

MEMORANDUM

DATE	April 24, 2018
TO	Board of Psychology
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #21(b)(1)(A): AB 282 (Jones-Sawyer) – Aiding, Advising, or Encouraging Suicide: Exemption from Prosecution

Background:

AB 282 (Jones-Sawyer) would codify that any person whose actions are performed in compliance with the provisions in the End of Life Option Act cannot be prosecuted for those actions under Penal Code Section 401.

Location: Senate Committee on Public Safety

Status: 3/15/18 – From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Senate Committee on Public Safety

Votes: 1/18/2018 Assembly Floor (45-17-15)
1/9/2018 Assembly Committee on Public Safety (6-0-1)

Action Requested:

The Policy and Advocacy Committee recommends that the Board **Support** AB 282, as this bill codifies the intent of the End of Life Option Act to create a safe and legal way for physicians and psychologists to assist individuals suffering from terminal illnesses to die with dignity. This bill simply codifies that these professionals' participation in this process, when done in compliance with the End of Life Option Act, is not a prosecutable offense.

Attachment A: Analysis of AB 282 (Jones-Sawyer)

Attachment B: AB 282 (Jones-Sawyer) Bill Text

Attachment C: Assembly Committee on Public Safety Analysis

2018 Bill Analysis

Author: Jones-Sawyer and Bonta	Bill Number: AB 282	Related Bills:
Sponsor: Author	Version: Amended 3/15/2018	
Subject: Aiding, advising, or encouraging suicide: exemption from prosecution		

SUMMARY

This bill would codify that any person whose actions are performed in compliance with the provisions in the End of Life Option Act cannot be prosecuted for those actions under Penal Code Section 401.

RECOMMENDATION

SUPPORT – This bill codifies the intent of the End of Life Option Act to create a safe and legal way for physicians and psychologists to assist individuals suffering from terminal illnesses to die with dignity. This bill simply codifies that these professionals' participation in this process, when done in compliance with the End of Life Option Act, is not a prosecutable offense.

REASON FOR THE BILL

According to the author, AB 282 is a simple bill which provides technical clean up to the statute which makes it a felony to aid, advise, or encourage a suicide. In 2015, the Legislature passed the End of Life Option Act which allows a terminally ill adult with the capacity to make medical decisions to request a prescription for an aid in dying drug if certain conditions are met, including that the patient is able to self-administer the drug.

Other Boards/Departments that may be affected: Medical Board of California, Osteopathic Medical Board of California	
<input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes	
<input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required	
Policy & Advocacy Committee Position: <input checked="" type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: <u>4/19/2018</u> Vote: <u>3-0-0</u>	Full Board Position: <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: _____ Vote: _____

The End of Life Option Act insulates a prescribing physician and a person who is present to assist the qualified patient in preparing the drug from criminal liability for actions which are authorized under the Act. However, when the End of Life Option Act was enacted, the Penal Code provision which makes it a crime to aid a suicide was not updated to reflect that change. This bill specifies that actions which are authorized under the End of Life Option Act cannot be prosecuted under the criminal statute.

ANALYSIS

The End of Life Option Act (AB 15 X2, Chapter 1, Statutes of 2015), was passed by the California Legislature in 2015. It allows a terminally ill patient with the capacity to make medical decisions to request a prescription for a lethal dose of drugs to end their suffering, insulates a prescribing physician from criminal liability, and sets forth rigorous procedures and safeguards for physicians and psychologists participating in the Act to protect against abuse. There are specific assessment and reporting requirements in the Act that must be met by both the attending physician and any psychologist/psychiatrist that participates in the End of Life Option Act to ensure that the patient has been properly assessed and has the “capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder”. Additionally, if the attending physician sees any indication of a mental disorder, the physician must refer the patient to a psychiatrist or psychologist for a mental health specialist evaluation, and if the referral is made, no aid-in-dying drugs can be prescribed to the patient until the psychiatrist or psychologist determines that the patient has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

Section 443.18 of the Health and Safety Code provides that actions taken in accordance with the Act “shall not, for any purposes, constitute suicide, assisted suicide, homicide, or elder abuse under the law.” The obvious intent was to shield these health care professionals from liability and prosecution if they legally participated in the End of Life Option Act. However, health care professionals have had concerns about the legal aspects of participating in the End of Life Option Act since its passage. This bill would simply clarify that when acting in accordance with the requirements of the End of Life Option Act, physicians and psychologists could not be prosecuted under Penal Code Section 401.

LEGISLATIVE HISTORY

AB 15 X2 (Chapter 1, Statutes of 2015) permits a competent, qualified individual who is an adult with a terminal disease to receive a prescription for an aid-in-dying drug if certain conditions are met.

SB 128 (Wolk), of the 2015-2016 Legislative Session, was substantially similar to AB 15 X2. SB 128 was held in the Assembly Committee on Health.

AB 2139 (Chapter 568, Statutes of 2014) requires a health care provider, when making a diagnosis that a patient has a terminal illness, to notify the patient of his or her right to comprehensive information and counseling regarding legal end-of-life options.

AB 374 (Berg), of 2007-2008 Legislative Session, would have enacted the California Compassionate Choices Act, which would have authorized competent adults who have been determined by two physicians to be suffering from a terminal disease to make a request for medication to hasten the end of their lives in a humane manner. AB 374 was moved to the inactive file on the Assembly Floor without a vote recorded.

OTHER STATES' INFORMATION

Five (5) other states have "Death with Dignity" or "Aid-in-Dying" laws, including Oregon, Washington, Vermont, Montana, and New Mexico. Each of these states makes participation optional and has protections for physicians and mental health professionals who chose to participate in the law.

PROGRAM BACKGROUND

The Board advances quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the practice. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists.

Participation in the End of Life Option Act already legally allows psychologists to participate in the law and perform the mental health specialist assessment to determine whether the patient has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder, therefore the Board would have no cause for action against psychologists that perform these assessments and reports according to the provisions of the Act.

FISCAL IMPACT

Not Applicable

ECONOMIC IMPACT

Not Applicable

LEGAL IMPACT

Not Applicable

APPOINTMENTS

Not Applicable

SUPPORT/OPPOSITION

Support: American Civil Liberties Union of California

Opposition: None on file

ARGUMENTS

Proponents: Under the End of Life Option Act, a physician is authorized to prescribe an aid-in-dying drug under specified circumstances.... However, the

provisions of Penal Code section 401, which makes it a felony to assist someone in committing suicide, do not exempt the actions of physicians or other persons as authorized under the Act. AB 282 will correct this omission and protect those who assist persons who seek to end their lives, legally, on their own terms.

Opponents: None on file



AB-282 Aiding, advising, or encouraging suicide: exemption from prosecution. (2017-2018)

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Date Published: 03/16/2018 04:00 AM

AMENDED IN SENATE MARCH 15, 2018

AMENDED IN ASSEMBLY JANUARY 03, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

No. 282

Introduced by Assembly Members Jones-Sawyer and Bonta

February 02, 2017

An act to amend Section 401 of the Penal Code, relating to suicide.

LEGISLATIVE COUNSEL'S DIGEST

AB 282, as amended, Jones-Sawyer. Aiding, advising, or encouraging suicide: exemption from prosecution.

Existing law, the End of Life Option Act, until January 1, 2026, authorizes an adult who meets certain qualifications and who has been determined by his or her attending physician to be suffering from a terminal disease to request a prescription for an aid-in-dying drug. The act, with some exceptions, provides immunity from civil or criminal liability for specified actions taken in compliance with the act. Actions taken in accordance with the act do not, for any purpose, constitute suicide, assisted suicide, homicide, or elder abuse under the law.

Existing law makes a person who deliberately aids, advises, or encourages another to commit suicide guilty of a felony.

This bill would prohibit a person whose actions are ~~authorized pursuant to~~ *compliant with* the End of Life Option Act from being prosecuted for deliberately aiding, advising, or encouraging suicide.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 401 of the Penal Code is amended to read:

401. (a) Every person who deliberately aids, advises, or encourages another to commit suicide is guilty of a felony.

(b) A person whose actions are ~~authorized pursuant to~~ *compliant with* the provisions of the End of Life Option Act (Part 1.85 (commencing with Section 443) of Division 1 of the Health and Safety Code) shall not be prosecuted under this section.

Date of Hearing: January 9, 2018
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 282 (Jones-Sawyer) – As Amended January 3, 2018

SUMMARY: Clarifies that a person whose actions are authorized under the provisions of the End of Life Option Act cannot be prosecuted for the crime of assisted suicide.

EXISTING LAW:

- 1) Makes it a felony to deliberately aid, advise, or encourage another person to commit suicide. (Pen. Code, § 401.)
- 2) Enacts the End of Life Option Act. (Health & Saf. Code, § 443 et. seq.)
- 3) Permits an individual who is an adult with the capacity to make medical decisions and with a terminal disease to request and receive a prescription for an aid-in-dying drug if all of the following conditions exist:
 - a) The attending physician has diagnosed the individual with a terminal disease;
 - b) The individual has voluntarily expressed the wish to receive a prescription for an aid in dying drug;
 - c) The individual is a resident of California and is able to establish residency, as specified;
 - d) The individual documents his or her request for aid-in-dying drug, as specified; and,
 - e) The individual has the physical and mental ability to self-administer the aid-in-dying drug. (Health & Saf. Code, § 443.2, subd. (a).)
- 4) States that death resulting from actions taken in accordance with the Act shall not, for any purposes, constitute suicide, assisted suicide, homicide, or elder abuse under the law. (Health & Saf. Code, § 443.18.)
- 5) Prohibits a person from being subject to civil or criminal liability solely because the person was present when the qualified individual self-administers the prescribed aid-in-dying drug. A person may also, without civil or criminal liability, assist the qualified individual by preparing the aid-in-dying drug, as long as he or she does not assist the qualified patient in ingesting the aid-in-dying drug. (Health & Saf. Code, § 443.14, subd. (a).)
- 6) Prohibits a health care provider from being subject to civil or criminal liability for actions authorized under the Act. (Health & Saf. Code, § 443.14, subd. (b).)

- 7) Provides that knowingly altering or forging a request for an aid-in-dying drug to end an individual's life without his or her authorization or concealing or destroying a withdrawal or rescission of a request for an aid-in-dying drug is punishable as a felony if the act is done with the intent or effect of causing the individual's death. (Health & Saf. Code, § 443.17, subd. (a).)
- 8) Provides that knowingly coercing or exerting undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without his or her knowledge or consent, is punishable as a felony. (Health & Saf. Code, § 443.17, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 282 is a simple bill which provides technical clean up to the statute which makes it a felony to aid, advise, or encourage a suicide. In 2015, the Legislature passed the End of Life Option Act which allows a terminally ill adult with the capacity to make medical decisions to request a prescription for an aid in dying drug if certain conditions are met, including that the patient is able to self-administer the drug. The End of Life Option Act insulates a prescribing physician and a person who is present to assist the qualified patient in preparing the drug from criminal liability for actions which are authorized under the Act. However, when the End of Life Option Act was enacted, the Penal Code provision which makes it a crime to aid a suicide was not updated to reflect that change. This bill specifies that actions which are authorized under the End of Life Option Act cannot be prosecuted under the criminal statute."
- 2) **End of Life Option Act:** The End of Life Option Act "authorizes a terminally ill patient with the capacity to make medical decisions to request a prescription for a lethal dose of drugs, insulates a prescribing physician from criminal liability, and sets forth rigorous procedures and safeguards to protect against abuse." (*Donorovich-Odonnell v. Harris* (2015) 241 Cal. App. 4th 1118, 1124.) A patient's request for the drug and ingestion of the drug is not considered a suicide. (Health & Saf. Code, § 443.18.)

The Act provides physicians immunity from civil or criminal liability, censure, discipline, suspension, loss of license, or other penalties for participating in good faith compliance with the law. The Act also protects persons who are present or prepare the aid-in-dying drug, as long as they do not assist with the ingestion of the drug. (Health & Saf. Code, § 443.14.)

- 3) **Elements of Assisted Suicide:** Penal Code section 401 proscribes aiding, assisting, or encouraging a suicide. Although the statute appears to criminalize simply giving advice or encouragement, "the courts have required something more than mere verbal solicitation of another person to commit a hypothetical act of suicide. The courts have interpreted the statute as proscribing the direct aiding and abetting of a specific suicidal act. Some active and intentional participation in the events leading to the suicide are required in order to establish a violation. Thus, to prove a violation of section 401 it is necessary to establish all

of the following essential elements: (1) the defendant specifically intended the victim's suicide; (2) the defendant undertook some active and direct participation in bringing about the suicide, such as by furnishing the victim with the means of suicide; (3) the victim actually committed a specific, overt act of suicide.” (*Donorovich-O'Donnell v. Harris, supra*, 241 Cal.App.4th 1118, 1127-1128, quoting *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1374-1375.)

This bill would clarify that a person whose actions are authorized under the provisions of the End of Life Option Act cannot be prosecuted for the crime of assisted suicide.

- 4) **Argument in Support:** The *American Civil Liberties Union of California* states, “In 2015, California took the humane step of authorizing qualified terminally ill persons to request a prescription for an aid-in-dying drug under the End of Life Option Act (“the Act”). Under the Act, a physician is authorized to prescribe an aid-in-dying drug under specified circumstances, and a person who assists the individual in preparing the drug is given civil and criminal immunity, so long as the person does not assist the person in ingesting the drug. However, the provisions of Penal Code section 401, which makes it a felony to assist someone in committing suicide, do not exempt the actions of physicians or other persons as authorized under the Act. AB 282 will correct this omission and protect those who assist persons who seek to end their lives, legally, on their own terms.”
- 5) **Prior Legislation:**
 - a) AB 15 X2 (Eggman), Chapter 1, Statutes of 2015, permits a competent, qualified individual who is an adult with a terminal disease to receive a prescription for an aid-in-dying drug if certain conditions are met.
 - b) SB 128 (Wolk), of the 2015-2016 Legislative Session, was substantially similar to AB 15 X2. SB 128 was held in the Assembly Health Committee.
 - c) AB 2139 (Eggman), Chapter 568, Statutes of 2014 requires a health care provider, when making a diagnosis that a patient has a terminal illness, to notify the patient of his or her right to comprehensive information and counseling regarding legal end-of-life options.
 - d) AB 374 (Berg), of 2007-2008 Legislative Session, would have enacted the California Compassionate Choices Act, which would authorize competent adults who have been determined by two physicians to be suffering from a terminal disease to make a request for medication to hasten the end of their lives in a humane manner. AB 374 was moved to the inactive file on the Assembly Floor without a vote recorded.
 - e) AB 651 (Berg), of the 2005-2006 Legislative Session, would have established a procedure for a competent adult person who is terminally ill and expected to die within six months to obtain from his or her physician a prescription for medication that he or she may self-administer in order to end his or her life. AB 651 failed passage in the Senate Judiciary Committee.
 - f) AB 654 (Berg), of 2005-2006 Legislative Session, would have enacted the California Compassionate Choices Act, which would authorize competent adults who have been determined by two physicians to be suffering from a terminal disease to make a request

for medication to hasten the end of their lives in a humane and dignified manner. AB 654 was moved to the inactive file on the Assembly Floor without a vote recorded.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California

Opposition

None

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