HB

107

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

1/21/83

Date: 4/6/83

Mr. Speaker:

The Committee on HESS has had HB 107

An Act relating to the right to a natural death.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MILO HESS

Milo Hansen

Adelbert Hammond Do Pass

Mike Nelson

Pete Ivers

MEMBERS HAVING
OTHER RECOMMENDATIONS:

M.H. Miller No Rec

Bruce Sinclair
CHAIRMAN
(MILO HESS)

H 60

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

ASSISTANT MINORITY LEADER

1527 H STREET
ANCHORAGE, ALASKA 99501
(907) 278-4188

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

SUMMARY OF HOUSE BILL 107

RIGHT TO NATURAL DEATH

Purpose: Recognizes the fundamental right of adults in Alaska to control the decision to have artifical life - sustaining procedures withheld or withdrawn in the case of a terminal condition.

Declaration Form: An adult may sign a written statement expressing his or her desire that artificial means should not be used to prolong the dying process.

Revocation: Explains how a person can revoke the written declaration.

Physician's Responsibility: An attending physician must certify that the patient's condition is terminal in order for the patient to qualify under the statute.

Immunity: A physician, health facility, or licensed professional acting under the direction of a physician is immune from any liability if they act in accordance with the provision of the bill.

Penalties: Penalizes persons who conceal or falsify a declaration of another, and submits a physician to civil liability for failure to comply with the declaration of his or her patient.

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

January 25, 1983

The Honorable Don Clocksin
Alaska House of Representatives
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Clocksin:

The Alaska State Hospital Association is pleased to offer our support for HB 107, An Act Relating to the Right for a Natural Death. This is a responsible approach to resolving a critical, ethical and legal medical problem.

A question does come to mind as to what would happen to a physician and/or a health facility when care is withheld pursuant to a "valid" declaration, but subsequent to death a discovery is made that a revocation existed.

We look forward to working with you on this measure.

Sincerely,

Dennis L. DeWitt
President

cc: House HESS
House Judiciary

POSITION PAPER/Department of Health and Social Services

POSITION PAPER

HOUSE BILL NO. 107

"An Act relating to the right to a natural death."

The right of a competent individual to decide whether life-sustaining procedures should be used in the face of a terminal illness or injury has received increasing attention in recent years as medical technology has expanded and individual cases have received media attention.

This Bill provides a process through which competent individuals can participate in decisions regarding their care when afflicted with a terminal condition. "Terminal condition" is restricted to situations in which two physicians determine that death will occur whether or not life-sustaining procedures are used. These procedures would only apply when a competent individual makes a positive decision to forego life-sustaining intervention and not in circumstances such as occurred in the much publicized Quinlan case.

The Bill appears to address the interests of the declarant, the health care providers and the heirs of the dying person. The Department of Health and Social Services supports the intent of this Bill. It is assumed the Department of Law is also reviewing it for adequacy of legal safeguards for participants as well as the penalty provisions.

Recommended by: _____
E. S. Rabeau, M.D., Director
Division of Public Health

Date: _____

Approved by: _____
Robert London Smith, Ph.D.
Commissioner
Department of Health & Social Services

Date: 2/2/83

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 107
Title "An Act relating to the right to a natural death."
Requested by House HESS Committee Date 2/1/83

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Health
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		0	0	0		

FUNDING (Thousands of Dollars)

GENERAL FUND		0	0	0		
FEDERAL FUNDS						
OTHER (Specify Source)						
		0	0	0		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This Bill prescribes procedures to allow adult persons to control decisions relating to the withholding or wirhdrawal of life-sustaining procedures when they suffer from a terminal illness or injury.

IV. DATE 2/1/83 PREPARED BY Dean F. Tirador, M.D.
AGENCY Health and Social Services
PHONE 465-3150

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82) OMB REVIEWED BY: NANCY DUNN

ALASKA

STATE LEGISLATURE

MEMORANDUM

To the committee:

The following position paper was prepared by the office of the Executive Director of the Older Alaskans Commission (OAC) for review and approval by the commission. The commission will consider the legislation at their meeting on February 17, 1983.

Rep. Don Clocksin

Position Paper

OLDER ALASKANS COMMISSION

HB 107 "Right to a Natural Death" February 15, 1983

We recommend that the OAC support the passage of HB 107 "An act relating to the right of a natural death".

With two insignificant word changes HB 107 is the same as HB 855 introduced by Rep. Clocksin and Rogers in the 12th legislature second session, February 16, 1982. The first change is found on page 3 line 29 under section 18.12.020. "Become" in the old bill is now "is" ("...the revocation IS effective on communication..." rather than ..."the revocation becomes effective...). The second change is found on page 5 line 29 under section 18.12.050. In the old bill the penalty for falsifying or forging a declaration which directly causes life sustaining procedures to be withheld or withdrawn and death to be hastened "commits the crime of murder in the first degree." In HB 107 the penalty is the same except that it reads "death to be hastened violates AS 11.41.100". The sentence for conviction of murder in the first degree is "at least 20 years and not more than 99 years" (AS 12.55.125).

The concept in HB 855 was supported for passage by the 1981 Alaska White House Conference on Aging, March 15, 1981. The delegates to the White House Conference on Aging supported passage of HB 855 in a meeting of February 24, 1982 and reported that action to the Older Alaskans Commission February 25, 1982 and asked for OAC support . There appears to be no

action taken by the OAC in meetings on that date or later on April 28 or 29, 1982 or June 2, 3, or 4, 1982.

The most significant discussion on the merits of HB 107 will center on the exact definition of "life sustaining procedures" and "the performance of medical procedure considered necessary to provide for the comfort of a qualified patient."

The nursing profession considers intravenous fluids and feeding as providing "comfort of a qualified patient." To withhold iv fluids and feeding in the view of the nursing profession is to promote dehydration and starvation.

The problem is that to provide fluids and feeding prolongs life, in some cases for years, when there is absolutely no hope for recovering and death is inevitable. Presently a comatose patient at Nakoya health center in Anchorage who has brain damage and was expected by doctors to die soon after admission has been sustained by fluids and food administered intravenously for over three years. The intravenous feeding and food might be considered to provide comfort but they thwart the intention of the right to a natural death. Furthermore, the question of a comatose person being comfortable or not from starvation or dehydration is moot if he has no feeling. The degree of comfort or discomfort from the process of withholding fluids and food is subject to the administration of other pain killers. It would appear that when a patient is unable to take fluids and food orally and there is no hope of recovery, administering them intravenously is a life sustaining procedure and thwarts the intention of a

right to a natural death. We recommend that section 18.12.120 definitions on page 7 be changed to add under section 3 "life sustaining procedures" subsection (a)...means a medical procedure or intervention(, INCLUDING INTRAVENOUS FEEDINGS AND FLUIDS,) ....

Impact on agencies: If this bill were authorized and passed it might result in less expense to the tax payers of Alaska for whom this bill would provide some relief at the point of not having to sustain a number of people in a comatose condition that is otherwise hopeless. That is the greatest impact.

A similar impact on nursing homes would reduce the population in nursing homes where people are now being sustained. If they had their will they might not themselves wish to be so.

HB107 3/14/83 Teleconference

Sen. Wilson
Sen - Opposes bill as written
1. opens up the well before death.

Anch - H. Print Dascaway - South addition
AARP member + other Sr. citizens groups
Speaks in Favor of the bill
1. Basic Freedom
2. wants to make the own decisions.
3. Compliments Teleconference.

⊗ Delay Kenny - Res Nurse - Rights to life
Opposes the Bill
1. unnecessary Already has a right to this.
2. undercut the rights of the majority.
⊗ 3. dangerous precidence authority of dr over patient.
⊗ 4. Abuse issues be handled by existing laws.
5. could be undertreated.
6. How about the people who do not sign a living will. Extraordinary measures may be interpretted as being needed (over-treatment.)
7.

Florence Orr – O P A D. (600 members) Senior voice

1. Priority of O.P.A.D. – Speaks for the Bill
2. Has a right to be kept alive on machines
3. Has letters & wants.

Irene Hedstrom – Pioneer Home – State Employee

1. Resident asks for something to sign not prolonging life.
2. Doesn't want to be burden.
3. Checks in Constituents.

Mr. Elias Vaark – none

Lola Reed – 831 at 19th (Private) Coordinated Memorial Society

1. Parents were adament about natural death.
2. Doctor cooperated

Theodore ~~Bea~~ Graham – Project Director Chugach Sr. Citizens Center

1. In favor the bill
2.

Pasquel Bedegno – Juneau citizen

1. Opposes Bill.
2. We already have the rights
3. ~~State~~ doesn't have the right to intervene. Leave it to family & Dr.
4. State didn't regulate birth & shouldn't regulate / intervene in death

Virginia Blanchard - For

1. Everyone doesn't have to participate in this living will.

Dr Rabeau

Mrs Dove Kull - Older Alaskan Commission

1. Speaks for the Bill
2. Right to die with Dignity
3.

Mary Horton - for herself

(+) 1. Speaks Against the Bill

2. Father in coma for 7 days. life support signed release & pull the plug.

3. mother - in coma - life support - " " " " ". no family physician attended terminate, of life support equip.

Lee Oxman - an older person Pioneer home for the bill?

Mary Jane Abbott

ALASKANS FOR LIFE
Incorporated
P. O. Box 2186
Juneau, Alaska 99803

March 14, 1983

TO: Members of the House HESS Committee - Alaska Legislature

Subject: H.B. 107, "An Act relating to the right to a natural death"

INTRODUCTION:

House Bill No. 107, an act relating to the right to a natural death, is "living will" legislation similar to so-called "death with dignity" and "natural death acts" proposed in many State Legislatures across the country. We are opposed to legislation of this kind.

We do not argue with the stated goals of the bill. We recognize the basic right of the patient to refuse the use of devices to prolong life when death is imminent. We also believe it is healthy for people to think about their death and to prepare for it.

Our opposition to this kind of legislation stems from the manner in which it attempts to achieve its goals. We are opposed to the concept of the living will because of the havoc it will cause in the physician-patient relationship and other potential harm that legislation of this kind may bring with it.

OBJECTIONS:

In general, the following summarizes our thoughts about this bill:

1. Living will legislation is unnecessary; patients already have those rights that this bill seeks to convey to the patient.

2. Superimposing a "legalism" into the decision surrounding the natural death process will hinder and interfere with good medical practice rather than help it.

3. This bill, if passed, will undercut the presently recognized rights of the majority who will not sign a living will.

4. The bill promotes uninformed consent to a future decision, the circumstances and details of which are unknown at the time of the decision.

5. The bill involves a dangerous precedent in implying that the physician has rights over the patient and that the State confers those rights.

ALTERNATIVE LEGISLATION

What does this legislation seek to do? Presumeably it is the desire of the supporters of this kind of legislation to protect the rights of either the patient or the physician or both. While we do not accept the need for this bill its goals could be accomplished without also jeopardizing the rights of non-signing patients and physicians.

We suggest a direct approach. Pass a law acknowledging the fundamental rights of the patient to make decisions affecting their care and restate the principle that extra-ordinary life sustaining measures may be withdrawn by the attending physician when done in his best judgement under the usual and customary standards of medicine following approval of the patient and/or family.

This approach would avoid the difficulty of definitions. There would be no requirement for signing a directive affirming one's rights and consequently no injury to those who do not sign and there would be no pitfalls and potential for serious abuse that exists in living will legislation.

CONCLUSION

We have chosen not to comment on specific provisions of H.B. 107. We believe this bill, in any form which gives legal status to a written directive, is not in the best interest of society. We urge you to preserve the rights of all patients by rejecting the concept of the living will.

Sidney Heidersdorf

Sidney Heidersdorf
ALASKANS FOR LIFE, INC.

I fear the power of choice over life or death at human hands. I see no human being whom I could ever trust with such a power – not myself or any other.

Pearl S. Buck, Nobel Laureate

A society is measured by the way it treats its young, its old, and its helpless. We recognize that the emphasis today is on "quality of life", but we must not let our concern for quality overpower our concern for LIFE itself.

We must safeguard the valuable tool we now have to determine each and every case individually — not by legislation but by HUMAN RIGHTS. Now that medical technology has advanced to the point where we no longer have a uniform "definition of death" to rely on, we must rely on human rights for our ethics — for we can no more justify prolonging the dying process by the application of abusive technology when there is no possible hope of recovery than we can justify burying the "doubtfully dead".

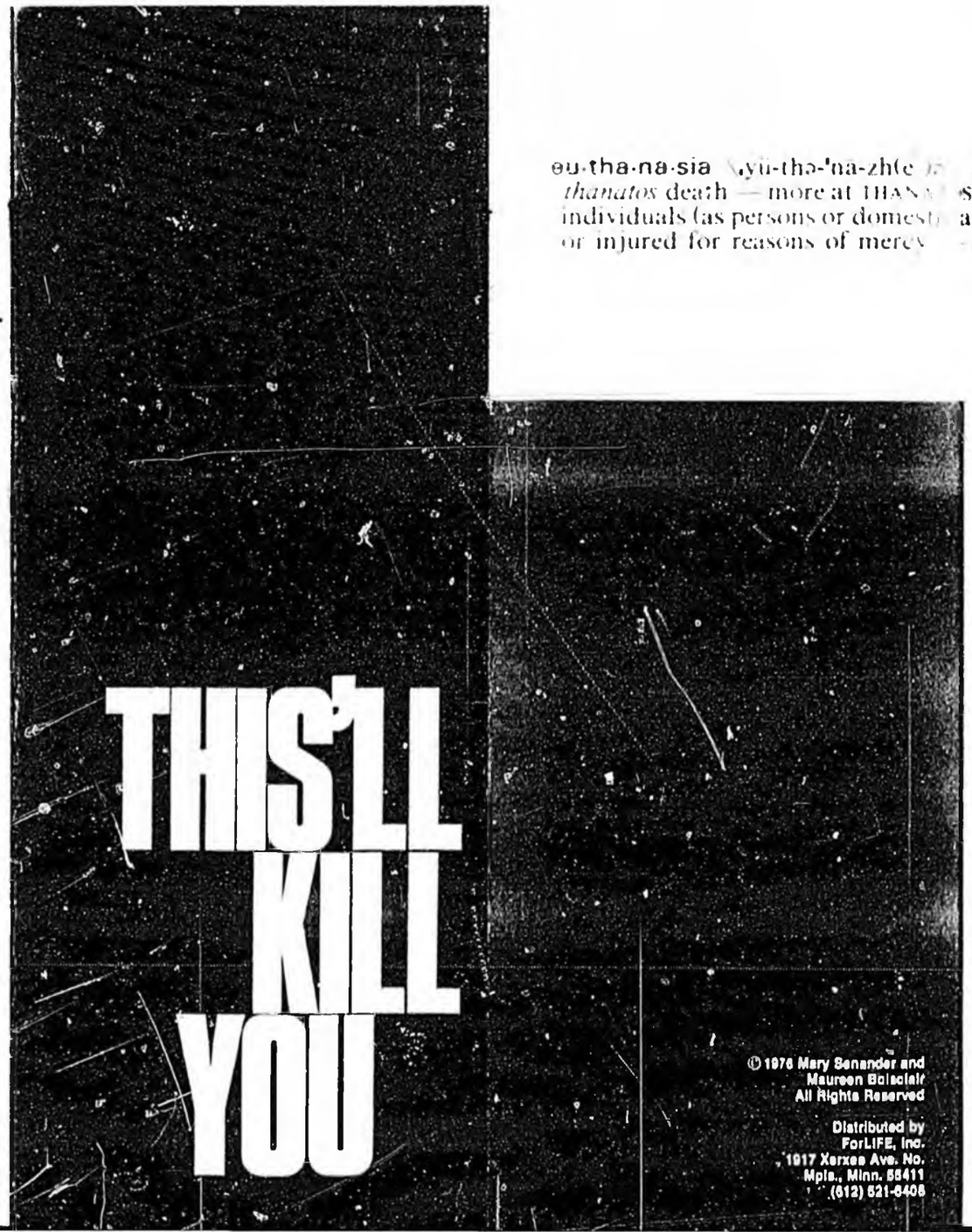
OUR CHALLENGE IS CLEAR.

We must:

- take a more realistic and accepting approach to aging, disability, dying, and death.
- re-evaluate hospitals and institutions and restructure them, if necessary, to meet their vital and difficult tasks. Much CAN be done to meet the needs of the disabled and dying. One such successful program is the HOSPICE concept, which offers loving, compassionate and skilled care for the dying.
- build caring and concerned communities which will preserve and defend human life, rights and dignity.
- become better informed on today's life issues so that we might help others understand them.

THE QUESTION IS: ARE WE GOING TO SAY, "I'M SORRY YOUR LIFE IS DIFFICULT. I WILL KILL YOU," OR ARE WE WILLING TO SAY, "I'M SORRY YOUR LIFE IS DIFFICULT. WHAT CAN I DO TO MAKE IT BETTER"?

Revised 6/77



eu·tha·na·sia \ˌyü-thə-'nā-zhē(-)ə\ *n* [Gk, easy death, fr. *eu-* + *thanatos* death — more at THAN] : the act or practice of killing individuals (as persons or domestic animals) that are hopelessly sick or injured for reasons of mercy — **eu·tha·na·sic** \-zik, -sik\ *adj*

EUTHANASIA

You've heard this word on TV. You've seen it in the newspapers. What does it mean to you? Does it mean that to **everyone**?

The **real** meaning of the word EUTHANASIA is muddled, because it conjures up images of everything from the senseless slaughter of millions in Nazi Germany, to mercy killings, to "pulling the plug" on old Uncle Charlie when there is no more hope of recovery.

Usually we hear about euthanasia in terms of positive/active euthanasia (**forcing** a person to die), or negative/passive euthanasia ("doing nothing," **allowing** death to come naturally). But as medical science rapidly changes, these distinctions become engulfed in a "rhetorical smokescreen", and it becomes increasingly important for us to "clear the air" so that we might fully understand this LIFE and DEATH issue that **may well affect us**.

Today, the word euthanasia has been stretched to include three quite different concepts:

- Death with Dignity
- Mercy Killing
- Death Selection

1 **DEATH WITH DIGNITY,** in the truest sense, means **allowing a terminally ill patient to die naturally,** without the mechanized desperation that often turns death into an inhumane ordeal (e.g. not using, or discontinuing, **extraordinary** means when a person has irrevocably entered the process of dying — in some instances called "pulling the plug").

EACH OF US HAS THE RIGHT TO EXPECT AND TO DEMAND TO DIE WITH DIGNITY, JUST AS WE HAVE THE RIGHT TO EXPECT AND TO DEMAND TO LIVE WITH DIGNITY.

This is not to say that we should neglect the dying person. The dying person, like any human being, is entitled to medical care that is reasonable and prudent under the circumstances involved, allowing him to *live with dignity* until the moment of death.

No church or medical group disapproves of Death with Dignity; no legislation is necessary to clarify this. What *is* necessary is education and support for dying persons and their families.

We must continue to CARE, even when there is no hope for CURE.

2 **MERCY KILLING** is positive, direct euthanasia, either voluntary or involuntary. As opposed to Death with Dignity, which permits the dying to die naturally, Mercy Killing employs **active means to cause death,** or at least to speed up death (such as a lethal injection).

Mercy Killing also includes the **abandonment or withdrawal of *ordinary* medical care** — those medical and surgical procedures commonly used to relieve sufferings and problems due to injuries and/or illnesses, based on the *individual* patient, the *individual* circumstances, and the available medical technology. (An example of this second type of Mercy Killing would be the denial of necessary surgery to a child who is retarded, when, if needed by a "normal" person, the identical care would not be questioned.)

WE MUST MAINTAIN A CLEAR DISTINCTION BETWEEN "LET HIM DIE" and "KILL HIM OFF".

3 **DEATH SELECTION** (involuntary or even mandatory euthanasia) involves the killing of persons who are "no longer considered socially useful" or who are judged to be a "burden" on society. This type of euthanasia, more aptly called MANAGERIAL EUTHANASIA, is rooted in a hard-core utilitarianism which sees no value beyond social utility, and balances life solely on a cost/benefit scale. Death Selection — the "sleeper" in this debate — poses a real threat to many groups in our society, especially the aged, the severely handicapped, and the retarded.

THE INTENT IS WHAT WE MUST KEEP UPPERMOST IN OUR MINDS:

- Are we merely allowing nature to take its course when there is no more hope, while making the patient as comfortable as possible? (Death with Dignity)
- Or, is the intention to HELP THE INDIVIDUAL TO DIE, either by **direct killing** or by **doing nothing, when help and support is possible,** even though circumstances might be difficult? (Mercy Killing)
- Or, is the intention to DESTROY A HUMAN INDIVIDUAL OR GROUPS OF HUMAN INDIVIDUALS **because they are unwanted, imperfect, or inconvenient?** (Death Selection)

Each of us should be concerned about euthanasia because **pro-euthanasia societies are alive *and* growing,** both in numbers and in influence. Among the most active are the Euthanasia Society of America (recently renamed the Society for the Right to Die, Inc., because the word "euthanasia" hurt lobbying efforts), the Euthanasia Educational Council, and the American Humanist Society.

Another organization, the Good Death Fellowship, wrote in its quarterly publication "Euthanasia News" (Vol. 1, No. 1) that the fellowship "is designed, in essence, to help people to achieve a good death". The same issue states: "Several major industries are poised and ready to make available not merely "another pill" but a wide and colorful range of products and methods to meet the needs of those who have lived their lives and are about ready for a good death."

The philosophies of these organizations have spread widely — into the classrooms, into public policy, and into the legislatures.

Over three-fourths of our states have introduced and/or passed euthanasia or death-related bills — ranging from "Death with Dignity and "Natural Death Acts" to registration allowing for direct killing.

- The 1975 Montana bill HB256 would allow a doctor to **administer euthanasia,** or to instruct a nurse to do so, or to provide lethal drugs to the family. Any individual over 18 could sign a statement, revocable only once, to qualify for medicated death.
- The 1975 Wisconsin Assembly Bill 1207 proposed that anyone over the age of seven could make an oral or written death request, and that anyone over the age of fourteen could carry out those wishes without fear of prosecution.
- In Florida, "Death with Dignity" legislation has been introduced every session since 1968. The 1973 bill (HB407) would have allowed a competent person to sign a paper instructing doctors to let him die if he becomes terminally ill or injured. Relatives of an "incompetent" person could prescribe death providin two physicians agreed. But for an irreversibly ill patient with no relatives, the simple signatures of three physicians approved by a judge are all that is needed to sign the death contract. Former Representative Sackett suggested that the the state of Florida could save five billion dollars in the next half century if 90% of the state's severely retarded and mentally ill were allowed to die. (The National Association for Retarded Citizens vigorously opposed HB407.)

Keeping in mind that Death with Dignity, as defined earlier, is acceptable to most people, euthanasia bills must be questioned for their underlying purpose. Are they paving the way for future legislation for Mercy Killing or Death Selection?

- In Maryland, when state Senator Julian L. Lapides introduced his 1974 euthanasia bill to the legislature, he was asked whether the bill would provide a wide-open door for Mercy Killing in the future. He replied, "Well, not a wide-open door, but maybe it opens it a crack."

> *Only "viable" human beings who have the "capability of meaningful life" may, but need not, be protected by the state.*
>
> United States Supreme Court
> Decision on Abortion, January 22, 1973
> (Roe vs Wade page 48)

LIFE IS A CONTINUUM. At one end of the spectrum, life is being destroyed before birth. And now, **legalized euthanasia is a genuine possibility.** AND WHY NOT?

A society that accepts the right to kill infants in the womb because they might be unwanted, imperfect, or merely inconvenient, should have no difficulty in accepting the right to kill other human beings who might be *judged* unwanted, imperfect, or merely inconvenient.

Several influential leaders of the pro-abortion and pro-euthanasia movements have suggested that next logical step. The following statements reflect their pro-death philosophy:

- Nobel Laureate Dr. James D. Watson, who cracked the genetic code, said that abortion is permissible when a child is determined to be defective in utero, but . . . "most defects are not discovered until birth. If a child were not declared alive until three days after birth, then all parents could be allowed the choice . . . the doctor could allow the child to die if the parents so chose and save a lot of misery and suffering". (AMA Prism. May 1973)
- Abortion advocate Dr. Glanville Williams, in his book **The Sanctity Of Life And The Criminal Law,** asks for "humanitarian infanticide" and "euthanasia for handicapped children".
- Dr. Robert H. Williams, professor of endocrinology, wrote that "planning to prevent overpopulation of the earth must also include euthanasia, either negative or positive". (Northwest Medicine, July 1970) He also suggests killing "potential suicides" and "hopelessly criminal individuals" as well as the terminally ill in discomfort or pain. (Seattle Times, March 7, 1973)
- Dr. Joseph Fletcher, professor of medical ethics, wrote that there must be quality control in the terminating of life as in its initiating. "What has taken place in birth control is equally imperative in death control." ("Ethics and Euthanasia", **To Live and To Die: When, Why, and How,** ed Robert H. Williams)

WHO IS TO SET THIS PRICE TAG ON HUMAN LIFE? WHAT IS TO PREVENT THE NEXT AUTHORITY FROM CHANGING THAT PRICE TAG?