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NECROPHILIA: A NEW SOCIAL-HARM TAXONOMY
OF U.S. LAWS

KIM D. RICARDO*

PREAMBLE

*The notion of consent . . . the law's line between
intercourse and rape, is so passive that a dead
[woman] could satisfy it.*¹

Originally, criminal prohibitions on rape existed to protect a man's proprietary rights over the sexuality of his wife and the chastity of his unmarried girl children.² The law viewed women's sexuality as either pure (alternately as virginal, or as sanctified if the sex occurred within the status of a lawful marriage) or as ruined.³ Therefore, the social harm of rape was the defilement of another man's merchandise.⁴ The law was also concerned about protecting the accused under this model,⁵ and therefore righteous women were expected to resist "to the utmost" to demonstrate their refusal to engage in unwanted sexual activities.⁶ Rape under common law required that sexual intercourse

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1. Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281, 1300 (1991) (citing ANDREA DWORKIN, INTERCOURSE 129 (1987); SUSAN ESTRICH, REAL RAPE: HOW THE LEGAL SYSTEM VICTIMIZES WOMEN WHO SAY NO 29–41 (1987)) (supporting her argument that the standard of consent under contemporary rape law is so minimal as to be essentially meaningless).

2. See KEITH BURGESS-JACKSON, RAPE: A PHILOSOPHICAL INVESTIGATION 44–45 (1996). The notion of property rights was so central to the early justification for rape laws that punishment for violations often included restitution to the husband or father, the purported victim of the crime. See *id.* at 68.

3. See Jed Rubenfeld, *The Riddle of Rape-by-Deception and the Myth of Sexual Autonomy*, 122 YALE L.J. 1372, 1388–92 (2013) (describing raped women as having been "defiled" and contrasting rape outside of marriage with spousal rape).

4. See *id.*; Corey Rayburn Yung, *Rape Law Fundamentals*, 27 YALE J.L. & FEMINISM 1, 15 (2015).

5. MATTHEW HALE, THE HISTORY OF THE PLEAS OF THE CROWN 634 (1847) (declaring that rape "is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho [sic] never so innocent"); see also *Brooks v. State*, 452 A.2d 1285, 1290–91 (Md. Ct. Spec. App. 1982) (citing *People v. Rincon-Pineda*, 538 P.2d 247, 256 (Cal. 1975)) (discussing the propriety of using Hale's infamous warning as a jury instruction at rape trials).

6. See, e.g., *State v. Rusk*, 424 A.2d 720, 733 (Md. 1981) (Cole, J., dissenting) ("She must follow the natural instinct of every proud female to resist, by more than mere words, the violation of her person by a stranger or an unwelcomed friend. She must make it plain that she regards such sexual acts as abhorrent and repugnant to her

be obtained by force or threat of force.⁷ Viewed through such a singular lens, rape was therefore a crime of violence.⁸ Feminist legal scholars criticized this force and violence model, observing that it excluded all but stranger rapes from the possibility of bona fide rapes.⁹

Efforts to reform the legal and social treatment of rape coincided with the increased number of women in law schools and the legal profession.¹⁰ Beginning in the early 1970s, feminist scholars, activists, and lawyers challenged the predominant narrative about rape as a crime of violence and shifted attention to the ways in which victims of rape experienced the injury as a loss of sexual autonomy.¹¹ By 1977, the sexual autonomy framework had taken hold, as exemplified by the United States Supreme Court's declaration in *Coker v. Georgia* that rape "is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and for the latter's privilege of choosing those with whom intimate relationships are to be established."¹² Legal scholars generally agree that, as a descriptive matter, the "country is converging on a single unifying principle: the right to *sexual autonomy*."¹³

Despite five decades marked by progressive rape law reform, however, there has been little significant change in the rate of rape

natural sense of pride. She must resist unless the defendant has objectively manifested his intent to use physical force to accomplish his purpose.").

7. The Model Penal Code (MPC) retained this focus on force by defining rape as requiring compulsion "by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping." MODEL PENAL CODE § 213.1(a) (AM. L. INST. 1962).

8. *Rusk*, 424 A.2d at 733.

9. See Aya Gruber, *Consent Confusion*, 38 CARDOZO L. REV. 415, 418–19 (2016); see also MacKinnon, *supra* note 1, at 1300 (asserting that the law at the time failed to recognize several unwanted sexual encounters as rape).

10. See Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 587–603 (2009); Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 87 FORDHAM L. REV. 977, 980–82, 996 (2018).

11. Lynne Henderson, *Getting to Know: Honoring Women in Law and in Fact*, 2 TEX. J. WOMEN & L. 41, 63–64 (1993) (noting that reform states eliminated the common law force element and redefined rape as nonconsensual intercourse); see also Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151, 2171 (1995) (noting that the 1970s feminist reforms marked the second series of rape law reforms, the first being the 1950s work of the American Law Institute and its Model Penal Code); Stephen J. Schulhofer, *Taking Sexual Autonomy Seriously: Rape Law and Beyond*, 11 L. & PHIL. 35, 36–40 (1992).

12. *Coker v. Georgia*, 433 U.S. 584, 597 (1977). In *Coker*, the Court considered an Eighth Amendment challenge to the imposition of the death penalty on a defendant convicted of rape. *Id.* at 586; see also Gruber, *supra* note 9, at 423 n.30 (quoting *People v. Soto*, 245 P.3d 410, 418 (Cal. 2011) (stating that "rape is [a] violation of 'sexual autonomy'")); Catharine A. MacKinnon, *Rape Redefined*, 10 HARV. L. & POL'Y REV. 431, 463–65 (2016) (noting that the consent/autonomy paradigm has also taken hold at the international level).

13. Rubinfeld, *supra* note 3, at 1378; see also Gruber, *supra* note 9, at 416 ("Forcible rape is totally passé, not in the sense that it does not occur, but in the current legal conception of sexual assault's essence.").

crimes.¹⁴ In fact, 2018 marked the sixth successive year in which the rate of rapes rose.¹⁵ In rape trials, prosecutors and defense attorneys struggle with the notion of consent.¹⁶ What does consent look like? That is, how do we know when sex happens with the participants' mutual willingness, free from undue coercion?

It is against this backdrop that I began my research on necrophilia. Following Catharine MacKinnon's criticism of the now-prevailing consent model of rape law,¹⁷ I began to wonder what the line actually was between access to a dead woman's passive body and a passive woman's consent. My initial instinct was that necrophilia laws, which I understood to be housed in the general category of sexual offenses, would provide some insight. Surely the question of consent when it comes to the sexual violation of a dead person would provide a straightforward answer. The result of this speculation is the following Article on the social harms of necrophilia.

INTRODUCTION

- I. BACKGROUND: NECROPHILIA
- II. SOCIAL-HARM TAXONOMY OF U.S. ANTI-NECROPHILIA LAWS
 - A. *No Social Harm*
 - B. *Crimes Against Nature*
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 - 1. *Dead Body Required*
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 - 3. *Sexual Autonomy: Per Se Consent*

CONCLUSION

APPENDIX

INTRODUCTION

*Does anyone really believe that if the law prohibiting necrophilia were repealed, society would descend into moral anarchy? It seems unlikely.*¹⁸

14. See Gruber, *supra* note 10, at 627 n.242.

15. This is especially startling in light of the fact that violent crime rates have generally been in decline since the early 1990s. Jamiles Lartey & Weihua Li, *New FBI Data: Violent Crime Still Falling*, THE MARSHALL PROJECT (Sept. 30, 2019), <https://www.themarshallproject.org/2019/09/30/new-fbi-data-violent-crime-still-falling> [<https://perma.cc/C55F-LF8K>].

16. See Gruber, *supra* note 9, at 429.

17. See MacKinnon, *supra* note 1, at 1300.

18. JONATHAN HERRING, GREAT DEBATES IN CRIMINAL LAW 2 (2012).

The word “necrophilia” likely conjures to mind images of disgusting and depraved sexual activity. At the same time, references to necrophilic acts as romantic expressions of undying love in our cultural products are not uncommon. From William Shakespeare¹⁹ to contemporary rapper Tyler, The Creator,²⁰ creative types throughout the centuries have used the image of sexual intimacy with or desire for a corpse as a metaphor for superlative love.²¹ The polarizing contrasts by which society imagines necrophilia is reflected in how the law treats associated activities—that is, whether the law chooses to punish offenders harshly or to not criminalize necrophilic acts at all.

Necrophilia is not an everyday occurrence,²² fortunately. Nevertheless, necrophilia has been a concern to human societies since ancient times. Practical measures to prevent living human beings from engaging in sexual acts with the dead have been recorded since

19. Acting under the belief that his betrothed is dead, Romeo enters Juliet’s crypt and mourns her by praising her beauty and expressing his desire for her. See WILLIAM SHAKESPEARE, *ROMEO AND JULIET* act 5, sc. 3, ll. 22–39, 45–48, 74–120.

20. In the “She” music video, Tyler’s alter ego is a man who is stalking a young woman. Tyler, The Creator, *She (feat. Frank Ocean)*, YOUTUBE (June 3, 2011), <https://www.youtube.com/watch?v=mFNaFeIm4bU>. He breaks into her bedroom to watch her as she sleeps and later raps to her in a fantasy: “Gorgeous, baby you’re gorgeous/ I just wanna drag your lifeless body to the forest/ And fornicate with it but that’s because I’m in love with you.” *Id.*

21. See Lisa Downing, *Death and the Maidens: A Century of Necrophilia in Female-Authored Textual Production*, 14 *FRENCH CULTURAL STUD.* 157, 157, 164–67 (2003) (discussing the “simultaneous disgust and fascination” associated with necrophilia and comparing two fictional works where the protagonists are self-identified necrophiles). Numerous other examples exist: ADRIENNE MAYOR, *THE AMAZONS: LIVES AND LEGENDS OF WARRIOR WOMEN ACROSS THE ANCIENT WORLD* 294–97 (2014) (depicting, in Greek mythology, Achilles killing Penthesilea during the Battle of Troy and then falling in love with her corpse); Pietro Pajetta, *The Hatred* (Museo Del Cenedese in Vittorio Veneto, It.) (1896) (depicting an image that was based on Lorenzo Stecchetti’s *Canto dell’Odio*, which lyricized the story of a spurned suitor who threatened to rape the corpse of the woman who rejected him); MARÍA TERESA VERA, *Boda Negra, on LAGRIMAS NEGRAS REMASTERED* (Caribe Music dos 2013) (describing the lover who digs his dead fiancé’s body up and brings her home to perform a postmortem wedding ritual); Kati Horna, *Oda a la necrofilia* (Ode to necrophilia) (photograph series) (The J. Paul Getty Museum, L.A., Cal.) (1962) (depicting a woman who disrobes in front of a deathbed); *HABLE CON ELLA* (El Deseo, Antena 3 Televisión, Good Machine & Vía Digital 2002) (depicting the story of a male nurse that rapes a comatose female patient); *IDLEWILD* (HBO Films, Mosaic Media Group, Atlas Entertainment & Forensic Films (2006)) (depicting Andre Benjamin’s character serenading his dead girlfriend as he prepares her for burial).

22. See ANIL AGGRAWAL, *NECROPHILIA: FORENSIC AND MEDICO-LEGAL ASPECTS* 113–53 (2011) (providing twenty case studies of some of the “[m]ost notable” necrophiles of the past). *But see* John Troyer, *Abuse of a Corpse: A Brief History and Re-theorization of Necrophilia Laws in the USA*, 13 *MORTALITY* 132, 150 n.9 (2008) (describing 1989 study and quoting A. A. Brill: “I dare say [necrophilic acts] happen more frequently than is known”); Dany Nobus, *Over My Dead Body: On the Histories and Cultures of Necrophilia*, in *INAPPROPRIATE RELATIONSHIPS: THE UNCONVENTIONAL, THE DISAPPROVED, & THE FORBIDDEN* 177–78 (Robin Goodwin & Duncan Cramer eds., 2002) (noting that clinical and forensic data do not provide accurate information about the prevalence of all necrophilic behaviors and fantasies).

Before the Common Era.²³ As has frequently been reported, ancient Egyptians waited at least a few days after the death of a woman before sending her cadaver to be embalmed to avoid tempting funeral workers to engage in sexual acts with the corpse.²⁴

Although necrophilia is not a rampant crime, the relative lack of cases may also have to do with underreporting.²⁵ Many necrophiliacs seek out professions or other employment that give them frequent and unsupervised contact with human corpses, which may provide effective cover for their illicit activities.²⁶ Cultural norms also have an impact on reporting. For example, although the United Kingdom formally outlawed necrophilia in 2003, criminologist Jason Roach—studying the topic thirteen years later—uncovered exactly zero prosecutions under the law.²⁷ Roach hypothesized that the reason why there are so few reported cases is not because there are comparatively fewer active necrophiles in the United Kingdom, but because of general British cultural embarrassment about the topic.²⁸ As a result, when faced with necrophilic acts, British police and prosecutors pursue less stigmatizing charges such as burglary.²⁹ In the United States, where the majority of states have some criminal law that covers necrophilic behavior, the dearth of cases in appellate reporters may also be the result of our robust plea bargaining system; when apprehended and prosecuted for criminal violations, offenders may take plea arrangements.³⁰ It may also be the case that convicted offenders do not appeal their convictions.

Most states have criminal laws that provide protection for dead bodies against sexual contact.³¹ However, the rationales supporting criminal prohibition vary widely. Some states frame the social harm

23. See Jonathan P. Rosman & Phillip J. Resnick, *Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia*, 17 BULL. AM. ACAD. PSYCHIATRY L. 153, 153 (1989) (citing HERODOTUS, *THE HISTORIES*—BOOK II (1956)). Rosman and Resnick's article studies 122 individual cases. *Id.* at 154.

24. Herodotus, *Herodotus on Burial in Egypt*, ANCIENT HIST. ENCYCLOPEDIA (Jan. 18, 2012), <https://www.ancient.eu/article/89/herodotus-on-burial-in-egypt> [<https://perma.cc/HKX4-BUX3>].

25. See Nobus, *supra* note 22, at 177–78 (noting the lack of “reliable data”).

26. See Rosman & Resnick, *supra* note 23, at 158; Nobus, *supra* note 22, at 178.

27. See Jason Roach, *No Necrophilia Please, We're British*, in UNDERSTANDING NECROPHILIA: A GLOBAL MULTIDISCIPLINARY APPROACH 94–95 (Lee Mellor, Anil Aggrawal & Eric Hickey eds., 2017).

28. See *id.* at 96.

29. See *id.*

30. Cf. Angela J. Davis, *The Power and Discretion of the American Prosecutor*, 49 DROIT ET CULTURES 55, 57 (2005) (citing U.S. Department of Justice statistics providing that 95% of criminal cases are resolved through the plea-bargaining process).

31. See AGGRAWAL, *supra* note 22, at 201–09 (exploring state statutes that prohibit necrophilia).

of the crime as an injury to the emotions of surviving family members, specifically rejecting the notion that the deceased's dignity rights survive death.³² Other states characterize necrophilia as a form of sexual assault.³³ Still others punish necrophilia through laws prohibiting a wide variety of vague "crimes against nature," that may include sodomy and bestiality under this umbrella term.³⁴

Identifying what social harm follows from necrophilic acts is complicated, in part, because of the complicated legal status of a person who was once alive but is now dead. After death, the corpse occupies an ambiguous legal space where it is not entirely clear what remaining rights or interests the body has.³⁵ Nor is it clear whether the deceased or her representative can or should be allowed to vindicate any surviving interests that may have been threatened or violated after death.³⁶ A dead person (and the body that represents that dead person) is someone/something between subject of the law and object of the law.³⁷

To simply declare that the dead have no rights³⁸ is to oversimplify an incredibly complex question. First of all, not every society thinks of the deceased as absolutely dead, gone, and forgotten.³⁹ Both Christians and Muslims believe in an afterlife, the quality of which is determined by the deceased's conduct during life.⁴⁰ Pueblo

32. *See id.* at 201, 205.

33. *Id.* at 203, 209.

34. *See, e.g.*, IDAHO CODE § 18-6605 (1972); N.C. GEN. STAT. § 14-177 (1994).

35. *See* Dorothy Nelkin & Lori Andrews, *Do the Dead Have Interests? Policy Issues for Research After Life*, 24 AM. J.L. & MED. 261, 262 (1998); Philippe Ducor, *The Legal Status of Human Materials*, 44 DRAKE L. REV. 195, 198 (1995).

36. *See* Nelkin & Andrews, *supra* note 35, at 262; Ducor, *supra* note 35, at 198.

37. For the philosopher Julia Kristeva, a human corpse represents a crisis in meaning which she describes as abjection. JULIA KRISTEVA, *POWERS OF HORROR: AN ESSAY ON ABJECTION* 1–13 (Leon S. Roudiez trans. 1982). The abject describes the liminal state of being and not(-being) and this quandary causes feelings of horror and disgust but also delight (jouissance) because abjection is a necessary stage in human psychosexual development. *Id.* at 109 (describing the corpse as a "decaying body . . . blurred between the inanimate and the inorganic, a transitional swarming, inseparable lining of a human nature whose life is undistinguishable from the symbolic"). Put differently: "[t]he offense of necrophilia is that it attempts, against all empirical evidence to the contrary, to convert a subject that has become an object back into a subject again." Scott Dudley, *Conferring with the Dead: Necrophilia and Nostalgia in the Seventeenth Century*, 66 ELH 277, 289 (1999).

38. *See, e.g.*, *Keller v. Finks*, No. 13-03117, 2014 WL 1283211, *6 (C.D. Ill. Mar. 31, 2014) (discussing decedent's Fourth Amendment rights claim and concluding that dead people do not have constitutional rights to assert).

39. *See, e.g.*, Isola Olomola, *Contradictions in Yoruba Folk Beliefs Concerning Post-Life Existence: The Ado Example*, 58 J. DES AFRICANISTES 107, 108–09 (1988) (discussing how the Yoruba believe that death is really a transition from one type of existence to another).

40. *See How the Major Religions View the Afterlife*, ENCYCLOPEDIA.COM (Sept. 29, 2020), <https://www.encyclopedia.com/science/encyclopedias-almanacs-transcripts-and>

Indians understand death not as an end, but as a continuation of life.⁴¹ It is not uncommon, therefore, for those who believe in a life after death to engage in practices that acknowledge the presence of the dead among the living. In her 2013 autobiography, Justice Sonia Sotomayor described the weekend seances that her grandmother, an espiritista or spiritual medium, would host to communicate with the dead.⁴² Mexicans in both Mexico and the United States celebrate Día de los Muertos each year.⁴³ Following this tradition, the living and the dead may exist on different planes, but they maintain the ability to commune with each other throughout the year, and manifestly so on the Day of the Dead.⁴⁴

As a result, even if science tells us that the dead are nothing but decaying flesh and bones, the fact that they were once living human beings means that sorting out whether and how long after death the formerly living (or their legal representatives) are entitled to assert the rights and interests they held in life is a legal question bound up in our cultural understandings of death and in our living commitments to honor the dead.⁴⁵ The law commonly permits living

-maps/how-major-religions-view-afterlife [<https://perma.cc/ZS8T-YACR>]. Orthodox Jews adhere to a strict set of funeral and burial practices, in accordance with the belief that the dead will be brought back to physical life when the Messiah comes. See Nelkin & Andrews, *supra* note 35, at 278–79 n.182. Jewish laws mandate that the body should not be embalmed nor displayed after death. See *id.* at 280 (citing *Lott v. State*, 225 N.Y.S.2d 434 (N.Y. Ct. Cl. 1962)). The *Lott* court awarded damages to the surviving family members of two women whose corpses had been delivered to the wrong mortuaries due to a hospital mistake. *Lott*, 225 N.Y.S.2d 434, 436–37 (1962). The Italian American woman's body was prepared for an Orthodox Jewish burial and the Jewish woman's body was buried with a crucifix and a rosary. *Id.* at 435–36. Importantly, the court carefully distinguished between injury to the deceased and injury to the feelings and emotions of surviving kin and based its award squarely on the latter. *Id.* at 436.

41. See ELSIE CLEWS PARSONS, PUEBLO INDIAN RELIGION VOLUME 1 68 (1996). The term “Pueblo Indians” describes a group of American Indian nations (e.g., Zuni, Hopi) from the present-day states of New Mexico, Arizona, and Texas. *Id.* at 1.

42. See SONIA SOTOMAYOR, MY BELOVED WORLD 23–25, 42–43 (2013).

43. The 2017 Disney animated film “Coco” tells a story about a Mexican family’s celebration of the Day of the Dead. See Monica Castillo, *An Enlightened Sense of Spirits*, N.Y. TIMES, Dec. 9, 2017, at C1. It was wildly popular and grossed over \$800 million in worldwide ticket sales. See Nancy Tartaglione, ‘Coco’ Sweet With \$800M Milestone At Worldwide Box Office, DEADLINE (May 1, 2018), <https://deadline.com/2018/05/coco-crosses-800-million-global-box-office-disney-pixar-1202380459> [<https://perma.cc/E5R8-6UZV>].

44. See Castillo, *supra* note 43, at C2; see also Day of the Dead (Día de los Muertos), HISTORY.COM (Oct. 30, 2018), <https://www.history.com/topics/halloween/day-of-the-dead> [<http://perma.cc/Y6PS-PAU5>].

45. “Science may prove, ever so clearly, that there is nothing there but carbon, and oxygen, and lime, . . . but all this can never eradicate the sentiment we are considering. It enters too deeply into our laws of thinking, our laws of speech, our most interior moral and religious emotions.” Nelkin & Andrews, *supra* note 35, at 264 (quoting Editor’s Table, HARPER’S NEW MONTHLY MAG., Dec. 1853 to May 1854, at 690, 690); cf. Robin Marantz Henig, *The Crossing*, NAT’L GEOGRAPHIC, Apr. 2016, at 36–37.

people to control what happens at their death and beyond in many instances.⁴⁶ Estate planning through wills, trusts, and other testamentary instruments allow living testators to plan in advance for events surrounding death and dying.⁴⁷ A testator can control not only who (or what) will inherit her property at death, but can also make choices regarding organ donation and disposition of the body.⁴⁸

This Article explores not just the interests that people might have in their bodies after they die but what happens when these interests are violated. Or, who or what is harmed when the bodies of formerly living people are violated? And, what role does the criminal law have to play in punishing violators? Through a survey of state laws on necrophilia, this Article specifically considers rights and interests related to bodily integrity and sexual autonomy.

The Article will proceed as follows. Part I answers the question: what exactly is necrophilia? It describes the current state of the clinical and forensic definitions of this sexual disorder. A highly detailed description of the different types of necrophilia can assist in better framing what social harms are threatened when an offender engages in necrophilic acts.

Part II answers the social harm question: how and why do states prohibit and punish necrophilic acts? That engaging in sex acts with dead human bodies is criminal is perhaps intuitively clear, but, as the fifty-state survey in Part II reveals, there is no uniform understanding among the states for the normative policy reasons for

46. See Nelkin & Andrews, *supra* note 35, at 278–79.

47. See Mary Randolph, *12 Simple Steps to an Estate Plan*, NOLO (Sept. 17, 2020), <https://www.nolo.com/legal-encyclopedia/12-simple-steps-estate-plan-29472.html> [<https://perma.cc/F3HN-KJ48>].

48. Many of these end-of-life decisions are structured around the legal notion of consent. See Nelkin & Andrews, *supra* note 35, at 277 (discussing that consent is key to human research and after death, surviving family members claim the right of consent). The Uniform Anatomical Gift Act of 1987, for example, allows for individuals to consent to organ and tissue donation after death. UNIF. ANATOMICAL GIFT ACT § 2 (1987), 8A U.L.A. 223 (2014). Because consent is such an important aspect of this decision-making, if the decedent's wishes regarding organ donation were not known prior to death, surviving family members are prohibited from consenting on the deceased's behalf. Nelkin & Andrews, *supra* note 35, at 279. Nor can they overrule the deceased in the event that the decedent previously declared a preference for other end-of-life plans. *Id.* Furthermore, eight states and the District of Columbia now have death with dignity statutes that allow competent adults with terminal illnesses to request medication to end their lives. *Death with Dignity Acts*, DEATH WITH DIGNITY, <https://www.deathwithdignity.org/learn/death-with-dignity-acts> [<https://perma.cc/FX8H-FHAP>]. Montana case law allows for the same. See *Baxter v. State*, 224 P.3d 1211, 1218 (Mont. 2009) (holding that physician-assisted suicide for a terminally ill, mentally competent adult was not against public policy). Although several bills have been introduced in the Montana state legislature to ban the practice via statutory law, as of April 2019, none of these efforts have been successful. See, e.g., *Montana*, DEATH WITH DIGNITY, <https://www.deathwithdignity.org/states/montana> [<https://perma.cc/HZX7-5M99>].

doing so. Part II creates identifiers and categories to organize the existing anti-necrophilia laws in the United States, organizing them according to different types of social harm. Not all criminal prohibitions against necrophilic acts exist for the same stated purpose and Part II presents an original taxonomy of U.S. necrophilia laws to aid in sorting the various justifications along an understanding of the normative reasons for criminalization. The Appendix summarizes this information in chart form.

Although this Article does not take a normative stance on the question of whether necrophilic acts should be criminalized or on how severely offenders should be punished if they are, it highlights the need to investigate these questions further. The survey contained here reveals that the wide variety of approaches in the states results in a significant disparity when it comes to severity of punishment for convicted offenders. In addition, the categorization of these necrophilic acts as sexual offenses in some states and not in others means that convicted offenders may not be aware of a duty to register as a sex offender upon a change of residence to a state in the former category.

I. BACKGROUND: NECROPHILIA

This Part defines the key term, necrophilia. “Loving the dead” actually comes in a variety of different psychological and physical forms, only some of which probably ought to be criminalized.⁴⁹ Necrophilia is “an erotic attraction to corpses.”⁵⁰ Although popularly understood to be sex with dead bodies, necrophilia is actually best described as a range of sexual practices related to what is commonly understood to be an “abnormal and perverse sensuality.”⁵¹ Although diagnosed necrophiles frequently report more than one motive for seeking to satisfy their desires, the most common was “to possess an unresisting and unrejecting partner.”⁵² Many necrophiles will seek jobs at

49. See Tyler Trent Ochoa & Christine Newman Jones, *Defiling the Dead: Necrophilia and the Law*, 18 WHITTIER L. REV. 539, 540–41 (1997).

50. *Id.* at 540. Ochoa and Jones argued that sexual activity with a corpse should be considered a criminal offense, specifically arguing that California should amend its penal code to prohibit all sexual contact with dead bodies. *Id.* at 576–77. The California legislature adopted such a law in 2004. See CAL. HEALTH & SAFETY CODE § 7052(a) (West 2020) (providing, “[e]very person who willfully mutilates, disinters, removes from the place of interment, or commits an act of sexual penetration on, or has sexual contact with, any remains known to be human, without authority of law, is guilty of a felony”).

51. Anil Aggrawal, *A New Classification of Necrophilia*, 16 J. FORENSIC & LEGAL MED. 316, 316 (2008).

52. Rosman & Resnick, *supra* note 23, at 158. Clinical psychologist Dany Nobus hypothesizes that, apart from seeking the power of complete domination over an unresisting

hospitals, morgues, or funeral parlors because these occupations provide easy, frequent, and often unsupervised access to corpses.⁵³

In 2011, Dr. Anil Aggrawal, a physician specializing in forensic medicine, published a comprehensive epidemiological study of necrophilia.⁵⁴ After a lengthy review of case studies and the extant medical and psychological theories, Aggrawal concluded that necrophilia is not a singular activity, but rather a spectrum of behavioral tendencies with ten distinct tiers or classes.⁵⁵

Classes I and II include necrophilic acts that involve atypical or unusual sexual interests and behavior (paraphilias), but probably do not require the regulation of criminal law because the necrophile's actions do not create social harms.⁵⁶ Necrophiles in Class I, for example, take pleasure in acting out role-play sexual fantasies.⁵⁷ Class I necrophiles seek out consenting partners and are aroused when their partners pretend to be dead or lifeless while engaging in sexual activities.⁵⁸ Class II includes individuals who are unable to come to terms with the actual death of their loved ones, and may continue to interact with their bodies as if they were still alive for some time after death.⁵⁹ Necrophilia of the Class II-type is temporary or "transient in nature" and typically comes to an end once the surviving family member finds an appropriate way to cope with the loss.⁶⁰

To be clear, a person who has atypical sexual desires does not necessarily have a mental disorder. The most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) distinguishes between human behavior that is unusual or atypical, and pathological behavior that causes personal mental distress or creates a threat to the psychological or physical well-being of others.⁶¹ The term "paraphilia" describes the

human body, at least some necrophiles seek pleasure in the act because of its very status as an extreme taboo. Nobus, *supra* note 22, at 187.

53. See, e.g., Rosman & Resnick, *supra* note 23, at 158, 160. Rosman and Resnick's 1989 study concluded that ninety-two percent of the "true necrophiles" that they had studied were male. See Rosman & Resnick, *supra* note 23, at 156.

54. See AGGRAWAL, *supra* note 22, at xvii.

55. See *id.* at 46.

56. *Id.* at 47–48, 51.

57. *Id.* at 47.

58. *Id.*

59. *Id.* Aggrawal calls these people "[r]omantic [n]ecrophiles." AGGRAWAL, *supra* note 22, at 48. Romantic necrophiles might continue to have conversations or eat meals with their dearly deceased. *Id.*

60. Aggrawal, *supra* note 51, at 317.

61. See AM. PSYCHIATRIC ASSOC., PARAPHILIC DISORDERS (2013). In fact, DSM-5 first provides a standard for "normal" sexual arousal—"sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners" and then defines paraphilias by exclusion. Michael B. First, *DSM-5*

former while “paraphilic disorder” is reserved for the latter category.⁶² Necrophilia is both a paraphilia and a paraphilic disorder, and the psychiatric distinction has forensic relevance.

When it comes to enacting legislation criminalizing necrophilic behavior, the distinction between desire (paraphilia) and disorder (paraphilic disorder) is significant. Beyond Aggrawal’s Class II are a range of behaviors that involve actual sex acts with dead bodies and, therefore, describe activities which can be and probably ought to be subject to criminal prohibitions.⁶³ Not only do these behaviors harm the rights and interests of others, those who engage in less serious necrophilic acts are prone to seek sexual satisfaction by engaging in increasingly dangerous and even deadly behavior over time.⁶⁴

Class III necrophiles have sexual fantasies about death or dead people.⁶⁵ Unlike those in Class I, individuals in Class III are aroused not by fictionalized death (as in role play), but by actual death and actual dead people.⁶⁶ Sometimes labeled “platonic necrophiles,” those in Class III are aroused by physical proximity to, but do not actually have sex with, the dead.⁶⁷ By contrast, individuals in Class IV need to touch dead bodies for sexual stimulation and satisfaction but do not engage in intercourse.⁶⁸ Class V comprises “fetishistic necrophiles.”⁶⁹ People who have a fetishistic necrophilia feel the need to take something from a corpse’s body (e.g., clothing) or some part of the corpse itself (e.g., a finger) as a fetish object.⁷⁰ Class VI necrophiles mutilate corpses while masturbating.⁷¹

and Paraphilic Disorders, 42 J. AM. ACAD. PSYCHIATRY L. 191, 198 (2014). By definition, therefore, non-penile sex and arousal when viewing pornography are paraphilias. *Id.* at 198–99.

62. See First, *supra* note 61, at 192.

63. See *infra* footnotes 65–80 and accompanying text.

64. See AGRAWAL, *supra* note 22, at 85 (noting that many of the activities of necrophiles will intensify over time, crossing class boundaries as their desires and behaviors change).

65. See Aggrawal, *supra* note 51, at 317.

66. See *id.*

67. See *id.*

68. See AGRAWAL, *supra* note 22, at 56 (otherwise known as “tactile necrophiles”).

69. See Aggrawal, *supra* note 51, at 318.

70. See AGRAWAL, *supra* note 22, at 59–60.

71. See *id.* at 63. In what the local press called the “bloodiest killing” in Fremont, California history, thirty-one-year-old Omar Pettigen confessed to shooting his mother. Joseph Serna, *Bloodiest killing in Fremont history is described in court documents*, L.A. TIMES (Oct. 8, 2015), <https://www.latimes.com/local/lanow/la-me-ln-fremont-killing-pettigen-details-interview-20151007-story.html>. He cut her open, pulled out her heart, and left it on her open chest. *Id.* He told police that after doing this, he went to an adjacent room and masturbated. *Id.*; David Debolt, Malaika Fraley & Bay Area News Group, *Police: Fremont son shot mom, sliced her chest open, held her heart*, SANTA CRUZ SENTINEL (Sept. 13, 2018), <https://www.santacruzsentinel.com/2015/10/06/police-fremont-son-shot-mom-sliced-her-chest-open-held-her-heart-2>. The acts committed by Pettigen likely

None of the necrophiles described above actually have sexual intercourse with corpses. Class VII necrophiles are the first in Aggarwal's ten classes who do.⁷² Individuals in Class VII are those who do not regularly fantasize about or desire to have sex with the dead; however, they are "opportunistic" necrophiles.⁷³ That is, Class VII necrophiles will engage in sex acts with a corpse if the opportunity arises.⁷⁴ Murderers who later, and only as an afterthought, perform sexual acts on their dead victims are Class VII necrophiles.⁷⁵

It is not until we reach the antepenultimate category in Aggrawal's classification system that we encounter what most commonly understand as necrophilia.⁷⁶ In Class VIII reside the "classic[]" necrophiles, those who have a preference for sex with the dead.⁷⁷ Class IX necrophiles take it a step further; this category includes individuals willing to kill someone in order to achieve the fantasy of having sex with a dead person.⁷⁸

In each of the previously described classes, the necrophile may prefer sexual activity with corpses, but can achieve intercourse with live partners.⁷⁹ Unlike those in the classes previously described, Class X necrophiles are completely unable to achieve arousal with living partners and therefore seek out corpses to satisfy their sexual desires.⁸⁰

The preceding section described the most current psychological and forensic literature on necrophilia. Knowing that there are several different types of necrophilia can assist in a more accurate understanding of what social harms are threatened when an offender engages in necrophilic acts.

II. SOCIAL-HARM TAXONOMY OF U.S. ANTI-NECROPHILIA LAWS

A majority of U.S. states have laws that criminalize one or more of the acts described in Part I. Of the forty-six states that criminalize

qualify as Class VI necrophilia, also known as necromutilomaniacs. *See* discussion on the mistreatment of corpses *infra* Section II.C.

72. Aggrawal, *supra* note 51, at 318.

73. *Id.*

74. *See* AGRAWAL, *supra* note 22, at 67.

75. *See, e.g.*, Taylor v. State, 28 A.3d 399, 402–03, 409 (Dec. 2011) (finding the defendant guilty of abuse of a corpse for inserting cucumbers into the mouth, vagina, and anus of his murdered fiancée).

76. *See* Roach, *supra* note 27, at 88–89; Aggrawal, *supra* note 51, at 318.

77. *See* Aggrawal, *supra* note 51, at 318.

78. *See* AGRAWAL, *supra* note 22, at 73. Serial killers such as Jeffrey Dahmer and Ed Gein would fit into Class IX. *See* Nobus, *supra* note 22, at 177, 182.

79. *See supra* notes 56–77 and accompanying text.

80. *See* AGRAWAL, *supra* note 22, at 84.

necrophilic acts, thirty-one treat the crime as a felony and offenders can be subject to harsh punishment.⁸¹ For example, offenders who sexually penetrate dead human bodies in Nevada are potentially subject to life imprisonment.⁸² In January 2019, a Georgia man who pleaded guilty to breaking into a funeral home and having anal sex with the corpse of a dead woman received a twenty-year sentence.⁸³ Yet despite the severe penal consequences at stake, there is no general agreement among the states about what rights or interests are injured by necrophilic acts or how to identify the associated social harms that make the behavior criminal.

This Article does not take a normative position on what social harms, if any, the acts related to necrophilia present. Nor does it argue that absolute uniformity among the states is either required or desired. Each state has an interest in individually identifying and addressing social harms and the potential impact of those harms on the state's residents, and deference to the state legislative will is a core principle of U.S. constitutional law.⁸⁴ The recent increase in state laws legalizing the recreational use of marijuana is a handy example of the states' power to engage in lawmaking that is tailored to each state's particular needs.⁸⁵ What the Article does offer is the

81. The states that treat necrophilia as a felony are: Alabama, Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. *See infra* Appendix.

Although the statutory text of the Maryland law classifies the crime as a misdemeanor, violations under the statute may be punished by up to ten years in prison, making it a functional felony offense. *See* MD. CODE ANN., CRIM. LAW § 3-322 (West 2002). Maryland case law provides that, unless the legislature expressly provides otherwise, only crimes that were felonies at common law are considered felonies. *See* *Bowser v. State*, 110 A. 854, 855 (Md. 1920). The misdemeanor classification, however, does not preclude the imposition of a sentence of more than one year in prison. *See* *State v. Canova*, 365 A.2d 988, 993 (Md. 1976) (discussing Maryland legislation that allows for a twelve-year sentence for the misdemeanor crime of bribery).

The result under Pennsylvania law is similar. Abuse of a corpse is a misdemeanor offense that can be punished by up to two years in prison. *See* 18 PA. CONS. STAT. § 5510 (1972); 18 PA. CONS. STAT. § 106(b)(8) (2013). In Pennsylvania, misdemeanors are crimes where the maximum punishment is five years. § 106(b)(6)–(8).

82. *See* NEV. REV. STAT. § 201.450(1) (2005) (categorizing sexual penetration of a human body as a crime against public decency and good morals).

83. *See* WRBL, *Man sentenced to prison after raping corpse at funeral home*, KRON4 (Jan. 30, 2019), <https://www.kron4.com/news/national/man-sentenced-to-prison-after-raping-corpse-at-funeral-home/1740477218> [<https://perma.cc/S8XZ-NMAX>]; GA. CODE ANN. § 16-6-7(b) (West 2010).

84. At least when it comes to commercial crimes, the United States Supreme Court appears resolute in the notion that individual state legislatures ought to be allowed the freedom and flexibility to identify and define diverse views of social harms. *See, e.g.*, *Ferguson v. Skrupa*, 372 U.S. 726, 729–31 (1963).

85. As of May 2019, ten states and the District of Columbia have legalized the adult

observation that, in contradistinction to other *mala in se* crimes⁸⁶—such as murder or theft, where there is much more uniformity in understanding and appreciating the root values and interests put at risk when someone is killed or someone steals⁸⁷—the same is not true for necrophilia.

History and culture play a constitutive role in the construction of social harm, and therefore our social understanding of the rights and interests at stake when we consider a certain crime may evolve and change over time.⁸⁸ Although state laws criminalizing rape have undergone significant changes over the past fifty years, for example, the general state consensus now holds that sexual autonomy is the primary human interest and right threatened by the crime of rape.⁸⁹ The prevailing theory about the social harm of rape is that states now criminalize rape to prevent and vindicate violations of an individual's sexual autonomy.⁹⁰ Currently, however, there is no consensus whatsoever among the states when it comes to the question of the social harm or harms of necrophilia.⁹¹ In fact, there are remarkable discrepancies in the various state approaches; these differences lead to inconsistent penal consequences, including the collateral consequences occasioned by sex offender registry laws.

use of recreational marijuana. *See, e.g.,* Lea Lane, *Want To Take A 'Weedcation?' Recreational Cannabis Now Legal In Ten States And DC*, FORBES (Apr. 20, 2019), <https://www.forbes.com/sites/lealane/2019/04/20/a-reason-to-celebrate-420-recreational-cannabis-now-legal-in-ten-states-and-dc/#2d23a2af5a6d> [<https://perma.cc/A9TL-XX5G>]. The variety of state approaches to the question is a good contemporary example of the principle of anti-commandeering. *See* Caleb Seckman, *Anti-Commandeering: A Modern Doctrine for a Modern World*, 13 N.Y.U. J.L. & LIBERTY 150, 189 (2019) (stating that marijuana provides a good example of the “anti-commandeering” principle at work).

86. Distinguishing *malum in se* crimes from crimes that are *malum prohibitum* is difficult because they are often categorized by exclusion from the other group. *See* Mark S. Davis, *Crimes Mala in Se: An Equity-Based Definition*, 17 CRIM. JUST. POL'Y REV. 270, 271, 280–81 (2006). Nevertheless, *malum in se* crimes can generally be defined as criminal behavior that is considered to be a non-contingent wrong. *See id.* at 271. That is, regardless of social or historical context, the bad act is considered to be criminal and worthy of social regulation and punishment. *Id.* Non-contingent wrongs include murder, theft, and rape. *See id.* at 271–73. The understanding of necrophilia as anti-social, morally wrong, and criminal are not likely to change over time. It is for these reasons why I categorize necrophilia as a crime *malum in se*.

87. *See* Peter Westen, *Reflections on Joshua Dressler's Understanding Criminal Law*, 15 OHIO STATE J. CRIM. L. 311, 330–31 (2018) (quoting JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 113–14 (7th ed. 2015)).

88. *See infra* footnotes 89–90 and accompanying text (discussing the evolution of rape and sexual assault law).

89. *See* Gruber, *supra* note 9, at 416–17 (observing that lawmakers and legal scholars have abandoned the notion of rape as a crime of force and violence).

90. *See id.* at 422–23 (describing the nature of rape today as harm to personal autonomy).

91. *See infra* Appendix.

Before presenting the taxonomy of social harms associated with anti-necrophilia laws, here is a basic description of what is meant by the critical term. Social harm is the “negation, endangering, or destruction of an individual, group, or state interest which [is] deemed socially valuable.”⁹² In the context of criminal law, harm is social because the injury is experienced not only by the individual victim of the harm, but also by society as a whole.⁹³ This is why we have public prosecutors that represent the state, not the individual victim, in criminal prosecutions.⁹⁴

Yet, as observed by Albin Eser in 1965, most state definitions of crime do not contain any reference at all to social harm.⁹⁵ Instead, the various penal codes rely on a formalistic understanding of crime as mere disobedience to the dictates of the power of the state to regulate social conduct.⁹⁶ In Illinois, for example, crime is simply “a violation of any penal statute of this State.”⁹⁷ Nevada defines crime as “an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline.”⁹⁸ New York continues to define crime as “a misdemeanor or a felony,”⁹⁹ but following in the example of the Model Penal Code,¹⁰⁰ has supplemented this formal definition with language in the general purposes section.¹⁰¹ New York’s Penal Code now declares that one of its main purposes

92. Albin Eser, *The Principle of “Harm” in the Concept of Crime: A Comparative Analysis of the Criminally Protected Legal Interests*, 4 DUQ. L. REV. 345, 413 (1965).

93. See Lawrence C. Becker, *Criminal Attempt and the Theory of the Law of Crimes*, 3 PHIL. & PUB. AFFS. 262, 269–71 (1974) (arguing that this is what distinguishes public criminal prosecutions from remedies under the civil law).

94. See ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* 10 (2007) (citing European scholar Cesare Beccaria who noted that “crime should be viewed as a societal problem, not simply as a wrong against an individual victim”).

95. See Eser, *supra* note 92, at 351.

96. *Id.*

97. 720 ILL. COMP. STAT. ANN. 5/2-12 (2012). The section announcing the general purposes of the Criminal Code of 2012 does not include any reference to social harm whatsoever. See *id.* ch. 720, 5/1-2. Academics who study Illinois law have made social harm an important consideration, proposing the following definition: “Illinois criminal law is law that defines as illegal and makes punishable by criminal sanctions behavior that involves a perceived social harm.” JOHN F. DECKER & CHRISTOPHER KOPACZ, *ILLINOIS CRIMINAL LAW: A SURVEY OF CRIMES AND DEFENSES* § 1.02 (5th ed. 2012).

98. NEV. REV. STAT. ANN. § 193.120(1) (2019).

99. N.Y. PENAL LAW § 10.00(6) (McKinney 2019).

100. The MPC incorporates the notion that some sort of social harm is a prerequisite to crime. See Bernard E. Harcourt, *The Collapse of the Harm Principle Redux: On Same-Sex Marriage, the Supreme Court’s Opinion in United States v. Windsor, John Stuart Mill’s Essay On Liberty (1859), H.L.A. Hart’s Modern Harm Principle* 17–18 (U. Chi. Pub. L. & Legal, Working Paper No. 437, 2013) (citing the MPC’s chief reporter, Herbert Wechsler, *Codification of Criminal Law in the United States: The Model Penal Code*, 68 COLUM. L. REV. 1425, 1432 (1968)).

101. See N.Y. PENAL LAW § 1.05 (McKinney 2006) (describing the general purposes of New York penal law).

is to “proscribe conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests.”¹⁰²

Eser argued that modern criminal law analysis is incomplete without an examination into the material wrong of the crime.¹⁰³ That is, social harm cannot be understood as the mere “breach of law.”¹⁰⁴ If the criminal law is to mean anything more than the bare power of the state to control the behavior of its residents, our understanding of “crime” should encompass more than mere disobedience or violations of enacted laws.¹⁰⁵ The true meaning of a prohibited act or omission lies in identifying what the material wrong is and why the criminal law seeks to protect against that particular injury.¹⁰⁶

Legal academics have pursued Eser’s material wrong agenda with greater fervor than the states.¹⁰⁷ The most popular Criminal Law casebook in U.S. law schools includes social harm in its elemental definition of crime.¹⁰⁸ A leading treatise provides that there is “universal agreement that society and government may not justly penalize human activities as long as they are not harmful in fact.”¹⁰⁹ The MPC declares as a primary purpose of the criminal law, “to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.”¹¹⁰

Not a mere academic issue, the social harm requirement is also a constitutional one about substantive due process—what Eser calls the “utility principle.”¹¹¹ The U.S. Constitution limits the states’ ability to use criminal law to regulate conduct.¹¹² Substantive due process principles allow courts to invalidate criminal laws when that

102. *Id.* § 1.05(1). In 1965, New York law used a mere disobedience definition. *See* Eser, *supra* note 92, at 348 (quoting Section 2 of the New York Penal Code defining crime as “an act or omission forbidden by law and punishable by death or imprisonment”).

103. *See id.* at 351.

104. *See id.* at 348.

105. *See id.* at 349; Bernard E. Harcourt, *The Collapse of the Harm Principle*, 90 J. CRIM. L. & CRIMINOLOGY 109, 144–45 (1999) (citing JUDITH BUTLER, *EXCITABLE SPEECH: A POLITICS OF THE PERFORMATIVE* 22, 24 (1997) (explaining resistance to Catharine MacKinnon’s call to regulate pornography on the basis of harm to women, warning that this aggrandizes state power that could be used to oppress the queer community)).

106. *See* Eser, *supra* note 92, at 348.

107. Harcourt, *supra* note 105, at 134 (noting that “[m]ost of the leading criminal law scholars either adopted the harm principle or incorporated it into their writings”).

108. JOSHUA DRESSLER & STEPHEN P. GARVEY, *CASES AND MATERIALS ON CRIMINAL LAW* 147–48 (6th ed. 2012). The casebook I use also speaks about social harm as element of crime. CYNTHIA LEE & ANGELA P. HARRIS, *CRIMINAL LAW: CASES AND MATERIALS* 6–7 (3d ed. 2014). *But see* Westen, *supra* note 87, at 334–35 (arguing that social harm is not an essential element of crime).

109. Eser, *supra* note 92, at 363.

110. MODEL PENAL CODE § 1.02(1)(a) (AM. L. INST. 2009).

111. *See* Eser, *supra* note 92, at 354.

112. *See id.* at 398–99 (explaining that criminal provisions are required to be in harmony with the Constitution).

legislation bears no substantial relationship to a matter of legitimate public concern.¹¹³ Put differently, states must provide reasons that justify their criminal laws. That a prohibited activity must be associated with some social harm (either in its result or by its existence) is, therefore, a fundamental feature of U.S. law.¹¹⁴

In a 1997 article, legal scholars pushing for enactment of a necrophilia statute in California—none existed at the time—observed that the states took three approaches to punishing necrophilic acts.¹¹⁵ Reviewing statutes and case law from the fifty states, the authors examined *how* prosecutors could use existing laws to prosecute and punish offenders.¹¹⁶ This Article, by contrast, will propose an original taxonomy of *why* states seek to punish necrophilic acts.

Five distinct formulations of the social harms associated with necrophilia emerge from a close textual reading of the statutes, relevant legislative history, and case law. The first category included in the taxonomy below is “no social harm.” In other words, it is possible that in the few remaining states that do not have anti-necrophilia laws, it is because their legislatures see no related rights or interests to protect or has not yet been confronted with a case necessitating such protections. The majority of states, however, fall into one of the remaining four categories—(2) crimes against nature; (3) mistreatment of corpses; (4) the rights of surviving family members; and (5) sex crimes.

A. No Social Harm

Four states currently lack any criminal prohibitions on behaviors associated with necrophilia.¹¹⁷ In these states, it may be that the

113. See, e.g., *Mugler v. Kansas*, 123 U.S. 623, 661 (1887).

114. See WAYNE R. LAFAVE, *CRIMINAL LAW* 10–11 (5th ed. 2010) (describing the harm principle as the fourth basic premise of criminal law; the others are actus reus, mens rea, concurrence, causation, punishment, and legality).

115. Ochoa & Jones, *supra* note 49, at 550. The three categories were: (1) case law interpreting rape and sodomy statutes to include necrophilic acts; (2) case law interpreting abuse of corpse statutes to include necrophilic acts; and (3) express statutory bans on necrophilic acts. See *id.* John H. Troyer similarly groups U.S. laws into three types: (1) abuse of corpse laws, (2) necrophilia laws that explicitly prohibit sex acts with corpses, and (3) unnatural acts or crimes against nature. See Troyer, *supra* note 22, at 135. Troyer briefly mentions the social harms associated with each type of law, but is less interested in how the law deals with the necrophile as he is in how the law treats the dead human body. See *id.* at 134.

116. See Ochoa & Jones, *supra* note 49, at 550–63, 565–66 (describing the approaches of different states in classifying the crime).

117. The four states are Louisiana, Missouri, Nebraska, and New Mexico. See *infra* Appendix. The District of Columbia does not have a necrophilia statute, but it does have case law stating that sexual abuse of a corpse can be the basis of a civil suit. See *Steagall v. Drs. Hosp.*, 171 F.2d 352, 353 (D.C. Cir. 1948) (recognizing the right of surviving family members “to possess, preserve and bury, or otherwise to dispose of, a dead body,” the violation of which is a tort).

legislatures do not understand the harms associated with necrophilic acts to be social harms that ought to be regulated, or have simply not yet been called upon by actual incidents in order to address these harms.

One could reasonably argue that because a corpse has ceased to exist as a human person—because her heart has stopped beating, because her brain stem has stopped functioning¹¹⁸—she cannot be harmed by nonconsensual treatment of her body after death. A Michigan court held just that in a case involving the murder of a female sex worker and the subsequent sexual penetration of her corpse.¹¹⁹ The court vacated the defendant's felony murder conviction, reasoning that the State had not proven that the defendant had committed the predicate felony of sexual assault because the victim was already dead.¹²⁰ "A dead body is not a person. It cannot allege anything. A dead body has no will to overcome. It does not have the same potential to suffer physically or mentally as a live or even an unconscious or dying victim."¹²¹ Interestingly, the court concluded its opinion by asking the state legislature to fill the gap by enacting a necrophilia law signaling that while sexual assault may not be the correct label, what this defendant did was deserving of blame.¹²²

A number of states that now have anti-necrophilia laws did not have them until tabloid events compelled the state legislatures into action.¹²³ For example, Washington passed its law after Ronald Shawn Ryan broke into a funeral home two times in a period of six days in 1992.¹²⁴ During the first incident, Ryan stole several items and caused property damage to furniture and office equipment.¹²⁵ He also made sexual contact with the bodies of three elderly women who had been prepared for burial.¹²⁶ During the second incident, Ryan broke in, stole items, and again had sexual contact with a dead woman's body.¹²⁷ The police apprehended Ryan on his third attempt to enter the funeral home.¹²⁸ At Ryan's trial, the court declared that,

118. UNIF. DETERMINATION OF DEATH ACT § 1 (NAT'L CONFERENCE COMM'RS. ON UNIF. STATE L. 1981).

119. *See* *People v. Hutner*, 530 N.W.2d 174, 175–76 (Mich. Ct. App. 1995).

120. *Id.* at 176–77.

121. *Id.* at 176.

122. *See id.* at 176 n.1. Michigan's mutilation of a dead body statute, listed in Section II.C, would not cover what Hutner did to his victim. *See infra* Section II.C.

123. *See, e.g.,* Ochoa & Jones, *supra* note 49, at 539 (citing Frank B. Williams, *Two Valley Men Arrested in Sex Assault on Corpse*, L.A. TIMES, Sept. 20, 1995, at B5).

124. *Id.* at 562 (citing *State v. Ryan*, 899 P.2d 825, 826 (Wash. Ct. App. 1995)).

125. *Id.* at 562 n.139.

126. *Id.*

127. *Id.* at 563.

128. *Id.*

without a necrophilia statute, the only victim was the funeral home—not the corpses.¹²⁹

Likewise, California added the crime of felony sexual penetration with a dead human body to its penal code during the 2003 legislative session after a startling incident called the public's attention to the fact that no law prohibited such contact.¹³⁰ Four-year-old Robyn Gillet had died of the flu while in the hospital and the driver who had been assigned to transport her body to the morgue was caught on security cameras sexually assaulting her body.¹³¹ The State pursued criminal charges against the driver, Donald Luis Cooper, under the only then-existing relevant statute, a Health and Safety Code section related to mutilation of human remains.¹³² State Representative Sharon Runner of the Thirty-Sixth District, where Robyn was a constituent, pushed for a new anti-necrophilia law, arguing that without a separate necrophilia crime, California would “only promote disrespect for the deceased.”¹³³

B. Crimes Against Nature¹³⁴

Crimes against nature (CAN) statutes are purposely broad and vague, and therefore, may be used by prosecutors to criminalize

129. Ochoa & Jones, *supra* note 49, at 563 n.140 (quoting the unpublished opinion of State v. Ryan Nos. 33607-0-1, 35017-0-1, 34293-2-1, at *828 n.2 (July 31, 1995)). Interestingly, Washington had previously criminalized necrophilia under its crimes against nature statute, but had repealed it with a set of criminal law reforms in 1975. *See id.* at 562; Jolayne Houtz, *Man Gets 10 Years For Abuse Of Bodies—Crime At Funeral Home Is ‘Shocking’*, SEATTLE TIMES (Oct. 12, 1993), <https://archive.seattletimes.com/archive/?date=19931012&slug=1725731> [https://perma.cc/A57S-ZRD8].

130. *See* CAL. HEALTH & SAFETY CODE § 7052 (West 2003) (as amended by Assemb. B. 1493, 2003–2004 Gen. Assemb., Reg. Sess. (Cal. 2003)).

131. Beau Yarbrough, *Necrophiliac Does Prison Time—At Last*, DAILY PRESS (Feb. 4, 2008), <https://www.vvdailypress.com/article/20070616/NEWS/306169997> [https://perma.cc/XUJ4-XP4C].

132. *Id.*

133. Assemb. B. 1493, 2003–2004 Gen. Assemb., Reg. Sess. (Cal. 2003). Representative Runner requested an excused absence for the February 24, 2003 assembly meeting in order to attend Robyn's funeral. Assemb. Daily Journal, 2003–2004 Reg. Sess., at 476 (Cal. 2003).

134. This approach is used by Idaho, Maryland, Massachusetts, Minnesota, and North Carolina. *See infra* Appendix. The Uniform Code of Military Justice (UCMJ) seems to take a similar approach, covering sexual acts with a corpse as an “indecent act” under Article 134. *See* 10 U.S.C. § 934 art. 134; *see also* United States v. Mabie, 24 M.J. 711, 713 (C.M.R. 1987) (holding that sexual acts with a corpse are indecent under UCMJ Art. 134). In *Mabie*, the court explained: “‘indecent’ signifies that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene, and repugnant to common propriety, but tends to excite lust and deprave the morals with respect to sexual relations.” *Id.* (quoting MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. V, ¶ 90c (1984); *see also* United States v. Sanchez, 11 C.M.A. 216, 218 (C.M.A. 1960) (holding that sexual penetration of a chicken is indecent per se under UCMJ Art. 134). In *Sanchez*, the court reasoned that the harm of indecent sex acts like bestiality and lewd activity with a child was a discredit to the armed services. *Id.* at 219. *But see* United States v. Anderson, 36 M.J. 963, 979 (C.M.R. 1993) (discussing the Government's submission that the UCMJ does not criminalize necrophilia).

necrophilic behavior. Notwithstanding their malleability, however, CAN laws do not provide a satisfactory explanation of the social harms associated with necrophilia. A euphemism for “unconventional sex in its various forms,”¹³⁵ most state laws prohibiting “crimes against nature” do not specifically define what behavior is prohibited under this label.¹³⁶ Indeed, as the Illinois Supreme Court put it in 1897: “[i]t was never the practice to describe the particular manner or the details . . . as the abominable crime [was] not fit to be named.”¹³⁷ The Illinois high court refused to provide further guidance in the case law, declaring, “the records of the courts need not be defiled with the details of different acts which may go to constitute [a crime against nature].”¹³⁸

The very ambiguity of CAN laws is what provides states the flexibility to pursue criminal charges for any atypical, unpopular, or deviant sex act,¹³⁹ including “all unnatural copulation with mankind or a beast.”¹⁴⁰ Idaho’s CAN law, for example, is written broadly enough to encompass necrophilic acts.¹⁴¹ It subjects “[e]very person who is guilty of the infamous crime against nature, committed with mankind or with any animal” to a minimum of five years in prison.¹⁴² Because of its breadth, Idaho law might also be utilized to punish anal sex, oral sex, masturbation, prostitution, incest, and bestiality.¹⁴³ These very different and distinct activities are among the many and varied that could fall under a generic CAN statute.¹⁴⁴ Necrophilia is not uncommonly included in a parade of horrors, along with bestiality and pedophilia, as sexually deviant conduct.¹⁴⁵ Thus,

135. David Abbott, *Crimes Against Language and Nature*, 3 SCRIBES J. LEGAL WRITING 149, 149 (1992).

136. See *Honselman v. People*, 48 N.E. 304, 305 (Ill. 1897).

137. *Id.*

138. *Id.*

139. See, e.g., M. Blake Huffman, *North Carolina Courts: Legislating Compulsory Heterosexuality by Creating New Crimes Under the Crimes Against Nature Statute Post-Lawrence v. Texas*, 20 L. & SEXUALITY 1, 6–7 (2011) (describing how North Carolina courts have interpreted the state’s CAN law broadly).

140. *State v. Cyr*, 198 A. 743, 743 (Me. 1938) (applying the liberal doctrine broadly interpreting Maine’s CAN law).

141. See IDAHO CODE § 18-6605 (1972).

142. In its entirety, Idaho Code § 18-6605 provides: “Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.” *Id.* It resides in Chapter 66, titled “sex crimes.” See also Troyer, *supra* note 22, at 142.

143. See, e.g., Huffman, *supra* note 139, at 6–7 (detailing how North Carolina courts have found such crimes to fall within the purview of the state’s CAN law).

144. See, e.g., *id.* at 6; see also *Lawrence v. Texas*, 539 U.S. 558, 568 (2003) (noting that early sodomy laws sought to prohibit all manner of nonprocreative sexual activity).

145. In 2014, Paul Stam, a state legislator from North Carolina spoke against including sexual orientation as a protected class. Elizabeth Leland, *Wake: Pedophilia and bestiality are sexual orientations, Republican lawmaker suggested*, CHARLOTTE OBSERVER (Oct. 12, 2016), <https://www.charlotteobserver.com/news/special-reports/permission-to-hate/article>

“carnal[] know[ledge of] a dead body” in Minnesota is criminalized as misdemeanor bestiality.¹⁴⁶

But it is with anti-gay sodomy bans that CAN laws are most notably and inextricably linked.¹⁴⁷ In sum, CAN laws are “[r]ooted in nothing more than moral and religious disapproval of nonprocreative sex acts that have become historically associated with homosexuality.”¹⁴⁸ Morality legislation in the form of CAN laws criminalized sex between gay men because gay sex—included under the label of sodomy—was the object of public revulsion and outrage.¹⁴⁹ Then, in its 2003 decision, *Lawrence v. Texas*, the Supreme Court acknowledged a substantive due process right of sexual intimacy for consenting adults and held that states could no longer punish consensual sexual activity between adults.¹⁵⁰ After *Lawrence*, state laws¹⁵¹ that treat necrophilia as a “crime against nature” similar to sodomy¹⁵² are inadequate in modern times.¹⁵³

105754116.html [https://perma.cc/T6PQ-8667]. He argued, as the Traditional Values Coalition has, that sexual orientation would include not only LGBTQ people, but also pedophiles and necrophiles. *Id.*

146. MINN. STAT. ANN. § 609.294 (West 1987) (providing, in relevant part, that “[w]hoever carnally knows a dead body or an animal or bird is guilty of bestiality”). Violations of Minnesota’s bestiality law were previously punishable at up to twenty years, but the law was amended in 1963. *See id.* advisory committee’s note to the 1963 amendment. The legislature determined that twenty years imprisonment was “excessive” and “more a product of revulsion to this type of crime than to the social harm in fact committed.” *Id.*

147. *See* William N. Eskridge, Jr., *Hardwick and Historiography*, 1999 U. ILL. L. REV. 631, 645–46 (1999).

148. Alexis Agathocleous, *When Power Yields to Justice: Doe v. Jindal and the Campaign to Dismantle Louisiana’s Crime Against Nature Statute*, 14 LOY. J. PUB. INT. L. 331, 333 (2013).

149. One of the arguments Michael Hardwick raised in his constitutional challenge to the Georgia sodomy law was that there was no rational basis for the law, except “the presumed belief . . . that homosexual sodomy is immoral and unacceptable.” *See Bowers v. Hardwick*, 478 U.S. 186, 196 (1986) *overruled by Lawrence v. Texas* 539 U.S. 558 (2003). The Court rejected this argument, concluding that the law is “constantly based on notions of morality.” *Id.*

150. 539 U.S. at 564; *see also* Huffman, *supra* note 139, at 2.

151. *See, e.g.*, MD. CODE ANN., CRIM. LAW § 3-322 (West 1957) (titled “Unnatural or perverted sexual practice”); MASS. GEN. LAWS ch. 272, § 34 (2000); N.C. GEN. STAT. § 14-177 (1994) (found to be unconstitutional as applied, *State v. Whiteley*, 616 S.E.2d 576, 577 (N.C. Ct. App. 2005)); *see also* Troyer, *supra* note 22, at 137 (listing Maryland and Massachusetts). Maryland also has a separate sodomy law and a separate law regarding mistreatment of a corpse. MD. CODE ANN., CRIM. LAW § 3-321 (repealed 2020) (sodomy); MD. CODE ANN., CRIM. LAW § 10-404(c) (West 2008) (indecent conduct in a cemetery). The latter would fall into this Article’s second category of social harms. *See supra* notes 117–33 and accompanying text.

152. *See, e.g.*, MODEL PENAL CODE § 250.10 cmt. at 421 (AM. L. INST. 1980) (noting that several states punish necrophilic acts on the basis of analogy to sodomy and bestiality, two serious offenses at common law).

153. Following *Lawrence*, states have an incentive to more specifically describe what actions are punishable by their CAN statutes. *See* Jonathan Turley, *The Loadstone Rock:*

Basing criminal sanctions on judgments of “sexual perversion” and disgust is problematic because it endows the state and its agents to elect among and place varying values and protections on different sexual acts. In a pre-*Lawrence* and even pre-*Bowers* case,¹⁵⁴ the Court of Criminal Appeals of Tennessee considered whether cunnilingus counted as an act prohibited under the state’s CAN law.¹⁵⁵ Writing in 1973, the majority concluded that it was.¹⁵⁶ Judge Charles Galbreath dissented, reasoning that whereas cunnilingus was “so universally accepted now as normal,” necrophilia—which had at that point not been the subject of criminal regulation in Tennessee—was “the most loathsome, degrading and vile sexual activity imaginable” and “so horrible as to be repugnant to all but the most depraved.”¹⁵⁷ Judge Galbreath’s endorsement of oral sex as “normal” and his designation of necrophilia as “vile” without an additional explanation of what rights and interests were being violated is exactly what is wrong with using CAN laws to punish necrophilia.¹⁵⁸ The disgust towards necrophilia so evident in Judge Galbreath’s dissenting opinion recalls the unadorned animus for gay men that characterize anti-sodomy laws.¹⁵⁹ His reasoning appeals to moral intuitions about “depraved” activity, but does not adequately explain why the criminal law should be involved.¹⁶⁰ Certainly, necrophilia was not the precise legal issue before Judge Galbreath at the time, but his rhetorical reliance on a visceral response to make his point demonstrates why CAN laws are unsatisfactory vehicles for the criminal law.¹⁶¹

The “public revulsion and outrage” associated with gay sex—or bestiality or necrophilia—are simply insufficiently precise descriptions of a social harm to justify the imposition of criminal punishment.¹⁶² That is not to say that bestiality and necrophilia should be decriminalized. But, after *Lawrence*, states seeking to punish bestiality and

The Role of Harm in the Criminalization of Plural Unions, 64 EMORY L.J. 1905, 1930–32 (2015) (describing Jeremy Bentham’s “felicific calculus” as serving as the basis for his opposition to anti-sodomy laws, despite his personal revulsion for gay sex).

154. *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986) (upholding Georgia’s sodomy statute against various constitutional challenges), *overruled by* *Lawrence v. Texas* 539 U.S. 558 (2003).

155. *Locke v. State*, 501 S.W.2d 826, 827 (Tenn. Crim. App. 1973).

156. *Id.*

157. *Id.* at 829 (Galbreath, J., dissenting).

158. *See id.*

159. *See id.* at 828–29.

160. *Id.* at 829.

161. *See Locke*, 501 S.W.2d at 829 (Galbreath, J., dissenting).

162. *Cf. Ochoa & Jones*, *supra* note 49, at 564; Eric A. Johnson, *Harm to the “Fabric of Society” as a Basis for Regulating Otherwise Harmless Conduct: Notes on a Theme from Ravin v. State*, 27 SEATTLE U. L. REV. 41, 68 (2003) (“[A]rguing that some existing human reaction patterns have social utility and so are worth preserving.”).

necrophilia as “crimes against nature” ought to contemplate more concrete, social-harm-based reasons for doing so.

C. *Mistreatment of Corpses*¹⁶³

Like CAN laws, many state anti-desecration of corpse statutes are broad enough to encompass the prohibition of necrophilic acts.¹⁶⁴ As distinct from the anti-necrophilia statutes described in subpart E below, however, mistreatment of corpse statutes do not specify sex acts as desecration, although some contain language requiring proof of wantonness.¹⁶⁵ South Dakota law, which prohibits removal of all or part of a dead body from a burial site, is fairly representative of the breadth of mistreatment or abuse of corpse statutes.¹⁶⁶ Section 34-27-19 requires that the South Dakota prosecutor prove that, in removing the body, the offender intended to sell or unlawfully dissect it, or that he acted with “malice or wantonness.”¹⁶⁷

The social harm associated with desecration of a corpse is that the mistreatment of a dead body is “an outrage upon the public feelings.”¹⁶⁸ The state laws considered in this Section likewise frame sexual activity with the dead as another form of desecration that violates community social norms. This notion is best illustrated in a 1939 Maine case, where the State sought to prosecute Frank E. Bradbury for indecently burning a dead human body.¹⁶⁹ Frank’s sister Harriet died at home.¹⁷⁰ After her death, Frank dragged her body into the

163. Thirteen, in total: Kansas, Maine, Michigan, Mississippi, Montana, New Hampshire, Oklahoma, South Carolina, South Dakota, Texas, Vermont, Virginia, and Wyoming. *See infra* Appendix.

164. *See, e.g.*, S.C. CODE ANN. § 16-17-600(A)(3) (2010) (“It is unlawful for a person wilfully [sic] and knowingly, and without proper legal authority to . . . desecrate human remains”); *see also* KAN. STAT. ANN. § 21-6205(a)(1) (2011); MICH. COMP. LAWS § 750.160 (1974); MONT. CODE ANN. § 44-3-404(3) (2009); N.H. REV. STAT. ANN § 644:7 (1973); OKLA. STAT. ANN. tit. 21, § 1161.1(B) (2008); TEX. PENAL CODE § 42.08(a)(1) (West 2017); VT. STAT. ANN. tit. 13, § 3761 (2019); VA. CODE ANN. § 18.2-126 (1995).

165. *See, e.g.*, MISS. CODE ANN. § 97-29-19 (1972) (disinterment of dead bodies, requiring “mere wantonness”); § 97-29-25 (1972) (desecration of cemeteries or corpses).

166. S.D. CODIFIED LAWS § 34-27-19 (1977) (“Every person who removes all or any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it without authority of law, or from malice or wantonness, is guilty of a Class 1 misdemeanor.”).

167. *Id.* “Wantonness” is not defined in the South Dakota criminal code, but a 2008 case involving child pornography relied on Black’s Law Dictionary to define “lewd” as “[o]bscene or indecent; tending to[ward] moral impurity or wantonness.” *State v. Dubois*, 746 N.W.2d 197, 208 (S.D. 2008) (citing *Lewd*, BLACK’S LAW DICTIONARY (8th ed. 2004)).

168. *State v. Bradbury*, 9 A.2d 657, 659 (Me. 1939) (citing *Kanavan’s Case*, 1 Me. 226, 227 (1821)).

169. *Id.* at 657.

170. *Id.*

cellar where he loaded her body—head first—into the furnace to burn it, causing dark smoke and a foul smell.¹⁷¹ The furnace was not large enough to fit the entire body so Frank had to keep pushing it in as it was consumed.¹⁷² In concluding that the State had properly charged Frank, the Supreme Judicial Court of Maine had to grapple with the underlying question of social harm.¹⁷³ The court explained that the way in which Frank had cremated his sister was unacceptable and therefore indecent because shoving his dead sister's body into a furnace was contrary to the norms and expectations of the community.¹⁷⁴

A subset of mistreatment of corpse laws are those that specifically prohibit dissection or mutilation of corpses.¹⁷⁵ These can be used to address the behaviors exhibited by Class VI necrophiles, or necromutilomaniacs.¹⁷⁶ Class VI necrophiles do not typically engage in copulatory activity with a dead body, instead they mutilate the corpse for the purpose of sexual pleasure.¹⁷⁷ Laws that sanction the mutilation of dead bodies, like Wyoming's¹⁷⁸ or Michigan's,¹⁷⁹ address this type of necrophilia.

In 2008, for example, Michigan's mutilating a dead body statute¹⁸⁰ was used to prosecute a man who raped the victim prior to killing her.¹⁸¹ After killing her, he "shoved his fist into her vagina, causing damage to her vaginal area."¹⁸² The appellate court affirmed his

171. *Id.*

172. *Id.*

173. *See id.* at 658.

174. *Bradbury*, 9 A.2d at 658–59. "The first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the community, whether right or wrong." *Id.* at 658 (quoting J. OLIVER WENDALL HOLMES, *THE COMMON LAW* 41 (1881)).

175. *See infra* Appendix.

176. AGRAWAL, *supra* note 22, at 63–66; *see, e.g.*, ME. REV. STAT. ANN. tit. 17-A, § 508(1) (West 2020) ("A person is guilty of abuse of corpse if he intentionally and unlawfully disinters, digs up, removes, conceals, mutilates or destroys a human corpse, or any part or the ashes thereof."). Oklahoma law also addresses concealment or mutilation. OKLA. STAT. ANN. tit. 21, § 1611.1 (West 2008) ("Jenny's Law"). It was passed in 2009 after Jennifer Snipes's murderer burned her body after raping her in order to conceal his crime. *See Senate Approves Bill to Protect Oklahomans from Predators*, OKLA. SENATE (May 23, 2008), <https://oksenate.gov/press-releases/senate-approves-bill-protect-oklahomans-predators> [<https://perma.cc/J3HV-Z34F>]; 2008 Okla. Sess. Laws Serv. 10–11 (West). Another aim of a law like Oklahoma's would be to give the surviving family an opportunity to provide a proper burial or other death rite. *Cf. State v. Stephens*, 203 So.3d 134, 139 (Ala. Crim. App. 2016) (applying an abuse of corpse statute).

177. AGRAWAL, *supra* note 22, at 60. According to Aggrawal, "class VI necrophiles get an orgasm simply by mutilating the dead body." *Id.*

178. WYO. STAT. ANN. § 6-4-502 (2017) ("[A] person who dissects or mutilates a dead human body is guilty of a felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.").

179. MICH. COMP. LAWS ANN. § 750.160 (West 1974).

180. *Id.*

181. *People v. Pena*, No. 275508, 2008 WL 681888, at *1 (Mich. Ct. App. Mar. 13, 2008).

182. *Id.*

five- to fifteen-year prison sentence.¹⁸³ The court cited irreparable damage and disfigurement to the victim's body as a justification for the conviction.¹⁸⁴ In an earlier case, the Michigan Supreme Court had previously concluded that the law sought to protect the surviving family's right to receive the intact corpse for burial.¹⁸⁵

D. Rights of Surviving Family Members

In the same vein, yet another approach to criminalizing the various activities associated with necrophilia is to frame the social harm of these acts as a violation of the rights of the surviving family members of the deceased.¹⁸⁶ Five states in this category follow the Model Penal Code (MPC) approach which seeks to protect against the outrage that a reasonable family member would experience if their loved one were to be the victim of sexual abuse after death and punishes this crime as a misdemeanor offense.¹⁸⁷ One state—Ohio—treats necrophilia as a misdemeanor or a felony, depending on whether outrage to the surviving family extends to the community in general.¹⁸⁸ Five others frame the harm of necrophilia as outrage to the family, but are distinguished from the MPC states because they punish the crime as a felony.¹⁸⁹

1. Misdemeanor Outrage to Family Members

Article 250 of the MPC covers “riot, disorderly conduct, and related offenses,” including Section 250.10 “abuse of corpse,”¹⁹⁰ the statutory provision that would cover necrophilic acts. The MPC includes “sexual indecency” towards a dead body as abuse of corpse, but specifically rejects categorization of this crime as a sexual offense.¹⁹¹ Instead, the MPC frames the social harm of necrophilic acts as outrage to the friends and family of the deceased.¹⁹² In the explanatory

183. *Id.*

184. *Id.* at *6–7.

185. *Deeg v. City of Detroit*, 76 N.W.2d 16, 19 (Mich. 1956).

186. *See infra* Appendix.

187. The five states are Colorado, Delaware, Hawai'i, Ohio, and Pennsylvania. *See infra* Appendix.

188. OHIO REV. CODE ANN. § 2927.01 (West 1996).

189. *See* ALA. CODE § 13A-11-13 (2002); ARK. CODE ANN. § 5-60-101(a)(2)(A) (2011); KY. REV. STAT. ANN. § 525.120 (West 2019); TENN. CODE ANN. § 39-17-312(1)(a) (2006); W. VA. CODE ANN. § 61-8-14(a) (West 2010).

190. Model Penal Code § 250.10 provides, simply: “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.” MODEL PENAL CODE § 250.10 (AM. L. INST. 1980).

191. *Id.* § 250.10 cmt. at 421 (AM. L. INST. 1980).

192. *Id.*

note to Article 250, the MPC drafters declare that the offenses contained in Sections 250.9 through 250.12 are “not likely to generate disorder, [but] are widely recognized as instances of public nuisance.”¹⁹³ The drafters explained that the decision to list abuse of a corpse under the category of Offenses Against Public Order and Decency as distinct from Sexual Offenses was because “we were concerned primarily with preventing physical aggressions, whereas here we deal with outrage to the feelings of surviving kin, outrage which can be perpetrated as well by mutilation or gross neglects as by sexual abuse.”¹⁹⁴ The MPC frames the social harm of necrophilia as a dignitary one that negatively impacts surviving family members.¹⁹⁵ For the MPC drafters, necrophilic acts amount to nothing more serious than undignified treatment of the dead body. Undignified treatment of the dead, including necrophilia, is criminal because this type of treatment can predictably result in outrage to family members. The harm impacts the immediate family of the deceased and society criminalizes this behavior because, by extension, necrophilic acts “harm the living public as a whole.”¹⁹⁶

The MPC approach is also distinct in that it grades the crime as a misdemeanor, explaining that “[g]reater penalties seem plainly excessive in light of the fact that the harm involved is only outrage to sensibility.”¹⁹⁷ Five states strictly adhere to the MPC approach.¹⁹⁸

The facts of a 2011 Delaware case—Delaware is a MPC state¹⁹⁹—help illustrate the impact of necrophilia on surviving family members.²⁰⁰ Emmett Taylor and Stephanie Mumford were engaged to be married.²⁰¹ When the couple failed to appear at a scheduled wedding

193. *Id.* at 311–12.

194. *Commonwealth v. Suder*, 436 A.2d 1376, 1379 (Pa. 1981) (quoting MODEL PENAL CODE § 250.10 cmt. at 40 (AM. L. INST., Tent. Draft No. 13)).

195. Harcourt, *supra* note 105, at 126 (quoting Jeffrie G. Murphy, *Legal Moralism and Liberalism*, 37 ARIZ. L. REV. 73, 77 (1995)). Importantly, the MPC drafters included a discussion of harm for each “moral offense” of the common law which it decided to punish. *Id.* at 137.

196. Hilary Young, *The Right to Posthumous Bodily Integrity and Implications of Whose Right It Is*, 14 MARQ. ELDER’S ADVISOR 197, 198 (2013). Here, Young is describing moral objections to the posthumous display of preserved human cadavers, but the dignitary objection she raises here is equally applicable to necrophilia. *See id.*

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

198. *Id.* at 422. Followed by Colorado (COLO. REV. STAT. § 18-13-101(1)(b)-(2) (2005)), Delaware (DEL. CODE ANN. tit. 11, § 1332 (1995)), Hawai’i (HAW. REV. STAT. ANN. § 711-1108(1) (West 2015)), Ohio (OHIO REV. CODE ANN. § 2927.01 (West 1996)), and Pennsylvania (18 PA. CONS. STAT. § 5510 (1972)). The commentaries in the Hawai’i Revised Statutes specifically contemplates “sexual contact (necrophilia)” as outrageous treatment of a human corpse. *See* HAW. REV. STAT. ANN. § 711-1108 (West 2015) (editor’s note).

199. DEL. CODE ANN. tit. 11, § 1332 (1995).

200. *Taylor v. State*, 28 A.3d 399, 402 (Del. 2011).

201. *Id.*; *see also* Cassandra Kramer & Hallie Jackson, *Court Documents Provide*

rehearsal, Mumford's family drove to the home that Taylor and Mumford shared.²⁰² When the family arrived, they discovered the house covered in blood and Mumford's body behind a door on the second floor.²⁰³ Police found ten photos of "Mumford lying on the floor of their townhouse with cucumbers inserted in her mouth, vagina, and anus" in Taylor's cell phone.²⁰⁴ The trial jury convicted Taylor of abuse of a corpse.²⁰⁵ In affirming the conviction, the Delaware Supreme Court explicitly cited outrage to ordinary family sensibilities as the core harm of the crime in affirming Taylor's conviction.²⁰⁶ Although Taylor was sentenced to death for his act of murder, standing alone, the abuse of corpse charge sentence would have been limited to one year.²⁰⁷

2. Ohio

One state straddles the line between a strict MPC approach and those states that treat the crime as a felony offense by treating the crime alternatively as a misdemeanor or as a felony.²⁰⁸ Ohio's anti-necrophilia statute punishes abuse of a corpse based on two different standards, depending on whether the conduct outrages the family of the deceased (a misdemeanor) or if it outrages the community in general (a felony).²⁰⁹ The law's sentencing scheme survived constitutional scrutiny when challenged in 1989 by a man who had been convicted for felony abuse of a corpse.²¹⁰

In that case, *State v. Gardner*, a mortician was indicted after his boyfriend, a funeral attendant, told the police about an incident during which he and the defendant-mortician engaged in various sexual acts, including intercourse, with a female corpse at their workplace.²¹¹ The boyfriend pleaded guilty to *misdemeanor* abuse of a corpse and later testified at the defendant's trial.²¹² By contrast,

Details About Woman's Murder, WBOC16 (Aug. 22, 2007), <http://www.wboc.com/story/6968338/court-documents-provide-details-about-womans-murder> [<http://perma.cc/35UC-B84J>] (relating a history of domestic violence prior to Mumford's murder).

202. *Taylor*, 28 A.3d at 402.

203. *Id.*

204. *Id.* at 403.

205. *Id.* at 404 (discussing Taylor's conviction for abuse of a corpse and for possession of a deadly weapon during the commission of a felony). The trial court sentenced Taylor to death. *Id.*

206. *Id.* at 408–09.

207. DEL. CODE ANN. tit. 11, § 4206(a) (1989).

208. See OHIO REV. CODE ANN. § 2927.01(C) (1996).

209. *Id.*

210. *State v. Gardner*, 582 N.E.2d 1014, 1017 (Ohio Ct. App. 1989).

211. *Id.* at 1015.

212. *Id.* at 1016.

the defendant was found guilty of *felony* abuse of a corpse and sentenced to one year in prison.²¹³ The defendant raised two separate constitutional challenges on appeal: arguing that the statute was unconstitutionally vague and that the statute violated the Equal Protection Clause of the Fourteenth Amendment.²¹⁴

In rejecting both of the defendant's constitutional claims, the Ohio Court of Appeals held that the statute was not void for vagueness because the two standards (outrage to family versus outrage to the community) could be "commonly understood by persons of common intelligence."²¹⁵ The court explained that criminal statutes are not vague when they require conformance to "an imprecise but comprehensive normal standard," only when there is no standard.²¹⁶ The court likewise rejected the defendant's Equal Protection challenge, concluding that the distinction between the two standards was a rational one.²¹⁷ Furthermore, the court held that the defendant's conduct toward the corpse "would certainly offend and outrage the entire community despite the lack of personal relationship with the deceased."²¹⁸

3. *Felony Outrage to Family Members*

Finally, the anti-necrophilia laws in Alabama,²¹⁹ Arkansas,²²⁰ Kentucky,²²¹ Tennessee,²²² and West Virginia²²³ are also framed as dignitary harms to surviving family members, but unlike the MPC, always punish these crimes as felonies.²²⁴

213. *Id.* at 1015.

214. *Id.*

215. *Id.* at 1017 (quoting *State v. Glover*, 479 N.E.2d 901, 904 (Ohio Ct. App. 1984)).

216. *Gardner*, 502 N.E.2d at 1017.

217. The court found that "a rational distinction can be made between conduct or treatment of a corpse which, although it would certainly offend and outrage the family of the deceased, would not necessarily offend and outrage the community in general." *Id.*

218. *Id.*

219. ALA. CODE § 13A-11-13 (2002).

220. ARK. CODE ANN. § 5-60-101(a)(2)(A) (2011). Abuse of a corpse is a class C felony, subjecting offenders to three to ten years in prison. *Id.* § 5-4-401(a)(4).

221. KY. REV. STAT. ANN. § 525.120 (West 2019). Abuse of a corpse is a class D felony, subjecting offenders to one to five years in prison. *Id.* § 532.60(2)(d); *see also* *Sanborn v. Commonwealth*, 754 S.W.2d 534, 549 (Ky. 1988) (citing commentary to the Kentucky rape statute which specifically excludes from its purview the sexual violation of dead bodies).

222. TENN. CODE ANN. § 39-17-312(a)(1) (2006). Violations are a class E felony, subject to one to six years in prison. *Id.* §§ 39-17-312(c), 40-35-111(b)(5).

223. W. VA. CODE ANN. § 61-8-14(a) (West 2010). The term "desecrate" includes a wide variety of actions that would include necrophilic acts. *See id.* § 61-8-14(b)(3) ("[D]esecrate" means destroying, cutting, mutilating, effacing, injuring, tearing down, removing, defacing, damaging or otherwise physically mistreating in a way that a reasonable person knows will outrage the sensibilities of persons likely to observe or discover his or her actions.').

224. *See supra* notes 219–23 and accompanying text. While it treats outrage to

Under Alabama law, “[a]buse of a corpse” occurs when a person “knowingly treats a human corpse in a way that would outrage ordinary family sensibilities.”²²⁵ “[A] way that would outrage” includes, but is not limited to, sexual intercourse with a dead human body.²²⁶ The commentary following Section 13A-11-13 of Alabama’s Criminal Code notes that it was adapted from MPC § 250.10 and that it consolidates all of the former separate sections dealing with “conduct involving a corpse which may outrage the ordinary family sensibilities.”²²⁷ Regarding the standard for measuring outrage, the commentary provides: “[t]he family must be outraged, which probably would be demonstrated partly by its pursuit of the offense. The sensibilities of the family must be ordinary, denoting the contemporary local community standard.”²²⁸ Offenders convicted under this statute are subject to one to ten years in prison.²²⁹ The Supreme Court of Arkansas has interpreted a similar provision to depend on the interpretation of the jury, using its common sense and experience to assess the standard set by the statute.²³⁰

A related, non-criminal law approach to achieving similar protections for the surviving family is through the quasi-property theories of torts law.²³¹ The theory of quasi-property rights is a gap-filler where criminal laws do not exist.²³² These claims are not proprietary in the typical sense of ownership,²³³ but property law provides an existing legal theory that delivers postmortem rights vis-à-vis the dead body to surviving kin.²³⁴ The “bundle” of quasi-property rights

reasonable family sensibilities as a misdemeanor, Ohio’s offenses against human corpse law treats outrage to reasonable community sensibilities as a felony of the fifth-degree offense. OHIO REV. CODE ANN. § 2927.01(B)–(C) (West 1996). The Ohio statute’s reach is not limited to necrophilia. *See id.* It has also been used to prosecute non-sexual treatment of corpses. *See, e.g., State v. Weaver*, 93 N.E.3d 178, 180, 184–85 (Ohio Ct. App. 2017) (describing that defendant placed her newborn baby into a plastic bag shortly after delivering her).

225. ALA. CODE § 13A-11-13(a) (2002).

226. *See, e.g., Padgett v. State*, 668 So.2d 78, 84–85 (Ala. Crim. App. 1995) (distinguishing the separate crimes of rape and abuse of a corpse).

227. ALA. CODE § 13A-11-13 (2002) (editor’s note).

228. *Id.*

229. *Id.* § 13A-11-13(b); *see id.* § 13A-5-6(a)(6) (describing the proscribed sentencing range for Class C felonies in Alabama).

230. *Williams v. State*, 468 S.W.3d 776, 782 (Ark. 2015).

231. *See Burgess v. Purdue*, 721 P.2d 239, 244 (Kan. 1986).

232. *See Pierce v. Proprietors of Swan Point Cemetery*, 10 R.I. 227, 231–32 (1872).

233. Although the U.S. Constitution protected the right of white people to own human beings as chattel property, most slavery has been outlawed since the end of the Civil War. *Compare* U.S. CONST. art. I, sec. 9, cl. 1 (slavery clause), *and Dred Scott v. Sanford*, 60 U.S. 393, 411–12 (1856), *with* U.S. CONST. amend. XIII. We no longer speak of human beings as property. *See* U.S. CONST. amend. XIII.

234. *See Christensen v. Superior Ct.*, 820 P.2d 181, 184 (Cal. 1991).

in the corpse include “the right to custody of the body; to receive it in the condition in which it was left, without mutilation; to have the body treated with decent respect, without outrage or indignity thereto; and to bury or otherwise dispose of the body without interference.”²³⁵ The surviving family member with the “quasi-property” interest in the dead body may not do with the corpse what she might do with any other piece of chattel property.²³⁶ Rather, her ownership rights are limited to “hold[ing] it only as a sacred trust for the benefit of all who may from family or friendship have an interest in it.”²³⁷ Following this theory, when this sacred trust is violated, the surviving family may sue as rights holder.²³⁸ Notably, Kansas and Louisiana, two states that do not currently have anti-necrophilia laws, frame mistreatment of corpse tort claims using quasi-property theories.²³⁹

E. Sex Crimes

The majority (eighteen) of state anti-necrophilia laws fall into the category of sex crimes.²⁴⁰ Twelve states explicitly require either sexual contact with a dead body or contact with a dead body for the purpose of sexual gratification.²⁴¹ Three more explicitly use the term “necrophilia” in defining the offense.²⁴² Finally, another three states frame the harm of the sexual assault of a corpse as a violation of sexual autonomy by including the crime with other per se consent provisions.²⁴³

1. Dead Body Required

Twelve states may not use the word “necrophilia” to define the offense, but they do specifically require sexual contact with a dead

235. *Whitehair v. Highland Memory Gardens, Inc.*, 327 S.E.2d 438, 441 (W. Va. 1985). The plaintiff in *Whitehair* sued on a theory of intentional infliction of emotional distress, alleging that the defendant funerary services provider treated her relatives’ bodies in a wanton and reckless manner when it was hired by the state to relocate buried bodies. *Id.* at 439–40. Surviving relatives may also assert claims even after the corpse has been interred, including the right to notice and a reasonable opportunity to be present when bodies are relocated from one resting place to another. *Id.* at 441.

236. *Pierce*, 10 R.I. at 242–43.

237. *Id.* at 243.

238. See Fred O. Smith, Jr., *The Constitution After Death*, 121 COLUM. L. REV. (forthcoming) (manuscript at 10).

239. See *Burgess v. Perdue*, 721 P.2d 239, 244–45 (Kan. 1986); *Blanchard v. Brawley*, 75 So. 2d 891, 893–94 (La. Ct. App. 1954).

240. See *infra* Appendix.

241. *Id.*

242. *Id.*

243. *Id.*

body: Alaska,²⁴⁴ California,²⁴⁵ Florida,²⁴⁶ Illinois,²⁴⁷ Indiana,²⁴⁸ Iowa,²⁴⁹ Nevada,²⁵⁰ New Jersey,²⁵¹ North Dakota,²⁵² Oregon,²⁵³ Utah,²⁵⁴ and Washington.²⁵⁵ As compared to the generalized prohibitions on the mistreatment or desecration of corpses discussed above in Section C (mistreatment of corpses), the state laws considered here unambiguously require proof of sexual contact with a corpse.²⁵⁶ This is true regardless of the individual code section's placement within the rest of the statutory scheme and regardless of the title of the individual crime. Therefore, although Alaska's Section 11.61.130 is titled "[m]isconduct involving a corpse," because the Alaska legislature has defined that crime as "engag[ing] in sexual penetration of a corpse,"²⁵⁷ it is counted as a sex crime here.

Washington's law is emblematic of the statutory prohibitions in this group by defining the crime without flourish: "[a]ny person who has sexual intercourse or sexual contact with a dead human body."²⁵⁸ Washington passed the current law in 1994²⁵⁹ after police caught a young man burglarizing a funeral home.²⁶⁰ Besides damaging property and theft, Ronald Shawn Ryan also engaged in sexual contact with the corpses of several women whose bodies were being prepared

244. ALASKA STAT. § 11.61.130(a)(2) (1978).

245. CAL. HEALTH & SAFETY CODE § 7052(a) (West 2020).

246. FLA. STAT. ANN. § 872.06 (1996).

247. 720 ILL. COMP. STAT. ANN. 5/12-20.6(b)(1) (West 2012); H.B. 5122, 97th Gen. Assemb., Reg. Sess. (Ill. 2012). The legislation won unanimous approval in the Illinois House. *Springfield at Work: State House Votes to Ban Necrophilia*, NBC CHI. (Mar. 29, 2012), <https://www.nbcchicago.com/news/local/state-house-votes-to-ban-necrophilia/1953052> [<https://perma.cc/J4WU-UZNU>].

248. IND. CODE ANN. § 35-45-11-2(2) (West 2014).

249. IOWA CODE § 708.14(1) (West 2010). Enacted in 1996, this section was later expanded to include mutilation to conceal a crime. ROBERT R. RIGG, IOWA PRACTICE, CRIMINAL LAW VOLUME 4 § 6:67 (2019–2020 ed.). It is a specific intent crime. *Id.* § 6:68.

250. NEV. REV. STAT. ANN. § 201.450 (West 2005).

251. N.J. STAT. ANN. § 2C:22-1(a)(3) (West 2002).

252. N.D. CENT. CODE § 12.1-20-12 (1973) (defining the crime of deviate sexual act); § 12.1-20-02(2) (defining the term "deviate sexual act").

253. OR. REV. STAT. ANN. § 166.087(1)(a) (West 1993).

254. UTAH CODE ANN. § 76-9-704(2)(e) (West 2007).

255. WASH. REV. CODE ANN. § 9A.44.105 (West 1994) (the crime of "[s]exually violating human remains"). *State v. Starbuck* is the only case published in the appellate court reporters since the statute was enacted in 1994. *See State v. Starbuck*, 355 P.3d 1167, 1177 (Wash. Ct. App. 2015) (discussing that defendant killed his ex-wife and then inserted a dildo into her vagina).

256. *See, e.g.*, ALASKA STAT. § 11.61.130(a)(2) (1978).

257. *Id.*

258. WASH. REV. CODE ANN. § 9A.44.105(1) (West 1994).

259. 1994 Wash. Sess. Laws 52.

260. Ochoa & Jones, *supra* note 49, at 562; *see also supra* notes 124–29 and accompanying text.

for burial.²⁶¹ In Washington, the crime is treated as a class C felony with a maximum penalty of five years in prison, a fine up to \$10,000, or a combination of both a prison term and a fine.²⁶²

Notably, while all twelve states require the same act (sexual contact with a corpse), a significant disparity exists in the way the states impose penalties on convicted offenders. Alaska's crime is treated as a misdemeanor.²⁶³ Likewise, North Dakota.²⁶⁴ The maximum penalty for offenders convicted of performing a "deviate sex act" in North Dakota is one year in prison and/or a fine of \$3,000.²⁶⁵ Alaska and North Dakota are the most lenient of the states in this group.²⁶⁶

At the other end of the scale are Florida and Nevada. Florida's "[a]buse of a dead human body" is a second-degree felony punishable by up to fifteen years in prison.²⁶⁷ To determine sentences, courts in Florida use an Offense Severity Ranking Chart to compute a sentence score for felony offenders.²⁶⁸ Abuse of a dead human body is ranked at Level 7 on a ten-degree scale, with Level 10 "being [the] most severe."²⁶⁹

Offenders in Nevada are subject to the most severe penalty of the states—life in prison with the possibility of parole.²⁷⁰ Moreover, although Nevada's law is located in the penal code's chapter on "crimes against public decency and good morals," offenders convicted under the statute are required to register as sex offenders.²⁷¹ So are

261. Ochoa & Jones, *supra* note 49, at 562–63 (citing *State v. Ryan*, 899 P.2d 825, 825–26 (Wash. Ct. App. 1995); *State v. Ryan*, Nos. 33607-0-1, 35017-0-1, 34293-2-1 at *828–29 (Wash. Ct. App. July 31, 1995)).

262. WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 2015).

263. ALASKA STAT. § 11.61.130 (1978).

264. N.D. CENT. CODE § 12.1-20-12 (1973).

265. *Id.* (deviate sex act); § 12.1-20-02(2) (defining "[d]eviate sexual act" as "any form of sexual contact with an animal, bird, or dead person"); § 12.1-32-01(5) (describing the penalty for conviction of a class A misdemeanor).

266. Compare ALASKA STAT. § 11.61.130(a)(2) (1978), and N.D. CENT. CODE § 12.1-20-12 (1973), with 720 ILL. COMP. STAT. 5/12-20.6(b)(1) (West 2012).

267. See FLA. STAT. § 872.06(2) (1996) (defining the offense); *id.* § 775.082(3)(d) (setting out the maximum punishment for second-degree felonies). Florida passed its abuse of a dead human body statute in 1996 after two teenagers allegedly conspired to dispose of the body of the first boy's mother. Michael Griffin, *Senate Passes Bill to Outlaw Necrophilia*, ORLANDO SENTINEL (Mar. 28, 1996), <https://www.orlandosentinel.com/news/os-xpm-1996-03-28-9603270913-story.html> [<https://perma.cc/FG3T-6NRE>]. In doing so, the second boy had sexual intercourse with her corpse. *Id.*

268. FLA. STAT. § 921.0022(3)(g) (2020).

269. Adam J. MacLeod, *The Law as Bard: Extolling a Culture's Virtues, Exposing Its Vices, and Telling Its Story*, 1 J. JURIS. 11, 23 (2008); see also FLA. STAT. § 921.0022(3)(g) (2020) (listing Level 7 offenses, including DUI resulting in serious bodily injury (FLA. STAT. § 316.193(3)(c)(2) (2020)), practicing medicine without a license (FLA. STAT. § 458.327(1) (2011)), and female genital mutilation (FLA. STAT. § 794.08(4) (2018)), among others).

270. NEV. REV. STAT. ANN. § 201.450(1) (West 2005).

271. *Id.*; see also *id.* § 179D.441 (outlining the duty to register); § 179D.097(1)(m) (defining "sexual offense" to include sexual penetration of a dead human body).

convicted offenders in Washington²⁷² and Iowa.²⁷³ The other nine states in this group may not mandate registration for similar offenses, but the states that do require new residents who were convicted elsewhere for analogous crimes to register upon moving.²⁷⁴

2. *Necrophilia*

Only three states—Arizona,²⁷⁵ Georgia,²⁷⁶ and Rhode Island²⁷⁷—actually use the term “necrophilia” in the statutory text defining the offense. In each of these jurisdictions, the material elements of each definition of necrophilia are essentially the same—sexual intercourse with a dead human body.²⁷⁸ Each of these states treats necrophilia as a felony offense, but whereas Arizona’s maximum prison sentence for a class 4 felony is three years,²⁷⁹ in Georgia and Rhode Island, judges may impose a prison term of anywhere between one and ten years.²⁸⁰ Yet, none of these three states require convicted necrophiles to register as sex offenders.²⁸¹

In Arizona, “[i]t is unlawful for a person to engage in necrophilia.”²⁸² Necrophilia itself is defined as “[h]aving sexual intercourse with a dead human body”²⁸³ and is classified under a list of “[c]rimes against the dead.”²⁸⁴ These provisions do not appear in Arizona’s criminal code, however.²⁸⁵ Rather, Arizona’s necrophilia statute is

272. WASH. REV. CODE ANN. § 9A.44.130(1)(a) (West 2017).

273. IOWA CODE ANN. § 692A.102(1)(b)(13) (West 2020).

274. *See, e.g.*, IOWA CODE ANN. § 692A.102(1)(b)(28) (West 2020) (imposing registration requirement for “[a]ny sex offense specified in the laws of another jurisdiction, or any sex offense that may be prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in” the Iowa Sex Offender Registry); § 692A.102(1) (imposing a registration requirement for any sex offense under the prior laws of other jurisdictions); WASH. REV. CODE ANN. § 9A.44.130(4)(a)(iv) (West 2017) (for new residents); NEV. REV. STAT. § 179D.097(1)(u) (2007) (defining “sexual offense” for which registration is mandated as an “offense committed in another jurisdiction that, if committed in this State, would be an offense listed in this subsection”).

275. ARIZ. REV. STAT. § 32-1364(D) (West 1998) (defining necrophilia as a Class 4 felony, punishable by one and one-half to three years in prison).

276. GA. CODE ANN. § 16-6-7 (1977) (allowing necrophilia to be punishable by one to ten years in prison).

277. 11 R.I. GEN. LAWS § 11-20-1.2 (1998) (outlining that necrophilia is punishable by one to ten years in prison and a fine up to \$10,000).

278. *See* ARIZ. REV. STAT. § 32-1364(E) (West 1998); GA. CODE ANN. § 16-6-7(a) (1977); 11 R.I. GEN. LAWS § 11-20-1.2 (1998).

279. ARIZ. REV. STAT. § 13-702(D) (West 2008).

280. GA. CODE ANN. § 16-6-7(a) (1977); 11 R.I. GEN. LAWS § 11-20-1.2 (1998).

281. *See* ARIZ. REV. STAT. § 32-1364(E) (West 1998); GA. CODE ANN. § 16-6-7(a) (1977); 11 R.I. GEN. LAWS § 11-20-1.2 (1998).

282. ARIZ. REV. STAT. § 32-1364(D) (West 1998).

283. *Id.* § 32-1364(D)(1).

284. *Id.* § 32-1364.

285. *Id.*

located in Title 32, which sets out regulations for Professions and Occupations.²⁸⁶ Namely, it falls under Chapter 12's rules for the Funeral Directors and Embalmers.²⁸⁷ The law specifically considers funeral home workers within its purview, but also reaches beyond these professionals.²⁸⁸ The Pima County Attorney's Office invoked the statute in 2013 when it prosecuted a man who had used his cell phone to videotape himself having sexual intercourse with his unresponsive girlfriend.²⁸⁹

Rhode Island did not have a law prohibiting necrophilia in 1997, when Charles Smith confessed to police that, after stabbing his step-daughter approximately fifteen times and believing her to be dead, he had sex with her body.²⁹⁰ The State charged Smith with murder and two counts of sexual assault in the first degree.²⁹¹ At his trial, the medical examiner was unable to definitively conclude whether the victim was dead or alive at the time of the sexual assault.²⁹² Because of this uncertainty, the trial court granted Smith's motion for judgments of acquittal on the sexual assault charges.²⁹³

Rhode Island law now defines the crime of necrophilia as follows: "Any person who performs the act of first degree sexual assault upon a dead human body shall be guilty of the crime of necrophilia."²⁹⁴ The actus reus of first-degree sexual assault is "engag[ing] in sexual

286. *Id.*

287. *Id.*

288. ARIZ. REV. STAT. § 32-1364(D) (West 1998).

289. *State v. Peoples*, 378 P.3d 421, 421–22 (Ariz. 2016); *see also State v. Peoples*, No. 2 CA-CR 2014-0408, 2015 WL 4599646, at *1–2 (Ariz. App. July 30, 2015) (providing additional facts), *rev'd*, 378 P.3d 421 (2016).

Tuscon paramedics responded to a 911 call at an apartment building and found an unresponsive woman in her bed. *Peoples*, 378 P.3d at 423. After the paramedics pronounced her dead, a police officer found a smart phone in the woman's bathroom. *Id.* When he opened the phone, the officer saw a paused video image of the unclothed woman in her bed. *Id.* The officer pressed play and watched a portion of the video that depicted a man having sex with the woman, who was "seemingly unresponsive" during the encounter. *Id.* The man was Robin Peoples, the woman's boyfriend. *Id.*

During a subsequent interview with the police, Peoples confirmed that he had sex with the woman in the early hours that morning and that he had filmed the encounter on his cell phone. *Id.* at 424. Peoples also told police that the woman was "probably" dead while he had sex with her, although he had heard her snoring and thought she was breathing at some earlier point. *Peoples*, 378 P.3d at 424. The police arrested Peoples and charged him with necrophilia and two other counts of sexual assault. *Id.* at 424.

Peoples entered a motion to suppress the video evidence found on his cell phone, arguing that he had a reasonable expectation of privacy in his cell phone as an overnight guest in the woman's apartment at the time of the search. *Id.* at 428. In 2016, the Arizona Supreme Court affirmed the trial court's grant of Peoples's motion. *Id.*

290. *State v. Smith*, 766 A.2d 913, 917 (R.I. 2001).

291. *Id.*

292. *Id.* at 918.

293. *Id.* at 918 n.1.

294. 11 R.I. GEN. LAWS § 11-20-1.2 (1998).

penetration with another person.”²⁹⁵ Sexual penetration is defined broadly under Rhode Island law, as

sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person’s body or by any object into the genital or anal openings of another person’s body, or the victim’s own body upon the accused’s instruction, but emission of semen is not required.²⁹⁶

Necrophilia is a felony offense and a person convicted for necrophilia faces a one- to ten-year prison sentence.²⁹⁷ In the words of a critical commentator, “the Rhode Island legislature . . . considers necrophilia equally as culpable as sexual assault.”²⁹⁸ Notably, however, Rhode Island does not require registration as a sex offender for individuals convicted of necrophilia.²⁹⁹

Georgia’s law is quite similar to Rhode Island’s in both scope and punishment.³⁰⁰ Georgia also treats necrophilia as a felony offense with a maximum prison sentence of ten years, and contains a wide scope of sexual activity relevant to the crime.³⁰¹ “A person commits the offense of necrophilia when he performs any sexual act with a dead human body involving the sex organs of the one and the mouth, anus, penis, or vagina of the other.”³⁰² The statute has been invoked by prosecutors on various occasions since the state legislature passed it in 1977.³⁰³ Under Georgia law, both necrophilia and

295. *Id.* § 11-37-2.

296. *Id.* § 11-37-1(8).

297. *Id.* § 11-20-1.2.

298. MacLeod, *supra* note 269, at 21.

299. 11 R.I. GEN. LAWS § 11-37.1-2(v) (2020) (listing first-degree sexual assault but not necrophilia as “sexually violent offenses” for which an offender would be required to register under Rhode Island’s Sexual Offender Registration and Community Notification law).

300. Compare GA. CODE ANN. § 16-6-7(a) (1977), with 11 R.I. GEN. LAWS § 11-20-1.2 (1998).

301. GA. CODE ANN. § 16-6-7(a) (1977).

302. *Id.*

303. Robert E. Cleary, Jr., *Unnatural Sex Acts*, in KURTZ CRIMINAL OFFENSES AND DEFENSES IN GEORGIA 10 (2020 ed.); see also *Norman v. State*, 781 S.E.2d 784, 787 (Ga. 2016) (affirming defendant’s conviction for necrophilia on the strength of his confession and other circumstantial evidence presented at trial); *Raulerson v. State*, 491 S.E.2d 791, 796, 798 (Ga. 1997) (affirming defendant’s convictions for necrophilia and murder when the trial evidence demonstrated that defendant shot his victim on two separate occasions before sodomizing her). Although there are only a few reported appellate cases, Georgia prosecutors have made frequent use of the necrophilia statute. See, e.g., Bryce Mursch, *Georgia man indicted on necrophilia charge*, WIS NEWS (July 3, 2006, 12:49 AM), <https://www.wistv.com/story/4765464/georgia-man-indicted-on-necrophilia-charge>. In 2006, Forsyth County charged Parker Clayton Ward with necrophilia after finding a woman’s dead body in a suspicious position with her clothing disturbed. See *id.* Ward admitted to police that he had attempted to have sex with the woman, although he denied knowing that

rape are sexual assault crimes that seek to protect the underlying value of consensual sex.³⁰⁴

Whether a jurisdiction has an anti-necrophilia law can lead to a frustrating paradox for prosecutors seeking to vindicate the right of sexual autonomy through a rape prosecution. If a person is the victim of a sexual assault while alive and survives, the state prosecutes the attacker for rape. When the victim of sexual assault dies during the attack, however, the states are split.

In *Lipham v. State*, for example, the Georgia Supreme Court heard the appeal of a defendant convicted for, inter alia, rape and murder.³⁰⁵ *Lipham* is a perimortem rape case, where the sexual assault occurred at or near the time of death.³⁰⁶ The defendant argued that there was insufficient evidence to support his conviction for rape because the prosecution had not proved that he had sexual intercourse with his victim before he killed her.³⁰⁷ In essence, the defendant raised a “necrophilia defense” to the rape charge.

The Georgia high court affirmed Lipham’s conviction for rape.³⁰⁸ In doing so, the court rejected the defendant’s argument that if he killed his victim and only thereafter had sex with her, he would be guilty only of necrophilia.³⁰⁹ The court concluded that the rape statute was equally applicable in cases where the defendant has used deadly force to achieve sexual intercourse.³¹⁰ In so doing, the court distinguished between perimortem rape and necrophilia, the latter crime

she was dead at the time *Id.* In 2008, a jury found Wallace Muhammed guilty of murder, necrophilia, and other charges after Muhammed broke into a motel room occupied by his victim. Zachary Hansen, *Man strangled woman, had sex with her corpse, set her body on fire*, ATL. J. CONST. (May 10, 2018), <https://www.ajc.com/news/crime-law/man-strangled-woman-had-sex-with-her-corpse-set-her-body-on-fire/dByKV4JyUKt4Gu5tEwqMqJ> [http://perma.cc/6J6X-PXTT]. After killing her and having sex with her corpse, Muhammed set her body on fire. *Id.* He was sentenced to life in prison. *Id.* Most recently, in January 2019, a sentencing court imposed a fifteen-year sentence for a man charged with necrophilia after being caught having anal sex with a corpse on a funeral home’s security cameras. BET Staff, *Homeless Man Pleads Guilty to Breaking Into Georgia Funeral Home And Having Sex With Corpse*, BET (Jan. 30, 2019), <https://www.bet.com/news/national/2019/01/30/homeless-man-pleads-guilty-to-breaking-into-georgia-funeral-home.html> [http://perma.cc/KK6L-M4QB].

304. See *Lipham v. State*, 364 S.E.2d 840, 842–43 (Ga. 1988).

305. *Id.* at 841.

306. See *id.* at 842.

307. *Id.*

308. *Id.* at 843.

309. *Id.* at 842.

310. *Lipham*, 364 S.E.2d at 842 (holding that even if penetration occurred after the victim’s death, both the force element and the lack of consent element would be fulfilled, making the crime rape). As for consent, the court cites a per se rule regarding victims who are drugged, asleep, unconscious, or in a coma. See *id.* at 842–43. The court concluded: “We see no reason why it should be any less applicable in a case in which the defendant has rendered the victim permanently unconscious by killing her.” *Id.* at 842.

the court characterized as when “one happens upon the corpse of a female and engages in sexual intercourse with it.”³¹¹ The social harm difference between the two crimes is one of degree. In rape, the criminal actor achieves intercourse through the use of force,³¹² in necrophilia, there is no force.³¹³

The decision in *Lipham* reflects the majority approach that a live body is not required to convict the defendant for rape.³¹⁴ But California and Nevada, states with necrophilia laws, have limited rape convictions to offenders who have violated living persons.³¹⁵ These states reason, more or less, that corpses are not living persons and therefore it is legally impossible to rape a corpse.³¹⁶ In *People v. Kelly*, for example, the California Supreme Court reasoned: “[t]he essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. . . .’ A dead body has no feelings of outrage.”³¹⁷

In his dissent to a 1996 case in which the Nevada Supreme Court concluded that necrophilia was the more appropriate label for a perimortem sexual assault where it is unclear exactly when the sexual contact occurred, Chief Justice Thomas L. Steffen explained this paradox:

Victims of imminent sexual assault, fighting and resisting to the end, are thus thought to suffer no indignity or outrage because they have succumbed to their attackers’ violence prior to being sexually violated. Because they are dead, their efforts to resist sexual assault, thereby making it clear that it would be accomplished without their consent, do not carry over after death. Having suffered death before the final insult, their cries of resistance, outrage, and fear no longer count. They are no longer “persons” under the majority’s ruling.³¹⁸

Even states that criminalize necrophilic acts as sexual assaults frequently confront the rights and interests question, and as we have seen, come to different conclusions. A final set of states resolves that question by incorporating per se consent rules when it comes to

311. *Id.* at 842.

312. *Id.* at 842–43.

313. *Id.*

314. *See, e.g.*, *State v. Brobeck*, 751 S.W.2d 828, 831–32 (Tenn. 1988).

315. *People v. Kelly*, 822 P.2d 385, 399 (Cal. 1992); *Doyle v. State*, 921 P.2d 901, 914 (Nev. 1996), *overruled on other grounds by Kaczmarek v. State*, 91 P.3d 16 (2004).

316. *See Kelly*, 822 P.2d at 399; *Doyle*, 921 P.2d at 914.

317. *Kelly*, 822 P.2d at 399–400 (quoting *People v. Sellers*, 250 Cal. Rptr. 345, 350 (Cal. Ct. App. 1988)) (concluding that the proper conviction was for attempted rape). Perimortem rape, however, can still be the basis of a felony murder conviction. *Id.* at 400.

318. *Doyle*, 921 P.2d at 919 (Steffen, C.J., concurring in part and dissenting in part).

corpses.³¹⁹ In other words, sexual contact with a corpse is a criminal violation because corpses cannot provide consent.

3. *Sexual Autonomy: Per Se Consent*

Out of the eighteen states that explicitly require sexual contact with a corpse, three states—Connecticut, New York, and Wisconsin—explicitly frame their anti-necrophilia laws around the notion of consent.³²⁰ The sex offender registry laws in each state have provisions for convicted offenders,³²¹ although Connecticut specifically reserves discretion for the sentencing judge to base the registration requirement on a finding that registration is necessary for public safety.³²² Each of these three states also require that offenders from other states register upon establishing residence.³²³

Connecticut's anti-necrophilia law is contained in the penal code's chapter on sex offenses.³²⁴ It provides: "A person is guilty of sexual assault in the fourth degree when . . . such person engages in sexual contact with an animal or dead body."³²⁵ The entire group of fourth-degree sexual assaults in Section 53a-73a is framed around the social value of consent.³²⁶ Subsection (a)(2) summarizes the consent focus of this section: "A person is guilty of sexual assault in the fourth degree when . . . such person subjects another person to sexual contact without such other person's consent."³²⁷

Consent is not defined in the statutory text,³²⁸ but the remaining subsections enumerate various sex acts that by statutory definition lack consent.³²⁹ For example, subsections (a)(1)(A)–(B) set out

319. *See infra* Appendix.

320. CONN. GEN. STAT. ANN. § 53a-73a(a)(3) (West 2019); N.Y. PENAL LAW § 130.05(1) (Consol. 2018); WIS. STAT. ANN. § 940.225(4)(c) (West 2018).

321. CONN. GEN. STAT. ANN. § 54-251(a) (West 2015); N.Y. CORRECT. LAW § 168-f (Consol. 2018); WIS. STAT. ANN. § 301.45(1g)(a) (West 2020). For additional details, see *infra* Appendix.

322. CONN. GEN. STAT. ANN. § 54-251(c) (West 2015).

323. *Id.* § 54-253(a); N.Y. CORRECT. LAW § 168-a(2)(d) (Consol. 2018) ("provided that the elements of such crime of conviction are substantially the same"); WIS. STAT. ANN. § 301.45(1g)(g) (West 2020) ("has been found to have committed a sex offense by another jurisdiction").

324. CONN. GEN. STAT. ANN. § 53a-73a(b) (West 2019).

325. *Id.* § 53a-73a(a). Sexual assault in the fourth degree is a misdemeanor offense unless the victim is under the age of sixteen, in which case it is a class D felony. *Id.* § 53a-73a(b).

326. *See id.* § 53a-73a(a).

327. *Id.*

328. *See id.* § 53a-65 (providing definitions relevant to Sex Offenses division of the Penal Code). *But see* *Efstathiadis v. Holder*, 119 A.3d 522, 526 (Conn. 2015) (relying on various dictionary definitions of consent).

329. CONN. GEN. STAT. § 53a-73a (West 2019); *see also* *State v. Hufford*, 533 A.2d 866, 871 (Conn. 1987) (recognizing that the statute "proscribe[s] nonconsensual sexual contact").

Connecticut's statutory rape law.³³⁰ Subsection (a)(1)(C) criminalizes sexual contact with those who are “physically helpless.”³³¹ Other subsections prohibit sexual contact between minors and their guardians,³³² institutional wards and their keepers,³³³ patients and their psychotherapists,³³⁴ students and school employees,³³⁵ and minor athletes and their coaches.³³⁶ These per se lack of consent scenarios demonstrate the legislature's intent to criminalize sexual activity in “situations in which one party may be under the control of the other.”³³⁷ As the Penal Code drafters asserted in the accompanying Commentary: “Both sexual assault in the first degree [forcible rape] and sexual assault in the fourth degree were designed to protect society from sexual contact without voluntary agreement.”³³⁸

Defendants who violate the consent norms established in Connecticut's Section 53a-73a are also subject to mandatory registration on the state's sex offender registry, but may be exempted if the sentencing court finds that registration is “not required for public safety.”³³⁹ In a 2017 case, a defendant pleaded guilty to sexual assault in the fourth degree after having sex with his girlfriend who had overdosed on drugs.³⁴⁰ During sentencing, the defendant asserted that he believed his girlfriend to be unconscious, not dead, when he tied her ankles and wrists to the bedposts before having sex with her.³⁴¹ Under these facts, the sentencing court concluded that the defendant's registration as a sex offender was “not required for public safety.”³⁴²

New York likewise punishes necrophilic acts as a crime of sexual misconduct, a class A misdemeanor.³⁴³ In New York, “[t]he crime of sexual misconduct overlaps with the crime of rape.”³⁴⁴ Every sex offense in Article 130 of the New York Penal Code includes lack of consent as an element.³⁴⁵ Section 130.05 defines lack of consent as

330. CONN. GEN. STAT. ANN. § 53a-73a(a)(1)(A)–(B) (West 2019).

331. *Id.* § 53a-73(a)(1)(C).

332. *Id.* § 53a-73a(a)(1)(D).

333. *Id.* § 53a-73a(a)(1)(E).

334. *Id.* § 53a-73a(a)(4).

335. *Id.* § 53a-73a(a)(6).

336. CONN. GEN. STAT. ANN. § 53a-73a(a)(7) (West 2019).

337. *Efstathiadis v. Holder*, 119 A.3d 522, 528–29 (Conn. 2015) (quoting the drafters' commentary to the Connecticut Penal Code).

338. *Id.* at 528.

339. CONN. GEN. STAT. ANN. § 54-251(a)–(c) (West 2019).

340. David Owens, *Willimantic Man Pleads Guilty To Having Sex With Dead Woman*, HARTFORD COURANT (Dec. 6, 2017), <https://www.courant.com/news/connecticut/hc-daniel-son-sex-assault-dead-woman-1207-story.html>.

341. *Id.*

342. *Id.*

343. N.Y. PENAL LAW § 130.20(3) (Consol. 2003).

344. *People v. Hough*, 607 N.Y.S.2d 884, 886 (Crim. Ct. 1994).

345. *See* N.Y. PENAL LAW § 130.05(1) (Consol. 2018).

resulting from, inter alia, forcible compulsion or incapacity to consent.³⁴⁶ The same section further provides a list of classes of people who are deemed incapable of consent, including minors under seventeen years of age, persons with mental disabilities, persons with mental incapacities, persons who are physically helpless, or persons under custody, supervision, or under medical, psychotherapeutic, or residential care.³⁴⁷ Like Connecticut and Wisconsin, New York requires offenders convicted of sex offenses in other jurisdictions to register as a sex offender in New York “provided that the elements of such crime of conviction are substantially the same.”³⁴⁸

In Wisconsin, the criminal prohibition against necrophilia is explicitly tied to the notion of sexual autonomy and consent.³⁴⁹ The law defines consent as “words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact.”³⁵⁰ It also provides for presumed incapacity for those who suffer from mental illness, are unconscious, or are physically incapable of communicating their unwillingness to an act.³⁵¹ Necrophilia is made criminal through a specific provision at the end of Wisconsin’s comprehensive sexual assault statute,³⁵² which provides: “This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.”³⁵³ The idea that necrophilia is understood as a crime that violates the value of consent was illustrated in the 2008 case, *State v. Grunke*.³⁵⁴

After seeing a photo of the deceased victim in her obituary, twenty-year-old Nicholas Grunke decided that he wanted to have sex with her.³⁵⁵ With the help of his twin brother and another friend, Grunke plotted to dig up the victim’s body, transfer it to a new location, and then have sex with her.³⁵⁶ To execute this plan, the defendants first drove to the cemetery to locate the deceased’s gravesite.³⁵⁷

346. *Id.* § 130.05(2).

347. *Id.* § 130.05(3).

348. N.Y. CORRECT. LAW § 168-a(2)(d) (Consol. 2018); *see supra* note 323 and accompanying text.

349. *See* WIS. STAT. ANN. § 940.225(4),(7) (West 2018).

350. *Id.* § 940.225(4).

351. *Id.* § 940.225(4)(b)–(c).

352. *Id.* § 940.225(1)-(3m). The relevant section outlines a series of sexual assault crimes ranging from first to fourth degree. *Id.*

353. *Id.* § 940.225(7).

354. *State v. Grunke*, 752 N.W.2d 769, 775–76 (Wis. 2008).

355. *Id.* at 771; *Just because it’s not illegal doesn’t mean it’s OK*, ASSOCIATED PRESS (Sept. 20, 2006), http://www.nbcnews.com/id/14929873/ns/us_news-weird_news/t/just-because-its-not-illegal-doesnt-mean-its-ok/#.XKFeFC2ZPOQ [<http://perma.cc/2XUN-XZ8A>].

356. *Grunke*, 752 N.W.2d at 771.

357. *Id.*

After going offsite to purchase various materials to exhume the corpse as well as a box of condoms, they returned to the gravesite and began digging.³⁵⁸ When the defendants uncovered the top of the deceased's concrete vault, they realized that they would not be able to pry it open.³⁵⁹ At this same time, a local police officer who had been alerted to a suspicious vehicle at the cemetery discovered the defendants as they were attempting to flee the crime scene.³⁶⁰

The State charged Grunke and his co-defendants with attempted third-degree sexual assault.³⁶¹ After a preliminary hearing, the circuit court determined that the anti-necrophilia statute did not apply to cases where the accused did not cause the victim's death and refused to bind over the defendants.³⁶² The intermediate appellate court affirmed, under the same rationale.³⁶³ The appellate court additionally reasoned that, because the sexual assault statutory scheme required the State to prove lack of consent and a corpse could never give consent, the anti-necrophilia provision was ambiguous.³⁶⁴

In reversing the appellate court, the Wisconsin Supreme Court disposed of the ambiguity argument by declaring there was no "incompatibility between, on the one hand, a victim being incapable of consent because the victim is dead and, on the other hand, . . . [the] requirement that sexual intercourse occur 'without the consent' of the victim."³⁶⁵ Simply because it would be much easier for the State to prove that a dead victim did not provide affirmative consent did not mean, the Court reasoned, that the requirement in a necrophilia case was superfluous.³⁶⁶ The court acknowledged that consent was a key element in the state's sexual assault laws.³⁶⁷ In ratifying the prosecutor's strategy to pursue attempted sexual assault charges, the court also affirmed the notion, inherent in the prosecution, that sexual autonomy measured by consent is a central part of

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.*; WIS. STAT. ANN. § 940.225(3) (West 2018) (third-degree sexual assault); § 939.32 (West 2014) (attempt).

362. *Grunke*, 752 N.W.2d at 771–72.

363. *State v. Grunke*, 738 N.W.2d 137, 143 (Wis. Ct. App. 2007), *rev'd*, *State v. Grunke*, 752 N.W.2d 769 (Wis. 2008).

364. *Id.* at 141–43 (citing *State v. Holt*, 382 N.W.2d 679 (Wis. Ct. App. 1985), *superseded by statute*, WIS. STAT. ANN. § 940.225 (West 1986)). In *State v. Holt*, a perimortem rape case prior to the enactment of the anti-necrophilia provision, where the court held that "in a rape-murder case where the exact sequence of events cannot be proved, the jury may reasonably infer . . . that the victim was alive during the sexual assault." 382 N.W.2d at 685.

365. *State v. Grunke*, 752 N.W.2d 769, 775–76 (Wis. 2008).

366. *Id.* at 776.

367. *See id.* at 775.

the social harm calculus under Wisconsin law.³⁶⁸ This understanding also further legitimizes the Wisconsin law requiring necrophiles convicted in other states to register as sex offenders in Wisconsin.³⁶⁹

CONCLUSION

In the common law tradition, John Stuart Mill may have been the first to articulate the limits of state power according to a harm principle.³⁷⁰ Mill famously argued that the limit of individual freedoms was the point at which exercise of that freedom interferes with the interests of another.³⁷¹ For Mill, it was fundamental that a democratic society demand an articulation of the harm to others before the state could operate to curtail the individual's freedom through execution of the criminal law.³⁷² In the preceding Article, what I mean by social harms are the interests and rights that are infringed by another's actions and are therefore the basis of legitimate criminal sanction.³⁷³

Necrophilia implicates a variety of social harms, as evidenced by the range of justifications that states currently provide for criminalizing associated behaviors. Although necrophilia has been highly suspect and generally abhorred for millennia, we still do not share a common understanding about the social harm or harms associated with this crime. I had hoped that studying what I assumed was a simple and straightforward example of sexual assault against a dead human body would reveal some insights about the notions of consent and sexual autonomy that are now the core of rape law.

In this regard, however, the survey of anti-necrophilia laws presented above generates more questions than it does fixed and satisfactory answers. Although the majority of states coalesce on a general definition of the crime as sexual contact with a corpse, even these states cannot find agreement on how severe the related harm is, the result of which are penal consequences ranging from fines to life in prison for essentially the exact same behavior.³⁷⁴ The mixed

368. *See id.* at 776–78.

369. WIS. STAT. ANN. § 301.45(1g)(g) (West 2020) (“has been found to have committed a sex offense by another jurisdiction”).

370. *See* Bernard E. Harcourt, *Mill's On Liberty and the Modern "Harm to Others" Principle*, in FOUNDATIONAL TEXTS IN MODERN CRIMINAL LAW 163, 163 (Markus D. Dubber ed. 2014).

371. *Id.* (quoting JOHN STUART MILL, ON LIBERTY 9 (E. Rapaport ed. 1978) (“[T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”).

372. *See id.* at 165–71 (attempting to distinguish the expansive “modern” harm principle which includes all types of generic harms, as asserted by Lord Patrick Devlin, from Mill's original attempt to craft a limiting principle against the excesses of the state).

373. *See id.* at 165 (“Mill framed the notion of harm within a liberal structure of recognized legal rights”).

374. *See infra* Appendix.

bag of state laws on necrophilia surveyed above betrays the subjective nature of criminal law-making. And while there is value to allowing states to experiment and to configure their criminal laws in the ways that make most sense to each state's special circumstances, the lack of uniformity among the states can cause confusion and uncertainty for convicted offenders and could potentially undermine sex offender registry laws designed to protect the public from sexual predators. Even though necrophilia prosecutions are infrequent (and appellate decisions even more rare), the important rights and interests questions identified here are already ripe for further consideration.

APPENDIX

State	Citation	Title of Law	Organized Under	Penalty
AL	Ala. Code § 13A-11-13(a)	Abuse of a corpse	Criminal Code—Offenses Against Order and Safety—Offenses Against Public Order and Decency	Class C Felony—not more than 10 years or less than 1 year and 1 day
AK	Alaska Stat. § 11.61.130 (a)(2)	Misconduct involving a corpse	Criminal—Offense Against Public Order	Class A Misdemeanor—one year and \$25,000 fine
AZ	Ariz. Rev. Stat. § 32-1364	Crimes against the dead	Professions & Occupations—Funeral Directors & Embalmers—Regulation & Enforcement	Class 4 Felony—1–3.5 years imprisonment
AR	Ark. Code § 5-60-101(a)(2)(A)	Abuse of a corpse	Criminal—Offenses Against Public Health, Safety, or Welfare	Class C Felony: 3–10 years imprisonment and up to \$10,000 fine. Ark. Code §§ 5-4-401(a)(4), 5-4-201(a)(2)
CA	Cal. Health & Safety Code § 7052(a)	Unlawful mutilation, disinterment, or act of sexual penetration of sexual contact with human remains	Health and Safety—Dead Bodies	Felony—16 months to 3 years imprisonment

State	Social Harm	Statutory Text
AL	Family: outrage (felony)	“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 sensibilities.”
AK	Sex offense: dead body required	“A person commits the crime of misconduct involving a corpse if . . . the person engages in sexual penetration of a corpse.”
AZ	Sex offense: necrophilia	“It is unlawful for a person to engage in necrophilia. A person engages in necrophilia by: (1) Having sexual intercourse with a dead human body (2) Having sexual contact with a dead human body, other than the contact normally required to store, prepare, disinfect or embalm a dead human body according to standards of practice in the funeral industry.”
AR	Family: outrage (felony)	“A person commits abuse of a corpse if . . . she knowingly: Physically mistreats or conceals a corpse in a manner offensive to a person of reasonable sensibilities.”
CA	Sex offense: dead body required	“Every person who willfully mutilates, disinters, removes from the place of interment, or commits an act of sexual penetration on, or has sexual contact with, any remains known to be human, without authority of law, is guilty of a felony.”

State	Citation	Title of Law	Organized Under	Penalty
CO	Colo. Rev. Stat. § 18-13-101(1)(b)	Abuse of a corpse	Criminal—Miscellaneous Offenses	Class 2 Misdemeanor—3 months to 1 year prison; \$250–\$1000 fine
CT	Conn. Gen. Stat. § 53a-73a(a)(3)	Sexual assault in the fourth degree	Penal Code—Sex Offenses	Class A misdemeanor
DE	Del. Code tit. 11 § 1332	Abusing a corpse	Criminal—Offenses Against Public Health, Order and Decency—Riot, Disorderly Conduct Related Offense	Class A Misdemeanor—One year and up to \$2,300 fine
D.C.	No law			
FL	Fla. Stat. § 872.06(2)	Abuse of a dead human body	Crimes—Offenses concerning Dead Bodies and Grave	2nd Degree Felony—No more than 15 years imprisonment, \$10,000 fine
GA	Ga. Code § 16-6-7	Necrophilia	Crimes—Sexual Offenses	1–10 years imprisonment
HI	Haw. Rev. Stat. § 711-1108	Abuse of a corpse	Penal Code—Offenses Against Public Order	Misdemeanor—one year imprisonment and fine up to \$2,000

State	Social Harm	Statutory Text
CO	Family: outrage (misdemeanor)	“A person commits abuse of a corpse if, without statutory or court-ordered authority, he or she . . . Treats the body or remains of any person in a way that would outrage normal family sensibilities.”
CT	Sex offense: consent	“A person is guilty of sexual assault in the fourth degree when: . . . such person engages in sexual contact with an animal or dead body.”
DE	Family: outrage (misdemeanor)	“A person is guilty of abusing a corpse when, except as authorized by law, the person treats a corpse in a way that a reasonable person knows would outrage ordinary family sensibilities.”
D.C.	N/A	Abuse of corpse is a tort. <i>Steagall v. Doctors Hosp.</i> , 171 F.2d 352, 353 (D.C. Cir. 1948).
FL	Sex offense: dead body required	“A person who mutilates, commits sexual abuse upon, or otherwise grossly abuses a dead human body commits a felony of the second degree.”
GA	Sex offense: necrophilia	“A person commits the offense of necrophilia when he performs any sexual act with a dead human body involving the sex organs of the one and the mouth, anus, penis, or vagina of the other.”
HI	Family: outrage (misdemeanor)	“A person commits the offense of abuse of a corpse if, except as authorized by law, the person: . . . [t]reats a human corpse in a way that the person knows would outrage ordinary family sensibilities.”

State	Citation	Title of Law	Organized Under	Penalty
ID	Idaho Code § 18-6605	Crime against nature	Penal Code—Sex Crimes	Not less than 5 years imprisonment
IL	720 Ill. Comp. Stat. 5/12-20.6(b)(1)	Abuse of a corpse	Criminal—Offenses Directed Against the Person—Bodily Harm—Mutilation	Class 2 Felony—3 to 7 years imprisonment; 730 Ill. Comp. Stat. 5/5-4.5-35(a)
IN	Ind. Code 35-45-11-2(2)	Abuse of a corpse	Criminal—Offenses Against Public Health, Order, and Decency	Level 6 Felony—6 months to 2.5 years imprisonment; up to \$10,000 fine
IO	Iowa Code § 709.18	Sexual abuse of a corpse	Criminal—Sexual Abuse	Class D Felony—up to 5 years imprisonment and fine of \$750–\$7500
KS	Kan. Stat. § 21-6205(a)(1)	Criminal Desecration	Crimes Against Public Peace	Class A nonperson misdemeanor
KY	Ky. Rev. Stat. § 525.120	Abuse of a corpse	Criminal—Riots, Disorderly Conduct	Class D Felony—1 to 5 years imprisonment; fine of \$1,000–\$10,000
LA	No Law			
ME	Me. Rev. Stat. tit. 17A, § 508	Abuse of corpse	Criminal—Offenses Against Public Order	Class D Crime—up to 1 year imprisonment; up to \$2,000 fine

State	Social Harm	Statutory Text
ID	CAN	“Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.”
IL	Sex offense: dead body required	“A person commits abuse of a corpse if he or she intentionally . . . engages in sexual conduct with a corpse or involving a corpse.”
IN	Sex offense: dead body required	“A person who knowingly or intentionally . . . has sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the corpse . . . commits abuse of a corpse, a Level 6 felony.”
IO	Sex offense: dead body required	“A person commits sexual abuse of a human corpse if the person knowingly and intentionally engages in a sex act, as defined in section 702.17, with a human corpse.” <i>See also</i> § 709.1 (defining “sexual abuse,” which focuses on per se consent issues).
KS	Mistreatment of corpse	“Criminal desecration is: . . . Knowingly obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being.”
KY	Family: outrage (felony)	“A person is guilty of abuse of a corpse when except as authorized by law he intentionally treats a corpse in a way that would outrage ordinary family sensibilities.”
LA	N/A	
ME	Mistreatment of corpse	“A person is guilty of abuse of corpse if he intentionally and unlawfully disinters, digs up, removes, conceals, mutilates or destroys a human corpse, or any part or the ashes thereof.”

State	Citation	Title of Law	Organized Under	Penalty
MD	Md. Crim. Law § 3-322(a)(3)	Unnatural or perverted sexual practice	Criminal—Other Crimes Against the Person; Sexual Crimes	Misdemeanor—up to 10 years imprisonment; up to \$1,000 fine
MA	Mass. Gen. Laws ch. 272, § 34	Crime against nature	Crimes Against Chastity, Morality, Decency and Good Order	Not more than 20 years
MI	Mich. Comp. Laws § 750.160	Disinterment, mutilation, defacement, or carrying away of human body	Penal Code—Dead Human Bodies	Felony—up to 10 years and \$5,000 fine
MN	Minn. Stat. § 609.294	Bestiality	Criminal—Sex Crimes	Misdemeanor; if done in the presence of another: up to 1 year imprisonment; \$3,000 fine

State	Social Harm	Statutory Text
MD	CAN	“A person may not . . . commit another unnatural or perverted sexual practice with another or with an animal.”
MA	CAN	“Whoever commits the abominable and detestable crime against nature, either with mankind or with a beast, shall be punished by imprisonment in the state prison for not more than twenty years.” <i>See also</i> Mass. Gen. Laws ch. 272, § 35 (unnatural and lascivious acts).
MI	Mistreatment of corpse	“A person, not being lawfully authorized so to do, who shall wilfully dig up, disinter, remove, or convey away a human body, or the remains thereof, from the place where the body may be interred or deposited . . . shall be guilty of a felony, punishable by imprisonment for not more than 10 years, or by fine of not more than \$5,000.00.”
MN	CAN	“Whoever carnally knows a dead body or an animal or bird is guilty of bestiality.”

State	Citation	Title of Law	Organized Under	Penalty
MS	Miss. Code § 97-29-19, 25	Disinter- ment of dead bodies; desecration of cemeteries or corpses	Crimes Against Public Morals and Decency	1–5 years imprison- ment and/or up to \$500 fine
MO				
MT	Mont. Code § 44-3-404(3)	Criminal Penalty	Forensic Science Systems Act	Misdemeanor—one year imprisonment and/or fine up to \$500
NB	No Law			

State	Social Harm	Statutory Text
MS	Mistreatment of corpse	<p>“Every person who shall remove the dead body of any human being from the grave or other place of interment for the purpose of . . . mere wantonness, or who shall wantonly dig into or open the grave or other place of interment where the remains of any dead human body is interred, or wantonly disturb the remains of any dead human body therein interred, shall upon conviction be imprisoned in the penitentiary not exceeding five years or in the county jail not more than one year, or be fined not more than five hundred dollars or both.”; “Every person who shall knowingly and willfully dig up, except as otherwise provided by law, obliterate, or in any way desecrate any cemetery where human dead are interred, or cause through word, deed or action the same to happen, shall upon conviction be imprisoned for not more than one (1) year in the county jail or fined not more than Five Hundred Dollars (\$500.00), or both, in the discretion of the court.</p>
MO	No law	
MT	Mistreatment of corpse	<p>“A person is guilty of a misdemeanor and may be fined not more than \$500 or be imprisoned in the county jail for not more than 1 year, or both, if the person . . . without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse.”</p>
NB	N/A	

State	Citation	Title of Law	Organized Under	Penalty
NV	Nev. Rev. Stat. § 201.450	Sexual Penetration of Dead Human Body	Criminal—Crimes Against Public Decency and Good Morals	Class A Felony—minimum 5 years imprisonment, not more than \$20,000; may be punished by life imprisonment with the possibility of parole
NH	N.H. Rev. Stat. § 644:7	Abuse of Corpse	Criminal—Breaches of the Peace and Related Offenses	Misdemeanor—one year imprisonment and/or fine up to \$1,200
NJ	N.J. Stat. § 2C:22-1(a)(3)	Disturbing, desecrating human remains; offenses	Criminal—Desecration of Human Remains	2nd Degree—up to 3 years imprisonment and/or \$1,000 fine
NM	No Law			
NY	N.Y. Penal Code § 130.20(3)	Sexual misconduct	Penal Code—Sex Offenses	Class A misdemeanor—up to 1 year imprisonment and/or \$1,000 fine
NC	N.C. Gen. Stat. §14-177, <i>invalidated by State v. Gentle</i> , 817 S.E.2d 833 (N.C. App. 2018)	Crime against nature	Offenses Against Public Morality and Decency	Class I Felony—three to twelve months

State	Social Harm	Statutory Text
NV	Sex offense: dead body required	“A person who commits a sexual penetration on the dead body of a human being is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole.”
NH	Mistreatment of corpse	“A person is guilty of a misdemeanor if he unlawfully removes, conceals or destroys a corpse or any part thereof.”
NJ	Sex offense: dead body required	“A person commits a crime of the second degree if he . . . Commits an act of sexual penetration or sexual contact, as defined in N.J.S.2C:14-1, upon human remains.”
NM	N/A	
NY	Sex offense: consent	“A person is guilty of sexual misconduct when . . . [h]e or she engages in sexual conduct with an animal or a dead human body.”
NC	CAN	“If any person shall commit the crime against nature, with mankind or beast, he shall be punished as a Class I felon.” N.C. Gen. Stat. § 14-177

State	Citation	Title of Law	Organized Under	Penalty
ND	N.D. Cent. Code § 12.1-20-12	Deviate sexual act	Criminal—Sexual Offenses	Class A Misdemeanor—up to 1 year in prison and/or fine of \$3,000
OH	Ohio Rev. Code § 2927.01(A)	Offenses against human corpse	Crimes—Miscellaneous Offenses	2nd Degree Misdemeanor—up to 90 days imprisonment and/or \$750 fine, or 5th Degree felony
OK	Okla. Stat. tit. 21, § 1161(B)	Unlawful removal of dead body	Ch. 47 violating sepulture and the remains of the dead	Felony—up to 5 years and/or \$5000 fine
OR	Or. Rev. Stat. § 166.087 (1)(a)	Abuse of corpse in the first degree	Crimes—Treason, Riot, Disorderly Conduct and Related Offenses	Felony Class B—up to 10 years imprisonment and/or \$250,000
PA	18 Pa. Stat. & Consol. Stat. § 5510	Abuse of a corpse	Crimes—Riot, Disorderly Conduct and Related Offenses	2nd Degree Misdemeanor—up to 2 years imprisonment and/or \$5,000 fine
RI	11 R.I. Gen. Laws § 11-20-1.2	Necrophilia	Criminal—Graves and Corpses	1st Degree Sexual Assault—up to 10 years imprisonment and/or \$10,000

State	Social Harm	Statutory Text
ND	Sex offense: dead body required	“Deviate sex act” means “any form of sexual contact with an animal, bird, or dead person.” N.D. Cent. Code § 12.1-20-02(2).
OH	Family: outrage (misdemeanor)	“No person, except as authorized by law, shall treat a human corpse in a way that the person knows would outrage reasonable family sensibilities.”
OK	Mistreatment of corpse	“No person shall remove any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it without authority of law, or from malice or wantonness.”
OR	Sex offense: dead body required	“A person commits the crime of abuse of corpse in the first degree if the person . . . Engages in sexual activity with a corpse or involving a corpse.”
PA	Family: outrage (misdemeanor)	“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 of the second degree.”
RI	Sex offense: necrophilia	“Any person who performs the act of first degree sexual assault upon a dead human body shall be guilty of the crime of necrophilia.”

State	Citation	Title of Law	Organized Under	Penalty
SC	S.C. Code § 16-17-600(A)(3)	Destruction or desecration of human remains or repositories	Criminal—Offenses Against Public Policy, Miscellaneous Offenses	Felony—5 years imprisonment and/or \$5,000
SD	S.D. Codified Laws § 34-27-19	Removing dead body maliciously or with intent to sell or dissect as a misdemeanor	Criminal—Public Health and Safety	Class 1 misdemeanor—up to 1 year imprisonment and/or \$2,000 fine
TN	Tenn. Code § 39-17-312	Corpses; abuse; purchase of skeletal remains	Criminal—Disorderly Conduct and Riots	Class E felony—1 to 6 years in prison and/or fine up to \$3,000
TX	Tex. Penal Code § 42.08 (a)(1)	Abuse of corpse	Penal Code—Disorderly Conduct and Related Offenses	Class A Misdemeanor—up to 1 year imprisonment and/or \$4,000 fine
UT	Utah Code § 76-9-704(2)(e)(i)	Abuse or desecration of a dead human body—Penalties	Criminal—Offenses Against Public Order and Decency	3rd Degree Felony—up to 5 years imprisonment and/or \$5,000 fine

State	Social Harm	Statutory Text
SC	Mistreatment of corpse	“It is unlawful for a person wilfully and knowingly, and without proper legal authority to . . . desecrate human remains.”
SD	Mistreatment of corpse	“Every person who removes all or any part of the dead body of a human being from a grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it without authority of law, or from malice or wantonness, is guilty of a Class 1 misdemeanor.”
TN	Family: outrage (felony)	“A person commits an offense who, without legal privilege, knowingly . . . [p]hysically mistreats a corpse in a manner offensive to the sensibilities of an ordinary person.”
TX	Mistreatment of corpse	“A person commits an offense if the person, without legal authority, knowingly . . . disinters, disturbs, damages, dissects, in whole or in part, carries away, or treats in an offensive manner a human corpse.”
UT	Sex offense: dead body required	“A person is guilty of abuse or desecration of a dead human body if the person intentionally and unlawfully: commits or attempts to commit upon any dead human body any act of sexual penetration, regardless of the sex of the actor and of the dead human body.” Part (2)(e) requires sexual penetration (defined as any penetration, however slight).

State	Citation	Title of Law	Organized Under	Penalty
VT	Vt. Stat. tit. 13, § 3761	Unauthorized removal of human remains	Crimes: Trespass and Malicious Injury to Property; Dead Bodies, Cemeteries, and Monuments	15 years or fined not more than \$10,000.00, or both
VA	Va. Code § 18.2-126(B)	Violation of sepulture; defilement of a dead human body; penalties	Criminal—Trespass to Realty	Class 6 felony—One to five years imprisonment and/or \$2,500
WA	Wash. Rev. Code § 9A.44.105 (1)	Sexually violating human remains	Criminal—Sexual Offenses	Class C Felony—up to 5 years imprisonment and/or \$10,000 fine
WV	W. Va. Code § 61-8-14(b)(3)	Disinterment or displacement of dead body or part thereof; damage to cemetery or graveyard; penalties; damages in civil action	Criminal—Crimes Against Chastity, Morality and Decency	Felony, up to five years imprisonment

State	Social Harm	Statutory Text
VT	Mistreatment of corpse	“A person who, not being authorized by law, intentionally excavates, disinters, removes, or carries away a human body, or the remains thereof, interred or entombed in this State, or intentionally excavates, disinters, removes, or carries away an object interred or entombed with a human body in this State, or knowingly aids in such excavation, disinterment, removal, or carrying away, or is accessory thereto, shall be imprisoned not more than 15 years or fined not more than \$10,000.00, or both.”
VA	Mistreatment of corpse	“If a person willfully and intentionally physically defiles a dead human body he is guilty of a Class 6 felony.”
WA	Sex offense: dead body required	“Any person who has sexual intercourse or sexual contact with a dead human body is guilty of a class C felony.”
WV	Family: felony	“For the purposes of this subsection, ‘desecrate’ means destroying, cutting, mutilating, effacing, injuring, tearing down, removing, defacing, damaging or otherwise physically mistreating in a way that a reasonable person knows will outrage the sensibilities of persons likely to observe or discover his or her actions.”

State	Citation	Title of Law	Organized Under	Penalty
WI	Wisc. Stat. § 940.225(7)	Sexual assault	Criminal—Bodily Security	Class G Felony—up to 6 years imprisonment and/or \$10,000 fine
WY	Wyo. Stat. § 6-4-502(a)	Mutilation of dead human bodies; concealing a felony; penalties; exceptions	Criminal—Desecrating Graves and Bodies	Felony—up to 10 years and \$10,000 fine
Puerto Rico	33 L.P.R.A. § 5187	Profanación de cadáver o cenizas	Código Penal—Delitos Contra la Persona—Delitos Contra la Familia—Respeto a los Muertos	3 years in prison
UCMJ	Art. 134	General article	Punitive articles	

State	Social Harm	Statutory Text
WI	Sex offense: consent	Subsection (7) of the sexual assault statute specifically provides that dead bodies are also subject to sexual assault.
WY	Mistreatment of corpse	“[A] person who dissects or mutilates a dead human body is guilty of a felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.”
Puerto Rico	Mistreatment of corpse	“Toda persona que ilegalmente mutile, desentierre o remueva de su sepultura, o del lugar en que se halle aguardando el momento de ser enterrado o cremado, el cadáver de un ser humano o parte del mismo, o sus restos o cenizas, o que de otra forma los profane, será sancionada con pena de reclusión por un término fijo de tres (3) años.”
UCMJ		Catch-all provision for other crimes