

Date of Hearing: April 22, 2025

Fiscal: Yes

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 45 (Bauer-Kahan) – As Amended April 9, 2025

SUBJECT: Privacy: health data: location and research

SYNOPSIS

In 2022, the Supreme Court ruling in Dobbs v. Jackson Women’s Health overturned a decades-old precedent protecting the fundamental right to abortion. Since then, many states have enacted strict restrictions or outright bans on abortion, threatening both patients and providers of critical reproductive care. Similarly, numerous states have imposed punitive restrictions on gender-affirming care.

Despite these challenges, California remains a leader in protecting reproductive freedom and transgender rights. However, these protections face potential legal threats from other states. For instance, the Texas Heartbeat Act allows private citizens to file civil lawsuits against anyone who aids or performs an abortion for a Texas resident. This framework could exploit gaps in California’s privacy laws, undermining its status as an abortion safe haven.

One such vulnerability is geofencing, a surveillance technique that creates virtual boundaries to track individuals entering or exiting specific locations. If used around healthcare facilities providing abortions or gender-affirming care, geofencing could enable enforcement of restrictive laws from other states. Additionally, current safeguards for personally identifiable research records are inadequate against out-of-state subpoenas, potentially weaponizing critical research on reproductive and gender-affirming care against the very patients it aims to help.

To address these issues, this bill, sponsored by University of California Office of the President, would prohibit geofencing near healthcare facilities and expand protections for personally identifiable data collected within them, covering both patients and visitors. Secondly, this bill would strengthen research privacy protections by preventing the release of personally identifiable information if the subpoena is issued under a law that conflicts with California’s legal standards. This bill is supported by American College of Obstetricians and Gynecologists District IX, the California Hospital Association, and Secure Justice.

THIS BILL:

1) Defines the following terms:

- a. “Collect,” “collected,” or “collection” to mean the buying, renting, gathering, obtaining, receiving, or accessing any personal information pertaining to a natural person by any means. This includes receiving information from the natural person, either actively or passively, or by observing the natural person’s behavior.
- b. “Family planning center” means a facility categorized as a family planning center by the North American Industry Classification System adopted by the United States

- Census Bureau, including, but not limited to, a clinic or center that provides reproductive health care services.
- c. “Geofence” to mean any technology that enables spatial or location detection to establish a virtual boundary around, and detect an individual’s presence within, a “precise geolocation”
 - d. “Health care services” to mean any service provided to a natural person of a medical, surgical, psychiatric, therapeutic, diagnostic, mental health, behavioral health, preventative, rehabilitative, supportive, consultative, referral, or prescribing nature.
 - e. “Person” to mean to a natural person, association, proprietorship, corporation, trust, foundation, partnership, or any other organization or group of people acting in concert.
 - f. “Research” to mean the systematic investigation, including research development, testing, and evaluation, that has as its primary purpose the development of, or contribution to, generalizable knowledge.
 - g. “Sell,” “selling,” “sale,” or “sold” to mean the selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a natural person’s personal information by another person to a third party for monetary or other valuable consideration.
 - h. “Share,” “shared,” or “sharing” to mean the sharing, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a natural person’s personal information by another person to a third party, whether or not for monetary or other valuable consideration.
- 2) Prohibits a person from collecting, using, disclosing, selling, sharing, or retaining the personal information of a natural person who is physically located at, or within a precise geolocation of, a family planning center, except as specified below:
- a. It is permissible to collect or use the personal information of a natural person who is physically located at, or within a precise geolocation of, a family planning center, but only as necessary to perform the services or provide the goods requested by the natural person.
- 3) Establishes that an aggrieved person or entity, including a family planning center, may institute and prosecute a civil action against any person who violates this bill for injunctive and monetary relief and attorney’s fees within three years of discovery of the violation.
- 4) Prohibits a person from geofencing an entity that provides in-person health care services in California for any of the following purposes:
- a. To identify or track a person seeking, receiving, or providing health care services.
 - b. To collect personal information from a person seeking, receiving, or providing health care services.

- c. To send notifications to a person related to their personal information or health care services.
 - d. To send advertisements to a person related to the person's personal information or health care services.
- 5) Prohibits the selling of personal information to, or sharing of personal information with, a third party for the use of such information for the purposes above.
- 6) Establishes that any person that violates this section shall be subject to an injunction and liable for a civil penalty of twenty-five thousand dollars (\$25,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General. The court may consider the good faith cooperation of the entity or person in determining the amount of the civil penalty.
- 7) Establishes that any civil penalty recovered by an action brought by the Attorney General for a violation of this section, and the proceeds of any settlement of any said action, shall be deposited in the California Reproductive Justice and Freedom Fund established pursuant to Section 140 of the Health and Safety Code.
- 8) Permits any person that owns, operates, manages, or otherwise provides services to an in-person health care entity to geofence the entity's own location to provide necessary health care services, including the use of location-based alarm devices to monitor newborns and memory-impaired individuals.
- 9) Permits any person that provides reproductive health care services to utilize geofencing for the purpose of providing security services to protect patients.
- 10) Prohibits research records, in a personally identifying form, developed or acquired by a person in the course of conducting research relating to anyone seeking or obtaining health care services, or relating to personal information, from being released in response to a subpoena or request if that subpoena or request is based on another state's laws that interfere with a person's rights under the Reproductive Privacy Act.
- 11) Prohibits research records, in a personally identifying form, developed or acquired by a person in the course of conducting research relating to anyone seeking or obtaining health care services, or relating to personal information, from being released to law enforcement for either of the following purposes, unless that release is pursuant to a subpoena not otherwise prohibited:
 - a. Enforcement of another state's law that interferes with a person's rights under the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).
 - b. Enforcement of a foreign penal civil action, as defined in Section 2029.200 of the Code of Civil Procedure.

EXISTING LAW:

- 1) Provides the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, from being violated, and prohibits warrants from being issued, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (US. Const., Amend. IV).
- 2) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1.)
- 3) Provides that the state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. (Cal. Const., art. I, § 1.1.)
- 4) Establishes under federal law, the Health Information Portability and Accountability Act of 1996 (HIPAA), which sets standards for the privacy of individually identifiable health information and security standards for the protection of electronic protected health information, including, through regulations, that a HIPAA-covered entity may not condition the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except under specified circumstances. Provides that if HIPAA's provisions conflict with state law, the provision that is most protective of patient privacy prevails. (42 U.S.C. § 1320d, et seq.; 45 Code Fed. Regs. Part 164.)
- 5) Prohibits a health facility to deny staff privileges to, remove from medical staff, or restrict the staff privileges of a person licensed by a healing arts board in this state on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state if that judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive sensitive services that would be lawful if provided in this state. (BPC § 805.9(a).)
- 6) Establishes that a licensed physician in Arizona may register and may practice medicine in California through November 30, 2024, solely for the purpose of providing abortions, as defined in Section 123464 of the Health and Safety Code, and abortion-related care to patients who are Arizona residents traveling from Arizona seeking abortions or abortion-related care in California. (BPC § 2076.6(a).)
- 7) Prohibits, under the state Confidentiality of Medical Information Act (CMIA), a health care provider, a health care service plan, a contractor, a corporation and its subsidiaries and affiliates, or any business that offers software or hardware to consumers, including a mobile application or other related device, as defined, from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. States that a violation of these provisions that results in economic loss or personal injury to a patient is a crime. (Civ. Code § 56, et. seq.)
- 8) Defines, for purposes of the CMIA, medical information to mean any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor

regarding a patient’s medical history, mental health application information, reproductive or sexual health application information, mental or physical condition, or treatment. (Civ. Code § 56.05(j).)

- 9) Defines “sensitive services” to mean all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence. (Civ. Code § 56.05(p).)
- 10) Prohibits health care providers, health care service plans, or contractors, as defined, from sharing medical information without the patient’s written authorization, subject to certain exceptions. (Civ. Code § 56.10(a).)
- 11) Deems any business organized for the purpose of maintaining medical information in order to make the information available to an individual or to a provider of health care at the request of the individual or the provider of health care, for purposes of allowing the individual to manage their information, or for the diagnosis and treatment of the individual, to be a health care provider subject to the requirements of the CMIA. (Civ. Code § 56.06(a).)
- 12) Deems any business that offers software or hardware to consumers, including a mobile application or other related device that is designed to maintain medical information in order to make the information available to an individual or a provider of health care at the request of the individual or a provider of health care, for purposes of allowing the individual to manage their information, or for the diagnosis, treatment, or management of a medical condition of the individual, to be deemed to be a health care provider subject to the requirements of the CMIA. (Civ. Code § 56.06(b).)
- 13) Require that a provider of health care, health care service plan, pharmaceutical company, contractor, or employer shall not knowingly disclose, transmit, transfer, share, or grant access to medical information in an electronic health records system or through a health information exchange that would identify an individual and that is related to an individual seeking, obtaining, providing, supporting, or aiding in the performance of an abortion that is lawful under the laws of this state to any individual or entity from another state, unless the disclosure, transmittal, transfer, sharing, or granting of access is lawfully authorized in accordance with California Law. (Civ. Code § 56.110(a).)
- 14) Defines “precise geolocation” to mean any data that is derived from a device and that is used or intended to be used to locate a consumer within a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet, except as prescribed by regulations. (Civ. Code § 1798.140.(w).)
- 15) Establishes the Reproductive Privacy Act, which provides that the Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care. Accordingly, it is the public policy of the State of California that:
 - a) Every individual has the fundamental right to choose or refuse birth control;

- b) Every individual has the fundamental right to choose to bear a child or to choose to obtain an abortion, with specified limited exceptions; and,
 - c) The state shall not deny or interfere with a person's fundamental right to choose to bear a child or to choose to obtain an abortion, except as specifically permitted. (Hlth & Saf. Code § 123462.)
- 16) Provides that the state may not deny or interfere with a person's right to choose or obtain an abortion prior to viability of the fetus or when the abortion is necessary to protect the life or health of the person. (Hlth & Saf. Code § 123466(a).)
- 17) Prohibits a person from being compelled in a state, county, city, or other local criminal, administrative, legislative, or other proceeding to identify or provide information that would identify or that is related to an individual who has sought or obtained an abortion if the information is being requested based on either another state's laws that interfere with a person's rights under subdivision (a) or a foreign penal civil action. (Hlth & Saf. Code § 123466(b).)
- 18) Prohibits an insurer from refusing to issue or renew, nor shall terminate, professional liability insurance for a health care provider in this state, solely based on any prohibited bases for discrimination including:
- a) A health care provider offers or performs abortion, contraception, gender-affirming health care, or care related to those health care services, that are lawful in this state, including, but not limited to, those that may be unlawful in another state.
 - b) Another state's laws create potential or actual liability for abortion, contraception, gender-affirming health care, or care related to those health care services offered or performed in this state.
 - c) Legal or administrative action taken in another state against a health care provider concerning abortion, contraception, gender-affirming health care, or care related to those health care services, results or resulted in a judgment, conviction, or disciplinary action against the provider, if those health care services, as provided, are or would be lawful and consistent with the applicable standard of care in this state. (Ins. Code § 11589.1.)

COMMENTS:

1) **Author's statement.** According to the author:

In our current political climate where reproductive freedoms are constantly under threat, personal data privacy has become a key mechanism for defending access to health care. We have all seen the unabashed threat posed by the federal administration regarding reproductive healthcare and the ever-evolving ways used to prosecute individuals accessing these basic rights. In the last few months, it has also become clear the ways in which research projects and data are under threat and can be weaponized against researchers and participants. While federal regulations cover most health care data privacy issues, there are gaps in coverage when it comes to personal information collected through research and geolocation data. AB 45 closes these gaps and protects research records from disclosure in response to a subpoena

or other law enforcement request based on other states' laws interfering with abortion rights and prohibits geofencing an entity that provides in-person health care services.

2) Post-*Dobbs* access to reproductive healthcare is being restricted across the nation. *Roe v. Wade* (1973) 410 U.S. 113 was the landmark U.S. Supreme Court decision that held the implied constitutional right to privacy extended to a person's decision to terminate a pregnancy, while allowing that some state regulation of abortion access could be permissible. *Roe* has been one of the most debated of all U.S. Supreme Court decisions, and its application and validity have been challenged numerous times, but its fundamental holding had continuously been upheld by the Court until June 2022. On June 24, 2022 the Court published its official opinion in *Dobbs* and voted 6-3 to overturn the holding in *Roe*.¹

The case involved a Mississippi law enacted in 2018 that banned most abortions after the first 15 weeks of pregnancy, which is before what is generally accepted as the period of viability. (See Miss. Code Ann. § 41-41-191.) The majority opinion in *Dobbs* upholds the Mississippi law, finding that, contrary to almost 50 years of precedent, there is no fundamental constitutional right to have an abortion. The opinion further provides that states should be allowed to decide how to regulate abortion and that a strong presumption of validity should be afforded to those state laws.

The *Roe* decision was the foundation for allowing people the ability to control their reproductive lives because it established a federal constitutional right for anyone who could become pregnant in the United States to decide when, and if, to have children and prevented criminalization of the acts of having an abortion or providing an abortion. Prior to *Roe*, legal abortion did exist in some states, but the choices available to those seeking to terminate an unwanted pregnancy were limited. Restrictions disproportionately affected those who were younger, lower income, and members of communities of color. In the wake of the *Dobbs* decision, 12 states have initiated near total abortion bans in effect and 6 other states have gestational limits in the first trimester.²

With the announcement of the *Dobbs* decision, a number of states moved quickly to restrict abortions and punish those who are suspected of helping people obtain them. Oklahoma, for example, passed the nation's strictest abortion ban in order to immediately end the ability of people in the state to obtain the procedure. The ban allows an abortion in the case of rape or incest, if the pregnant person reports the crime to law enforcement. In addition, the ban authorizes doctors to remove a "dead unborn child caused by spontaneous abortion," or miscarriage, or to remove an ectopic pregnancy, a potentially life-threatening emergency that occurs when a fertilized egg implants outside the uterus, often in a fallopian tube and early in pregnancy. A second Oklahoma bill went into effect in August 2022, which made performing an abortion a felony, with a punishment of up to 10 years in prison and a fine of up to \$100,000.³

Most recently, Florida reduced its 15 week abortion ban to six weeks. In response, former White House press secretary Karine Jean-Pierre noted:

This ban would prevent four million Florida women of reproductive age from accessing abortion care after six weeks — before many women even know they're pregnant. This ban

¹ *Dobbs v. Jackson Women's Health* (2022) 597 U.S. __ (142 S.Ct. 2228), accessed at https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf)

² KFF, "Abortion in the United States Dashboard" (December 20, 2024), accessed at

³ Associated Press, "Oklahoma governor signs the nation's strictest abortion ban", *NPR*, (May 26, 2022), accessed at <https://www.npr.org/2022/05/26/1101428347/oklahoma-governor-signs-the-nations-strictest-abortion-ban>

would also impact the nearly 15 million women of reproductive age who live in abortion-banning states throughout the South, many of whom have previously relied on travel to Florida as an option to access care.⁴

Along with the ban, the Florida legislation includes a particularly cruel provision requiring victims of incest or rape to provide written documentation of the crime in order to obtain an abortion between six and 15 weeks.⁵

Not to be outdone, along with an existing ban on abortions after six weeks, the Governor of Idaho signed a bill into law that makes it illegal for an adult to help a minor get an abortion without parental consent. This law is the first of its kind in the nation, creating the new crime of “abortion trafficking” by barring adults from obtaining abortion pills for a minor or “recruiting, harboring or transporting the pregnant minor” without parental consent. Anyone convicted faces two to five years in prison and can be sued by the minor’s parent. However, parents who rape their child will not be able to sue, but the abortion trafficking criminal penalties will still apply. According to a 2023 Associated Press article, in order to sidestep violating a constitutional right to travel between states, the law makes illegal only the in-state portion of the trip to an out-of-state abortion provider.⁶

3) **California is a reproductive freedom state.** The California Supreme Court held in 1969 that the state constitution’s implied right to privacy extends to an individual’s decision about whether or not to have an abortion.⁷ This was the first time an individual’s right to abortion was upheld in a court and came before the *Roe* decision. In 1972, the California voters passed a constitutional amendment that explicitly provided for the right to privacy in the state constitution.⁸ California statutory law provides, under the Reproductive Privacy Act, that the Legislature finds and declares every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, which entails the right to make and effectuate decisions about all matters relating to pregnancy; therefore, it is the public policy of the State of California that every individual has the fundamental right to choose or refuse birth control, and every individual has the fundamental right to choose to bear a child or to choose to obtain an abortion. (Hlth & Saf. Code § 123462.) In 2019, Governor Newsom issued a proclamation reaffirming California’s commitment to making reproductive freedom a fundamental right in response to the numerous attacks on reproductive rights across the nation.⁹

In September 2021, over 40 organizations came together to form the California Future Abortion Council (CA FAB) to identify barriers to accessing abortion services and to recommend policy proposals to support equitable and affordable access for not only Californians, but all who seek

⁴ Anthony Izaguirre, “DeSantis signs Florida GOP’s 6-week abortion ban into law”, *Associated Press* (Apr. 14, 2023), accessed at <https://apnews.com/article/florida-abortion-ban-approved-c9c53311a0b2426adc4b8d0b463edad1>.

⁵ Associated Press, “Florida has a new abortion ban after 6 weeks, but it can’t go into effect yet”, *NPR*, (April 14, 2023) accessed at <https://www.npr.org/2023/04/14/1169933395/florida-gov-desantis-signs-6-week-abortion-ban-bill>.)

⁶ Associated Press, “Idaho governor signs law banning adults from helping minors get abortions”, *The Guardian* (April 6, 2023), accessed at <https://www.theguardian.com/us-news/2023/apr/06/idaho-abortion-trafficking-law-governor>

⁷ *People v. Belous* (1969) 71 Cal. 2d 954.)

⁸ Prop. 11, Nov. 7, 1972 gen. elec.

⁹ California Proclamation on Reproductive Freedom (May 31, 2019), accessed at <https://www.gov.ca.gov/wp-content/uploads/2019/05/Proclamation-on-Reproductive-Freedom.pdf>.)

care in this state. CA FAB issued its first report in December 2021, which included 45 policy recommendations to protect, strengthen, and expand abortion access in California.¹⁰

In response to the *Dobbs* decision and the CA FAB report, California enacted a comprehensive package of legislation, described below, that protects the rights of patients seeking abortion in the state and those supporting them. Additionally, the voters overwhelmingly approved Proposition 1, and enacted an express constitutional right in the state constitution that prohibits the state from interfering with an individual's reproductive freedom in their most intimate decisions.¹¹

In the last session, several bills were enacted to further protect reproductive rights in California, among them:

1. AB 254 (Bauer-Kahan; Stats 2023, Ch. 254) protects reproductive and sexual health digital data included in personal health tracking applications.
2. AB 352 (Bauer-Kahan; Stats. 2023, Ch. 255) enhances privacy protections for electronic medical records related to abortion, gender affirming care, pregnancy loss, and other sensitive services, closing a major loophole in privacy protections for people traveling to California for abortion and gender affirming care.
3. AB 571 (Petrie-Norris; Stats. 2023, Ch. 256) prohibits an insurer from refusing to provide malpractice insurance to a provider on the basis of them offering abortion, contraception, or gender affirming care that is lawful in California but unlawful in another state.
4. AB 1707 (Pacheco; Stats. 2023, Ch. 258) protects health care providers and facilities in California from state licensing actions against them based on the enforcement of hostile laws that restrict abortion and gender affirming care in another state.
5. SB 345 (Skinner; Stats. 2023, Ch. 260) improves protections for providers against the enforcement of other states' laws that criminalize or limit reproductive and gender affirming health care services.
7. AB 2085 (Bauer-Kahan; Stats. 2024, Ch. 82) simplifies the permitting process for establishing reproductive health clinics in commercially or medically zoned areas. By requiring ministerial approval, it removes unnecessary delays, facilitating the development of clinics in underserved regions.
8. SB 233 (Skinner; Stats. 2024, Ch. 11) allows Arizona-based abortion providers to obtain temporary licenses to practice in California, thereby expanding access to abortion services.

4) **Interstate attacks on healthcare access.** As detailed elsewhere in the analysis, many states have enacted reproductive healthcare prohibitions. For example, Texas' SB 8, also known as the Texas Heartbeat Act, makes it illegal to obtain an abortion in Texas once fetal cardiac activity can be detected. Importantly, this law introduces a private right of action, allowing any citizen to

¹⁰ California Future of Abortion Council, *Recommendations to Protect, Strengthen, and Expand Abortion Care in California* (Dec. 2021), available at https://www.cafabcouncil.org/files/ugd/ddc900_0beac0c75cb54445a230168863566b55.pdf.

¹¹ Nov. 8, 2022 gen. elec.

sue someone who performs or assists with an abortion. If the lawsuit is successful, the plaintiff may be awarded a civil penalty of at least \$10,000, effectively incentivizing vigilante enforcement of reproductive healthcare restrictions.¹²

Similarly, 27 states have enacted laws that restrict youth access to gender affirming care.¹³ These laws serve as a basis to punitively target and intimidate patients and healthcare providers, which, regardless of if they are accessing or providing reproductive or gender affirming care, could have a chilling effect on all patients and healthcare providers.

This threat is not theoretical. A New York-based doctor was recently indicted by a grand jury in Louisiana for mailing abortion medication to a pregnant teenager in that state.¹⁴ The same doctor is also facing criminal charges in Texas for sending abortion medication to a pregnant woman. The Louisiana case is particularly notable, as state officials are seeking to extradite the doctor from New York for prosecution. However, New York, like California, has enacted shield laws that prohibit cooperation with out-of-state legal actions that violate their own state's laws. These laws mean that New York will not cooperate with requests from either Texas or Louisiana. Governor Kathy Hochul has stated firmly that she will not approve the doctor's extradition.¹⁵ Nonetheless, the fact that such cross-state litigation is occurring highlights the very real and harmful consequences for those seeking or providing essential medical care.

5) Geofencing. Geofencing is the practice of creating a virtual perimeter around a specific geographic area. These perimeters can range in size from entire states to a single business or building.¹⁶ Geofencing works by tracking the IP addresses of devices that enter the defined location. Data brokers can purchase this information and combine it with other consumer data to identify individuals and package the information for various uses. Some businesses use geofencing data to determine which consumers are near their locations, allowing them to send targeted coupons or advertisements to encourage in-store visits. On a more granular level, businesses can analyze movement patterns within a store to determine where customers spend the most time and tailor advertisements or store layouts accordingly.

In a healthcare setting, geofencing is often used to enhance patient safety. Some healthcare facilities use it to monitor who enters and exits, helping to prevent individuals with a history of violence from reentering the premises. Geofencing can also be employed to track patients with neurodegenerative conditions, such as Alzheimer's disease, to ensure they remain within the facility and receive appropriate care.¹⁷ Additionally, hospitals may use geofencing to ensure that infants are transported only by authorized personnel, helping to prevent mismatches or

¹² Texas State Law Library, "What does Senate Bill 8 say about abortions?", (May 16, 2024), accessed at <https://www.sll.texas.gov/faqs/abortion-senate-bill-8/>.

¹³ Human Rights Campaign, "Map: Attacks on Gender Affirming Care by State", (Dec. 4, 2024), accessed at <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>.

¹⁴ Pam Belluck, Benjamin Oreskes, and Emily Cochrane, "Abortion Provider Won't Be Extradited to Louisiana, N.Y. Governor Says", *The New York Times* (Feb. 13, 2025), accessed at <https://www.nytimes.com/2025/02/13/nyregion/abortion-extradition-louisiana-doctor.html>.

¹⁵ *Ibid.*

¹⁶ Rahul Awati, "geofencing", *TechTarget* (December 2022), accessed at <https://www.techtarget.com/whatis/definition/geofencing>.

¹⁷ Securitas Healthcare, "Location Tracking for Alzheimer's and Dementia Residents", (Feb. 17, 2022), accessed at <https://www.securitashealthcare.com/blog/location-tracking-alzheimers-and-dementia-residents>.

abductions.¹⁸ While these applications offer clear benefits, they also raise concerns. The vast amount of data collected and the relative ease with which it can be accessed push this technology toward a more dystopian territory, especially when considering issues of privacy and surveillance.

This becomes particularly concerning when considering the use of geofencing warrants.¹⁹ These warrants are issued to tech companies that collect location data and are used after a crime has occurred to access information about every individual who was in the vicinity at the time. While this method can aid in identifying suspects, it also risks implicating innocent bystanders who happened to be nearby. The practice raises serious legal questions about balancing individual privacy rights with law enforcement interests.

Traditionally, law enforcement must demonstrate probable cause and obtain a warrant to investigate a specific suspect. Geofencing warrants, however, often function as broad, sweeping data requests that bypass those individualized requirements. Recently, the Fourth and Fifth Circuit Courts issued conflicting rulings on the constitutionality of geofencing warrants. In both cases, the warrants led to the identification of suspects who were later convicted of robbery. The Fourth Circuit upheld the use of geofencing warrants,²⁰ while the Fifth Circuit ruled against that using them was unconstitutional.²¹ These opposing decisions highlight the ongoing uncertainty around how geofencing fits within the framework of Fourth Amendment protections.²²

Geofencing and geofencing warrants can become highly punitive when used to enforce laws like the Texas Heartbeat Act. For instance, an individual in Texas could geofence a healthcare facility in California that provides abortion services and track who enters and exits the premises. If they are able to identify a patient from Texas, this data could form the basis of a civil lawsuit under the law's private right of action provision. That suit could not only endanger the patient, but also the doctor and any individual who "aids or abets" the patient in obtaining abortion care. This kind of surveillance represents a serious threat to privacy and bodily autonomy and directly undermines California's constitutional protections to the right to privacy and the right to access abortion care.

This can become even more worrisome if extrajudicial means are used to obtain geofenced location data. Specifically, location data brokers collect billions of location data points linked to unique persistent identifiers and timestamps that could give detailed insights into people's movements. This information is then repackaged and sold to their clients, who often use it to trace the movements of individuals to and from sensitive locations. These include medical facilities, places of religious worship, places used to infer an LGBTQ+ identification, domestic abuse shelters, substance use disorder treatment facilities, and homeless shelters. Further, data collected is not anonymized, it is possible to identify the exact identity of the mobile device owner.

¹⁸Claire Swedberg, "Hybrid RTLS Solution Tracks Infants in Hospitals", *RFID Journals* (Oct. 28, 2024), accessed at <https://www.rfidjournal.com/news/hybrid-rtls-solution-tracks-infants-in-hospitals/222010/>.

¹⁹Prathi Chowdri, "Emerging Tech and Law Enforcement: What Are Geofences and How Do They Work?", *Lexipol* (Jan. 4, 2024), accessed at <https://www.lexipol.com/resources/blog/emerging-tech-and-law-enforcement-what-are-geofences-and-how-do-they-work/>.

²⁰*United States v. Chatrue*, 107 F.4th 319 (4th Cir. 2024)

²¹*United States v. Jamarr Smith*, 110 F.4th 817 (5th Cir. 2024)

²²Jackie O'Neil, "Much Ado About Geofence Warrants", *Harvard Law Review* (Feb. 18, 2025), accessed at <https://harvardlawreview.org/blog/2025/02/much-ado-about-geofence-warrants/>.

As an example of the information location data brokers are capable of providing, a customer, law enforcement or otherwise, could request individualized data on someone that is traveling to California for reproductive healthcare. They could then ask the broker to track the movements of those mobile devices over a two week period, allowing them to determine where individual the member is staying in California. The customer could then ask the broker to geofence local healthcare facilities and identify if and when the person they are tracking enters into that healthcare facility. This could then be used as the basis for legal recourse. A prohibition of the selling and sharing of location data is also pending in this committee (AB 1355, Ward).

6) **Research Privacy.** Although patient data is typically protected under HIPAA and CMIA, research data does not have the same protections. The University of California Office of the President writes in a support letter:

Many UC researchers conduct survey- and interview-based research on people about their reproductive health experiences, including research specifically evaluating the effects of new state laws enacted since the *Dobbs v. Jackson* Supreme Court decision. This data can include information about contraception, abortion care and other individual care information. For example, the UCSF Advancing New Standards in Reproductive Health research program conducted a longitudinal study, known as the Turnaway Study, which examines the effects of unwanted pregnancies on women's lives. Research assistants interviewed participants by phone over a period of 5 years, and nearly 8,000 interviews were conducted over the course of the project. The main finding of the Turnaway Study is that receiving an abortion does not harm the health and wellbeing of women, but in fact, being denied an abortion results in worse financial, health, and family outcomes. UCSF has published over 50 scientific papers in peer-reviewed journals using data from the Turnaway Study.

Generally, both state and federal laws protect against the disclosure of any medical information relating to seeking or obtaining an abortion that is collected in a clinical setting. However, when an individual discloses this information while participating in research, the same protections against disclosure do not exist. It is critically important that additional protections be in place to ensure that information shared by study participants in the context of a research study be fully protected from subpoena by out-of-state actors seeking to criminalize them for care they might have obtained that is legal in California. Without these protections, the risk to participant confidentiality might be too great, and it might not be possible to continue this kind of research.

Currently, research data is protected under Certificates of Confidentiality (CoCs) only if the research is federally funded. These certificates, issued by agencies such as the National Institutes of Health (NIH) or the Centers for Disease Control and Prevention (CDC), are designed to safeguard identifiable, sensitive information collected during research.²³ Privately funded research, however, does not automatically receive the same protections. Although such projects can apply for a CoC, approval is at the discretion of the issuing agency, a process that may be especially difficult under the current federal administration that has taken a more critical stance toward certain areas of research. Even when a CoC is granted, disclosure of protected information can still be required under specific federal, state, or local laws. As a result, the current framework for protecting research records could allow for compliance with subpoenas

²³ National Institutes of Health, "Certificates of Confidentiality", (Aug. 2, 2024), accessed at <https://grants.nih.gov/faqs#certificates-of-confidentiality.htm?anchor=55551>.

issued by other states, even when those subpoenas are based on laws that contradict California's legal protections.

7) What this bill would do. Currently, patient data is protected by the Health Insurance Portability and Accountability Act (HIPAA) and the California Medical Information Act (CMIA); however, these laws do not extend protections to information collected by entities that are not healthcare providers, nor do they cover data gathered through research. The policy goals of this bill are to establish stronger privacy protections for healthcare facilities, their patients and visitors, and the research conducted within these institutions.

First, the bill prohibits the selling, sharing, disclosure, or retention of any personal information of individuals present within a healthcare facility, except when necessary for the explicit purpose of providing care. This provision protects both patients and those aiding them, and it establishes a mechanism for legal recourse in cases where a healthcare facility improperly disseminates personal information.

Second, the bill bans the use of geofencing around medical facilities. Specifically, it prohibits the use of geofencing technologies to collect data for the purpose of identifying or tracking patients or healthcare professionals, or for sending notifications and advertisements based on that data. This serves a dual purpose: first, to prevent the use of targeted advertising aimed at discouraging individuals from seeking certain types of care, such as abortions or gender-affirming treatments, and second, to prevent geofenced data from being used as the basis for legal actions, which could be weaponized in other states to deter individuals from accessing healthcare. Importantly, the bill exempts healthcare facilities that use geofencing solely for security or patient protection purposes.

Lastly, the bill strengthens the privacy protections of personally identifiable research records collected at healthcare facilities. This would safeguard data from studies like the UCSF Turnaway Study by prohibiting the release of research records in response to subpoenas that violate California's Reproductive Privacy Act. Such a provision protects individuals from punitive legal actions by other states seeking to target those receiving healthcare in California.

ARGUMENTS IN SUPPORT: University of California Office of the President writes in support:

AB 45 provides critical privacy protections for researchers, study participants, and patients such as those involved with the Turnaway Study. The research occurring across UC campuses is vital for improving public health, supporting informed decision-making, addressing health disparities and understanding the impact of the Dobbs decision. As a top-tier research institution and a leading health care provider, UC is committed to ensuring that this critical research continues.

While federal regulations cover most health care data privacy issues, there are gaps in coverage when it comes to personal information collected through research and geolocation data. AB 45 protects research records from disclosure in response to a subpoena or other law enforcement request based on another state's laws that interfere with a person's right to obtain an abortion and prohibits geofencing an entity that provides in-person health care services. For these reasons, we urge your support on AB 45.

REGISTERED SUPPORT / OPPOSITION:

Support

University of California (Sponsor)
American College of Obstetricians & Gynecologists - District IX
California Hospital Association
Secure Justice

Opposition

None on file.

Analysis Prepared by: John Bennett / P. & C.P. / (916) 319-2200