



In Focus

Assisted Dying Legislation: North America and England and Wales

QSD on 6 March 2017

Ahead of the question for short debate on 6 March 2017 on whether recent legislative changes on assisted dying in North America provide an appropriate basis for legislation in England and Wales, this briefing sets out the law in Canada and selected states in the United States. It also provides an overview of the law as it currently stands in England and Wales, as well as a brief legal history of the changes and attempts to change it.

Canada

'Medical Assistance in Dying', as referred to in Canada, had been debated through court cases, private members' bills and reports over many years.¹ Although the Quebec Legislature passed the Act Respecting End-of-Life Care in 2014, changes in federal law came about following the Canadian Supreme Court's decision in *Carter v Canada (Attorney General)* in 2015, which declared that sections of the Canadian Criminal Code were in violation of an individual's rights under the Canadian Charter of Rights and Freedoms.² Consequently, an Act to amend the criminal code for medical assistance in dying came into force on 17 June 2016.³ The term 'Medical Assistance in Dying' (MAID) means:

- Administration of a substance by a medical practitioner or nurse practitioner at the request of a person that causes that person's death (also known as voluntary euthanasia); or
- a medical practitioner or nurse practitioner prescribing or providing a substance to a person, at that person's request, that can be self-administered and that will cause the person's own death (also known as medically-[assisted] or physician-assisted suicide).⁴

The legislation amends the Canadian Criminal Code—exempting physicians and nurse practitioners providing MAID, pharmacists who dispense the substance prescribed for MAID and individuals who aid a person, at that person's explicit request, to self-administer a prescribed substance, from culpable homicide—allowing both voluntary euthanasia and assisted suicide, subject to a number of conditions.

There are a number of factors to be eligible for MAID. For example, the individual must have made a voluntary request for MAID—not made as a result of external pressure—and have given informed consent after being informed of alternative means to relieve their suffering, including palliative care. The individual must also have a "grievous and irremediable medical condition", which requires them to:

- Have a serious and incurable illness, disease or disability;
- be in an advanced state of irreversible decline in capability;
- be suffering unbearably from illness, disease, disability or state of decline; and
- be at a point where natural death has become reasonably foreseeable, which takes into account all medical circumstances.⁵

Two independent physicians or nurse practitioners will determine an individual's eligibility. The request for MAID must be made in writing and signed by the patient before two independent witnesses. The independent witnesses, physicians and nurse practitioners are also subject to safeguarding measures. There must also be ten clear days between the signed request and the day MAID is delivered. The patient must be informed that he or she may withdraw the request at any time and in any manner, and immediately before the provision of MAID must be given a final opportunity to withdraw.⁶ The changes also created new criminal offences in relation to failing to comply with procedural safeguards; forgery in relation to a request for MAID; and the destruction of documents relating to MAID where their intent is to interfere. Physicians, nurse practitioners and pharmacists are required to file information about requests for MAID to the Ministry of Health, and failing to comply is a criminal offence.⁷

United States of America

'Assisted dying' or 'assisted suicide' is unlawful in the majority of US states. The law in the states of Oregon, Washington, Vermont, California, Colorado and Montana are described below.

Oregon

In 1997, Oregon passed its Death with Dignity Act, which allows "terminally-ill" adult residents of Oregon to "end their lives through the voluntary self-administration of lethal medications, expressly prescribed by a physician for that purpose".⁸ Two physicians must confirm that the individual has a terminal illness that will lead to death within six months and is capable of making and communicating health care decisions for themselves. In order to obtain lethal medication, the individual must make two oral requests at least 15 days apart and one written request for the medication which must be signed before two independent witnesses. The individual must also be informed of alternatives, such as comfort care, hospice care, and pain control. An individual can rescind a request at any time and in any manner. The legislation also places reporting requirements on healthcare professionals.⁹

Washington, California, Colorado and Vermont

Washington's Death with Dignity Act,¹⁰ California's End of Life Option Act (in force until 2026 unless extended by legislation),¹¹ Colorado's End of Life Options Act¹² and Vermont's Patient Choice and Control at End of Life Act¹³ are all similar to the law in Oregon. All three states allow adult residents of their state, who are capable of voluntarily making decisions about their health, and are terminally ill with a prognosis of six months, to seek lethal medication for self-administration. Similar processes and safeguarding measures are also in place, such as the involvement of two physicians in diagnosis and prognosis, 15 days between oral requests and the written requests must be observed by two witnesses. All three have some form of reporting requirements.

Montana

Through a legal challenge to the state of Montana's homicide law, the Supreme Court of Montana, in *Baxter v Montana* in 2009, held that doctors may use the defence of consent in the event they face charges of homicide for assisting a mentally competent and terminally ill individual commit suicide.¹⁴ At the time of writing, a bill to change this and provide that consent is not a defence for physician-assisted suicide is proceeding through the Montana Legislature.¹⁵

England and Wales

Section 2 of the Suicide Act 1961 (as amended by the Coroners and Justice Act 2009) makes it criminally unlawful for an individual to perform an act capable of encouraging or assisting the suicide or attempted suicide of another person, where that individual's act was intended to encourage, assist or attempt at suicide. Section 2(4) provides that no proceedings can be brought for an offence under section 2 except by, or with the consent of, the Director of Public Prosecutions (DPP).

There have been a number of challenges to the Suicide Act 1961. In 2001, Diane Pretty, a motor neurone disease sufferer, challenged the DPP's refusal to withhold consent to prosecute her husband. The House of Lords, as the then highest court, held that the DPP could not be required, nor does the DPP have the power, to undertake to withhold consent to prosecution in advance of a contemplated suicide.¹⁶ In addition, the European Court of Human Rights held that section 2 of the 1961 Act did not infringe her right to privacy under Article 8 of the European Convention on Human Rights (ECHR).¹⁷

In 2009, Debbie Purdy, a progressive multiple sclerosis sufferer, challenged the DPP's refusal to publish specific guidance as to what criteria would be used when deciding whether an individual would be prosecuted or not for assisting in a suicide. This time, the House of Lords held that her Article 8 rights were engaged and infringed, as the DPP's general guidance failed to meet the "accessibility and foreseeability" requirements under Article 8(2) of the ECHR.¹⁸ The DPP was therefore required to publish guidance clarifying the factors relevant for and against prosecution. The *Purdy* decision did not change the law, but confirmed that Article 8 of the ECHR "encompasses an individual's right to manage his life and death, and entitles that individual to be provided with sufficient guidance from the State as to how the discretion to prosecute the offence of assisted suicide will be exercised".¹⁹

In 2014, the Supreme Court considered the state of the law in the context of Article 8 of the ECHR in the case of Tony Nicklinson, Paul Lamb and AM, who were all severely disabled following either a stroke or accident.²⁰ In their judgment, five out of nine justices considered that the court did have the power to make a declaration that the general prohibition on assisted suicide in section 2 of the 1961 Act was incompatible with Article 8 of the ECHR²¹ but only two were prepared to make that declaration. Four justices considered that Parliament was better qualified than the courts on the matter. The effect of the Supreme Court's decision was therefore to defer the matter to Parliament for consideration.

Following the *Purdy* case, the DPP published interim guidance in September 2009 and launched a public consultation on prosecuting assisted suicide cases. The final guidance was published in 2010, which lists factors tending in favour and against prosecution.²² For example, the victim not reaching a "voluntary, clear, settled and informed decision to commit suicide" tends in favour of prosecution, and the suspect being "wholly motivated by compassion" tends against prosecution. The DPP also updated the guidance to clarify the position in relation to healthcare professionals following the *Nicklinson* judgment.

Bills and Amendments Considered in Parliament

Lord Joffe (Labour) introduced the [Patient \(Assisted Dying\) Bill \[HL\]](#) in the 2002–03 session, but it did not proceed beyond second reading in the House of Lords. A second bill sponsored by Lord Joffe, the [Assisted Dying for the Terminally Ill Bill \[HL\]](#), aimed to allow terminally ill individuals to end their own life with medical assistance. This was introduced in the 2003–04 session and then re-introduced in 2005–06, but was delayed by a vote at second reading, and consequently did not secure a second reading.²³

In 2009, Lord Falconer of Thoroton (Labour) tabled an amendment to the bill that became the [Coroners and Justice Act 2009](#), which would have removed the threat of prosecution for assisting a terminally ill individual to travel abroad to where assisted suicide was lawful if two doctors independently certified that the individual was terminally ill and had the capacity to make the decision to end their life by travelling to the country. The amendment was defeated on division by 194 votes to 141.²⁴

In session 2013–14, Lord Falconer introduced the [Assisted Dying Bill \[HL\]](#) in the House of Lords, which provided for "a person who is terminally ill and has six months or less to live to seek and lawfully be provided with assistance to end their own life". However, the Bill did not secure a second reading. It was reintroduced twice, but did not progress beyond committee stage in [2014–15](#) and first reading in [2015–16](#).

In session 2015–16, Rob Marris (Labour MP for Wolverhampton South West) introduced the [Assisted Dying \(No 2\) Bill](#) in the House of Commons, which aimed to “enable competent adults who are terminally ill to choose to be provided with medically supervised assistance to end their own life”. It did not progress beyond a second reading, defeated at a division by 330 to 118 votes.²⁵

In session 2016–17, Lord Hayward (Conservative) introduced the [Assisted Dying Bill \[HL\]](#) in the House of Lords, which would enable “competent adults who are terminally ill to be provided at their request with specified assistance to end their own life; and for connected purposes”. The Bill has yet to secure a second reading at the time of writing.

Further Reading

- Christopher Johnson, *Medical Treatment: Decisions and the Law* (Chapter 14: Treating Suicidal Patients), 2016 (book available in the House of Lords Library)
- House of Commons Library, [Assisted Dying \(No 2\) Bill](#), 4 September 2015
- Library of Parliament (Canada), [Legislative Summary of Bill C-14: An Act to Amend the Criminal Code and to Make Related Amendments to Other Acts \(Medical Assistance in Dying\)](#), 21 April 2016

¹ Julia Nicol and Marlisa Tiedemann, [Bill C-14: Act to Amend the Criminal Code and to Make Related Amendments to Other Acts \(Medical Assistance in Dying\)](#), Library of Parliament, 21 April 2016, p 1.

² *ibid.* Also, see [Carter v Canada \(Attorney General\) 2015 SCC 5](#).

³ See sections 14, 227, 241 and 245 of the [Criminal Code, RSC, 1985, c C-46](#).

⁴ Julia Nicol and Marlisa Tiedemann, [Bill C-14: Act to Amend the Criminal Code and to Make Related Amendments to Other Acts \(Medical Assistance in Dying\)](#), Library of Parliament, 21 April 2016, p 8.

⁵ Government of Canada website, [‘Medical Assistance in Dying’](#), accessed 27 February 2017.

⁶ *ibid.*

⁷ Julia Nicol and Marlisa Tiedemann, [Bill C-14: Act to Amend the Criminal Code and to Make Related Amendments to Other Acts \(Medical Assistance in Dying\)](#), Library of Parliament, 21 April 2016, p 11–12.

⁸ Oregon Health Authority, [‘Death with Dignity Act’](#), accessed 27 February 2017.

⁹ *ibid.*

¹⁰ Washington State Department of Health, [‘Death with Dignity Act: Frequently Asked Questions’](#), accessed 27 February 2017.

¹¹ California Department for Public Health, [‘End of Life Option Act’](#), accessed 27 February 2017.

¹² Colorado End of Life Options Act: [CRS 25–48–101 to 25–48–123](#).

¹³ Vermont Department of Health, [‘Patient Choice and Control at End of Life’](#) and [‘FAQs’](#), accessed 27 February 2016.

¹⁴ Julia Nicol and Marlisa Tiedemann, [Euthanasia and Assisted Suicide: The Law in Selected Countries](#), Library of Parliament, 23 October 2015, p 7–8. See also [Baxter v Montana \[2009\] MT 449](#).

¹⁵ [Bill HB536—Provide that Consent is not a Defense for Physician Assisted Suicide](#) (second reading scheduled 28 February 2017). For the law making process, see Montana Legislature, [‘From Bill to Law’](#). Both accessed 28 February 2017.

¹⁶ [R \(on the application of Pretty\) v Director of Public Prosecutions and the Secretary for State for the Home Department \[2001\] UKHL 61](#).

¹⁷ [Pretty v United Kingdom 2346/02 \[2002\] ECHR 427](#).

¹⁸ [R \(on the application of Purdy\) v Director of Public Prosecutions \[2009\] UKHL 45](#).

¹⁹ Christopher Johnson, *Medical Treatment: Decisions and the Law*, 2016, chapter 14, para 14.11.

²⁰ [R \(on the application of Nicklinson and Another\) v Ministry of Justice \[2014\] UKSC 38](#). Tony Nicklinson died in 2012, prior to the hearing in the Supreme Court.

²¹ A declaration is made pursuant to section 4 of the [Human Rights Act 1998](#).

²² Crown Prosecution Service, [Policy for Prosecutors in respect of Cases of Encouraging or Assisting Suicide](#), updated October 2014.

²³ [HL Hansard, 12 May 2006, cols 1184–1296](#).

²⁴ [HL Hansard, 7 July 2009, cols 595–634](#).

²⁵ [HC Hansard, 11 September 2015, cols 656–728](#).

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