

Wednesday, July 18, 2007

### **Criminalizing assisted suicide.**

Photo from website of U.S. District Court (W.D. Mi.). Assisted suicide does not seem to be prosecuted much, and perhaps even less now that Jack Kevorkian claims not to be doing it at the moment (apparently, at least, to pay lip service to his post-incarceration conditions). For that reason, I have not needed to research the criminal law as it applies to suicide, until this week, when someone asked me about Maryland's suicide law, which sparked my curiosity about what I would find. I learned that a person cannot be prosecuted in Maryland for attempting to take his or her own life. (Of course, nobody is available to prosecute if the attempt succeeds.) Assisted suicide is punishable in Maryland up to one year as a felony, which is a lower maximum than I would have expected, perhaps as a legislative acknowledgment that it should not be classified on par with rape, robbery or murder. Md. Crim. Law Code § 3-104. The Maryland Code provides protection against such prosecutions for health care professionals (and home care providers who follow the directions of health care professionals) attempting to treat a person rather than trying to kill the patient. Among health care treatments that can hasten death is morphine, no matter its pain relieving benefits. I have asked a few people about the possibility that a person jumping off a bridge or roof might, somewhere before landing, decide it was a mistake to commit suicide, and recognize that the decision now is irreversible. One person suggested such a scenario is unlikely, in that a person likely feels so much pain at the time of jumping that the goal remains to end the pain. I suppose that people who believe in reincarnation do not believe that committing suicide ends all one's problems. I recall reading a theory that Japan would have a lower suicide rate but for many people there having a reluctance against burdening others with their problems. No such hurdle exists in the United States, yet it appears that plenty of people still kill themselves in the United States who would not do so if they obtained quality psychological counseling, support from friends and family, or both. Of course, many people also commit suicide as an alternative to suffering from disease. As much as I wish society and individuals would help healing so that fewer people would want to commit suicide, I do not wish to see arrests and prosecutions for assisted suicide any more than I want prosecutions of people who botch attempts to kill themselves. That is separate from prosecuting "mercy killings" (where the killer singlehandedly determines that the victim should die, thinking the killer knows what is best for the victim) or triage killings (where the victim is denied medical treatment on the supposition that the person is too old or feeble to merit redirecting medical resources from others). What is the law governing suicide and assisted suicide where you live? Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00