The Effect of Incarceration on the Right to Die

I. THE RIGHT TO DIE OUTSIDE OF PRISON

The right to die has been a controversial and important issue both inside and outside of the prison environment.¹ Prior to the well publicized case of In re Quinlan,² which defined an individual’s right to die outside the context of prison, decisions regarding the termination of life support systems were routinely made by the patient’s family and physician.³ Because of a rise in medical malpractice litigation, however, physicians have now deferred this decision-making process to the courts.⁴

In Quinlan, a 21 year old female was in a “chronic persistent vegetative state”⁵ with little or no hope of recovery.⁶ Her father petitioned the court to have himself appointed guardian, with the authority to

1. One commentator has suggested that the right to die issue surpasses the landmark decisions handed down in Miranda v. Arizona, 384 U.S. 436 (1966) (requiring police to give formal warnings concerning the right to remain silent and right to counsel); Wong Sun v. United States, 371 U.S. 471 (1963) (self-incriminating statements made after unlawful detention are inadmissible); and Mapp v. Ohio, 367 U.S. 643 (1961) (application of the fourth amendment exclusionary rule to the States) since those decisions will have little meaning to a law-abiding citizen whereas a decision regarding the right to die has the potential to affect everyone. See Coburn, In re Quinlan: A Practical Overview, 31 ARK. L. REV. 59 (1977). Daniel Coburn was the court-appointed guardian for Karen Ann Quinlan.


3. Voluntary Euthanasia: A Proposed Remedy, 39 ALB. L. REV. 826, 837 (1975). This article, published one year before the Quinlan decision, states that physicians and family made such decisions without any apparent legal authority.

4. See Note, The Legal Aspects of the Right to Die: Before and After the Quinlan Decision, 65 KY. L.J. 823 n.4 (1977) (wherein the author points out that Dr. Ashad Jeved, one of Karen Ann Quinlan’s treating physicians, had contacted his malpractice insurance carrier seeking advice the same week the Quinlans filed their petition to remove life-support systems).

5. 70 N.J. at 24, 355 A.2d at 654.

6. “As nearly as may be determined . . . she can never be restored to cognitive or sapient life. Even with regard to the vegetative level and improvement therein . . . the prognosis is extremely poor and the extent unknown if it should in fact occur.” Id. at 26, 355 A.2d at 655 (emphasis in original).
have all life-support systems terminated. The Supreme Court of New Jersey carefully weighed two seemingly conflicting concepts: the individual's right of privacy, and the state's dual interest in preserving life and allowing a physician to administer treatment in accordance with that physician's judgment. The *Quinlan* court concluded that, where the prognosis was dim and the degree of bodily intrusion great, an individual's right of privacy was sufficient to overcome the compelling state interests. Since *Quinlan*, many jurisdictions have recognized a right to die when that right was asserted by a terminally ill patient.

In the case of *Superintendent of Belchertown State School v. Saikewicz*, the Supreme Judicial Court of Massachusetts expanded the state interests enunciated in *Quinlan*, and established a test for determining whether a person should be allowed to invoke the right of privacy to refuse life-saving medical treatment. In *Saikewicz*, a men-

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7. *Id.* at 18, 355 A.2d at 651.
8. *Id.* at 40, 355 A.2d at 663. "The claimed interests of the State in this case are essentially the preservation and sanctity of human life and defense of the right of the physician to administer medical treatment according to his best judgment."
9. *Id.* at 41, 355 A.2d at 664. "[T]he State's interest...weakens and the individual's right to privacy grows as the degree of bodily invasion increases and the prognosis dims. Ultimately there comes a point at which the individual's rights overcome the State interest." In this case, the state interest weakened since the prognosis was extremely poor and the degree of bodily invasion, 24-hour intensive care, was great.
10. See *In re Colyer*, 99 Wash. 2d 114, 660 P.2d 738 (1983) (right of privacy of woman in a chronic vegetative state due to cardiopulmonary arrest outweighed compelling state interests); *Severns v. Wilmington Medical Center, Inc.*, 421 A.2d 1334 (Del. 1980) (husband of woman rendered comatose from automobile accident allowed to remove life-support systems); *Matter of Eichner*, 73 A.D.2d 431, 426 N.Y.S. 2d 517 (1980) (respirator withdrawn from priest in vegetative state); *Leach v. Akron General Medical Center*, 68 Ohio Misc. 1, 426 N.E.2d 809 (1980) (constitutional right to privacy guaranteed a terminally ill patient the right to refuse medical treatment); *Satz v. Perlmutter*, 362 So.2d 160 (Fla. Dist. Ct. App. 1978), aff'd, 379 So.2d 359 (Fla. 1980) (73 year old man suffering from Lou Gehrig's disease allowed to refuse treatment). For the purpose of this Note, "terminally ill" is defined as including patients suffering from a terminal disease as well as patients who are comatose.
12. The state interests the court considered in *Quinlan* were the preservation of life and allowing a physician to administer treatment in accordance with his judgment. *Saikewicz* expanded upon these interests by adding the compelling state interests of the prevention of suicide and the protection of innocent third parties. See infra note 13 and accompanying text.
13. *Saikewicz*, 373 Mass. at 741, 370 N.E.2d at 425. The right to privacy was balanced against four compelling state interests: 1) the preservation of life, 2) the protection of innocent third parties, 3) the prevention of suicide, and 4) maintaining the ethical integrity of the medical profession. Several courts have since adopted this test in their own jurisdictions. See *In re Conroy*, 286 A.2d 1209 (N.J. 1975); *Colyer*, 99 Wash. 2d 114, 660 P.2d 738 (1983); *State ex rel White v. Narick*, 292 S.E.2d 54 (W.Va. 1982); *Satz*, 362
tally incompetent patient, a resident of the Belchertown State School for 49 years, was suffering from acute myeloblastic monocytic leukemia. The school sought the appointment of a guardian ad litem who would consent to chemotherapy in the hope of prolonging the individual's life. The court recognized Saikewicz' right to be free from bodily intrusion and right to privacy, and balanced these rights against the four countervailing state interests found to be compelling in such cases. The preservation of life was the sole interest the court deemed relevant to its decision. Since the chemotherapy prognosis was so dim, the state's interest was held to be insufficient to outweigh Saikewicz's fundamental right to privacy.

The right to die, however, has not been limited to situations where the prognosis was incurable. Rather, it has been held to apply where,


14. *Saikewicz*, 373 Mass. at 731, 370 N.E.2d at 420. Saikewicz had lived in state institutions since 1923 and resided at the Belchertown State School since 1928 after being diagnosed as profoundly retarded.

15. Monocytic leukemia is defined as a form of leukemia where the most numerous cells present are monocytes. Leukemia in general is caused by an excessive number of white blood cells. Schmidt's ATTORNEYS' DICTIONARY OF MEDICINE M-132 (1984).

16. See Robin v. Robin, 3 Ill. Dec. 950, 45 Ill. App.3d 365, 359 N.E.2d 809 (1977) (A guardian ad litem is a court-appointed person with the duty to prosecute or defend a minor in any suit where the minor is a party). See also Kossar v. State, 13 Misc. 2d 941, 179 N.Y.S.2d 71 (1958); BLACK'S LAW DICTIONARY 635 (5th Ed. 1979) (A guardian ad litem is a court-appointed guardian, authorized to represent the interests of an infant or incompetent in a suit to which the infant or incompetent is a party).

17. *Saikewicz*, 373 Mass. at 729, 370 N.E.2d at 419. The court noted that due to the age and general health of Saikewicz, chemotherapy would only produce a 30-40% chance of remission, which would probably last from 2-13 months, but that chemotherapy would not completely cure the disease. The side effects relative to chemotherapy are pain and discomfort, depressed bone marrow, anemia, increased possibility of infection, bladder irritation, and possible loss of hair. *Id.* at 734, 370 N.E.2d at 421.

18. *Id.* at 744-45, 370 N.E.2d at 427. "To be balanced against these State interests was the individual's interest in the freedom to choose to reject, or refuse to consent to, intrusions of his bodily integrity and privacy." See supra note 13 for a discussion of the compelling state interests.

19. The court held that the protection of innocent third parties was inapplicable since Saikewicz' only family consisted of two sisters who had no desire to participate in the hearing; the prevention of suicide was not applicable since Saikewicz was a mental incompetent who was unaware and incapable of understanding the situation; and medical ethics were not undermined since "the prevailing ethical practice seems to be to recognize that the dying are more often in need of comfort than treatment." *Saikewicz*, 373 Mass. at 743, 370 N.E.2d at 426.

20. *Id.* For the historical development of the right to privacy, see infra note 52 and accompanying text.

21. Initially, courts were reluctant to acknowledge the right to die, and felt justified in doing so only in those instances where the proposed treatment would have little or no effect on the patient's chance of recovery. See supra note 9 (where the Quinlan court
despite an excellent prognosis, the degree of bodily intrusion was so high as to justify a refusal of life-saving medical treatment. For example, in In re Quackenbush, the Morristown Memorial Hospital petitioned the court for the appointment of a guardian to consent to the amputation of both legs of a 72 year old man suffering from gangrene. Without the operation, Quackenbush's life expectancy was three weeks; with the operation, the probability of total recovery was high, with only minimal risk to the patient. The court held that, due to the extensive bodily invasion involved, the state interest in preserving life gave way to the right of privacy, "regardless of the absence of a dim prognosis." Yet, right to die cases which allow a patient to forego treatment, relying wholly upon the degree of bodily intrusion involved and disregarding the patient's prognosis, establish a doctrine that appears to ignore the compelling interest in preserving life.

As discussed, a right to die has been acknowledged in certain situations outside the context of prison, as justified by the right to privacy. This Note will go on to explore under what circumstances, if was greatly concerned with the fact that the prognosis was so dim); Saikewicz, 373 Mass. at 743, 370 N.E.2d at 426 (where the court holds the preservation of life to be the only relevant interest and since the chemotherapy treatment offered little hope of recovery, this interest was weakened to a level where it was insufficient to outweigh Saikewicz' right to privacy). See also supra note 10. Now, however, some courts have disregarded the prognosis and focused mainly on the degree of bodily intrusion. See infra notes 22-26 and accompanying text.

22. See In re Conroy, 286 A.2d 1209 (N.J. 1985) (84 year old nursing home patient allowed to remove nasogastric feeding tube which was necessary to sustain her life since she was otherwise incapable of eating). See also In re Quackenbush, 156 N.J. Super. 282, 383 A.2d 785 (1978); Lane v. Candura, 6 Mass. App. Ct. 377, 376 N.E.2d 1232 (1978) (A 77 year old competent woman suffering from gangrene in the right foot and lower leg was allowed to refuse an amputation. The court noted that this case did not involve factors which would bring it within the Saikewicz guidelines and thus did not warrant overriding the will of a competent woman.).


24. Id. at 283, 383 A.2d at 786.

25. In determining the risks inherent in an amputation operation the court deferred to the judgement of Dr. Filippone, Quackenbush's treating physician. Id. at 284-85, 383 A.2d at 787.

26. Id. at 290, 383 A.2d at 789.

27. See Matter of Storar, 52 N.Y.2d 363, 438 N.Y.S.2d 266, 420 N.E.2d 64, cert. denied, 454 U.S. 858 (1981) (New York Court of Appeals allowed blood transfusions to be performed on a retarded 52 year old man with terminal bladder cancer. The court held that although the transfusions would not cure the cancer, they would prevent death from another treatable cause.); John F. Kennedy Memorial Hosp. v. Heston, 58 N.J. 576, 279 A.2d 670 (1971) (where the Supreme Court of New Jersey ordered blood transfusions for a young woman, despite her mother's religious objections, emphasizing the state's interest in preserving life of one who, if treated, will live a long life in good health).

28. The right to die issue has also been raised in at least one other context outside the
any, a right to die should exist for those confined in our penal institutions, given the state's additional interests unique to the prison environment.29

II. THE RIGHT TO DIE IN PRISON

A. The Inmate's Constitutional Rights

Inmates who have asserted a right to die by their refusal of necessary medical treatment while incarcerated have based their claims on two constitutional rights: the right to privacy30 and the first amendment guarantee of freedom of expression.31 Incarceration, however, imputes certain limitations to these constitutional rights. The issue of an in-

prison environment. In these situations, competent adults have sought to refuse treatment for life-threatening conditions which they brought upon themselves. Thus far, only two cases have reached the courts, yielding conflicting results.

The State of California denied the right to die to one who attempts starvation. This case involved Elizabeth Bouvia, a paralyzed 26 year old cerebral palsy victim. Mrs. Bouvia wished to starve herself to death while at the same time having the Riverside General Hospital provide her with pain-killers and hygienic care. Bouvia claimed her right to privacy precluded the hospital from feeding her against her will and expressed her desire to die rather than remain in a useless body. Judge Hews issued a temporary injunction authorizing force-feeding, holding that she does not have a right to have society help her commit suicide. The California Supreme Court unanimously rejected her appeal and Judge Hews later made his injunction permanent. See N.Y. Times, Jan. 20, 1984 at B4, col. 3.

New York allowed a patient to die. The case involved an 85 year old man living in a nursing home, who began fasting over depression resulting from a series of illnesses. The fasting was an attempt to hasten his own death. The nursing home petitioned the court to determine its rights and obligations. The court held that the nursing home was not obligated nor empowered to force-feed the patient, basing its decision on the right to privacy and a state public health law allowing competent patients to refuse necessary treatment. See N.Y. Times, Feb. 3, 1984 at A1, col. 3.

29. See infra notes 106-131 and accompanying text for a discussion of additional state interests which are unique to the context of prison.


mate's retention of constitutional rights was brought to the forefront in Wolff v. McDonnell. In Wolff, the Supreme Court announced that "a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country." However, the Court went on to hold that constitutional rights were subject to restrictions because of the prison environment. Therefore, although inmates do retain those rights discussed thus far, in their attempts to refuse treatment, those rights are subject to additional limitations peculiar to penal institutions.

One right which is retained by inmates is the first amendment right to free speech and expression. Inmates have attempted to invoke their first amendment rights in those situations in which their refusal of treatment has been associated with a form of protest. The proper standard of review for first amendment cases with respect to the penal environment, however, has never been clearly defined by the courts.

Outside the prison context, the Supreme Court has established a test for determining whether a violation of free speech has occurred. The

32. 418 U.S. 539 (1974). In Wolff, an inmate filed suit claiming violations of his constitutional rights. He claimed disciplinary proceedings against him failed to comply with the Due Process clause of the Fourteenth Amendment, that the prison's legal assistance failed to meet constitutional standards, and that the inspection of mail from attorneys to clients was unconstitutionally restrictive. The Court went on to hold that the revocation of "good-time" credits without notice and a hearing was a violation of due process, prison officials could open, but not read, mail that was clearly marked as from an attorney and only if the inmate was present, and that the prisoners may be allowed to assist each other in legal matters.


34. Wolff, 418 U.S. at 556.

35. See infra notes 106-131 and accompanying text for a discussion of state interests peculiar to penal institutions.

36. See supra note 33.

37. In Von Holden, the inmate claimed a right to free expression since his fasting was designed to focus attention on starving children around the world. 87 A.D.2d at 67, 450 N.Y.S.2d at 625. In White, the inmate was protesting prison conditions and claimed he would die for his cause. 292 S.E.2d at 55.


application of this test to a penal institution, in which an inmate refuses life-saving medical treatment, demonstrates why this right has been unsuccessfully asserted by inmates. The first prong of the test requires restrictions on free speech to be supported by a substantial governmental interest. This is easily met since the state has several compelling interests which it seeks to protect: specifically, the preservation of life, the prevention of suicide, and the maintenance of prison security. The second prong of the test allows only incidental restrictions on the first amendment. This requirement is successfully overcome upon a showing that the state would seek to compel the necessary treatment even if there had been no demand or protest made. The third prong of the test requires that any restriction imposed be no greater than what is essential to further the state's interest. This requirement may be satisfied rather simply, since the only way to further the state's interest is to administer the life-saving treatment. Therefore, if an inmate refused treatment based on his first amendment right to free expression, it is probable that this refusal would be countermanded. Some questions arise, however, as to whether this test.

within constitutional limits if: 1) the regulation furthers a substantial governmental interest; 2) the governmental interest is unrelated to the suppression of free expression; and 3) if the incidental restrictions on the First Amendment freedoms are no greater than what is essential to further that interest. Id. at 377. See also Linmark Associates, Inc. v. Willingboro, 431 U.S. 85 (1977) (regulation prohibiting "for sale" signs on front lawns because of fear of "white flight" violated the first amendment).

40. See Von Holden, 87 A.D.2d at 70, 450 N.Y.S.2d at 627, where the New York Supreme Court, Appellate Division, summarily dismissed Chapman's first amendment argument noting that his incarceration rendered this right subject to reasonable limitations necessary in the prison environment.

41. See supra note 39 and accompanying text.

42. For a discussion of these interests see infra notes 72-129, 145-164 and accompanying text.

43. See supra note 39 and accompanying text.

44. This can be done by demonstrating that even had the prisoner made no demand or protest, the state would seek to compel treatment. For example, in Caulk, 35 CRIM. L. REP. (BNA) 2352 (1984), the inmate made no demand upon the system, nor did he seek to bring attention to any particular cause, yet the state still sought to force treatment upon him.

45. See supra note 39 and accompanying text.

46. Once an inmate refuses life-saving medical treatment, the state has three options. The first option is to compel the treatment thereby fulfilling all the state duties. The second option is to allow the inmate to die. If this is done however, the state will not have succeeded in its goals of preserving life and preventing suicide, at the very least. Potential security problems may also arise. See infra notes 72-105 and accompanying text. The third option is to grant the inmate's requests. While this may discharge most of the state interests, a prison security problem may still arise. See infra notes 112-130 and accompanying text.

47. To date, only one court has allowed a hunger striker to forego life-saving medical
or a less demanding standard of review giving greater deference to the state, applies to inmates in the prison context. Under either standard, however, it is doubtful whether a first amendment claim would be successful. This is due to the fact that even application of the more rigid three-pronged test would likely result in a finding for the state.

The constitutional right asserted more successfully in cases of this type is the right to privacy. This right, although not explicitly set out
treatment. Even in this instance, the Supreme Court of Georgia implicitly rejected the inmate's freedom of expression claim by relying only on the inmate's right to privacy in reaching its decision. See Zant v. Prevatte, 248 Ga. at 834, 286 S.E.2d at 717. "[W]e hold that Prevatte, by virtue of his right of privacy, can refuse to allow intrusions on his person . . . ."

48. See Procunier v. Martinez, 416 U.S. 396 (1974). In this case a prison inmate challenged prison mail censorship regulations claiming a violation of the first amendment. Acknowledging that no generally accepted standard of review for prison mail cases existed, the Court set out to establish a standard. The Court held that censorship was justified if "[f]irst, the regulation or practice in question . . . further[s] an important or substantial governmental interest unrelated to the suppression of expression . . . . Second, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved." Id. at 413. (This is essentially a restatement of the O'Brien test, supra note 39). However, the Court noted that mail involved the first amendment rights of both the sender and the receiver, and based this standard on the fact that non-inmate rights were also affected by the censorship. Id. at 408-09.

49. See Pell v. Procunier, 417 U.S. 817 (1974). Inmates challenged the constitutionality of a regulation allowing the media to interview inmates but not allowing particular inmates to be selected in advance. The Court held that:

"In the First Amendment context a corollary of this principle is that a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Thus, challenges to prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of legitimate policies and goals of the corrections system . . . ."

Id. at 822. Holding that the deterrence of crime and prison security were legitimate goals furthered by the prison regulation and that inmates had other alternatives to communicate with the media, no constitutional violation existed. Applying this test to the present situation, the state has several legitimate interests (e.g. prison security) and inmates could protest via the mail or other reasonable means instead of by refusing treatment. See also Jones v. North Carolina Prisoners' Union, 433 U.S. 119 (1977) (prison labor union claiming first amendment violation by prohibiting prisoners from soliciting other inmates to join their union).

50. See supra note 39 and accompanying text. Regardless of which test applies to freedom of expression in a prison environment, the inmate's first amendment right would be outweighed. This is true because application of the three-pronged test, a test more beneficial to the inmate, would result in a finding for the state. See supra notes 40-47 and accompanying text.

51. Although only one court has held that an inmate's right to privacy outweighs all state interests with regard to medical treatment (see supra note 47) all courts dealing with the right to die issue in the prison context have weighed the compelling state inter-
in the Constitution, has been interpreted by the Supreme Court as a fundamental right implicit in the Constitution.52

Courts outside of the prison context have acknowledged that this right applies to the case in which an individual refuses life-sustaining medical treatment.53 In dealing with this question in Quinlan, the New Jersey Supreme Court held that "[p]resumably this right is broad enough to encompass a patient's decision to decline medical treatment under certain circumstances, in much the same way as it is broad enough to encompass a woman's decision to terminate pregnancy under certain conditions."54 Other courts which have dealt with prison-

ests with the right to privacy before reaching their decisions. See supra note 30 and accompanying text. It was this fundamental right to privacy that outweighed compelling state interests in certain circumstances outside of the prison environment. See supra notes 8-28 and accompanying text.

52. The Supreme Court has acknowledged a right to privacy exists stemming from the penumbras of the specific guarantees of the Bill of Rights and from the first, fourth, fifth, sixth and fourteenth amendments. This right has its roots in the early cases of Meyer v. Nebraska, 262 U.S. 390 (1923) (Court held invalid a statute prohibiting schools from teaching in any language other than English) and Pierce v. Society of Sisters, 268 U.S. 510 (1925) (invalidating a statute requiring students to attend public schools instead of private schools). Because of these cases, the right to choose with respect to one's individual personal life gained constitutional recognition. This right was expanded to sexual matters in Skinner v. Oklahoma, 316 U.S. 535 (1942) (Court held statute unconstitutional which authorized the sterilization of those twice convicted of felonies of moral turpitude); Griswold v. Connecticut, 381 U.S. 479 (1965) (invalidating statute preventing the use of contraceptives between married couples relying on a "right to privacy"); Eisenstadt v. Baird, 405 U.S. 438 (1972) (extending right to use contraceptives to unmarried people); and also to issues regarding marriage in Loving v. Virginia, 388 U.S. 1 (1967) (striking down statute preventing interracial marriage) and Zablocki v. Redhail, 434 U.S. 374 (1978) (unconstitutional to have law which restricted the ability of economically poor people to marry). Finally, the right to privacy was held to encompass the right to procure an abortion in Roe v. Wade, 410 U.S. 113 (1973). To date, the Supreme Court has yet to determine whether the right to privacy encompasses the right to forego life-saving medical treatment. See J. NOWAK, R. ROTUNDA, & J. YOUNG, CONSTITUTIONAL LAW 764-765 (1983).

53. See infra note 54 and accompanying text; Colyer, 99 Wash. 2d at 120, 660 P.2d at 742, "In harmony with other jurisdictions, we now hold that an adult who is incurably and terminally ill has a constitutional right of privacy that encompasses the right to refuse treatment that serves only to prolong the dying process . . . ."; Saikewicz, 373 Mass. at 759, 370 N.E.2d at 435, "Finding no State interest sufficient to counterbalance a patient's decision to decline life-prolonging medical treatment in the circumstances of this case, we conclude that the patient's right to privacy and self-determination is entitled to enforcement." See also Severns, 421 A.2d 1334 (Del. 1980); Eichner, 73 A.D.2d 431, 426 N.Y.S.2d 517 (1980); Leach, 68 Ohio Misc. 1, 426 N.E.2d 809 (1980); Satz, 362 So.2d 160 (Fla. Dist. Ct. App. 1978).

54. Quinlan, 70 N.J. at 40, 355 A.2d at 663. The Supreme Court first held the right to privacy encompassed the right to abortion in the companion cases of Roe v. Wade, 410 U.S. 113 (1973) and Doe v. Bolton, 410 U.S. 179 (1973).
ers refusing treatment have adopted this line of reasoning and have acknowledged that the right to privacy which prisoners have asserted can be extended to the right to die.\footnote{55} Hence, any compelling interests argued by the state will have to outweigh a prisoner's right to be free from bodily intrusions.\footnote{56}

\section*{B. The Compelling State Interests}

The role each state interest plays in the court's overall analysis is dependent upon the facts of a specific case.\footnote{57} For example, in \textit{In re Colyer}, \footnote{58} a case involving a woman who suffered a cardiac arrest, the

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\footnote{55} None of the cases dealing with the right to die, whether inside or outside of the prison context, have seriously challenged the fact that the right to privacy encompasses the right to decline necessary treatment. States have only challenged the right to die on the ground that the state has compelling interests which should prevail over this constitutional right. \textit{See State ex rel White v. Narick}, 292 S.E.2d 54 (W.Va. 1982) (acknowledging the right to die but holding that White's personal privacy right has been severely modified due to incarceration); \textit{Von Holden v. Chapman}, 87 A.D.2d 66, 450 N.Y.S.2d 625 (1982) (implicity recognizing that the right to privacy applies with regard to the refusal of radical surgery or medical treatment); \textit{In re Caulk}, 35 CRIM. L. REP. (BNA) 2352, No. 84-246 (N.H. Sup. Ct. July 23, 1984) (agreeing that the defendant's right to privacy was implicated by an attempt to hunger strike); \textit{Zant v. Prevatte}, 248 Ga. 832, 286 S.E.2d 715 (1982) (right to privacy permitted the refusal of intrusions, even though calculated to preserve life); \textit{Commissioner of Corrections v. Myers}, 379 Mass. 255, 399 N.E.2d 452 (1979) (individuals have a constitutional right to privacy which can be asserted to prevent unwanted intrusions of bodily integrity).

\footnote{56} \textit{See Zant}, 248 Ga. at 834, 286 S.E.2d at 717 (State has not shown a compelling interest to override the right to refuse medical treatment). \textit{See also Saikewicz}, 373 Mass. at 744-45, 370 N.E.2d at 427 (balanced against the four categories of state interests "was the individual's interest in the freedom to choose to reject, or refuse to consent to, intrusions of his bodily integrity and privacy.").

\footnote{57} \textit{See infra} notes 58-61. \textit{See also John F. Kennedy Memorial Hospital v. Heston}, 58 N.J. 576, 279 A.2d 670 (1971) (where a 22 year old Jehovah's Witness was severely injured and in need of a blood transfusion. In authorizing the transfusion over religious objections, the court was influenced by the fact that there was a strong interest in preserving life since here, total recovery could be expected).

\footnote{58} 99 Wash. 2d 114, 660 P.2d 738 (1983). In \textit{Colyer}, the court examined each of the state interests enunciated in \textit{Saikewicz}. In examining the first interest, the preservation of life, the court noted that this interest weakens where treatment only serves to prolong life and not improve it. The second interest, that of protecting innocent third parties, was not strong in a case where the patient had no children and the patient's immediate family also sought to withhold treatment. In addressing \textit{Saikewicz}' third interest, the prevention of suicide, the court noted that suicide does not occur in a situation where, if treatment were revoked, the patient would die of natural causes. Finally, the court held that maintaining the ethical integrity is not an important factor where the patient is terminally ill, since often these patients need comfort in lieu of treatment. Implicitly, had Mrs. Colyer not been terminally ill, or had she had children, the compelling state interests may have been present with sufficient force to compel treatment.
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Supreme Court of Washington noted that the state interest in preserving life was weakened where there was little hope of recovery.\(^5\) In *Saikewicz*,\(^6\) the court held that the state interest in preventing suicide was inapplicable to a situation where an individual was refusing medical treatment but did not originally bring the illness upon himself.\(^6\) Not only do the basic state interests vary according to the particular situation, the prison environment itself has produced several additional state interests which must be considered.\(^6\) In the cases to date which have involved inmates' refusal of life-sustaining medical treatment, two distinct fact patterns have emerged.\(^6\)

**Pattern 1: Where the inmate sets the death-producing agent in motion:**

This body of cases is comprised of what are commonly called "hunger strikes," and it constitutes a majority of prison cases to date.\(^6\) The first concern to be examined is the state's duty to protect any innocent third parties.\(^6\) The state has typically argued this duty justifies mandatory treatment in situations where the person seeking to refuse treatment has dependent children or other family members who would become a financial burden to the state in the event of that person's death.\(^6\) This interest, however, appears to have little relevance in the

\(^{59}.\) Id. at 122, 660 P.2d at 742. This was also the case in *Quinlan* where the court stated, "[w]e think that the State’s interest *contra* weakens and the individual’s right to privacy grows as the degree of bodily invasion increases and the prognosis dims." 79 N.J. at 41, 355 A.2d at 664.


\(^{61}.\) Id. at 744, 370 N.E.2d at 427.

\(^{62}.\) See Von Holden v. Chapman, 87 A.D.2d 66, 450 N.Y.S.2d 625 (1982) (state's duty to provide medical care for those in its custody); *State ex rel White v. Narick*, 292 S.E.2d 54 (W.Va. 1982) (prison security). These interests were not considered in non-prison cases. *See supra* note 13, for the state interests asserted in non-prison cases.

\(^{63}.\) The two patterns are: 1) where the inmate sets the death-producing agent in motion, and 2) where the inmate refuses treatment for an already existing illness. Because these situations are distinct and have a significant impact on the state interests involved, they will be treated separately.

\(^{64}.\) Of all the cases decided thus far where an inmate has refused treatment, only one has involved a non-hunger striker. *See Commissioner of Corrections v. Myers*, 379 Mass. 255, 399 N.E.2d 452 (1979). However, in Appendix I of the *Myers* decision, Commissioner Hall noted that other situations occur (besides hunger strikes) where inmates voluntarily cause their own medical problems. For example, an 18 year old inmate at M.C.I. Concord attempted to gain a transfer by mutilating a surgical wound and refusing treatment for the life-threatening situation. *Id.* at 267, 399 N.E.2d at 459.

\(^{65}.\) *Saikewicz*, 373 Mass. at 742, 370 N.E.2d at 426.

\(^{66}.\) *Id. See also Colyer*, 99 Wash. 2d at 123, 660 P.2d at 743, where the court holds that because Mrs. Colyer had no children and her immediate family consented to the removal of life-support systems, no third party interest needed to be protected. *See also*
prison context.\textsuperscript{67}

Another interest to which the courts have accorded little importance is that of maintaining the ethical integrity of the medical profession.\textsuperscript{68} Courts outside of the prison context have determined this interest is of minor consequence since medical ethics have recognized the need to offer comfort instead of treatment in certain situations.\textsuperscript{69} In the penal context, however, this reasoning is generally unsound. Where an inmate has set the death-producing agent\textsuperscript{70} in motion, medical professionals would seemingly be obliged to treat, rather than comfort, an inmate since that treatment would most likely result in recovery.\textsuperscript{71} Thus, maintaining ethical integrity should no longer be summarily dismissed; rather, it should be given greater weight in the overall balancing process.

A third state interest to be considered is the preservation of life.\textsuperscript{72} Two penal cases have relied heavily on this interest in determining whether treatment may be refused and have reached different conclusions.\textsuperscript{73} The first case was \textit{Zant v. Prevatte}.\textsuperscript{74} \textit{Zant} involved an inmate who was both sane and rational yet had refused to eat until his de-

\textsuperscript{67} This interest has only been asserted in two cases in the prison context. \textit{See Myers}, 379 Mass. at 262, 399 N.E.2d at 456 (court holding that interest in third parties was of no consequence since inmate was not married and had no children). \textit{See also White}, 292 S.E.2d at 58 (court raises the \textit{Saikewicz} interests but addresses only the interest in preserving life). Presumably this is because even if the inmate had dependents, since he was incarcerated he would not have been able to support them anyway.

\textsuperscript{68} In \textit{Saikewicz}, the court dismissed this interest holding that medical ethics would not be undermined since "the prevailing ethical practice seems to be to recognize that the dying are more often in need of comfort than treatment." 373 Mass. at 743, 370 N.E.2d at 426. None of the hunger striking cases have relied on this interest to compel force-feeding.

\textsuperscript{69} \textit{Id.}

\textsuperscript{70} For the purpose of this Note, "death-producing agent" will be defined as any illness or injury which proximately causes the patient's death. One dying from "natural causes" has not set the "death-producing agent" in motion. \textit{See Saikewicz}, 373 Mass. at 743 n.11, 370 N.E.2d at 426 n.11.

\textsuperscript{71} In a hunger striking situation, although certain risks are inherent to treatment, force-feeding would generally result in recovery. \textit{See Note}, \textit{The Privacy and Procedural Due Process Rights of Hunger Striking Prisoners}, 58 N.Y.U.L. Rev. 1157, 1176-79 (1983) for a description of force-feeding and its risks.

\textsuperscript{72} \textit{See infra} notes \textsuperscript{73-92} and accompanying text.


\textsuperscript{74} 248 Ga. 832, 286 S.E.2d 715 (1982).
mand for a transfer was granted.75 Without food, Prevatte was expected to die within three weeks.76 The state brought a petition to force-feed Prevatte, arguing that they had a duty to protect those incarcerated77 and that a compelling interest to preserve life existed.78 In concluding that the inmate’s privacy right outweighed the interest in preserving life,79 the Supreme Court of Georgia looked to the fact that Prevatte was once sentenced to death.80 The court then reasoned that, taking “the State’s argument to its logical conclusion, were Prevatte still under a death sentence the State would ask the Court to allow it to keep him alive against his will so it could later kill him.”81

The fallacy of the Zant court’s logic was illuminated by the later case of State ex rel White v. Narick.82 In White, the Supreme Court of Appeals of West Virginia was faced with a murderer serving a life sentence who began a hunger strike to protest prison conditions.83 The inmate had already lost one hundred pounds and stated that he would rather die for his cause than be fed.84 Prison officials announced they would force-feed White, and White sought injunctive relief.85 The state argued it had a compelling interest in preserving human life.86 In reaching its decision, the court analyzed the only existing precedent, the Zant decision.87 The court then criticized the Zant decision, noting that:

The Georgia court failed to consider compelling reasons for pre-

75. Id. at 833, 286 S.E.2d at 716. Zant had refused to eat for approximately one month. The reason for the strike was to let prison officials know that he feared he was in danger from other inmates and desired a transfer.
76. Prison doctors described Prevatte as in “ketosis”, a condition where protein was metabolized due to lack of nourishment. Id.
77. Id. See infra notes 107-111 and accompanying text for a discussion of the state’s compelling interest in protecting inmates.
78. 248 Ga. at 833, 286 S.E.2d at 716.
79. “[W]e hold that Prevatte, by virtue of his right of privacy, can refuse to allow intrusions on his person, even though calculated to preserve his life.” Id. at 834, 286 S.E.2d at 717.
80. Id. at 834, 286 S.E.2d at 716.
81. Id.
82. 292 S.E.2d 54 (W.Va. 1982). See infra note 88 and accompanying text for a critical look at the Zant court’s reasoning.
83. Id. at 55.
84. Id. Despite the inmate’s insistence that he would rather die than be fed, the court noted that shortly after the case was argued White voluntarily ended his fast. Id. n.1.
85. Id. at 55. However, at the time of this appeal, White had regained 50 pounds. Id. n.1.
86. Id. at 56.
87. Id. The court noted that “[o]nly one state court has written about whether a hunger striking prisoner should be allowed to die.”
serving life, not the least being civility. What sense does it make for a state to allow a prisoner to kill himself, urging as its justification his right-of-privacy right to refuse medical treatment for his voluntary debilitation; and yet preserve unto itself the right to kill him, the ultimate violation of his privacy right. We doubt that Georgia would allow him to raise his right of privacy against being put to death, as a defense against the death penalty.

The *White* court went on to hold that West Virginia's interest in preserving life outweighed White's right to privacy and freedom of expression, since it was "a concern at the very core of civilization." In reaching this decision, the court in *White* implicitly recognized an important fact that the *Zant* court seemed to ignore—the fact that this case differed from a case of uninvited death. This holding is consistent with the terminally-ill cases which maintain that, where the prognosis is dim, the state interest in preserving life is reduced.

Another key element in this analysis is the interest in preventing suicide. There is little doubt that the state has a duty to prevent self-inflicted harm whenever such harm is reasonably foreseeable, and consequently will be held liable for negligence where this duty is breached.

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88. *Id.* at 57.
89. *Id.* at 58.
90. The court acknowledged the *Saikewicz* decision holding that a terminally ill patient may be allowed to die. Implicit in this recognition was the fact that this was not a case of certain uninvited death requiring the right of privacy to dominate. *Id.*
91. See *supra* note 10 and accompanying text.
92. Logically, the reverse is also true. Where the prognosis is good, as in hunger striking cases, the interest in preserving life is at its peak. See *Caulk*, 35 Crim. L. Rev. (BNA) 2352 (1984), holding that where the inmate sets the death-producing agent in motion, the state interests in preserving life and preventing suicide should dominate.
93. See Ray v. Leader Federal Savings & Loan Ass'n., 40 Tenn. App. 625, 644, 292 S.W.2d 458, 467 (1953) (quoting BLACK'S LAW DICTIONARY 1121 (2nd ed.)); "Suicide is the wilfull and voluntary act of a person who understands the physical nature of the act, and intends by it to accomplish the result of self-termination." Borrson v. Missouri-Kansas-Texas R. Co., 351 Mo. 229, 245, 172 S.W.2d 835, 846 (1943) ("Suicide means voluntary, intentional self-destruction . . . "). See also *Giff's* LAW DICTIONARY 204 (1975) (Suicide is the voluntary and intentional killing of one's self.).
94. See generally *Kanayurak* v. North Slope Borough, 677 P.2d 893 (Alaska 1984) (duty to protect prisoner encompasses a duty to prevent foreseeable self-inflicted harm); Pretty on Top v. City of Hardin, 182 Mont. 311, 597 P.2d 58 (1979) (widow of prisoner who committed suicide denied recovery from city because she failed to show suicide was foreseeable); Figueroa v. State, 61 Hawaii 369, 604 P.2d 1198 (1979) (judgment vacated and remanded to see if risk of hanging while in isolation was foreseeable by staff and whether reasonable care was exercised). See also Comment, Custodial Suicide Cases: An Analytical Approach To Determine Liability For Wrongful Death, 62 B.U. L. Rev. 177 (1982).
95. See *Kanayurak*, 677 P.2d 893 (Alaska 1984) (Supreme Court of Alaska reversed
In a hunger strike situation, it appears that both the voluntary and intent elements are present, thus constituting suicide under the strict definition.\textsuperscript{96} This was the rationale used in \textit{Von Holden v. Chapman}.\textsuperscript{97} In this case, Mark David Chapman, serving a 20 year to life term for murder, attempted to invoke his constitutional rights to privacy and freedom of expression by refusing to eat.\textsuperscript{98} His stated reason for refusing to eat was to draw attention to all the starving children in the world.\textsuperscript{99} The Supreme Court of New York, Appellate Division, rejected Chapman's right to privacy claim, holding that "it is self-evident that the right of privacy does not include the right to commit suicide . . . . To characterize a person's self-destructive acts as entitled to Constitutional protection would be ludicrous."\textsuperscript{100} In so holding, the court noted the clear distinction between a case where the inmate sets the death-producing agent in motion, as opposed to cases which involved the right to refuse radical surgery.\textsuperscript{101}

One possible explanation for the failure of the \textit{Zant} and \textit{White} courts to rely on the prevention of suicide interest is that, upon closer subjective analysis, neither inmate intended to die.\textsuperscript{102} In \textit{Von Holden}, the inmate clearly knew his goal of eliminating the starvation of children could not realistically be met, yet he still desired to starve for his cause.\textsuperscript{103} This was not true in \textit{Zant} and \textit{White}, as both inmates had goals which could, more realistically, have been met. Although the intent to commit suicide is much more evident in \textit{Von Holden}, objectively, the requisite intent is still sufficiently present in all hunger

the lower court's grant of summary judgment in favor of the prison); Padula v. State, 48 N.Y.2d 366, 422 N.Y.S.2d 943, 398 N.E.2d 548 (1979) (State held liable for wrongful death of a heroin addict who drank poison because of an irresistible urge while attending a narcotics control center); Dezort v. Village of Hinsdale, 35 Ill. App. 3d 703, 342 N.E.2d 468 (1976) (Village police officers held liable for wrongful death of a jail inmate who committed suicide by hanging from his belt while intoxicated).

\textsuperscript{96} See supra note 93 and accompanying text.
\textsuperscript{97} 97 A.D.2d 66, 450 N.Y.S.2d 623 (1982).
\textsuperscript{98} Chapman, imprisoned for the murder of former Beatle John Lennon, was found to be competent and had frequently expressed his intention to commit suicide. \textit{Id.} at 66-67, 450 N.Y.S.2d at 624-25.
\textsuperscript{99} \textit{Id.}
\textsuperscript{100} \textit{Id.}
\textsuperscript{101} \textit{Id.} at 69, 450 N.Y.S.2d at 626. In the former, the inmate is attempting suicide and thus the state interest compels treatment, while in the latter, no element of suicide exists because the condition was pre-existing and thus involuntary.
\textsuperscript{102} See supra notes 75, 83 and accompanying text. In the \textit{Zant} case it is logical to assume that one who is in fear from other inmates would not commit suicide to escape the danger. Likewise in \textit{White}, the inmate's real motive was to improve prison conditions, not to die.
\textsuperscript{103} See supra note 98 and accompanying text.
Thus, despite the fact that an inmate is merely exercising some form of protest, the act of carrying the protest to its logical conclusion would involve suicide, and in such a situation the state interests of preventing suicide and preserving life should dominate. The remaining state interests to be considered are peculiar to the prison environment. The first of these is the state's common law duty to provide necessary medical attention to inmates. Where prison officials fail to provide necessary medical attention to inmates, a violation of the eighth amendment's cruel and unusual punishment clause is presumed to exist. Although one court has taken this duty lightly, other courts have accorded it a great deal of weight in the consideration of hunger striking cases.

104. Regardless of the reasons for invoking a hunger strike, intent to commit suicide can be found since this would be the natural and probable result of carrying out the strike. But see Note, Force-Feeding Hunger-Striking Prisoners: A Framework for Analysis, 35 U. Fla. L. Rev. 99, 102-105 (1983) (objective and subjective tests have been used to determine whether all the elements of suicide are met and under the subjective standard, since hunger strikers only desire to have their demands met and not to die, the intent element of suicide is not present.).


106. Since these additional interests are totally peculiar to the prison environment, they were not considered in any of the right to die cases outside the prison context.

107. The common law imposes a duty on prison officials to provide for an inmate's medical needs. See Spicer v. Williamson, 191 N.C. 487, 132 S.E. 291 (1926); Leigh v. Gladstone, 26 T.L.R. 139 (1909) (English case allowing the force-feeding of a prisoner based on the common law duty to provide for an inmate's medical needs).

108. Zant, 248 Ga. at 833, 286 S.E.2d at 716. "The State argues that it has a duty to protect the health of those who are incarcerated in the state penal system . . . ." Id.

109. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Supreme Court has interpreted this amendment to mean that any refusal of necessary medical attention constitutes a violation of the eighth amendment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976) where the Court concluded "that the deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' . . . prescribed by the Eighth Amendment" (citation omitted). Cf. Jones v. Marquez, 526 F. Supp. 871 (D. Kan. 1981) (court holding that no Eighth Amendment violation occurred where the hunger striker made no specific requests for treatment).

110. Zant, 248 Ga. at 833-34, 286 S.E.2d at 716. "Does this duty authorize the State to force medical treatment and food on a sane prisoner who does not want such treatment . . . ? The court rules that it does not . . . . The State has no right to monitor this man's physical condition against his will . . . ."

111. See Boyce v. Petrovsky, No. 81-3222 (W.D. Mo. Sept. 16, 1981) (Federal district court holding that the government could not be relieved of its duty to provide medical care and therefore permitted force-feeding); Von Holden, 87 A.D.2d at 66-67, 450 N.Y.S.2d at 624-25. "[W]e hold that the obligation of the State to protect the health and
Perhaps the most important interest to consider in all cases involving incarcerated individuals is the need for prison security. In the case of an inmate setting the death-producing agent in motion, the threat to prison security is readily apparent. In Von Holden, although the inmate set an unrealistic goal which would have been impossible for prison officials to accede to, Chapman still succeeded in disrupting prison procedures in his unit. This created resentment among other inmates and served as an example to those who subsequently began similar attempts at starvation. The problem of institutional security becomes even more evident in situations where it is possible for prison officials to comply with the inmate’s requests. In White, the purpose of the inmate’s strike was to force officials to improve prison conditions. Had officials given in to White’s demands, it

welfare of persons in its custody, its interest in the preservation of life, and its interest in maintaining rational and orderly procedures . . . are countervailing considerations of such importance as to outweigh any claimed rights . . . .”

112. See Bell v. Wolfish, 441 U.S. 520, 546 (1979) noting that “maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of . . . convicted prisoners. . . .” In addition, the Court held that “[p]rison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” Id. at 547. See also Hewitt v. Helms, 459 U.S. 460 (1983). In Hewitt, the Court interpreted the Bell language to mean prison officials were only obligated to hold informal non-adversary reviews of evidence which supported the inmate’s administrative confinement within a reasonable amount of time after confinement to satisfy due process.

113. Chapman’s goal was to wipe out global starvation. 87 A.D.2d at 67, 450 N.Y.S.2d at 625.

114. “There was further evidence that Chapman’s hunger strike had caused disruption in the procedures in his unit, resentment among other patients, and had resulted in other patients adopting the starvation technique in order to gain attention.” Id. at 67, 450 N.Y.S.2d at 625.

115. See supra note 114.

116. The problem of institutional security with regard to hunger strikes has several different aspects. The first is the concern that other inmates may invoke similar strikes causing widespread disruption. See supra note 114. The second aspect is that if prison officials allow the inmate to die, resentment and anger will be created among the remaining inmates with an equally disruptive effect. See Commissioner of Corrections v. Myers, 379 Mass. 255, 399 N.E.2d 452 (1979). The third aspect is that if prison officials do comply with the inmate’s demands, the inmate will have succeeded in manipulating the system to gain something otherwise not obtainable. See infra note 118. However, this third aspect is effectively countered in situations where the inmate’s particular demand is impossible to comply with as in Von Holden. Thus, the corollary is also true: where an inmate’s demands can be effectively met, officials are faced with this third aspect of compliance which can only serve to complicate the decision-making process.

117. See supra note 83 and accompanying text.
would be reasonable to assume that other inmates would invoke similar strikes, as in Von Holden, creating an illegitimate "court of appeals,"
whereby inmates could attain goals they otherwise could not. Such an impact would undoubtedly interfere with the goals of a penal institution.

It is not necessary, however, that an inmate make any demand or protest for a prison security problem to arise. For example, in In re Caulk, the New Hampshire Supreme Court was faced with an inmate who was sentenced to several lengthy terms and had additional indictments pending in California. Caulk's sole reason for wanting to die by starvation was that he was "tired, unhappy, and disappointed with the promise that life holds . . . ." and that "if he cannot live freely, he does not want to live at all." The state argued that, despite the fact that Caulk made no demands, it had compelling interests in preserving life, preventing suicide, and maintaining an effective criminal justice system. The court agreed with the state's arguments and allowed the force-feeding of Caulk despite the fact that Caulk himself posed no direct threat to institutional security. In so doing, the court implicitly rejected the notion that a threat to security consisted solely of demands made upon officials or the precedential value the inmate's actions would have on the rest of the prison population.

118. "To accede to the prisoners' demands as a result of the hunger strike would establish an altogether too easily invoked Court of Appeal by Hunger, enabling any prisoner with determination and a long sentence who had run the full course of the legal process to reopen his case." Force Feeding, 124 New L.J. 113, (Feb. 7, 1974).

119. Interestingly enough, in the only case that allowed a prisoner to forego force-feeding, the state never asserted its interest in prison security. See Zant, 248 Ga. 832, 286 S.E.2d 715 (1982). The only state interests asserted in Zant were the duty to protect those in state custody and the interest in preserving life. Id. at 833, 286 S.E.2d at 716.


121. Id. at 2353. The sentences, together with the pending indictments, would probably result in a life sentence without parole.

122. Id. at 2352.

123. Id. Caulk testified that he had hurt too many people and that the pain from slow starvation would amount to sufficient punishment for his past conduct.

124. Id. at 2353.

125. The court recognized that:

[t]his is not a situation where an individual, facing death from a terminal illness, chooses to avoid extraordinary and heroic measures to prolong his life . . . . Rather, the defendant has set the death-producing agent in motion with the specific intent of causing his own death . . . and any comparison of the two situations is superficial . . . . Thus, in these circumstances, the State's interest in preserving life and preventing suicide dominates.

126. Id. at 2352.

127. Id. at 2353.
The court implicitly noted that any disruption of prison order could have a bearing on prison security in sufficient quantity which, when coupled with additional state interests, would tip the overall balance in favor of the state.\textsuperscript{128}

Thus, in all cases where an inmate seeks to inflict harm upon himself, regardless of the intent to achieve a specific goal, the inmate’s right to privacy should be outweighed by the need to maintain prison security. To do otherwise would only encourage disobedience by other inmates and frustrate the disciplinary structure of the prison system.\textsuperscript{129}

In balancing the constitutional right of privacy with all the compelling state interests that a prison situation presents, it appears that courts have tended to give great weight to the maintenance of prison security, the preservation of life, the prevention of suicide, and the duty to provide medical care.\textsuperscript{130} In a case in which an inmate sets the death-producing agent in motion, these interests will be present in sufficient degree to justify the authorization of involuntary medical treatment.\textsuperscript{131}

**Pattern 2: Where the inmate refuses treatment for an already existing illness:**

The situation involving an inmate refusing treatment for an already existing condition is closely analogous to the cases of terminally ill patients decided outside the prison context.\textsuperscript{132} In deciding these cases with respect to incarceration, courts should first determine the scope of the state interests applicable to the cases outside of the prison environment.\textsuperscript{133} If the court finds the inmate would be allowed to exercise his right to die if not incarcerated, the court should then look to the state

\begin{itemize}
\item \textsuperscript{128} In reaching its decision with regard to authorizing force-feeding, the court looked at several factors: that Caulk required a special diet; that Caulk was a maximum security inmate who would have to be housed in the infirmary; by evading prison controls he was jeopardizing prison discipline and taxing prison resources; and the predicament of how to deal with Caulk once he became comatose. \textit{Id.}
\item \textsuperscript{129} See supra notes 112-128 and accompanying text.
\item \textsuperscript{130} See supra note 30 and accompanying text.
\item \textsuperscript{131} The state’s interest in the preservation of life is strongest where the prognosis is good, as in a hunger strike; suicide is a factor since the inmate set the death-producing agent in motion; prison security will be evident, even if no demand is made upon the system, because of the possibility of other inmates undertaking a strike; and the duty to provide medical care is present due to the fact that the institution is aware of the need, and the need for care is serious.
\item \textsuperscript{132} See supra notes 2-21 and accompanying text for a discussion of the terminally-ill cases decided outside of the prison context. This is true since in both cases, the potential cause of death was independent of the individual.
\item \textsuperscript{133} See supra note 13 and accompanying text for the state interests applicable to the right to die issue as enunciated in \textit{Saikewicz}. 
\end{itemize}
interests indigenous to prison \(^{134}\) to determine if they mandate the subjugation of the inmate’s constitutional rights. \(^{135}\) This was the analysis used in *Commissioner of Correction v. Myers*, \(^{136}\) the only case to date dealing with an inmate’s refusal of medical treatment for an already existing illness.

In *Myers*, \(^{137}\) the Supreme Judicial Court of Massachusetts was faced with a competent adult prisoner who refused to submit to life-saving dialysis treatments. \(^{138}\) Myers claimed that his right to privacy and bodily integrity precluded such treatment absent his consent. \(^{139}\) The Superior Court of Massachusetts, after a hearing, had previously concluded that the Commissioner possessed the legal authority to force Myers to submit to hemodialysis. \(^{140}\) The Superior Court refused to issue a preliminary injunction since Myers had begun treatment. \(^{141}\) Later, however, Myers began to refuse treatment on an ad hoc basis and the Superior Court issued a standing order authorizing treatment. \(^{142}\) On appeal, the Supreme Judicial Court examined each of the *Saikewicz* elements in light of the facts of this case. \(^{143}\)

The first interest examined was the protection of innocent third parties. Since Myers had neither children nor a wife, this interest was found to be inapplicable, as death would not endanger the welfare or safety of others. \(^{139}\) The court next examined the interest of preventing suicide. This interest was also rejected since a refusal of dialysis would...

\(^{134}\) The state interests indigenous to the prison environment are the duty to provide medical care for those incarcerated and the interests in maintaining institutional security. *See supra* note 62.

\(^{135}\) It is important to realize that although an inmate does not lose constitutional protection by virtue of his incarceration, an inmate’s constitutional rights may be limited to the extent that they are inconsistent with the legitimate goals associated with prison. *See supra* notes 33-34 and accompanying text.


\(^{137}\) *Id.*

\(^{138}\) While incarcerated at M.C.I. Concord, Myers first developed a kidney condition which required hemodialysis treatments. For approximately one year Myers voluntarily submitted to dialysis before he began to refuse treatment. *Id.* at 258, 399 N.E.2d at 454.

\(^{139}\) *Id.* at 257, 399 N.E.2d at 453.

\(^{140}\) *Id.* The Superior Court held that both the Commissioner and the Department of Public Health, an intervening plaintiff, possessed the authority to compel the hemodialysis treatments.

\(^{141}\) *Id.*

\(^{142}\) *Id.* The time interval between the initial proceeding and the issuance of the standing order was approximately one month.

\(^{143}\) *Id.* at 262, 399 N.E.2d at 456. *See supra* note 13 for the state interests enunciated in *Saikewicz*.

\(^{144}\) *Id.* at 262, 399 N.E.2d at 456. This application of the innocent third parties element is consistent with the application in *Saikewicz* and *Colyer*. *See supra* notes 19 and 66.
not conform to the strict definition of suicide. "Rather, his death would result from ‘natural causes’ since he would not have ‘set the death producing agent in motion’ with the ‘specific intent’ of causing his own death." This view is consistent with the courts’ holdings in cases of terminal illness as previously discussed.

The Myers court had great difficulty dealing with the state interest in preserving life. If Myers continued dialysis treatment he would be expected to lead an otherwise normal life. At the same time, however, the court was concerned with the high degree of bodily intrusion that hemodialysis necessitated. Earlier cases noted that this interest was weakened in situations where treatment only serves to prolong life with little or no hope of recovery. In addition, several courts have held that, where the bodily intrusion is too great, the right to privacy prevails despite an excellent prognosis. Because the court’s analysis

145. See supra note 93 and accompanying text.
146. Myers, 379 Mass. at 262, 399 N.E.2d at 456. This is consistent with In re Colyer, 99 Wash. 2d 114, 660 P.2d 738 (1983) where the husband of a woman who suffered a heart attack resulting in a vegetative state petitioned the court for an order authorizing the discontinuance of life-support systems. In deciding whether suicide was applicable, the Supreme Court of Washington held that “[a] death which occurs after the removal of life sustaining systems is from natural causes, neither set in motion nor intended by the patient.” Id. at 123, 660 P.2d at 743. This was also the case in Quinlan where the court recognized that there was a “real distinction between self-infliction of deadly harm and a self-determination against artificial life support . . . .” 70 N.J. at 43, 355 A.2d at 665. Therefore, in situations where an inmate merely refuses treatment for an already existing illness, the prevention of suicide is inapplicable and should not carry any weight in the overall balancing process. See also Saikewicz, 373 Mass. at 744, 370 N.E.2d at 427.
147. See supra note 10 and accompanying text. See also In re Conroy, 286 A.2d 1209, 1224 (N.J. 1985). “[D]eciding life-sustaining medical treatment may not properly be viewed as an attempt to commit suicide. Refusing medical intervention merely allows the disease to take its natural course; if death were eventually to occur, it would be the result, primarily, of the underlying disease, and not the result of a self-inflicted injury.”; ETHICAL ISSUES IN DEATH AND DYING (T. Beauchamp & S. Perlin 1978). “An act is not suicide if the person who dies suffers from a terminal disease or from a mortal injury which, by refusal of treatment, he passively allows to cause his death.” (emphasis in original) Id. at 99.
149. Id.
150. Id. at 258, 399 N.E.2d at 454. Myers required four hours of dialysis three times per week, excluding an additional hour to attach machinery. In Quinlan and Colyer, although the bodily intrusion was high, the prognoses were so dim as to make the decision in favor of a right to die easier.
151. Colyer, 99 Wash. 2d at 122, 660 P.2d at 743; Quinlan, 70 N.J. at 41, 355 A.2d at 664.
152. See In re Quackenbush, 156 N.J. Super. at 290, 383 A.2d at 789, holding “that the extensive bodily invasion involved . . . the amputation of both legs . . . is sufficient to make the State's interest in the preservation of life give way to Robert Quackenbush’s
with regard to the state's interests outside the prison context yielded conflicting results, the *Myers* court looked toward remaining interests peculiar to the prison environment in order to reach a decision.\footnote{153}

The interest the *Myers* court examined which ultimately tipped the balance in favor of the state was that of upholding orderly prison administration and security.\footnote{154} Once the court has applied the *Saikewicz* factors and made a preliminary finding that the prisoner may exercise his right to privacy, the interest in prison security should be the determining factor\footnote{155} in light of the fact that an inmate's constitutional rights are limited due to incarceration.\footnote{156} The threat to prison security, like the interests of suicide prevention, life preservation, and the maintenance of the ethical integrity of the medical profession, may change significantly when the inmate refuses treatment for an already existing condition.\footnote{157} However, as *Myers* demonstrates, in this type of case, prison security is still a key factor.\footnote{158}

In *Myers*, the court held that the interest in prison security was not weakened.\footnote{159} Since *Myers* did not inflict this ailment upon himself, the court simply looked to his reasons for refusal of treatment\footnote{160} and the right of privacy to decide his own future regardless of the absence of a dim prognosis."


\footnote{153}{"Taken together, the great deference accorded to the State's interest in the preservation of life ... and the defendant's interest in avoiding significant, nonconsensual invasions of his bodily integrity yield a very close balance of interests. What tips the balance decisively in the direction of authorizing treatment without consent is ... the State's interest in upholding orderly prison administration."}

*Myers*, 379 Mass. at 263-64, 399 N.E.2d at 457.

\footnote{154} {Id.}

\footnote{155}{If, after applying the *Saikewicz* test, the prisoner would not be allowed to exercise his right to die, the penal interests are irrelevant since they only serve to tip the scale in favor of the state, not benefit the individual.}

\footnote{156}{See supra notes 32-34 and accompanying text.}

\footnote{157}{In the cases where inmates set the death-producing agent in motion, one of the biggest security problems was the precedential value to other inmates. This fear is reduced in this case since the inmates do not bring the illness upon themselves.}

\footnote{158}{*Myers*, 379 Mass. at 264, 399 N.E.2d at 457. See also infra note 161.}

\footnote{159}{In fact, the court held that this security interest was sufficiently strong enough to justify the treatment. "[T]he State's interest in upholding orderly prison administration tips the balance in favor of authorizing treatment without consent." 379 Mass. at 266, 399 N.E.2d at 458.}

\footnote{160}{*Myers* refused hemodialysis to protest being placed in a medium security prison. He felt that the treatment left him weak and unable to defend himself from the other inmates. 379 Mass. at 259, 399 N.E.2d at 454.}
impact this refusal would have on other inmates. In addition, the court gave deference to the prison officials’ belief that “failure to prevent Myers’ death would present a serious threat to prison order and security. . . .” Two elements of prison security were apparent in this case; Myers’ attempt to manipulate the system for personal reasons and the potential negative reaction from other inmates. Therefore, the court felt sufficiently justified in concluding that, although Myers might have been allowed to refuse treatment if not incarcerated, the threat to prison security was sufficiently present to authorize unconsented hemodialysis.

The remaining state interests, specifically the duty of the state to care for its prisoners and the duty to maintain the ethical integrity of the medical profession, were mentioned only briefly in the Myers opinion. The state’s duty to provide for prisoners’ medical needs is an important interest to consider. This duty is mandatory, and it matters little whether or not an already existing illness or a self-inflicted condition is involved, since in both circumstances the state will have knowledge of a dangerous situation and hence a duty to intervene.

161. The court accepted prison officials’ belief that Myers death would generate “a possibly ‘explosive’ reaction among other inmates . . .” and would also be “encouraging them to attempt similar forms of coercion in order to attain illegitimate ends.” 379 Mass. at 264, 399 N.E.2d at 457.

162. Id.

163. See supra notes 160-161 and accompanying text. These two elements of prison security are usually present without regard to the source of the inmate’s injury (i.e. whether self-inflicted or not), however, the precedential effect on other inmates is generally lowered, although not eliminated as Myers demonstrates, where the injury or illness is not self-inflicted since inmates would first have to suffer from an illness before they could attempt to manipulate that illness.

164. Myers, 379 Mass. at 266, 399 N.E.2d. at 458.

Given the magnitude of the medical invasion occasioned by dialysis . . . the defendant’s interest in refusing dialysis is strong enough . . . to counterbalance the State’s usually predominant interest in the preservation of life . . . . However, the State’s interest in upholding orderly prison administration tips the balance in favor of authorizing treatment without consent. Our evaluation of this interest takes account of the threat posed to prison order, security, and discipline by a failure to prevent the death of an inmate who attempts to manipulate his placement within the prison system by refusing lifesaving treatment.

Id.

165. The Myers court concluded that neither of these interests were controlling “since a patient’s right of self-determination would normally be superior to such institutional consideration.” Id. at 266, 399 N.E.2d at 458.

166. See supra note 111 and accompanying text.

167. All that is required is that the state have knowledge of a serious medical need.

See supra note 109 and accompanying text.
The interest in maintaining the ethical integrity of the medical profession is also applicable to the non-hunger striking situation since medical ethics allow the comforting (as opposed to the treatment) of inmates only in certain situations. The ethical interest, however, is not affected by incarceration, and where the interest requires a high degree of bodily intrusion medical ethics may allow a patient to forego treatment. Viewed in isolation, this interest is not controlling and would be insufficient to outweigh an inmate's right to privacy.

In balancing an inmate's right to privacy with all the compelling state interests in a situation in which the inmate's illness was not self-inflicted, some circumstances may compel the conclusion that the inmate's right to die is superior.

III. Conclusion

When courts are confronted with an inmate's wish to invoke his right to die by the refusal of medical treatment, the court's first step in the balancing process should be to determine what caused the inmate's condition. If it is discovered that the illness was self-inflicted, either by hunger striking or some other method, under no circumstances should the inmate be allowed to die. In this situation, the state interests in preserving life and preventing suicide sufficiently override the inmate's constitutional rights, which have been limited to some extent by his incarceration. These interests, coupled with the additional state interests of prison security and the duty of the penal system to provide care to its incarcerated charges, are present with sufficient force to outweigh any constitutional rights that may be asserted.


169. Medical ethics involves a patient's prognosis, a factor which is totally independent of incarceration.


171. Myers, 379 Mass. at 266, 399 N.E.2d at 458.

172. See infra notes 173-185 and accompanying text.

173. The cause of the inmate's predicament will determine the weight to be given to each of the compelling state interests. See supra notes 57-62 and accompanying text.

174. See supra notes 32-34 and accompanying text.

175. See supra notes 112-129 and accompanying text. Prison security is generally an issue in hunger striking cases since they usually involve a protest or the threat that other inmates might invoke similar procedures.

176. See supra notes 107-111 and accompanying text.

177. In this situation, the interest in preserving life is at its peak since force-feeding would almost certainly restore the inmate to his previous condition; the interest in preventing suicide is also high since the inmate possesses the requisite intent, evidenced...
If the court should determine, however, that the inmate is refusing treatment for a condition which he did not cause, the right to die may be successfully invoked.\textsuperscript{178} The court should first weigh the inmate's rights with regard to the four interests established in \textit{Saikewicz}\textsuperscript{179} to determine if the individual would be allowed to refuse treatment outside of the prison environment. Of the \textit{Saikewicz} state interests, the preservation of life should be given the most weight, since the prevention of suicide is inapplicable,\textsuperscript{180} the protection of innocent third parties may be countered effectively,\textsuperscript{181} and the medical profession acknowledges that ethics sometimes require comfort instead of treatment.\textsuperscript{182} Once the court has determined that, but for the prison environment, the inmate has the right to refuse treatment, the court should then examine the interests peculiar to incarceration in determining whether the balance might shift in favor of the state.\textsuperscript{183} Of these, the interest in prison security, if applicable, will be sufficient to overcome the inmate's constitutional rights.\textsuperscript{184} Therefore, if the state can show that the inmate has refused treatment for reasons which are not personal or if it can show that the effect on other inmates would be negative, then the court should authorize the state to provide the necessary medical care. Conversely, if no security problems exist and none can reasonably be foreseen, the constitutional right to privacy of the inmate should prevail.\textsuperscript{185}

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\textsuperscript{178} This is true since this type of case more accurately reflects the terminally ill cases outside the prison context. \textit{See supra} note 132 and accompanying text.

\textsuperscript{179} \textit{See supra} note 13.

\textsuperscript{180} Refusing treatment for an already existing illness is not suicide. \textit{See supra} notes 93, 146-147.

\textsuperscript{181} \textit{See supra} note 67. \textit{Cf. In re} President of Georgetown College, 331 F.2d 1000 (D.C. Cir. 1964) (court prevented a parent's death because it would mean the abandonment of a dependent child). \textit{See also In re} Osborne, 294 A.2d 372 (D.C. 1972) (court refused to order a transfusion for a 34 year old man who had already provided for his children's future).

\textsuperscript{182} \textit{See supra} note 68.

\textsuperscript{183} The state interests peculiar to the penal system are the duty to provide medical care for those incarcerated and prison security. \textit{See supra} notes 106-112.


\textsuperscript{185} \textit{See Myers}, 379 Mass. 255, 399 N.E.2d 452 (1979). From the \textit{Myers} decision, it is reasonable to infer that had Myers posed no security problem, he would have been allowed to die by refusing hemodialysis treatments.