



**House Judiciary Committee
February 8, 2024**

**House Bill 2676
Testimony of the BIDS Legislative Committee
Presented by Emily Brandt
Opponent**

Chairperson Humphries and Members of the Committee:

We incorporate our opposition testimony to HB 2488 and again express our sympathies for all persons impacted by suicide. But like with HB 2488, we cannot ignore the Constitutional implications of HB 2676, and therefore respectfully oppose the bill.

In analyzing its assisting suicide statute, the Minnesota Supreme Court held that the statutory prohibitions against **advising and encouraging** another to commit suicide violate the First Amendment because they were not narrowly drawn to serve a compelling government interest.¹ And further held that speech in support of suicide, however distasteful, is an expression of a viewpoint on a matter of public concern,” and is entitled to special protection.²

Analysis of Each Proposed Amendment

The proposed amendment to (a)(2)(A) criminalizes speech. We raised this concern in our opposition testimony to HB 2488, but this proposed amendment highlights the exact scenario we were concerned about: physicians and other healthcare and hospice professionals being prosecuted for informing patients of their rights to refuse medical care. And not only professionals, but friends and loved ones of people in end-of-life care too. Competent people have a constitutionally protected right to refuse lifesaving hydration and nutrition, as part of the right to self-determination.³ This proposed amendment criminalizes providing people with the knowledge that they possess the right to refuse medical care.

The proposed new subsection (a)(3) criminalizes speech. “Communicating” is speech.

¹ *State v. Melchert-Dinkel*, 844 N.W.2d 13, Syl. ¶ 4 (Minn. 2014)

² *Melchert-Dinkel*, 844 N.W.2d at 24.

³ *Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 262, 273 (1990)

The proposed new subsection (a)(4) may not criminalize speech, but it is likely superfluous. Without a statutory definition, it is unclear how “undue influence” is different from the language in (a)(1). It is likely that the conduct in new (a)(4) is already criminalized. If the committee believes that “undue influence” is different from “force or duress,” then we would recommend instead amending subsection (a)(1) to read:

Knowingly, by force, duress **or undue influence**, causing another person to commit or attempt to commit suicide.

The proposed new section (a)(5) criminalizes speech. The Minnesota Supreme Court expressly held that “encourage” was too broad and violated the First Amendment.⁴ To the extent that “coerce” may not criminalize speech, like the proposed new subsection (a)(4), the intended criminalized conduct is likely already criminalized by the term “duress” in section (a)(1).

Survey of Assisting Suicide Statutes in Other States

Below, please find a chart of other states that have assisting suicide statutes. Based on our research, excluding Kansas, twelve other states have assisting suicide statutes. Of those six statutes, only two have been challenged under the First Amendment. We could not find appellate case law out of the remaining jurisdictions challenging the constitutionality of the statutes.⁵ In each state, in fact, there was very little appellate case law analyzing assisting suicide statutes.

California: In a 1992 decision from a California Court of Appeals, the court held that the statute did not violate the First Amendment. Critical to the court’s decision, though, was that the California Supreme Court interpreted the statute to require affirmative and direct conduct such as furnishing a weapon or other means by which another could physically and immediately complete suicide.⁶ So the statute criminalizes conduct, not speech. The challenge was also brought by a man with incurable brain disease seeking declaratory judgment from the California courts that he had a right to assisted suicide. It was not a criminal case. It was more akin to a death-by-dignity or euthanasia case.

Minnesota: In its 2014 opinion analyzed above and in our opposition testimony to HB 2488, the Minnesota Supreme Court found that the statute violated the First Amendment.

Half of the statutes contain the problematic “advising” or “encouraging” language. The remainder are more akin to our current assisting suicide statute, criminalizing conduct (assisting, soliciting, etc.) not speech (encouraging, advising, communicating, etc.).

⁴ *Melchert-Dinkel*, 844 N.W.2d at 23–24.

⁵ We pause to note that there is a difference between a statute being enacted and a statute being declared unconstitutional. The mere fact that the other states do not have relevant case law is not an endorsement that the statutes are constitutional.

⁶ *Donaldson v. Lungren*, 2 Cal.App.4th 1614, 1625 (1992).

Our research also suggested that at least eight of the twelve statutes included some kind of exception for licensed health care professionals.

State	Statutory Reference	Link	1A Challenge?	“Advising” or “Encouraging” language included	Exception for Licensed Health Care Professional
California	Cal. Penal Code § 401	CA Link	YES – held Constitutional bc intentional conduct required	YES	YES
Iowa	Iowa Code Ann. § 707A.2	IA Link	NO	NO	YES
Louisiana	La. Stat. Ann. § 14:32.12	LA Link	NO	YES	YES
Maine	Me. Rev. Stat. tit. 17-A, § 204	ME Link	NO	NO	YES
Minnesota	Minn. Stat. Ann. § 609.215	MN Link	YES – held Unconstitutional	YES	YES
Mississippi	Miss. Code Ann. § 97-3-49	MS Link	NO	YES	NO
Montana	Mont. Code Ann. § 45-5-105	MT Link	NO	NO	NO
New Hampshire	N.H. Rev. Stat. Ann. § 630:4	NH Link	NO	NO	NO
North Dakota	N.D. Cent. Code Ann. § 12.1-16-04	ND Link	NO	NO	YES
Oklahoma	Okla. Stat. Ann. tit. 21, § 813	OK Link	NO	YES	YES
Pennsylvania	18 Pa. Stat. and Cons. Stat. Ann. § 2505	PA Link	NO	NO	NO
South Dakota	S.D. Codified Laws § 22-16-37	SD Link	NO	YES	YES

Proposed Amendment to Punishment for Assisting Suicide

In our state survey, we also reviewed the applicable sentencing schemes in each state. In multiple states, unintentional conduct or conduct not resulting in death was treated less severely than intentional conduct and conduct resulting in death. For example, in Oklahoma, conduct not resulting in death is punishable by a maximum of two years in prison. In California, conduct not resulting in death is punishable by up to eighteen months in prison. In South Dakota, even intentional conduct resulting in death is punishable by up to two years in prison and, in Maine, up to one year in prison.

Under the current Kansas statute, unintentional conduct is punishable by a minimum of 55 months, nearly five years, for a defendant with no criminal history. We also note that the current

statute punishes conduct resulting in death the same as conduct not resulting in death. Based on these observations, we would, at the very least, recommend lowering the severity level of the offense for conduct that does not result in death:

(b) Assisting suicide as defined in:

(1) Subsection (a)(1) causing another person to commit suicide is severity level 3, person felony;

(2) subsection (a)(1) causing another person to attempt to commit suicide is a severity level 4, person felony;

(3) subsection (a)(2) assisting another person to commit suicide is a severity level 9, person felony; and

(4) subsection (a)(2) assisting another person to attempt to commit suicide is a severity level 10, person felony.

Thank you for your time and consideration.

Emily Brandt
Assistant Appellate Defender
Appellate Defender Office
Member of BIDS Legislative Committee
ebrandt@sbids.org
785.296.5484