

AMENDED IN ASSEMBLY MAY 15, 2002

AMENDED IN ASSEMBLY MAY 2, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2328

**Introduced by Assembly Member Wayne
(Principal coauthor: Assembly Member Aroner)**

February 21, 2002

An act to amend Section 24178 of the Health and Safety Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2328, as amended, Wayne. Medical experiments.

Existing law, the Protection of Human Subjects in Medical Experimentation Act, prohibits any person from being subjected to any medical experiment unless the informed consent of the person is obtained.

This bill would authorize certain persons to give surrogate informed consent for a person to be subjected to a medical experiment when conducted within an institution that holds an assurance with the United States Department of Health and Human Services in accordance with specified regulations, if that person is unable to give that consent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 24178 of the Health and Safety Code is
2 amended to read:

3 24178. (a) Except for this section and the requirements set
4 forth in Sections 24172 and 24176, this chapter shall not apply to
5 any person who is conducting a medical experiment as an
6 investigator within an institution that holds an assurance with the
7 United States Department of Health and Human Services pursuant
8 to Part 46 of Title 45 of the Code of Federal Regulations and who
9 obtains informed consent in the method and manner required by
10 those regulations.

11 (b) For purposes of obtaining informed consent required for
12 medical experiments pursuant to subdivision (a), if a person is
13 unable to consent and does not express dissent or resistance to
14 participation, surrogate informed consent may be obtained from a
15 surrogate decisionmaker, who shall include any of the following
16 persons, in the following descending order of priority:

17 (1) The person's agent pursuant to an advance health care
18 directive.

19 (2) The conservator or guardian *of the person* having the
20 authority to make health care decisions for the person.

21 (3) The spouse of the person.

22 (4) The domestic partner of the person.

23 (5) An adult son or daughter of the person.

24 (6) A custodial parent of the person.

25 (7) Any adult brother or sister of the person.

26 (8) Any adult grandchild of the person.

27 (9) The *geographically* closest available adult relative of the
28 person.

29 (c) *Where there are two or more available persons who,*
30 *pursuant to subdivision (b), may give surrogate informed consent*
31 *and who are in the same order of priority, if any of those persons*
32 *expresses dissent as to the participation of the person in the*
33 *medical experiment, consent shall not be considered as having*
34 *been given.*

35 (d) Subdivision (b) does not apply to any of the following
36 persons, except as otherwise provided by law:

37 (1) Persons who lack the capacity to give informed consent and
38 who are involuntarily committed pursuant to Part 1 (commencing



1 with Section 5000) of Division 5 of the Welfare and Institutions
2 Code.

3 (2) Persons who lack the capacity to give informed consent and
4 who have been voluntarily admitted or have been admitted upon
5 the request of a conservator pursuant to Chapter 1 (commencing
6 with Section 6000) of Part 1 of Division 6 of the Welfare and
7 Institutions Code.

O

