

**Introduced by Senator Melendez**

August 18, 2021

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Senate Concurrent Resolution No. 59—Relative to medical interventions.

LEGISLATIVE COUNSEL’S DIGEST

SCR 59, as introduced, Melendez. Medical interventions: voluntary and informed consent.

This measure would urge the Legislature and the Governor to take actions to protect Californians’ right to make their own health and medical decisions, among other related actions. The measure would urge the Legislature to amend existing law, as specified, in order to require the voluntary and informed consent of an individual or their guardian, and to authorize the consent’s withdrawal without prejudice, for any preventive, diagnostic, or therapeutic medical intervention taken by the State Department of Public Health to ascertain the nature of a contagious, infectious, or communicable disease and to prevent its spread.

Fiscal committee: yes.

- 1 WHEREAS, In a free society, the integrity of personal liberty
- 2 is firmly recognized and protected, even during times of exigency
- 3 or emergency, such as the ongoing COVID-19 pandemic; and
- 4 WHEREAS, The California Constitution declares, “All people
- 5 are by nature free and independent and have inalienable rights.
- 6 Among these are enjoying and defending life and liberty, acquiring,
- 7 possessing, and protecting property, and pursuing and obtaining
- 8 safety, happiness, and privacy”; and

1 WHEREAS, The Universal Declaration on Bioethics and Human  
2 Rights, adopted by the United Nations Educational, Scientific and  
3 Cultural Organization (UNESCO), states, “Any preventive,  
4 diagnostic and therapeutic medical intervention is only to be carried  
5 out with the prior, free and informed consent of the person  
6 concerned, based on adequate information. The consent should,  
7 where appropriate, be express and may be withdrawn by the person  
8 concerned at any time and for any reason without disadvantage or  
9 prejudice”; and

10 WHEREAS, The United States Supreme Court reminds us that  
11 “[n]o right is held more sacred, or is more carefully guarded, by  
12 the common law, than the right of every individual to the  
13 possession and control of his own person, free from all restraint  
14 or interference of others, unless by clear and unquestionable  
15 authority of law”, and that courts have held that a competent  
16 person’s right to refuse unwanted medical treatment is both a  
17 constitutional and a common law right; and

18 WHEREAS, The Ninth Amendment to the United States  
19 Constitution clarifies and memorializes, “The enumeration in the  
20 Constitution, of certain rights, shall not be construed to deny or  
21 disparage others retained by the people”; and

22 WHEREAS, The Fourteenth Amendment to the United States  
23 Constitution protects United States citizens, as “[n]o State shall  
24 make or enforce any law which shall abridge the privileges or  
25 immunities of citizens of the United States; nor shall any State  
26 deprive any person of life, liberty, or property, without due process  
27 of law; nor deny to any person within its jurisdiction the equal  
28 protection of the laws”; and

29 WHEREAS, The United States Supreme Court has reminded  
30 us that “[t]he Constitution was adopted in a period of grave  
31 emergency. Its grants of power to the federal government and its  
32 limitations of the power of the States were determined in the light  
33 of emergency, and they are not altered by emergency”; and

34 WHEREAS, The critical events of the year 2020 have resulted  
35 in the Legislature and citizens becoming concerned about  
36 California laws and emergency orders that could infringe upon the  
37 state constitutional and inalienable rights of Californians to enjoy  
38 and defend their life and liberty, to acquire, possess, and protect  
39 property, and to pursue and obtain their own safety, happiness,  
40 and privacy, and could infringe upon international human rights

1 principles that recognize the inherent dignity and the equal and  
2 inalienable rights of all members of the human family, requiring  
3 that those rights be protected by the rule of law; and

4 WHEREAS, The Legislature finds that existing state law,  
5 Section 120140 of the Health and Safety Code, could infringe upon  
6 the right to consent or not consent and allows the government to  
7 take possession or control of the body of any living person; and

8 WHEREAS, The Legislature finds that support for, and  
9 promotion of, medical, immunity, or vaccine passports, or other  
10 document requirements imposed by governments, businesses, or  
11 other entities, could lead to people sharing their private medical  
12 information unwillingly in order to participate in everyday life,  
13 commerce, education, employment, entertainment, gatherings, or  
14 travel; and

15 WHEREAS, Experts from the federal government and private  
16 industry were leveraged to develop vaccines quickly, and those  
17 vaccines have been made widely available for those who choose  
18 to use them; and

19 WHEREAS, The Legislature finds that the inflexible  
20 implementation of “one-size-fits-all” medical requirements places  
21 a disproportionate and unequal risk burden on those individuals  
22 who are genetically, otherwise biologically, or environmentally at  
23 higher risk for suffering harm from medical interventions; and

24 WHEREAS, Parental choice and involvement are key for  
25 Californians to make the best and most informed decision to help  
26 families, communities, and the state to be their very best; now,  
27 therefore, be it

28 *Resolved by the Senate of the State of California, the Assembly*  
29 *thereof concurring*, That the Legislature and the Governor are  
30 urged to take actions to protect Californians’ right to make their  
31 own health and medical decisions, and to take additional actions  
32 that reflect the principle that all people are by nature free and  
33 independent and have inalienable rights, that citizens should always  
34 be given the opportunity to decide to consent, or not to consent,  
35 to medical treatments or other interventions without any element  
36 of force, fraud, deceit, duress, coercion, undue influence, or  
37 disadvantage; and be it further

38 *Resolved*, That the Legislature is urged to amend Section 120140  
39 of the Health and Safety Code, through future legislation, by adding  
40 to the section’s existing language the following new subdivision:

1 “(b) Any preventive, diagnostic, or therapeutic medical  
2 intervention taken by the department to ascertain the nature of the  
3 disease and to prevent its spread shall be carried out with the  
4 voluntary and informed consent of an individual or their guardian.  
5 The consent shall, where appropriate, be express, and may be  
6 withdrawn by the individual or their guardian for any reason  
7 without prejudice”; and be it further  
8 *Resolved*, That the Secretary of the Senate transmit copies of  
9 this resolution to the author for appropriate distribution.

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