custodian under Tenn. Code Ann. §37-1-140[1] or, if there is no legal custodian, his parents or guardian.

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[1]Tenn. Code Ann. §37-1-140 provides: "A custodian to whom legal custody has been given by the court under this part has the right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian."