STATES OF JERSEY

ASSISTED DYING – UNBEARABLE SUFFERING

Lodged au Greffe on 17th February 2026
by Deputy G.P. Southern of St. Helier Central
Earliest date for debate: 10th March 2026

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to agree that the Draft Assisted Dying (Jersey) Law 202-, if adopted and once in force, should be extended to include persons suffering from an incurable physical medical condition (which is not terminal) that is giving rise to unbearable suffering that cannot be alleviated in a manner the person deems to be tolerable, and to request the Minister for Health and Social Services to undertake the necessary changes to the Law.

DEPUTY G.P. SOUTHERN OF ST. HELIER CENTRAL

REPORT

Introduction

In bringing this Proposition to extend the remit of the Assisted Dying (Jersey) Law 2026 (the "AD Law") to individuals suffering from an incurable physical medical condition, my intention is to provide the Assembly with the opportunity to fully reexamine the dual approach put forward by the Minister in P.18/2024. I appreciate that it is late in the term however it remains an important debate for Members and the time frame for approval of the AD Law left me little option.

I believe that to maintain a dual approach (referred to as 'Route 1' and 'Route 2'), and only to proceed with Route 1 runs the risk of opening the AD Law to challenge under Articles 8 and 14 of the European Convention of Human Rights (ECHR). The ECHR is binding on Jersey through the United Kingdom's ratification of the ECHR which was extended to Jersey, and is supported by the Human Rights (Jersey) Law 2000.

For clarity I note that I have used the term Assisted Dying for ease, though this term can be considered to include the terms euthanasia, assisted suicide and physician assisted suicide.

The potential Human Rights challenge

The creation of the European Convention of Human Rights (ECHR) codified Human Rights, including the Right to Life, Right to respect for private and family life, and Prohibition of Discrimination.

Under ECHR individuals have the right to take cases to the Court of Human Rights in order to challenge decisions of Governments or judiciaries that they consider in breach of their human rights under the ECHR. There have been numerous such challenges relating to Assisted Dying, each focussing on slightly different elements of the right to die. Such cases are developing and it is my assertion that our AD Law currently leaves us open to challenge.

This report looks at arguments relating to ECHR Articles relevant to Assisted Dying, notably Article 8 (Right to respect for private and family life), and Article 14 (Prohibition of Discrimination) in conjunction with Article 8.

Article 8

Right to respect for private and family life

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime,*

for the protection of health or morals, or for the protection of the rights and freedoms of others[1].

One of the earliest judgements in relation to Assisted Dying dates back to 2002 and is much referenced in subsequent case law. Within Pretty v. the United Kingdom (2002) the Court only went as far as stating, in relation to the restrictions on the applicant, that they were "*not prepared to exclude that this constitutes an interference with her right to respect for private life as guaranteed under Article 8 § 1 of the Convention*". They also stated that –

> *"The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance."*[2]

Since 2002 there has been development of the Case Law, and a growing number of judgements that consider Article 8 engaged – and in the case of Gross v. Switzerland (2013) the judgement was that the applicants rights had been breached under Article 8 through the country's refusal to provide medication for an assisted death.

Even where the judgement considers there is no breach of Article 8, it is no longer debated whether a person's end of life decisions engage Article 8 as is clearly detailed within the judgement on Mortier v. Belgium (2022) –

> *"An individual's right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention."*[3]

This leads us to the related argument – that Article 8 does not "*impose a positive obligation to facilitate suicide in dignity"*.[4] If this was a debate about whether or not to adopt Assisted Dying, that would be a very relevant argument. However, this debate is not about adopting Assisted Dying. The Assembly has already made that decision. This debate is about the potential for two people who are both experiencing unbearable suffering to be treated differently. Article 8 is equally engaged for both the terminal sufferer and the non-terminal sufferer.

The following, taken from the judgement of Karsai v. Hungary (2024) encapsulates this right –

> *"6.1. The decision by a terminally ill patient not to live until the natural end of a life that is characterised by suffering is part of patient's right to self-determination […]. The right to decide upon one's own death is to be enjoyed by all persons, irrespective of whether they are healthy or ill – whether terminally, as the art of medicine currently stands, or not."*[5]

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[1] European Convention on Human Rights https://www.echr.coe.int/documents/d/echr/convention_ENG

[2] Pretty v. The United Kingdom https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-60448%22]}

[3] Mortier v. Belgium https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-219988%22]}

[4] Koch v. Germany https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-112282%22]}

[5] Karsai v. Hungary https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-234151%22]}

Article 14

Prohibition of discrimination

> *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*[6]

It is important that Article 14 is considered in conjunction with the settled case law of the European Court of Human Rights – namely that –

> *"in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations with regard to the enjoyment of the rights and freedoms […]. Such a difference in treatment is discriminatory if it has no objective and reasonable justification…"*[7]

I would argue that there is no substantive justification for the difference in treatment that cannot be sufficiently mitigated by the planned safeguards.

Applying for an assisted death is not going to be a simple process. It will not be taken lightly – and indeed nor should it. But the very existence of these stringent safeguards (as set out in the detailed step plan within the AD Law) renders the discrimination between terminal and non-terminal individuals unreasonable.

Dr Stevie Martin (College Lecturer in Law and Fellow/Bye-Fellow at Fitzwilliam and King's Colleges, Cambridge)[8] addressed this point in an article published in November 2024 –

> *"In my earlier work, I have suggested that differentiating between individuals on the basis of suffering could constitute discrimination. Specifically, legislative schemes which only extend to individuals who are suffering intolerably and who have a terminal illness have the effect that individuals who are arguably in analogous or relevantly similar situations (i.e. those who are suffering intolerably) are treated differently on the basis of their illness (i.e. terminal or not), and that constitutes discrimination for the purposes of Article 14. Because of my wider conclusion that bans on assisted dying are not justified under Article 8(2) (since it is possible to create a system of assisted dying that protects vulnerable individuals while also securing the rights of those wanting to be assisted to die), I argue that such differential treatment is without a reasonable and objective justification and, therefore, violates Article 14 taken together with Article 8."*[9]

[6] European Convention on Human Rights https://www.echr.coe.int/documents/d/echr/convention_ENG

[7] Karsai v. Hungary https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-234151%22]}

[8] https://www.law.cam.ac.uk/people/academic/ss-martin/76676

[9] https://ukconstitutionallaw.org/2024/11/05/stevie-martin-the-decriminalisation-and-regulation-of-assisted-suicide-in-england-and-wales-acknowledging-and-addressing-the-slippery-slope-argument/

Whilst in a later article[10] she notes that this is a speculative position because "*the ECtHR has not directly considered a challenge to the assisted dying laws (statute or jurisprudential in origin) in other ECHR Contracting States […] on the basis that they are discriminatory under Article 14 for excluding some individuals*.", the arguments remain valid and a live ongoing area of discussion.

It is clear to me that such a challenge will be made sooner rather than later, and our AD Law will be open to that challenge.

The recent report of the Assisted Dying Review Panel[11] referred to many of the same sources and ECHR decisions that I have cited in my report. They consider the findings and hypothesise on the potential results of such a challenge, and whilst they may come to a different conclusion to these hypothetical results, there is an inherent consensus that a valid claim could be brought.

In coming to a decision under the AD Law as proposed there is a likelihood that such a decision would be eligible for challenge under Article 14, due to the inequality of treatment, leading to a lengthy decision-making process under ECHR.

Conclusion

In concluding, the first question becomes, whether Article 8 is considered engaged – and, as detailed in the preceding section, there is strong case law and agreement that it is.

The second question is whether the AD Law treats people differently – and the answer is that, as currently drafted, this is exactly what the AD Law will do.

The final question then becomes whether such difference in treatment is justified, or whether we are, as Professor Emily Jackson states, denying access to assisted death to certain individuals, not for their own good "*but in order to protect other hypothetical vulnerable patients."*[12]

If the difference in treatment is not justified, then the AD Law runs the risk of being considered in breach of Article 14, taken together with Article 8.

As can be seen from multiple case laws, there is ambiguity in various areas of Assisted Dying Law that leave them open to interpretation and therefore challenge. The case of Haas v. Switzerland (2011) raised the question of whether the State had failed to provide sufficient guidelines, and the case of Gross v. Switzerland (2013) found that the applicant suffered a considerable degree of anguish arising from uncertainty due to the lack of clear, State-approved guidelines. This was confirmed as a breach of Article 8. We have the opportunity to avoid such ambiguity by getting this right as soon as possible, recognising that the necessity to be terminally ill is discriminatory.

[10] https://ukconstitutionallaw.org/2024/11/27/stevie-martin-differentiation-in-dying-can-limiting-assisted-suicide-to-the-terminally-ill-be-justified/
[11] https://statesassembly.je/getattachment/1e8b1db4-2ba2-4c3f-8171-4fea7cc1b886/S-R-1-2026-Interim-Report-%e2%80%93-Review-of-the-Draft-Assisted-Dying-Legislation.pdf?lang=en-GB&ext=.pdf
[12] https://iai.tv/articles/euthanasia-isnt-a-slippery-slope-auid-2036?_auid=2020

The treatment of non-terminal patients in a manner different to terminal patients is unjustified and as such open to appeal to the Court of Human Rights.

Financial and staffing implications

The changes would require additional time for the Policy team and Legislative Drafting Office. As the framework of legislation is in place such work would be limited to the expansion of criteria in Article 2(2) of the draft Law, along with the inclusion of the necessary safeguards and processes. It is appreciated that this would require additional time and work, however the amended Law would be a more robust whole, without the current potential for discrimination.

Children's Rights Impact Assessment

I consider that this proposition has no direct or indirect impact on children and that the duty to have due regard to the UN Convention on the Rights of the Child does not arise. Accordingly, a Children's Rights Impact Assessment is not required under the Children (Convention Rights) (Jersey) Law 2022.

Appendix 1

Public views and Assembly Decisions

It is important to look at the views of Islanders and to note the overwhelming public opinion in favour of assisted dying.

Public engagement in Jersey has consistently shown strong support for assisted dying.

- 2018 Poll: Bailiwick Express launched a poll which received over 1,000 respondents; In the results 954 respondents (90%+) supported assisted dying.
- A subsequent e-petition titled "Assisted Dying – allow individual of capacity their own end of life choices" was launched calling for assisted dying to be brought in. It received 1,861 signatures.
- In 2019 4insight ran a Survey leading to the publication of the report "Research Report for End-of-Life Choices Jersey". This showed that 86–92% of respondents were in support; 63% stating that an assisted death was "always acceptable."
- In response to this report the Citizens' Jury was established in 2021: In their final report published on 16th September 2021, 78% of the panel supported assisted dying for terminal illness or unbearable suffering.
- 2022–23 Government Consultations: The Government has undertaken multiple public consultations and provided feedback reports in 2022 and 2023.

A number of written responses from stakeholders focused on the inclusion of unbearable suffering in the eligibility criteria: '*an incurable physical medical condition that is giving rise to unbearable suffering that cannot be alleviated in a manner the person deems tolerable*.', with responses accepting the subjective and variable nature of suffering, understanding that it is the person who is suffering who must determine whether their suffering is bearable.[13]

Those in favour of the inclusion of an unbearable suffering (non-terminal) route cited freedom of choice, highlighting unimaginable suffering that might extend for decades in some cases.

One person in favour said: "*This isn't about disability, it's about suffering, and choice for people who feel that they can't go on*".[14]

In May 2024 the Assembly approved assisted dying for terminal illness but rejected inclusion of non-terminal incurable conditions (Route 2) which would have allowed the same choice, the same dignity in death, to be permitted for those persons who have an incurable physical condition but where there is no reasonable expectation of death in a short timeframe

In January 2026 the Assembly voted to approve the draft Assisted Dying (Jersey) Law in principle, with the Articles to return to the Assembly on 24th February 2026 for debate.

[13] https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/Assisted%20dying%20consultation%20feedback%20report.pdf

[14] https://www.bailiwickexpress.com/news/split-views-assisted-dying-those-unbearable-suffering/

Appendix 2

Rebuttal of previously raised arguments

Previous debate

In May 2024 the Assembly approved assisted dying for terminal illness but rejected inclusion of non-terminal incurable conditions (Route 2) which would have allowed the same choice, the same dignity in death, to be permitted for those persons who have an incurable physical condition but where there is no reasonable expectation of death in a short timeframe

In January 2026 the Assembly voted to approve the draft Assisted Dying (Jersey) Law in principle, with the Articles to return to the Assembly on 24th February 2026 for debate.

I wish to touch briefly on some of the arguments put forward by the Assembly during the debate in May 2024 (and some subsequently in January 2026). Considering the closeness of the vote on whether to adopt 'Route 2' – 19 Pour, 27 Contre, with 3 Members absent on States' business, it is worth identifying the main arguments made by those Members generally against assisted dying, or about the use of Route 2.

Problematic definition

> *Deputy Howell –*
> *Let me start with Route 2: unbearable suffering. I fear that unbearable suffering will be hard to define and this route will be highly susceptible to mission creep.*[15]

In the first instance, this Proposition refers to an 'incurable physical medical condition', which is a specific and definable category. It cannot equally be stated that there are no difficulties with the definition of unbearable suffering. However there already exist well-established criteria. For example –

- The Belgian Act defines incurable suffering as a '*medically hopeless state of persistent and unbearable physical […] suffering which cannot be alleviated and which is the result of a serious and incurable condition*'.

- The Netherlands Termination of Life on Request and Assisted Suicide (Review Procedures) Act contains the requirements of 'due care' that must be followed, the first two of which are as follows -
  1. The requirements of due care, referred to in Article 293 second paragraph Penal Code mean that the physician:
  a. holds the conviction that the request by the patient was voluntary and well-considered,
  b. holds the conviction that the patient's suffering was lasting and unbearable,[16]

[15] https://statesassembly.je/publications/hansard/2024/official-report-22nd-may-2024
[16] https://wfrtds.org/dutch-law-on-termination-of-life-on-request-and-assisted-suicide-complete-text/

- A 2019 study of hospice patients in the Netherlands[17] also set out preliminary categories –

  First, suffering must have an underlying medical dimension […] Second, the patient's suffering must be recognizable by the physician as unbearable, based on the standards and values of this specific patient.

- Spanish Law includes the definition of 'serious and incurable disease', defining it as a "*disease which by its nature causes constant and unbearable physical or psychic suffering without the possibility of relief which the person considers tolerable, with a limited life prognosis, in a context of progressive fragility*".[18]

An increasing body of case law also exists, from the Schoonheim case in 1984, wherein the Dutch Supreme Court explicitly stated that unbearable suffering should be understood to include 'loss of dignity', to the most recent Karsai v. Hungary in 2024 wherein the court agreed that "*the disease imposes on the applicant unbearable suffering, both physical and mental*".

It should be noted that the current 'route' adopted by the Assembly and presented within the AD Law also refers to those with unbearable suffering, the criteria for assisted dying set out in 2 (2) (b) being that –

(b) they believe that –
  (i) they cannot bear the suffering that the condition causes them; or
  (ii) they would not be able to bear the suffering that the condition is expected to cause them;

This implies that it is possible to define unbearable suffering when it relates to those suffering from a terminal condition, but not when it relates to a non-terminal but incurable condition.

Disabled persons

In the 2024 debate Deputy Bailhache made the following statement –

> *Route 2 is a special avenue for disabled people. It is not a sufficient answer to the criticism that Route 2 targets disabled people, to state that people with disabilities can make up their own minds about whether to end their lives.*[19]

I would like to take this opportunity to wholeheartedly disagree with this statement and state that I consider the Deputy is wrong in his assertion. The removal of the terminal requirement does not target disabled people; it rather treats all Islanders equally. If any person lacked capacity to make such a decision, they would not be eligible to apply. By implying that disabled persons should not be able to make up their own minds, the Deputy undermines their rights.

[17] Determinants of unbearable suffering in hospice patients who died due to euthanasia: A retrospective cohort study
https://www.tandfonline.com/doi/full/10.1080/07481187.2019.1648338#abstract
[18] https://wfrtds.org/wp-content/uploads/2021/03/Spain-law-EN.pdf
[19] https://statesassembly.je/publications/hansard/2024/official-report-22nd-may-2024

One of the frequently mentioned arguments against the inclusion of non-terminal unbearable suffering is that it "*makes (and reinforces) an "ableist" judgment about the negative value of the lives of people with disabilities*"[20]. This was raised in the Assisted Dying in Jersey Ethical Review Report, along with the concern that it would deprive people with disabilities and chronic illness from equal protection against coercion to undertake an assisted death.

In rebuttal of this position I cannot put it any better than three Professors from the University of Madrid, published in the American Journal of Bioethics in opposition of an ableist argument similar to the above who argued that the ableist argument was fallacious for three main reasons –

(1) There is a lack of empirical evidence proving that people with disabilities are receiving euthanasia at higher rates than those in the general population;
(2) The ableist argument is grounded in a belief that euthanasia sends a demeaning social message about the value of the lives of people with disabilities; and
(3) It uses the rights protections of one group (persons with disabilities) to restrain general rights.

Professor C.A Riddle, Chair of Philosophy, Utica University in New York summed this up in his submissions to the Jersey ethical review consultation –

> "*Neither the practice nor the laws force anyone to seek aid in dying and to suggest that people with disabilities are especially vulnerable to social nudging is to perpetuate the myth that people with disabilities cannot make decisions of their own and need to be protected from themselves*."[21]

Finally, as stated locally during the Assisted Dying workshops, there should be freedom of choice for all - "*I want a choice for me and my body. Why should that be different because I have a disability*?"[22].

Concerns about the potential for greater impact on the disabled members of our community can be offset through the proposed rigorous controls and safeguards. The removal of the terminal requirement does not reduce our obligation of care, rather the opposite.

"It's a Slippery Slope…"

There is a frequent contention that there is an inevitable move from one type of Assisted Dying to the next and then on to some unknown.

Unbearable suffering is subjective. That does not mean that there are no objective tests and restrictions that can be imposed. It does not mean that someone with no medical record or diagnosis can walk straight into an assisted death. It equally does not mean that a vulnerable person who is suffering would not undergo all necessary reviews and processes to assess state of mind and possibility of coercion.

[20] https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/Assisted%20Dying%20in%20Jersey%20Ethical%20Review%20Report.pdf
[21] https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/Assisted%20dying%20consultation%20feedback%20report.pdf
[22] https://statesassembly.je/getmedia/dfffb49d-e8fd-4daf-a1b8-0ef6daeed333/P-18-2024-Add-(2).pdf?ext=.pdf

As cited in the section on Disabled persons above, there is a lack of any empirical data proving that people with disabilities are receiving euthanasia at higher rates than those in the general population. To assert that this is a 'slippery slope' is to ignore that "*every step in the sequence can and has to be knowingly taken after a thorough assessment of the interests and principles at stake and only if this next step can be ethically and legally justified*"[23].

Slippery slope arguments ignore the safeguards in place and the numerous steps that would need to be accomplished in order to access an assisted death – and the fact that there would be a step that required an explicit decision. These steps, and the fact that any changes to these steps would need to be approved by the Assembly, run counter to the arguments that there could be any organic change in the scope of the Law.

Rather than "slipping" down the slope, it is about implementing support for terminal and non-terminal scenarios and thinking of this as the conjunction of free and informed consent, with supportive and diligent processes.

Claims that "the system isn't ready" confuse existing failings with assisted dying

The argument that "the system is imperfect, therefore Assisted Dying cannot function" is a false equivalence.

Assisted dying requires –

- A small specialist team
- Dedicated oversight structures
- Clear, narrow eligibility criteria
- Low volume (estimated ~6–10 cases annually)

This is simpler than complex surgery, oncology, emergency care or mental health services - all of which we already deliver. The structured nature of Assisted Dying through fixed pathways, pre-planned processes, predictable caseloads makes it easier to implement safely compared to most clinical services.

Suicide Prevention is not undermined

In January 2026 Members argued that Assisted Dying 'sends the wrong message' and would increase suicides.

This is not substantiated through studies. Studies relating to the relationship between Assisted Dying and suicide are complex and subject to conflicting interpretations, with studies reporting different outcomes regarding the impact. So whilst it is accurate to state that the introduction of Assisted Dying in other jurisdictions has not led to a decrease in suicides, it is equally inaccurate to state that, as was stated by Deputy Howell on 20th January 2026 that 'it is a fact that where assisted dying has been introduced there has been an increase in the suicide rate."

Assisted Dying is not considered suicide in law, ethics, or practice - it is a clinical pathway for terminal illness, not an impulsive act of despair. Suicide prevention and Assisted Dying address different individuals –

[23] https://www.knmg.nl/actueel/nieuws/nieuwsbericht/euthanasia-in-the-netherlands

Suicide	Assisted Dying
Often impulsive	Always deliberative
Often linked to treatable mental health conditions	Mental illness cannot be driving the request
No oversight	Heavy oversight
Preventable	Not preventable by care; suffering is irreversible
Occurs alone, frequently violently	Occurs peacefully, voluntarily, with family present

Controlled end-of-life decision-making does not undermine efforts to prevent premature deaths by suicide.

Coercive control

Members repeatedly cite examples of coercion around wills, family disputes, or online relationships. But these situations already occur, and occur without oversight.

Assisted dying, by contrast, legally requires –

- Two independent clinical assessments
- Mandatory and repeated capacity checks
- Multidisciplinary evaluation
- Explicit screening for coercion
- Mandatory documentation at every stage
- A legal offence of coercive inducement (maximum 14-year sentence)[24]

This is far more protection than exists for wills, property transfers, or withdrawal of care, all of which currently occur with no equivalent statutory scrutiny.

Those citing coercion rely on hypothetical scenarios. Yet after extensive research it was not possible to locate any proven cases of coercion leading to an assisted death. Data shows that assessments err on the side of caution and that many eligible applicants are refused.[25]

[24] Article 45 of the Draft Assisted Dying (Jersey) Law 202-

[25] Refused and granted requests for euthanasia and assisted suicide in the Netherlands: interview study with structured questionnaire - PMC