

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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H.P. 552

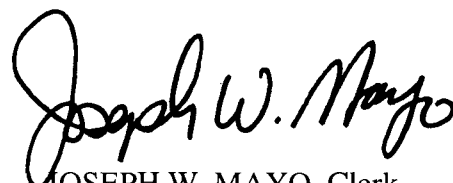
House of Representatives, March 7, 1995

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**An Act to Allow Physician Assisted Deaths with Dignity for Terminally Ill Persons in Maine.**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative RICHARDSON of Portland.  
Cosponsored by Representatives: BARTH of Bethel, BRENNAN of Portland, CROSS of Dover-Foxcroft, ETNIER of Harpswell, GOOLEY of Farmington, GREEN of Monmouth, JOHNSON of South Portland, JONES of Bar Harbor, LABRECQUE of Gorham, LINDAHL of Northport, MARVIN of Cape Elizabeth, PEAVEY of Woolwich, PERKINS of Penobscot, STEVENS of Orono, STONE of Bangor, VOLENIK of Sedgwick, Senators: BUSTIN of Kennebec, McCORMICK of Kennebec.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 18-A MRSA art. V, Part 9** is enacted to read:

6 **Part 9**

8 **DEATH WITH DIGNITY ACT**

10 **§5-901. Short title**

12 This Part may be known and cited as the "Death With Dignity Act."

14 **§5-902. Definitions**

16 As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

18 (a) "Adult" means a person who is 18 years of age or older.

20 (b) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

24 (c) "Capable" means not incapable.

26 (d) "Consulting physician" means the physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

30 (e) "Counseling" means a consultation between a state licensed psychiatrist or psychologist and a patient for the purpose of determining whether the patient is suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

32 (f) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the laws of this State to administer health care in the ordinary course of business or practice of a profession and includes a health care facility.

36 (g) "Incapable" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, a patient lacks the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

2           (h) "Informed decision" means a decision by a qualified  
3 patient to request and obtain a prescription to end that person's  
4 life in a humane and dignified manner and that is based on an  
5 appreciation of the relevant facts and after being fully informed  
6 by the attending physician of:

7           (1) The patient's medical diagnosis;

8           (2) The patient's prognosis;

9           (3) The potential risks associated with taking the  
10 medication that is prescribed;

11           (4) The probable results of taking the prescribed  
12 medication; and

13           (5) The feasible alternatives, including, but not limited  
14 to, comfort care, hospice care and pain control.

15           (i) "Medically confirmed" means that the medical opinion of  
16 the attending physician is confirmed by a consulting physician  
17 who has examined the patient and the patient's relevant medical  
18 records.

19           (j) "Patient" means a person who is under the care of a  
20 physician.

21           (k) "Physician" means a doctor of medicine or osteopathy  
22 licensed to practice medicine by the Board of Registration in  
23 Medicine.

24           (l) "Qualified patient" means a capable adult who is a  
25 resident of this State and who has satisfied the requirements of  
26 this Act in order to obtain a prescription for medication to end  
27 that person's life in a humane and dignified manner.

28           (m) "Terminal disease" means an incurable and irreversible  
29 disease that has been medically confirmed and will, within  
30 reasonable medical judgment, produce death within 6 months.

31           **§5-903. Written request for medication**

32           (a) An adult who is capable, is a resident of this State  
33 and is determined by the attending physician and consulting  
34 physician to be suffering from a terminal disease and who has  
35 voluntarily expressed the wish to die may make a written request  
36 for medication for the purpose of ending that adult's life in an  
37 humane and dignified manner in accordance with this Act.  
38

2 (b) A valid request for medication under this Act must be  
3 in the form described in section 5-920, signed and dated by the  
4 patient and witnessed by at least 2 individuals who, in the  
5 presence of the patient, attest that to the best of their  
6 knowledge and belief the patient is capable, is acting  
7 voluntarily and is not coerced to sign the request.

8 (1) A witness may not be a person who is:

10 (i) A relative of the patient by blood, marriage or  
11 adoption;

12 (ii) At the time the request is signed, entitled to  
13 any portion of the estate of the qualified patient upon  
14 that patient's death under a will or by operation of  
15 law; or

16 (iii) An owner, operator or employee of a health care  
17 facility where the qualified patient is receiving  
18 medical treatment or is a resident.

19 (2) The patient's attending physician at the time the  
20 request is signed may not be a witness.

21 (3) If the patient is a resident in a long-term care  
22 facility at the time the written request is made, one of the  
23 witnesses must be an individual designated by the facility  
24 and have the qualifications specified by the Department of  
25 Human Services by rule.

26 **§5-904. Attending physician's responsibilities**

27 The attending physician shall:

28 (a) Make the initial determination of whether a patient has  
29 a terminal disease, is capable and has voluntarily requested the  
30 medication under this Act;

31 (b) Inform the patient of:

32 (1) The patient's medical diagnosis;

33 (2) The patient's prognosis;

34 (3) The potential risks associated with taking the  
35 medication prescribed;

36 (4) The probable result of taking the medication  
37 prescribed; and

2           (5) The feasible alternatives, including, but not limited  
3           to, comfort care, hospice care and pain control;

4           (c) Refer the patient to a consulting physician for medical  
5           confirmation of the diagnosis and for a determination that the  
6           patient is capable and acting voluntarily;

8           (d) Refer the patient for counseling if appropriate  
9           pursuant to section 5-906;

10           (e) Request that the patient notify next of kin;

12           (f) Inform the patient of the opportunity to revoke the  
13           request at any time and in any manner and offer the patient an  
14           opportunity to revoke at the end of the 15-day waiting period  
15           pursuant to section 5-909;

18           (g) Verify, immediately prior to writing the prescription  
19           for medication under this Act, that the patient is making an  
20           informed decision;

22           (h) Fulfill the medical record documentation requirements  
23           of section 5-912; and

24           (i) Ensure that all appropriate steps are carried out in  
25           accordance with this Act prior to writing a prescription of  
26           medication to enable a qualified patient to end that patient's  
27           life in a humane and dignified manner.

30           **§5-905. Consulting physician confirmation**

32           A patient is qualified under this Act if a consulting  
33           physician examines the patient and the patient's relevant medical  
34           records and confirms, in writing, the attending physician's  
35           diagnosis that the patient is suffering from a terminal disease  
36           and verifies that the patient is capable, is acting voluntarily  
37           and has made an informed decision.

38           **§5-906. Counseling referral**

40           If, in the opinion of the attending physician or the  
41           consulting physician, a patient is suffering from a psychiatric  
42           or psychological disorder or depression that causes impaired  
43           judgment, either physician shall refer the patient for  
44           counseling. Medication to end a patient's life in a humane and  
45           dignified manner may not be prescribed until the counselor  
46           determines that the patient is not suffering from a psychiatric  
47           or psychological disorder or depression that causes impaired  
48           judgment.

50

2                   **§5-907. Informed decision**

4                   A person may not receive a prescription for medication to  
6                   end that person's life in a humane and dignified manner unless  
8                   that person has made an informed decision as defined in section  
                    5-902, subsection (g). Before prescribing medication under this  
                    Act, the attending physician shall verify that the patient is  
                    making an informed decision.

10                   **§5-908. Family notification**

12                   The attending physician shall ask the patient to notify the  
14                   next of kin of the patient's request for medication pursuant to  
                    this Act. A patient who declines or is unable to notify the next  
                    of kin is not denied the request for that reason.

16                   **§5-909. Written and oral request**

18                   To receive a prescription for medication to end the  
20                   patient's life in a humane and dignified manner, a qualified  
22                   patient must make an oral request and a written request and  
24                   repeat the oral request to the attending physician after a period  
                    of 15 days from the initial oral request. When the qualified  
                    patient makes the 2nd oral request, the attending physician shall  
                    offer the patient an opportunity to revoke the request.

26                   **§5-910. Right to revoke request**

28                   A patient may revoke a request for medication under this Act  
30                   at any time and in any manner without regard to the patient's  
32                   mental state. A prescription for medication under this Act may  
34                   not be written without the attending physician offering the  
                    qualified patient an opportunity to revoke the request.

36                   **§5-911. Waiting period**

38                   No less than 15 days may elapse between the patient's  
40                   initial oral request and the writing of a prescription under this  
                    Act. No less than 48 hours may elapse between the patient's  
                    written request and the writing of a prescription under this Act.

42                   **§5-912. Medical record filing requirements**

44                   The following information must filed in the patient's  
46                   medical record:

48                   (a) All oral requests by a patient for medication to end  
                    the patient's life in a humane and dignified manner;

50                   (b) All written requests by a patient for medication to end  
                    the patient's life in a humane and dignified manner;

2           (c) The attending physician's diagnosis and prognosis,  
4           determining that the patient is capable, is acting voluntarily  
          and is making an informed decision;

6           (d) The consulting physician's diagnosis and prognosis,  
8           determining that the patient is capable, is acting voluntarily  
          and is making an informed decision;

10           (e) A report of the determinations made during counseling;

12           (f) The attending physician's offer to the patient to  
14           revoke the request at the time of the patient's 2nd oral request  
          pursuant to section 5-909; and

16           (g) A note by the attending physician stating that  
18           requirements under this Act are met and indicating the steps  
          taken to carry out the request, including the medication  
20           prescribed.

22           **§5-913. Residency requirement**

24           Only residents of this State may make and be granted  
          requests under this Act.

26           **§5-914. Reporting requirements**

28           (a) The Bureau of Health shall annually review records  
30           maintained pursuant to this Act.

32           (b) The Bureau of Health shall adopt rules to facilitate  
34           the collection of information in compliance with this Act. The  
          information is not a public record and is not available to the  
          public.

36           (c) The Bureau of Health shall make available to the public  
38           an annual statistical report of information collected under  
          subsection (b).

40           **§5-915. Effect on construction of wills, contracts and laws**

42           (a) A provision in a contract, will or other agreement,  
44           whether written or oral, to the extent the provision affects the  
46           decision of a person to make or revoke a request for medication  
          to end the person's life in a humane and dignified manner, is not  
          valid.

48           (b) An obligation owing under any existing contract is not  
          conditional to or affected by the making or revoking of a request



2 for medication under this Act to end the person's life in a  
humane and dignified manner.

4 **§5-916. Insurance or annuity policies**

6 The sale, purchase or issuance of a life, health or accident  
8 insurance or annuity policy or the rate charged for a policy is  
10 not a condition of or affected by the making or revoking of a  
12 request under this Act for medication to end the patient's life  
14 in a humane and dignified manner. A qualified patient's act of  
ingesting medication to end that patient's life in a humane and  
dignified manner may not have an effect upon a life, health or  
accident insurance or annuity policy.

16 **§5-917. Construction**

18 This Act may not be construed to authorize a physician or  
20 any other person to end a patient's life by lethal injection,  
22 mercy killing or active euthanasia. Actions taken in accordance  
with this Act do not, for any purpose, constitute suicide,  
assisted suicide, mercy killing or homicide.

24 **§5-918. Immunities**

26 Except as provided in section 5-919 the following immunities  
apply.

28 (a) A person is not subject to civil or criminal liability  
30 or professional disciplinary action for participating in good  
32 faith with this Act, including being present when a qualified  
patient takes the prescribed medication to end the qualified  
patient's life in a humane and dignified manner.

34 (b) A professional organization or association or health  
36 care provider may not subject a person to censure, discipline,  
38 suspension, loss of license, loss of privileges, loss of  
membership or other penalty for participating or refusing to  
participate in good faith with this Act.

40 (c) A request by a patient for medication or provision by  
42 an attending physician of medication in good faith with the  
44 provisions of this Act does not provide the sole basis for the  
appointment of a guardian or conservator. The provision of  
medication to a qualified patient does not constitute neglect on  
the part of an attending physician.

46 (d) A health care provider is not under a duty, whether by  
48 contract, by law or by any other legal requirement to provide  
50 medication to end the patient's life in a humane and dignified  
manner. If a health care provider is unable or unwilling to

2 carry out a patient's request under this Act and the patient  
3 transfers that patient's care to a new health care provider, the  
4 prior health care provider shall transfer, upon request, a copy  
5 of the patient's relevant medical records to the new health care  
6 provider.

7 **§5-919. Liabilities**

8  
9 (a) A person who, without authorization of the patient,  
10 willfully alters or forges a request for medication or conceals  
11 or destroys a revocation of that request with the intent or  
12 effect of causing the patient's death commits a Class A crime.

13 (b) A person who coerces or exerts undue influence on a  
14 patient to request medication for the purpose of ending the  
15 patient's life or to destroy a revocation of such a request  
16 commits a Class A crime.

17 (c) This Act does not limit further liability for civil  
18 damages resulting from other negligent conduct or intentional  
19 misconduct by any person.

20 (d) The penalties in this Act do not preclude criminal  
21 penalties applicable under other law for conduct that is  
22 inconsistent with the provisions of this Act.

23 **§5-920. Form of the request**

24 A request for medication as authorized by this Act must be  
25 in substantially the following form.

26  
27 **REQUEST FOR MEDICATION**  
28 **TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER**

29 I,....., am an adult of sound mind.

30 I am suffering from....., which  
31 my attending physician has determined is a terminal disease and  
32 which has been medically confirmed by a consulting physician.

33 I have been fully informed of my diagnosis, prognosis,  
34 the nature of medication to be prescribed and potential  
35 associated risks, the expected result and the feasible  
36 alternatives, including comfort care, hospice care and pain  
37 control.

38 I request that my attending physician prescribe  
39 medication that will end my life in a humane and dignified manner.

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**INITIAL ONE:**

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... I have informed my family of my decision and taken their opinions into consideration.

... I have decided not to inform my family of my decision.

... I have no family to inform of my decision.

I understand that I have the right to revoke this request at any time. I understand the full importance of this request and I except to die when I take the medication to be prescribed.

I make this request voluntarily and without reservation and I accept full moral responsibility for my actions.

Signed:.....

Dated:.....

**DECLARATION OF WITNESSES**

We declare that the person signing this request:

(A) Is personally known to us or has provided proof of identity;

(B) Signed this request in our presence;

(C) Appears to be of sound mind and not under duress, fraud or undue influence; and

(D) Is not a patient for whom either of us is the attending physician.

.....Witness 1/Date

.....Witness 2/Date

Note: One witness may not be a relative by blood, marriage or adoption of the person signing this request, may not be entitled to any portion of the person's estate upon death and may not own, operate or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses must be an individual designated by the facility.

## STATEMENT OF FACT

2

This bill creates the Death with Dignity Act.

4

6 The bill allows a person who has been diagnosed with a  
terminal condition that is likely to lead to death within 6  
8 months and whose condition has been certified by an attending  
physician and a consulting physician to request a medically  
assisted death.