Testimony to the Public Health Committee
Connecticut House of Representatives
In Opposition to HB 5417, "An Act Concerning End-of-Life Care"

March 19, 2018

I would like to comment on the pending bill HB 5417, misleadingly titled "An Act Concerning End-of-Life Care." In fact the actions authorized for physicians, family members and others under this bill have never been aspects of "end of life care" in Connecticut or the vast majority of states. In Connecticut's penal code they constitute the crime of aiding a suicide, a Class C felony:

Sec. 53a-56. Manslaughter in the second degree: Class C felony. *(a) A person is guilty of manslaughter in the second degree when: (1) He recklessly causes the death of another person; or (2) he intentionally causes or aids another person, other than by force, duress or deception, to commit suicide. (emphasis added)*

The sponsors may believe that because they surround the act with paperwork, witnesses, and disclaimers about coercion, they have made these acts into something else. But that is absurd. None of these peripheral concerns have anything to do with the crime – in fact, the current prohibition specifically applies when "force, duress of deception" are *not* involved. (When they are involved, the crime is murder.)

The key difference between what this law allows, and what will remain illegal after it passes, is that two physicians will have expressed an "opinion," which may be negligent (as it need only be a "good faith" guess), that the victim has a terminal illness. Terminal illness is then defined in terms of an expected death in six months. The definition is profoundly ambiguous -- among other things, it does not say whether this life expectancy applies even with medical treatment, or in the absence of treatment, as when the patient refuses treatment or a physician or insurance company denies it. In the latter case, legal protection is withdrawn from people who could live for years or decades with continued treatment. For this reason alone, the definition seems unconstitutionally vague, as this porous and ambiguous description of someone's health condition is the decisive basis for exempting him or her from the protections of the criminal code that are equally provided to everyone else.

This dismissive attitude by the able-bodied legislators of Connecticut toward the value of life in people with serious illness is a weak basis indeed for legally redefining a crime as "care."

My credentials in this area are as follows. I have analyzed proposals of this kind for three decades. Though retired from full-time employment, I continue to do research and writing on this issue as an Associate Scholar at the Charlotte Lozier Institute and as a Public Policy Fellow at the University of Notre Dame's Center for Ethics and Culture. I also reside in a state with a law similar to HB 5417, and have analyzed the ways in which such laws expose sick and elderly

Americans to abuse. I hope Connecticut does not repeat my home state's mistake. Critiques of the Oregon law itself, the model for laws in Washington and other states, include my recent article "Oregon's Assisted Suicides: The Up-to-Date Reality in 2017," https://lozierinstitute.org/oregons-assisted-suicides-the-up-to-date-reality-in-2017-2/.

My specific criticism of HB 5417 as written is twofold.

I. HB 5417 replicates many of the problems and loopholes of laws like Oregon's:

- It eliminates a class of especially vulnerable patients from the legal protections afforded to others, whose suicidal feelings are addressed through suicide prevention rather than suicide assistance. The great majority of states, despite vigorous efforts by groups like "Compassion & Choices," have maintained their laws protecting all their citizens equally from those who would "assist" their suicides. In fact, more states have passed new *bans* on assisted suicide since Oregon enacted its law than have taken the approach of HB 5417. This is because -- as the U.S. Supreme Court and New York's highest court have both unanimously concluded -- legislators have good and valid reasons for concluding that the only adequate way to prevent abuse of such a double standard is to forbid assisting the suicide of anyone, making no invidious distinctions between those whose suicides are acceptable to the State and those whose suicides are not.

- Like Oregon's law, HB 5417 has absolutely no safeguard against pressure, coercion, or outright homicide at the time the patient actually receives and dies from the lethal drugs, and no penalty for such actions. Whatever safeguards exist in this regard apply when a prescription is written, but (as proponents of such bills have repeatedly recognized) this is *not* the time when the patient or other person uses the drugs or decides that they will be used.

- The provision for psychological consultation is optional for the initial physicians, who can decide on their own that even if a patient is depressed this does not "impair" his or her judgment (since they agree with that judgment, as physicians who favor assisted suicide). In Oregon and Washington, which have this provision, 96% of the patients never receive a psychological evaluation.

- The actions of all parties need only be in "good faith" compliance with the law, a completely subjective standard -- it allows actual violation of this law if the person negligently *believes* his or her actions are permitted;

- All reporting on what occurs is by the prescribing and consulting physicians. The physicians can hardly be expected to incriminate themselves by reporting that they violated legal requirements. Moreover, they need not even be present at the most crucial time when violations may be committed by others, the time when the patient dies from a lethal overdose. As in Washington state's law, the physician is legally *required* to lie on the death certificate, listing death from natural causes to prevent any actual scrutiny into abuses.

II. HB 5417 makes it all but impossible to penalize outright murder of those it applies to:

- The bill defines "aid in dying" as the prescribing of medication that "a qualified patient *may* self-administer to bring about his or her death." However:

- It nowhere forecloses the prospect that others "may" also administer the drugs.

- There are penalties for forging the patient's request or destroying the patient's rescinding of a request, but no penalty for another person's actually inserting the lethal drugs into the patient's body.

- Even "self-administer" is defined (as in Washington) as the patient's "act of *ingesting* medication." To "ingest" is to swallow or absorb something, including something inserted into the patient's body by others. Thus when the bill states that the patient's act of "self-administering" (ingesting) the lethal medication may not be seen as a suicide for any purpose, including application of the state's ban on assisting a suicide, the person delivering the drugs is exempted from liability.

- The drugs need never be under the physical control of the patient – they can be provided to his or her "agent," who of course may be a relative or other associate who will inherit upon the patient's death or have other self-serving motives.

- The bill's penalty for possessing or "delivering" the lethal drugs exempts the person who is "delivering such medication to a qualified patient." Putting the pills into a patient's mouth is of course one way of "delivering" them.

- Section 15 (a) states that nothing in this bill "authorizes a physician or any other person to end another person's life by lethal injection, mercy killing, assisting a suicide or any other active euthanasia." Note that this is not a prohibition, only a failure to authorize; and the terms "mercy killing" and "active euthanasia" in any case have no legal definition. But even this is then nullified by Section 15 (b), which states that no action taken "in accordance with" the bill "*shall constitute* causing or assisting another person to commit suicide in violation of section 53a-54a or 53a-56 of the general statutes." Section 53a-56 is the law against assisting a suicide cited earlier. Section 53a-54a is the law against murder:

Sec. 53a-54a. Murder. *(a) A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception…*

To say that no such actions "shall constitute" assisted suicide or murder is to say that, even if they actually *are* assisted suicide or murder, they may not be treated as such in law. So actions in accordance with this bill -- which include actions that the agent merely believes in "good

faith" are in accordance with the bill -- provide an exemption from liability for murder. Unlike "mercy killing" and "euthanasia, "murder" does have a clear legal definition in Connecticut, and this bill clearly provides protection to those who in fact practice it.

Conclusion

HB 5417 has the major loopholes and dangers of other laws in this field, including the Oregon law – and it includes features that aggravate the likelihood that its passage will lead to elder abuse, undue influence toward death for people who suffer from depression, and even the murder of people with serious illnesses and disabilities. I would therefore urge the legislature to reconsider.

Sincerely,

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