

**AFTERLIFE RIGHTS IN THE CARCERAL SYSTEM:
A CALL TO RECOGNIZE INDIVIDUAL AND FAMILIAL
DIGNITY**

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What happens after death? Dignitary interests in corpses – both legal and normative – do not cease with the person. This Note posits that the interest in bodily autonomy after death belongs to both the deceased individual and their family. However, not all dead people are treated equally. Incarceration deprives the individual and their loved ones of bodily control after death. Five ongoing lawsuits against the University of Alabama Birmingham (UAB), brought by families of five deceased inmates, claim that UAB's Department of Pathology removed internal organs from dead inmates at the Alabama Department of Corrections without consent from family members.

Bodily integrity outlives the individual, as the family holds a dignitary interest in bodily remains following the death of a loved one. The history of remains disposal laws, which developed in response to cultural and religious traditions revering the dead, support the notion that bodily sanctity persists after death. The core of this Note demonstrates that deceased incarcerated individuals do not have the same 'afterlife rights' as deceased non-incarcerated individuals at three after-death stages: (1) death notification and registration, (2) autopsy performance, and (3) remains disposal. Alabama serves as a case study.

Taken together, disparate treatment at each stage demonstrates that carceral status-based discrimination outlives the individual. Such unequal treatment is borne onto the families of the deceased. Ultimately, this Note proposes an amendment to the Model Penal Code as a means to address the gap in treatment between incarcerated corpses and non-incarcerated corpses.

INTRODUCTION

The United States faces a shortage of organs for transplants, science, and medical education. Markets to obtain body parts have emerged as a result. Demand for organs has bolstered the “body broker” trade, where companies dissect and sell body parts to medical schools.¹ The body broker industry requires consent from families to use organs for “advancement of science and education.”² At the same time, a less visible and more expedient method of organ harvesting operates. Medical school personnel

¹ Dwayne Bray, *After Kelvin Moore Died in an Alabama Prison, His Body Was Returned without Organs. His Family Wants Answers*, ANDSCAPE (Jan. 30, 2024), <https://andscape.com/features/alabama-prison-kelvin-moore-missing-organs/>.

² *Id.*

retain and utilize inmate organs from deceased prisoners without family consent.³

Brandon Clay Dotson and Charles Edward Singleton died while incarcerated in Alabama prisons.⁴ When their bodies were returned to their families, both were missing organs.⁵ In December 2023, the family of Brandon Clay Dotson filed a federal lawsuit alleging that upon receipt, Dotson's body was in an "advanced state of decomposition" and missing his heart.⁶ In January 2024, the family of Charles Edward Singleton added a claim to the lawsuit, alleging that Singleton's body was missing all internal organs upon return.⁷ Both families assert that the University of Alabama-Birmingham's Department of Pathology performed an autopsy.⁸ The family of Kelvin Moore was the third family in 2024 to report organs missing from their loved ones' body while in the custody of the Alabama Department of Corrections.⁹

The University of Alabama Birmingham (UAB) has conducted autopsies for the state's prison system since 2006.¹⁰ Statistically, Black families are more likely to be impacted by autopsy abuse. In 2022, Black people comprised 26.8% of Alabama's population.¹¹ 52.7% of Alabama's prison

³ *Id.*

⁴ *Alabama Prisoners' Bodies Returned to Families with Hearts, Other Organs Missing, Lawsuit Claims*, ASSOCIATED PRESS (Jan. 11, 2024), <https://apnews.com/article/alabama-prisons-inmate-bodies-organs-missing-deaf18ac866955fdf4945e295c21dd46#>.

⁵ *Id.*

⁶ Daniel Johnson, *Alabama Prison System Faces Outrage as Multiple Lawsuits Allege Unauthorized Organ Removals from Deceased Inmates*, BLACK ENTERPRISE (Jan. 31, 2024), <https://www.blackenterprise.com/alabama-prison-system-organ-removal-deceased-inmates/>.

⁷ *Id.*

⁸ Cynthia Gould, *2nd Such Case: Inmate's Organs, Including Brain, Missing from Decomposing Body*, ABC15NEWS (Jan. 10, 2024), <https://wpde.com/news/nation-world/-brain-missing-autopsy-decomposing-body-2nd-case-revealed-alabama-inmate-body-found-missing-organs-charles-edward-singleton-brandon-dotson-department-corrections-pathology>.

⁹ Cynthia Gould, *Brother Retrieves Inmate's Organs Missing after Autopsy at Alabama Hospital*, ABC15News (Jan. 31, 2024), <https://wpde.com/news/nation-world/brother-retrieves-inmates-organs-missing-after-autopsy-at-alabama-hospital-simone-moore-kelvin-moore-fentanyl-overdose-uab-hospital-birmingham-lawsuit-autopsy-posthumously-robbed-missing>.

¹⁰ Brandi C. McCleskey, Stephanie D. Reilly & Dan Atherton, *The Value of Outsourcing Selected Cases in a Medical Examiner Population: A 10-Year Experience*. J. FORENSIC SCI., 62(1), 99-102 (2017), <https://doi.org/10.1111/1556-4029.13269>.

¹¹ Eddie Burkhalter, *New Justice Department Report Shows Incarceration Has Increased in Alabama, With No Evidence of Public Safety Benefits*, ALA.APPLESEED CTR. FOR LAW & JUST. (Dec. 11, 2023), <https://alabamaappleseed.org/author/eddie-burkhalter/new-justice-department-report-shows-incarceration-has-increased-in-alabama-with-no-evidence-of-public-safety->

population is Black.¹² Since 1978, the Black incarceration rate has increased 193 percent in Alabama.¹³ Two of the three previously mentioned deceased inmates missing internal organs, Charles Edward Singleton and Kelvin Moore, were Black men.

No federal law governs the sale of corpses or body parts for use in research or education, and few state laws govern dissection and sale of human body parts.¹⁴ Only New York, Virginia, Oklahoma, and Florida closely monitor body part donations and sales.¹⁵ State law enables and perpetuates bodily abuse of deceased incarcerated individuals. Notification of death requirements to families and subsequent treatment of a dead body is disparate based on the deceased's incarceration status.

The Note will proceed as follows. Part I provides a normative approach, explaining why bodily sanctity after death directly impacts those closest to the deceased. Families hold custody over disposal of the body, and hospitals serve as intermediaries to determine the cause of death. The family of an individual who dies while incarcerated should be, but is not presently, afforded the same legal rights as compared to families of free individuals. This Note does not negate the fact that hospitals perpetuate abuse against non-incarcerated deceased persons. Such abuse, however, is exacerbated when the deceased is incarcerated. Families are also victims in this cycle of carceral abuse.

Professor Leslie Meltzer Henry clarifies the disorder surrounding 'dignity' and the terms' complicated legal usage. Professor Henry provides a framework that captures the range of ways the Court has utilized the term and surveys dignity's judicial function in contemporary constitutional jurisprudence.¹⁶ This Note expands upon Professor Henry's conceptualization and argues that her theorization must be extended to include deceased prisoners. Legal precedent supports this contention. In *Brown v. Plata*, the Supreme Court held that prisoners in confinement retain some degree of human dignity despite their lawful incarceration.¹⁷ The Court

benefits/#:~:text=Black%20Alabami-ans%20made%20up%2026.8,and%20the%20U.S.%20Census%20Bureau.

¹² *Id.*

¹³ *Incarceration Trends in Alabama*, VERA INSTITUTE (Dec. 2019) <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-alabama.pdf>.

¹⁴ Brian Grow and John Shiffman, *Cashing in on the Donated Dead: The Body Trade*, REUTERS INVESTIGATES (Oct. 24, 2017), <https://www.reuters.com/investigates/special-report/usa-bodies-brokers/>.

¹⁵ *Id.*

¹⁶ See generally Leslie M. Henry, *The Jurisprudence of Dignity*, 160 U. PA. L. REV. 169 (2011), Available at: https://scholarship.law.upenn.edu/penn_law_review/vol160/iss1/3.

¹⁷ Benjamin F. Krolkowski, *Brown v. Plata: The Struggle to Harmonize Human Dignity with the Constitution*, 33 PACE L. REV. 1255 (2013) <https://digital-commons.pace.edu/plr/vol33/iss3/9>; See *Brown v. Plata*, 563 U.S. 493 (2011) ("As a consequence of their own actions, prisoners may be deprived of rights that

emphasized that federal courts must therefore enforce the constitutional rights of prisoners when they are violated, even if this results in the release of some individuals from captivity.¹⁸ This line of argumentation extends to deceased prisoners. Dignity survives death.

Part II presents legal support for the argument that families of deceased incarcerated individuals should be treated with dignity, similar to families of deceased non-incarcerated individuals. Case law, spanning from the nineteenth century to the present mandates respect for the deceased's body and respect for the families of the deceased.

Part III examines three phases of the after-death process – (1) death notification and registration, (2) autopsy performance, and (3) remains disposal – to highlight disparate treatment between incarcerated and non-incarcerated individuals and their families. Bodily integrity of the deceased individual is violated at each stage, and this abuse is borne onto the families of the deceased. Alabama serves as a case study to illustrate this claim.

Part IV provides solutions to address the gap in treatment between incarcerated corpses and non-incarcerated corpses. The Model Penal Code § 250.10 criminalizes bodily abuse: “Except as authorized by law, a person who treats a corpse in a way that he knows would outrage ordinary family sensibilities commits a misdemeanor.” This Note argues that all states should adapt their criminal codes to include a provision that protects the deceased against bodily abuse, specifically considering the deceased's family to determine what constitutes abuse. Ultimately, this Note elucidates how laws governing three after-death stages – notification, autopsy, and remains return – disproportionately harm deceased incarcerated individuals and their families.

I. A NORMATIVE APPROACH TO INDIVIDUAL AND FAMILIAL INTERESTS IN BODILY SANCTITY

A. *Dignitary Interests in Bodily Sanctity*

The dignity principle underscores that every human being possesses an intrinsic worth.¹⁹ Dignity as a status is not achieved through age or education and should be afforded to all.²⁰ French sociologist Émile

are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment.”).

¹⁸ *Id.*

¹⁹Mugambi Jouet, *Mass Incarceration Paradigm Shift?: Convergence in an Age of Divergence*, 109 J. CRIM. L. & CRIMINOLOGY 703, 712 (2019), <https://scholarlycommons.law.northwestern.edu/jclc/vol109/iss4/1712>.

²⁰ John P. Fantuzzo, *Recognizing Human Dignity Behind Bars: A Moral Justification for College-in-Prison Programs*, THEORY AND RSCH. IN EDUC. 20, no. 1, 26–43, 29 (Mar. 2022).

Durkheim observed that the norm of dignity can offset harsh punishments by leading people to identify with offenders at a human level: “[w]hat concerns man concerns us all; because we are all men. The feelings protecting human dignity thus are personally dear to us.”²¹ Both the victim and offender have value, as it would be “a contradiction to avenge the human dignity violated in the person of the victim, by violating it in the person of the culprit.”²²

Dignity as a term, which originated in religious writings and philosophy texts, has been adopted by the Supreme Court in the criminal context.²³ Professor Leslie Meltzer Henry clarifies the disorder surrounding ‘dignity’ and the term’s complicated legal usage.²⁴ Professor Henry’s approach captures the range of ways the Court has utilized the term and surveys dignity’s judicial function in contemporary constitutional jurisprudence.²⁵ Specifically, Henry argues that the term’s main function is “to give weight to substantive interests that are implicated in specific contexts.”²⁶ Henry considers *collective virtue as dignity* as “less concerned with individual dignity per se than with how a society values the totality of human life.”²⁷ Henry’s theorization does not diminish the individual’s bodily sanctity after death, but rather emphasizes that death does not solely impact one person. Death implicates the deceased’s loved ones and wider social network.

In a similar vein, Professor Jonathan Simon emphasizes that universal individual dignity reflects a wider societal interest.²⁸ Simon denotes the term “decent society” to mean “societies that value the dignity of their members and act on that through regulated labor markets, civil rights laws, and welfare institutions.”²⁹ Simon writes that “[o]nly a decent society would value civilized security over that which might be as effective but for its negative effects on outsider groups. Only a civilized security institution can reliably deliver a dignified condition in custody.”³⁰ Dignified incarceration seems like an oxymoron – but this should not be the case. Common dignified conditions during life and after death reflects a societal interest in equality of treatment between incarcerated and non-incarcerated individuals. An individual’s burial is within the public interest

²¹ Jouet, *supra* note 19, at 729.

²² *Id.* at 730.

²³ *Id.* at 734.

²⁴ See generally Leslie M. Henry, *The Jurisprudence of Dignity*, 160 U. PA. L. REV. 169 (2011).

²⁵ *Id.*

²⁶ *Id.* at 190.

²⁷ *Id.* at 221.

²⁸ Jonathan Simon, *Knowing What We Want: A Decent Society, A Civilized System of Justice & A Condition of Dignity*, DAEDALUS 151, no. 1, 2022, at 170–80, 172. <https://www.jstor.org/stable/48638137>.

²⁹ *Id.*

³⁰ *Id.*

“because a decent burial is part of our collective self-expression of values, of feelings, of affection, of individual dignity, and of human worth.”³¹ This section examines how both a deceased individual and their family maintain an interest in bodily integrity and concludes that this right must be respected regardless of carceral status.

1. Individual Interests in Bodily Integrity

Individual choice over what happens to the body after death – cremation, burial, or something in between – provides a sense of comfort to the living.³² The choice is not limited to remains disposal, but also extends to organ donation. The interest in one’s bodily integrity outlives the individual. While living, people care about what happens to their bodies after they die, and they seek assurance that these wishes will be respected.³³ To contravene this wish would upset the deceased and their loved ones.³⁴ The choice is central to the self and the conceptualization of autonomy.³⁵ Accordingly, individual interests in posthumous bodily integrity can “ground legal rights.”³⁶

2. Familial and Societal Interests in Bodily Integrity

Posthumous treatment of the corpse has an impact on surviving friends and family. It follows that loved ones and family can be harmed by the “careless treatment of a loved one’s remains.”³⁷ Having a loved one’s organs removed for transplantation without pre-approval can also be a source of harm “if it is disturbing to surviving family members.”³⁸ Interests in remains and remains disposal do not belong solely with the individual. Familial sensibilities also inform bodily integrity.

Outside of the family, society at large has an interest in posthumous bodily integrity. Following the dead’s wishes reflects that society at large both respects the deceased and keeps its promises regardless of whether the party is alive to see that promise fulfilled.³⁹ A broader dignity interest in carrying out the wishes of the dead takes shape.⁴⁰ Dignitary harm to

³¹ Mark E. Wojcik, *Discrimination After Death*, 53 OKLA. L. REV. 389, 394 (2000), <https://digitalcommons.law.ou.edu/olr/vol53/iss3/3>.

³² Hilary Young, *The Right to Posthumous Bodily Integrity and Implications of Whose Right it Is*, 14 MARQ. ELDER’S ADVISORY 197, 201 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2637315.

³³ *Id.* at 200.

³⁴ *Id.*

³⁵ *Id.* 214.

³⁶ *Id.* 213.

³⁷ *Id.* at 232.

³⁸ *Id.*

³⁹ *Id.* at 201

⁴⁰ *Id.* at 223.

society as a whole may ensue where wishes of the dead are not respected, even if those wishes are not publicly revealed.⁴¹

B. Dignitary Interests in Bodily Sanctity in the Carceral Context

The family of an individual who dies while incarcerated should be, but is not presently, afforded the same legal rights and obligations as compared to families of free individuals. Imprisonment necessarily entails impact on the incarcerated individual and their loved ones. Ultimately, incarceration as a status should not deprive the individual and their loved ones of the interest in bodily sanctity.

1. Imprisonment Affects the Individual and the Individual's Loved Ones

While the incarcerated individual most directly experiences the carceral system, the family weathers abuse. An individual's experience in the criminal justice system is borne onto future generations. Divorce is more common among current and formerly incarcerated men.⁴² Mothers are more likely to engage in harsh parenting and experience depression when fathers are incarcerated.⁴³ Applicants to public-sector jobs and private-sector jobs are often obligated to disclose their familial or social relation to persons convicted of various crimes.⁴⁴

Children are necessarily implicated. As of 2020, nearly half (47%) of the approximately 1.25 million people in state prison were parents of minor children, and about 1 in 5 (19%) of those children is age 4 or younger.⁴⁵ Young children (ages 2-6) of incarcerated parents have been observed to have emotional regulation difficulties.⁴⁶ School-aged children are stigmatized by their peers and exhibit poor academic performance and behavioral problems.⁴⁷ Children of incarcerated parents are more likely to

⁴¹ *Id.*

⁴² Sara Savat, *Mass Incarceration Has Hurt American Families. Here's How to Change It*, WASHINGTON UNIVERSITY IN ST. LOUIS NEWSROOM (Oct. 14, 2021), <https://source.wustl.edu/2021/10/for-50-years-mass-incarceration-has-hurt-american-families-heres-how-to-change-it/>.

⁴³ *Id.*

⁴⁴ Nina Moore, *The Political Roots of Racial Tracking in American Criminal Justice*, CAMBRIDGE UNIVERSITY PRESS 38 (Mar. 26, 2015).

⁴⁵ Leah Wang, *Both Sides of the Bars: How Mass Incarceration Punishes Families*, PRISON POL'Y INITIATIVE (Aug. 11, 2022), https://www.prisonpolicy.org/blog/2022/08/11/parental_incarceration/.

⁴⁶ Parental Incarceration and Child Wellbeing in Fragile Families, FRAGILE FAMS. RSCH. BRIEF (Apr. 2008), <https://ffcws.princeton.edu/sites/g/files/toruqf4356/files/researchbrief42.pdf>.

⁴⁷ *Id.*

experience fair or poor overall health, a variety of physical and mental health conditions⁴⁸, activity limitations, and chronic school absence.⁴⁹

Research examining the impact of incarceration on families and children assumes that the incarcerated individual is alive.⁵⁰ However, even where the incarcerated person is no longer alive, families must live with the consequences of the carceral system. The impact of imprisonment outlives the imprisoned individual. Families and loved ones continue to carry the burdens imposed by the carceral system.

2. Dignitary Implications of Imprisonment on the Individual and the Individual's Loved Ones

Individual and societal dignity extends to the prison context. Incarceration should not deprive individuals of bodily dignity. The carceral system exists in a gentle balance between the “the manner in which we punish and the pain it [incarceration] causes, with, on the other hand, societal standards recognizing the person we are punishing is still a person who has dignity.”⁵¹ Incarcerated individuals maintain dignity, as “a concern for accountability and public safety does not conflict with the moral obligation to recognize human dignity because holding persons accountable for their actions presupposes capacities that are fundamental to human

⁴⁸ Kristin Turney, *Stress Proliferation across Generations? Examining the Relationship between Parental Incarceration and Childhood Health*, J. OF HEALTH AND SOC. BEHAV. 2014, vol. 55(3) 302–319, 314. The authors specify that mental health conditions include learning disabilities, ADD/ADHD, behavioral or conduct problems, developmental delays, and speech or language problems

⁴⁹ *Id.*

⁵⁰ FRAGILE FAMS. RSCH. BRIEF, *supra* note 46. (“Children whose parents have been incarcerated face considerable instability. Their parents perform worse in the labor market and their families are more likely to face material hardship. They are less likely to live with both their biological parents, are more likely to experience residential moves, and are more likely to have contact with the foster care system. Children whose fathers have been incarcerated are also significantly more likely to display aggressive behavior, though they do not differ from their counterparts in terms of physical health, anxious/depressive behavior, withdrawal behavior, or cognitive development.”); See Kristin Turney and Rebecca Goodsell, *Parental Incarceration and Children's Wellbeing*, FUTURE OF CHILD. (Spring 2018) <https://files.eric.ed.gov/fulltext/EJ1179185.pdf>; See also Eric Martin, *Hidden Consequences: The Impact of Incarceration of Dependent Children*, NAT'L INST. OF JUST. J. (May 2017), <https://www.ojp.gov/pdffiles1/nij/250349.pdf>; Branden A. McLeod, Pajarita Charles & Luke Muentner. *Father-Child Contact During Prison and Its Association With Fathers' Parenting Self-Efficacy*. FAMS. IN SOC'Y (Feb. 9, 2024), <https://doi.org/10.1177/10443894231220411>.

⁵¹ Haney, Kali A. *The Death Dignity Demands: The Eighth Amendment Requires Incarcerated People Decide Their Method of Execution*, GA. CRIM. L. REV., Vol. 2: No. 1, Article 5 (2024) 140, 164, <https://digitalcommons.law.uga.edu/gclr/vol2/iss1/5164>.

dignity.”⁵² The bodily sanctity calculus for the deceased and the deceased’s family should not change based on carceral status. At minimum, individual and familial dignity interests must be treated as equal, regardless of incarceration status.

Incarceration status threatens not only the individual’s dignity, but also the family’s dignity. Quoting *Brown v. Plata*,⁵³ Henry applies *collective virtue as dignity* to the incarceration context: prisoners “retain the essence of human dignity inherent in all persons...[that] animates the Eighth Amendment prohibition against cruel and unusual punishment.”⁵⁴ The Court noted that governmental deprivation of basic sustenance is “incompatible with the concept of human dignity and has no place in civilized society.”⁵⁵ Professor Henry’s theorization of *collective virtue as dignity* must be extended to include deceased prisoners and their loved ones. Under *Brown v. Plata*, federal courts must enforce the constitutional rights of prisoners when they are violated.⁵⁶ This line of argumentation should apply to deceased prisoners and their loved ones. The incarcerated person and their loved ones possess interests in bodily dignity that should survive death.

II. AFTER DEATH: COMMON LAW AND STATUTORY CONSIDERATION FOR INDIVIDUALS AND FAMILIES

Both the deceased and the deceased’s loved ones possess what I call ‘afterlife rights’: *active* control over a *passive* corpse. Dignity belongs to the deceased individual and the family. This section argues that both the individual and the family are central in determining ‘afterlife rights.’ Common law spanning two hundred years and state statutory provisions support this contention. The nineteenth century case *In re Kanavan*⁵⁷ and the twenty first century case *Tachiona v. Mugabe*⁵⁸ serve as illustrative examples of ‘afterlife rights.’

⁵² Fantuzzo, *supra* note 20 at 28.

⁵³ *Brown v. Plata*, 563 U.S. 493, 510 (2011).

⁵⁴ Henry, *supra* note 24 at 225; *See also* *Trop v. Dulles*, 356 U.S. 86, 100 (1958) (plurality opinion) (“The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.”).

⁵⁵ *Id.*, quoting *Brown*, 563 U.S. at 493. *See also* *Estelle v. Gamble*, 429 U.S. 97 (1976) (Reaffirming that the Eighth Amendment “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity, and decency.’”).

⁵⁶ *Id.*; *Brown*, 563 U.S. at 510.

⁵⁷ *In re Kanavan*, 1 Me. 226 (1821).

⁵⁸ *Tachiona v. Mugabe*, 234 F. Supp. 2d 401, 438 (S.D.N.Y. 2002).

A. *Common Law Support for Individual Dignity After Death*

In the United States, the legal duty to properly inter the dead dates back to at least 1821.⁵⁹ The Maine Supreme Court in *In re Kanavan* considered whether a defendant could face criminal charges for disposing of a dead infant's corpse by throwing it into a river.⁶⁰ A man named Kanavan [first name unknown] convinced a woman pregnant with his illegitimate child to deliver the baby and then give the baby to him.⁶¹ She complied, and the child was later found dead in the Kennebec River.⁶² A jury convicted Kanavan for throwing the child's corpse into the river.⁶³ The court criminalized deprivation of "decent burial, by a disgraceful exposure, or disposal of the body contrary to usages so long sanctioned."⁶⁴ Religious sensibilities informed the court's reasoning. The first line of the case is instructive to this point: "To cast a dead body into a river, without the rites of Christian sepulture, is indictable, as an offence against common decency."⁶⁵ This early case established that individual bodily integrity does not cease with the person.

Twenty-first century courts echo the notion that bodily dignity survives death. Judge Marrero of the Southern District of New York reasoned that death does not terminate an individual's interest in bodily integrity: "life's veneration of life does not end at the grave; death does not extinguish organized society's reverence for human dignity or the law's recognition of all aspects of life's experience; nor does it diminish protection against life's degradation."⁶⁶ In coming to this conclusion, the court considered religious sensibilities: "Throughout the ages, in almost every culture, civilization has embodied rites with emblems and taboos signaling that the dignity of the human body is worthy of safeguards against desecration even after death."⁶⁷ Religious and cultural tradition surrounding burial procedure inform courts' reasoning in the present day.

B. *Common Law Support for Familial Dignity After Death*

Prior to the development of the mortuary profession, the family was responsible for remains disposal and reverence.⁶⁸ Before 1880, in the absence of an organized mortuary industry, the decedent's family was responsible for corpse cleansing, its dressing and care until funeral service,

⁵⁹ Fred O. Smith, Jr., *The Constitution After Death*, 120 COLUM. L. REV. 1471, 1492 (2020), https://columbialawreview.org/wp-content/uploads/2020/10/Smith-The_Constitution_After_Death.pdf.

⁶⁰ *In re Kanavan*, 1 Me. 226 (1821).

⁶¹ *Id.* at 227.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Smith, *supra* note 59, at 1493.

⁶⁵ *Kanavan*, 1 Me., at 227.

⁶⁶ *Tachiona*, 234 F. Supp. 2d at 438.

⁶⁷ *Id.*

⁶⁸ *Id.*

and coffin construction arrangements.⁶⁹ In response to this reality, courts recognized that family members had a property interest in a deceased family member's corpse. Beginning in the nineteenth century, courts recognized that relatives and friends deserved "the solace and comfort of burying the remains of a deceased person."⁷⁰ Some jurisdictions used the term "quasi-property right" to vest families with the right to possession of mortal remains for disposal purposes.⁷¹ *In re Kanavan* and *Tachiona v. Mugaibe* illustrate that bodily dignity concerns not only the deceased, but also the deceased's family.⁷² The *Kanavan* court observed that exhuming an already buried body would cause "outrage upon the public feelings, and torturing to the afflicted relatives of the deceased."⁷³ The court makes this point to reason that "it must also be a crime to deprive them [relatives of the deceased] of a decent burial, by a disgraceful exposure, or disposal of the body contrary to usages so long sanctioned, and which are so grateful to the wounded hearts of friends and mourners."⁷⁴

⁶⁹ Tanya K. Hernandez, *The Property of Death*, 60 U. PITT. L. REV. 971, 992 (1998-1999), https://ir.lawnet.fordham.edu/faculty_scholarship/17.

⁷⁰ Notes and Comment, CORNELL L. REV., Vol. 3 Issue 1 (Nov. 1917) <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2641&context=clr> 36; *See generally* Renihan v. Wright, 125 Ind. 536 (1890); Anderson v. Acheson, 132 Ia. 744 (1907); Meyers v. Clarke, 12 Ky. 866 (1906); Seaton v. Commonwealth, 49 Ky. 498 (1912); Cohen v. The Congregation, 85 N.Y. App. Div. 6 (1903); Jackson v. Savage, 109 N.Y. App. Div. 556 (1905).

⁷¹ *See* Fuller v. Marx, 724 F.2d 717, 719 (8th Cir. 1984) (observing that Arkansas law recognizes a quasi-property right in a dead body by next of kin); *See also* Cohen v. Groman Mortuary, 41 CAL. RPTR. 481, 483-84 (1964) (recognizing a quasi-property right to possession of dead body for limited purpose of determining who shall have its custody for burial); Louisville & N.R. Co. v. Wilson, 51 S.E. 24, 26 (Ga. 1905) (finding a quasi-property right in the dead body of a relative); Weld v. Walker, 14 N.E. 57, 58 (Mass. 1880) (explaining that spouse's disposal right of decedent spouse's mortal is a quasi right of property in the remains of the spouse for the burial purposes); Radomer Russ-Pol Unterstutzunf Verein v. Posner, 4 A.2d 743, 746 (Md. 1939) (holding that next of kin have a quasi property right in a dead body for burial preparation absent testamentary disposition); Strachan v. John F. Kennedy Mem'l Hosp., 507 A.2d 718, 725 (NJ. Super. Ct. App. Div. 1986), *aff'd in part and rev'd in part*, 538 A.2d 346 (NJ. 1988) (explaining that there is a quasi right in property for next of kin to claim dead for burial purposes); Barela v. Hubbell Co., 355 P.2d 133, 136 (N.M. 1960) (recognizing that there is a quasi-property right in a dead body for nearest relatives of deceased arising out of their duty to bury their dead); Sanford v. Ware, 60 S.E.2d 10, 12 (Va. 1950) (holding that the right to bury and preserve bodily remains is protected as a quasi-property right); England & Bishop v. Central Pocahontas Coal Co., 104 S.E. 46, 47 (W. Va. 1920) (holding that the right to bury a corpse and preserve remains is a legal right viewed as a quasi right in property).

⁷² *See* discussion *infra* Section II.A.

⁷³ *In re Kanavan*, 1 Me. 226, 227 (1821).

⁷⁴ *Id.*

More than two hundred years later, courts consider familial sensibilities in the burial context. In *Tachiona v. Mugabe*, members of an opposing political party alleged that defendant, through its officers, planned and executed a campaign of violence designed to intimidate and suppress political opposition in violation of Alien Tort Claims Act (ATCA), the Torture Victim Protection Act (TVPA), and fundamental norms of human rights law. Plaintiffs – all of whom were Zimbabwean nationals – claimed that they and/or their family members were subjected to torture, assault, execution, and other acts of violence at the hands of Zimbabwe African National Union (ZANU-PF) members and upon the orders of ZANU-PF officials, the ruling political party of Zimbabwe.⁷⁵

The opinion emphasized the interplay between the deceased and the deceased's family. Judge Marrero wrote that public dragging of the deceased in front of the victim's own home "for close kin and neighbors to behold the gruesome spectacle" constitutes "degradation and [a] mean affront to human dignity."⁷⁶ Specifically, plaintiffs asserted that prior to death, Tapfuma Chiminya, Mathew Pfebve, and David Stevens were bound and gagged, forced to ride in a vehicle for hours, dragged down the street in front of neighbors and loved ones, and faced fear of impending death.⁷⁷ Dignity after death, in this sense, does not only apply to the dead person: "the relatives necessarily made to bear witness to the torture and degradation of their kin, or the ransacking of their common property...suffer the severe emotional pain and indignities associated with forms of cruelty and inhuman treatment."⁷⁸

The Restatement of Torts reflects common law courts' consideration of familial sensibilities regarding burial. The Restatement of Torts provides families a cause of action against individuals and entities that interfere with their ability to properly inter their kin.⁷⁹ State courts have implemented these guidelines, specifically considering the circumstances in which someone interferes with: A family's ability to perform a proper burial, concealing a death certification, embalming the dead without authorization, or withholding the ashes of a cremated person.⁸⁰

The Supreme Court of the United States codified the family's legal interest in their loved ones' remains, specifically in the autopsy context. In *National Archives and Records Administration v. Favish*, the Court decided that family members of a man who committed suicide had a privacy right supporting the government's withholding autopsy photos from

⁷⁵ *TACHIONA V. MUGABE: Background*, THE CTR. FOR JUST. AND ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/amicus-briefs/tachiona-v-mugabe/>.

⁷⁶ *Tachiona v. Mugabe*, 234 F. Supp. 2d 401, 438 (S.D.N.Y. 2002).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ RESTATEMENT (SECOND) OF TORTS §868 (AM. L. INST.1979).

⁸⁰ Smith, *supra* note 55, at 1493-94.

Freedom of Information Act request.⁸¹ In a unanimous opinion written by Justice Anthony Kennedy, the Court held that the family's interest in privacy outweighed the public's interest in pictures from Vincent Foster's death scene. The public interest could only trump privacy interests if Allan Favish – the photo requester – could present evidence that the government might have acted improperly, and Favish failed to do so. The Court employed normative reasoning to support its judgment: “Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.”⁸² The Court also invoked common law support, emphasizing that “a family's control over the body and death images of the deceased” is a “well-established cultural tradition” that “has long been recognized at common law.”⁸³

C. Statutory Support for Individual and Familial Dignity After Death

State statutory authority does not separately protect individual and familial sensibilities after death. Rather, state law codifies protection from corporal abuse, which functionally incorporates individual and familial interests. Arizona,⁸⁴ Georgia,⁸⁵ Missouri,⁸⁶ Nebraska,⁸⁷ Tennessee⁸⁸ and Wisconsin⁸⁹ have criminalized unlawful abandonment or concealment of dead bodies that constitute interference with proper interment.⁹⁰ The right to inter, however, does not belong to anyone. Generally, the law assigns one person with custody of the body for the purposes of interment.⁹¹ Interference with the right of interment is a common law tort.⁹² Without evidence of contrary intent by the decedent, the surviving spouse holds the right of interment.⁹³ Otherwise, the right belongs to next of kin.⁹⁴ Professor Fred Smith writes that “right to dignified interment” belongs to both

⁸¹ National Archives and Records Administration v. Favish, 541 U.S. 157 (2004).

⁸² *Id.* at 168.

⁸³ *Id.*

⁸⁴ Ariz. Rev. Stat. § 13-2926 (2014).

⁸⁵ Ga. Code Ann. § 31-21-44.2 (2012).

⁸⁶ Mo. Ann. Stat. § 194.425 (West 2017).

⁸⁷ Neb. Rev. Stat. § 28-1301 (2018).

⁸⁸ Tenn. Code Ann. § 39-17-312 (2006).

⁸⁹ Wis. Stat. § 940.11(2) (2017).

⁹⁰ Smith, *supra* note 59, at 1493-94.

⁹¹ *Id.* at 1496.

⁹² RESTATEMENT (SECOND) OF TORTS § 868 cmt. a (AM. L. INST. 1999) (“One who is entitled to the disposition of the body of a deceased person has a cause of action in tort against one who intentionally, recklessly or negligently mistreats or improperly deals with the body, or prevents its proper burial or cremation.”).

⁹³ Smith, *supra* note 59, at 1496.

⁹⁴ *Id.*

the surviving family members and the dead themselves.⁹⁵ Several states⁹⁶ explicitly permit decedents to fortify their wishes legally pre-death.⁹⁷

While common law and state codes protect individual and familial control over interment in a general sense, the law falls short in protecting individuals who die while incarcerated. The law also fails families of these individuals. Families of deceased incarcerated individuals should be, but are not presently, treated with dignity, relative to families of deceased non-incarcerated individuals. The next section illustrates where the law falls short in three after-death stages in the incarceration context: (1) death notification and registration, (2) autopsy performance, and (3) remains disposal.

III. THREE STAGES OF ‘AFTERLIFE RIGHTS’ AFTER DEATH

This Section reveals a policy inequity in three after-death stages in the incarceration context: death notification, autopsy reporting and remains disposal. The lack of consistency and transparency in these policies raises questions as to how death is managed in prisons and the likelihood of adherence to these policies.⁹⁸ Alabama serves as a case study to illustrate the wider problem: families of incarcerated individuals are not afforded the same ‘afterlife rights’ when their loved one dies in prison.

A. After-Death Stage One: Death Notification

Thirty-five states currently have policies on next-of-kin (NOK) notification requirements for death of individuals who are incarcerated, requiring contact with next of kin.⁹⁹ Of those thirty-five states, twenty-eight do not have time limitation reporting requirements.¹⁰⁰ Alabama, Arkansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Puerto Rico, West Virginia, and Wyoming had no accessible policies on the following issues: Time constraints for NOK notification, notifying parties or designated contact persons, and ultimate disposition of unclaimed remains. The required notifying party to the NOK varied by state, including: Warden,¹⁰¹

⁹⁵ *Id.* at 1479.

⁹⁶ Arkansas, California, Colorado, D.C., Delaware, Idaho, Maryland, Minnesota, Nebraska, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Washington, Wyoming. *Id.*

⁹⁷ *Id.*

⁹⁸ Yoshiko Iwai, Michael Forrest Behne & Lauren Brinkley-Rubinstein, *Death in Prison: Increasing Transparency on Next of Kin Notification and Disposition of Remains*. HEALTH JUST. 11:37, 4 (2023). <https://doi.org/10.1186/s40352-023-00232-x>.

⁹⁹ *Id.* at 2.

¹⁰⁰ *Id.*

¹⁰¹ Delaware, Georgia, Indiana, Kansas, South Dakota.

chaplain,¹⁰² superintendent,¹⁰³ facility head¹⁰⁴ or a grouping of chaplains, administrative directors, and coroners.¹⁰⁵

B. After-Death Stage Two: Autopsy Performance

No research or source consolidates state-by-state policies on autopsy consent requirements when the deceased individual is incarcerated at the time of death.¹⁰⁶ The Center for Disease Control reported that three states required autopsies to be performed for all deaths that occur in jail or police custody.¹⁰⁷ While this number may appear small, it is significant. The sole fact that a person died while in jail mandates that the person be autopsied, regardless of consent or other circumstances.

C. After-Death Stage Three: Return of Remains

In thirty-one states, next of kin have the right to claim remains.¹⁰⁸ Eleven states have publicly available policies regarding the amount of time to claim remains.¹⁰⁹ Policies vary widely by state. For example, Florida reported the amount of time to claim remains, vaguely, as a “medically acceptable period.”¹¹⁰ A dearth of information is a data point in its own right. As a general matter, the lack of accessible policies rings alarm bells around “decency, humanity, and transparency in communication surrounding the death of an individual during incarceration.”¹¹¹ In the absence of written mandates, the “the extent and method of communication for family involvement remains unknown.”¹¹² The lack of publicly available information deprives families of their own rights after an incarcerated loved one dies.

¹⁰² Arizona, Nevada, Rhode Island, South Carolina, Texas, Washington D.C.

¹⁰³ Alaska, Massachusetts, New York.

¹⁰⁴ Idaho, Oklahoma.

¹⁰⁵ Iwai, Behne & Brinkley-Rubinstein, *supra* note 98.

¹⁰⁶ Data current as of September 21, 2024. Iwai, Behne & Brinkley-Rubinstein *supra* note 98, collected publicly available operational policies for the Federal Bureau of Prisons, Immigration and Customs Enforcement, 50 state prison systems, and the Washington D.C. jail. The research examined available policies on NOK notification and disposition of remains and did not investigate autopsy requirements regarding the incarcerated decedent.

¹⁰⁷ *Selected Characteristics of Deaths Requiring Autopsy by State*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/phlp/docs/coroner/table2-autopsy.pdf>.

¹⁰⁸ Iwai et. al, *supra* note 98.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

D. Case-Study: Denial of Afterlife Rights in Alabama

Alabama exemplifies where states fail in three after death stages: notification, autopsy, and disposal. An Alabama law passed in 2021 requires medical examiners to notify next-of-kin if they will retain a deceased person's organs to determine cause of death.¹¹³ The bill also requires approval from next-of-kin to retrain organs for research purposes.¹¹⁴ Yet, Alabama corrections facilities and University of Alabama Birmingham (UAB) have failed to follow protocol. UAB medical students have previously questioned the ethics of the school's inmate organ retention: "Our concern is not with the practice of autopsy, but with the process of consent for retention and use of tissue samples...Neither the patient, not their family, has consented to or been directly informed of the retention of tissues for teaching, education, or research."¹¹⁵ UAB medical students revealed that a disproportionate number of organ samples came from deceased prisoners. The samples included brief biographies indicating that the person died in a correctional facility along with health history.¹¹⁶

A 2019 report from the U.S. Department of Justice and the Alabama U.S. Attorney's Office shows that the state's corrections department does not maintain a reliable system of tracking in-custody deaths.¹¹⁷ Alabama's carceral system highlights how individuals who die while incarcerated are mistreated after death. Two individuals illustrate the problem at hand: Jim Kennedy Jr. and Arthur Stapler. This Part tells their stories.

Inmate Jim Kennedy Jr. died in 2023 at the Limestone Correctional Facility in Harvest, Alabama while serving a 300-year sentence for rape, sodomy, and kidnapping.¹¹⁸ The funeral home preparing the body notified Jim Kennedy Jr.'s sister-in-law that his eyes were the only organs returned. Upon receipt, the funeral home informed the family that Kennedy's body was in "a severely damaged state ... missing all of his organs and...some of his bones, including his ribs, were broken."¹¹⁹ Kennedy's brother, who held power of attorney, reported that the family had not authorized

¹¹³ AL S.B. 22, (2021) <https://legiscan.com/AL/text/SB22/2021>.

¹¹⁴ *Id.*

¹¹⁵ Isabel Rosales, 'Wild, Wild West.' *Families Say Organs of Deceased Alabama Inmates Have Been Removed Without Their Consent*, CNN (Apr. 18, 2024), <https://www.cnn.com/2024/04/18/us/organs-removed-deceased-alabama-inmates/index.html>.

¹¹⁶ *Id.*

¹¹⁷ U.S. Department of Justice, *Notice Regarding Investigation of Alabama's State Prisons for Men* (Apr. 2, 2019), https://www.justice.gov/d9/press-releases/attachments/2019/04/03/notice_letter_and_report_aldoc.pdf.

¹¹⁸ Rosales, *supra* note 115.

¹¹⁹ Jenna Wood and Josh Gauntt, *5 Families File Lawsuits Claiming UAB Took Organs From Adoc Inmates 'Without Consent'*, WBRC NEWS (Apr. 18, 2024), <https://www.wbrc.com/2024/04/19/5-families-file-lawsuits-claiming-uab-took-organs-without-consent/>.

retention of his brother's organs.¹²⁰ Marvin Kennedy, Jim Kennedy Jr.'s brother, lamented that UAB and prison officials "made the decisions...[and] represented without ...permission."¹²¹

Similarly, Arthur Stapler died five months after Kennedy Jr. in Birmingham, Alabama, where he was serving a ten-year sentence for child sex abuse.¹²² Stapler's family hired a private pathologist to perform an autopsy on the body. The pathologist reported that Stapler's body was also missing organs.¹²³ The lawsuit¹²⁴ alleges that the family was not notified or asked for consent to retain Stapler's organs.¹²⁵ Stapler's family contacted the University of Alabama at Birmingham, the prison system's autopsy provider. They then received Stapler's brain and heart in plastic viscera bags, and other internal organs came back in pieces and were damaged.¹²⁶ Stapler's son, Biller Stapler, was told by AUB's autopsy department that the rest of his organs may have been thrown away.¹²⁷ Billy Stapler's questions remained unanswered: "[H]ow do you throw away organs?... Why did you even take them out of him?"¹²⁸

The stories of Jim Kennedy Jr. and Arthur Stapler illustrate a larger problem: Inmates who die while incarcerated are not afforded the same 'afterlife rights' as compared to non-incarcerated individuals. This inequity is borne onto the family of the deceased. The problem manifests in three after-death stages: death notification, autopsy performance, and return of remains.

IV. CHARTING A PATH FORWARD

A. Solution Space in Alabama

Existing law in Alabama prohibits the practice of retaining organs after autopsies, but currently carries no criminal penalties.¹²⁹ The law,

¹²⁰ *Id.*

¹²¹ Rosales, *supra* note 115.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Stapler v. Hamm et al.*, 03-CV-2024-900568.00 (Ala. Cir. Ct. Complaint filed on Apr. 11, 2024).

¹²⁵ Wood and Gauntt, *supra* note 119.

¹²⁶ Gabriel Tynes, *Alabama Harvested the Organs of Inmates Without Consent, Families Say*, COURTHOUSE NEWS SERVICE (Apr. 11, 2024), <https://www.courthousenews.com/alabama-harvested-the-organs-of-inmates-without-consent-families-say/>.

¹²⁷ *Id.*

¹²⁸ Rosales, *supra* note 115.

¹²⁹ The Alabama Supreme Court has "long recognized that 'there is at least a quasi legal right in, to, or concerning dead bodies, which the courts will recognize and protect by proper action.'" *Thompson v. Hopper*, No. CV-98-760-SH, 1998 WL 35257166 (Ala. Cir. Ct. Apr. 09, 1998) (*citing* *Deavors v. S. Express Co.*, 76 So. 288, 289 (1917)). In Alabama, the nearest relation of the dead person present

passed in 2021, requires medical examiners to notify next of kin if they will retain a deceased person's organs to determine cause of death and requires approval from next of kin to retrain organs for research purposes.¹³⁰ On March 25, 2024, Alabama's House Judiciary Committee passed House Bill 200, adding criminal sanctions for conducting an autopsy without familial consent.¹³¹ Specifically, the bill makes it a Class C felony, punishable by up to ten years in prison, for a medical examiner to retain an examinee's organs without notifying the next of kin.¹³² The Alabama House of Representatives approved this bill on April 25, 2024 with an 89-1 vote.¹³³ The bill moved to the Senate for consideration in May 2024.¹³⁴

The legislation is a responsive measure to several ongoing lawsuits¹³⁵ alleging that prisoners who died in Alabama prisons were returned to their families missing organs. The Bill's sponsor, Rep. Chris England, D-Tuscaloosa, stated that the legislation serves to "[let] people know we're paying attention and the law needs to be followed."¹³⁶ Rep. England also emphasized the importance in equal treatment between incarcerated and non-incarcerated individuals: "[T]here is general recognition of the spirit of the law to make sure that anybody, whether you are incarcerated or not, from a state-ordered autopsy, you are notified before organs are retained."¹³⁷

may maintain a tort action as against the wrongdoer for an "unwarranted interference with the burial of the body." *Southern Life & Health Ins. Co. v. Morgan*, 21 Ala.App. 5, 9 (Ala.App. 1925).

¹³⁰ *Supra* note 113.

¹³¹ *Id.*

¹³² AL H.B. 200 (2024), <https://alison.legislature.state.al.us/files/pdf-docs/SearchableInstruments/2024RS/HB200-int.pdf>.

¹³³ Alander Rocha, *Alabama House Approves Bill Criminalizing Organ Retention*, ALA. REFLECTOR (Apr. 25, 2024), <https://alabamareflector.com/briefs/alabama-house-approves-bill-criminalizing-organ-retention/>.

¹³⁴ On May 2, 2024, the bill was read for the first time and subsequently referred to the Senate Committee on Fiscal Responsibility and Economic Development. The bill remains pending Committee Action in Second House. <https://legiscan.com/AL/bill/HB200/2024>.

¹³⁵ See *Kennedy v. Hamm et al.*, 03-CV-2024-900567.00 (Ala. Cir. Ct. Complaint filed on Apr. 11, 2024); *Stapler v. Hamm et al.*, 03-CV-2024-900568.00 (Ala. Cir. Ct. Complaint filed on Apr. 11, 2024); *Brackins v. Hamm et al.*, 03-CV-2024-900569.00 (Ala. Cir. Ct. Complaint filed on Apr. 11, 2024); *Moore v. Hamm et al.*, 03-CV-2024-900571.00 (Ala. Cir. Ct. Complaint filed on Apr. 11, 2024); *Dotson v. Alabama Department of Corrections*, 2:23-CV-01657 (N.D. Ala. 2023).

¹³⁶ Mike Carson, *Alabama House Passes Bill to Make It Felony to Retain Organs From Autopsy Without Consent*, AL.COM (Apr. 25, 2024), <https://www.al.com/news/2024/04/alabama-house-passes-bill-to-make-it-felony-to-retain-organs-from-autopsy-without-consent.html>.

¹³⁷ Ralph Chapoco, *Alabama House Committee Approves Bill Criminalizing Organ Retention*, AL. REFLECTOR (Mar. 20, 2024),

Imposing a criminal punishment aims to address the current abuses rampant within Alabama's prison-medical system industrial complex. However, the legislation does not address one critical preliminary problem: Alabama does not have next-of-kin notification timing requirements following the death of an incarcerated individual.¹³⁸ With that said, the legislation addresses one problem: Retaining organs without familial consent. However, Alabama prisons are still not required to alert families when a loved one dies in prison. For the legislation to be most effective, the state must impose death notification reporting requirements. Prisons must be required to alert families when a loved one dies in prison. Families are due notification before the prison-medical industrial complex conducts an autopsy and seeks to retain internal organs from the autopsy.

B. Beyond Alabama: Lessons from the Model Penal Code

AL H.B. 200 is a response to abuse in Alabama's prison and medical care systems. The legislation is aimed to curb future abuse by requiring communication between prisons and families of deceased incarcerated individuals. This legislation would likely be more effective if the state criminalized bodily interference *before* the autopsy stage. Alabama has the legal framework in place to implement this assertion.

§ 250.10 of the Model Penal Code proposes that abuse of a corpse constitutes a misdemeanor offense where "a person who treats a corpse in a way that he knows would outrage ordinary family sensibilities."¹³⁹ The drafters explained that the decision to list abuse of a corpse under 'Offenses Against Public Order and Decency' concerned "outrage to the feelings of surviving kin, outrage which can be perpetrated as well by mutilation or gross neglects as by sexual abuse."¹⁴⁰ Judge Marrero's opinion in *Tachiona v. Mugabe*¹⁴¹ cited § 250.10 to support his argument that "laws, customs and practices generally define separate classes of offenses whose focal wrong is not the conscious infliction of physical pain and suffering on the living, but the *hurt perpetrated upon the living by the defiling of the dead*."¹⁴²

Alabama has adopted a version of this Model Penal Code section. Alabama's penal code § 13A-11-13 provides that abuse of corpse is a Class C felony and occurs where: "A person commits the crime of abuse of a corpse if, except as otherwise authorized by law, he knowingly treats a human corpse in a way that would outrage ordinary family

<https://alabamareflector.com/briefs/alabama-house-committee-approves-bill-criminalizing-organ-retention/>.

¹³⁸ *Iwai et al.*, *supra* note 98, at 3.

¹³⁹ MODEL PENAL CODE § 250.10: Abuse of Corpse.

¹⁴⁰ MODEL PENAL CODE § 250.10 cmt. at 424 (AM. L. INST. 1980).

¹⁴¹ See discussion *infra* Section II.B.

¹⁴² *Tachiona v. Mugabe*, *supra* note 66 (emphasis added).

sensibilities.”¹⁴³ The provision combines several specific statutes¹⁴⁴ concerning corpses. Commentary to the provision explains that by not enumerating specific offenses, “The Criminal Code seeks to consolidate the areas of the Alabama statutes and to provide for any other type of conduct involving a corpse which may outrage the ordinary family sensibilities.”¹⁴⁵ The text provides the following examples: “Abuse of a corpse may include knowingly and willfully signing a certificate as having embalmed, cremated, or prepared a human body for disposition when, in fact, the services were not performed as indicated.”¹⁴⁶ Failure to notify the family in three after death stages – death notification and registration, autopsy performance, and remains disposal – constitutes ‘abuse of a corpse’ within the meaning of Model Penal Code § 2510.10. Normative¹⁴⁷ and legal¹⁴⁸ frameworks support this claim.

States that have adopted versions of the Model Penal Code section 250.10 must clarify that institutions including prisons, medical systems and courts effectuate bodily abuse in its failure to notify families at the aforementioned after-death stages. This could come in the form of an amendment to the relevant penal code section or an addendum to the commentary. However, in order to amend the code’s language, legislative representatives, prison-medical industrial systems and the public must understand that families of incarcerated individuals who have died while incarcerated are entitled to information at three after death stages: death notification and registration, autopsy performance, and remains disposal. Withholding information from families at these critical points is abuse in it of itself.

CONCLUSION

Abuse in Alabama’s carceral-medical industrial complex reflects a larger problem: Incarcerated individuals and their families do not receive equal treatment, regardless of whether the incarcerated individual is living or deceased. This Note employed normative reasoning, legal support and the case study method to illustrate such inequity. Reform can only come after legislators, carceral systems, medical institutions and society at large

¹⁴³ A.L. ST. § 13A-11-13: Abuse of Corpse.

¹⁴⁴ Former Alabama statutes concerning corpses include: former § 13-6-80 (removing dead body from grave); former § 13-6-81 (exception as to physicians and surgeons); former § 13-6-82 (buying dead bodies); former § 13-6-83 (violating grave with intent to steal or remove dead body, etc.); former § 13-6-84 (mutilating dead bodies); former § 13-6-85 (defacing tombstones, trees, shrubbery, etc.); § 22-19-3 (burial or removal permits for dead bodies; certificates of birth or death; penalty for failure to obtain or to give information relative thereto); and § 22-19-4 (ministers at funerals to ascertain if burial permit has been secured).

¹⁴⁵ A.L. ST § 13A-11-13: Commentary.

¹⁴⁶ *Id.*

¹⁴⁷ See discussion *infra* Section I.

¹⁴⁸ See discussion *infra* Section II.

recognize that incarcerated individuals and their families deserve afterlife rights. The dead and their loved ones are due dignity, regardless of carceral status.
