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Assistance in dying: A comparative look at legal definitions

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ABSTRACT

Euthanasia, assisted suicide, medical assistance in dying, death with dignity: these and many other different terms are used around the world to capture various types of assistance in dying. This diversity in terminology can create confusion both in academic debates and in policy-making if it is unclear what type of action or inaction is intended to be captured, by whom, and under what circumstances. By defining and contrasting several terms and legal status of assistance in dying in jurisdictions authorizing it, this comparative glossary aims to lay a foundation that prevents linguistic and conceptual confusion.



Euthanasia, assisted suicide, medical assistance in dying, death with dignity: these and many other different terms are used around the world to capture various types of assistance in dying. This diversity in terminology can create confusion both in academic debates and in policy-making if it is unclear what type of action or inaction is intended to be captured, by whom, and under what circumstances. By defining and contrasting several terms and the legal status of assistance in dying in jurisdictions authorizing it, we aim to lay a foundation that prevents linguistic and conceptual confusion.

In this paper, we provide the definitions of the terms found in the legal instruments (whether legislation or court decision) that rendered assistance in dying legal (or subsequently regulated it) in Switzerland, the Netherlands, Belgium, Luxembourg, Colombia, the province of Quebec (Canada), Canada, the state of Victoria (Australia), and nine states and one district of the United States of America (Oregon, Washington, Montana, Vermont, California, Colorado, District of Columbia, Hawaii, New Jersey, and Maine).¹ In several of these jurisdictions, the terms are not in English. For the purposes of this paper, we provide a literal translation from the original language to English immediately following the term.

“Assistance in dying” could be considered to fall on a spectrum of additional practices including withholding or withdrawing potentially life-sustaining treatment, assisted voluntary stopping eating and drinking, and palliative/terminal sedation. Because these terms are, for the most part, clinical rather than legal terms, they may not have standardized definitions within jurisdictions, healthcare domains or institutions or even between clinicians themselves. Thus, we do not provide a complete overview of their definitions and usage. Rather, we restrict our scope to the practices traditionally captured by the legal terms active voluntary euthanasia and assisted suicide or their equivalents in other languages.

Switzerland

Switzerland is a federal republic of 26 cantons. Criminal law and regulation of pharmaceuticals lie within federal jurisdiction, whereas health law falls under both federal and cantonal jurisdictions. The non-punishability of assistance in dying under certain circumstances stems from criminal law. The lethal substance that is usually used must be prescribed by a physician in accordance with the Federal Act on Medicinal Products and Medical Devices (Switzerland, 2020b). Assistance in dying is also a matter of health

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law, as a health condition could underlie the request. In some cantons, legislation specific to assisted suicide regulates the practice when it takes place in publicly-funded healthcare facilities.

Federal

The original version of the Swiss Criminal Code was enacted by the Federal Assembly in 1937 and entered into force on 1 January 1942. It includes two articles related to assistance in dying (Switzerland, 2020a).²

Article 114 of the Criminal Code concerns euthanasia, which is prohibited, although it is subject to a reduced penalty compared to murder.³

Homicide at the request of the victim “Any person who for commendable motives, and in particular out of compassion for the victim, causes the death of a person at that person’s own genuine and insistent request is liable to a custodial sentence not exceeding three years or to a monetary penalty.” (English)

Tötung auf Verlangen “Wer aus achtenswerten Beweggründen, namentlich aus Mitleid, einen Menschen auf dessen ernsthaftes und eindringliches Verlangen tötet, wird mit Freiheitsstrafe bis zu drei Jahren oder Geldstrafe bestraft.” (German)

Meurtre sur la demande de la victime “Celui qui, cédant à un mobile honorable, notamment à la pitié, aura donné la mort à une personne sur la demande sérieuse et instante de celle-ci sera puni d’une peine privative de liberté de trois ans au plus ou d’une peine pécuniaire.” (French)

Omicidio su richiesta della vittima “Chiunque, per motivi onorevoli, segnatamente per pietà, cagiona la morte di una persona a sua seria e insistente richiesta, è punito con una pena detentiva sino a tre anni o con una pena pecuniaria.” (Italian) (art.114)

Article 115 of the Swiss Criminal Code deals with assisting suicide. In the French version, the concept of “assistance” is used, while in the German and Italian versions the concept of “help” is preferred, but this distinction does not seem to be meaningful. There are also subtle differences between the versions as different ones use “enticement”, “incitement”, and “instigation”.

Inciting and assisting suicide “Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty.” (English)

Verleitung und Beihilfe zum Selbstmord [*enticement and aiding suicide*] “Wer aus selbstsüchtigen Beweggründen jemanden zum Selbstmorde verleitet oder ihm dazu Hilfe leistet, wird, wenn der Selbstmord ausgeführt oder versucht wurde, mit

Freiheitsstrafe bis zu fünf Jahren oder Geldstrafe bestraft.” (German)

Incitation et assistance au suicide [*incitement and assistance to suicide*] “Celui qui, poussé par un mobile égoïste, aura incité une personne au suicide, ou lui aura prêté assistance en vue du suicide, sera, si le suicide a été consommé ou tenté, puni d’une peine privative de liberté de cinq ans au plus ou d’une peine pécuniaire.” (French)

Istigazione e aiuto al suicidio [*instigation and aiding suicide*] “Chiunque per motivi egoistici istiga alcuno al suicidio o gli presta aiuto è punito, se il suicidio è stato consumato o tentato, con una pena detentiva sino a cinque anni o con una pena pecuniaria.” (Italian) (art. 115)

Under Swiss law, assisted suicide is a form of suicide and assisting a person who wants to end her life by administering a lethal substance to her is a form of homicide. Punishable assisted suicide is distinguished from non-punishable assisted suicide by the motives of the provider (no “selfish motives,” i.e. hate, financial gain, revenge). Assisted suicide is distinguished from homicide at the request of the victim by the nature of the final action (self-administration comes with no penalty while provider-administration comes with a reduced penalty). Contrary to other jurisdictions, the status of the provider (clinician or not) is not determinative. However, a physician must be involved in the evaluation of the request and prescribe the lethal substance if a regulated drug is used. Also, if a perfusion is needed, a nurse has to set it up.

Cantonal

In recent years, three French-speaking cantons (Vaud in 2012, Neuchâtel in 2014, and Geneva in 2018) have amended their public health legislation—either through a citizen-initiated vote or bills—in order to regulate assisted suicide in public healthcare facilities (e.g. hospitals, nursing homes).

Netherlands

Euthanasia, termination of life and assisted suicide are the terms commonly used in policy and regulatory documents in the Netherlands. The practice is regulated at the national level through the *Termination of Life on Request and Assisted Suicide Act*⁴. There are no provincial statutes. The law uses the following terms:

Levensbeëindiging op verzoek (Dutch). [*Termination of life on request*]

Hulp bij zelfdoding het opzettelijk een ander bij zelfdoding behulpzaam zijn of hem de middelen daartoe verschaffen als bedoeld in artikel 294, tweede lid, tweede volzin, Wetboek van Strafrecht (Dutch). [Assisted suicide means intentionally assisting in a suicide of another person or procuring for that other person the means referred to in Article 294 second paragraph, second sentence of the Penal code⁵]. (art. 1b)

Zelfdoding (Dutch). [Suicide]

The Dutch *Criminal Code* contains separate offences for whom “intentionally and with premeditation takes the life of another person” (murder), “intentionally takes the life of another person” (manslaughter), and for “terminating the life of another person at that other person’s express and earnest request” (no label). The *Termination of Life on Request and Assisted Suicide (Review Procedures) Act* creates an exception to the last of these offences and to the offence of assisting and providing the means to commit suicide for physicians who act in accordance with the due care criteria and who report the act to the coroner. The Dutch *Criminal Code* and the *Act* use the term “suicide” and so explicitly recognize assisted suicide as a form of suicide. The practice guideline, authored by the Regional Review Committees (RTE) that oversee the practice, uses the term “euthanasia” to refer to both termination of life and assisted suicide and distinguishes them only where necessary (Regional Euthanasia Review Committee (RTE), 2018, p. 6). The due care criteria as defined in the *Act* stand as a *de facto* definition of euthanasia, i.e. a termination of life on request or assisted suicide that are not punishable.

Belgium

The Belgian *Law on euthanasia of 28 May 2002* is federal (Belgium, 2002). There are no regional statutes. Unlike in the Netherlands, the Belgian parliament did not modify its Criminal Code but instead passed a law specific to euthanasia. The law uses the term “euthanasia”:

Euthanasie l’acte, pratiqué par un tiers, qui met intentionnellement fin à la vie d’une personne à la demande de celle-ci (French). [The act, practiced by a third party, which puts intentionally an end to a person’s life at the request of that person].

Euthanasie het opzettelijk levensbeëindigend handelen door een andere dan de betrokkene, op diens verzoek (Dutch). [Same translation as above]. (art. 2)

According to the law, the “third party” can only be a physician. Although assistance in suicide is not

mentioned in the 2002 legislation, the Act has been interpreted to include assisted suicide by the Commission Fédérale de Contrôle et d’Évaluation de l’Euthanasie (CFCEE), a federal authority, in conformity with the interpretation of the Conseil national de l’Ordre des médecins, the medical regulator, in its opinion dated March 22, 2003 (Commission fédérale de contrôle et d’évaluation de l’euthanasie (CFCEE), 2015). The CFCEE’s interpretation provides that the physician assists the patient until death. Also, the CFCEE interpreted the law as requiring that euthanasia must intentionally and *directly* cause death in order to distinguish euthanasia from terminal sedation practiced with the intention to cause death (since it was thought to cause death indirectly).

If the legal requirements and procedures are not fulfilled, euthanasia is legally considered forms of homicide while assisted suicide is considered to be the crime of poisoning. The Belgian euthanasia law establishes that someone who acts consistent with the law “commits no offense” so euthanasia is an (acceptable) form of homicide. Suicide is not mentioned in the *Criminal Code*, so no inference can be drawn re: whether assisted suicide is legally considered a form of suicide.

Luxembourg

The Grand Duchy of Luxembourg passed legislation in 2009 that legalized euthanasia and assisted suicide. The *Law of 16 March 2009 on euthanasia and assisted suicide* was passed as part of a larger legislative framework that also includes a law on palliative care (Luxembourg, 2009). The act uses the terms “euthanasia” and “assisted suicide”:

Euthanasie. L’acte, pratiqué par un médecin, qui met intentionnellement fin à la vie d’une personne à la demande expresse et volontaire de celle-ci (French). [Euthanasia. The act, performed by a physician, which intentionally puts an end to a person’s life at that person’s express and voluntary request]. (art. 1)

Assistance au suicide. Il y a lieu d’entendre le fait qu’un médecin aide intentionnellement une autre personne à se suicider ou procure à une autre personne les moyens à cet effet, ceci à la demande expresse et volontaire de celle-ci (French). [Assisted suicide. It is understood that a doctor intentionally helps another person to commit suicide or provides another person with the means to do so, at that person’s express and voluntary request]. (art. 1)

This act does not remove euthanasia or assisted suicide from the scope of criminal law. Rather, it establishes that, in order not to be punishable,

euthanasia and assisted suicide must be performed by a physician in accordance with the eligibility criteria set out in the legislation and must meet certain procedural conditions. In allowing euthanasia and assisted suicide, the Luxembourgian law creates an exception to the various *Criminal Code* offences of murder, homicide, poisoning, patricide, and infanticide. The Luxembourgian law uses the term “suicide” and so explicitly recognizes assisted suicide as a form of suicide.

Colombia

In 1991 Colombia established a new Constitution. The Constitution created a special Court whose role was to assess, among other things, the constitutionality of laws, constitutional amendments, and executive orders by the President.

In the Criminal Code, separate penalties are provided for homicide (*homicidio*) and mercy killing (*homicidio por piedad*). The Court’s 1997 decision decriminalized euthanasia (*eutanásia*) by creating an exception to the mercy killing provision (Corte Constitucional de Colombia, 1997). The court clarified that the exception applied specifically when a medical doctor helped to end the life of a terminally ill, suffering person who had given informed consent.

Homicidio por piedad: El que matare a otro por piedad, para poner fin a intensos sufrimientos provenientes de lesión corporal o enfermedad grave o incurable, incurrirá en prisión de seis meses a tres años (Spanish). [*Mercy Killing: Whoever will kill another for mercy, to end intense suffering from bodily injury or serious or incurable illness, will be imprisoned for six months to three years*]. (art. 326 of the Penal Code, in Corte Constitucional de Colombia, 1997)

Although euthanasia was decriminalized by the Constitutional Court, there was no legal framework to regulate it, generating conflicting interpretations and ambiguity. In December 2014, following the petition of a person who wished to receive assistance in dying but was refused the option by her healthcare institution, the Constitutional Court asked the Ministry of Health and Social Protection to establish a regulatory framework for the healthcare sector to use in order to guarantee terminally ill patients, with the wish to undergo euthanasia, their right to a dignified death (Corte Constitucional de Colombia, 2014). In this judgment, the Court stated that euthanasia can be either active (injection of lethal substance by a physician) or passive (withdrawing or withholding of treatment).

Since 2015, the practice has been regulated by Resolution 1216 from the Ministry of Health and Social Protection, which establishes criteria and procedures to ensure the right to death with dignity (Ministerio de Salud y Protección Social, 2015). In the Resolution 1216 the following expression is used: “Right to die with dignity” [*Derecho a morir con dignidad*].

Criterios de la garantía del derecho fundamental a morir con dignidad: Son criterios para la garantía del derecho a morir con dignidad la prevalencia de la autonomía del paciente, la celeridad, la oportunidad y la imparcialidad, en los términos definidos en la sentencia T-970 de 2014 (Spanish). [*Right to die with dignity: Criteria for guaranteeing the right to die with dignity are the predominance of patient autonomy, speed, timeliness and impartiality, in the terms defined in judgment T-970 of 2014*]. (art. 3)

Assisted suicide is not included within these legal and regulatory frameworks.

Canada

In Canada, the permissibility of assistance in dying falls within the domains of criminal law and health. Criminal law falls within the jurisdiction of the federal government. Health is an area of shared jurisdiction between the federal government and the provinces and territories.

Assistance in dying first became legal in the province of Quebec when the Quebec National Assembly legislated re: assistance in dying through its power over health (Quebec, 2014a, 2014b).

Assistance in dying then became legal across Canada following a Supreme Court of Canada judgment declaring the *Criminal Code of Canada* prohibitions on assistance in dying to be unconstitutional as they breached the *Canadian Charter of Rights and Freedoms* (Supreme Court of Canada, 2015). In response to the Supreme Court of Canada’s decision, the federal government legislated assistance in dying by creating exceptions to specific provisions in the *Criminal Code* (Canada, 2016).

Federal

Assistance in dying is called medical assistance in dying (MAiD) or *aide médicale à mourir* (AMM) in French. It is defined as follows in the *Criminal Code*:

medical assistance in dying means

- (a) the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or

(b) the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death.

aide médicale à mourir Selon le cas, le fait pour un médecin ou un infirmier praticien :

- (a) d'administrer à une personne, à la demande de celle-ci, une substance qui cause sa mort;
- (b) de prescrire ou de fournir une substance à une personne, à la demande de celle-ci, afin qu'elle se l'administre et cause ainsi sa mort. (French)⁶ (art. 241.1)

MAiD falls under the *Criminal Code* provisions on “Suicide”—it is explicitly an “exemption” to the prohibition on counselling or aiding suicide as well as culpable homicide, administering a noxious thing. Legally, self-administered MAiD is an exempted form of suicide while provider-administered MAiD is an exempted form of homicide and administering a noxious thing.

Quebec

Assistance in dying is called *aide médicale à mourir* (AMM) or medical aid in dying (MAiD). It is defined as follows in the *Act respecting end of life care*:

« aide médicale à mourir » un soin consistant en l'administration de médicaments ou de substances par un médecin à une personne en fin de vie, à la demande de celle-ci, dans le but de soulager ses souffrances en entraînant son décès.

“medical aid in dying” means care consisting in the administration by a physician of medications or substances to an end-of-life patient, at the patient’s request, in order to relieve their suffering by hastening death.⁷ (art. 3 (6))

The Quebec legislation pre-dated the federal MAiD legislation and only concerns euthanasia, i.e. provider-administered assistance in dying. Quebec’s phrase “medical aid in dying” does not include assisted suicide. However, under the Canadian legislation MAiD does include a form of assisted suicide and this law is also applicable in Quebec. This means that a provider who complies with the federal legislation in Quebec has not committed a crime.

As noted above, the Quebec National Assembly passed the Quebec law under its jurisdiction over health. It has no jurisdiction over the *Criminal Code of Canada* and so the Quebec legislation cannot be taken to advance any legal position with respect to

whether medical aid in dying is a form of homicide or suicide.

Australia (Victoria)

Assistance in dying in Australia falls within the domain of criminal law. Most criminal law in Australia falls within the jurisdiction of its states and territories. The criminal law with respect to assistance in dying falls within the jurisdiction of the states. However, for the territories, it falls within the jurisdiction of the federal government.

Assistance in dying is legally permitted in only one state⁸ – Victoria. It is legal in Victoria as a result of the *Voluntary Assisted Dying Act* passed in 2017 (Victoria, 2017).

Assistance in dying is called “voluntary assisted dying.” This is defined as follows in the Act:

voluntary assisted dying means the administration [by self or practitioner] of a voluntary assisted dying substance and includes steps reasonably related to such administration;

voluntary assisted dying substance means a poison or controlled substance or a drug of dependence specified in a voluntary assisted dying permit for the purpose of causing a person’s death. (art. 3)

Under the *Crimes Act* 1958, S.6B(2), intentional killing and aiding suicide are crimes (Victoria, 1958). The effect of the *Voluntary Assisted Dying Act* is to create an exception to the *Crimes Act* 1958 prohibitions. Therefore, voluntary assisted dying is legally a subset of suicide and homicide (depending upon whether self- or other-administered).

USA (Oregon, Washington, Montana, Vermont, California, Colorado, District Of Columbia, Hawaii, New Jersey, Maine)

In the United States, assistance in dying falls within the domain of the criminal law. Criminal law falls within the jurisdiction of the states. Assistance in dying is now legal in a number of states and the District of Columbia through a variety of legal mechanisms: legislation passed through direct democracy in the form of citizen initiatives advanced through ballot measures or propositions (California, Colorado, Oregon, and Washington) or by legislative bodies (District of Columbia, Hawaii, Maine, New Jersey, and Vermont) or as a result of court decisions (Montana).

Oregon

While it is called the *Death with Dignity Act* (Oregon, 1994), “death with dignity” is not a term used in the legislation. Instead the Act employs the following description of the substance used to bring about death:

Medication for the purpose of ending his or her life in a humane and dignified manner in accordance with ORS 127.800 to 127.897. (s.127.805 s.2.01)

Nothing in ORS 127.800 to 127.897 shall be construed to authorize a physician or any other person to end a patient’s life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law. [1995 c.3 s.3.14] (127.880 s.3.14.)

The action that constitutes assistance in dying is clearly distinguished from suicide and assisted suicide and homicide.

Washington

Like Oregon, while the Washington law is called the *Death with Dignity Act* (Washington, 2008), “death with dignity” is not a term used in the legislation. No noun captures assistance in dying. Instead, the Act provides a definition of the substance to bring about death:

Self-administering life-ending medication – “medication that the patient may self-administer to end his or her life in a humane and dignified manner in accordance with this chapter.” (RCW 70.245.020 (1))

(1) Nothing in this chapter authorizes a physician or any other person to end a patient’s life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law. State reports shall not refer to practice under this chapter as “suicide” or “assisted suicide.” [...] state reports shall refer to practice under this chapter as obtaining and self-administering life-ending medication. (70.245.180).

The action that constitutes assistance in dying is clearly distinguished from suicide and assisted suicide and homicide.

Montana

The Montana Supreme Court (2009) authorized assistance in dying in the *Baxter v. Montana* decision. A

few paragraphs in the judgment define what is meant by “physician aid in dying”:

Physician aid in dying—“in which a terminally ill patient elects and consents to taking possession of a quantity of medicine from a physician that, if he chooses to take it, will cause his own death.” (para 26)

Section 50-9-205(7), MCA, reads: ‘This chapter does not condone, authorize, or approve mercy killing or euthanasia.’ Physician aid in dying is, by definition, neither of these. Euthanasia is the ‘intentional putting to death of a person with an incurable or painful disease intended as an act of mercy.’ *Stedman’s Medical Dictionary* 678 (28th ed., Lippincott Williams & Wilkins 2006). The phrase ‘mercy killing’ is the active term for euthanasia defined as ‘a mode of ending life in which the intent is to cause the patient’s death in a single act.’ *Stedman’s Medical Dictionary* at 678. Neither of these definitions is consent-based, and neither involves a patient’s autonomous decision to self-administer drugs that will cause his own death. (para 36)

in physician aid in dying, the final death-causing act lies in the patient’s hands. (para 38)

No inference can be drawn from the judgment of the court as to the literal or conceptual relationship between self-administered aid in dying and suicide or homicide.

Vermont

As with other states, there is no noun embraced in the Vermont legislation to capture assistance in dying. The following description is used in *An act relating to patient choice and control at end of life* (Vermont, 2013):

Medication to be self-administered for the purpose of hastening the patient’s death

Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient’s life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law. (5292)

The action that constitutes assistance in dying is clearly distinguished from suicide and assisted suicide and homicide.

California

California has no noun to capture assistance in dying. Instead the substance used to bring about death and

the manner of taking the substance are defined as follows in the *End of Life Option Act* (California, 2016):

“Aid-in-dying drug” means a drug determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to bring about his or her death due to a terminal disease. (443.1(b))

“Self-administer” means a qualified individual’s affirmative, conscious, and physical act of administering and ingesting the aid-in-dying drug to bring about his or her own death. (443.1(p))

Nothing in this part may be construed to authorize a physician or any other person to end an individual’s life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this part shall not, for any purposes, constitute suicide, assisted suicide, homicide, or elder abuse under the law. (443.18)

The action that constitutes aid-in-dying is clearly distinguished from suicide, assisted suicide, and homicide.

Colorado

In the state of Colorado, the *End of Life Options Act* (Colorado, 2016) authorizes assistance in dying:

“Medical aid in dying” means the medical practice of a physician prescribing medical aid-in-dying medication to a qualified individual that the individual may choose to self-administer to bring about a peaceful death. (25-48-102)

Nothing in this article authorizes a physician or any other person to end an individual’s life by lethal injection, mercy killing, or euthanasia. Actions taken in accordance with this article do not, for any purpose, constitute suicide, assisted suicide, mercy killing, homicide, or elder abuse under the “Colorado Criminal Code,” as set forth in title 18, C.R.S. (25-48-121)

Colorado explicitly rejected consideration of medical aid in dying as a form of suicide or homicide.

District of Columbia

Like some states, the District of Columbia does not use a noun to capture assistance in dying. Instead the *Death with Dignity Act* (District of Columbia, 2016) employs the following description:

Request for and dispensation of covered medications to qualified patients seeking to die in a humane and peaceful manner

‘Covered medication’ means a medication prescribed pursuant to this act for the purpose of ending a

person’s life in a humane and peaceful manner. (s.2(5))

Sec.16. Construction

(a) Nothing in this act may be construed to authorize a physician or any other person to end a patient’s life by lethal injection, mercy killing, active euthanasia, or any other method or medication not authorized under this act.

(b) Actions taken in accordance with this act do not constitute suicide, assisted suicide, mercy killing, or homicide.

The District of Columbia has explicitly rejected consideration of the action that constitutes assistance in dying as a form of suicide, assisted suicide or homicide.

Hawaii

Hawaii does not use a noun to capture assistance in dying. Instead the *Our Care, Our Choice Act* (Hawaii, 2018) employs the following description of the substance to bring about death:

A prescription that may be self-administered for the purpose of ending the adult’s life in accordance with this chapter.

Section 3-18. (a) Nothing in this chapter shall be construed to authorize a health care provider, health care facility, or any other person to end a patient’s life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, murder, manslaughter, negligent homicide, or any other criminal conduct under the law.

Section 5. Section 327H Hawaii Revised Statutes, is amended by amending subsection(b) to read as follows:

(b) Nothing in this section shall be construed to:

(3) Prohibit the discipline or prosecution of a licensed physician for:

(E) Causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual; provided that:

(i) It is not “causing or assisting in causing, the suicide, euthanasia, or mercy killing of any individual” to prescribe, dispense, or administer medical treatment for the purpose of treating severe acute pain or severe chronic pain, even if the medical treatment may increase the risk of death, so long as the medical treatment is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason; and

(ii) This subparagraph shall not apply to actions taken under chapter____. (sic)

Hawaii has explicitly rejected consideration of the action that constitutes assistance in dying as a form of suicide, assisted suicide, or homicide.

New Jersey

While it is called the *Medical Aid in Dying for the Terminally Ill Act* (New Jersey, 2019), “medical aid in dying” is not a term defined in the act. Instead, the Act employs the following description of the substance to bring about death:

Medication that the patient may choose to self-administer in order to bring about the patient’s humane and dignified death

C.26:16-15 Construction of act.

15. Nothing in P.L.2019, c.59 (C.26:16-1 et al.) shall be construed to:

a. authorize a physician or any other person to end a patient’s life by lethal injection, active euthanasia, or mercy killing, or any act that constitutes assisted suicide under any law of this State;

17. a. (2) any action taken in accordance with the provisions of P.L.2019, c.59 (C.26:16-1 et al.) shall not constitute patient abuse or neglect, suicide, assisted suicide, mercy killing, euthanasia, or homicide under any law of this State.

28. Any action taken in accordance with the provisions of P.L.2019, c. 59 (C.26:16-1 et al.) shall not constitute suicide or assisted suicide.

The action that constitutes medical aid in dying is clearly distinguished from suicide, assisted suicide, and homicide.

Maine

An Act To Enact the Maine Death with Dignity Act (Maine, 2019) does not define “death with dignity” and it expressly distinguishes acts committed under the Act from suicide, assisted suicide, and homicide.

20. Authority of Act; references to acts committed under Act; applicable standard of care. This Act does not authorize a physician or any other person to end a patient’s life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with this Act do not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide under the law. State reports may not refer to acts committed under this Act as “suicide” or “assisted suicide.” Consistent with the provisions of this Act, state reports must refer to acts committed under this Act as obtaining and self-administering life-ending medication. A patient’s death certificate, pursuant to section 2842, must list the underlying terminal disease as the cause of death.

Observations

From this overview, we can draw some preliminary observations when considering assistance in dying from a comparative, international perspective. Jurisdictions that have more recently legalized assistance in dying, more commonly use descriptive terms such as aid in dying. With the exception of Oregon, Washington and Montana jurisdictions that have had legal assistance in dying for a number of years, more often use the terminology “euthanasia” and “assisted suicide”. Some of these terms describe the act itself while other terms point to who can provide and receive assistance in dying, the goals of the practice, the relationships of the named practices to suicide and homicide, and the motives of the provider.

Internationally, the definitions we have reviewed show that there are three types of regimes for legally allowable assistance in dying: (1) jurisdictions that permit only health care provider-administered assistance in dying (Colombia and Quebec); (2) those that permit only self-administered assistance in dying (Switzerland and the US jurisdictions); and (3) those that permit both provider- and self-administered (Australia [Victoria], Belgium, Canada, Québec⁹, Luxembourg, and the Netherlands). There is no regime in which a non-health care provider can administer the substance to bring about death without risking legal consequences. Canada is unique in that it allows nurse practitioners to act as providers. Only Switzerland does not legally specify the status of the provider, nor the means to be employed. Therefore, anyone who is willing and who has no selfish motive can provide assistance, i.e. a means that allows the requester to make the final act herself. Transnationally, the terms do not have standardized definitions. For example, the Belgian law uses the term euthanasia, but assisted suicide is understood to be included within euthanasia while in Luxembourg euthanasia refers only to provider-administered assistance. Meanwhile, in New Jersey, aid in dying only includes self-administered assistance while in the Quebec law the expression ‘medical aid in dying’ includes only provider-administered assistance.

Regarding who can receive assistance in dying, Colombia, Montana, and Quebec all include a variation of the expression of “end-of-life” in their definitions of assistance in dying which serves to delineate the target population of requesters. Due to a recent Court decision in Quebec, the target population is no longer restricted to the end-of-life even though the definition of “medical aid in dying” in the Quebec legislation has not been amended. California defines

an aid in dying drug as something a person may self-administer to bring about his or her death “due to a terminal disease.” New Jersey’s law is called Medical Aid in Dying for the Terminally Ill where terminally ill is defined within the act as having a prognosis of six months or less. In these jurisdictions, assistance in dying is by definition reserved for persons nearing the end of their lives (although in practice in Quebec, end of life has taken on a more expansive definition). No other jurisdiction provides information in the definition of the practice about target or excluded populations or eligibility conditions. In all cases apart from Switzerland, this is further elaborated upon in legal eligibility criteria.

The goals of assistance in dying are identified in the definitions in only some jurisdictions. Quebec includes the alleviation of suffering in its definition of assistance in dying. Several US states identify a rationale for assistance in dying including: a peaceful death (Colorado), a humane and peaceful death (District of Columbia), and a humane and dignified death (New Jersey, Oregon, and Washington).

In some jurisdictions, assistance in dying is *de facto* but not *de jure* a form of homicide/suicide. For others, it is *de jure* a form of homicide/suicide. For still others, it is *de jure* not to be considered a form of suicide or homicide. Contrary to the Benelux countries, some US states distinguish their form of self-administered assistance in dying from assisted suicide as well as euthanasia.

Finally, in both Colombia and Switzerland, the motives of the providers play a role in the definition of the practice. In Colombia, assistance in dying is an exception to the crime of mercy killing because of the compassionate motives of the provider. However, it only ceases to be a crime when it achieves the goal of alleviating the suffering of a consenting person with a terminal disease. The right to die with dignity unites motive of the provider with the goal of the practice. Switzerland requires that the providers’ motives are not selfish.

This overview is necessarily brief and incomplete but should illustrate certain key points which may be useful when reading the papers included in this special issue. First, the terms used to describe assistance in dying are not standard and vary from jurisdiction to jurisdiction in some cases within the same country (e.g. between US states). Second, similar terms may refer to different practices between jurisdictions (e.g. Quebec and New Jersey). Beyond these definitions lie a great many factors ranging from political systems, organization of a country’s health

care system, religious beliefs in the population, the views of the medical profession among others which influence not only who can provide and receive assistance in dying but what it is called and what it is for.

Notes

1. As of January 2020, we present the countries in chronological order based on the date they came into force, except for the American states that we present together at the end to avoid confusion and repetition. Since this article was accepted, Germany, the state of Western Australia, New Zealand, Spain and Tasmania (Australia) have also authorized forms of assistance in dying.
2. All subsequent citations of the Swiss Criminal Code refer to Switzerland (2020a). Translations are offered on the portal of the Swiss government and are reproduced here.
3. For example, a provider can be accused based on this article if, at the last minute, s/he activates a perfusion delivering the lethal substance because the requester can no longer do it by herself.
4. An unofficial English translation of the law can be found on the website of the World Federation of Right to Die Societies (n.d.).
5. *Ibid.*
6. Both the English and French definitions are official (Canada, 2016).
7. Both the French and English definitions are official (Quebec, 2014a, 2014b).
8. The Northern Territory legalized euthanasia in 1995. However, the jurisdiction of the three Australian territories over euthanasia was removed by the Australian Parliament in 1997 and that euthanasia legislation was repealed. Voluntary assistance in dying is being actively explored in Queensland. A bill permitting voluntary assistance in dying has passed in both the upper and lower Houses of Parliament in Tasmania and will return for a final vote in March 2021. A law permitting voluntary assistance in dying has been passed in Western Australia and will come into effect in 2021. For ongoing coverage of developments, see End of Life Law in Australia (n.d.).
9. Both the Quebec and Canadian laws are valid and apply in Quebec. The Quebec law only concerns provider-administered assistance however, according to the Canadian law, self-administered assistance is not a crime in Quebec. The medical regulator however, only recommends provider administration, provides a detailed protocol for administration and has not to date provided a protocol for self-administration.

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References

- Belgium. (2002). *Loi relative à l'euthanasie du 28 mai 2002* [Law on euthanasia of 28 May 2002]. https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002052837&table_name=loi.
- California. (2016). *End of Life Option Act*. https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520162AB15.
- Canada. (2016). *Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying, C-14)*. https://laws-lois.justice.gc.ca/eng/annualstatutes/2016_3/fulltext.html.
- Colorado. (2016). *End-of-Life Options Act*. <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2015-2016/145Final.pdf>.
- Commission fédérale de contrôle et d'évaluation de l'euthanasie (CFCEE). (2015). *Brochure à l'intention du corps médical* [Brochure Intended for the Medical Profession]. https://organesdeconcertation.sante.belgique.be/sites/default/files/documents/federale_controle_-_en_evaluation-commissie_euthanasie-fr/cfcee_brochureaintentioncorp-smedical-2015.pdf.
- Corte Constitucional de Colombia. (1997). *Sentencia C-239/97* [Judgment C-239/97]. <http://www.corteconstitucional.gov.co/relatoria/1997/c-239-97.htm>.
- Corte Constitucional de Colombia. (2014). *Sentencia T-970/14* [Judgment T-970/14]. <https://www.corteconstitucional.gov.co/relatoria/2014/t-970-14.htm>
- District of Columbia. (2016). *Death with Dignity Act*. https://dchealth.dc.gov/sites/default/files/dc/sites/doh/page_content/attachments/Death%20With%20Dignity%20Act.FINAL_.pdf.
- End of Life Law in Australia. (n.d). *Euthanasia and assisted dying*. <https://end-of-life.qut.edu.au/euthanasia>.
- Hawaii. (2018). *Our Care, Our Choice Act*. <https://health.hawaii.gov/opppd/files/2018/11/OCOC-Act2.pdf>.
- Luxembourg. (2009). *Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide (Mémorial A46 du 16 mars 2009)* [Law of 16 March 2009 on euthanasia and assisted suicide (Memorial A46 of 16 March 2009)]. <http://data.legilux.public.lu/eli/etat/leg/loi/2009/03/16/n2/jo>.
- Maine. (2019). An act to enact the Maine Death with Dignity Act. <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0948&item=3&snm=129>
- Ministerio de Salud y Protección Social. (2015). *Resolución 1216 del 2015* [Resolution 1216 of 2015]. *Diario Oficial* 49489. https://www.minsalud.gov.co/Normatividad_Nuevo/Resoluci%C3%B3n%201216%20de%202015.pdf.
- Montana Supreme Court. (2009). *Baxter v. State of Montana*. <https://www.deathwithdignity.org/wp-content/uploads/2015/12/Baxter-Decision-December-2009.pdf>.
- New Jersey. (2019). *Medical aid in dying for the terminally ill*. <https://www.deathwithdignity.org/wp-content/uploads/2015/10/2019-NJ-Aid-in-Dying-for-the-Terminally-Ill-Act.pdf>.
- Oregon. (1994). *Oregon's Death with Dignity Act*. <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Pages/ors.aspx>.
- Quebec. (2014a). *Loi concernant les soins de fin de vie* [Act respecting end of life care.]. S-32.0001. <http://legisquebec.gouv.qc.ca/fr/showdoc/cs/S-32.0001>.
- Quebec. (2014b). *Act respecting end of life care*. S-32.0001. <http://legisquebec.gouv.qc.ca/fr/showdoc/cs/s-32.0001?langCont=en>.
- Regional Euthanasia Review Committee (RTE). (2018). *Euthanasia Code*. <https://english.euthanasiecommissie.nl/the-committees/code-of-practice>.
- Supreme Court of Canada. (2015). *Carter v. Canada*, [2015] 1 SCR 331. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do>.
- Switzerland. (2020a). *311.0 Swiss Penal Code of 21 December 1937* (Status as of 1st July 2020). <https://www.admin.ch/opc/fr/classified-compilation/19370083/index.html>.
- Switzerland. (2020b). *Federal Act on medicinal products and medical devices (Therapeutic Products Act, TPA) of 15 December 2000* (Status as of 1 August 2020). <https://www.admin.ch/opc/en/classified-compilation/20002716/index.html>.
- Vermont. (2013). *No.39. An act relating to patient choice and control at end of life*. <http://www.leg.state.vt.us/docs/2014/Acts/ACT039.pdf>.
- Victoria. (1958). *Crimes Act 1958*. http://classic.austlii.edu.au/au/legis/vic/consol_act/ca195882/.
- Victoria. (2017). *Voluntary Assisted Dying Act*. <https://www.legislation.vic.gov.au/in-force/acts/voluntary-assisted-dying-act-2017/004>.
- Washington. (2008). *The Washington Death with Dignity Act*. <https://apps.leg.wa.gov/RCW/default.aspx?cite=70.245&full=true#70.245.010>.
- World Federation of Right to Die Societies. (n.d). *Dutch law on Termination of life on request and assisted suicide* (complete text). <https://www.worldrtd.net/dutch-law-termination-life-request-and-assisted-suicide-complete-text>.