

What Is The Current Law Regarding Assisted Suicide?

As of April 2001

Nationally

The U.S. Constitution allows the states to *prohibit* assisted suicide, according to two 1997 decisions of the U.S. Supreme Court. In *Vacco v. Quill* and *Washington v. Glucksberg*, the Supreme Court ruled that **assisted suicide is not a constitutional right**.

The Court also **recognized the distinction between suicide**, involving the direct and intentional taking of life, **and decisions to refuse treatment or use pain medication**, which may indirectly result in hastened death but not involve an intent to take life.

The U.S. Congress approved by an overwhelming margin in 1997 a law **barring the funding of assisted suicide with federal dollars**.

Currently, **assisting suicide is a crime in all but one state, directly banned by statute in 38 states**. Oregon voters have approved a law that legalizes physician-assisted suicide for persons with terminal conditions. Several persons have already relied on the law to commit suicide with physician-prescribed drugs. Voters in Michigan (1998) and Maine (2000) have rejected similar ballot proposals. **Efforts to legalize assisted suicide, by legislation or referendum in California, and by judicial challenge in Alaska, are currently underway**.

The question remains whether federal law allows the states to permit assisted suicide and under what circumstances. By classifying persons with terminal conditions as eligible for suicide assistance, while continuing to treat suicide assistance involving non-terminally ill suicide victims as a crime, the Oregon law raises serious equal protection questions. The administration of President George W. Bush is considering action **to prevent doctors from using federally controlled drugs for assisted suicides in Oregon**.

Massachusetts Law

Assisting suicide is a “common law” crime in Massachusetts, meaning that while no state statute bans suicide assistance, the state courts treat it as a felony crime. *Commonwealth v. Mink*, 123 Mass. 422, 425 (1877) (“The life of every human being is under the protection of the law, and cannot be lawfully taken by himself or another with his consent”). The Massachusetts legislature has enacted a statute authorizing a health care proxy to make medical decisions for incapacitated persons. **Both the state courts and the proxy statute distinguish choices to refuse medical treatment from suicide**. A bill to legalize physician assisted suicide for adults with terminal conditions (H.B. 1543) failed during the 1997-98 state legislative term. No such bill has been filed in the 1999 or 2001 terms. A state “end-of-life” commission is considering ways to improve life-affirming services for persons facing terminal illness.

The Massachusetts Constitution declares that the protection of life is an “unalienable right” for all persons. Mass. Const. part 1, art. I. **A law permitting assisted suicide for the terminally ill harms all eligible persons by treating their right to the protection of life as an alienable, and therefore inferior interest**. This status-based harm would be inflicted on any unwilling persons with terminal conditions who desire to retain their protected status under the Constitution, and who reject being considered as candidates for killing. *See Daniel Avila, Assisted Suicide and the Inalienable Right to Life*, 16 Issues in Law & Med. 111 (Fall 2000).