

PHYSICIAN AID IN DYING

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The links below provide access to the introduced bill. The other information is also available under the links or “Status of this Bill.”

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: Under [45-2-211, MCA](#), the consent of a victim is a defense to a criminal offense. Consent is ineffective under several circumstances, including if “it is against public policy to permit the conduct or the resulting harm, even though consented to”. In [Baxter v. State](#), 2009 MT 449, 354 Mont. 234, 224 P.3d 1211, the Montana Supreme Court held that physician aid in dying, which the Court characterized as a physician making “medication available for a terminally ill patient who requests it, and the patient would then choose whether to cause his own death by self-administering the medicine”, is not against public policy under 45-2-211, MCA, and, therefore, a physician who aided a terminally ill patient in dying and who was subsequently charged with a criminal offense for those actions could assert consent as a defense. The Montana Supreme Court has not addressed whether physician aid in dying is protected under the Montana Constitution.

Legislative Services Division Materials:

None

Other Materials:

[Privacy Dignity at the End of Life: Protecting the Right of Montanans to Choose Aid in Dying](#) (The Honorable James R. Browning Symposium, The Right to Privacy), Tucker, 68 Mont. L. Rev. 317 (2007).

Introduced Legislation

*Chapter number assigned means bill was passed and approved.

2017

TOPIC OF PRIMER

[House Bill No. 536](#) – (H) Died in Process -- AN ACT PROVIDING THAT CONSENT TO PHYSICIAN AID IN DYING IS NOT A DEFENSE TO A CHARGE OF HOMICIDE; AMENDING SECTION 45-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE.

2015

[House Bill No. 328](#) – (H) Missed Deadline for General Bill Transmittal -- AN ACT PROVIDING THAT CONSENT TO PHYSICIAN AID IN DYING IS NOT A DEFENSE TO A CHARGE OF HOMICIDE; AMENDING SECTION 45-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE.

[House Bill No. 477](#) – (S) Died in Standing Committee -- AN ACT REVISING AIDING OR SOLICITING SUICIDE LAWS; PROVIDING THAT PHYSICIAN-ASSISTED SUICIDE IS AGAINST PUBLIC POLICY AND IS PROHIBITED; REVISING THE OFFENSE OF AIDING OR SOLICITING SUICIDE; PROVIDING A DEFINITION; AMENDING SECTION 45-5-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

2013

[House Bill No. 505](#) – (S) Died in Process -- AN ACT CLARIFYING THE OFFENSE OF AIDING OR SOLICITING SUICIDE; CLARIFYING THAT PHYSICIAN-ASSISTED SUICIDE IS A FORM OF AIDING OR SOLICITING SUICIDE; CLARIFYING THAT THE CONSENT OF A VICTIM IS NOT A DEFENSE TO AIDING OR SOLICITING SUICIDE; PROVIDING DEFINITIONS; AMENDING SECTION 45-5-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

2011

[Senate Bill No. 116](#) – (S) Died in Standing Committee -- AN ACT PROHIBITING AID IN DYING; AMENDING SECTIONS 45-2-211 AND 50-9-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[Senate Bill No. 167](#) – (S) Died in Standing Committee -- AN ACT ALLOWING A TERMINALLY ILL PATIENT TO REQUEST MEDICATION TO END THE PATIENT'S LIFE; ESTABLISHING PROCEDURES; PROVIDING THE RIGHT TO RESCIND THE REQUEST; PROVIDING DEFINITIONS; PROVIDING IMMUNITY FOR PERSONS PARTICIPATING IN GOOD FAITH COMPLIANCE WITH THE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

2009

[House Bill No. 351](#) – (H) Died in Standing Committee -- AN ACT ALLOWING FOR FREEDOM OF CONSCIENCE IN PROVIDING HEALTH CARE SERVICES; PROVIDING DEFINITIONS; PROVIDING REMEDIES; AMENDING SECTIONS 37-1-105, 37-1-136, 37-1-303, 37-1-307, 37-1-308, 37-1-402, AND 50-5-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.