

## Montana

[Excerpted from: [Carter v. Canada \(Attorney General\), 2012 BCSC 886 \(CanLII\)](#)]

[613] While Montana has not legalized assisted suicide, its Supreme Court has recognized that the consent of a terminally ill patient can constitute a statutory defence to a charge of homicide against an aiding physician. Evidence concerning the legal status of assisted death in Montana was provided by Mark Connelly, a lawyer in Montana, and Professor Shariff.

[614] In *Baxter v. Montana*, a terminally ill man, four physicians and a non-profit organization challenged the constitutionality of the application of Montana's homicide statutes to physicians who provide aid in dying to mentally competent, terminally ill patients. The District Court held that under Montana's *Constitution*, a competent, terminally ill patient had the constitutional right to die with dignity based on the rights to dignity and privacy (Cause No. ADV-2007-287 (Montana First Judicial District Court), Decision and Order 5 December 2008). The District Court further held that none of the state interests advanced by Montana was sufficiently compelling or narrowly tailored to justify the limitation of that right. These interests included preserving human life, protecting vulnerable groups from potential abuses, and protecting the integrity and ethics of the medical profession.

[615] While the District Court found the homicide statutes to be unconstitutional as they applied to terminally ill patients and their physicians, it concluded that implementation of the right to death with dignity and medical assistance was properly left to the legislature.

[616] On appeal, the Montana Supreme Court affirmed the result but vacated the District Court's ruling on the constitutional issues (2009 MT 449). The Supreme Court found as a matter of statutory interpretation that there was nothing in Montana statutes or jurisprudence indicating that physician assistance in dying was against public policy. It held that a terminally ill patient's consent to physician assistance in dying constituted a statutory defence to the charge of homicide against the aiding physician when no other consent exceptions apply.

[617] The Supreme Court's ruling represents the current state of the law in Montana, according to Professor Shariff.

**Note:** in February 2013, [House Bill 505](#), a bill aiming to prohibit physician assisted suicide, was introduced into Montana's Legislature. The bill was [defeated on its second reading](#).