

**ANNOTATED CODE OF MARYLAND
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TITLE 5. DEATH

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SUBTITLE 1. "BODY" DEFINED

5-101. "Body" defined.

In this title, "body" means a dead human body.

SUBTITLE 2. DETERMINATION OF DEATH

§ 5-201. Scope of subtitle.

Notwithstanding any other law, a pronouncement of death under this subtitle shall be used for all purposes in this State, including the trials of civil and criminal cases.

§ 5-202. Cessation of circulatory and respiratory or brain functions.

(a) Determination of death.- An individual is dead if, based on ordinary standards of medical practice, the individual has sustained either:

- (1) Irreversible cessation of circulatory and respiratory functions; or
- (2) Irreversible cessation of all functions of the entire brain, including the brain stem.

(b) Removal of organ.-

(1) This subsection does not apply to the removal of a vital organ while the individual is alive, if the individual gives informed consent to the removal.

(2) A pronouncement of death under this section shall be made before any vital organ is removed for transplantation.

§ 5-203. Absence of brain function.

Repealed by Acts 1982, ch. 327, effective July 1, 1982.

SUBTITLE 3. POSTMORTEM EXAMINERS COMMISSION

§ 5-301. Definitions.

(a) In general.- In this subtitle the following words have the meanings indicated.

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(b) Commission.- "Commission" means the State Postmortem Examiners Commission.

(c) Medical examiner's case.- "Medical examiner's case" means a death that a medical examiner is required by law to investigate.

§ 5-309. Medical examiner's cases.

(a) Deaths to be investigated.-

(1) A medical examiner shall investigate the death of a human being if the death occurs:

(i) By violence;

(ii) By suicide;

(iii) By casualty;

(iv) Suddenly, if the deceased was in apparent good health or unattended by a physician;
or

(v) In any suspicious or unusual manner.

(2) A medical examiner shall investigate the death of a human fetus if:

(i) Regardless of the duration of the pregnancy, the death occurs before the complete expulsion or extraction of the fetus from the mother; and

(ii) The mother is not attended by a physician at or after the delivery.

(b) Notification of medical examiner.- If a medical examiner's case occurs, the police or sheriff immediately shall notify the medical examiner and State's Attorney for the county where the body is found and give the known facts concerning the time, place, manner, and circumstances of the death.

(c) Investigation by medical examiner.- Immediately on notification that a medical examiner's case has occurred, the medical examiner or an investigator of the medical examiner shall go to and take charge of the body. The medical examiner or the investigator shall investigate fully the essential facts concerning the medical cause of death and, before leaving the premises, reduce these facts and the names and addresses of witnesses to writing, which shall be filed in the medical examiner's office.

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(d) Evidence.- The medical examiner or the investigator shall take possession of and deliver to the State's Attorney or the State's Attorney's designee any object or article that, in the opinion of the medical examiner or the investigator, may be useful in establishing the cause of death.

(e) Personal property.-

(1) If the next of kin of the deceased is not present at the investigation, the police officer or sheriff at the investigation or, if a police officer or sheriff is not present, the medical examiner or the investigator shall:

(i) Take possession of all property of value found on the body;

(ii) In the report of the death, make an exact inventory of the property; and

(iii) Deliver the property to the appropriate sheriff or police department.

(2) The sheriff or police department shall surrender the property to the person who is entitled to its possession or custody.

(f) Unexpected death of child.-

(1) If the case involves the unexpected death of a child, the medical examiner shall notify the chairperson of the local child fatality review team for the county in which the child resided.

(2) If the case involves the death of a child and the death is believed to be caused by abuse or neglect, or there is evidence suggesting that the child was a victim of abuse or neglect, the Office of the Chief Medical Examiner shall orally report the findings and deliver a copy of the child's final autopsy report to the local department of social services and the local law enforcement agency of the county in which the child last resided in accordance with § 5-704 of the Family Law Article.

§ 5-310. Autopsies.

(a) When cause of death established.- If the cause of death is established to a reasonable degree of medical certainty, the medical examiner who investigates the case shall file in the medical examiner's office a report on the cause of death within 30 days after notification of the case.

(b) Autopsy required; exception.-

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(1) If the medical examiner who investigates a medical examiner's case considers an autopsy necessary, the Chief Medical Examiner, a deputy chief medical examiner, an assistant medical examiner, or a pathologist authorized by the Chief Medical Examiner shall perform the autopsy.

(2) If the family of the deceased objects to an autopsy on religious grounds, the autopsy may not be performed unless authorized by the Chief Medical Examiner or by the Chief Medical Examiner's designee.

(3) (i) In accordance with normal standards of medical practice, the medical examiner performing the autopsy may retain any medical evidence, tissue, or organ needed to carry out the duties of this subtitle.

(ii) The medical examiner shall dispose of any medical evidence, tissue, or organ under subparagraph (i) of this paragraph in accordance with normal standards of medical practice.

(c) Autopsy on fire fighter.-

(1) A medical examiner shall conduct an autopsy of any fire fighter and any sworn personnel of the State Fire Marshal's Office who dies in the line of duty or as a result of injuries sustained in the line of duty.

(2) The autopsy shall include:

(i) A toxicological analysis for toxic fumes;

(ii) Gross and microscopic studies of heart, lung, and any other tissue involved;

(iii) Appropriate studies of blood and urine; and

(iv) Appropriate studies of body fluids and body tissues.

(3) If the medical examiner determines toxic fumes were the cause of death, the medical examiner shall:

(i) Investigate to the extent possible the source of the fumes; and

(ii) Prepare a written report on the specific effects of the fumes on human tissue.

(4) The autopsy and analysis shall be sufficient to determine eligibility for benefits under the federal Public Safety Officers' Benefits Act of 1976.

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(d) Findings; correction of findings and conclusions.-

(1) The individual who performs the autopsy shall prepare detailed written findings during the progress of the autopsy. These findings and the conclusions drawn from them shall be filed in the office of the medical examiner for the county where the death occurred. The original copy of the findings and conclusions shall be filed in the office of the Chief Medical Examiner.

(2) (i) Except in a case of a finding of homicide, a person in interest as defined in § 10-611(e)(3) of the State Government Article may request the medical examiner to correct findings and conclusions on the cause and manner of death recorded on a certificate of death under § 10-625 of the State Government Article within 60 days after the medical examiner files those findings and conclusions.

(ii) If the Chief Medical Examiner denies the request of a person in interest to correct findings and conclusions on the cause of death, the person in interest may appeal the denial to the Secretary, who shall refer the matter to the Office of Administrative Hearings. A contested case hearing under this paragraph shall be a hearing both on the denial and on the establishment of the findings and conclusions on the cause of death.

(iii) The administrative law judge shall submit findings of fact to the Secretary.

(iv) After reviewing the findings of the administrative law judge, the Secretary, or the Secretary's designee, shall issue an order to:

1. Adopt the findings of the administrative law judge; or
2. Reject the findings of the administrative law judge, and affirm the findings of the medical examiner.

(v) The appellant may appeal a rejection under subparagraph (iv)2 to a circuit court of competent jurisdiction.

(vi) If the final decision of the Secretary, or of the Secretary's designee, or of a court of competent jurisdiction on appeal, establishes a different finding or conclusion on the cause or manner of death of a deceased than that recorded on the certificate of death, the medical examiner shall amend the certificate to reflect the different finding or conclusion under §§ 4-212 and 4-214 of this article and § 10-625 of the State Government Article.

(vii) The final decision of the Secretary, or the Secretary's designee, or of a court under this paragraph may not give rise to any presumption concerning the application of any provision of or the resolution of any claim concerning a policy of insurance relating to the deceased.

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(viii) If the findings of the medical examiner are upheld by the Secretary, the appellant is responsible for the costs of the contested case hearing. Otherwise, the Department is responsible for the costs of the hearing.

(e) Fee for pathologist.- The Chief Medical Examiner shall set a reasonable fee for performing an autopsy by an authorized pathologist.

SUBTITLE 4. ANATOMY BOARD

§ 5-401. Definitions.

(a) In general.- In this subtitle the following words have the meanings indicated.

(b) Board.- "Board" means the State Anatomy Board.

(c) Medical study program.- "Medical study program" means any research or teaching activity conducted at or under the sponsorship of a hospital or other institution devoted to research, teaching, or study of medicine, dentistry, or any related health profession or advanced human biological science.

(d) Public officer.- "Public officer" means an officer of this State or of a county or other political subdivision of this State.

§ 5-406. Unclaimed bodies.

(a) Notice to Board.-

(1) A public officer who has control of a body immediately shall notify the chairman of the Board if, after a reasonable search, the public officer has not found a person who will take control of the body for its final disposition.

(2) Subject to the limitations imposed on nursing homes under § 10-214 of the Human Services Article, any other person who has control of a body may notify the Board if, after a reasonable search, the person has not found a person who will take control of the body for its final disposition.

(b) Removal to designated morgue.-

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(1) Subject to the time limitations in this subsection, when the Board is notified of the existence of a body, the Board may remove the body to a morgue in Baltimore City that the Board designates for that purpose.

(2) If the person who notifies the Board can refrigerate the body suitably, the body may be removed only at the expiration of 72 hours after death.

(3) If the person who notifies the Board cannot refrigerate the body suitably, the body may be removed as soon as feasible after death, and, on arrival at the morgue, shall be refrigerated until the expiration of 72 hours after death.

(c) Control after 72 hours; embalming; claim of body.-

(1) On expiration of 72 hours after death, the body shall be under the exclusive control of the Board and may be embalmed.

(2) If the body is embalmed, it shall be embalmed in a proper manner by an individual whom the Board designates.

(3) Any relative or friend of the deceased may claim the body and, on payment to the Board of its cost of moving and embalming the body, shall receive it.

(4) The Board may waive its costs under this section upon a showing of hardship by the relative or friend.

§ 5-406.1. Donated body.

(a) Notice to Board.- Any person who has custody of a donated body immediately shall notify the chairman of the Board.

(b) Removal to designated morgue.- When the Board is notified of the existence of a donated body, the Board may remove the body to a designated morgue in Baltimore City.

(c) Exclusive control of Board; embalming.-

(1) The donated body shall be under the exclusive control of the Board and may be embalmed.

(2) If the body is embalmed, it shall be embalmed in a proper manner by an individual whom the Board designates.

[1982, ch. 368; 1991, ch. 68.]

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§ 5-407. Distribution and use of bodies or body parts.

The Board shall first distribute bodies or body parts that are under its exclusive control equitably among the schools described in § 5-403 of this subtitle, and then, at the Board's discretion, distribute bodies or body parts to other medical study programs. These bodies or body parts may be used only for the promotion and application of medical sciences.

§ 5-408. Buying, selling, or transporting bodies.

(a) Buying or selling bodies or human organs.-

(1) A person may not sell or buy any body or any part of a body that is under the exclusive control of the Board.

(2) A person other than a nonprofit organization that qualifies under § 501 (c) (3) of the Internal Revenue Code, may not sell, buy, or act as a broker for a profit in the transfer of any human organ that:

(i) Is removed from a human body that is alive or dead at the time of removal; and

(ii) Is not under the exclusive control of the Board.

(3) In this section, "human organ" does not include blood and plasma.

(b) Transporting.-

(1) Except as provided in paragraphs (2) and (3) of this subsection, a person may not send, transport, or permit or cause to be sent or transported out of the State any body or any part of a body that is under the exclusive control of the Board.

(2) The Board may authorize, by regulation, the transporting of human specimens under its exclusive control to an out-of-state medical study program, provided that:

(i) The needs of the schools of the State are met;

(ii) The requesting party demonstrates the need for a specimen;

(iii) The circumstances of the request are that:

1. No other sufficient source of specimens within the requesting state exists; or

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2. A preexisting organ tissue donation was made by an individual in compliance with the Uniform Donor Act;

(iv) The requesting party bears the responsibility for transporting and the specialized care of the specimen and all associated costs; and

(v) The Board retains the right of exclusive control of the specimen including the final disposition when appropriate or necessary to fulfill an obligation to return the remains of a donated specimen to the donor's family.

(3) The Board may authorize a physician, teacher, demonstrator, or investigator of advanced human biological sciences to send or transport human specimens out of the State for use by medical study programs.

§ 5-408.1. Disposition of body by will.

Except as provided in § 5-408 (a) (2) of this subtitle, this subtitle does not deny the right of a donor to provide by last will and testament or by contract for the ultimate disposition and repose of the donor's last remains.

SUBTITLE 5. MISCELLANEOUS PROVISIONS

§ 5-501. Consent for postmortem examination.

(a) In general.- Consent for a postmortem examination of a body by a physician is sufficient if the consent is given as provided in this section.

(b) Persons authorized to consent.-

(1) The consent may be given by any one of the following persons if that person, whether alone or with another, has assumed control of the body for its final disposition:

(i) A parent;

(ii) A spouse;

(iii) A domestic partner;

(iv) A child;

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(v) A guardian;

(vi) A next of kin; or

(vii) In the absence of these persons, any other person.

(2) If a person does not assume control of a body under paragraph (1) of this subsection, the consent may be given by the State Anatomy Board.

(c) Form of consent.- The consent may be in the form of:

(1) A written document;

(2) A telegram; or

(3) A recorded telephonic or other recorded message.

§ 5-502. Cremation - Required identification and authorization.

(a) Scope of section.- This section does not apply to the disposition of a body by a school of medicine or dentistry.

(b) In general.- Except as otherwise provided in this section, a person may not cremate a body until it has been identified by:

(1) The next of kin;

(2) A person who is authorized to arrange for final disposition of the body under §§ 5-508 through 5-512 of this subtitle; or

(3) A medical examiner.

(c) Delegation of authority.- If a person who is authorized to arrange for final disposition of a body is not available to identify the body and authorize cremation, that person may delegate that authority to § another person by sending to the delegate an electronic communication that contains the name, address, and relationship of the sender to the deceased and the name and address of the individual to whom authority is delegated. Written authorization shall follow by mail but does not take precedence over the electronic communication authorizing the identification and cremation.

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5-503. Cremation - Time interval.

A person may not cremate a body until at least 12 hours after death.

§ 5-504. Transporting to crematory.

A person may not transport a body to a crematory without using a cot and pouch or receptacle.

§ 5-505. Use of casket.

(a) Casket not required.- Except as provided in subsection (b) of this section, a person may not require that a cremation be performed with a casket. However, the use of a simple container may be required.

(b) Use of casket.- The person arranging for final disposition of a body may specify that a casket:

- (1) Be used before cremation;
- (2) Be consumed during cremation;
- (3) Be used after cremation; or
- (4) Not be used before, during, or after cremation.

§ 5-506. Control of body by health officer.

(a) Power of health officer.- A health officer may take control of a body that is being kept in a room where an individual lives and that is in a condition that endangers an individual in the house where the body is kept if:

- (1) At least 3 individuals living near the house or a physician asks the health officer, in writing, to order final disposition of the body;
- (2) The health officer issues an order for final disposition, within a time period stated in the order; and
- (3) Final disposition of the body is not made within that time.

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(b) Prohibited act.- A person may not obstruct the carrying out of an order of a health officer under this section.

§ 5-507. Penalty.

(a) Violations of §§ 5-502 through 5-505.- A person who violates any provision of § 5-502, § 5-503, § 5-504, or § 5-505 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

(b) Violations of § 5-506.- A person who violates any provision of § 5-506 (b) of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$200 or imprisonment not exceeding 6 months.

§ 5-508. Definitions.

(a) In general.- In this subtitle the following words have the meanings indicated.

(b) Authorizing agent.- "Authorizing agent" means the individual who has legal authority to arrange for and make decisions regarding the final disposition of a dead human body, including by cremation.

(c) Cremation.- "Cremation" means the disposition of a dead human body by means of incineration.

(d) Crematory.- "Crematory" is a building in which cremations are performed.

(e) Decedent.- "Decedent" means a dead human being.

(f) Practitioner.- "Practitioner" means a person who is licensed by the State as a funeral director, mortician, or surviving spouse licensee to practice mortuary science.

(g) Pre-need contract.- "Pre-need contract" means an agreement prior to the time of death between a consumer and a practitioner to provide any goods and services regarding the final disposition of a dead human body.

§ 5-509. Disposition of body other than by will.

(a) Disposition of one's own body - Document or pre-need contract.- Any individual who is 18 years of age or older may decide the disposition of the individual's own body after

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that individual's death without the predeath or post-death consent of another person by executing a document that expresses the individual's wishes regarding disposition of the body or by entering into a pre-need contract.

(b) Same - Formalities.- In order to be valid, any document executed under subsection (a) of this section must be written and signed by the individual in the presence of a witness, who, in turn, shall sign the document in the presence of the individual.

(c) Priority of disposition authority in absence of writing.- Unless a person has knowledge that contrary directions have been given by the decedent, if a decedent has not executed a document under subsection (a) of this section, the following persons, in the order of priority stated, have the right to arrange for the final disposition of the body of the decedent, including by cremation under § 5-502 of this subtitle:

- (1) The surviving spouse or domestic partner of the decedent;
- (2) An adult child of the decedent;
- (3) A parent of the decedent;
- (4) An adult brother or sister of the decedent;
- (5) A person acting as a representative of the decedent under a signed authorization of the decedent;
- (6) The guardian of the person of the decedent at the time of the decedent's death, if one has been appointed; or
- (7) In the absence of any person under paragraphs (1) through (6) of this subsection, any other person willing to assume the responsibility to act as the authorizing agent for purposes of arranging the final disposition of the decedent's body, including the personal representative of the decedent's estate, after attesting in writing that a good faith effort has been made to no avail to contact the individuals under paragraphs (1) through (6) of this subsection.

(d) Authorizing agents - In general.-

(1) Subject to paragraph (2) of this subsection, if a decedent has more than one survivor under subsection (c)(1) through (4) of this subsection, any adult child, parent, or adult brother or sister of the decedent who confirms in writing to a practitioner that all of the other members of the same class have been notified may serve as the authorizing agent

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for purposes of § 5-502 of this subtitle unless the practitioner receives a written objection to the cremation from another member of that class within 24 hours.

(2) If a decedent has more than one survivor under subsection (c)(1) through (4) of this section, the majority of a class may serve as the authorizing agent.

(e) State as authorizing agent.- In the case of an individual whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent for purposes of § 5-502 of this subtitle.

(f) Nursing homes or private institutions as authorizing agents.- In the case of an individual who has donated the individual's body to medical science or whose death occurred in a nursing home or other private institution, a representative of the institution to which the body was donated or in which the decedent died shall authorize cremation for purposes of § 5-502 of this subtitle if the decedent executed cremating authorization forms and the institution is charged with making arrangements for the final disposition of the body.

§ 5-510. Same - Failure to agree on disposition.

(a) Petition to circuit court.-

(1) If the majority of individuals under § 5-509 (c) of this subtitle cannot agree on the arrangements, any individual specified in § 5-509 (c) of this subtitle or the practitioner who has custody of the body, or both, may file a petition in the circuit court for the county in which the decedent was domiciled at the time of death or the county in which the body is located requesting the court to decide the final disposition of the body.

(2) The practitioner may add the court costs associated with a petition under this subsection to the costs of final disposition.

(b) Liability of practitioner pending final orders.- In the event of a disagreement under subsection (a) of this section, a practitioner is not liable for refusing to accept the body or to inter or otherwise dispose of the body of the decedent or complete the arrangements for the final disposition of the body until the practitioner receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the body.

(c) Right of practitioner to preserve body until final orders.- If the practitioner retains the body for final disposition in accordance with a court order or written agreement among

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the parties, the practitioner may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision and may add the costs of embalming and refrigeration and sheltering to the final disposition costs.

(d) Duty to bring action; civil or criminal liability.-

(1) This section may not be construed to require or to impose a duty upon a practitioner to bring an action under this section.

(2) A practitioner may not be held criminally or civilly liable for choosing not to bring an action under this section.

§ 5-511. Reliance on authorizing agent's representations; duty to investigate; filing to become authorizing agent.

(a) Reliance on representations of authorizing agent.- A practitioner and an operator of a crematory may rely on the representations made by an authorizing agent and are not guarantors of the reliability of those representations.

(b) No duty of independent investigation.- A practitioner and an operator of a crematory have no responsibility to contact or to independently investigate the existence of any next of kin of the decedent.

(c) Filing to become authorizing agent.- An individual may file a petition with the appropriate court to obtain the authority to be authorizing agent:

(1) If the individual alleges that permitting one or more of the individuals with priority under § 5-509 (c) of this subtitle to authorize arrangements for the final disposition of the body of a decedent may cause substantial injustice; or

(2) If, considering all the circumstances, an individual other than an individual with priority under § 5-509 (c) of this subtitle had a closer personal affinity to the decedent and should be allowed to make the arrangements.

(d) Suspension of arrangements pending final decision.- Pending the outcome of a petition filed under this section, a practitioner shall suspend any arrangements with the individuals under § 5-509 (c) of this subtitle.

§ 5-512. Authorizing agent as personal representative not required; documents negating cremation.

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(a) Authorizing agent as personal representative.- A practitioner or an operator of a crematory may not require an authorizing agent to obtain appointment as personal representative of the decedent's estate as a condition precedent to making final arrangements or authorizing cremation of a decedent.

(b) Documents negating wish for cremation.- A person may not authorize cremation when a decedent has left instructions in a document that the decedent does not wish to be cremated.