



THE CAYMAN ISLANDS LAW REFORM COMMISSION



DECRIMINALIZATION OF SUICIDE

**DISCUSSION PAPER
20TH MAY, 2019**

THE CAYMAN ISLANDS LAW REFORM COMMISSION

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LAW REFORM COMMISSION

DECRIMINALIZATION OF SUICIDE

1. INTRODUCTION

1.1 Background

1.1.1 This Discussion Paper is prepared in response to a submission proposing the decriminalization of suicide made to the Law Reform Commission (“the Commission”) by the Legal Committee of the Alex Panton Foundation¹ (“the Foundation”). This Paper identifies the provisions in Penal Code (2019 Revision) of the Cayman Islands that save “suicide” as a criminal offence and make “assisted suicide”² and “suicide pacts” criminal offences. A review and comparative analysis of the relevant provisions of the Penal Code of Cayman Islands against the relevant provisions of the laws of various jurisdictions including, England and Wales, Canada, India, Ireland and Singapore was carried out by the Commission and recommendations for the decriminalization of suicide are provided. The Commission consulted with the Alex Panton Foundation and the Mental Health Commission both of which support the recommendations made. Having regard to the recommendations made in this Paper, draft Laws setting out the proposed provisions are attached as Annexes 2 and 3.

1.1.2 Suicide is a common law offence in the Cayman Islands and the Cayman Islands is among the minority of countries including, Guyana, Argentina, Malaysia and Uganda that still criminalize suicide.³ Suicide or attempting is not a crime in United Kingdom, Australia, Canada, New Zealand and most of Europe.

1.1.3 In the Early 19th century, most countries around the world had laws that criminalized suicide and provided penalties, including imprisonment for persons who attempted to commit suicide. However, in the last half-century most countries (although not all) have decriminalized suicide. According to the World Health Organization’s 2014 Report, “Preventing Suicide: A global imperative” (“the Suicide Report”), only 25 of the 192 countries and states surveyed have laws and punishments for attempted suicide.⁴

¹ See Proposal attached as Annex 1.

² Aiding or abetting, counselling or procuring suicide.

³ https://en.wikipedia.org/wiki/Suicide_legislation#History.

⁴ Preventing Suicide: A global imperative, World Health Organization at page 51.

- 1.1.4 The Suicide Report urged countries to review their legal provisions in relation to suicide to ensure they do not deter people from seeking help. Although the Suicide Report suggested that the rates would decrease, it also recognized that it is possible that decriminalization will increase the reporting of suicides once fear of legal recriminations is eliminated.⁵
- 1.1.5 The Suicide Report also states that many of the countries with laws stipulating punishments for suicide do not actually prosecute people who attempt suicide⁶ and the same is true in the Cayman Islands. Prosecution has never been sought for those who attempt suicide in the Cayman Islands and the consensus is that treatment, rather than prosecution, is the appropriate and recommended response to those struggling with mental health crises. Suicide is a public health concern⁷ that needs to be managed by governments and clinicians in a culturally sensitive manner. The perception of suicide and suicidal ideations as criminal creates a barrier that prevents people from seeking appropriate treatment.⁸ Furthermore, there are real life ramifications of suicide being a crime, such as health insurance companies refusing to cover medical costs for injuries relating to an attempt to commit suicide.⁹
- 1.1.6 The Foundation found that the rates of suicide are continuously rising in the Cayman Islands, particularly amongst our children and young people. In a recent national survey of all children and youth at Cayman Islands public and private schools, including UCCI students, undertaken by the National Drug Counsel in collaboration with the Foundation produced alarming statistics that this country cannot ignore. Most alarmingly, one in three children surveyed reported suicidal ideation and 13% reported actual attempted suicide, but only 5% of these children in need are seeking treatment.¹⁰
- 1.1.7 The Foundation's proposal sets out the potential benefits to the Cayman Islands as follows —
- (a) to safeguard the rights of the people with mental illness and align Cayman Islands with other progressive Commonwealth countries (including the UK, Canada,

⁵ Ibid 4 at page 51.

⁶ Ibid 5.

⁷ Ibid 1 and See World Health Organization – suicide is the second leading cause of death among 15–29 year olds – <https://www.who.int/en/news-room/fact-sheets/detail/suicide>.

⁸ Ibid 1.

⁹ Ibid 1.

¹⁰ Ibid 1.

Australia, New Zealand, and most of Europe) that have abolished the crime of attempted suicide.

- (b) to encourage further dialogue and consultation on mental health in our community; and
- (c) to address mental health needs in our society with the potential to reduce delinquency and create a more productive workforce, and this proposal is an important step towards a healthier, more resilient community.¹¹

1.2. Recommendations of the Commission

1.2.1 Based on the review, consultations and consideration of the current status of the law and the areas of concerns raised by the Foundation’s proposal, the Commission recommends the following —

- (a) That the Penal Code (2019 Revision) (the “Penal Code”) be amended to make provision for the rule of law whereby it is a crime for a person to commit suicide to be abrogated.
- (b) That the Mental Health Law, 2013¹² be maintained in its current form as the definition of “serious mental illness” is wide enough to cover a person who is about to attempt or attempts to take his or her own life and it makes provision for persons such a person to be apprehended by a police officer and taken to a medical practitioner for assessment and for observation and treatment, where necessary.
- (c) That the Penal Code be amended to provide for assisted suicide as a substantive offence.
- (d) That the Health Care Decisions Law, 2019 be amended to provide definitions for the terms “assisted suicide” and “euthanasia” for the purposes of that Law.

1.2.2 The draft Laws attached as Annexes 2 and 3 make provision for amendment of the Penal Code and the Health Care Decisions Law, 2019 based on the recommendations.

¹¹ Ibid 1.

¹² Law 10 of 2013.

2. COMPARATIVE ANALYSIS OF SUICIDE LAWS

2.1 Introduction

- 2.1.1 The common law offence of suicide (“self-murder”) was saved in the Cayman Islands by section 2 of the Penal Code which provides that nothing in the Penal Code shall affect the liability, trial or punishment of a person for an offence against the common law or any other law in force in the Islands.
- 2.1.2 Although persons are not prosecuted for suicide or attempted suicide in the Cayman Islands, persons were prosecuted at common law in England and Wales for the offence of self-murder until 50 years ago. In many cases, prosecutions against persons who attempted suicide and survived were discharged but some were fined or sent to prison for a short sentence of up to six months. For example, when Lieutenant Geoffrey Walker attempted suicide on the beach in Dunkirk, using a French revolver he had found, he was prosecuted in June 1951 and fined £25 for his actions.¹³ Similarly, in 1958, Lionel Churchill was found with a bullet wound in his forehead lying next to his decomposed wife who had recently passed away. He had tried but failed to take his own life in the bed of their Cheltenham home. Although the doctors said Churchill needed medical treatment at a mental hospital, magistrates disagreed and he was sent to prison for six months after pleading guilty.¹⁴
- 2.1.4 The offence of assisted suicide is provided for in the Cayman Islands by section 18 of the Penal Code which makes it an offence to aid or abet, counsel or procure the commission of an offence. Because suicide is a criminal offence, albeit a common law offence, section 18 of the Penal Code captures the offence of aiding, abetting counselling or procuring suicide.
- 2.1.5 By section 187 of the Penal Code, suicide pacts are also illegal as under that section it is manslaughter and not murder for a person acting in pursuance of a suicide pact between him and another to kill the other or to be a party to the other killing himself or being killed by a third person.
- 2.1.6 The offences of suicide, assisted suicide and suicide pacts are examined and an analysis of the relevant provisions of the Penal Code and the Mental Health Law, 2013 as compared with the relevant provisions in other countries is provided below and recommendations are made with regard to the legislative framework required for the decriminalization of suicide. A comparison table of suicide laws is attached as Annex 4.

¹³ <https://www.bbc.com/news/magazine-14374296>.

¹⁴ Ibid 13.

2.2. Suicide

2.2.1 Cayman Islands

2.2.1.1 Suicide remains a common law offence in the Cayman Islands that was saved by section 2(1) of the Penal Code which provides as follows —

“2.(1) Nothing in [the Penal Code] shall affect (a) the liability, trial or punishment of a person for an offence against the common law or any other law in force in the Islands”.

2.2.1.2 Suicide is usually the result of a combination of factors, including mental illness (and in particular depression). It is therefore imperative that laws which address mental health are also capable of making provision for persons who are suffering from mental illnesses that affect persons by causing them to attempt suicide.

2.2.1.3 Section 7 of the Mental Health Law, 2013 gives a constable the power to apprehend and place in protective custody any person who is, by reason of mental impairment or serious mental illness, an immediate danger, or is likely to become a danger to him or her or others. The constable must with all reasonable dispatch, but in any case not longer than twelve hours, bring the person before a government medical doctor registered under the Health Practice Law (2005 Revision). The medical doctor must examine that person, and if the medical doctor considers that the person should be further detained the medical doctor shall, within twelve hours of receiving the patient, make an emergency detention order under section 6 after consultation with a medical officer. “Serious mental illness” is defined in section 2 of the Mental Health Law, 2013 to mean a substantial disorder of thought, mood, perception, orientation or memory which - (a) grossly impairs a person’s judgement, behaviour; capacity to recognize reality or ability to meet the ordinary demands of life; or (b) poses a danger to the person concerned or others, but does not include a sole diagnosis of alcoholism or drug abuse, that is, a diagnosis of alcoholism or drug abuse without any other ailment of a mental nature.

2.2.1.4 Under section 8 of the Mental Health Law, 2013, a medical officer may detain a person further by making an observation order allowing the person to be detained in a hospital or a prescribed place of safety for up to fourteen days to facilitate the assessment of that person to determine whether that person needs to undergo treatment for mental impairment or a serious mental illness. Further, under section 9 of the Mental Health Law, 2013, a responsible medical officer may, after consultation with another medical officer, make a treatment order, if a person under an observation order persists in his mental impairment or serious mental illness to an extent calling for further detention or violates an assisted outpatient treatment order.

2.2.1.5 Sections 7, 8 and 9 of the Mental Health Law, 2013, when read with the definition of “serious mental illness” in section 2 of that Law, appears to be wide enough to empower a police officer to apprehend and take persons who are suspected to be about to attempt or to have attempted suicide, and who are believed to be dangerous to himself or other persons, to a medical practitioner for officer for assessment and for observation and treatment, where necessary.

2.2.2 *England and Wales*

2.2.2.1 In early English common law, suicide was a “*Felo de se*,” Latin for “felon on himself.” A person found guilty of suicide, even though dead, was subject to various punishments including forfeiture of property to the Crown and being given a profane burial.¹⁵ However, section 1 of the Suicide Act 1961¹⁶ decriminalized suicide in England and Wales by providing that “the rule of law whereby it is a crime for a person to commit suicide is hereby abrogated”. Therefore, there is no basis in law for prohibiting a person from taking their own life if the person has capacity to make that decision.¹⁷ This means that a person who failed in the attempt to kill himself will not be prosecuted.

2.2.2.2 In England and Wales, section 136 of the Mental Health Act 1983¹⁸ provides for the detention of a person who appears to a constable to be suffering from mental disorder and to be in immediate need of care or control, if the constable thinks it necessary to do so in the interests of that person or for the protection of other persons. The term “mental disorder” is defined to mean any disorder or disability of the mind and the only purpose of the detention is to take the person to a safe place where the person can be assessed with a view to treatment, possibly without that person’s consent, via a section 3 detention. The detention rate under section 136 of the Mental Health Act 1983 relating to suicide prevention is reported to be as high as 80%.¹⁹ Such detentions give an opportunity for the issues that have caused a person to contemplate suicide to be addressed as a mental health matter.

2.2.2.3 In the *Rabone & Anor v Pennine Care NHS Trust* case (the “Rabone Case”),²⁰ Ms. Rabone, was admitted to hospital as a voluntary patient following an attempted suicide and was diagnosed as suffering from a severe episode of recurrent depressive disorder. Whilst being treated, she made

¹⁵ <https://www.thevintagenews.com/2016/12/27/in-early-english-common-law-suicide-was-a-punishable-crime/>

¹⁶ c.60 9 and 10 Eliz 2

¹⁷ See *Re Z (local authority: duty)* [2004] EWHC 2817 (Fam), [2005] 3 All ER 280, [2005] 1 WLR 959, where the court considered the lawfulness of an injunction obtained by the local authority under the inherent jurisdiction restraining Z’s husband from committing a criminal offence by removing her from England and Wales.

¹⁸ 1983 c.20.

¹⁹ See, The Conversation, *Changes to controversial police Mental Health Act powers may only be a sideways step*, Claire Warrington , PhD Candidate, <https://theconversation.com/changes-to-controversial-police-mental-health-act-powers-may-only-be-a-sideways-step-88504> University of Brighton

²⁰ [2012] UKSC 2,

two further attempts to commit suicide and was assessed to be a moderate-to-high suicide risk. She made a request for home leave which was granted for two days and the leave was granted during a ward round despite her relatives voicing their concerns. On the second day of her leave, Ms. Rabone took her own life. Her parents pursued a case to the Supreme Court and it was found that Ms. Rabone was owed a positive operational duty under Article 2 (right to life) of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) by the NHS Trust. The Trust should have taken preventative action to safeguard her life even though she was a voluntary patient not detained under mental health legislation. The judgment concluded that the trust failed to do all that it could reasonably have been expected to do in order to prevent the risk of her suicide.

2.2.2.4 The Rabone case demonstrates the importance of correctly balancing the competing interests of duty of care on one hand and personal autonomy on the other. Lady Hale’s reasoning highlighted the difficulty in achieving this balance. She stated that - “There is a difficult balance to be struck between the right of the individual patient to freedom and self-determination and her right to be prevented from taking her own life [it] appears that there was no proper assessment of the risks before she was given leave and no proper planning for her care during the leave. Having regard to the nature and degree of the risk to her life, and the comparative ease of protecting her from it, I agree that her right to life was violated”.²¹

2.2.3 Canada

2.2.3.1 In Canada suicide was decriminalized in 1972²². This means that a person who attempts suicide does not commit an offence under the Canada Criminal Code.²³

2.2.3.2 In 2012, the Federal Framework for Suicide Prevention Act²⁴ was enacted to make it mandatory for the Government of Canada to establish a federal framework for suicide prevention that recognizes that suicide, in addition to being a mental health issue, is a public health issue and that, as such, it is a health and safety priority; and designates the appropriate entity within the Government of Canada to assume responsibility for —

- (a) providing guidelines to improve public awareness and knowledge about suicide;
- (b) disseminating information about suicide, including information concerning its prevention;
- (c) making publically available existing statistics about suicide and related risk factors;

²¹ Ibid 13, paragraph 107.

²² <https://www.thecanadianencyclopedia.ca/en/article/suicide>.

²³ Criminal Code, a federal statute enacted by Parliament pursuant to s91(27) of the Constitution Act 1867, which provides the federal government exclusive jurisdiction to legislate criminal offences in Canada.

²⁴ S.C. 2012, c. 30.

- (d) promoting collaboration and knowledge exchange across domains, sectors, regions and jurisdictions;
- (e) defining best practices for the prevention of suicide; and
- (f) promoting the use of research and evidence-based practices for the prevention of suicide.

2.2.4 India

2.2.4.1 The Mental Health Care Act, 2017 overturned section 309²⁵ of the India Penal Code which criminalized attempted suicide and imposes a positive duty on the government to provide assistance and mental health services to those who have attempted suicide.

2.2.4.2 The section 309 was thought to be archaic and grossly inhumane and its overturn came after many appeals for it to be removed. It was recognized that people who tried to commit suicide were already “stressed out” and needed assistance and counselling, rather than having to deal with the fear of being put behind bars. Chandra Shekhar Gupta, a psychiatrist based in Jaipur, said the number of cases in which people had been jailed for attempted suicide was probably not large because most incidents were not reported to authorities. His view was that the old law had created a stigma around attempting suicide that had discouraged people from seeking help because they were afraid the police would come to them.²⁶

2.2.4.3 Section 115 (Presumption of Severe Stress in Case of Attempt to Commit Suicide) of the Mental Health Care Act, 2017 states the following —

“115 (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.”.

2.2.5 Ireland

2.2.5.1 Suicide was decriminalized in Ireland nearly 25 years ago with the enactment of section 2(1) of the Criminal Law (Suicide) Act, 1993 which provides that suicide shall cease to be a crime.

²⁵ Section 309 of the India Penal Code provided that whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

²⁶ <https://www.thenational.ae/world/attempted-suicide-no-longer-a-crime-as-india-changes-attitude-to-mental-health-problems-1.55290>.

2.2.5.2 The decriminalization of suicide was one of the first steps in Irish society recognizing that suicide and mental ill-health are serious public health issues. It was the beginning of the long road to remove stigma from suicide, self-harm and mental illness, a journey that continues.²⁷

2.2.5.3 In Ireland, the discussions on suicide prevention have led to the formation of a number of non-government organizations, such as the National Suicide Research Foundation and the Irish Association of Suicidology, that are involved in suicide prevention and raise the understanding of the complexities of mental illness and suicide.

2.2.6 Singapore

2.2.6.1 Section 89 of the Criminal Law Reform Bill²⁸ provides for the repeal of section 309 of Singapore's Penal Code that makes it a crime to attempt suicide. The Bill was introduced by the Singapore Government having considered the proposal made for the repeal of 309 by the Penal Code Review Committee ("the Committee") in its Report of August, 2018.²⁹ Under section 309 attempting suicide is an offence punishable by a term of at least one year imprisonment, a fine, or both. While the Committee proposed that section 309 be repealed, it was of the view that the abetment attempted suicide "must remain a crime".³⁰ The Committee stated that section 309 is a 19th century provision which "exists because it was thought that criminalization was the best way to deter suicide attempts".³¹ The Committee noted that "there is a growing recognition that treatment, not prosecution"³² is the appropriate response in cases of attempted suicide or suicide. Most of the respondents to the Committee's report agreed that persons who attempt suicide should be provided with help rather than be penalized. However, a minority were of the view that the decriminalization of attempted suicide is contrary to the societal view that life is precious.³³

2.2.6.2 The proposal to decriminalize attempted suicide was among the sweeping amendments in the Criminal Law Reform Bill tabled in the Singapore Parliament in February, 2019. In the Parliamentary sitting held on 6th May 2019, the Bill drew strong views from various Members of Parliament. One view expressed was that the relevant provisions in the Criminal Law Reform Bill should be reconsidered as retaining the law would deter suicide attempts and removing it would it

²⁷ Dan Neville, <https://www.independent.ie/opinion/comment/we-have-travelled-far-but-there-is-still-a-long-way-to-go-in-suicide-prevention-37067725.html>.

²⁸ Bill No.6 of 2019.

²⁹ Penal Code Review Committee Report, August, 2018, <https://www.mha.gov.sg/docs/default-source/default-document-library/penal-code-review-committee-report3d9709ea6f13421b92d3ef8af69a4ad0.pdf>.

³⁰ Ibid 29, paragraph 16 at page 339

³¹ Ibid 29, paragraph 50 at page 347.

³² Ibid 29, paragraph 13 at page, 339.

³³ First Reading of Criminal Law Reform Bill and the Government's Response to Feedback on it, <https://www.mha.gov.sg/newsroom/press-release/news/first-reading-of-criminal-law-reform-bill-and-the-government-response-to-feedback-on-it>.

could cause more suicides to occur.³⁴ It was suggested that the law could be retained while maintaining support, care and counselling for those who are contemplating suicide.³⁵ Another reason for not supporting the provision to decriminalize suicide was that this suicide would remove the requirement to report on attempted suicides and would take away a “crucial means” for a suicidal person to receive professional care.³⁶ The contrary view given was that “a person in distress and attempting suicide should not be treated like a criminal and must be shown care and compassion with the necessary professional and psychosocial support”.³⁷

2.2.7 Comments

2.2.7.1 The Cayman Islands Law Reform Commission has considered the recommendation of the Foundation to decriminalize suicide and recommends that suicide should no longer be a crime. This will bring the law of the Cayman Islands in line with that of most countries including the United Kingdom and Canada.

2.2.7.2 The Commission considered whether to amend section 7 of Mental Health Law, 2013 to expressly provide for the police to have the power under that Law to take a person suspected of attempting or about to attempt to commit suicide into protective custody. However, section 7 and the other provisions of the Mental Health Law, 2013 already ensure that the police and medical practitioners have the necessary powers to intervene to ensure that help is available to persons who require help when they need it. It is recognized that treatment (rather than prosecution) is the appropriate response to persons who are so distressed that they attempt suicide.

2.2.8 Recommendations

2.2.8.1 The recommendations of the Commission are as follows —

Recommendation 1: Amend the Penal Code to make provision for the rule of law whereby it is a crime for a person to commit suicide to be abrogated.

Recommendation 2: That the Mental Health Law, 2013³⁸ be maintained in its current form as the definition of “serious mental illness” is wide enough to cover a person who is about to attempt or attempts to take his or her own life and it makes provision for persons such a person to be apprehended by a police officer and taken to a medical practitioner for officer for

³⁴ Mr Christopher De Souza, MP for Holland-Bukit Timah Group Representation Constituency (GRC), See MPs divided on views regarding move to decriminalise suicide, <https://www.todayonline.com/singapore/parliament-mps-divided-views-regarding-move-decriminalise-suicide>.

³⁵ Ibid 33.

³⁶ Ibid 33.

³⁷ MP Anthea Ong, See MPs divided on views regarding move to decriminalise suicide, <https://www.todayonline.com/singapore/parliament-mps-divided-views-regarding-move-decriminalise-suicide>.

³⁸ Law 10 of 2013.

assessment and for observation and treatment, where necessary.

2.3 Assisted suicide

2.3.1 *Cayman Islands*

- 2.3.1.1 Section 18 of the Penal Code makes it an offence to aid or abet, counsel or procure the commission of an offence and as such captures the offence of assisted suicide (aiding, abetting counselling or procuring suicide) as long as suicide remains a criminal offence. Again, there are no reported cases of prosecution for assisted suicide in the Cayman Islands.
- 2.3.1.2 The Health Care Decisions Law, 2019 expressly provides that it does not authorize euthanasia³⁹ or assisted suicide. However, section 37(1) of that Law provides for immunity, where a doctor, registered practitioner or proxy acts in good faith and without negligence and in compliance or purported compliance with a directive made by a person. Section 37(1) of the Health Care Decisions Law, 2019 applies notwithstanding sections 188(d) (causing death defined), 191 (responsibility of person who has charge of another) and 211 (other negligent acts causing harm) of the Penal Code.⁴⁰
- 2.3.1.3 Section 41 of the Health Care Decision Law, 2019 makes provision for brainstem death cases so that if a person has been certified as brainstem dead, a doctor may withdraw all life-sustaining measures from the deceased.
- 2.3.1.4 Section 4 of the Health Care Decision Law, 2019 further states that it does not affect the operation of Part VI of the Penal Code (which deals with offences against the person, including murder and manslaughter) except as provided in section 37 and 41 of the Bill. This means that a doctor who complies with sections 37 and 41 would not be guilty offence under Part VI of the Penal Code. If the offence of assisted suicide is expressly provided for in Part VI of the Penal Code, the exceptions provided for sections 37 and 41 of Health Care Decisions Law, 2019 would also be applicable in respect of that offence.
- 2.3.1.5 The terms “assisted suicide” and “euthanasia” are used in the Health Care Decisions Law, 2019 without definition and it may be useful amend that Law provide definitions for those terms for the purposes of that Law.

³⁹The painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma.

⁴⁰ Section 37(2) Health Care Decisions Law, 2019.

2.3.2 *England and Wales*

- 2.3.2.1 All forms of assisted dying is illegal in England and Wales (assisted suicide and euthanasia) Section 2 of the Suicide Act 1961 (which deals with complicity in relation to suicide) makes it a criminal offence in England and Wales for a person to do an act capable of encouraging or assisting the suicide or attempted suicide of another person, and if the act was intended to encourage or assist suicide or an attempt at suicide. The person who encouraged or assisted need not be a specific person (or class of persons) known to, or identified by the person encouraging or assisting and an offence may be committed whether or not a suicide, or an attempt at suicide, occurs. An offence under section 2 is triable on indictment and a person convicted of such an offence is liable to imprisonment for a term not exceeding 14 years. Further, if on the trial of an indictment for murder or manslaughter of a person it is proved that the deceased person committed suicide, and the accused committed an offence in relation to that suicide, the jury may find the accused guilty of the offence of encouraging or assisting suicide.
- 2.3.2.2 Section 2(4) of the Suicide Act 1961 also provides that proceedings for assisted suicide must not be instituted for an offence under that section except by or with the consent of the Director of Public Prosecutions. The Crown Prosecution Service in England and Wales therefore looks at individual cases to ascertain whether a prosecution should be brought for assisted suicide.
- 2.3.2.3 Originally, section 2 of the Suicide Act 1961 provided that a person who “aids, abets, counsels or procures” the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.
- 2.3.2.4 Section 2 of the Suicide Act 1961 was amended by the Coroners and Justice Act 2009⁴¹ (the “2009 Act”) in an attempt to clarify, rather than change, the law on assisted suicide, by replacing the previous substantive offence (in subsection (1) as originally enacted) and attempt offence (by virtue of the Criminal Attempts Act 1981, section 1) with a single offence expressed in terms of “encouraging or assisting” the suicide or attempted suicide of another person.⁴²
- 2.3.2.5 This change followed recommendations in the Law Commission Report “Inchoate liability for assisting and encouraging crime” (July 2006) and the Government-commissioned report “Safer Children in a Digital World” (March 2008). The Government’s intention to legislate was set out in a Written Ministerial Statement to Parliament (479 HC Official Report (6th series) col

⁴¹ 2009, c.25.

⁴² General Note, Halsbury’s annotations, [https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?ersKey=23_T28744852822&backKey=20_T28744852829&homeCsi=274768&A=0.7658737635853704&urlEnc=ISO-8859-1&&remotekey1=normcite\(1961_60a_Prov2\)&remotekey2=All%20Subscribed%20Commentary%20Sources&dpsi=0200&cmd=f:exp&service=QUERY&origdpsi=0200&linktype=RCL&id=id5](https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?ersKey=23_T28744852822&backKey=20_T28744852829&homeCsi=274768&A=0.7658737635853704&urlEnc=ISO-8859-1&&remotekey1=normcite(1961_60a_Prov2)&remotekey2=All%20Subscribed%20Commentary%20Sources&dpsi=0200&cmd=f:exp&service=QUERY&origdpsi=0200&linktype=RCL&id=id5).

142WS). The Secretary of State for Justice and Lord Chancellor explained the rationale on the second reading of the Bill for the 2009 Act in the House of Commons —

*“Both the Law Commission and an independent review identified confusion about the scope of the law on assisted suicide. ... [s 59 of the 2009 Act] does not substantively change the law, but it does simplify and modernize the language of section 2 of the Suicide Act 1961 to increase public understanding and to reassure people that the provision applies as much to actions on the internet as to actions offline.”*⁴³

2.3.2.6 Changes to the Law relating to assisted suicide have been proposed and Assisted Dying Bills have been brought before the UK Parliament several times. In 2015, one such Bill was rejected by Parliament after much debate. The last Assisted Dying Bill was introduced into the House of Lords by Lord Falconer in 2016. The purpose of the Bill was to enable competent adults who are terminally ill to be provided at their request with specified assistance to end their own life.

2.3.2.7 The Assisted Dying Bill would allow doctors in England and Wales to end the life of a terminally ill and mentally competent patient with less than six months to live and independent doctors would have to sign a declaration that the person had made a decision to die. The patient would then administer the drugs themselves while in the company of a health professional. The health professional would not be allowed to administer the medicine. Campaigners for the Bill advocated that *“assisted dying must be a fundamental right for us all. We must be free from torture and suffering, we must have the freedom to choose for ourselves. We have no choice about how and when we come into this world, but it seems that we should be able to have a choice in how we leave it if our death is fast approaching.”*⁴⁴ On the other hand, those opposing of the Bill claimed that if the Assisted Dying Bill passed, people’s lives would be ended without their consent, through mistakes and abuse.

2.3.2.8 Lord Falconer’s Assisted Dying Bill received its first reading but the second reading of the Bill was not scheduled before the 2016-2017 session of Parliament was prorogued and the Bill made no further progress.

2.3.3 *Guernsey*

2.3.3.1 In 2018, States Assembly in Guernsey, a British Crown Dependency, rejected proposals to legalize assisted dying. If the proposed Bill had been accepted, the Island could have become the first place in the British Isles to allow assisted dying and this would have raised even more debate

⁴³ (487 HC Official Report (6th series) col 35).

⁴⁴ Sir Patrick Stewart, actor and Dignity in Dying supporter, <https://www.itv.com/news/2015-08-14/sir-patrick-stewart-assisted-dying-must-be-a-fundamental-right-for-us-all>.

across the United Kingdom. As a British Crown Dependency, Guernsey can set its own laws, but these must be approved by the Privy Council, a group of senior politicians who assess the future impact of the legislation on the UK.

2.3.4 Canada

2.3.4.1 Assisted suicide remains a criminal offence under section 241(1) of the Canada Criminal Code so that anyone found guilty of counselling another to take his or her own life or of aiding a suicide is liable to imprisonment of up to 14 years, whether or not the suicide attempt was successful.

2.3.4.2 However, the Medical Assistance in Dying Act⁴⁵ amended the Canada Criminal Code in 2016 to introduce, certain exceptions to the offence of assisted suicide so that —

- (a) a medical practitioner or nurse practitioner does not commit an offence under paragraph 241(1)(b) if they provide a person with medical assistance in dying in accordance with section 241.2;⁴⁶
- (b) a person is not a party to an offence under paragraph 241(1)(b) if they do anything for the purpose of aiding a medical practitioner or nurse practitioner to provide a person with medical assistance in dying in accordance with section 241.2;⁴⁷
- (c) a pharmacist who dispenses a substance to a person other than a medical practitioner or nurse practitioner does not commits an offence under paragraph 241(1)(b) if the pharmacist dispenses the substance further to a prescription that is written by such a practitioner in providing medical assistance in dying in accordance with section 241.2;⁴⁸
- (d) a person does not commit an offence under paragraph 241(1)(b) if they do anything, at another person's explicit request, for the purpose of aiding that other person to self-administer a substance that has been prescribed for that other person as part of the provision of medical assistance in dying in accordance with section 241.2;⁴⁹
- (e) a social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional does not commit an offence if they provide information to a person on the lawful provision of medical assistance in dying;⁵⁰

⁴⁵An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) (S.C. 2016, c. 3).

⁴⁶ Canada Criminal Code, section 241(2).

⁴⁷ Canada Criminal Code, section 241(3).

⁴⁸ Canada Criminal Code, section 241(4).

⁴⁹ Canada Criminal Code, section 241(5).

⁵⁰ Canada Criminal Code, section 241(5.1).

- (f) the exemptions apply even if the person invoking the exemption has a reasonable but mistaken belief about any fact that is an element of the exemption.⁵¹

The exemptions were introduced after much debate in both the Canada federal and provincial legislatures with regard to the right of individuals to assisted suicide, particularly in cases where a person's disability prevents them from committing the act without assistance.⁵¹

2.3.4.3 These exemptions for medically assisted suicide came after much debate on the issue in Canada.

2.3.4.4 In 2011, a lawsuit was filed by the British Columbia Civil Liberties Association to challenge the law against assisted suicide. The case *Carter v Canada*⁵² was brought on behalf of the families of two women who suffered debilitating conditions. The first was Kay Carter who died in 2010 and Gloria Taylor who died 2012. The case came before the Supreme Court in 2014 and, early in 2015, the court voted unanimously to allow physician-assisted suicide for “a competent adult person who clearly consents to the termination of life; and has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition”.⁵³ The court reasoned that the *Criminal Code* “prohibition on physician-assisted dying infringes the right to life, liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice. The object of the prohibition is not, broadly, to preserve life whatever the circumstances, but more specifically to protect vulnerable persons from being induced to commit suicide at a time of weakness. Since a total ban on assisted suicide clearly helps achieve this object, individuals' rights are not deprived arbitrarily. However, the prohibition catches people outside the class of protected persons. It follows that the limitation on their rights is in at least some cases not connected to the objective and that the prohibition is thus overbroad”.⁵⁴

2.3.4.5 In June 2016, more than a year after the Supreme Court decision, the Medical Assistance in Dying Act⁵⁵ established the procedural safeguards and eligibility criteria for medically assisted suicide. According to the Act, to be eligible a person must be at least 18 years of age and capable of making decisions with respect to their health⁵⁶, with a “grievous and irremediable medical condition”⁵⁷. Further the person must be in an “advanced state of irreversible decline,”⁵⁸ in which their “natural death has become reasonably foreseeable”.⁵⁹

⁵¹ 241.2.(1)(c) and see 241.2(2) for definition of “grievous and irremediable medical condition.

⁵² *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331 [Carter].

⁵³ Ibid 52, page 343 - 344.

⁵⁴ Ibid 52, pages 335 - 336.

⁵⁵ Bill C-14 (Royal Assent), June 17, 2016.

⁵⁶ Canada Criminal Code, 241.2(1)(b).

⁵⁷ Canada Criminal Code, 241.2(1)(c).

2.3.5 Ireland

2.3.5.1 By section 2 of the Criminal Law (Suicide) Act, 1993⁶⁰, a person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.⁶¹ If on the trial of an indictment for murder, murder to which section 3 of the Criminal Justice Act, 1990 applies or manslaughter, it is proved that the person charged aided, abetted, counselled or procured the suicide of the person alleged to have been killed, he may be found guilty of an offence.⁶² Proceedings are not to be instituted for an offence under section 2 except by or with the consent of the Director of Public Prosecutions. The effect is that where suicide has taken place or been attempted, three possible offences may have been committed: murder, manslaughter, or aiding or abetting suicide.⁶³

2.3.6 Comment

- 2.3.6.1 The Commission considered whether to amend the Penal Code to make provision for assisted suicide as the offence of aiding, abetting, counseling procuring the suicide of another currently provided for by virtue of section 18 of the penal Code would fall away once suicide is no longer a criminal offence.
- 2.3.6.2 Having regard to the changes made to the Suicide Act 1961 to clarify the offence of assisted suicide and the reasons for those changes, the Penal Code should be amended to retain assisted suicide as a substantive offence rather than an inchoate offence so that even if suicide is decriminalized it would be an offence to encourage or assist the suicide or attempted suicide of another person.
- 2.3.6.3 The Health Care Decisions Law, 2019 should also be amended to provide definitions for the terms “assisted suicide” and “euthanasia” for the purposes of that Law.

2.3.7 Recommendation

2.3.7.1 The Recommendations of the Commission are as follows —

Recommendation 3: Amend the Penal Code to retain assisted suicide as a substantive offence.

⁵⁸ Canada Criminal Code, 241.2(2)(b).

⁵⁹ Canada Criminal Code, 241.2(2)(d).

⁶⁰ Number 11 of 1993.

⁶¹ Criminal Law (Suicide) Act, 1993, section 2(2).

⁶² Criminal Law (Suicide) Act, 1993, section 2(3).

⁶³ Criminal Law (Suicide) Act, 1993, section 2(4)

Recommendation 4: That the Health Care Decisions Law, 2019 be amended to provide definitions for the terms “assisted suicide” and “euthanasia” for the purposes of that Law.

2.4 Suicide pacts

2.4.1 *Cayman Islands*

2.4.1.1 By section 187 of the Penal Code, it is manslaughter and not murder for a person acting in pursuance of a suicide pact between him and another to kill the other or to be a party to the other killing himself or being killed by a third person. Section 187 also provides that where it is shown that the person charged with the murder of another killed the other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other. The burden of proving the lesser offence of manslaughter is therefore on the defence.

2.4.2 *England and Wales*

2.4.2.1 By section 4 of the Homicide Act 1957,⁶⁴ a person who, acting in pursuance of a suicide pact between himself and another, kills the other or is a party to the other being killed by a third party, is guilty of manslaughter. For those purposes, a “suicide pact” is a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a “suicide pact” is to be treated as done by the him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.⁶⁵

2.4.2.2 Where it is shown that a person charged with the murder of another killed the other or was a party to his being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.⁶⁶

2.4.3 *Comment*

2.4.3.1 Section 187 of the Penal Code and section 4 of the Homicide Act are similar and no changes are necessary to facilitate the decriminalization of suicide.

2.4.4 *Recommendation*

2.4.4.1 No recommendations are made with regard to suicide pacts.

⁶⁴ 1957 Chapter 11 5 and 6 eliz 2.

⁶⁵ Homicide Act 1957, s 4(3).

⁶⁶ Homicide Act 1957, s4(2).

No recommendation.

3. **CONCLUSION**

- 3.1 The review of the Penal Code, Mental Health Law, 2013 and the Health Care Decisions Law, 2019 and laws of comparable jurisdictions relating to suicide suggests that suicide should no longer be an offence in the Cayman Islands and the Commission recommends the amendment of the Penal Code to expressly do away with the offence. Express provision should also be made to retain the offence of assisted suicide. Further, the Mental Health Law, 2013 does not require amendment with regard to suicide as it contains adequate provisions to allow for the detention, assessment, observation and treatment, where necessary of a person who tries to take their own life. The draft Penal Code (Amendment) Bill, 2019 and Health Care Decisions (Amendment) Bill, 2019 attached as Annexes 2 and 3 would give legislative effect to the recommendations of the Commission.

¹ Canada Criminal Code, section 241(6).