Suicide by Physician Ban Act

Model Legislation & Policy Guide

Advancing the Human Right to Life
in Culture, Law, and Policy

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INTRODUCTION

Forty states currently prohibit "Suicide by Physician"—what Americans United for Life calls "assisted suicide," imposing criminal penalties on anyone who helps another end his or her life. However, advocates of physician-enabled suicide are aggressively seeking to overturn patient-protective laws and manufacture legalized suicide that provides little to no protection for vulnerable Americans nearing the end of life. Over the last few years, more than half of the states have considered legislative or ballot measures to legalize suicide with the aid of a doctor.

Electoral, legislative, and legal setbacks fabricated by advocates of suicide by physician include:

- ***November 1994***—Oregon becomes the first state to legalize suicide through a referendum vote.
- ***March 2009***—A Washington law authorizing the practice takes effect following a ballot measure approving suicide.
- ***December 2009***—In *Baxter v. State*, the Montana Supreme Court finds "nothing in Montana Supreme Court precedent or Montana statutes indicating that physician 'aid in dying' [*i.e.,* physician-enabled suicide] is against public policy." The court concludes physicians (and perhaps non-physicians) may use the "consent" defense against a charge of homicide when assisting a suicide.[1]
- ***May 2013***—A Vermont bill legalizing suicide is signed by the governor.
- ***June 2016***—A California law permitting suicide takes effect.
- ***November 2016***—Colorado voters approve a ballot initiative legalizing suicide.
- ***June 2017***—Implementation of a suicide law begins in the District of Columbia.
- ***January 2019***—A Hawaii law permitting suicide is enacted.
- ***August 2019***—A New Jersey law permitting suicide takes effect.
- ***September 2019***—A Maine law permitting suicide takes effect.
- ***June 2021***—A New Mexico law permitting suicide takes effect.
- ***January 2022***—Amendments to California's suicide law take effect, severely reducing informed consent safeguards for patients.
- ***March 2022***—In *Gideonse v. Brown*, Oregon officials settled a legal challenge to the residency requirement in the state suicide statute, agreeing not to enforce the provision and opening the state up for suicide tourism.[2]
- ***April 2022***—Vermont amended its suicide statute to permit telemedicine.

[1] 224 P.3d 1211, 1222 (Mont. 2009).
[2] No. 3:21-cv-1568 (D. Or. dismissed Mar. 28, 2022).

Notably, federal courts entered the debate over medicalized suicide in 1996 when two appellate courts struck down state laws in New York and Washington prohibiting suicide by physician. The U.S. Supreme Court, however, reversed those decisions in June 1997 in *Washington v. Glucksberg*, holding that assisting a suicide is not a fundamental right under the U.S. Constitution.[3] In doing so, the Court also affirmed the states' authority to legislate or regulate in this area.

Undeterred by their earlier failure to have a federal constitutional right to suicide by physician recognized by the courts, anti-life advocates have recently challenged prohibitions or limitations on suicide in at least five other states: California, Massachusetts, Minnesota, New York, and Oregon. Legal activism to contrive a state right to assisted suicide failed in New York but is ongoing in Massachusetts. Minnesota plaintiffs have argued a free speech right to promote suicide. In Vermont, assisted suicide proponents have challenged residency requirements for the state's doctor-aided suicide law. California litigants argue under disability rights legislation that the state must expand its suicide statute to include euthanasia.

Although legal challenges to fabricate a right to suicide are often unsuccessful, there have been some pro-life setbacks. For example, the Montana Supreme Court has refused to address the constitutional questions around suicide by physician but nevertheless construed that Montana public policy permits physicians to use a "consent" defense when providing "aid in dying." The court distinguished "aid in dying" (suicide advocates' preferred term for "suicide by physician") from "mercy killing" and euthanasia. In doing so, the Montana Supreme Court effectively sanctioned an individual's decision to commit suicide.[4] The court further found "aid in dying" indistinguishable from withholding or withdrawing of life-sustaining treatment,[5] contradicting the distinction long-recognized by the medical community and the courts.

Further, decisive action is needed to counter and turn back the "slippery slope" toward "aid in dying" and euthanasia that is evident internationally. Belgium extended its euthanasia statute in 2014 to permit minors to obtain euthanasia in certain circumstances. The Netherlands has protocol for killing ("euthanizing") newborn infants that parents and/or doctors think have "unbearable suffering." In 2021, Austria, Colombia, New Zealand, and Spain succumbed to legal activism that undermines end of life patient protections. Colombia now permits euthanasia for individuals without terminal illnesses. Austria and

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[3] *See Washington v. Glucksberg*, 521 U.S. 702 (1997), *rev'g Compassion in Dying v. State of Washington*, 79 F.3d 790 (9th Cir. 1996) (finding that Washington's prohibition of assisted suicide does not violate the Due Process Clause of the Fourteenth Amendment); and *Vacco v. Quill*, 521 U.S. 793 (1997), *rev'g* 80 F.3d 716 (2d Cir. 1996) (holding that the New York ban on assisted suicide does not violate the Equal Protection clause of the Fourteenth Amendment).
[4] *Baxter v. State*, 224 P.3d at 1219.
[5] *Id.* at 1218–19.

New Zealand permit suicide with the help of a doctor. Spain has constructed legal protections for both medicalized suicide and euthanasia.

Suicide and euthanasia are neither "compassionate" nor appropriate solutions for those who suffer. America's most vulnerable citizens—the elderly, the terminally ill, the people with disabilities, and the depressed—are worthy of life and equal protection under the law. As we have weathered the COVID-19 health crisis these past few years, our country has increasingly recognized the importance of caring and sacrificing for our most vulnerable neighbors, not view them as burdens.

It is more important than ever to take affirmative action to prohibit suicide by physician. States that have left the legal status of suicide undetermined, as well as states that prohibit suicide under the common law or per judicial interpretations of their homicide statutes, should enact explicit bans on physician-assisted suicide.

To assist in combating the drive toward legalizing medicalized suicide (or any form of euthanasia), Americans United for Life (AUL) has developed the *Assisted Suicide Ban Act.* For more information or drafting assistance, please contact AUL at Legislation@aul.org.

ASSISTED SUICIDE BAN ACT

HOUSE/SENATE BILL No. ______
By Representatives/Senators _____________

Section 1. Title.

This Act may be known and cited as the "Assisted Suicide Ban Act."

Section 2. Legislative Findings and Purposes.

(a) The [*Legislature*] of the State of [*Insert name of State*] finds that:

(1) "In almost every State—indeed, in almost every western democracy—it is a crime to assist a suicide. The States' assisted suicide bans are not innovations. Rather they are longstanding expressions of the States' commitment to the protection and preservation of all human life." *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997).

(2) "Indeed, opposition to and condemnation of suicide—and, therefore, of assisting suicide—are consistent and enduring themes of our philosophical, legal and cultural heritages." This almost universal tradition has long rejected a right to assisted suicide and the State of [*Insert name of State*] "continues to explicitly reject it today, even for terminally ill, mentally competent adults." *Washington v. Glucksberg*, 521 U.S. 702, 711 and 723 (1997).

(3) The State of [*Insert name of State*] "has an unqualified interest in the preservation of human life, . . . in preventing suicide, and in studying, identifying, and treating its causes." *Washington v. Glucksberg*, 521 U.S. 702, 729–30 (1997).

(4) The State of [*Insert name of State*] "has an interest in protecting vulnerable groups—including the poor, the elderly, and disabled persons—from abuse, neglect, [*coercion,*] and mistakes." A ban on assisted suicide reflects and reinforces the well-supported policy "that the lives of the terminally ill, disabled and elderly people must be no less valued than the lives for the young and healthy, and that a seriously disabled[*, terminally ill*, *or elderly*] person's suicidal impulses should be interpreted and treated the same way as anyone else's." *Washington v. Glucksberg*, 521 U.S. 702, 731–32 (1997).

(5) The State of [*Insert name of State*] recognizes the practice of assisted suicide fosters and exacerbates prejudice against "people with disabilities as well as people in other vulnerable constituencies . . . includ[ing] people who are aging, are underinsured, have chronic or progressive conditions, and/or lack privilege in other ways." NAT'L COUNCIL ON DISABILITY, THE DANGER OF ASSISTED SUICIDE LAWS: PART OF THE BIOETHICS AND DISABILITY SERIES 15–16 (2019).

(6) "[I]f assisted suicide is legal, some people's lives, particularly those of people with disabilities, will be ended without their fully informed and free consent, through mistakes, abuse, insufficient knowledge, and the unjust lack of better options. No safeguards have ever been enacted or proposed that can prevent this outcome." NAT'L COUNCIL ON DISABILITY, THE DANGER OF ASSISTED SUICIDE LAWS: PART OF THE BIOETHICS AND DISABILITY SERIES 14–15 (2019).

(7) The State of [*Insert name of State*] has an interest in protecting the integrity and ethics of the medical profession, including its obligation to serve its patients as healers, as well as to the principles articulated in the Hippocratic Oath to:

a. Keep the sick from harm and injustice.

b. Refrain from giving anybody a deadly drug if asked for it, nor make a suggestion to this effect.

(8) More specifically, the State of [*Insert name of State*] recognizes the close link between physician-assisted suicide and euthanasia where a "right to die" easily becomes a "duty to die." A prohibition of assisted suicide is the only reasonable means to protect against foreseeable abuses. *Washington v. Glucksberg*, 521 U.S. 702, 734–35 (1997); *Vacco v. Quill*, 521 U.S. 793, 808–09 (1997).

(9) The State of [*Insert name of State*] also recognizes the distinction between a patient refusing life-sustaining medical treatment (not to include the withdrawal of artificial nutrition and hydration), where he or she dies from the underlying fatal disease or pathology; and a patient ingesting or administering a lethal medication prescribed by a physician, where the medication is the cause of death. *Vacco v. Quill*, 521 U.S. 793, 801 (1997).

(10) The State of [*Insert name of State*] further recognizes the importance of palliative care and pain management and emphasizes the distinction in the "legal principles of causation and intent" between pain management intended

to alleviate pain and assisted suicide intended to cause death. *Vacco v. Quill*, 521 U.S. 793, 801–03 (1997).

(b) Based on the findings in subsection (a), it is the purpose of this Act to:

(1) Deter discrimination and provide protection for our most vulnerable citizens by explicitly prohibiting assisted suicide within the State of [*Insert name of State*]'s criminal code.

(2) Regulate prescriptions for lethal dosages of drugs that could be deliberately or accidentally misused with irreversible consequences.

(3) Reinforce and reflect the intended purpose of our medical professions to preserve life, prevent suicide, and act as healers.

Section 3. Definitions.
As used in this Act only:

(a) "**Aid in dying**" means the act or instance of a person providing the means or manner for another to be able to commit suicide.

(b) "**Deliberately**" means to consider carefully; done on purpose; intentional.

(c) "**Healthcare provider**" means any individual who may be asked to participate in any way in a healthcare service, including, but not limited to, the following: a physician; physician's assistant; nurse; nurses' aide; medical assistant; hospital employee; clinic employee; nursing home employee; pharmacist; pharmacy employee; researcher; medical or nursing school faculty member, student, or employee; counselor; social worker; or any professional, paraprofessional, or any other person who furnishes or assists in the furnishing of healthcare services.

(d) "**Person**" means any natural person and, when appropriate, an "**organization**" to include:

(1) A public or private corporation, company, association, firm, partnership, or joint-stock company;

(2) Government or a governmental instrumentality; or

(3) A foundation, institution, society, union, club, or church.

(e) "**Physician**" means a person licensed to practice medicine in the State of [*Insert name of State*]. This term includes medical doctors and doctors of osteopathy.

(f) **"Suicide"** means the act or instance of taking one's own life voluntarily and intentionally.

Section 4. Criminal Penalties.

(a) Any person who deliberately advises, assists, or encourages another to commit suicide or provides aid in dying is guilty of [*Insert appropriate degree of felony*].

(b) Any physician or healthcare provider who

(1) Prescribes any drug, compound, or substance to a patient with the intended purpose to assist in ending the patient's life; or

(2) Assists or performs any medical procedure for the intended purpose to assist in ending the patient's life is guilty of [*Insert appropriate degree of felony*].

Section 5. Civil Penalties and Fines.

(a) Any person, physician, or healthcare provider who intentionally or knowingly violates this Act shall be liable for damages.

(b) If any person assists a suicide resulting in death, any surviving family member, other beneficiary, executor, or administrator of the decedent's estate may bring an appropriate action under [*Insert reference(s) to state's wrongful death statute(s)*].

(c) Any physician or other healthcare provider who assists a suicide in violation of this Act shall be considered to have engaged in unprofessional conduct for which his or her [*certificate or*] license to provide healthcare services in the State of [*Insert name of State*] shall be suspended or revoked by [*Insert name of State Medical Board or other appropriate entity*].

Section 6. Construction.

Nothing in this Act shall be construed to prohibit a physician or healthcare provider from

(a) Participating in the execution of a person sentenced by a court to death by lethal injection.

(b) Following a patient's clear, expressed, and documented wishes to withhold or withdraw life-sustaining treatment [*not necessarily inclusive of withdrawing artificial nutrition and hydration*].

(c) Prescribing and administering palliative care or pain medication treatment options intended to relieve pain while the patient's illness or condition follows its natural course.

Section 7. Right of Intervention.

The [*Legislature*], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this Act, or any portion thereof, is challenged.

Section 8. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 9. Effective Date.

This Act takes effect on [*Insert date*].

For further information regarding this or other AUL policy guides, please contact:

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