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CRIMES AND OFFENSES Crimes Against the Person: Provide for the Criminal Offense of Offering to Assist in the Commission of Suicide and Committing an Act in Furtherance Thereof

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CRIMES AND OFFENSES

Crimes Against the Person: Provide for the Criminal Offense of Offering to Assist in the Commission of Suicide and Committing an Act in Furtherance Thereof

CODE SECTION: O.C.G.A. § 16-5-5 (new)
BILL NUMBER: HB 415
ACT NUMBER: 1196
SUMMARY: The Act provides criminal penalties for those who offer or hold themselves out to assist another person in the commission of suicide and commit an act in furtherance thereof. The Act also provides criminal penalties for anyone who overcomes the will of another person and thereby causes that person to commit or attempt to commit suicide. The Act exempts withholding or withdrawing medical care pursuant to a living will, a durable power of attorney, or a written do-not-resuscitate order.
EFFECTIVE DATE: July 1, 1994

History

The issue whether physician-assisted suicide should be legal is an ethical dilemma with advocates on both sides.¹ The issue has become particularly poignant since Dr. Jack Kevorkian participated in a physician-assisted suicide in 1990.² Since that time, Dr. Kevorkian has

1. Compare SIDNEY H. WANZER ET AL., *The Physician's Responsibility Toward Hopelessly Ill Patients: A Second Look*, 320 NEW ENG. J. MED. 846-48 (1989), reprinted in TAKING SIDES: CLASHING VIEWS ON CONTROVERSIAL BIOETHICAL ISSUES, 110-13 (Carol Levine ed., 5th ed. 1993) (arguing it is not immoral for physicians to assist in rational suicide of a terminally ill person) with David Orentlicher, *Physician Participation in Assisted Suicide*, 262 JAMA 1844-45 (1989), reprinted in TAKING SIDES: CLASHING VIEWS ON CONTROVERSIAL BIOETHICAL ISSUES 114-17 (Carol Levine ed., 5th ed. 1993) (arguing that "treatment" designed to bring on death does not heal and is inconsistent with physician's role).

2. *She Got Dying Wish: Use of Doctor's Suicide Device*, ATLANTA CONST., June 6, 1990, at A3. Dr. Kevorkian stirred the ethical debate when he participated in the suicide of Janet Adkins, an Alzheimer's patient. The Portland, Oregon woman traveled to Detroit, Michigan to meet Dr. Kevorkian. Dr. Kevorkian constructed a device allowing Ms. Adkins to give herself a lethal dose of the chemicals thiopental and potassium chloride. Dr. Kevorkian actively participated by placing an intravenous tube in her arm. *Id.*; see also Christine K. Cassel & Diane E. Meier, *Sounding Board: Morals and Moralism in the Debate over Euthanasia and Assisted Suicide*, 323 NEW ENG. J. MED. 750 (1990).

participated in at least twenty physician assisted suicides.³ Including Georgia, twenty-nine states have outlawed assisted suicides.⁴

The legislation was introduced during the 1993 legislative session at a time when almost daily reports of Dr. Kevorkian's activities were coming from Michigan.⁵ At that time, Georgia was similar to Michigan in that Georgia did not have any method, besides possibly a murder charge, by which to prosecute a physician who participated in an assisted suicide.⁶

Representative Ron Crews of Gwinnett County introduced the bill as a pre-emptive attempt to prevent Dr. Kevorkian, or any similar person, from committing assisted suicides in Georgia.⁷ The bill as introduced was a hybrid modeled after review of similar laws of other states,⁸ including Michigan.⁹ Proponents viewed the bill as a way for Georgia to go on record as stating that assisted suicide is not an acceptable medical practice in Georgia.¹⁰ The bill was opposed by the American Civil Liberties Union (ACLU) and was supported by Choice in Dying.¹¹

The problem of assisted suicide has arisen because of the longer life expectancy of human beings today.¹² The problem arises when a person, because of depression, illness, or infirmity, makes a decision not to continue living.¹³ An additional problem is the potential for a doctor to "prey" upon someone with an illness or depression.¹⁴ Proponents of the bill feared that legitimizing assisted suicide would lead down the slippery slope of legalized euthanasia.¹⁵

3. *Kevorkian to Stand Trial*, ATLANTA CONST., Feb. 19, 1994, at A10.

4. '93 Georgia Legislature, *Bill on Assisting Suicides Passes House*, ATLANTA CONST., Feb. 26, 1993, at E3; see, e.g., TENN. CODE ANN. § 39-13-216 (Supp. 1994).

5. Telephone Interview with Rep. Ron Crews, House District No. 78 (Mar. 22, 1994) [hereinafter Crews Interview].

6. *Id.*

7. Ann Hardie, *Georgia Legislature, Legislators Study Ban on Assisted Suicides*, ATLANTA CONST., Mar. 4, 1993, at C3.

8. Crews Interview, *supra* note 5; see MICH. COMP. LAWS ANN. § 752.1027 (West Supp. 1994).

9. MICH. COMP. LAWS ANN. § 752.1027 (West Supp. 1994).

10. Crews Interview, *supra* note 5.

11. *Id.* The ACLU opposed the bill because "[i]t takes away a right of an individual to die with dignity when they need some assistance doing so." *Id.* (citing Georgia ACLU Executive Director Teresa Nelson). Choice in Dying supported the bill because they believed that "before assisted suicides are legal, Americans must decide under what circumstances they are tolerable to the public." *Id.*

12. *Lawmakers '94* (WGTV television broadcast, Feb. 9, 1994) (videotape available in the Georgia State University College of Law Library) [hereinafter *Lawmakers*, Feb. 9, 1994].

13. *Id.*

14. *Id.*

15. Crews Interview, *supra* note 5. Active euthanasia is legal in the Netherlands. Orentlicher, *supra* note 1.

The Georgia Supreme Court, in *State v. McAfee*, examined the issue of assisted suicide.¹⁶ The court held that Mr. McAfee had a right to turn off a life-sustaining ventilator and a right to be free from pain at that time.¹⁷ This decision gave the patient the right to have a physician administer a sedative at the time the patient disconnects his respirator.¹⁸ However, after the Supreme Court reached the decision, Mr. McAfee changed his mind and decided he wanted to live.¹⁹

Whether one has a constitutionally protected right to commit suicide is uncertain. The United States Supreme Court has indicated that a person has a Fourteenth Amendment liberty interest to refuse unwanted medical care.²⁰ But the Court has not gone so far as to say that one definitely does or does not have a constitutional right to refuse food and hydration.²¹ Therefore, whether one has the constitutional right to take the next step and actually end one's life is undecided.

The bill was originally introduced in the House during the 1993 legislative session.²² The bill passed the House in 1993 by an overwhelming 123-36 vote.²³ Opponents argued that existing laws were adequate to prohibit assisted suicide.²⁴ However, the bill was still in Senate committee when the 1993 session ended.²⁵

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The bill as originally introduced in 1993 was broader than the bill which was finally passed during the 1994 legislative session.²⁶ The 1993 bill did not have the exception for withholding or withdrawing

16. 385 S.E.2d 651 (Ga. 1989).

17. *Id.* at 652.

18. *Id.*

19. John Dunn, *A Bittersweet Victory: Winning the Right to Die*, TECH TOPICS (Georgia Tech Alumni Association, Atlanta, Ga.), Winter 1989, at 1; see also Stanley S. Herr et al., *No Place to Go: Refusal of Life-Sustaining Treatment by Competent Persons with Physical Disabilities*, 8 ISSUES IN L. & MED. 3 (1992). One reason cited by opponents of assisted suicide is that patients may, at the last minute, change their minds. Debra J. Saunders, *Kevorkian Changed His Mind; So Might Patients*, ATLANTA J., Dec. 21, 1993, at A14. In fact, in 1993, allegations arose that one of Dr. Kevorkian's patients did change their mind at the last minute, but that Dr. Kevorkian allowed the patient to die. *Officials Say Kevorkian Patient May Have Tried to Back Out of Suicide*, ATLANTA J., Feb. 26, 1993, at A3.

20. *Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261 (1990).

21. *See id.* at 279.

22. Ben Smith III, *Opinion Shift Threatens 'Anti-Kevorkian' Bill*, ATLANTA CONST., Feb. 25, 1994, at F4.

23. '93 Georgia Legislature, *Bill on Assisting Suicides Passes House*, ATLANTA CONST., Feb. 26, 1993, at E3.

24. *Id.*

25. Final Composite Status Sheet, Mar. 23, 1993.

26. *Legislative '94 Session in Brief: Weaker Suicide Bill is OK'd*, ATLANTA CONST., Mar. 17, 1994 at D4.

medical treatment.²⁷ Additionally, the bill would apply to anyone who assisted in a suicide.²⁸ The bill specifically applied to anyone who gave another person, via prescription or otherwise, any drug or instrument with the knowledge that the other person would use those items to commit suicide.²⁹ The 1993 bill had a provision similar to the provision of the final 1994 bill relating to the use of duress to cause another person to commit suicide.³⁰

The House Committee on Special Judiciary offered a committee substitute which specifically covered acts by any "licensed health care professional."³¹ Additionally, the punishment for assisting a suicide was changed to imprisonment from one to five years or a \$2000 fine or both.³² This substitute version excepted the administration of drugs that would tend to hasten death under this version, unless there was an intent to assist in suicide.³³ Finally, the exception of withholding or withdrawing medical treatment was added to the bill.³⁴ This version of the bill passed the House in 1993.³⁵

In 1994, the bill was recommitted to the Senate Committee on Special Judiciary.³⁶ The Senate committee substitute specifically covered acts by any "certified, registered, or licensed health care professional."³⁷ Additionally, this version provided an exception for withholding or withdrawing medical treatment under a living will or a

27. HB 415, as introduced, 1993 Ga. Gen. Assem.

28. *Id.*

29. *Id.*

30. Compare *id.* with O.C.G.A. § 16-5-5 (Supp. 1994). The 1993 bill, as introduced, provided for stiffer penalties when duress was involved. HB 415, as introduced, 1994 Ga. Gen. Assem. Simply assisting a suicide would have been punishable by imprisonment for one to ten years. Using duress to cause another person to commit suicide would have been punishable by imprisonment for one to twenty years. For a discussion of the penalties under the 1994 bill, see *infra* notes 62-63 and accompanying text.

31. HB 415 (HCS), 1993 Ga. Gen. Assem.

32. *Id.*

33. *Id.* While the bill was in the House Special Judiciary Committee, the Medical Association of Georgia offered an amendment, which was adopted in the Senate committee substitute, that healthcare workers who treated patients for pain would not be prosecuted even if the treatment hastened death. Crews Interview, *supra* note 5. The main thrust of this provision was to insure that only those who have the intent to assist in suicide are prosecuted. *Id.* In May 1994, Dr. Kevorkian was acquitted of violating Michigan's assisted suicide law because of a similar clause in the Michigan law. Julia Prodis, *Michigan Jury Finds Kevorkian Innocent*, ATLANTA CONST., May 3, 1994, at A4. Jurors believed that Dr. Kevorkian was relieving the deceased's pain when Dr. Kevorkian administered carbon monoxide to the deceased. *Id.*

34. HB 415 (HCS), 1994 Ga. Gen. Assem.; see *infra* note 64.

35. Final Composite Status Sheet, Mar. 23, 1993.

36. Final Composite Status Sheet, Mar. 16, 1994.

37. HB 415 (SCS), 1994 Ga. Gen. Assem.

durable power of attorney.³⁸ Finally, the Senate committee substitute provided an exception for "hospice provided by . . . a hospice care team."³⁹

Under this version, if a patient asked a private physician for pills to overdose, a violation would occur if the pills were given "intentionally" for the purpose of allowing the patient to commit suicide.⁴⁰ Senate opponents feared the bill might cause relatives to seek legal remedies from physicians and feared there might be a "witch hunt" in cases of suicide to determine whether the dosage was proper or whether the patient abused the prescription.⁴¹ Opponents postulated that a physician might be afraid to prescribe some drugs for terminal patients.⁴² The Senate passed this version by 34 votes.⁴³

However, the House rejected the Senate version 84 to 81.⁴⁴ During debate, many representatives related their experiences in dealing with the medical decisionmaking surrounding the death of a loved one.⁴⁵ The House rejected the bill because opponents feared it would put the district attorney in every intensive care unit.⁴⁶

A Conference Committee then recommended a substitute bill which finally passed both houses.⁴⁷ The bill which left the Conference Committee was substantially different from the bill as introduced.⁴⁸

38. *Id.* "Durable power of attorney" refers to the situation in which a "person executes a power of attorney which will become or remain effective in the event he or she should later become disabled." BLACK'S LAW DICTIONARY 1173 (6th ed. 1990).

39. HB 415 (SCS), 1994 Ga. Gen. Assem. This provision was added upon the encouragement of the hospice lobby. Crews Interview, *supra* note 5.

40. *Lawmakers*, Feb. 9, 1994, *supra* note 12.

41. *Id.*

42. *Id.* For example, if a depressed and possibly suicidal patient sought medical care, the proper treatment would be to provide anti-depression drugs. However, opponents believed that the doctor might be afraid to prescribe the needed medication for fear the patient might actually use the medication to overdose and commit suicide. *Id.*

43. *Id.*

44. Smith, *supra* note 22.

45. *Lawmakers '94* (WGTV television broadcast, Feb. 24, 1994) (videotape available in the Georgia State University College of Law Library) [hereinafter *Lawmakers*, Feb. 24, 1994].

46. *Id.* Proponents argued the bill actually took the district attorney out of the intensive care unit because the bill allowed physicians and family members to make decisions to treat for pain without fear of prosecution. *Id.* Proponents further argued that making a decision not to prolong life was not the same as making a decision to hasten death. *Id.*

47. HB 415 (CCS), 1994 Ga. Gen. Assem.

48. Crews Interview, *supra* note 5. The Senate version of the bill clearly dealt with assisted suicide, whereas the bill as passed dealt mainly with the Kevorkian issue. *Id.* Compare HB 415, as introduced, 1993 Ga. Gen. Assem. with HB 415 (CCS), 1994 Ga. Gen. Assem. During the time period from the bill's introduction in 1993 to its reconsideration by the Conference Committee, public attitude toward assisted suicide

The Act provides for two instances when assisting in a suicide constitutes a criminal offense.⁴⁹ The first instance occurs when people who publicly advertise, offer, or hold themselves out to intentionally and actively assist another person in the commission of suicide and who also commits an overt act to further that purpose.⁵⁰ The overt act to commit suicide does not have to be successful for a violation to occur.⁵¹

The Act specifically defines the level of intent necessary to be found culpable.⁵² Intent to assist suicide is a main element of the bill.⁵³ During House debate of the Senate version, questions were raised as to the actual level of intent necessary to be prosecuted.⁵⁴ In particular, the issue of whether a district attorney would need to show criminal intent was raised.⁵⁵ The House debate failed to resolve the question of the level of intent necessary to be prosecuted.⁵⁶

Not covered by this Act is a situation in which people publicly advertise, offer, or hold themselves out as willing to assist another to commit suicide but takes no action to assist another person to commit suicide.⁵⁷ More importantly, the Act applies only if the offering to assist another to commit suicide is done publicly.⁵⁸ This still leaves room for a physician and a patient to make private decisions concerning the patient's desire to have the physician assist in the patient's suicide.⁵⁹

Assisting a suicide is also criminal when a person knowingly and willfully commits an act which destroys the will of another and thereby

had changed. Crews Interview, *supra* note 5. A 1994 *Atlanta Journal-Constitution* poll showed that a majority of Georgians favored assisted suicide. Mark Sherman, *Special Report—Issues '94 Georgians Speak Out Health*, ATLANTA CONST., Jan. 9, 1994, at H5. However, the elderly in the poll were "less supportive of such a law." *Id.*

49. O.C.G.A. § 16-5-5(b)-(c) (Supp. 1994).

50. *Id.* § 16-5-5(b) (Supp. 1994).

51. *Id.* § 16-5-5(c) (Supp. 1994) ("Any person who . . . commits any act which . . . causes [another] person to commit or attempt to commit suicide . . .") (emphasis added).

52. *Id.* § 16-5-5(a)(1) (Supp. 1994). " 'Intentionally and actively assisting suicide' means direct 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." *Id.*

53. Crews Interview, *supra* note 5.

54. *Lawmakers*, Feb. 24, 1994, *supra* note 45.

55. *Id.*

56. *Id.*

57. Crews Interview, *supra* note 5; see O.C.G.A. § 16-5-5(b) (Supp. 1994).

58. Crews Interview, *supra* note 5; see O.C.G.A. § 16-5-5(b) (Supp. 1994).

59. Crews Interview, *supra* note 5; see Timothy Quill, *Sounding Board: Death and Dignity: A Case of Individualized Decision Making*, 324 NEW ENG. J. MED. 691 (1991). This article describes a case in which a doctor had prescribed barbiturates for a terminal patient with leukemia knowing that the patient would use the medication to commit suicide. Toward the latter stages of the disease, the patient did use the pills to commit suicide. *Id.*

substitutes the person's own will for the wishes of the other person and then intentionally causes or induces the other person to commit or attempt to commit suicide.⁶⁰ Instances when a person's will can be destroyed include: fraudulent practices preying upon a person's fears, affections, or sympathies; duress; or undue influence.⁶¹

Punishment for a person convicted of publicly offering to assist another to commit suicide and actively participating in another's suicide is imprisonment for one to five years.⁶² However, punishment for a person who overcomes the will of another and causes the other to commit or attempt suicide is imprisonment for one to ten years.⁶³

The Act does not apply to the withholding or withdrawing of medical or health care treatment.⁶⁴ The Act specifically states that it does not apply to withholding or withdrawing of medical care related to a living will,⁶⁵ a durable power of attorney,⁶⁶ or a written do-not-resuscitate order.⁶⁷ However, the exception is not limited to these three instances.⁶⁸ The provision in the Senate committee substitute for exempting hospice care was eliminated from the final bill.⁶⁹

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60. O.C.G.A. § 16-5-5(c) (Supp. 1994). The Association of Medically Handicapped Citizens requested this section. Crews Interview, *supra* note 5. This group felt medically vulnerable and did not want to be taken advantage of and did not want their lives to be considered without value. *Id.* This section of the bill was modeled after the section of the Georgia Will Code. *Id.*; see O.C.G.A. § 53-2-6 (1992) (relating to destroying freedom of volition in testamentary disposition). Because that section has previously been litigated, the proponents of the bill felt the case law would give this section of the Code some background. Crews Interview, *supra* note 5.

61. O.C.G.A. § 16-5-5(c) (Supp. 1994). Examples of overcoming the will of another would include talking someone into committing suicide, especially when motivated by financial gain, such as inheritance or avoidance of extreme medical expenses. Crews Interview, *supra* note 5.

62. O.C.G.A. § 16-5-5(b) (Supp. 1994).

63. *Id.* § 16-5-5(c) (Supp. 1994). Proponents felt that preying upon another should be a more severe crime. Crews Interview, *supra* note 5.

64. O.C.G.A. § 16-5-5(d) (Supp. 1994).

65. *Id.* Georgia's living will provisions are provided in O.C.G.A. §§ 31-32-1 to -11 (Supp. 1994). Georgia law already provides that the making of a living will does not constitute suicide. *Id.* § 31-32-9 (Supp. 1994).

66. *Id.* § 16-5-5(d) (Supp. 1994). Georgia's durable power of attorney provisions are provided in O.C.G.A. §§ 31-36-1 to -13 (1991).

67. *Id.* § 16-5-5(d) (Supp. 1994).

68. *Id.*

69. Compare HB 415 (SCS), 1994 Ga. Gen. Assem. with O.C.G.A. § 16-5-5 (Supp. 1994).