

AMENDMENTS TO HB 160 ARE A SHAM

By Margaret Dore, Esq.

HB 160 seeks to legalize physician-assisted suicide, assisted suicide and euthanasia as those terms are traditionally defined. Assisting persons can have their own agendas: An adult child wanting an inheritance; a financial predator seeking financial gain; or a doctor wanting to hide malpractice. The bill is, regardless, stacked against the individual and must be rejected.

A. Even If a Patient Struggled, Who Would Know?

The bill, as originally drafted and as amended, has no supervision over administration of the lethal dose.¹

In addition, the drugs used are water and alcohol soluble, such that they can be injected into a sleeping or restrained person.² Alex Schadenberg, Executive Director for the Euthanasia Prevention Coalition, puts it this way:

With assisted suicide laws in Washington and Oregon [and with the proposed bill], perpetrators can . . . take a "legal" route, by getting an elder to sign a lethal dose request. Once the prescription is filled, there is no supervision over administration. Even if a patient struggled, "who would know?" (Emphasis added).³

B. The Death Certificate Will List a Terminal Illness as the Cause of Death, Which Will Prevent Prosecution for Murder

The bill, as drafted and as amended, states:

¹ See HB 160 in its entirety, original version plus amendments. The amendments are attached hereto as pages A-1 and A-2.

² In Oregon, the drugs used include Secobarbital, Pentobarbital (Nembutal) and Phenobarbital. Secobarbital and Pentobarbital are soluble in water and alcohol. See <http://www.drugs.com/pr/seconal-sodium.html> and <http://www.drugs.com/pro/nembutal.html>. Phenobarbital is soluble in alcohol. See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2977013>

³ Alex Schadenberg, Letter to the Editor, "Elder abuse a growing problem," *The Advocate*, Official Publication of the Idaho State Bar, October 2010, page 14, available at [http://www.margaretdore.com/info/October Letters.pdf](http://www.margaretdore.com/info/October%20Letters.pdf)

The death certificate must list the underlying terminal illness as the cause of death. (Emphasis added).⁴

The significance of requiring a terminal illness to be listed as the cause of death is that it creates a legal inability to prosecute. The official legal cause of death is a terminal illness (not murder) as a matter of law.

More to the point, heirs, other financial predators and malpracticing doctors will all be let off the hook: The bill will create the perfect crime.

C. The Proposed Felony for Undue Influence Is Unenforceable

The proposed amendment contain a felony for "undue influence," which is not defined. House Amendment No. 1 states:

A person who coerces or exerts undue influence on a patient to make a request for medication or to destroy a rescission of a request for medication under this chapter with the intent or effect of causing the patient's death is guilty of a class A felony.⁵

The bill also allows a patient's heir to be one of two witnesses on the lethal dose request form.⁶ This is a marker of undue influence in the context of a will.⁷

The bill also allows one of the patient's two physicians to be a witness on the lethal dose request form.⁸

⁴ See: original bill, § 2504B(b), lines 95-96; and HA 1, line 27, attached hereto at page A-2.

⁵ HA 1, lines 40-42, attached hereto at page A-2.

⁶ See § 2504B(b), as drafted and as amended.

⁷ Compare Washington State's probate statute, attached hereto at page A-3, providing that a gift to one of two witnesses on a will creates a presumption of "duress, menace, fraud, or undue influence."

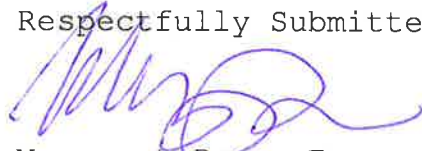
⁸ The amendment states:

The patient's attending physician and consulting physician at the time the request for medication is

Participation of a person in "apparent authority" such as a health care professional is another marker of undue influence, as is the fact that the person potentially being influenced is ill. This is in the elder abuse context.⁹

How do you prove that undue influence occurred when the bill does not define it and the bill also allows conduct used to prove it in other contexts? You can't. The proposed felony for undue influence is illusory and unenforceable.

Respectfully Submitted,



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signed may not serve as a witness [on the lethal dose request form] under subsection (b) of this section. (Emphasis added).

HA 1, lines 7-10, attached hereto at page A-1.

⁹ See for example, the attached undue influence statute from California, attached hereto at page A-4.



SPONSOR: Rep. Baumbach

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1
TO
HOUSE BILL NO. 160

1 AMEND House Bill No. 160 on line 17 by inserting "including a mental capacity evaluation," after
2 "consultations" and before "as" therein.

3 FURTHER AMEND House Bill No. 160 by deleting lines 56 and 57 in their entirety and inserting in lieu thereof
4 the following:

5 "(2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified
6 patient upon death under any will, trust, or codicil thereto then existing, or by operation of law."

*1 of 2 witnesses is allowed to see an
will - see
this section
and original
bill.*

7 FURTHER AMEND House Bill No. 160 by deleting line 60 in its entirety and inserting in lieu thereof the
8 following:

9 "(c) The patient's attending physician and consulting physician at the time the request for medication is signed
10 may not serve as a witness under subsection (b) of this section."

11 FURTHER AMEND House Bill No. 160 by inserting after line 60 and before line 61 the following:

12 "(d) Any individual serving as a witness must be 18 years of age or older."

13 FURTHER AMEND House Bill No. 160 on line 64 by inserting after the period therein the following:

14 "The determination that the patient has made the request for medication voluntarily includes confirming the
15 request does not arise from coercion or undue influence by another person by discussing the request for medication with the
16 patient outside the presence of any other person, except an interpreter as required."

17 FURTHER AMEND House Bill No. 160 on line 88 by deleting "Board of Medical Licensure and Discipline" after
18 "the" and before the comma therein and inserting in lieu thereof "Office of Controlled Substances".

19 FURTHER AMEND House Bill No. 160 by inserting after line 94 and before line 95 the following:

20 "(13) Counsel the patient on the importance of maintaining the medication prescribed under this chapter in a safe
21 and secure location until the time the qualified patient will ingest it and how any unused medication should be safely and
22 lawfully disposed of by any person in possession or control of any of the qualified patient's unused medication after the
23 qualified patient ends their life in a humane and dignified manner."

Page A.1

24 FURTHER AMEND House Bill No. 160 by deleting lines 95 and 96 in their entirety and inserting in lieu thereof
25 the following:

26 "(b) The attending physician may sign the qualified patient's death certificate.

27 (c) The death certificate must list the underlying terminal illness as the cause of death."

28 FURTHER AMEND House Bill No. 160 on line 179 by inserting "this" after the second occurrence of "to"
29 therein.

30 FURTHER AMEND House Bill No. 160 by inserting after line 183 and before line 184 the following:

31 "(e) Nothing in this section shall be construed to limit the ability of an insurance or annuity provider from
32 investigating a claim for benefits for a death."

33 FURTHER AMEND House Bill No. 160 on line 195 by deleting "the" after "end" and before "their" therein.

34 FURTHER AMEND House Bill No. 160 by inserting after line 254 and before line 255, and by redesignating
35 subsequent section numbers accordingly, the following:

36 "§ 2519B. Liabilities.

37 (a) A person who without authorization of the patient willfully alters or forges a request for medication or conceals
38 or destroys a rescission of a request for medication under this chapter with the intent or effect of causing the patient's death
39 is guilty of a class A felony.

40 (b) A person who coerces or exerts undue influence on a patient to make a request for medication or to destroy a
41 rescission of a request for medication under this chapter with the intent or effect of causing the patient's death is guilty of a
42 class A felony.

43 (c) This chapter does not limit liability for civil damages resulting from negligent conduct or intentional
44 misconduct not expressly provided for in this chapter.

45 (d) This chapter does not limit or preclude criminal penalties applicable under the Code."

SYNOPSIS

This Amendment clarifies the definition of "counseling" to include mental capacity evaluations; clarifies the restrictions on who may serve as a witness in regard to potential benefits from the estate of the qualified patient; restricts both the attending physician and the consulting physician from serving as a witness; requires anyone serving as a witness be over the age of 18; adds to the attending physician's responsibilities the requirement to confirm the medication request is not the result of coercion or undue influence and the requirement to counsel the patient on safely storing the medication until it is ingested and how any unused medication should be safely and lawfully disposed of; clarifies that insurance or annuity providers are not precluded from investigating a claim for benefits for a death under the Act; clarifies that civil and criminal liability are not limited or precluded under the Act and provides additional provisions for criminal liability in certain circumstances; and makes technical corrections.

Page A.2

RCW 11.12.160

Interested witness—Effect on will.

(1) An interested witness to a will is one who would receive a gift under the will.

(2) A will or any of its provisions is not invalid because it is signed by an interested witness. Unless there are at least two other subscribing witnesses to the will who are not interested witnesses, the fact that the will makes a gift to a subscribing witness creates a rebuttable presumption that the witness procured the gift by duress, menace, fraud, or undue influence.

(3) If the presumption established under subsection (2) of this section applies and the interested witness fails to rebut it, the interested witness shall take so much of the gift as does not exceed the share of the estate that would be distributed to the witness if the will were not established.

(4) The presumption established under subsection (2) of this section has no effect other than that stated in subsection (3) of this section.

[1994 c 221 § 16; 1965 c 145 § 11.12.160. Prior: 1917 c 156 § 38; RRS § 1408; prior: Code 1881 § 1331; 1863 p 209 § 67; 1860 p 171 § 34.]

NOTES:

Effective dates—1994 c 221: See note following RCW 11.94.070.

*A gift to 1 of 2 witnesses
in a will creates a
rebuttable presumption of
"duress, menace, fraud,
or undue influence."*

Page A-3
A-11

West's Ann.Cal.Welf. & Inst.Code § 15610.70

C

Effective: January 01, 2014

West's Annotated California Codes Currentness

Welfare and Institutions Code (Refs & Annos)

Division 9. Public Social Services (Refs & Annos)

Part 3. Aid and Medical Assistance (Refs & Annos)

§ Chapter 11. Elder Abuse and Dependent Adult Civil Protection Act (Refs & Annos)

§ Article 2. Definitions (Refs & Annos)

→ § 15610.70. Undue influence

(a) "Undue influence" means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

X (1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.

X (2) The influencer's apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

(3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following:

(A) Controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep.

(B) Use of affection, intimidation, or coercion.

(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

(4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

CREDIT(S)

(Added by Stats.2013, c. 668 (A.B.140), § 3.)

Page 7.4
A-55