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¹⁹³ pozn. autora: zásady jsou přiloženy v aktuálním platném znění, nikoli původním

Příloha č. 1¹⁹⁴

N á v r h

ZÁKON

ze dne 2008,

o důstojné smrti

§ 1

(1) Důstojnou smrtí se pro účely tohoto zákona rozumí ukončení života osoby (pacienta) na její vlastní žádost s vědomou, odbornou pomocí jiné osoby za podmínek stanovených tímto zákonem.

(2) Důstojnou smrtí se pro účely tohoto zákona rozumí rovněž úmyslné ukončení života osoby (pacienta) na její vlastní žádost jinou osobou, pokud není možné použít postup dle odst. 1.

§ 2

(1) Důstojné smrti může být dle tohoto zákona nápomocen, případně ji vyvolat pouze lékař, a to za podmínek stanovených tímto zákonem a prováděcími předpisy.

(2) Lékař, který je nápomocen důstojné smrti nebo ji vyvolá, není odpovědný za tento skutek podle předpisů trestního práva, pokud splní podmínky tohoto zákona a prováděcích předpisů a postupuje v souladu s postupy v nich stanovenými.

(3) Žádný lékař však nemůže být k nápomoci důstojné smrti či k jejímu vyvolání nucen.

(4) Pokud to stav pacienta dovoluje, použije se přednostně před vyvoláním důstojné smrti pomoc k ní.

¹⁹⁴ Senátní tisk 303/08: *Návrh senátního zákona o důstojné smrti* [online]. [cit. 2016-06-08]. Dostupné z: <http://www.senat.cz/xqw/webdav/pssenat/original/47525/40369>

§ 3

O důstojnou smrt může pacient žádat předem pro případ, že by v budoucnu nebyl schopen vyjádřit svoji vůli.

Žádost pacienta

§ 4

(1) V době vyhotovení žádosti o důstojnou smrt musí být pacient plně způsobilý k právním úkonům a musí být plně při vědomí. Žádost musí být vyhotovena písemně a musí z ní být nade vši pochybnost zřejmé, že pacient dobrovolně a po náležitém zvážení žádá o důstojnou smrt. Pacient musí žádost vlastnoručně sepsat, datovat a podepsat; podpis pacienta musí být úředně ověřen.

(2) Pokud pacient nemůže číst nebo psát, nebo je nevidomý, může svoji žádost o důstojnou smrt učinit před třemi současně přítomnými svědky v listině, která musí být hlasitě přečtena a přítomnými svědky podepsána. Přitom pacient musí před svědky potvrdit, že listina obsahuje jeho žádost o důstojnou smrt. Pisatelem a předčitatelem může být i svědek; pisatel však nesmí být zároveň předčitatelem.

(3) V listině podle odst. 2 musí být uvedeno, že pacient nemůže číst nebo psát, kdo listinu napsal a kdo nahlas přečetl a jakým způsobem pacient potvrdil, že listina obsahuje jeho žádost o důstojnou smrt. Listinu musí svědci podepsat.

(4) Osoby neslyšící, které nemohou číst nebo psát, mohou projevit žádost o důstojnou smrt před třemi současně přítomnými svědky, ovládajícími znakovou řeč, a to v listině, která musí být tlumočena do znakové řeči.

(5) V listině podle odst. 4 musí být uvedeno, že pacient nemůže číst nebo psát, kdo listinu napsal a kdo nahlas přečetl a jakým způsobem pacient potvrdil, že listina obsahuje jeho žádost o důstojnou smrt. Obsah listiny podle odst. 4 musí být po jejím sepsání přetlumočen do znakové řeči; i toto musí být v listině uvedeno. Listinu musí svědci podepsat.

(6) Svědky žádostí o důstojnou smrt uvedených v tomto paragrafu mohou být pouze osoby, které jsou plně způsobilé k právním úkonům. Svědky nemohou být osoby nevidomé, neslyšící, němé, ty, které neznají jazyk, ve kterém se projev vůle činí, a osoby, které by mohly mít na smrti pacienta jakýkoli materiální zájem.

§ 5

Žádost o důstojnou smrt může pacient vzít kdykoliv zpět.

§ 6

Žádost o důstojnou smrt se zakládá do zdravotnické dokumentace pacienta. V případě jejího zpětvzetí je žádost ze zdravotnické dokumentace okamžitě vyňata a zničena.

§ 7

(1) K důstojné smrti lze na základě jeho žádosti dopomoci nebo ji vyvolat pouze u pacienta, který je v situaci, kdy jeho zdravotní stav je beznadějný, a kdy se nachází ve stavu trvalého utrpení fyzického nebo psychického, které je výsledkem nahodilé nebo dlouhodobé závažné a nevléčitelné nemoci.

(2) K důstojné smrti nelze dopomoci nebo ji vyvolat u osoby pouze na základě stáří nebo bezmocnosti.

(3) K důstojné smrti nelze dopomoci nebo ji vyvolat dříve než 4 týdny od vyhotovení žádosti pacientem.

Postup lékaře

§8

Pokud pacient požádá o pomoc k důstojné smrti či o její vyvolání, musí být před samotnou pomocí nebo vyvoláním důstojné smrti současně splněny následující podmínky:

a) ošetřující lékař musí podrobně seznámit pacienta s jeho zdravotním stavem, předpokládanou délkou jeho života, možnými léčebnými postupy a utišující léčbou včetně jejich účinků

b) ošetřující lékař musí prodiskutovat s pacientem jeho žádost o důstojnou smrt a musí nabýt přesvědčení, že vzhledem ke všem okolnostem neexistuje žádné jiné rozumné řešení situace pacienta a že žádost pacienta je zcela dobrovolná

c) ošetřující lékař musí s pacientem vést o jeho žádosti o důstojnou smrt nejméně tři časově přiměřeně oddělené rozhovory, aby se ujistil o trvání fyzického nebo psychického utrpení pacienta a o jeho opakované vůli.

§ 9

(1) Před pomocí k důstojné smrti nebo jejím vyvoláním musí ošetřující lékař konzultovat jiného lékaře, kterého zevrubně informuje o zdravotním stavu pacienta. Tento lékař musí být nezávislý ve vztahu k pacientovi i ošetřujícímu lékaři a musí splňovat další podmínky stanovené prováděcím předpisem. Konzultovaný lékař přezkoumá lékařské záznamy a vyšetří pacienta. Konzultovaný lékař vypracuje o svých zjištěních zprávu, se kterou musí ošetřující lékař seznámit pacienta.

(2) Pokud pacienta pravidelně ošetřuje lékařský tým, ošetřující lékař musí pacientovu žádost o důstojnou smrt konzultovat i se členy tohoto lékařského týmu. Výsledky těchto konzultací je nutno zachytit v písemné formě. Členové ošetřujícího lékařského týmu musejí tento dokument podepsat.

(3) Pokud některý z konzultovaných lékařů vyjádří pochybnost o odůvodněnosti vyvolání důstojné smrti, je ošetřující lékař povinen konzultovat postupem dle odst.1 dalšího lékaře.

(4) Při splnění podmínek tohoto ustanovení ošetřující lékař postupuje dále podle § 12.

Postup lékaře v případě žádosti učiněné předem

§ 10

Důstojnou smrt lze za podmínek tohoto zákona vyvolat i u pacienta, který o důstojnou smrt požádal způsobem stanoveným tímto zákonem předem.

§ 11

(1) Pokud pacient požádal o vyvolání důstojné smrti předem, musí být před samotným vyvoláním důstojné smrti současně splněny následující podmínky:

- a) pacient trpí vážnou a nevléčitelnou nemocí;
- b) pacient se nachází ve stavu nezměnitelného bezvědomí;

c) zdravotní stav pacienta je s ohledem na stav lékařské vědy v té době nevratný;

d) ošetřující lékař musí konzultovat jiného lékaře, kterého zevrubně informuje o zdravotním stavu pacienta. Tento lékař musí být nezávislý ve vztahu k pacientovi i ošetřujícímu lékaři a musí splňovat další podmínky stanovené prováděcím předpisem. Konzultovaný lékař přezkoumá lékařské záznamy, vyšetří pacienta a sdělí, zda podle jeho názoru jsou splněny podmínky písm. a) až c).

(2) Pokud pacienta pravidelně ošetřuje lékařský tým, ošetřující lékař musí pacientovu žádost o důstojnou smrt konzultovat i se členy tohoto lékařského týmu. Výsledky těchto konzultací je nutno zachytit v písemné formě. Členové ošetřujícího lékařského týmu musejí tento dokument podepsat.

(3) Pokud některý z konzultovaných lékařů vyjádří pochybnost o odůvodněnosti vyvolání důstojné smrti, je ošetřující lékař povinen konzultovat postupem dle písm. d) dalšího lékaře.

(4) Při splnění podmínek tohoto ustanovení ošetřující lékař postupuje dále podle § 12.

§ 12

Lékařské postupy pro pomoc k důstojné smrti a pro její vyvolání stanoví ministerstvo vyhláškou.

§ 13

Lékař, který byl nápomocen k důstojné smrti nebo ji vyvolal, musí vyplnit formulář sestavený ministerstvem a doručit jej ministerstvu do pěti pracovních dnů od vyvolání nebo pomoci k důstojné smrti. Ve formuláři musí být uvedeno pohlaví, místo a datum narození pacienta; datum, místo a hodina úmrtí; povaha utrpení, které bylo trvalé; zda byl pacient v nezměnitelném bezvědomí; důvody, které vedly k přesvědčení, že vzhledem ke všem okolnostem neexistovalo žádné jiné rozumné řešení situace pacienta a že žádost pacienta byla zcela dobrovolná; datum sepsání žádosti o důstojnou smrt; data a výsledky konzultací s jinými lékaři, případně se členy ošetřujícího lékařského týmu.

§ 14

Ministerstvo formulář uvedený v § 13 nejpozději do 3 pracovních dnů postoupí komisi zřízené při úřadu veřejného ochránce práv a složené lékařů, právníků a expertů na oblast důstojné smrti, která na základě údajů ve formuláři přezkoumá, zda byly v daném případě splněny podmínky tohoto zákona. V případě pochybností si komise může vyžádat od ošetřujícího lékaře údaje ze zdravotní dokumentace pacienta vztahující se k vyvolání důstojné smrti, zejména zprávy z veškerých konzultací, které byly učiněny v rámci postupu stanoveného tímto zákonem. Ošetřující lékař má povinnost vyžádanou dokumentaci komisi poskytnout.

§ 15

Komise vydává ke každému případu do dvou měsíců od doručení formuláře rozhodnutí o tom, zda byly splněny podmínky tohoto zákona. Na rozhodování komise se přiměřeně použijí ustanovení správního řádu.

§ 16

Pokud komise dospěje v rozhodnutí k názoru, že při pomoci k důstojné smrti nebo při jejím vyvolání nebyly splněny podmínky stanovené tímto zákonem, postoupí případ místně příslušnému státnímu zástupci.

§ 17

Komise je usnášeníschopná, pokud jsou přítomny nejméně dvě třetiny jejích členů.

§ 18

Členové komise jsou povinni zachovávat mlčenlivost o skutečnostech, o nichž se dozvědí v souvislosti s činností v komisi. Tím není dotčena povinnost uvedená v § 16. Rovněž

ustanovení zvláštních zákonů o zproštění mlčenlivosti touto zásadou nejsou dotčena. Členové komise rovněž důsledně dbají ochrany osobních údajů.

§ 19

Ministerstvo stanoví prováděcím předpisem bližší podmínky, které musí splňovat lékař konzultovaný v souvislosti se žádostí o důstojnou smrt, sestaví formulář uvedený v § 13 tohoto zákona a určí početní zastoupení odborníků v komisi podle § 14 tohoto zákona.

Příloha č. 2¹⁹⁵

Schedule 1—Amendment of the Northern Territory (Self-Government)

Act 1978

1 After section 50

Insert

50A Laws concerning euthanasia

(1) Subject to this section the power of the Legislative Assembly conferred by section 6 in relation to the making of laws does not extend to the making of laws which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life.

(2) The Legislative Assembly does have power to make laws with respect to:

(a) the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient; and

(b) medical treatment in the provision of palliative care to a dying patient, but not so as to permit the intentional killing of the patient; and

(c) the appointment of an agent by a patient who is authorised to make decisions about the withdrawal or withholding of treatment; and

(d) the repealing of legal sanctions against attempted suicide.

2 Application

For the avoidance of doubt, the enactment of the Legislative Assembly called the *Rights of the Terminally Ill Act 1995* has no force or effect as a law of the Territory, except as regards the lawfulness or validity of anything done in accordance therewith prior to the commencement of this Act.

¹⁹⁵ Euthanasia Laws Act 1997. [online]. [cit. 2016-06-08]. Dostupné z: <https://www.legislation.gov.au/Details/C2004A05118>

Příloha č. 3

| Návrhy zákonů – euthanasie a asistovaná sebevražda - Austrálie | | |
|--|--|-------|
| Jurisdikce | Název návrhu | Datum |
| Commonwealth | Euthanasia Laws Bill | 2004 |
| | Australian Territories Rights of the Terminally Ill Bill | 2007 |
| | Rights of the Terminally Ill Bill | 2008 |
| | Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill | 2008 |
| | Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill | 2010 |
| | Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill | 2012 |
| | Restoring Territory Rights (Assisted Suicide Legislation) Bill | 2015 |
| Teritorium hlavního města | Voluntary and Natural Death Bill | 1993 |
| | Medical Treatment (Amendment) Bill | 1995 |
| | Medical Treatment (Amendment) Bill | 1997 |
| | Euthanasia Referendum Bill | 1997 |
| | Crimes (Assisted Suicide) Bill | 1997 |
| Nový jižní Wales | Voluntary Euthanasia Referendum Bill | 1997 |
| | Right of the Terminally Ill Bill | 2001 |
| | Voluntary Euthanasia Trial (Referendum) Bill | 2002 |
| | Voluntary Euthanasia Trial (Referendum) Bill | 2003 |
| | Rights of the Terminally Ill Bill | 2003 |
| | Rights of the Terminally Ill Bill | 2010 |
| | Rights of the Terminally Ill Bill | 2010 |
| | Rights of the Terminally Ill Bill | 2013 |
| Severní teritorium | Rights of the Terminally Ill Bill | 1995 |
| | Criminal Code (Euthanasia) Amendment Bill | 1998 |

| | | |
|------------------|---|------|
| Jižní teritorium | Voluntary Euthanasia Bill | 1995 |
| | Voluntary Euthanasia Bill | 1996 |
| | Voluntary Euthanasia (Referendum) Bill | 1996 |
| | Dignity in Dying Bill | 2001 |
| | Dignity in Dying Bill | 2001 |
| | Dignity in Dying Bill | 2002 |
| | Dignity in Dying Bill | 2003 |
| | Dignity in Dying Bill | 2003 |
| | Dignity in Dying Bill | 2005 |
| | Voluntary Euthanasia Bill | 2007 |
| | Voluntary Euthanasia Bill | 2007 |
| | Voluntary Euthanasia Bill | 2008 |
| | Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill | 2008 |
| | Voluntary Euthanasia Bill | 2010 |
| | Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill | 2010 |
| | Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill | 2010 |
| | Criminal Law Consolidation (Medical Defences – End of Life Arrangements) Amendment Bill | 2011 |
| | Voluntary Euthanasia Bill | 2012 |
| | Ending Life with Dignity Bill | 2013 |
| | Ending Life with Dignity Bill (No2) | 2013 |
| Tasmánie | Dying with Dignity Bill | 2009 |
| | Voluntary Assisted Dying Bill | 2013 |

Tabulka 2 návrhy zákonů do 2015 – vlastní zpracování¹⁹⁶

¹⁹⁶ WILLMOTT, Lindy, Ben WHITE, Christopher STACKPOOLE, Kelly PURSER a Andrew MCGEE. (failed) Voluntary euthanasia law reform in Australia: two decades of trends, models and politics. *UNSW Law Journal*. 2016, 39(1), ISSN 57 195 873 179. str. 45-46.

Příloha č. 4¹⁹⁷

NORTHERN TERRITORY OF AUSTRALIA

RIGHTS OF THE TERMINALLY ILL ACT

An Act to confirm the right of a terminally ill person to request assistance from a medically qualified person to voluntarily terminate his or her life in a humane manner; to allow for such assistance to be given in certain circumstances without legal impediment to the person rendering the assistance; to provide procedural protection against the possibility of abuse of the rights recognised by this Act; and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Rights of the Terminally Ill Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

In this Act, unless the contrary intention appears:

assist, in relation to the death or proposed death of a patient, includes the prescribing of a substance, the preparation of a substance and the giving of a substance to the patient for self-administration, and the administration of a substance to the patient.

certificate of request means a certificate in or to the effect of the form in the Schedule that has been completed, signed and witnessed in accordance with this Act.

health care provider, in relation to a patient, includes a hospital, nursing home or other institution (including those responsible for its management) in which the patient is located

¹⁹⁷ Rights of the Terminally Ill Act. [online]. [cit. 2016-02-20]. Dostupné z: http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/legis/nt/consol_act/rottia294.pdf

for care or attention and any nurse or other person whose duties include or directly or indirectly relate to the care or medical treatment of the patient.

illness includes injury or degeneration of mental or physical faculties.

medical practitioner means a medical practitioner who has been entitled to practise as a medical practitioner (however described) in a State or a Territory of the Commonwealth for a continuous period of not less than 5 years and who is resident in, and entitled under the *Medical Act* to practise medicine in, the Territory.

qualified psychiatrist means:

- (a) a person entitled under a law of a State or Territory of the Commonwealth to practise as a specialist in the medical specialty of psychiatry;
- (b) a specialist whose qualifications are recognised by the Royal Australian and New Zealand College of Psychiatrists as entitling the person to fellowship of that College; or
- (c) a person employed by the Commonwealth or a State or Territory of the Commonwealth, or an Agency or authority of the Commonwealth or a State or Territory, as a specialist or consultant in the medical specialty of psychiatry.

terminal illness, in relation to a patient, means an illness which, in reasonable medical judgment will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the patient, result in the death of the patient.

Part 2 Request for and giving of assistance

4 Request for assistance to voluntarily terminate life

A patient who, in the course of a terminal illness, is experiencing pain, suffering and/or distress to an extent unacceptable to the patient, may request the patient's medical practitioner to assist the patient to terminate the patient's life.

5 Response of medical practitioner

A medical practitioner who receives a request referred to in section 4, if satisfied that the conditions of section 7 have been met, but subject to section 8, may assist the patient to

terminate the patient's life in accordance with this Act or, for any reason and at any time, refuse to give that assistance.

6 Response of medical practitioner, &c., not to be influenced by extraneous considerations

(1) A person shall not give or promise any reward or advantage (other than a reasonable payment for medical services), or by any means cause or threaten to cause any disadvantage, to a medical practitioner or other person for refusing to assist, or for the purpose of compelling or persuading the medical practitioner or other person to assist or refuse to assist, in the termination of a patient's life under this Act. Penalty: \$10,000.

(2) A person to whom a reward or advantage is promised or given, as referred to in subsection (1), does not have the legal right or capacity to receive or retain the reward or accept or exercise the advantage, whether or not, at the relevant time, he or she was aware of the promise or the intention to give the reward or advantage.

7 Conditions under which medical practitioner may assist

(1) A medical practitioner may assist a patient to end his or her life only if all of the following conditions are met:

(a) the patient has attained the age of 18 years;

(b) the medical practitioner is satisfied, on reasonable grounds, that:

(i) the patient is suffering from an illness that will, in the normal course and without the application of extraordinary measures, result in the death of the patient;

(ii) in reasonable medical judgment, there is no medical measure acceptable to the patient that can reasonably be undertaken in the hope of effecting a cure; and

(iii) any medical treatment reasonably available to the patient is confined to the relief of pain, suffering and/or distress with the object of allowing the patient to die a comfortable death;

(c) two other persons, neither of whom is a relative or employee of, or a member of the same medical practice as, the first medical practitioner or each other:

- (i) one of whom is a medical practitioner who holds prescribed qualifications, or has prescribed experience, in the treatment of the terminal illness from which the patient is suffering; and
- (ii) the other who is a qualified psychiatrist, have examined the patient and have:
- (iii) in the case of the medical practitioner referred to in subparagraph (i), confirmed:
 - (A) the first medical practitioner's opinion as to the existence and seriousness of the illness;
 - (B) that the patient is likely to die as a result of the illness; and
 - (C) the first medical practitioner's prognosis; and
- (iv) in the case of the qualified psychiatrist referred to in subparagraph (ii), confirmed that the patient is not suffering from a treatable clinical depression in respect of the illness;
- (d) the illness is causing the patient severe pain or suffering;
- (e) the medical practitioner has informed the patient of the nature of the illness and its likely course, and the medical treatment, including palliative care, counselling and psychiatric support and extraordinary measures for keeping the patient alive, that might be available to the patient;
- (f) after being informed as referred to in paragraph (e), the patient indicates to the medical practitioner that the patient has decided to end his or her life;
- (g) the medical practitioner is satisfied that the patient has considered the possible implications of the patient's decision to his or her family;
- (h) the medical practitioner is satisfied, on reasonable grounds, that the patient is of sound mind and that the patient's decision to end his or her life has been made freely, voluntarily and after due consideration;
- (i) the patient, or a person acting on the patient's behalf in accordance with section 9, has, not earlier than 7 days after the patient has indicated to his or her medical practitioner as

referred to in paragraph (f), signed that part of the certificate of request required to be completed by or on behalf of the patient;

(j) the medical practitioner has witnessed the patient's signature on the certificate of request or that of the person who signed on behalf of the patient, and has completed and signed the relevant declaration on the certificate;

(k) the certificate of request has been signed in the presence of the patient and the first medical practitioner by another medical practitioner (who may be the medical practitioner referred to in paragraph (c)(i) or any other medical practitioner) after that medical practitioner has discussed the case with the first medical practitioner and the patient and is satisfied, on reasonable grounds, that the certificate is in order, that the patient is of sound mind and the patient's decision to end his or her life has been made freely, voluntarily and after due consideration, and that the above conditions have been complied with;

(l) where, in accordance with subsection (4), an interpreter is required to be present at the signing of the certificate of request, the certificate of request has been signed by the interpreter confirming the patient's understanding of the request for assistance;

(m) the medical practitioner has no reason to believe that he or she, the countersigning medical practitioner or a close relative or associate of either of them, will gain a financial or other advantage (other than a reasonable payment for medical services) directly or indirectly as a result of the death of the patient;

(n) not less than 48 hours has elapsed since the signing of the completed certificate of request;

(o) at no time before assisting the patient to end his or her life had the patient given to the medical practitioner an indication that it was no longer the patient's wish to end his or her life;

(p) the medical practitioner himself or herself provides the assistance and/or is and remains present while the assistance is given and until the death of the patient.

(2) In assisting a patient under this Act a medical practitioner shall be guided by appropriate medical standards and such guidelines, if any, as are prescribed, and shall

consider the appropriate pharmaceutical information about any substance reasonably available for use in the circumstances.

(3) Where a patient's medical practitioner has no special qualifications in the field of palliative care, the information to be provided to the patient on the availability of palliative care shall be given by a medical practitioner (who may be the medical practitioner referred to in subsection (1)(c)(i) or any other medical practitioner) who has such special qualifications in the field of palliative care as are prescribed.

(4) A medical practitioner shall not assist a patient under this Act where the medical practitioner or any other medical practitioner or qualified psychiatrist who is required under subsection (1) or (3) to communicate with the patient does not share the same first language as the patient, unless there is present at the time of that communication and at the time the certificate of request is signed by or on behalf of the patient, an interpreter who holds a prescribed professional qualification for interpreters in the first language of the patient.

8 Palliative care

(1) A medical practitioner shall not assist a patient under this Act if, in his or her opinion and after considering the advice of the medical practitioner referred to in section 7(1)(c)(i), there are palliative care options reasonably available to the patient to alleviate the patient's pain and suffering to levels acceptable to the patient.

(2) Where a patient has requested assistance under this Act and has subsequently been provided with palliative care that brings about the remission of the patient's pain or suffering, the medical practitioner shall not, in pursuance of the patient's original request for assistance, assist the patient under this Act. If subsequently the palliative care ceases to alleviate the patient's pain and suffering to levels acceptable to the patient, the medical practitioner may continue to assist the patient under this Act only if the patient indicates to the medical practitioner the patient's wish to proceed in pursuance of the request.

9 Patient who is unable to sign certificate of request

(1) If a patient who has requested his or her medical practitioner to assist the patient to end the patient's life is physically unable to sign the certificate of request, any person who has attained the age of 18 years, other than the medical practitioner or a medical

practitioner or qualified psychiatrist referred to in section 7(1)(c), or a person who is likely to receive a financial benefit directly or indirectly as a result of the death of the patient, may, at the patient's request and in the presence of the patient and both the medical practitioner witnesses (and where, in accordance with section 7(4) an interpreter has been used, also in the presence of the interpreter), sign the certificate on behalf of the patient.

(2) A person who signs a certificate of request on behalf of a patient forfeits any financial or other benefit the person would otherwise obtain, directly or indirectly, as a result of the death of the patient.

10 Right to rescind request

(1) Notwithstanding anything in this Act, a patient may rescind a request for assistance under this Act at any time and in any manner.

(2) Where a patient rescinds a request, the patient's medical practitioner shall, as soon as practicable, destroy the certificate of request and note that fact on the patient's medical record.

11 Improper conduct

(1) A person shall not, by deception or improper influence, procure the signing or witnessing of a certificate of request. Penalty: \$20,000 or imprisonment for 4 years.

(2) A person found guilty of an offence against subsection (1) forfeits any financial or other benefit the person would otherwise obtain, directly or indirectly, as a result of the death of the patient, whether or not the death results from assistance given under this Act.

Příloha č. 5¹⁹⁸

POLICY FOR PROSECUTORS IN RESPECT OF CASES OF ENCOURAGING OR ASSISTING SUICIDE

Issued by The Director of Public Prosecutions

February 2010, updated October 2014

Introduction

1. A person commits an offence under section 2 of the Suicide Act 1961 if he or she does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and that act was intended to encourage or assist suicide or an attempt at suicide. This offence is referred to in this policy as "encouraging or assisting suicide". The consent of the Director of Public Prosecutions (DPP) is required before an individual may be prosecuted.
2. The offence of encouraging or assisting suicide carries a maximum penalty of 14 years' imprisonment. This reflects the seriousness of the offence.
3. Committing or attempting to commit suicide is not, however, of itself, a criminal offence.
4. This policy is issued as a result of the decision of the Appellate Committee of the House of Lords in *R (on the application of Purdy) v Director of Public Prosecutions* reported at [2009] UKHL45, which required the DPP "to clarify what his position is as to the factors that he regards as relevant for and against prosecution" (paragraph 55) in cases of encouraging and assisting suicide.
5. The case of *Purdy* did not change the law: only Parliament can change the law on encouraging or assisting suicide.
6. This policy does not in any way "decriminalise" the offence of encouraging or assisting suicide. Nothing in this policy can be taken to amount to an assurance that a person will be immune from prosecution if he or she does an act that encourages or assists the suicide or the attempted suicide of another person.

¹⁹⁸Policy for prosecutors in respect of cases of encouraging or assisting suicide. [online]. [cit. 2016-06-08]. Dostupné z: http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html

7. For the purposes of this policy, the term "victim" is used to describe the person who commits or attempts to commit suicide. Not everyone may agree that this is an appropriate description but, in the context of the criminal law, it is the most suitable term to use.
8. This policy applies when the act that constitutes the encouragement or assistance is committed in England and Wales; any suicide or attempted suicide as a result of that encouragement or assistance may take place anywhere in the world, including in England and Wales.

The investigation

9. The police are responsible for investigating all cases of encouraging or assisting suicide. The Association of Chief Police Officers (ACPO) intends to provide all Police Forces with guidance on dealing with cases of encouraging or assisting suicide soon after the publication of this policy. Prosecutors who are involved in such cases should ensure that they familiarise themselves fully with the ACPO guidance when it is available.
10. The ACPO guidance will specifically recommend that police officers liaise with the reviewing prosecutor to seek his or her advice at an early stage and throughout their enquiries so that all appropriate lines of investigation, in the context of the individual case, are discussed and agreed by the Prosecution Team. This is to ensure that all relevant evidence and information is obtained to allow a fully informed decision on prosecution to be taken.
11. The reviewing prosecutor must ensure that he or she has sufficient evidence and information in order to reach a fully informed decision about the evidential and public interest stages of the Full Code Test (see paragraph 13 below). The reviewing prosecutor will need detailed information about the mental capacity of the person who committed or attempted to commit suicide and about any relevant public interest factor.
12. The reviewing prosecutor should only make a decision when he or she has all the relevant material that is reasonably capable of being obtained after a full and thorough investigation. The reviewing prosecutor should tell the police if any further evidence or information is required before a decision can be taken.

The decision-making process

13. Prosecutors must apply the Full Code Test as set out in the Code for Crown Prosecutors in cases of encouraging or assisting suicide. The Full Code Test has two stages: (i) the evidential stage; and (ii) the public interest stage. The evidential stage must be considered before the public interest stage. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. Where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
14. The DPP will only consent to a prosecution for an offence of encouraging or assisting suicide in a case where the Full Code Test is met.

The evidential stage

15. Section 2 of the Suicide Act 1961 was amended with effect from 1 February 2010. It is therefore essential that prosecutors identify the timing of any act of encouragement or assistance that it is alleged supports the bringing of a criminal charge relating to the suicide or attempted suicide of the victim.
16. Where the act of encouragement or assistance occurred on or after 1 February 2010, section 2 of the Suicide Act 1961 as amended by section 59 and Schedule 12 of the Coroners and Justice Act 2009 applies.
17. In these cases, for the evidential stage of the Full Code Test to be satisfied, the prosecution must prove that:
 - a. the suspect did an act capable of encouraging or assisting the suicide or attempted suicide of another person; and
 - b. the suspect's act was intended to encourage or assist suicide or an attempt at suicide.
18. "Another person" referred to in section 2 need not be a specific person and the suspect does not have to know or even be able to identify that other person. The offence of encouraging or assisting suicide can be committed even where a suicide or an attempt at suicide does not take place.
19. It is no longer possible to bring a charge under the Criminal Attempts Act 1981 in respect of a section 2 Suicide Act 1961 offence by virtue of paragraph 58 of Schedule

- 21 of the Coroners and Justice Act 2009. Attempts to encourage or assist suicide are now captured by the language of section 2, as amended.
20. In the context of websites which promote suicide, the suspect may commit the offence of encouraging or assisting suicide if he or she intends that one or more of his or her readers will commit or attempt to commit suicide.
 21. Section 59(4) of the Coroners and Justice Act 2009 adds section 2A into the Suicide Act 1961.
 22. Section 2A provides that a person who arranges for someone else to do an act capable of encouraging or assisting the suicide or attempted suicide of another person will also be liable alongside that second person for the encouragement or assistance.
 23. Section 2A also makes it clear that a person may encourage or assist another person even where it is impossible for the actual act undertaken by the suspect to provide encouragement or assistance - for example, where the suspect believes he or she is supplying the victim with a lethal drug which proves to be harmless.
 24. Finally, section 2A also makes it clear that a suspect who threatens or puts pressure on the victim comes within the scope of the offence under section 2.
 25. The amendments to section 2 of the Suicide Act 1961 are designed to bring the language of the section up-to-date and to make it clear that section 2 applies to an act undertaken via a website in exactly the same way as it does to any other act.
 26. Prosecutors should consult the Ministry of Justice Circular 2010/03 which provides further detail about the changes made to section 2 of the Suicide Act.
 27. Where the act in question occurred on or before 31 January 2010, the former offence of aiding, abetting, counselling or procuring the suicide of another, or an attempt by another to commit suicide, contrary to the then section 2 of the Suicide Act 1961, applies.
 28. In these cases, for the evidential stage to be satisfied, the prosecution must prove that:
 - a. the victim committed or attempted to commit suicide; and
 - b. the suspect aided, abetted, counselled or procured the suicide or the attempt.
 29. The prosecution also has to prove that the suspect intended to assist the victim to commit or attempt to commit suicide and that the suspect knew that those acts were capable of assisting the victim to commit suicide.

30. In relation to an act done prior to 1 February 2010, it is possible in law to attempt to assist a suicide. Such an offence should be charged under the Criminal Attempts Act 1981.
31. This enables an individual to be prosecuted even where the victim does not go on to commit or attempt to commit suicide. Whether there is sufficient evidence of an attempt to assist suicide will depend on the factual circumstances of the case.

Encouraging or assisting suicide and murder or manslaughter distinguished

32. The act of suicide requires the victim to take his or her own life.
33. It is murder or manslaughter for a person to do an act that ends the life of another, even if he or she does so on the basis that he or she is simply complying with the wishes of the other person concerned.
34. So, for example, if a victim attempts to commit suicide but succeeds only in making him or herself unconscious, a person commits murder or manslaughter if he or she then does an act that causes the death of the victim, even if he or she believes that he or she is simply carrying out the victim's express wish.

Explaining the law

35. For the avoidance of doubt, a person who does not do anything other than provide information to another which sets out or explains the legal position in respect of the offence of encouraging or assisting suicide under section 2 of the Suicide Act 1961 does not commit an offence under that section.

The public interest stage

36. It has never been the rule that a prosecution will automatically follow where the evidential stage of the Full Code Test is satisfied. This was recognised by the House of Lords in the *Purdy* case where Lord Hope stated that: "[i]t has long been recognised that a prosecution does not follow automatically whenever an offence is believed to have been committed" (paragraph 44). He went on to endorse the approach adopted by Sir Hartley Shawcross, the Attorney General in 1951, when he stated in the House of Commons that: "[i]t has never been the rule... that criminal offences must automatically be the subject of prosecution".

37. Accordingly, where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
38. In cases of encouraging or assisting suicide, prosecutors must apply the public interest factors set out in the Code for Crown Prosecutors and the factors set out in this policy in making their decisions. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour.
39. Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and for those factors to be put to the court for consideration when sentence is passed.
40. The absence of a factor does not necessarily mean that it should be taken as a factor tending in the opposite direction. For example, just because the victim was not "under 18 years of age" does not transform the "factor tending in favour of prosecution" into a "factor tending against prosecution".
41. It may sometimes be the case that the only source of information about the circumstances of the suicide and the state of mind of the victim is the suspect. Prosecutors and investigators should make sure that they pursue all reasonable lines of further enquiry in order to obtain, wherever possible, independent verification of the suspect's account.
42. Once all reasonable enquiries are completed, if the reviewing prosecutor is doubtful about the suspect's account of the circumstances of the suicide or the state of mind of the victim which may be relevant to any factor set out below, he or she should conclude that there is insufficient information to support that factor.

Public interest factors tending in favour of prosecution

43. A prosecution is more likely to be required if:

- a. the victim was under 18 years of age;
- b. the victim did not have the capacity (as defined by the Mental Capacity Act 2005) to reach an informed decision to commit suicide;
- c. the victim had not reached a voluntary, clear, settled and informed decision to commit suicide;
- d. the victim had not clearly and unequivocally communicated his or her decision to commit suicide to the suspect;
- e. the victim did not seek the encouragement or assistance of the suspect personally or on his or her own initiative;
- f. the suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that he or she or a person closely connected to him or her stood to gain in some way from the death of the victim;
- g. the suspect pressured the victim to commit suicide;
- h. the suspect did not take reasonable steps to ensure that any other person had not pressured the victim to commit suicide;
- i. the suspect had a history of violence or abuse against the victim;
- j. the victim was physically able to undertake the act that constituted the assistance him or herself;
- k. the suspect was unknown to the victim and encouraged or assisted the victim to commit or attempt to commit suicide by providing specific information via, for example, a website or publication;
- l. the suspect gave encouragement or assistance to more than one victim who were not known to each other;
- m. the suspect was paid by the victim or those close to the victim for his or her encouragement or assistance;
- n. the suspect was acting in his or her capacity as a medical doctor, nurse, other healthcare professional, a professional carer [whether for payment or not], or as a person in authority, such as a prison officer, **and the victim was in his or her care;**

- o. the suspect was aware that the victim intended to commit suicide in a public place where it was reasonable to think that members of the public may be present;
 - p. the suspect was acting in his or her capacity as a person involved in the management or as an employee (whether for payment or not) of an organisation or group, a purpose of which is to provide a physical environment (whether for payment or not) in which to allow another to commit suicide.
44. On the question of whether a person stood to gain, (paragraph 43(6) see above), the police and the reviewing prosecutor should adopt a common sense approach. It is possible that the suspect may gain some benefit - financial or otherwise - from the resultant suicide of the victim after his or her act of encouragement or assistance. The critical element is the motive behind the suspect's act. If it is shown that compassion was the only driving force behind his or her actions, the fact that the suspect may have gained some benefit will not usually be treated as a factor tending in favour of prosecution. However, each case must be considered on its own merits and on its own facts.

Public interest factors tending against prosecution

45. A prosecution is less likely to be required if:
- a. the victim had reached a voluntary, clear, settled and informed decision to commit suicide;
 - b. the suspect was wholly motivated by compassion;
 - c. the actions of the suspect, although sufficient to come within the definition of the offence, were of only minor encouragement or assistance;
 - d. the suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide;
 - e. the actions of the suspect may be characterised as reluctant encouragement or assistance in the face of a determined wish on the part of the victim to commit suicide;
 - f. the suspect reported the victim's suicide to the police and fully assisted them in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing encouragement or assistance.

46. The evidence to support these factors must be sufficiently close in time to the encouragement or assistance to allow the prosecutor reasonably to infer that the factors remained operative at that time. This is particularly important at the start of the specific chain of events that immediately led to the suicide or the attempt.
47. These lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.
48. If the course of conduct goes beyond encouraging or assisting suicide, for example, because the suspect goes on to take or attempt to take the life of the victim, the public interest factors tending in favour of or against prosecution may have to be evaluated differently in the light of the overall criminal conduct.

Handling arrangements

49. Cases of encouraging or assisting suicide are dealt with in Special Crime Division in CPS Headquarters. The Head of that Division reports directly to the DPP.
50. Any prosecutor outside Special Crime Division of Headquarters who receives any enquiry or case involving an allegation of encouraging or assisting suicide should ensure that the Head of Special Crime Division is notified.
51. This policy comes into effect on 25 February 2010 and supersedes the Interim Policy issued on 23 September 2009. It was updated on 16 October 2014.