

**PHYSICIAN-ASSISTED SUICIDE: AN ASSESSMENT  
AND COMPARISON OF STATUTORY  
APPROACHES AMONG THE STATES**

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## I. INTRODUCTION

Despite the noble goals of medicine to prevent disease and prolong life, every life will end. New medical technologies strive to prevent and delay death, yet death is inevitable. As the population ages and the medical community is confronted with increasing numbers of futile cases, it is important to address issues related to death. Should patients be allowed to refuse life-saving treatments? Should doctors fight to prolong life at all cost? Should doctors be able to help their patients commit suicide? In the case of *Cruzan v. Director, Missouri Department of Health*, Justice Scalia acknowledges that there are “difficult, indeed agonizing, questions that are presented by the constantly increasing power of science to keep the human body alive for longer than any reasonable person would want to inhabit it.”<sup>1</sup>

This project was designed to specifically address the following question: Do the laws of the various states differ in respect to their treatment of physician-assisted suicide? To answer that question, state statutes were used to analyze policies among the various states in this country. In order to understand the fundamental issues related to the right to die, physician-assisted suicide, and euthanasia, a detailed discussion of terms is provided. This Article then discusses the statutes relating to physician-assisted suicide from the various states. A matrix is provided to concisely present the laws of each state. The states are distinguished based on whether they allow physician-assisted suicide or declare that physician-assisted suicide is implicitly or explicitly illegal. Additionally, the matrix includes citations to all relevant statutes and information on where the provisions related to physician-assisted suicide are located within each state’s statutes as a whole.

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<sup>1</sup> *Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261, 292 (1990).

## **II. REVIEW OF EXISTING LITERATURE REVEALS INCONSISTENT TERMINOLOGY AND AN INCOMPLETE UNDERSTANDING OF EXISTING LAW**

### *A. Definitions and Descriptions of Terms*

In order to fully understand the arguments and discussions related to the terms ‘right to die,’ ‘physician-assisted suicide,’ or ‘euthanasia,’ it is important to accurately define these terms. Scholarly literature, state statutes, and case law may refer to terms such as ‘right to die,’ ‘mercy killing,’ or ‘passive euthanasia’ without making clear distinctions between their meanings. The following definitions and explanations will help to clarify the distinctions between some of the important terms and will aid in later discussions of these topics.

‘Euthanasia’ is derived from a Greek word meaning a “gentle and easy death.”<sup>2</sup> Most people who use the term ‘euthanasia’ agree that it involves physicians who make decisions that ultimately shorten the life of the patient based on the belief that death would benefit the patient.<sup>3</sup> Such decisions rely on the belief that the patient would be better off dead than to continue living in his or her present state.<sup>4</sup>

Although the term ‘euthanasia’ may be easily comprehensible, it is used in a variety of ways to mean different things. ‘Passive euthanasia’ most often refers to allowing patients to die naturally after disconnecting life-supporting or life-sustaining medical devices.<sup>5</sup> In addition to the discontinuation of present treatment, ‘passive euthanasia’ can also occur by refraining from administering life-supporting procedures.<sup>6</sup> In both cases, it is foreseeable that refraining from additional treatments or withdrawing existing treatments will lead to the death of the patient.

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<sup>2</sup> JOHN KEOWN, EUTHANASIA, ETHICS, AND PUBLIC POLICY: AN ARGUMENT AGAINST LEGALISATION 10 (2002).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> JENNIFER M. SCHERER & RITA JAMES SIMON, EUTHANASIA AND THE RIGHT TO DIE: A COMPARATIVE VIEW 13 (1999).

<sup>6</sup> RAPHAEL COHEN-ALMAGOR, THE RIGHT TO DIE WITH DIGNITY 81 (2001).

'Active euthanasia,' by contrast, involves a deliberate action to end the life of the patient.<sup>7</sup> It is not merely *foreseeable* that the action will lead to death; the action is *intended* to lead to death.<sup>8</sup> 'Active euthanasia' may be carried out by administering a poisonous injection or a lethal dose of drugs designed to kill the patient.<sup>9</sup> To many, these actions seem identical to the act of murder. 'Active euthanasia' can further be distinguished based on whether the action was voluntary or involuntary.<sup>10</sup> In 'active voluntary euthanasia' a mentally competent person has requested that a physician administer a lethal dose of drugs.<sup>11</sup> 'Active involuntary euthanasia,' however, involves the death of a patient who has not consented to a lethal dose of medication.<sup>12</sup>

While 'euthanasia' involves a physician terminating the life of a patient, either by withdrawing treatment or administering lethal medication, 'physician-assisted suicide' involves a physician helping a patient to commit suicide.<sup>13</sup> 'Assisted suicide' occurs when a person, other than a physician, assists the patient in ending his or her life.<sup>14</sup> In the case of 'physician-assisted suicide,' the physician may assist by prescribing a lethal dose of certain medications or may provide the physical means for committing suicide, such as a plastic bag.<sup>15</sup> It is important to note the distinction between 'physician-assisted suicide' and 'active euthanasia:' in the case of 'physician-assisted suicide,' the *patient* must take the medication on his or her own, while in the case of 'active euthanasia,' the *physician* administers or injects the lethal dose of drugs. Although the physician is the source of the lethal medication in both scenarios, the physician is only directly causing the death of the patient in the case of 'active euthanasia.'

The phrase 'right to die' may be used by many people in a variety of contexts. In the United States Supreme Court case, *Cruzan v. Director, Missouri Department of Health*, the 'right to die'

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<sup>7</sup> KEOWN, *supra* note 2, at 11.

<sup>8</sup> *Id.*

<sup>9</sup> COHEN-ALMAGOR, *supra* note 6, at 81.

<sup>10</sup> SCHERER & SIMON, *supra* note 5, at 13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> KEOWN, *supra* note 2, at 31.

<sup>14</sup> SCHERER & SIMON, *supra* note 5, at 13.

<sup>15</sup> KEOWN, *supra* note 2, at 31.

refers to the right of each person to refuse medical treatments when forgoing or withdrawing such treatments would result in death.<sup>16</sup> Because the person has the right to refuse any medical treatments, the person has a 'right to die.'<sup>17</sup> Such a right in this context, however, does not imply a right to receive a lethal dose of medication.<sup>18</sup>

Various other terms are also worth noting at this point. 'Mercy killing' has become synonymous with euthanasia.<sup>19</sup> It generally refers to an act, motivated by compassion, which actively kills a patient to end his or her life of suffering.<sup>20</sup> 'Comfort-only care' refers to treatments administered to a patient not to cure or treat, but simply to relieve physical pain and suffering.<sup>21</sup> Although such pain relief can hasten the death of the person, the treatment is not aimed at shortening life; it is only intended to prevent pain.<sup>22</sup> Such treatments can also be referred to as 'palliative care.'<sup>23</sup> Finally, 'self-deliverance' is used by some who prefer this term to the word suicide.<sup>24</sup> They believe that while suicidal persons are ending their lives due to emotional or psychological trauma, persons who desire 'self-deliverance' are rationally choosing to end their lives after careful deliberation.<sup>25</sup>

### *B. What is Missing in Current Literature?*

While much of the literature currently available to the general public asserts that assisted suicide is illegal in most states, the authors of these works rarely cite state statutes in support of

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<sup>16</sup> *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 277 (1990).

<sup>17</sup> *Id.* at 278.

<sup>18</sup> *Id.* at 295–96 (citing *People v. Roberts*, 178 N.W. 690, 693 (1920) (a man who prepared poison for his terminally ill wife was convicted of murder in the first degree), *overruled by* *People v. Kevorkian*, 527 N.W.2d 714, 716 (Mich. 1994), *cert. denied*, 514 U.S. 1083 (1995)).

<sup>19</sup> RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 848 (1992) (defining "mercy killing" as a synonym for euthanasia).

<sup>20</sup> ARTHUR J. DYCK, *LIFE'S WORTH: THE CASE AGAINST ASSISTED SUICIDE* 32 (2002).

<sup>21</sup> *Id.* at 31.

<sup>22</sup> *Id.*

<sup>23</sup> SCHERER & SIMON, *supra* note 5, at 13.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

that claim.<sup>26</sup> The only state statute commonly cited is the Oregon Death with Dignity Act, a statute that authorizes physician-assisted suicide in some circumstances. In Scherer & Simons' work, a table is provided that details the "Status of Right-to-Die Legislation in the United States, by State" as of July 1997.<sup>27</sup> The table contains information on whether the state recognizes living wills, whether the state allows health care agents, and whether physician-assisted suicide is criminalized by statute or criminalized by common law. Again, however, there are no citations to any of the state statutes. Additionally, the table does not provide information about whether the state makes assisted suicide explicitly or implicitly illegal. Without citations to state statutes, readers who wish to verify that a state criminalizes physician-assisted suicide are left to search for state statutes on their own.

Although much of the current literature fails to include statutory citations, citations related to assisted suicide are found or referenced in Supreme Court cases and law review articles.<sup>28</sup> However, for many reasons these lists are still inadequate. First, the lists contain statutes related to assisted suicide, but do not note whether the statutes specifically prohibit physician-assisted suicide or merely prohibit all forms of assisted suicide. Second, the lists do not contain any information regarding whether the statutes are an explicit or implicit prohibition of assisted suicide. Third, information regarding where the particular statutes are located

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<sup>26</sup> See, e.g., SUSAN M. BEHUNIAK & ARTHUR G. SVENSON, PHYSICIAN-ASSISTED SUICIDE: THE ANATOMY OF A CONSTITUTIONAL LAW ISSUE 27 (2003); IAN ROBERT DOWBIGGIN, A MERCIFUL END: THE EUTHANASIA MOVEMENT IN MODERN AMERICA 163 (2003); DEREK HUMPHRY, FINAL EXIT: THE PRACTICALITIES OF SELF-DELIVERANCE AND ASSISTED SUICIDE FOR THE DYING 14 (2nd ed. 1996); PHYSICIAN-ASSISTED SUICIDE: WHAT ARE THE ISSUES? 1 (Loretta M. Kopelman & Kenneth A. DeVille eds., 2001); SCHERER & SIMON, *supra* note 5, at 9; MELVIN I. UROFSKY, LETHAL JUDGMENTS: ASSISTED SUICIDE AND AMERICAN LAW ix (2000); SUE WOODMAN, LAST RIGHTS: THE STRUGGLE OVER THE RIGHT TO DIE 5 (1998); LISA YOUNT, PHYSICIAN-ASSISTED SUICIDE AND EUTHANASIA 56 (2000).

<sup>27</sup> SCHERER & SIMON, *supra* note 5, at 41-46.

<sup>28</sup> See, e.g., *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 280 n.8 (1990) (citing George P. Smith II, *All's Well That Ends Well: Toward a Policy of Assisted Rational Suicide or Merely Enlightened Self-Determination?*, 22 U.C. DAVIS L. REV. 275, 290-91 nn.106-18 (1989)); Kevorkian, 527 N.W.2d at 731-32 nn.51, 53-54.; *Compassion in Dying v. Washington*, 79 F.3d 790, 847 nn.10-13 (9th Cir. 1996); *Washington v. Glucksberg*, 521 U.S. 702, 775 n.14 (1997); *Vacco v. Quill*, 521 U.S. 793, 805 n.9 (1997).

within the state's statutory compilations is rarely given.<sup>29</sup> Finally, some of the cited statutes should not be included because they fail to mention assisted suicide. For example, in *People v. Kevorkian*, the court cites numerous statutes in support of its claim that "nearly all states expressly disapprove of suicide and assisted suicide . . . ."<sup>30</sup> One such statute from Arkansas, however, never mentions assisted suicide, but merely affirms that the state "does not authorize or approve mercy killing."<sup>31</sup> Another statute cited from Colorado actually declares that the state does not "[p]ermit or authorize euthanasia or an affirmative or deliberate act to end a person's life."<sup>32</sup> Because the clause mentions deliberate acts to end life, and not deliberate acts to *assist* in ending life, the statute seems to apply more directly to acts such as mercy killing or euthanasia rather than to assisted suicide. While the Arkansas and Colorado statutes might be broadly construed to also prohibit assisted suicide, they do not directly mention such action and, therefore, should not be cited in support of the claim that the state *expressly* disapproves of assisted suicide.<sup>33</sup>

The statutes presented in this study differ from previous lists contained in Supreme Court cases and law review articles in many respects. First, the statutory information in this study has been organized into a matrix. Compared to the simple lists found in many legal sources, the matrix in this project increases readability of the information by organizing the statutes by state into different rows. Additionally, the columns of the matrix provide important information regarding each statute, including whether the law is an implicit or explicit prohibition of physician-assisted suicide and where the statute is found within the state's statutory compilation. Such information provides readers with a more complete understanding of the nature and context of the statutes. The

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<sup>29</sup> In *Kevorkian*, the court does have separate notes for statutes that criminalize assisted suicide and for statutes that are found "either in statutes dealing with durable powers of attorney in health-care situations, or in 'living will' statutes." 527 N.W.2d at 731-32 nn.51, 53-54.

<sup>30</sup> *Id.* at 731-32 nn.53-54.

<sup>31</sup> ARK. CODE ANN. § 20-13-905(f) (2005).

<sup>32</sup> COLO. REV. STAT. ANN. § 15-19-102(3)(h) (2006).

<sup>33</sup> Other state statutes refuse to condone euthanasia or mercy killing; *see, e.g.*, COLO. REV. STAT. ANN. § 15-18.5-101(3) (2006)); FLA. STAT. ANN. § 765.309(1) (West 2005 & Supp. 2006).

matrix is also based on the laws in effect in 2006, making the information contained in this matrix more up-to-date.

Most importantly, the lists contained in the previously cited cases fail to address the central question of this project: Do the current laws of the various states differ in respect to their treatment of physician-assisted suicide? Merely reading the list of statutes does not answer that question. The matrix contained in this project, however, begins to answer that question. One can immediately look at the matrix and see that some states have many statutes related to assisted suicide while other states have only a few. Furthermore, the matrix allows the reader to quickly identify which states explicitly prohibit physician-assisted suicide and which states only implicitly prohibit such action. The Discussion and Conclusion parts of this Article fully explain whether the laws of the various states differ in respect to their treatment of physician-assisted suicide, and, if so, how they differ. The language of the statutes is presented and analyzed, and states with similar statutes are classified together. In these respects, the matrix and the analysis contained in this project provide a wealth of information far greater than a mere list of statutes. This project's comprehensive analysis of the laws of each state accomplishes the unprecedented task of specifically determining whether states differ in respect to their treatment of physician-assisted suicide.

### ***III. METHODS USED TO CREATE A COMPREHENSIVE REVIEW OF STATE STATUTES REGARDING PHYSICIAN-ASSISTED SUICIDE***

#### ***A. Data Management***

After analyzing the various state statutes, a matrix was constructed to concisely present the similarities and differences between the states. The first vertical column of the matrix contains the name of the state. The second column contains the citation to any statutes that relate to physician-assisted suicide specifically or to assisted suicide generally. If the statute is only a general prohibition of assisted suicide, a note beneath the statutory citation indicates that it is only a blanket prohibition of assisted suicide and that it does not specifically mention physicians. The



third column of the matrix indicates whether the cited statute makes physician-assisted suicide legal or illegal.

If the statute makes the action illegal, the fourth column indicates whether the action is implicitly or explicitly illegal. For example, in Arkansas, one statute clarifies that “‘physician-assisted suicide’ means a physician or health care provider participating in a medical procedure or knowingly prescribing any drug, compound, or substance for the express purpose of assisting a patient to intentionally end the patient’s life.”<sup>34</sup> The statute further provides that any physician or health care provider who assists a patient to commit suicide will be guilty of a Class C felony.<sup>35</sup> Therefore, the fourth column of the matrix labeled the statute explicitly illegal because it *explicitly* defines physician-assisted suicide and provides a concrete punishment for violations. By contrast, in Alabama, the end of the chapter “Termination of Life-Support Procedures” states that “[n]othing in this chapter shall be construed to condone, authorize or approve mercy killing or physician assisted suicide or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this chapter.”<sup>36</sup> This statute is labeled implicitly illegal in the matrix; the statute does not *explicitly* say that physician-assisted suicide is illegal or provide any penalty, but it *implies* that physician-assisted suicide is illegal by refusing to “condone, authorize or approve” such action.<sup>37</sup>

The final column of the matrix indicates the chapter or division title in which the particular statute is found. The statute from Arkansas is found in the chapter on Homicide,<sup>38</sup> while the statute from Alabama is located in the chapter “Termination of Life-Support Procedures.”<sup>39</sup> Listing the chapter titles helps the reader to understand the particular statutes within a larger context.

The matrix allows for immediate comparisons between the states. Readers will be able to quickly see which states allow

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<sup>34</sup> ARK. CODE ANN. § 5-10-106(a)(1) (Supp. 2007).

<sup>35</sup> *Id.* § 5-10-106(c).

<sup>36</sup> ALA. CODE § 22-8A-10 (LexisNexis 1997).

<sup>37</sup> *Id.*

<sup>38</sup> ARK. CODE ANN. § 5-10-106 (Supp. 2007).

<sup>39</sup> ALA. CODE § 22-8A-10 (LexisNexis 1997).

physician-assisted suicide and which states make such action illegal. Readers will also be able to compare how many times physician-assisted suicide is addressed in different states and will be able to see which statutes make physician-assisted suicide implicitly or explicitly illegal. By comparing the corresponding chapter titles, readers will also gain a sense of the variety of places in which states address the issue of physician-assisted suicide.

### *B. Data Analysis*

After the matrix was constructed, a written description was prepared to summarize the findings. Particular attention was paid to any state whose laws differ in some significant way. For instance, in Oregon, physician-assisted suicide is currently legal. The Oregon Death with Dignity Act is explained in further detail to present the reader with a better understanding of the Act's provisions.

The Article's conclusion specifically answers the research question. When the laws among the states differ in respect to their treatment of physician-assisted suicide, the major differences are outlined for the reader. The matrix concisely shows the reader whether there are differences among the states and where these differences lie, and the conclusion serves to summarize the information in the matrix as it relates to differences in the laws among the states.

**IV. RESULTS: A COMPREHENSIVE MATRIX OF THE STATUTORY TREATMENT OF PHYSICIAN-ASSISTED SUICIDE IN THE FIFTY STATES**

	Relevant Statutory Provisions	Legal or Illegal	If Illegal, Implicitly or Explicitly	Statutory Chapter or Section Title
Alabama	ALA. CODE § 22-8A-10 (Lexis 1997)	Illegal	Implicitly	Termination of Life-Support Procedures
Alaska	ALASKA STAT. § 11.41.120 (2004) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person
	ALASKA STAT. § 13.52.120 (2004) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Health Care Decisions Act
	ALASKA STAT. § 13.52.300 (2004) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Health Care Decisions Act

Arizona	ARIZ. REV. STAT. ANN. § 13-1103 (2001 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Homicide
	ARIZ. REV. STAT. ANN. § 36-3210 (2003) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Living Wills and Health Care Directives
Arkansas	ARK. CODE ANN. § 5-10-106 (Supp. 2007)	Illegal	Explicitly	Homicide
	ARK. CODE ANN. § 17-95-704 (Supp. 2005)	Illegal	Explicitly	Physicians and Surgeons
	ARK. CODE ANN. § 5-10-104 (2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Homicide
	ARK. CODE ANN. § 20-13-104 (2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Emergency Medical Services

California	CAL. PENAL CODE § 401 (West 1999 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Of Crimes Against the Public Health and Safety
	CAL. PROB. CODE § 4653 (West Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Health Care Decisions
Colorado	COLO. REV. STAT. ANN. § 18-3-104 (West 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person
	COLO. REV. STAT. ANN. § 18-3-104(4) (c) (West 2006)	Illegal	Implicitly	Offenses Against the Person
Connecticut	CONN. GEN. STAT. § 53a-56 (West 2001 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Penal Code: Offenses

Delaware	DEL. CODE ANN. tit. 11, § 645 (2001) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Specific Offenses
Florida	FLA. STAT. ANN. § 782.08 (West 2000 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Homicide
Georgia	GA. CODE ANN. § 16-5-5 (2003) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Crimes Against the Person
Hawaii	HAW. REV. STAT. ANN. § 327H-2 (LexisNexis Supp. 2005)	Illegal	Implicitly	Pain Patient's Bill of Rights
	HAW. REV. STAT. ANN. § 327E-13 (LexisNexis 2000) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Uniform Health-Care Decisions Act (Modified)

Idaho	IDAHO CODE ANN. § 56-1022 (2002) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Department of Health and Welfare
Illinois	720 ILL. COMP. STAT. ANN. 5/12-31 (West 2002 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Criminal Offenses
	755 ILL. COMP. STAT. ANN. 40/5 (West 1992 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Estates
	755 ILL. COMP. STAT. ANN. 40/50 (West 1992 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Estates
Indiana	IND. CODE ANN. § 35-42-1-2.5 (LexisNexis 2004) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Homicide

Indiana (continued)	IND. CODE ANN. § 35-42-1-2.5(a) (1) (LexisNexis 2004)	Illegal	Implicitly	Homicide
Iowa	IOWA CODE ANN. § 707A.2 (West 2003) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Assisting Suicide
	IOWA CODE ANN. § 707A.3 (West 2003)	Illegal	Implicitly	Assisting Suicide
Kansas	KAN. STAT. ANN. § 21-3406 (1995 & Supp. 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Crimes Against Persons
	KAN. STAT. ANN. § 60-4403 (2005)	Illegal	Implicitly	Prevention of Assisted Suicide
Kentucky	KY. REV. STAT. ANN. § 216.302 (LexisNexis 1999) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Health Facilities and Services



Kentucky (continued)	KY. REV. STAT. ANN. § 216.304 (LexisNexis 1999)	Illegal	Implicitly	Health Facilities and Services
Louisiana	LA. REV. STAT. ANN. § 14:32.12 (1997 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person
	LA. REV. STAT. ANN. § 14:32.12(C) (2) (1997 & Supp. 2006)	Illegal	Implicitly	Offenses Against the Person
Maine	ME. REV. STAT. ANN. tit. 17-A, § 204 (2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person
	ME. REV. STAT. ANN. tit. 18-A, § 5-813 (1998) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Protection of Persons Under Disability and Their Property

Maryland	MD. CODE ANN. CRIM. LAW § 3-102 (LexisNexis 2002) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Other Crimes Against the Person
	MD. CODE ANN. CRIM. LAW § 3-103 (LexisNexis 2002 & Supp. 2006)	Illegal	Explicitly	Other Crimes Against the Person
Massachusetts				
Michigan	MICH. COMP. LAWS ANN. § 750.329a (West 2004) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Homicide
	MICH. COMP. LAWS ANN. § 333.5660 (West 2001 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Terminal Illness

Minnesota	MINN. STAT. ANN. § 609.215 (West 2003 & Supp. 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Criminal Code
	MINN. STAT. ANN. § 609.213 Subd. 3 (West 2003 & Supp. 2005)	Illegal	Implicitly	Criminal Code
	MINN. STAT. ANN. § 145B.14 (West 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Living Will
	MINN. STAT. ANN. § 145C.04 (West 2004) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Health Care Directives
Mississippi	MISS. CODE ANN. § 97-3-49 (West 2005 & Supp. 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Crimes Against the Person

Mississippi (continued)	MISS. CODE ANN. § 41-41-227 (West 1999 & Supp. 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Surgical or Medical Procedures; Consents
Missouri	MO. ANN. STAT. § 565.023 (West 1999 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person
Montana	MONT. CODE ANN. § 45-5-105 (2005 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person
Nebraska	NEB. REV. STAT. ANN. § 28-307 (LexisNexis 1995) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Crimes and Punishments

Nebraska (continued)	NEB. REV. STAT. ANN. § 20-412 (LexisNexis 1997) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Civil Rights
	NEB. REV. STAT. ANN. § 30-3401 (LexisNexis 1995) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Decedents' Estates; Protection Of Persons and Property
Nevada	NEV. REV. STAT. ANN. § 449.670 (LexisNexis 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Medical and Other Related Facilities
	NEV. REV. STAT. ANN. § 450B.590 (LexisNexis 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Emergency Medical Services

New Hampshire	N.H. REV. STAT. ANN. § 630:4 (LexisNexis 2001) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Homicide
	N.H. REV. STAT. ANN. § 137-J:10 (LexisNexis Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Written Directives for Medical Decision Making for Adults Without Capacity to Make Health Care Decisions
	N.H. REV. STAT. ANN. § 137-J:30 (LexisNexis Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Written Directives for Medical Decision Making for Adults Without Capacity to Make Health Care Decisions
New Jersey	N.J. STAT. ANN. § 2C:11-6 (West 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Criminal Homicide

New Mexico	N.M. STAT. ANN. § 30-2-4 (LexisNexis 2004) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Criminal Offenses
	N.M. STAT. ANN. § 24-7A-13 (LexisNexis 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Health and Safety
	N.M. STAT. ANN. § 24-7B-15 (LexisNexis Supp. 2007) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Health and Safety
New York	N.Y. PENAL LAW § 120.30 (McKinney 2004 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person Involving Physical Injury, Sexual Conduct, Restraint and Intimidation

New York (continued)	N.Y. PENAL LAW § 125.15 (McKinney 2004 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians  N.Y. PUB. HEALTH LAW § 2989 (McKinney 2002 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians  N.Y. SUPR. CT. PROC. ACT LAW § 1750-b (McKinney Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person Involving Physical Injury, Sexual Conduct, Restraint and Intimidation  Health Care Agencies and Proxies  Guardians of Mentally Retarded And Developmentally Disabled Persons
North Carolina				
North Dakota	N.D. CENT. CODE § 12.1-16-04 (1997) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Homicide



North Dakota (continued)	N.D. CENT. CODE § 12.1-16-06 (1997)	Illegal	Implicitly	Homicide
Ohio	OHIO REV. CODE ANN. § 3795.02 (LexisNexis 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Assisted Suicide
	OHIO REV. CODE ANN. § 3795.03 (LexisNexis 2005)	Illegal	Implicitly	Assisted Suicide
	OHIO REV. CODE ANN. § 2133.12 (LexisNexis 2002) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Modified Uniform Rights of the Terminally Ill Act and the DNR Identification and Do- Not-Resuscitate Order Law
	OHIO REV. CODE ANN. § 2133.24 (LexisNexis 2002 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Modified Uniform Rights of the Terminally Ill Act and the DNR Identification and Do- Not-Resuscitate Order Law

Oklahoma	OKLA. STAT. ANN. tit. 21, § 813 (West 2002 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Suicide
	OKLA. STAT. ANN. tit. 21, § 814 (West 2002 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Suicide
	OKLA. STAT. ANN. tit. 21, § 815 (West 2002 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Suicide
	OKLA. STAT. ANN. tit. 63, § 3141.3 (West 2004 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Assisted Suicide Prevention Act
	OKLA. STAT. ANN. tit. 63, § 3141.4 (West 2004)	Illegal	Implicitly	Assisted Suicide Prevention Act

Oklahoma (continued)	OKLA. STAT. ANN. tit. 63, § 3101.2 (West 2004 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act
	OKLA. STAT. ANN. tit. 63, § 3101.12 (West 2004 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act
	OKLA. STAT. ANN. tit. 63, § 3131.13 (West 2004) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Oklahoma Do-Not-Resuscitate Act
Oregon	Or. Rev. Stat. § 127.805 § 2.01 (2005 & Supp. 2005)	Legal		Powers of Attorney; Advance Directives for Health Care; Declarations for Medical Health Treatment; Death with Dignity

Oregon (continued)	OR. REV. STAT. § 163.125 (2005 & Supp. 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against Persons
Pennsylvania	18 PA. CONS. STAT. ANN. § 2505 (West 1998 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Criminal Homicide
	20 PA. CONS. STAT. ANN. § 5423 (West. 2005 & Supp. 2007) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Health Care
	20 PA. CONS. STAT. ANN. § 5482 (West 2005 & Supp. 2007) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Out-of-Hospital Nonresuscitation
Rhode Island	R.I. GEN. LAWS § 11-60-3 (2002)	Illegal	Explicitly	Assisted Suicide
	R.I. GEN. LAWS § 11-60-4 (2002)	Illegal	Implicitly	Assisted Suicide

South Carolina	S.C. CODE ANN. § 16-3-1090 (2003) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person
	S.C. CODE ANN. § 16-3-1090(C) (2) (2003)	Illegal	Implicitly	Offenses Against the Person
South Dakota	S.D. CODIFIED LAWS § 22-16-37 (2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Homicide and Suicide
	S.D. CODIFIED LAWS § 34-12D-23 (Supp. 2006)	Illegal	Implicitly	Living Wills
	S.D. CODIFIED LAWS § 34-12D-20 (2004)	Illegal	Implicitly	Living Wills
Tennessee	TENN. CODE ANN. § 39-13-216 (2003 & Supp. 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against Person

Tennessee (continued)	TENN. CODE ANN. § 39-13-216(b) (2) (2003 & Supp. 2005)	Illegal	Implicitly	Offenses Against Person
Texas	TEX. PENAL CODE ANN. § 22.08 (Vernon 2003 & Supp. 2006) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Offenses Against the Person
Utah	UTAH CODE ANN. § 75-2a-122 (1993 & Supp. 2007) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Advance Health Care Directive Act
Vermont				
Virginia	VA. CODE ANN. § 8.01-622.1 (2000) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Injunctions
	VA. CODE ANN. § 8.01-622.1 (E) (2000)	Illegal	Implicitly	Injunctions

Washington	<p>WASH. REV. CODE ANN. § 9A.36.060 (West 2000 &amp; Supp. 2005) *Blanket prohibition of assisted suicide; not specific to physicians</p> <p>WASH. REV. CODE ANN. § 70.122.100 (West 2002)</p>	Illegal	Explicitly	Assault—Physical Harm
West Virginia	<p>W. VA. CODE ANN. § 16-30-2 (LexisNexis 2006) *Blanket prohibition of assisted suicide; not specific to physicians</p> <p>W. VA. CODE ANN. § 16-30-15 (LexisNexis 2006) *Blanket prohibition of assisted suicide; not specific to physicians</p> <p>W. VA. CODE ANN. § 16-30C-14 (LexisNexis 2006) *Blanket prohibition of assisted suicide; not specific to physicians</p>	Illegal	Implicitly	Public Health
		Illegal	Implicitly	Public Health
		Illegal	Implicitly	Public Health

West Virginia (continued)	W. VA. CODE ANN. § 30-3A-4 (LexisNexis 2002) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Professions and Occupations
Wisconsin	WIS. STAT. ANN. § 940.12 (West 2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Explicitly	Crimes Against Life and Bodily Security
Wyoming	WYO. STAT. ANN. § 35-22-414 (2005) *Blanket prohibition of assisted suicide; not specific to physicians	Illegal	Implicitly	Living Will



**V. DISCUSSION: COMPARISONS AND CONTRASTS BETWEEN VARIOUS STATE LAWS REGARDING PHYSICIAN-ASSISTED SUICIDE**

After examining the statutes of all fifty states, it is clear that the current state laws differ in their treatment of physician-assisted suicide. Some states have no prohibitions against such action, while other states specifically prohibit physician-assisted suicide and provide additional penalties for physicians who assist in a suicide. Vermont, for example, does not directly mention or prohibit physician-assisted suicide or assisted suicide generally anywhere in its statutes, and Massachusetts only implicitly prohibits mercy killing.<sup>40</sup> By contrast, Arkansas specifically criminalizes physician-assisted suicide,<sup>41</sup> and states such as Minnesota and Oklahoma provide the additional penalty of licensure revocation for health care professionals.<sup>42</sup> Perhaps the greatest difference among the states is that while nearly all states at least implicitly prohibit assisted suicide, physician-assisted suicide is legal in Oregon under limited conditions.<sup>43</sup>

The wide degree of variation among the states with respect to physician-assisted suicide may surprise many physicians, patients, and health policymakers. Some of the differences may be related to the varying attitudes of citizens across the country toward this issue. Certain regions of the country may feel that physician-assisted suicide should be allowed, or at least not explicitly prohibited. It is interesting to note that while Oregon is the only state that currently allows physician-assisted suicide, two of the states that border Oregon - Idaho and Nevada - have only implicit prohibitions of such action.<sup>44</sup> Policymakers will hopefully find the matrix provided in this Article helpful in their attempt to advocate for laws in their own state. Physicians, patients, and citizens may find this matrix informative and useful for identifying the laws

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<sup>40</sup> MASS. GEN. LAWS ANN. ch. 201D, § 12 (West 2004).

<sup>41</sup> ARK. CODE ANN. § 5-10-106 (Supp. 2007); ARK. CODE ANN. § 17-95-704 (Supp. 2005).

<sup>42</sup> MINN. STAT. ANN. § 147.091 Subd. 1(w) (West 2005); OKLA. STAT. ANN. tit. 63, § 3141.8 (West 2004).

<sup>43</sup> OR. REV. STAT. § 127.805 § 2.01(1) (2005 & Supp. 2005).

<sup>44</sup> IDAHO CODE ANN. § 56-1022 (2002); NEV. REV. STAT. ANN. §§ 449.670, 450B.590 (LexisNexis 2005).

across the country, and the discussion of these laws will help to highlight the many subtle differences of language and impact. Although the matrix may soon be outdated, it will at least provide a valuable starting point for anyone who wishes to research United States laws regarding physician-assisted suicide.

The following discussion will categorize the laws of the fifty states based on whether physician-assisted suicide is legal or illegal in the particular state. States that prohibit physician-assisted suicide or assisted suicide generally will be further categorized based on whether the statutory prohibition is explicit or implicit. States with no explicit or implicit prohibitions of assisted suicide and states with particularly interesting statutes will also be discussed.

Part A will begin with a discussion of the Oregon Death with Dignity Act. As the only statute to currently legalize physician-assisted suicide under limited conditions, Oregon's statute deserves careful examination. Part B will address those states that prohibit physician-assisted suicide or assisted suicide generally. Subsection 1 will discuss states that explicitly prohibit the act of physician-assisted suicide, while Subsection 2 will list the states that explicitly prohibit assisted suicide generally. States with implicit prohibitions of physician-assisted suicide will be discussed in Subsection 3, and states that implicitly prohibit assisted suicide generally will be discussed in Subsection 4. Part C will discuss states with no explicit or implicit prohibitions of physician-assisted suicide or assisted suicide generally. Presumably, these states neither explicitly nor implicitly prohibit such actions. Finally, some states have laws that are particularly interesting and worthy of closer examination. These statutes will be discussed in Part D.

#### *A. The Oregon Death with Dignity Act*

The Oregon Death with Dignity Act is unique because it is the only statute in the United States that currently authorizes physician-assisted suicide under limited circumstances. The Act states that "[a]n adult who is capable, is a resident of Oregon, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in

a humane and dignified manner . . . .”<sup>45</sup> A terminal disease is defined as “an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.”<sup>46</sup> The statute specifically notes that no one will be able to request physician-assisted suicide “solely because of age or disability;”<sup>47</sup> the person must be suffering from a terminal condition.<sup>48</sup>

The Oregon Death with Dignity Act contains a section of numerous safeguard procedures that must be followed before a patient may obtain a lethal dose of medication from his physician. The section of safeguards begins by listing the responsibilities of the attending physician who must “[m]ake the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily.”<sup>49</sup> To ensure that the patient is making an informed decision, the attending physician must:

inform the patient of: (A) His or her medical diagnosis; (B) His or her prognosis; (C) The potential risks associated with taking the medication to be prescribed; (D) The probable result of taking the medication to be prescribed; and (E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control.<sup>50</sup>

The attending physician must also “[r]efer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily” and should “[r]efer the patient for counseling if appropriate . . . .”<sup>51</sup> Additionally, the attending physician should “[c]ounsel the patient about the importance of having another person present when the patient takes the medication prescribed . . . .”<sup>52</sup> The statute states that the physician shall also “recommend that the patient notify the next of kin of his or her request for medication . . . . [But, a] patient who declines or is unable to

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<sup>45</sup> OR. REV. STAT. § 127.805 § 2.01(1) (2005 & Supp. 2005).

<sup>46</sup> *Id.* § 127.800 § 1.01(12).

<sup>47</sup> *Id.* § 127.805 § 2.01(2).

<sup>48</sup> *Id.* § 127.805 § 2.01(1).

<sup>49</sup> *Id.* § 127.815 § 3.01(1)(a).

<sup>50</sup> *Id.* § 127.815 § 3.01(1)(c).

<sup>51</sup> OR. REV. STAT. § 127.815 § 3.01(1)(d)–(e) (2005 & Supp. 2005).

<sup>52</sup> *Id.* § 127.815 § 3.01(1)(g).

notify next of kin shall not have his or her request denied for that reason.”<sup>53</sup>

In addition to the patient’s oral request for a lethal dose of medication, the patient must also sign a written request.<sup>54</sup> It must be “signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.”<sup>55</sup>

As an added safeguard, the Oregon Death with Dignity Act requires the Department of Human Services to collect information about the patients and physicians who participate under the Death with Dignity Act, to monitor compliance with laws and regulations, and to publish annual statistical reports.<sup>56</sup> The section related to safeguards concludes by noting that nothing in the Act “shall be construed to authorize a physician or any other person to end a patient’s life by lethal injection, mercy killing or active euthanasia.”<sup>57</sup>

It is interesting to note that while physician-assisted suicide is currently legal under limited circumstances, Oregon explicitly prohibits all other forms of assisted suicide that do not meet the requirements of the Oregon Death with Dignity Act. In the statutory chapter on Offenses Against Persons, the state provides that “[c]riminal homicide constitutes manslaughter in the second degree when: . . . (b) A person intentionally causes or aids another person to commit suicide . . . .”<sup>58</sup> In Oregon, manslaughter in the second degree is a Class B felony.<sup>59</sup> Oregon is clearly declaring that assisted suicides must meet the requirements of the Oregon Death with Dignity Act, and the state provides punishment for any violations.

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<sup>53</sup> *Id.* § 127.835 § 3.05.

<sup>54</sup> *Id.* § 127.840 § 3.06.

<sup>55</sup> *Id.* § 127.810 § 2.02(1).

<sup>56</sup> *Id.* § 127.865 § 3.11.

<sup>57</sup> OR. REV. STAT. § 127.880 § 3.14 (2005 & Supp. 2005).

<sup>58</sup> *Id.* § 163.125(1)(b).

<sup>59</sup> *Id.* § 163.125(2).

*B. States that Prohibit Physician-Assisted Suicide or Assisted Suicide Generally*

*1. States with Explicit Prohibitions of Physician-Assisted Suicide*

Only two states, Arkansas and Rhode Island, have statutes that explicitly prohibit physician-assisted suicide. Perhaps most prominently, Arkansas creates a specific crime of physician-assisted suicide by criminalizing the act in the statutory chapter on Homicide that contains a particular section titled "Physician-assisted suicide."<sup>60</sup> The statute defines physician-assisted suicide as "a physician or health care provider participating in a medical procedure or knowingly prescribing any drug, compound, or substance for the express purpose of assisting a patient to intentionally end the patient's life."<sup>61</sup> A physician charged with the crime of physician-assisted suicide is guilty of a Class C felony.<sup>62</sup> The state of Arkansas also explicitly declares physician-assisted suicide to be illegal in the statutory chapter titled "Physicians and Surgeons." The subchapter on "Treatment of Chronic Intractable Pain" states that a physician may not "[c]ause or assist in causing the suicide, euthanasia, or mercy killing of any individual."<sup>63</sup> If found guilty of assisting suicide, a physician may have his or her license suspended or revoked by the Arkansas State Medical Board.<sup>64</sup>

The state of Rhode Island explicitly prohibits assisted suicide by all persons, including licensed health care practitioners. In the chapter titled "Assisted Suicide," the state "finds and declares that the welfare of the citizens of the state requires that vulnerable persons be protected from suicide and that the cost to the taxpayers of enforcing laws preventing assisted suicides will be reduced by promoting civil enforcement of such laws."<sup>65</sup> The statute provides that an "individual or licensed health care practitioner" is guilty of assisting suicide if he knowingly "(1)

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<sup>60</sup> ARK. CODE ANN. § 5-10-106 (Supp. 2007).

<sup>61</sup> *Id.* § 5-10-106(a)(1).

<sup>62</sup> *Id.* § 5-10-106(c).

<sup>63</sup> ARK. CODE ANN. § 17-95-704(e)(4)(A) (Supp. 2005).

<sup>64</sup> *Id.* § 17-95-704(c)(1)(B)-(E).

<sup>65</sup> R.I. GEN. LAWS § 11-60-1 (2002).

Provides the physical means . . . [or] (2) Participates in a physical act by which another person commits or attempts to commit suicide . . . .”<sup>66</sup> Anyone who assists in a suicide “is guilty of a felony and upon conviction may be punished by imprisonment for up to ten (10) years, by a fine of up to ten thousand dollars (\$10,000) or both.”<sup>67</sup> As the only two states with explicit prohibitions of physician-assisted suicide, Arkansas and Rhode Island would be interesting to policymakers who wish to examine the format or impact of the laws in these states.

## 2. States with Explicit Prohibitions of Assisted Suicide Generally

Most states have statutes that prohibit the act of assisted suicide. While not specific to physicians, these statutes offer blanket prohibitions of assisted suicide that would apply to any individual, including physicians. The following thirty-nine states have statutes that prohibit assisted suicide generally: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin.<sup>68</sup>

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<sup>66</sup> *Id.* § 11-60-3.

<sup>67</sup> *Id.* § 11-60-3(2).

<sup>68</sup> ALASKA STAT. § 11.41.120 (2004); ARIZ. REV. STAT. ANN. § 13-1103 (2001 & Supp. 2006); ARK. CODE ANN. § 5-10-104 (2006); CAL. PENAL CODE § 401 (West 1999 & Supp. 2006); COLO. REV. STAT. ANN. § 18-3-104 (2006); CONN. GEN. STAT. ANN. § 53a-56 (West 2001 & Supp. 2006); DEL. CODE ANN. tit. 11, § 645 (2001); FLA. STAT. ANN. § 782.08 (West 2000 & Supp. 2006); GA. CODE ANN. § 16-5-5 (2003); 720 ILL. COMP. STAT. ANN. 5/12-31 (West 2002 & Supp. 2006); IND. CODE. ANN. § 35-42-1-2.5 (LexisNexis 2004); IOWA CODE ANN. § 707A.2 (West 2003); KAN. STAT. ANN. § 21-3406 (1995 & Supp. 2005); KY. REV. STAT. ANN. § 216.302 (LexisNexis 1999); LA. REV. STAT. ANN. § 14:32.12 (1997 & Supp. 2006); ME. REV. STAT. ANN. tit. 17-A, § 204 (2006); MD. CODE ANN., CRIM. LAW § 3-102 (LexisNexis 2002); MICH. COMP. LAWS ANN. § 750.329a (West 2004); MINN. STAT. ANN. § 609.215 (West 2003 & Supp. 2005); MISS. CODE ANN. § 97-3-49 (West 2005 & Supp. 2005); MO. ANN. STAT. § 565.023 (West 1999 & Supp. 2006); MONT. CODE ANN. § 45-5-105 (2005 & Supp. 2006); NEB. REV. STAT. ANN. § 28-307 (LexisNexis 1995); N.H. REV. STAT. ANN. § 630:4 (LexisNexis 2001); N.J. STAT. ANN. § 2C:11-6 (West 2005); N.M. STAT. ANN. § 30-2-4 (LexisNexis 2004); N.Y. PENAL LAW §§ 120.30, 125.15 (McKinney 2004 & Supp. 2006); N.D. CENT. CODE § 12.1-16-04

The laws in these states typically declare that aiding or assisting another person to commit suicide is a crime and provide punishment for violations. In California, for instance, the state legislature explains that “[e]very person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony.”<sup>69</sup> Louisiana’s law is more specific, defining assisted suicide as the “intentional advising, encouraging, or assisting of another person to commit suicide, or the participation in any physical act which causes, aids, abets, or assists another person in committing or attempting to commit suicide.”<sup>70</sup> In Louisiana, violators “shall be imprisoned, with or without hard labor, for not more than ten years or fined not more than ten thousand dollars, or both.”<sup>71</sup>

Although states such as Louisiana and Arkansas define assisted suicide as either aiding *or* causing another person to commit suicide,<sup>72</sup> some states distinguish these two acts. In Delaware, for instance, a person is guilty of promoting suicide if he or she “intentionally *aids* another person to commit suicide,”<sup>73</sup> but is guilty of manslaughter if he or she “intentionally *causes* another person to commit suicide”<sup>74</sup> or of murder if he or she “intentionally *causes* another person to commit suicide by force or duress.”<sup>75</sup> In states with separate laws for assisting and causing

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(1997); OHIO REV. CODE ANN. § 3795.02 (LexisNexis 2005); OKLA. STAT. ANN. tit. 21, § 813-15 (West 2002 & Supp. 2006); OKLA. STAT. ANN. tit. 63, § 3141.3 (West 2004 & Supp. 2006); OR. REV. STAT. § 163.125 (2005 & Supp. 2005); 18 PA. CONS. STAT. ANN. § 2505 (West 1998 & Supp. 2006); S.C. CODE ANN. § 16-3-1090 (2003); S.D. CODIFIED LAWS § 22-16-37 (2006); TENN. CODE ANN. § 39-13-216 (2003 & Supp. 2005); TEX. PENAL CODE ANN. § 22.08 (Vernon 2003 & Supp. 2006); VA. CODE ANN. § 8.01-622.1 (2000); WASH. REV. CODE ANN. § 9A.36.060 (West 2000 & Supp. 2005); WIS. STAT. ANN. § 940.12 (West 2005).

<sup>69</sup> CAL. PENAL CODE § 401 (West 1999 & Supp. 2006).

<sup>70</sup> LA. REV. STAT. ANN. § 14:32.12(A)(2) (1997 & Supp. 2006).

<sup>71</sup> *Id.* § 14:32.12(D).

<sup>72</sup> Louisiana’s statute states that “[c]riminal assistance to suicide is: . . . (2) The intentional advising, encouraging, or assisting of another person to commit suicide, or the participation in any physical act which *causes, aids, abets, or assists* another person in committing or attempting to commit suicide.” LA. REV. STAT. ANN. § 14:32.12(A)(2) (1997 & Supp. 2006) (emphasis added); Arkansas’ statute states that “[a] person commits manslaughter if . . . [t]he person purposely *causes or aids* another person to commit suicide.” ARK. CODE ANN. § 5-10-104(a)(2) (2006) (emphasis added).

<sup>73</sup> DEL. CODE ANN. tit. 11, § 645 (2001) (emphasis added).

<sup>74</sup> *Id.* § 632 (5) (emphasis added).

<sup>75</sup> *Id.* § 636 (3) (emphasis added).

suicide, only the laws related to assisting suicide are included in the matrix as explicit prohibitions based on the assumption that causing someone to commit suicide goes beyond the mere act of assisting such action.<sup>76</sup>

In addition to the distinction between assisting suicide and causing suicide, some states, such as New York and Oklahoma, have separate laws for assisting suicide and for assisting an attempted suicide.<sup>77</sup> In these cases, both laws were included as explicit prohibitions of assisted suicide. While these states have prohibitions for assisting both suicide and attempted suicide, it is worth noting that Montana is the only state whose explicit prohibition only applies to a suicide attempt. The statute declares that “[a] person who purposely aids or solicits another to commit suicide, *but such suicide does not occur*, commits the offense of aiding or soliciting suicide”<sup>78</sup> for which, if convicted, he or she “shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.”<sup>79</sup> Although Montana explicitly prohibits assisting an attempted suicide, there is no other explicit prohibition within the statutory compilations to address assistance in a suicide which is completed.<sup>80</sup>

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<sup>76</sup> Although Hawaii's statutory compilations never explicitly prohibit *assisted* suicide, it is worth noting that the state's manslaughter statute does apply to any person who “intentionally *causes* another person to commit suicide.” HAW. REV. STAT. ANN. § 707-702(1)(b) (LexisNexis 1999 & Supp. 2005) (emphasis added). Without a distinct prohibition of *assisted* suicide, it is unclear whether the state intended its manslaughter statute to apply to both the acts of causing and aiding suicide or whether the state intended only to prohibit the act of causing suicide, leaving those who merely assist in a suicide unpunished. Obviously, a person who merely assisted in a suicide would argue that his assistance did not *cause* the suicide. Because the manslaughter statute does not clearly prohibit *assisted* suicide, it was not included in the matrix as an explicit prohibition of such action.

<sup>77</sup> N.Y. PENAL LAW §§ 120.30, 125.15(3) (McKinney 2004 & Supp. 2006); OKLA. STAT. ANN. tit. 21, §§ 813–15 (West 2002 & Supp. 2006); OKLA. STAT. ANN. tit. 63, § 3141.3 (West 2004 & Supp. 2006).

<sup>78</sup> MONT. CODE ANN. § 45-5-105(1) (2005 & Supp. 2006) (emphasis added).

<sup>79</sup> *Id.* § 45-5-105(2).

<sup>80</sup> The annotator's notes following this provision try to provide some guidance by mentioning that if the suicide is successful, the person who offered assistance may be prosecuted for either deliberate or mitigated deliberate homicide. § 45-5-105 cmts. (Crim. Law Comm'n). Neither of the statutes relating to homicide, however, specifically mentions assisted suicide. The first statute relates to causing death (not suicide) while the second statute relates to causing death under extreme emotional distress. §§ 45-5-102 to -103. If the person merely assists another to commit suicide, however, it could be argued that his or her actions do not fit either of the conditions



While all of the states mentioned in this section contain a blanket prohibition of assisted suicide, nine states provide the additional penalty of licensure revocation or suspension for physicians who assist in such action. By providing this additional penalty, these states may be trying to ensure that members of the medical profession are aware of the prohibition of assisted suicide. These states include: Kansas, Kentucky, Minnesota, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, and Virginia.<sup>81</sup>

Although the majority of states with blanket prohibitions of assisted suicide address the issue in separate statutes dedicated to assisted suicide, eight states include assisted suicide in their manslaughter or homicide statutes. Alaska, Arizona, Arkansas, Colorado, Connecticut, Missouri, New York, and Oregon all identify assistance in a suicide as a form of manslaughter or homicide.<sup>82</sup> In Arizona, Arkansas, and Missouri, the penalty for assisting in a suicide is the same as the penalty for committing murder after a sudden quarrel or heat of passion arising from adequate provocation by the victim.<sup>83</sup> Although one can imagine that someone who kills in the heat of passion has a much different state of mind than the family member who helps a loved one to commit suicide, these states presumably punish both individuals equally.

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of these statutes and, therefore, that he or she should not be prosecuted under these statutes. Because neither of these statutes specifically prohibits assisted suicide, neither was included in the list of explicit prohibitions of such action, thus leaving only the explicit prohibition of attempted suicide.

<sup>81</sup> KAN. STAT. ANN. § 65-2836(cc) (2002 & Supp. 2005); KY. REV. STAT. ANN. § 216.308 (LexisNexis 1999); MINN. STAT. ANN. § 147.091 Subd. 1(w) (West 2005); N.D. CENT. CODE § 12.1-16-08 (Supp. 2005); OHIO REV. CODE ANN. § 4731.22(B)(37) (LexisNexis 2003 & Supp. 2006); OKLA. STAT. ANN. tit. 63, § 3141.8 (West 2004); S.C. CODE ANN. § 16-3-1090(G) (2003); S.D. CODIFIED LAWS § 34-12D-28 (Supp. 2006); VA. CODE ANN. § 8.01-622.1(D) (2000).

<sup>82</sup> ALASKA STAT. § 11.41.120 (2004); ARIZ. REV. STAT. ANN. § 13-1103 (2001 & Supp. 2006); ARK. CODE ANN. § 5-10-104 (2006); COLO. REV. STAT. ANN. § 18-3-104 (2006); CONN. GEN. STAT. ANN. § 53a-56 (West 2001 & Supp. 2006); MO. ANN. STAT. § 565.023 (West 1999 & Supp. 2006); N.Y. PENAL LAW § 125.15 (McKinney 2004 & Supp. 2006); OR. REV. STAT. § 163.125 (2005 & Supp. 2005).

<sup>83</sup> ARIZ. REV. STAT. ANN. § 13-1103 (2001 & Supp. 2006); ARK. CODE ANN. § 5-10-104 (2006); MO. ANN. STAT. § 565.023 (West 1999 & Supp. 2006).

### 3. States with Implicit Prohibitions of Physician-Assisted Suicide

Several states implicitly prohibit physician-assisted suicide. In these states, the implicit prohibition declares that various acts, such as prescribing or dispensing medication, are not assisted suicide *unless* they are performed for the purpose of bringing about the death of the patient. Alabama, Colorado, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, and Washington all have laws that implicitly prohibit physician-assisted suicide.<sup>84</sup>

Indiana's law, for instance, states that:

A licensed health care provider who administers, prescribes, or dispenses medications or procedures to relieve a person's pain or discomfort [does not commit the crime of assisting suicide], even if the medication or procedure may hasten or increase the risk of death, unless such medications or procedures are intended to cause death.<sup>85</sup>

Similar statutes are found in other states with implicit prohibitions of physician-assisted suicide. By stating that such actions do not constitute assisting suicide *unless* they are performed for the purpose of bringing about death, these states implicitly prohibit assisted suicide and directly address the role of a physician in that act.

In two of these states - Alabama and Washington - the statute implicitly prohibits physician-assisted suicide by refusing to

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<sup>84</sup> ALA. CODE § 22-8A-10 (LexisNexis 1997); COLO. REV. STAT. ANN. § 18-3-104(4)(c) (2006); HAW. REV. STAT. ANN. § 327H-2 (LexisNexis Supp. 2005); IND. CODE ANN. § 35-42-1-2.5(a)(1) (LexisNexis 2004); IOWA CODE ANN. § 707A.3 (West 2003); KAN. STAT. ANN. § 60-4403 (2005); KY. REV. STAT. ANN. § 216.304 (LexisNexis 1999); LA. REV. STAT. ANN. § 14:32.12(C)(2) (1997 & Supp. 2006); MD. CODE ANN., CRIM. LAW § 3-103 (LexisNexis 2002 & Supp. 2006); MINN. STAT. ANN. § 609.215 Subd. 3 (West 2003 & Supp. 2005); N.D. CENT. CODE § 12.1-16-6 (1997); OHIO REV. CODE ANN. § 3795.03 (LexisNexis 2005); OKLA. STAT. ANN. tit. 63, § 3141.4 (West 2004); R.I. GEN. LAWS § 11-60-4 (2002); S.C. CODE ANN. § 16-3-1090(C)(2) (2003); S.D. CODIFIED LAWS § 34-12D-23 (Supp. 2006); TENN. CODE ANN. § 39-13-216(b)(2) (2003 & Supp. 2005); VA. CODE ANN. § 8.01-622.1(E) (2000); WASH. REV. CODE ANN. § 70.122.100 (West 2002).

<sup>85</sup> IND. CODE ANN. § 35-42-1-2.5(a)(1) (LexisNexis 2004).

condone or authorize such action.<sup>86</sup> In the chapter regarding “Termination of Life-Support Procedures,” Alabama, for example, implicitly declares that assisted suicide is illegal by stating that “[n]othing in this chapter shall be construed to condone, authorize or approve mercy killing or physician assisted suicide or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this chapter.”<sup>87</sup> A similar provision is found in Washington’s statutory chapter titled “Natural Death Act.”<sup>88</sup> It is interesting to note that in Alabama the implicit prohibition of physician-assisted suicide is the only state statute relating to physician-assisted suicide or to assisted suicide generally. No other explicit prohibition of these actions is found in Alabama’s statutory compilations. Colorado’s statute is also slightly different from the statutes found in other states. Colorado explains that a medical caregiver “who prescribes or administers medication for palliative care to a terminally ill patient” will not be guilty of manslaughter,<sup>89</sup> but mentions that the statute “shall not be interpreted to permit a medical caregiver to assist in the suicide of the patient.”<sup>90</sup>

#### 4. States with Implicit Prohibitions of Assisted Suicide Generally

Twenty-three states have statutes that contain implicit prohibitions of assisted suicide generally. These states include: Alaska, Arizona, Arkansas, California, Hawaii, Idaho, Illinois, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Utah, West Virginia, and Wyoming.<sup>91</sup>

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<sup>86</sup> ALA. CODE § 22-8A-10 (LexisNexis 1997); WASH. REV. CODE ANN. § 70.122.100 (West 2002).

<sup>87</sup> ALA. CODE § 22-8A-10 (LexisNexis 1997).

<sup>88</sup> WASH. REV. CODE ANN. § 70.122.100 (West 2002).

<sup>89</sup> COLO. REV. STAT. ANN. § 18-3-104(4)(a) (2006).

<sup>90</sup> *Id.* § 18-3-104(4)(c).

<sup>91</sup> ALASKA STAT. §§ 13.52.120, 13.52.300 (2004); ARIZ. REV. STAT. ANN. § 36-3210 (2003); ARK. CODE ANN. § 20-13-104 (2005); CAL. PROB. CODE § 4653 (West Supp. 2006); HAW. REV. STAT. ANN. § 327E-13 (LexisNexis 2000); IDAHO CODE ANN. § 56-1022 (2002); 755 ILL. COMP. STAT. ANN. 40/5, 40/50 (West 1992 & Supp. 2006); ME. REV. STAT. ANN. tit. 18-A, § 5-813 (1998); MICH. COMP. LAWS ANN. § 333.5660 (West 2001 & Supp. 2006); MINN. STAT. ANN. §§ 145B.14, 145C.04 (West 2005); MISS. CODE ANN. § 41-41-227 (West 1999 & Supp. 2005); NEB. REV. STAT. ANN. § 20-412

California's statutory chapter on Health Care Decisions, for example, states that "[n]othing in this division shall be construed to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia."<sup>92</sup> The statutes in these states do not explicitly prohibit assisted suicide, but they imply that it is illegal by refusing to condone or authorize such action.

For some of these states, the implicit prohibition is the only statute related to assisted suicide. Idaho, Nevada, Utah, West Virginia, and Wyoming do not explicitly prohibit physician-assisted suicide or assisted suicide generally in any of their statutory compilations. The implicit prohibitions of assisted suicide are the only statutory prohibitions of such action in these states.

*C. States with No Explicit or Implicit Prohibitions of Assisted Suicide*

Massachusetts, North Carolina, and Vermont contain no statutory prohibitions of physician-assisted suicide or assisted suicide generally. Presumably, such actions are neither explicitly nor implicitly illegal in these states. Furthermore, North Carolina and Vermont do not even specifically prohibit mercy killing or euthanasia. Both states' statutes, however, contain references which might be interpreted as applying to those actions. In Vermont's chapter on "Advance Directives," the state declares that "[n]othing in this chapter shall be interpreted to affect the statutory or common law in existence at the time of enactment applicable to death intentionally hastened through the use of

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(LexisNexis 1997); NEB. REV. STAT. ANN. § 30-3401 (LexisNexis 1995); NEV. REV. STAT. ANN. §§ 449.670, 450B.590 (LexisNexis 2005); N.H. REV. STAT. ANN. §§ 137-J:10, J:30 (LexisNexis Supp. 2006); N.M. STAT. ANN. § 24-7A-13 (LexisNexis 2006); N.M. STAT. ANN. § 24-7B-15 (LexisNexis Supp. 2007); N.Y. PUB. HEALTH LAW § 2989 (McKinney 2002 & Supp. 2006); N.Y. Surr. Ct. Proc. Act Law § 1750-b (McKinney Supp. 2006); OHIO REV. CODE ANN. § 2133.12 (LexisNexis 2002); OHIO REV. CODE ANN. § 2133.24 (LexisNexis 2002 & Supp. 2006); OKLA. STAT. ANN. tit. 63, §§ 3101.2, 3101.12 (West 2004 & Supp. 2006); OKLA. STAT. ANN. tit. 63, § 3131.13 (West 2004); 20 PA. CONS. STAT. ANN. §§ 5423, 5482 (West 2005 & Supp. 2007); S.D. CODIFIED LAWS § 34-12D-20 (2004); UTAH CODE ANN. § 75-2a-122 (1993 & Supp. 2007); W. VA. CODE ANN. §§ 16-30-2, -30-15, -30C-14 (LexisNexis 2006); W. VA. CODE ANN. § 30-3A-4 (LexisNexis 2002); WYO. STAT. ANN. § 35-22-414 (2005).

<sup>92</sup> CAL. PROB. CODE. § 4653 (West Supp. 2006).

prescription medication.”<sup>93</sup> This might easily be a reference to mercy killing, euthanasia, or even physician-assisted suicide because each of those actions might involve the use of prescription medication. The problem, however, is that there does not seem to be any statutory or common law which currently makes it illegal to use such medication to intentionally hasten death. It would be difficult, therefore, for anything in Vermont’s chapter on “Advance Directives” to affect laws which do not seem to exist. Without a clear explicit or implicit prohibition of physician-assisted suicide or assisted suicide generally, it is unclear how the state would handle these actions.

Like Vermont, North Carolina never specifically mentions assisted suicide anywhere in its statutory compilations. In the chapter on “Medicine and Allied Occupations,” however, the state does declare that “[n]othing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.”<sup>94</sup> Because the clause mentions acts or omissions to end life, and not acts to *assist* in ending life, it seems to more directly apply to acts such as mercy killing or euthanasia rather than to assisted suicide. The state might choose to broadly interpret this clause to apply to assisted suicide, but without a clear implicit or explicit prohibition of such action, the state has not formally clarified its position on physician-assisted suicide or assisted suicide generally.

Finally, the state of Massachusetts has no explicit or implicit statutory prohibitions of physician-assisted suicide or assisted suicide generally, but the state does have a statute that implicitly prohibits mercy killing and suicide.<sup>95</sup> In the chapter titled “Health Care Proxies,” Massachusetts states that nothing in the relevant statutory sections “shall be construed to constitute, condone, authorize, or approve suicide or mercy killing, or to permit any affirmative or deliberate act to end one’s own life other than to permit the natural process of dying.”<sup>96</sup> No punishment for violations is given. When reading this statute closely, it appears that the state is actually implicitly declaring that suicide is illegal.

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<sup>93</sup> VT. STAT. ANN. tit. 18 § 971.5(c) (Supp. 2005).

<sup>94</sup> N.C. GEN. STAT. ANN. § 90-320(b) (West 2005).

<sup>95</sup> MASS. GEN. LAWS ANN. ch. 201D, § 12 (West 2004).

<sup>96</sup> *Id.*

Note that the first clause specifically mentions “suicide or mercy killing.”<sup>97</sup> Although the state offers no definitions, mercy killing generally implies that a patient’s suffering is ended by another person. Suicide, however, refers to a self-murder. The second clause of the statute mentions an “act to end one’s own life.”<sup>98</sup> Assisted suicide, by contrast, involves an act to end the life of another. Both clauses seem to support a prohibition of suicide. Although mercy killing may be broadly interpreted to include other acts such as assisted suicide or euthanasia, one might argue that Massachusetts actually has no statutory basis for finding such acts to be illegal. Moreover, Massachusetts still seems to prohibit the act of self-murder, even if no outside parties are involved.

Massachusetts’ manslaughter statute is also interesting to examine because the notes following this statute mention a case from the Supreme Judicial Court of Massachusetts related to assisted suicide.<sup>99</sup> The manslaughter statute itself does not mention any of the elements of manslaughter, but the notes state that a “[h]usband aiding wife to commit suicide could be found guilty of involuntary manslaughter.”<sup>100</sup> That brief description of the case might conjure up images of a husband helping his frail, ailing wife to end her life of suffering, but the actual facts of the case are quite different.<sup>101</sup> In this particular case, the husband had informed his wife that he wanted a divorce, whereupon she threatened to commit suicide.<sup>102</sup> Instead of trying to calm her, the husband told her to go get the rifle from the kitchen, loaded the gun for her, and suggested that she take off her shoes so that she could reach the trigger.<sup>103</sup> Although these actions might seem heartless, the husband claimed that he did not think his wife would actually commit suicide and that the gun only discharged by accident.<sup>104</sup> Given that the wife threatened to commit suicide

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> MASS. GEN. LAWS ANN. ch. 265, § 13 (West 2000 & Supp. 2006), *construed in Persampieri v. Commonwealth*, 175 N.E.2d 387 (Mass. 1961).

<sup>100</sup> MASS. GEN. LAWS ANN. ch. 265, § 13 case note 2 (West 2000 & Supp. 2006) (citing *Persampieri*, 175 N.E.2d at 390).

<sup>101</sup> *Persampieri*, 175 N.E.2d at 389.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

and that her husband helped her to do so, this case is technically about assisted suicide, and one might argue, therefore, that assisted suicide is prohibited in Massachusetts, at least under common law.<sup>105</sup> The extreme facts of this case, however, no doubt contributed to the finding of involuntary manslaughter, and one has to wonder whether a more sympathetic case involving the assisted suicide of a loved one, for instance, would warrant the same prosecution or punishment.

#### *D. Interesting State Statutes*

Certain state statutes deserve closer examination. The following statutes are interesting because they have unique wordings or impacts or because they have addressed the problem of assisted suicide in unusual ways. In Alabama, assisted suicide is mentioned in the commentary to the statute on the crime of manslaughter. A person is guilty of manslaughter in Alabama if he or she "recklessly causes the death of another person" or if he or she kills a person "due to a sudden heat of passion caused by provocation . . . ."<sup>106</sup> The commentary following this statute contains a section titled "Aiding Suicide." The Alabama legislature acknowledges that "[s]pecial attention also has been given in several criminal codes to intentionally causing or aiding a suicide . . . ."<sup>107</sup> The commentary specifically states, however, that "[n]o special treatment on suicide was included in the Criminal Code. Absent a preponderance of calamities, exceptional cases may be left to the judgment of the grand jury or prosecutive discretion."<sup>108</sup> Obviously, the legislature considered this issue and intentionally chose to leave the act of assisted suicide out of the Criminal Code. Alabama's implicit prohibition of physician-assisted suicide is the only evidence that such action is not condoned by the state.

In the state of Georgia, the statutory chapter on crimes against the person contains a specific crime of "Assisting Suicide."<sup>109</sup> The wording of this statute, however, bears examining. The statute first begins with a definition of "intentionally and

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<sup>105</sup> *Id.* at 387.

<sup>106</sup> ALA. CODE § 13A-6-3 (LexisNexis 2005).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> GA. CODE ANN. § 16-5-5(a)(1) (2003).

actively assisting suicide.”<sup>110</sup> Such an act is defined as “direct and physical involvement, intervention, or participation in the act of suicide which is carried out free of any threat, force, duress, or deception and with understanding of the consequences of such conduct.”<sup>111</sup> The relevant portion of the statute then provides that “[a]ny person who publicly advertises, offers, or holds himself or herself out as offering that he or she will intentionally and actively assist another person in the commission of suicide and commits any overt act to further that purpose is guilty of a felony . . . .”<sup>112</sup> The statute also provides punishment for anyone “who knowingly and willfully commits any act which destroys the volition of another, such as fraudulent practices upon such person’s fears, affections, or sympathies; duress; or any undue influence . . . and thereby intentionally causes or induces such other person to commit or attempt to commit suicide . . . .”<sup>113</sup> Taken together, these two portions of the statute obviously prohibit a person from publicizing that he or she will assist someone to commit suicide or from using duress to induce someone to commit suicide. The statute, however, does not provide punishment for someone who privately agrees to assist in a suicide without using coercion. In essence, this statute seems to leave unpunished the family members and friends assisting a loved one who has asked for help in dying while reserving punishment for individuals, like Dr. Kevorkian, who advertise that they will assist in another’s suicide and for those persons with malicious intentions.

Michigan’s statutory compilations contain numerous references to assisted suicide. Most notably, the state established a commission on death and dying to address the issues surrounding suicide and assisted suicide.<sup>114</sup> The creation of this commission was likely a response to the numerous assisted suicides performed by Dr. Kevorkian in Michigan. “The legislature finds that the voluntary self-termination of human life, with or without assistance, raises serious ethical and public health questions in the state. To study this problem and to develop recommendations for

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* § 16-5-5(b).

<sup>113</sup> *Id.* § 16-5-5(c).

<sup>114</sup> MICH. COMP. LAWS ANN. § 752.1021(1) (West 2004).



legislation, the Michigan commission on death and dying is created.”<sup>115</sup> The statute lists twenty-two organizations that may each nominate two persons for appointment to the commission.<sup>116</sup> The American Association of Retired Persons, Health Care Association of Michigan, Hemlock of Michigan, Michigan Association for Retarded Citizens, Michigan Hospice Organization, Michigan Psychiatric Society, Michigan State Medical Society, Right to Life of Michigan, State Bar of Michigan, and Prosecuting Attorneys Association of Michigan are among the organizations included in this list.<sup>117</sup> By creating a commission of diverse organizations, it seems that the state of Michigan is attempting to discuss and study the issue of assisted suicide from many different points of view. The statute also notes that “[i]n its deliberations, the commission shall provide for substantial involvement from the academic, health care, legal, and religious communities, as well as from members of the general public.”<sup>118</sup>

In developing its recommendations, the commission is directed to consider the “proper aims of legislation affecting voluntary self-termination . . . .”<sup>119</sup> Specifically, the statute notes that the commission should consider “[t]he existence of a societal consensus in the state on the morality of the voluntary self-termination of life, including the morality of other persons assisting a patient’s self-termination.”<sup>120</sup> With respect to how the law should regard a person who assists a patient in committing suicide, the commission is also directed to consider whether to make distinctions based on the following: “(A) The nature of the assistance, including inaction; noncausal facilitation; information transmission; encouragement; providing the physical means of self-termination; active participation . . . . (B) The motive of the person assisting, including compassion, fear for his or her own safety, and fear for the safety of the patient.”<sup>121</sup> Clearly, Michigan

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.* § 752.1023(1).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* § 752.1023(6).

<sup>119</sup> *Id.* § 752.1024(1)(b).

<sup>120</sup> MICH. COMP. LAWS ANN. § 752.1024(1)(b)(i) (West 2004).

<sup>121</sup> *Id.* § 752.1024(1)(b)(iv).

wants to ensure that its laws have been carefully crafted and that they are reflective of the values and opinions of its residents.

Finally, it is interesting to note that the states with the greatest number of laws prohibiting assisted suicide are somewhat close to each other geographically. Located in or near the Midwest, Kansas, Minnesota, Ohio, Oklahoma, and South Dakota all mention the prohibition of assisted suicide at least eight times within their respective statutory compilations. Each of these states has at least one explicit prohibition of assisted suicide generally<sup>122</sup> as well as one implicit prohibition of assisted suicide specific to physicians.<sup>123</sup> With the exception of Kansas, each of these states also implicitly prohibits assisted suicide generally at least once.<sup>124</sup>

In addition to their numerous explicit and implicit prohibitions, all five states provide the additional penalty of licensure revocation for health care workers. Oklahoma and South Dakota contain statutes which broadly apply to any licensed health care professional,<sup>125</sup> while Kansas, Minnesota, and Ohio have laws which are specific to particular health care workers, including physicians, nurses, physician assistants, dentists, podiatrists, respiratory therapists, and pharmacists.<sup>126</sup> Kansas,

<sup>122</sup> KAN. STAT. ANN. § 21-3406 (1995 & Supp. 2005); MINN. STAT. ANN. § 609.215 (West 2003 & Supp. 2005); OHIO REV. CODE ANN. § 3795.02 (LexisNexis 2005); OKLA. STAT. ANN. tit. 21, §§ 813-15 (West 2002 & Supp. 2006); OKLA. STAT. ANN. tit. 63, § 3141.3 (West 2004 & Supp. 2006); S.D. CODIFIED LAWS § 22-16-37 (2006).

<sup>123</sup> KAN. STAT. ANN. § 60-4403 (2005); MINN. STAT. ANN. § 609.215 Subd. 3 (West 2003 & Supp. 2005); OHIO REV. CODE ANN. § 3795.03 (LexisNexis 2005); OKLA. STAT. ANN. tit. 63, § 3141.4 (West 2004); S.D. CODIFIED LAWS § 34-12D-23 (Supp. 2006).

<sup>124</sup> MINN. STAT. ANN. §§ 145B.14, 145C.04 (West 2005); OHIO REV. CODE ANN. § 2133.12 (LexisNexis 2002); OHIO REV. CODE ANN. § 2133.24 (LexisNexis 2002 & Supp. 2006); OKLA. STAT. ANN. tit. 63, §§ 3101.2, 3101.12 (West 2004 & Supp. 2006); OKLA. STAT. ANN. tit. 63, § 3131.13 (West 2004); S.D. CODIFIED LAWS § 34-12D-20 (2004).

<sup>125</sup> OKLA. STAT. ANN. tit. 63, § 3141.8 (West 2004); S.D. CODIFIED LAWS § 34-12D-28 (Supp. 2006). South Dakota also provides that "[n]o pharmacist may be required to dispense medication if there is reason to believe that the medication would be used to . . . [c]ause the death of any person by means of an assisted suicide, euthanasia, or mercy killing." S.D. CODIFIED LAWS § 36-11-70 (2004).

<sup>126</sup> KAN. STAT. ANN. § 65-1120(a)(9) (2002 & Supp. 2005) (relating to nurses); KAN. STAT. ANN. § 65-1436(a)(20) (2002 & Supp. 2005) (relating to dentists and dental hygienists); KAN. STAT. ANN. § 65-1627(a)(14) (2002 & Supp. 2005) (relating to pharmacists); KAN. STAT. ANN. § 65-2006(a)(14) (2002) (relating to podiatrists); KAN. STAT. ANN. § 65-2836(cc) (2002 & Supp. 2005) (relating to professionals in the healing arts); KAN. STAT. ANN. § 65-28a05(h) (2002) (relating to physician assistants);

Minnesota, Ohio, and Oklahoma also provide a cause of action for injunctive relief.<sup>127</sup> In Oklahoma, for example, the "Assisted Suicide Prevention Act" provides "injunctive relief . . . against any person who is reasonably believed to be about to violate, who is in the course of violating, or who has violated [the prohibition of assisted suicide] . . . ."<sup>128</sup> The statute explains that "[s]uch an injunction shall legally prevent the person from assisting any suicide in this state regardless of who is being assisted."<sup>129</sup> Finally, civil damages are also available in Kansas, Minnesota, and Oklahoma.<sup>130</sup> The numerous explicit and implicit prohibitions of assisted suicide, as well as the additional penalties of injunction, civil damages, and licensure revocation clearly demonstrate the commitment of these states to preventing assisted suicide. The geographic proximity of these zealous states may be a mere coincidence, but the statutory similarities might also suggest something about the attitudes of the residents or policymakers within this region.

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MINN. STAT. ANN. § 147.091 Subd. 1(w) (West 2005) (relating to physicians); MINN. STAT. ANN. § 147A.13 Subd. 1(22) (West 2005) (relating to physician assistants); MINN. STAT. ANN. § 148.261 Subd. 1(20) (West 2005) (relating to nurses); MINN. STAT. ANN. § 150A.08 Subd. 1(15) (West 2005) (relating to dentists and dental hygienists); MINN. STAT. ANN. § 151.06 Subd. 1(7)(xiii) (West 2005) (relating to pharmacists); OHIO REV. CODE ANN. § 4731.22(B)(37) (LexisNexis 2003 & Supp. 2006) (relating to physicians); OHIO REV. CODE ANN. § 4723.28(B)(33) (LexisNexis 2003 & Supp. 2006) (relating to nurses); OHIO REV. CODE ANN. § 4730.25(B)(24) (LexisNexis 2003) (relating to physician assistants); OHIO REV. CODE ANN. § 4761.09(A)(14) (LexisNexis 2003 & Supp. 2006) (relating to respiratory care workers).

<sup>127</sup> KAN. STAT. ANN. § 60-4404 (2005); MINN. STAT. ANN. § 609.215 Subd. 4 (West 2003 & Supp. 2005); OHIO REV. CODE ANN. § 3795.02(B) (LexisNexis 2005); OKLA. STAT. ANN. tit. 63, § 3141.5 (West 2004). It is interesting to note that in Ohio, aside from the threat of licensure revocation for health care workers, the only punishment for assisting in a suicide seems to be an injunction. There is no mention that assisted suicide is a felony, misdemeanor, or other crime, and there is no other threat of punishment such as jail time or money damages. The state explicitly prohibits assisted suicide but does not seem to provide punishment beyond an injunction. OHIO REV. CODE ANN. § 3795.02 (LexisNexis 2005).

<sup>128</sup> OKLA. STAT. ANN. tit. 63, § 3141.5 (West 2004).

<sup>129</sup> *Id.* tit. 63, § 3141.5.

<sup>130</sup> KAN. STAT. ANN. § 60-4405 (2005); MINN. STAT. ANN. § 609.215 Subd. 5 (West 2003 & Supp. 2005); OKLA. STAT. ANN. tit. 63, § 3141.6 (West 2004).

## VI. CONCLUSION

After examining the laws of all fifty states, it is obvious that the current laws in the United States differ with respect to their treatment of physician-assisted suicide. Some states have no prohibitions against such action, while other states specifically prohibit physician-assisted suicide and provide additional penalties for physicians who assist in a suicide. Vermont, for example, never directly prohibits physician-assisted suicide or assisted suicide in general anywhere in its statutes, and Massachusetts only implicitly prohibits mercy killing.<sup>131</sup> By contrast, the state of Arkansas specifically criminalizes physician-assisted suicide,<sup>132</sup> and states such as Minnesota and Oklahoma provide the additional penalty of licensure revocation for health care professionals.<sup>133</sup> Perhaps the greatest difference among the states is that while nearly all states at least implicitly prohibit assisted suicide, physician-assisted suicide is currently legal in Oregon under limited conditions.<sup>134</sup>

The wide degree of variation among the states with respect to physician-assisted suicide may surprise many physicians, patients, and health policymakers. Some of the differences may be related to the varying attitudes of citizens across the country with respect to this issue. While certain regions of the country may feel physician-assisted suicide should be allowed, or at least not explicitly prohibited, other regions may adamantly oppose such action and feel they need to take extra steps to create laws or to provide additional punishments for violations. Policymakers will hopefully find the matrix provided in this Article useful in their attempt to advocate for laws in their own state, and physicians, patients, and citizens of the United States may find this matrix informative and useful for identifying the laws across the country. Although this matrix may soon be outdated, it will at least provide a valuable starting point for anyone who wishes to research the laws of the United States regarding physician-assisted suicide.

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<sup>131</sup> MASS. GEN. LAWS ANN. ch. 201D, § 12 (West 2004).

<sup>132</sup> ARK. CODE ANN. § 5-10-106 (Supp. 2007); ARK. CODE ANN. § 17-95-704 (Supp. 2005).

<sup>133</sup> MINN. STAT. ANN. § 147.091 Subd. 1(w) (West 2005); OKLA. STAT. ANN. tit. 63, § 3141.8 (West 2004).

<sup>134</sup> OR. REV. STAT. § 127.805 § 2.01(1) (2005 & Supp. 2005).