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Dead on Arrival: A Call for Legislative Action with Respect to State and Federal Laws Surrounding Cryonics

*Gage Taylor**

I. INTRODUCTION

A man is born in 1925 and dies of a heart attack in 1988.¹ He arranges to have his body frozen in the hopes that one day, science will revive him.² His family is distraught, dismissing the man as irrational, and they proceed to fight over his will.³ Ultimately, however, he is revived and living by 2072.⁴ This is the plot of James Halperin's 1998 novel *The First Immortal*.⁵ With the rise of cryonic preservation, such a sequence of events is not limited to science fiction.⁶ In fact, the Cryonics Institute recommends "The First Immortal" as part of its "Institute Resource Library."⁷

Cryonics, derived from the Greek word *krýos* meaning "cold," was first proposed as a legitimate scientific endeavor in 1964.⁸ The term, as recognized by courts, describes "[t]he procedure of placing the bodies/brains of people who have been declared legally dead into storage at temperatures of -100°C or lower, with the hope that future medical development will allow the restoration of life and health."⁹ There are generally eight steps to cryonic freezing.¹⁰ The first step is to find a cryonic company.¹¹ Five organizations in

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1. See generally JAMES L. HALPERIN, *THE FIRST IMMORTAL* (2d ed. 1998).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. See generally Ole Martin Moen, *The Case for Cryonics*, 41 J. MED. ETHICS 677 (2017), <https://www.olemartinmoen.com/wp-content/uploads/TheCaseForCryonics.pdf>.
7. *Cryonics Institute Resource Library*, CRYONICS INST., <https://www.cryonics.org/resources/ci-vm-1-formula/P50> [<https://perma.cc/3URV-FHV2>] (last visited Feb. 1, 2022).
8. Kerry Howley, *Until Cryonics Do Us Part*, N.Y. TIMES (July 7, 2010), <https://www.nytimes.com/2010/07/11/magazine/11cryonics-t.html> [<https://perma.cc/RST4-FZVK>].
9. *Alcor Life Extension Found. v. Richardson*, 785 N.W.2d 717, 719 (Iowa Ct. App. 2010).
10. Tim Urban, *Why Cryonics Makes Sense*, WAIT BUT WHY (Mar. 24, 2016), <https://waitbutwhy.com/2016/03/cryonics.html> [<https://perma.cc/LE9P-QRFM>].

the world currently offer cryonic or “body freezing” storage.¹² These organizations are the Alcor Life Extension Foundation, American Cryonics Society (ACS), Cryonics Institute (CI), KrioRus, and Trans Time, Inc.¹³ The second step is to apply to become a member.¹⁴ Third, those who elect to become members must obtain a life insurance policy in the name of the cryonics company.¹⁵ Fourth, those who wish to be frozen must wear a bracelet with important instructions and contact information should an unfortunate, life-ending event occur suddenly.¹⁶ Step five is to pass away.¹⁷ Sixth, upon death, those who have followed the steps up to this point are transported to a cryonics facility and undergo a preliminary freezing process.¹⁸ Seventh, the patient is then vitrified.¹⁹ Vitrification is a process that replaces the decedent’s blood with a cryoprotectant solution (i.e., antifreeze) to prevent the body from crystallizing.²⁰ The final step is the transportation of the patient to a long-term freezing facility where it stays, awaiting the necessary scientific advances which would enable a successful revival attempt.²¹

The cryopreservation process is gaining momentum in the United States.²² Currently, there are approximately 250 cryopreserved people in the United States and around 1,500 additional individuals who have arranged for cryopreservation arrangements to take place when they pass away.²³ However, the numbers remain small.²⁴ The idea of freezing bodies so that they may be resurrected at an uncertain point in the future still seems outlandish to many, and it certainly is not without its critics.²⁵ However, science fiction has

11. *Id.*

12. *FAQ – Cryonics Organizations*, KRIOBUS, <https://kriorus.ru/en/FAQ-Cryonics-organizations> [<https://perma.cc/H7VP-D7VY>] (last visited Feb. 1, 2022).

13. *Id.*

14. Urban, *supra* note 10.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. Urban, *supra* note 10.

21. *Id.*

22. Moen, *supra* note 6.

23. *Id.*

24. *Id.*

25. Elizabeth Day, *Dying Is the Last Thing Anyone Wants to Do—So Keep Cool and Carry On*, THE GUARDIAN (Oct. 10, 2015), <https://www.theguardian.com/science/2015/oct/11/cryonics-booms-in-us> [<https://perma.cc/4YB5-SU59>].

inspired real-life scientific advancements in the past.²⁶ For example, air travel, space travel, and even organ implantation were once considered impossible but are now part of everyday life.²⁷ The reality, however, is whether cryogenics is legitimate science with a future or “snake oil medicine” at its finest, cryogenics has rippling effects across many areas of law which must be addressed now rather than in some distant future where dying is a relic of the past.²⁸

The purpose of this Comment is to show a need for legislative clarity in the area of cryonics through a survey of existing, and often conflicting, federal and state laws.²⁹ Part I of this Comment offers a brief history of cryonics, providing the background necessary to understand the full impact of this process and the relevant legal landscape.³⁰ Part II provides a concise summary of how cryonics is generally received among the scientific community.³¹ Part III then extensively examines the current legal landscape surrounding cryonics, including its effect on life insurance, trust and estate planning, and various federal and state statutes.³² Part IV then takes a quick look at some important court decisions that illustrate the ways in which courts have handled this topic.³³ Lastly, Part V concludes that despite the many “shady” practices of cryonic companies and the effect that cryonics has on the families of those who opt to participate in the service, this must be balanced with the right of an individual to choose what happens to their remains after they pass away.³⁴ As such, despite one’s instinct to scoff at a practice such as cryonics, state legislatures need to clarify what is and is not allowable as a viable funeral alternative in a way that protects both an individual’s freedom of choice and the families of those who elect to undergo this process.³⁵

II. A BRIEF HISTORY OF THE ORIGIN OF CRYONICS

Cryonics is rooted in the thousand-year-old idea of suspended animation, or, the slowing of biological processes to a death-like state for the pur-

26. Ryan Sullivan, *Pre-Mortem Cryopreservation: Recognizing a Patient’s Right to Die in Order to Live*, 14 QUINNIPIAC HEALTH L. J. 49, 52 (2010).

27. *Id.*

28. *Id.*

29. *See infra* Parts I-IV.

30. *See infra* Part I.

31. *See infra* Part II.

32. *See infra* Part III.

33. *See infra* Part IV.

34. *See infra* Part V.

35. Adam A. Perlin, “*To Die In Order To Live*”: *The Need for Legislation Governing Post-Mortem Cryonic Suspension*, 36 SW. U. L. REV. 33, 58 (2007).

pose of preservation.³⁶ Centuries-old tales such as Sleeping Beauty and Rip Van Winkle all involve a protagonist in a peaceful state before reawakening and continuing life hundreds of years later.³⁷ Humanity has always pursued immortality.³⁸ In some regards, cryonics is a logical step towards that goal.³⁹

Although it seems far-fetched, cryonics involves a lot of the same science as many widely accepted medical practices.⁴⁰ The preservation of human cells or tissues at extremely low temperatures, or, cryopreservation, is now almost universally accepted in the scientific community and predates serious discussion of cryonics by only eight years.⁴¹ In 1954, cryopreservation was first successfully applied to humans in the form of frozen sperm, which were used to achieve three successful inseminations.⁴² Soon after, Robert Ettinger, the “father of cryonics,” published his highly influential book on the topic, *The Prospect of Immortality*.⁴³ This book was the first to make a scientific case for cryonic preservation, and he successfully transitioned cryonics from a fun science-fiction plotline to a legitimate possibility.⁴⁴ This is not to say that Robert Ettinger was not met with high amounts of skepticism.⁴⁵ So much so, that before Doubleday would even publish the book, they sent it to Isaac Asimov, the famous science-fiction author of *I, Robot*, who assured the publisher that the scientific components of the theory

36. *Suspended Animation*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/suspended%20animation> [https://perma.cc/9ZSL-XT8H] (last visited Feb. 1, 2022).

37. *Films About Cryogenics and Suspended Animation*, MORIA, <https://www.moriareviews.com/cryogenics-and-suspended-animation> [https://perma.cc/647B-YC5D] (last visited Feb. 1, 2022).

38. Ana Corker, *Cryonics, or the Dream of Immortality*, AUGUSTA FREE PRESS (Aug. 11, 2021, 11:07 AM), <https://augustafreepress.com/cryonics-or-the-dream-of-immortality/> [https://perma.cc/C9CG-4NPR].

39. *Id.*

40. See Mark G. Larman et al., *Cryopreservation in ART and Concerns with Contamination During Cryobanking*, 13(3) J. REPROD. MED. & BIOLOGY 107 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5892987/#:~:text=Artificial%20insemination%20with%20frozen%20semen,formation%20of%20human%20sperm%20banks> [https://perma.cc/PF9J-FV2H].

41. *Id.*

42. *Id.*

43. Emma Brown, *Robert Ettinger, Founder of the Cryonics Movement, Dies at 92*, WASH. POST (July 24, 2011), https://www.washingtonpost.com/local/obituaries/from-physics-teacher-to-founder-of-the-cryonics-movement/2011/07/24/gIQAupuIXI_story.html [https://perma.cc/D5SU-94RU].

44. *See id.*

45. *Id.*

were feasible.⁴⁶ In his book, Ettinger argued that the damage caused by freezing the human body is negligible, and that very little scientific progress is necessary before reversal is possible.⁴⁷ He also focused on life insurance as the way in which cryonics would be practical for the average person.⁴⁸

Ettinger, dissatisfied with mere speculation about the possibility of cryonics, founded the Cryonics Institute in 1976.⁴⁹ However, Ettinger was not the first to attempt to turn the thesis of his book into a reality.⁵⁰ Several other cryonic organizations were founded only a few years after the publication of Ettinger's book, most notably the Alcor Life Extension Foundation, founded in 1972.⁵¹ By the end of the 1970s, there were approximately six cryonic companies in the United States.⁵² However, convincing people to be frozen after death is a difficult sell, and the cost of preserving and storing bodies in such a complex facility is expensive, so many of these companies either consolidated or closed by the 1980s.⁵³ Today, only a handful of companies remain that offer full-body cryonic services including Alcor Life Extension Foundation and the Cryonics Institute, both mentioned above.⁵⁴

Dr. James Bedford, a psychology professor, was the first person in the world to ever be cryonically preserved after death in 1967.⁵⁵ Unfortunately, due to being the first person cryonically frozen, the solution used to protect his body was rather unsophisticated by today's standards, making it likely his brain was not properly preserved.⁵⁶ Regardless, in 1987, Dr. Bedford's body

46. David Pascal, *A Brain Is a Terrible Thing to Waste*, CRYONICS SOC'Y, http://www.cryonicssociety.org/articles_mensajournal.html [https://perma.cc/5Q2M-WFND] (last visited Feb. 1, 2022).

47. ROBERT ETTINGER, *THE PROSPECT OF IMMORTALITY* 15 (1962).

48. *Id.* at 70.

49. *The CI Advantage*, CRYONICS INST., <https://www.cryonics.org/the-ci-advantage/> [https://perma.cc/H787-LUUL] (last visited Feb. 1, 2022).

50. Stephanie Watson, *The History of Cryonics*, HOWSTUFFWORKS, <https://science.howstuffworks.com/life/genetic/cryonics4.htm> [https://perma.cc/NA2S-ZT9K] (last visited Feb. 1, 2022).

51. *About*, ALCOR LIFE EXTENSION FOUND., <https://www.alcor.org/about/> [https://perma.cc/G5AX-AFHU] (last visited Feb. 1, 2022).

52. Watson, *supra* note 50.

53. *Id.*

54. *Id.*

55. Mike Darwin, *Evaluation of the Condition of Dr. James Bedford After 24 Years of Cryonic Suspension*, ALCOR LIFE EXTENSION FOUND. (Aug. 1991), <https://www.alcor.org/library/bedford-condition/> [https://perma.cc/HXS5-8NFB].

56. R. Michael Perry, *Suspension Failures: Lessons from the Early Years*, ALCOR LIFE EXTENSION FOUND. (Oct. 2014), <https://www.alcor.org/library/suspension-failures-lessons-from-the-early-years/> [https://perma.cc/NF7J-VXNL].

was transported to Alcor Life Extension Foundation where it remains to this day.⁵⁷

Presently, there are two options for cryopreservation.⁵⁸ The first is the classic “whole body preservation” which follows the process laid out in the Introduction.⁵⁹ The second, and more cost-friendly option, is “neuropreservation.”⁶⁰ This option is the preservation of only the patient’s brain.⁶¹ The process involved is similar to the “whole body” preservation process in that it requires a prompt transportation of the deceased, full preparation work, and the vitrification process to prevent freezing injury.⁶² Freezing only the brain, however, requires arguably even more scientific optimism as the hope is that future regenerative technology will allow the regrowing of a new body around the brain.⁶³

Finally, the cost of cryonic freezing has risen over the years.⁶⁴ In 1982, the cost was approximately \$100,000 for the whole body and \$35,000 for neurosuspension.⁶⁵ Today, the cost for whole body suspension is \$200,000 and \$80,000 for neurosuspension.⁶⁶ However, as proposed by Robert Ettinger in *The Prospect of Immortality* in 1964, most every cryosuspension is paid for using life insurance policies.⁶⁷ Here, a client can designate the cryonic company as the beneficiary of the life insurance policy which would allow those who wish to pursue cryonics the opportunity to do so, even if they

57. *Alcor Reveals that Dr. James Bedford, the First ‘Cryonaut,’ Could Be the Longest Surviving Human Ever*, PR NEWSWIRE (Dec. 16, 2015, 1:32 PM), <https://www.prnewswire.com/news-releases/alcor-reveals-that-dr-james-bedford-the-first-cryonaut-could-be-the-longest-surviving-human-ever-300193924.html> [<https://perma.cc/8485-YNNW>].

58. *FAQ: General Questions*, ALCOR LIFE EXTENSION FOUND., <https://www.alcor.org/library/faq-general-questions/#cost> [<https://perma.cc/99KP-FGME>] (last visited Feb. 1, 2022).

59. *Id.*

60. *Id.*

61. *Neuropreservation FAQ*, ALCOR LIFE EXTENSION FOUND., <https://www.alcor.org/library/neuropreservation-faq/> [<https://perma.cc/8NPP-FFJK>] (last visited Feb. 1, 2022).

62. *Id.*

63. *Id.*

64. See Mike Darwin, *The Cost of Cryonics*, ALCOR LIFE EXTENSION FOUND. (Aug. 1990), <https://www.alcor.org/library/cost-of-cryonics/> [<https://perma.cc/KF7H-YL7Y>].

65. *Id.*

66. *FAQ: General Questions*, *supra* note 58.

67. ETTINGER, *supra* note 47, at 70.

could never afford the operation while alive.⁶⁸ As such, one must purchase a life insurance policy worth at least \$200,000 for a whole-body suspension, although Alcor suggests future patients to purchase more than this to allow for an adjustment in price between the present and when the services will actually be rendered.⁶⁹

III. GENERAL RECEPTION AMONG SCIENTISTS

Cryonics is generally perceived as a “fringe pseudoscience” in which the cryonic scientists are “effectively destroying the body and preserving the pieces, hoping someone in the future can put the pieces back together.”⁷⁰ Michael Hendricks, a neuroscientist at McGill University, explains that the promise of “connectonomics,” or the mapping of neural connections to restore a person’s mind, memories, etc. is far-fetched at best.⁷¹ These cryonic companies purposefully conflate what is “theoretically conceivable” with what would ever be “practically possible,” giving people false hope.⁷² This false hope, some argue, is rather cruel.⁷³ Kenneth Goodman, director of the University of Miami Bioethics Program, opines that such a practice will complicate the already universal issue of dealing with death, preventing people from reaching “mature views” about dying.⁷⁴

Even cryobiologists, who study the freezing and cold effects on plant and animal cells are against cryonics as they do not allow those who practice cryonics in the Society of Cryobiology.⁷⁵ In a statement, the Society for Cryobiology asserts, “the act of preserving a body, head or brain after clinical death and storing it indefinitely on the chance that some future generation may restore it to life is an act of speculation or hope, not science.”⁷⁶ In other words, the practice of cryonics is currently more akin to practicing a religion

68. *Funding Methods for Cryopreservation at Alcor*, ALCOR LIFE EXTENSION FOUND., <https://www.alcor.org/library/funding-methods-for-cryopreservation-at-alcor/> [https://perma.cc/GM8U-HQTL] (last visited Feb. 1, 2022).

69. *FAQ: General Questions*, *supra* note 58.

70. Robert L. Steinback, *Mainstream Science Is Frosty Over Keeping the Dead on Ice*, CHI. TRIB. (Sept. 29, 2002), <https://www.chicagotribune.com/news/ct-xpm-2002-09-29-0209290429-story.html>.

71. Michael Hendricks, *The False Science of Cryonics*, MIT TECH. REV. (Sept. 15, 2015), <https://www.technologyreview.com/2015/09/15/109906/the-false-science-of-cryonics/> [https://perma.cc/QT3W-YKSY].

72. *Id.*

73. Steinback, *supra* note 70.

74. *Id.*

75. *Society for Cryobiology Position Statement—Cryonics*, SOC’Y FOR CRYOBIOLOGY (Nov. 2018), https://www.societyforcryobiology.org/assets/documents/Position_Statement_Cryonics_Nov_18.pdf [https://perma.cc/8HNM-H745].

76. *See id.*

as it requires faith and hope that is not grounded in modern day science.⁷⁷ Some scientists go so far as to calling it “high-tech quackery” and equating cryonics to “believing you can turn a hamburger back into a cow.”⁷⁸

However, this is not to say that there are no reasonable scientists who support the legitimacy of cryonics.⁷⁹ Some scientists are not so quick to dismiss it, as advances in fields such as nanotechnology theoretically provides a future possibility of reviving frozen patients.⁸⁰ These advocates state that the perfection of cryosuspension is inevitable and could come about in as soon as ten to twenty years.⁸¹ Others face the “false hope” criticism head on, stating that cryonics is a “grand experiment” more similar to playing the lottery than anything else.⁸² The prize is life after death, and the odds are not in favor of cryonics.⁸³ But, there is still a chance at “winning the prize,” one just has to purchase a ticket.⁸⁴

Some scientists, too, believe that the vitriolic reaction against cryopreservation of humans has less to do with the potential for the science, and more to do with job security.⁸⁵ Cryobiologist Ramon Risco contends that the general lack of support for cryonics is not entirely organic, but rather, “scientists fear being ostracized and ridiculed” for being open-minded or a proponent of seemingly outlandish science in a field where monetary grants are of utmost importance.⁸⁶ He further contends that saying reviving someone in cryonic suspension is “impossible” is a brave statement.⁸⁷ It is likely that in five to ten years, science may be able to revive a small mouse frozen in suspension.⁸⁸ Risco adds, “If you are looking for the truth, why would you put barriers up?”⁸⁹

77. *See id.*

78. HAROLD SCHECHTER, *THE WHOLE DEATH CATALOG: A LIVELY GUIDE TO THE BITTER END* 206 (2009).

79. *Id.*

80. *Id.*

81. Steinback, *supra* note 70.

82. *Id.*

83. *Id.*

84. *Id.*

85. Alexandra Topping, *Cryonics Debate: ‘Many Scientists Are Afraid to Hurt Their Careers,’* THE GUARDIAN (Nov. 20, 2016, 12:53 PM), <https://www.theguardian.com/science/2016/nov/20/cryonics-debate-science-freezing-human-bodies> [<https://perma.cc/7E85-Z8SK>].

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

There also have been at least a few scientific studies that show some promise in helping legitimize the practice.⁹⁰ In one such study, a worm underwent “olfactory imprinting” as a larva in which it was exposed to the smell of benzaldehyde and trained to recognize that smell.⁹¹ When drops of benzaldehyde were dropped on a petri dish, the worm would migrate to that portion of the dish.⁹² The worms were then vitrified and cryopreserved using the process common for freezing embryos.⁹³ After the worms were revived, the trained worms were tested with the same benzaldehyde drops.⁹⁴ The result showed that the worms did remember the smell, providing at least some evidence that memory can survive the cryosuspension process.⁹⁵

Despite the fact that the vast majority of scientists dismiss cryonic preservation as science-fiction nonsense, there are some proponents and studies to support the future legitimization of the process.⁹⁶ Regardless of whether cryonics will be possible in the future, however, there are several legal areas, such as a person’s right to choose what happens after they die, that are presently being called into question.⁹⁷

IV. THE CURRENT LEGAL LANDSCAPE

Regardless of whether it enjoys broad acceptance in the scientific community, cryonics is currently allowed, to some extent, in the United States.⁹⁸ Cryopreservation touches on more legal practice areas than many realize. This Comment will explore cryonics’ effect on both federal and state levels. At the federal level, cryonics implicates life insurance, trusts and estate planning, and the Uniform Anatomical Gift Act (UAGA), a model act that has been adopted in forty-eight states.⁹⁹ At the state level, there are Personal Preference Acts, Requirement of Autopsy Acts, and Funeral Practice Laws, all of which connects in some form or another to cryosuspension.

90. Natasha Vita-More, *Persistence of Long-Term Memory in Vitrified and Revived Simple Animals*, ALCOR LIFE EXTENSION FOUND. (Sept. 2015), <https://www.alcor.org/library/persistence-of-long-term-memory-in-vitrified-and-revived-simple-animals/> [<https://perma.cc/72PX-K2D4>].

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Steinbeck, *supra* note 70; Topping, *supra* note 85; Vita-More, *supra* note 90.

97. Sullivan, *supra* note 26.

98. Miné Salkin, *The Only Anti-Cryonics Law in North America*, VICE (Apr. 16, 2015, 2:15PM), <https://www.vice.com/en/article/bmjkk3/the-only-anti-cryonics-law-in-north-america> [<https://perma.cc/D6RS-VH3R>].

99. Katie Robinson, *50th Anniversary of the Uniform Anatomical Gift Act*, UNIF. L. COMM’N BLOG (Dec. 6, 2018, 10:44 AM), [<https://perma.cc/7DXJ-GRW2>].

A. Federal Laws Concerning Cryonics

As discussed just above, there are no federal laws that directly address cryonics.¹⁰⁰ In fact, the only law in North America that mentions cryonics is Section 14 of the Cremation, Interment and Funeral Services Act of British Columbia. Under this law,

a person must not offer for sale, or sell, an arrangement for the preservation or storage of human remains that is based on (a) cryonics, (b) irradiation, or (c) any other means of preservation or storage, by whatever name called, and that is offered, or sold, *on the expectation of the resuscitation of human remains at a future time*.¹⁰¹

Thus, it is illegal to advertise cryonic services with an emphasis on revival in Canada.¹⁰² However, the United States, despite being the location of four out of the five currently operating cryonic companies in the world, has no such consumer protection laws.¹⁰³ A thorough survey of Insurance law, Estate law, and the Uniform Anatomical Gift Act will show that this needs to change.

1. Life Insurance

Insurance law has been implicated by cryonic preservation since its invention.¹⁰⁴ As stated above, Robert Ettinger, the “father of cryonics,” suggested the use of life insurance policies as a means for average individuals to pay for cryonic preservation.¹⁰⁵ This process requires an individual, at the behest of the cryonic organization, to purchase a life insurance policy in excess of the amount required for the procedure and to designate the cryonic organization as the beneficiary of the policy.¹⁰⁶ This will often require the purchase of a whole life insurance policy, as opposed to a term life insurance policy that pays out at ninety-nine years of age if the individual covered under the policy is still alive.¹⁰⁷ Among other differences, whole life insurance policies are five to fifteen times more expensive than term life insurance

100. Salkin, *supra* note 98.

101. Cremation, Interment and Funeral Services Act, S.B.C. 2004, c 35(14) (Can. B.C.) (emphasis added).

102. *See id.*

103. *See* KRIOBUS, *supra* note 12.

104. Brown, *supra* note 43, at 70.

105. *Id.*

106. Daniel Caughill, *One (Surprising) Thing Life Insurance Covers: Getting Your Brain Cryogenically Frozen*, VALUE PENGUIN (Aug. 1, 2018), <https://www.valuepenguin.com/2018/08/one-surprising-thing-life-insurance-covers-getting-your-brain-cryogenically-frozen> [<https://perma.cc/2HYJ-Q9EN>].

107. *Id.*

policies and often require heftier monthly premiums.¹⁰⁸ As such, in addition to the membership fees required by the cryonic organization, individuals will still be paying a considerable amount of money per month for the chance at being frozen, despite companies advertising life insurance as an “affordable” way to cover the cost.¹⁰⁹

From a policy standpoint, this practice is more than bothersome.¹¹⁰ Considering the expense of a whole life insurance policy with a minimum value of \$200,000, this will leave average individual with little opportunity to purchase any additional life insurance.¹¹¹ This is particularly important because the fine print of designating anyone as a sole beneficiary under the policy legally excludes anyone else from obtaining one cent from the insurance when it pays out.¹¹² When an individual makes Alcor Life Extension Foundation, for example, the sole beneficiary of their whole term life insurance policy, this prevents the deceased’s family from ever obtaining anything.¹¹³ This means that if an individual passes away with credit card, mortgage, or any other type of debt, the family will be the ones stuck covering the cost out of their own pockets.¹¹⁴ Unlike British Columbia, the United States has no laws that prevent cryonic companies from including the potential for “life after death” in their advertising.¹¹⁵ As such, these companies often prey on desperate individuals, providing hope and profiting in the process.¹¹⁶ In many cases, this will rob already grieving families of any money to cover expenses and debts that the deceased incurs.¹¹⁷ As a result, this predatory behavior by cryonics companies is in dire need for much-necessary regulation.¹¹⁸

In fact, it is likely this predatory behavior already comes close to running afoul of the law, especially for those members sixty and older.¹¹⁹ The Elder Justice Act is contained in the Affordable Care Act (ACA) under § 1397m-1(c)(2)(A)-(C).¹²⁰ Under this Act, the federal government provides

108. *Id.*

109. *See Membership*, ALCOR LIFE EXTENSION FOUND., <https://www.alcor.org/membership/> [<https://perma.cc/HP4Q-PZ4P>] (last visited Feb. 1, 2022).

110. *See Caughill*, *supra* note 106.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *See* S.B.C. 2004, c 35(14).

116. *See* *About.*, *supra* note 51.

117. *See* *Caughill*, *supra* note 106.

118. *See id.*

119. *See* 42 U.S.C. § 1397m-1(c)(2)(A)-(C).

120. *Id.*

funding for states that enact demonstration programs to test “methods to detect or prevent financial exploitation of elders.”¹²¹ Elders are defined under the Act as anyone over the age of 60.¹²² As a result, all states have enacted laws to protect against the financial exploitation of vulnerable individuals.¹²³ For example, Title 7 of the Texas Penal Code criminalizes the “exploitation” of elderly individuals which is defined in part as “the use of . . . the resources of a child, elderly individual, or disabled individual for monetary or personal benefit, profit, or gain.”¹²⁴ Further, the Texas statute requires “effective consent” and states that consent is not effective if “induced by deception or coercion.”¹²⁵ One can argue that these cryonic companies, in promising the possibility of “life after death” to vulnerable and/or dying individuals, run directly against these state laws authorized under the ACA.¹²⁶

Further, these companies may be in violation of the federal Wire Fraud Statute.¹²⁷ Though federal law does not specifically address insurance fraud, such crimes are often prosecuted under the federal Mail Fraud and Wire Fraud Statutes. The essential elements of the Wire Fraud Statute are (1) a scheme to defraud, and (2) the use of, or causing the use of, interstate wire communications to execute the scheme.¹²⁸ Admittedly, the “scheme to defraud” element would be difficult to prove as the cryonic companies do believe in their product despite the fact that it requires a blind hope in future scientific progress.¹²⁹ However, it could be argued that companies know that proposing a possible solution to a vulnerable individual’s imminent death could lead them to drop their families and name their cryonic organization as the sole beneficiaries of their life insurance policies.¹³⁰ And, because these companies make these knowingly reckless statements through the Internet, Wire Fraud prosecution is at least possible, despite an uncertain likelihood of success.¹³¹ The larger point here, however, is that while existing laws may

121. § 1397m-1(c)(2)(B).

122. § 1397j(5).

123. *Elder Abuse and Elder Financial Exploitation Statutes*, U.S. DEP’T OF JUST., https://www.justice.gov/elderjustice/prosecutors/statutes?field_statute_state=TX&field_statute_category=All [https://perma.cc/NB6G-2R9F] (last visited Feb. 1, 2022).

124. TEX. PENAL CODE ANN. § 32.53(a)(2), (b) (West 2015).

125. § 31.01(3)(A).

126. *See id.*; U.S. DEP’T OF JUST., *supra* note 123.

127. 18 U.S.C. § 1343.

128. *United States v. Faulkner*, 17 F.3d 745, 771 (5th Cir. 1994).

129. *See Hendricks*, *supra* note 71.

130. *See Funding Methods for Cryopreservation at Alcor*, ALCOR LIFE EXTENSION FOUND., <https://www.alcor.org/library/funding-methods-for-cryopreservation-at-alcor/> [https://perma.cc/75D3-G4AR] (last visited Feb. 1, 2022).

131. *See id.*

potentially cover cryonic companies' possibly predatory behavior of inducing people to sign them as sole beneficiaries of their life insurance policies to the detriment of their families, further and more direct regulation in this area is needed.

2. Trusts and Estates

Should there ever be a miracle breakthrough in science, it is important that an individual can engage in successful estate planning prior to death and cryopreservation to ensure financial security in the event of a successful reanimation.¹³² For that, estate-planning has an answer: revival trusts.¹³³ In essence, a revival trust sets aside assets that will be waiting for any cryonically frozen individual should they ever be given a second life.¹³⁴ A person who wishes to be cryonically frozen merely creates a trust holding various assets and names himself as beneficiary.¹³⁵ Upon the grantor's death, a much larger influx of assets makes its way into the trust where it stays until the potential future revival of the grantor.¹³⁶ A revival trust, at its core, is a "dynasty trust," or a trust created to last in perpetuity for future generations.¹³⁷ The difference here is obviously that, instead of the trust passing through the family, the money stays in place until the cryonically frozen beneficiary comes back to life.¹³⁸

Inevitably, this causes a significant number of legal challenges.¹³⁹ The phrase "you can't take it with you" takes on new meaning because now the wealth will stay with the deceased individual rather than the family, leading disgruntled members looking for a way to undo it.¹⁴⁰ There are several valid arguments against revival trusts that could be raised.¹⁴¹ First, generally

132. See Ted Knutson, *To Freeze Yourself at Death, There's an Estate Planning Trust for That*, NEXT AVENUE (Mar. 8, 2019), <https://www.nextavenue.org/freeze-yourself-estate-planning-trust/> [<https://perma.cc/36QF-5PHE>].

133. *Id.*

134. *Id.*

135. John Dedon, *Preserving Assets in Trusts for Clients Considering Cryonics*, 45 EST. PLAN. 24, 24 <http://www.dedononestateplanning.com/wp-content/uploads/2018/07/ETPL-August-2018-Dedon.pdf> [<https://perma.cc/2LGK-KPRQ>].

136. *Id.*

137. *Id.*

138. *Id.*

139. Knutson, *supra* note 132.

140. *Id.*

141. Al W. King III, *Trusts Without Beneficiaries—What's the Purpose?*, WEALTH MGMT. (Feb. 2, 2015), <https://www.wealthmanagement.com/estate-planning/trusts-without-beneficiaries-what-s-purpose> [<https://perma.cc/GQS3-LVAH>]; See Dedon, *supra* note 135.

speaking, trusts must have a beneficiary to be enforceable.¹⁴² Because cryopreservation only takes place after the patient is declared legally dead, revival trusts do not have a legally recognizable beneficiary.¹⁴³ There are two exceptions to the requirement of a beneficiary, charitable trusts and non-charitable purpose (NCP) trusts.¹⁴⁴ Charitable trusts do not apply here; if one does wish to pursue a revival trust, it must be an NCP trust.¹⁴⁵ However, this is not the end of the argument.¹⁴⁶ Some of the common purposes for establishing an NCP are pet care, grave maintenance, business maintenance, and home maintenance.¹⁴⁷ This is not universal however, and depending on the jurisdiction, a revival trust may be impossible.¹⁴⁸ For example, many states *only* allow for NCP trusts for pets, as it is the only explicitly allowable purpose for NCPs in the Uniform Probate Code.¹⁴⁹ Further, Louisiana and Minnesota do not allow for any NCP trusts at all.¹⁵⁰

Assuming the relevant jurisdiction allows broad use of NCP's and that cryonic revival is a valid purpose, there are still other issues to address.¹⁵¹ First, because it will likely be quite some time before cryonic revival is possible, there are Rule Against Perpetuity issues.¹⁵² The Rule Against Perpetuities, generally speaking, states that "no interest is good unless it must vest, if at all, no later than twenty-one years after some life in being at the creation of the interest."¹⁵³ The underlying purpose is to prevent exactly what revival trusts would attempt, namely, to prevent estates from staying in "legal limbo" for a long period of time.¹⁵⁴ This creates an obvious issue as most states adhere to the Rule Against Perpetuities and require NCP trusts to vest after twenty-one years, as evidenced in the Uniform Trust Code and the Uniform Probate Code.¹⁵⁵ There are some states that allow for dynasty trusts which

142. King, *supra* note 141.

143. *See* Dedon, *supra* note 135.

144. King, *supra* note 141.

145. *See* Dedon, *supra* note 135.

146. *See* King, *supra* note 141.

147. *Id.*

148. *See id.*

149. Unif. Prob. Code § 2-907(b) (amended 2019) (Unif. L. Comm'n 1969).

150. King, *supra* note 141, at n. 7.

151. *See* George P. Smith, II & Clare Hall, *Cryonic Suspension and the Law*, 17 OMEGA J. DEATH & DYING 1, 5 (1986), <https://scholarship.law.edu/cgi/view-content.cgi?article=1638&context=HOLAR> [HTTPS://PERMA.CC/RV42-VKW3].

152. *Id.*

153. *Id.*

154. *Id.*

155. Prob. § 2-907(a); Unif. Trade Code § 409 (amended 2010) (Unif. L. Comm'n 2000).

typically have 1,000 year or unlimited limits on NCPs.¹⁵⁶ These states are Delaware, Hawaii, Idaho, Kentucky, Maine, New Hampshire, South Dakota, Wisconsin, and Wyoming.¹⁵⁷ Now, this is not an unbeatable legal issue as section 273 of the Restatement (Second) of Conflict of Laws states that a trust is ruled by the laws of the state in which “the settlor has manifested an intention that the trust is to be considered.”¹⁵⁸ However, because revival trusts and the surrounding circumstances are uncommon, it is likely many revival trusts will not be established in the proper state.¹⁵⁹

Another issue with revival trusts arises out of the trustee requirement.¹⁶⁰ Any trust requires the appointment of a trustee, whose job it is to follow the provisions and allocate the trust.¹⁶¹ From a practical standpoint, an individual creating a revival trust should not appoint a family member as the trustee because a family member may or may not respect the cryonic patient’s wishes.¹⁶² It is also highly unlikely that a revival will take place during the life of the trustee.¹⁶³ To satisfy concerns regarding permanence and reliability, an institutional trustee should be appointed.¹⁶⁴ An institutional trustee is a bank or trust company that acts as a trustee for many different trusts.¹⁶⁵ Problems arise here because institutional trustees are not equipped to handle all that would be required to oversee a cryonic revival trust.¹⁶⁶ Institutional trustees would have to monitor the cryonic facility, ensure compliance with state laws, hire scientific experts as advisors, and assess and approve the criteria for revival.¹⁶⁷ Legally speaking, this would be allowable, but in a practical sense, this is highly implausible. Some argue that, to remedy this problem, a revival trust must also be made a “directed trust” in which a “committee of guardians” is formed to instruct the trustee and perform the tasks listed above.¹⁶⁸ However, this really does not solve any of the problems.

156. King, *supra* note 141.

157. *Id.*

158. Gideon Rothschild et al., *Self-Settled Spendthrift Trusts: Should a Few Bad Apples Spoil the Bunch?*, 9 J. BANKR. L. & PRAC. 59, 64 (1999).

159. *See* Moen, *supra* note 6. at 677; Knutson, *supra* note 132.

160. *See* Dedon, *supra* note 135.

161. *Id.*

162. Knutson, *supra* note 132.

163. *See* Dedon, *supra* note 135.

164. *Id.*

165. *Pros and Cons of Using an Institutional Trustee*, RUBIN L., <https://www.rubinlaw.com/blog/pros-and-cons-of-using-an-institutional-trustee/> [https://perma.cc/RZ6V-PH4Z] (last visited Feb. 1, 2022).

166. Dedon, *supra* note 135.

167. *Id.*

168. *Id.*

While it is easier for a committee of people to perform all that would be required of the trustee, it would still be practically impossible for this committee to maintain adequate oversight for an indefinite and potentially unending period of time.¹⁶⁹

In light of all of the potential problems surrounding revival trusts, one must tread carefully in that direction.¹⁷⁰ A trust would undoubtedly be necessary if revival is actually accomplished, as starting over with nothing is hardly the goal of cryonic preservation.¹⁷¹ However, very specific steps must be taken to ensure that the trust is as legally sound as possible; even then, should one ever be challenged by a disgruntled family, the result could potentially go against the wishes of the decedent.¹⁷² If it is not an NCP trust, not an accepted “purpose,” time limited, or if the right team is not in place to look after it, a revival trust will probably become dead on arrival.¹⁷³ While cryonics is still in its infancy, it is becoming more and more popular, and laws directly addressing the issue of estate planning will be necessary to ensure a revival trust’s survival.¹⁷⁴

3. Uniform Anatomical Gift Act (UAGA)

Perhaps the most legally significant legislation, the Uniform Anatomical Gift Act (UAGA), provides for and regulates the donation of an anatomical gift in the form of organs, tissue, or whole bodies.¹⁷⁵ Cryonics companies make use of this Act, labelling it a “very important piece of legislation,” to legally obtain possession of the bodies just as individuals are allowed to donate their bodies after death for medical schools or organ transplantation.¹⁷⁶ Such a donation process must be done quickly and cannot be challenged by family members.¹⁷⁷ While it should be noted that this is merely a model form of legislation, the most recently amended 2006 version of the UAGA has been adopted in forty-eight states.¹⁷⁸

169. *See id.*

170. *See id.*

171. Knutson, *supra* note 132.

172. *Id.*

173. King, *supra* note 141.

174. Moen, *supra* note 6, at 677.

175. Unif. Anatomical Gift Act § 4 (amended 2009) (Unif. L. Comm’n 2006).

176. Keegan Macintosh, *How Uniform Are the Uniform Anatomical Gift Acts?*, BIOSTASIS (Aug. 8, 2016), <https://www.biostasis.com/how-uniform-are-the-uniform-anatomical-gift-acts/> [https://perma.cc/H42D-SQCF].

177. Stephen Bridge, *The Legal Status of Cryonics Patients*, ALCOR LIFE EXTENSION FOUND. (Dec. 26, 1994), <https://www.alcor.org/library/the-legal-status-of-cryonics-patients/> [https://perma.cc/V8S3-59WG].

178. Robinson, *supra* note 99.

The relevant portion of the act states “(a) an anatomical gift may be made to the following persons named in the document of gift: (1) a hospital; accredited medical school; dental school; college or university; organ procurement organization; or other appropriate person, for research or education.”¹⁷⁹ The most recent amendments codified what has already been implied in the UAGA, namely, that the wishes of a decedent take precedent over any conflicting wishes of the next of kin.¹⁸⁰ This is significant as the UAGA is a clear-cut example of the law protecting an individual’s right to choose what happens to them after they die, even if it goes against the wishes of those closest to them.¹⁸¹ This idea will be explored further in the next section in the discussion of many state’s Personal Preference Acts.¹⁸² In essence, the UAGA is used to take away the family’s ability to “dispose” of the individual in some other way if it is the decedent’s documented wish that they be cryonically frozen.¹⁸³

An important question arises: In where exactly do cryonic organizations fit into the UAGA? They are never explicitly mentioned, and one can say with relative certainty that the drafters never intended for the UAGA to cover cryonics.¹⁸⁴ A potential argument is that cryonic organizations are similar to “organ procurement organizations” and could fit comfortably within that label.¹⁸⁵ However, in order to be deemed an “organ procurement organization,” the designation must be approved by the Secretary of the U.S. Department of Health and Human Services.¹⁸⁶ Proponents of cryogenic freezing are then left to argue that they fit within the “other appropriate person, for research or education” portion of the UAGA.¹⁸⁷ While this may seem like a stretch as that clause is overly broad and meant to be more of a “catch all” term, the Iowa Court of Appeals agrees with the cryonics companies.¹⁸⁸ Unlike the previous two topics of life insurance and trusts and estates, whether or not cryonic organizations are covered by the UAGA has been litigated.¹⁸⁹

In *Alcor Life Extension Foundation v. Richardson*, Alcor sued the family of a deceased individual who had paid for their neuro-suspension services

179. Unif. Anatomical Gift Act § 11.

180. Robinson, *supra* note 99.

181. *See id.*

182. *See infra* Part III(B).

183. *See* Robinson, *supra* note 99.

184. *See generally* Unif. Anatomical Gift Act.

185. Macintosh, *supra* note 176.

186. *Id.*

187. *Id.*

188. *Alcor Life Extension Found. v. Richardson*, 785 N.W.2d 717, 725 (Iowa Ct. App. 2010).

189. *See id.*

because the family refused to comply and buried the individual instead.¹⁹⁰ Much of the court's analysis centers on whether the UAGA applies to Alcor, and whether the court under the Act must issue an order compelling the decedent's relatives to sign for disinterment approval.¹⁹¹ The court points to Alcor's educational institution tax exempt status from the Internal Revenue Service under 26 U.S.C. § 501(c)(3) as proof that the cryonic organization qualifies as a legitimate research facility.¹⁹² The court further states that Alcor's "bona fides as an organization engaged in research in cryopreservation" solidifies its status as an "appropriate person for research" under the UAGA.¹⁹³ The comments under the relevant UAGA section states that an anatomical gift "can be made to a named organization.¹⁹⁴ These gifts "typically occur as the result of a whole-body donation to a particular institution in the donor's will or as the result of a prior arrangement between a donor and a particular research or educational institution."¹⁹⁵

While *Alcor Life Extension Foundation v. Richardson* serves as precedent in an area with practically no litigation, this is only one court's opinion and the future of cryonic organization's recognition under the UAGA remains tentative.¹⁹⁶ While it is understandable and undeniable that cryonic organizations are engaged in research, there are other issues that arise.¹⁹⁷ Perhaps the most obvious point of contention is whether the \$200,000 transaction for cryosuspension services actually qualifies as a gift.¹⁹⁸ The Iowa Court of Appeals does mention this as a concern, and hesitantly decides that the exchange still qualifies as a "gift," while ultimately calling for "legislative clarification" in this area.¹⁹⁹

Despite the Iowa court's conclusion, there are several arguments to be made that the exchange taking place between a potential cryonic patient and a cryonic organization does not qualify as a gift, and thereby excludes such organizations from the UAGA.²⁰⁰ The typical elements of a "gift" are (1)

190. *Id.* at 719.

191. *Id.* at 723–37.

192. *Id.* at 725.

193. *Id.*

194. Unif. Anatomical Gift Act § 11 cmt. (amended 2009) (Unif. L. Comm'n 2006).

195. *Id.*

196. *See Alcor Life Extension Found. v. Richardson*, 785 N.W.2d 717, 726 (Iowa Ct. App. 2010).

197. Max More, *Support Our New Research Initiative: RAPID! (Readiness and Procedure Innovation/Deployment)*, ALCOR (Dec. 18, 2020), <https://www.alcor.org/2020/12/support-our-new-research-initiative-rapid-readiness-and-procedure-innovation-deployment/> [<https://perma.cc/48GJ-AHXM>].

198. *Richardson*, 785 N.W.2d at 726–27.

199. *Id.* at 727.

200. *See id.*

intent to make a gift; (2) delivery of the property; and (3) acceptance of the property.²⁰¹ Pertaining to the second and third elements, courts are split on the issue of whether a body can be considered “property.” Despite this, the majority of courts hold that there is at least a qualified property right in a body.²⁰² However, the public policy rationale for the majority rule may not suffice in the context of cryonic suspension. The general reasoning for this qualified right is that the body is property insofar as the right to disposition goes, but the body is not unqualified commercial property as the end result of this label would be a “revolting commerce.”²⁰³ The argument can be made, however, that the cryonic organizations are not acquiring qualified property rights to their patients’ bodies for purposes of final disposition, but rather, they are engaging in a transaction with these bodies as matter required for their business to operate, the exact type of “revolting commerce” that courts have refused to allow.²⁰⁴ Without the bodies of patients, cryonic organizations cannot operate and cannot make a profit. In their analysis, the Iowa Court of Appeals fails to mention this argument entirely.²⁰⁵

Assuming *arguendo* that a decedent’s body is considered “property,” the next issue is whether the cryonic patient possesses the requisite “intent to make a gift.”²⁰⁶ It is undisputed that, at the very least, the circumstances surrounding cryonic “donation” do not mimic those of a typical gift-giving scenario.²⁰⁷ In a normal gift exchange, one person purchases or otherwise produces an object and offers it to another party.²⁰⁸ Here, a potential cryonic patient pays membership fees, sets up an insurance policy naming the organization as sole beneficiary, and organizes a trust all for the opportunity to have their body taken and frozen after death. While many acknowledge it is not a certainty, the goal of these transactions is not out of altruism but rather, out of the hope that this company will revive the individual at an uncertain future date.²⁰⁹ The exchanging of money for a future potential service seems

201. *Dorman v. Arnold*, 932 S.W.2d 225, 227 (Tex. App.—Texarkana 1996, no writ).

202. Walter F. Kuzenski, *Property in Dead Bodies*, 9 MARQ. L. REV. 17, 20 (1924), <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=http://sredir=1&article=4512&context=mulr> [<https://perma.cc/4ZCX-JAW6>].

203. *Id.*

204. *See id.*

205. *Alcor Life Extension Found. v. Richardson*, 785 N.W.2d 717, 727 (Iowa Ct. App. 2010).

206. *Dorman*, 932 S.W.2d at 227.

207. *See Richardson*, 785 N.W.2d at 727.

208. *See Dorman*, 932 S.W.2d at 227.

209. Ralph C. Merkle, *Revival of Alcor Patients*, ALCOR LIFE EXTENSION FOUND. (2018), <https://www.alcor.org/library/revival-of-alcor-patients/> [<https://perma.cc/47SB-ZSC3>].

more similar to a transaction than a gift. The Restatement (Third) of Property: Wills & Other Donative Transfers states that “the relevant criterion is intent to transfer an ownership interest gratuitously, as opposed to engaging in an exchange transaction or making an involuntary transfer.”²¹⁰ As such, any transaction would rightly disqualify the body from qualifying as a gift under the UAGA. The Iowa Court of Appeals even admits as much stating “in a strict common-law sense it may not qualify as a ‘gift.’”²¹¹ While admittedly the documents signed by each cryonics patient characterizes the transaction as an “anatomical donation,” this can only be given so much deference.²¹² The actual actions that ensue after the signing of these documents undoubtedly are more similar to that of a transaction and as such, should disqualify cryonic organizations under the UAGA.

It should also be noted that the “or other appropriate person, for research or education” language of the UAGA has not been adopted in all states.²¹³ Oklahoma, Virginia, and the District of Columbia all require state officials to designate who can be considered an “other appropriate person.”²¹⁴ Further, California, Florida, Maryland, New York, Texas, and Washington omit the language altogether, rendering cryonic services in these states disqualified under their respective UAGA statutes.²¹⁵ Despite this, in all other states with the appropriate language, the only existing court opinion on the matter suggests the UAGA applies.²¹⁶ While the future of the UAGA’s applicability to cryonic services remains to be seen, the *Richardson* court correctly emphasizes that “legislative clarification would be beneficial in this area.”²¹⁷

B. State Laws Concerning Cryonics

State laws, similar to the federal laws surveyed above, appear to be silent on the issue of cryonics at first glance. However, cryonics implicate three primary types of state laws, some of which lead to conflicting results. These are (1) Personal Preference Acts; (2) Requirement of Autopsy Acts; and (3) state Funeral Practice Laws. The primary aim in surveying these three areas is to point out the inconsistencies among the laws and between the states to further emphasize the need for federal legal clarification of cryonic freezing.

210. THOMAS J. RAY, JR., CHARITABLE GIFT PLANNING: A PRACTICAL GUIDE FOR THE ESTATE PLANNER 3 (2d ed. 2007).

211. *Richardson*, 785 N.W.2d at 726.

212. *Id.*

213. *Macintosh*, *supra* note 176.

214. *Id.*

215. *Id.*

216. *Richardson*, 785 N.W.2d at 726.

217. *Id.*

1. Personal Preference Acts

Personal Preference Acts are laws in place to protect an individual's wishes as to their final disposition.²¹⁸ In other words, these laws require the surviving family to honor the preferences of the deceased if they have dictated how they would like their body or remains to be disposed (i.e., burial, cremation, etc.).²¹⁹ Thirty-one states (and the District of Columbia) have personal preference statutes which state, in part, that a decedent has a right to choose what happens to their remains after they die.²²⁰ In theory, this means that if a person makes known their wish to be cryonically frozen when they pass away, the next of kin is legally bound to honor that request.²²¹ However, it is not quite that simple as there is significant variety amongst the different states that have Personal Preference Statutes.²²²

Among the states that place severe restrictions on the right of personal preference are Georgia, Idaho, Mississippi, and Rhode Island.²²³ These states only guarantee a decedent's wishes if there is a pre-paid, pre-need funeral contract in place.²²⁴ Considering the fact that no funeral home in the world offers cryonic freezing services, this obviously bars any decedent's wish to undergo cryonic treatment in these states.²²⁵

Take, for example, Georgia's Personal Preference Statute.²²⁶ This statute states, in part, that "a person who is 18 years of age or older and of sound mind. . .may direct the location, manner, and conditions of the disposition of the person's remains and the arrangements for funeral goods and services to be provided. . .that are contained in a preneed contract."²²⁷ This very specific language makes it abundantly clear that, absent a contract with a funeral service provider, a decedent's wishes may be willfully and legally ignored.²²⁸

Surprisingly, these four states are not the most restrictive. In Kentucky, New Mexico, and South Carolina, the law only allows for an individual to

218. *Who Has the Right to Make Decisions About Your Funeral?*, TALK DEATH (Feb. 4, 2014), <https://www.talkdeath.com/who-has-the-right-to-make-decisions-about-your-funeral-2/> [<https://perma.cc/BCS8-QEQW>].

219. *Id.*

220. Tanya D. Marsh, *Who Controls the Dead? The Right to Make Funeral and Disposition Decisions*, FUNERAL L. BLOG, <https://funerallaw.typepad.com/files/marsh-who-controls-the-dead.pdf> (last visited Nov. 7, 2021).

221. *See id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *See id.*

226. GA. CODE ANN. § 31-21-7 (West 2012).

227. *Id.*

228. *See id.*

“authorize the person’s own cremation.”²²⁹ As a result, any preference outside of cremation is not protected nor required to be followed. Given the fact that various religions deem cremation to be improper, this law likely was enacted to prevent decedents with more religious family members from ignoring their wishes.²³⁰ When considering the narrow nature of these laws, however, it seems logically inconsistent to only protect one type of preference.²³¹ Outside of the fact that cremation is more widely accepted, what makes that preference more worthy of legal protection than cryonics? This is just one example of the inconsistencies that are found not just from state to state but within individual state laws as well.

Perhaps the most important differences in Personal Preference statutes, however, are the extent to which they absolve all who rely on them from liability.²³² In fact, most states *only* protect funeral and cemetery organizations from liability incurred while seeking to fulfill a decedent’s wishes.²³³ For example, Texas’ Personal Preference statute, located in section 711.002 of the Texas Health and Safety Code, provides that “a funeral director or embalmer. . . shall not be liable for carrying out the written directions of a decedent.”²³⁴ While this may not seem immediately significant, in the context of cryonic freezing, this can open whoever follows the decedents wishes to civil liability.²³⁵ For example, in Texas, the Personal Preference statute requires that “the person otherwise entitled to control the disposition of a decedent’s remains. . . shall faithfully carry out the directions of the decedent.”²³⁶ As such, if a Texas decedent has made it their express wish to be cryonically frozen, whoever is the designated agent is legally required to respect those wishes.²³⁷ However, because liability protection is only afforded to funeral industry professionals, the designated agent who fulfills the decedent’s wish by organizing transportation, in addition to the cryonic company itself, is not shielded from any lawsuit brought by surviving family members should anything go wrong.²³⁸ In short, by following the law requiring one to follow a

229. Marsh, *supra* note 220; N.M. STAT. ANN. § 61-32-19 (West 2011).

230. See *8 Religions and Their Views on Cremation*, NEPTUNE SOC’Y, <https://www.neptunesociety.com/cremation-information-articles/8-religions-and-their-views-on-cremation#:~:text=Islam%20and%20Cremation,to%20be%20an%20unclean%20practice> [https://perma.cc/UKA4-ZQ29] (last visited Feb. 1, 2022).

231. See § 61-32-19 (West 2011).

232. Marsh, *supra* note 220.

233. *Id.*

234. TEX. HEALTH & SAFETY CODE ANN. § 711.002 (West 2019).

235. See HEALTH & SAFETY § 711.002(i).

236. HEALTH & SAFETY § 711.002(g).

237. See *id.*

238. See HEALTH & SAFETY § 711.002(i).

decedent's wishes, a person or persons may face legal trouble from disgruntled family members.

Despite the difficulties faced by those who wish to undergo cryonic freezing in the states listed above, some states have much broader Personal Preference statutes that have been held to cover cryonics specifically.²³⁹ For example, California, notably the location of Alcor Life Extension Foundation, has the broadest Personal Preference Statute. This statute states that “a decedent . . . may direct, in writing, the disposition of his or her remains . . . the directions may not be altered, changed or otherwise amended.”²⁴⁰ As such, any request by a decedent that is within the bounds of the law must be honored.²⁴¹ This notion was upheld in relation to cryonics specifically in *Alcor Life Extension Found., Inc. v. Mitchell*.²⁴² While the actual issue before the court concerned the UAGA as discussed above, the holding implicitly confirms that California's Personal Preference Act applies to cryonic freezing.²⁴³ In explaining its decision, the California Court of Appeals stated,

*[Those] who have directed that Alcor place their bodies in cryonic suspension, provided that. . . [i]n the event and at such time as [DHS] implement[s] an otherwise lawful licensing and registration system for procurement organizations pursuant to the Uniform Anatomical Gift Act, plaintiff Alcor will be subject to lawful and reasonable licensing and registration requirements.*²⁴⁴

The court further states that it agrees with the trial court's issuance of a restraining order against the Department of Health Services to prevent interference with a decedent's wish to be frozen at the Alcor facility.²⁴⁵ As such, any individual located in California who “direct[s] that Alcor place their bodies in cryonic suspension” has their wish protected from interference by law.²⁴⁶

Iowa, too, has had a court step in to confirm that its Personal Preference Act does not prohibit cryonic freezing.²⁴⁷ In *Alcor Life Extension Found. v. Richardson*, the Iowa Court of Appeals granted Alcor's request to compel a decedent's relatives to disinter the body so that he could be frozen according

239. *See* *Alcor Life Extension Found. v. Richardson*, 785 N.W.2d 717, 727 (Iowa Ct. App. 2010); *Alcor Life Extension Found., Inc. v. Mitchell*, 7 Cal. App. 4th 1287, 1292 (Cal. Dist. Ct. App. 1992).

240. CAL. HEALTH & SAFETY CODE § 7100.1 (West 2021).

241. *See id.*

242. *Mitchell*, 7 Cal. App. 4th at 1292.

243. *Id.*

244. *Id.*

245. *Id.*

246. *See id.*

247. *Alcor Life Extension Found. v. Richardson*, 785 N.W.2d 717, 726 (Iowa Ct. App. 2010).

to his documented personal preference.²⁴⁸ Interestingly, Iowa's Personal Preference Statute is relatively narrow compared to California's.²⁴⁹ Under Iowa Code Ann. § 144C.3, a decedent may appoint a designee who "shall have sole responsibility and discretion or making decisions concerning the final disposition of the declarant's remains."²⁵⁰ As a result, a declaration that one wishes to be cryonically frozen is seemingly unprotected.²⁵¹ However, the court held that such a declaration falls under Iowa's Anatomical Gift Act, which takes precedent over the Personal Preference Act.²⁵² Therefore, indirectly, a decedent's wish to undergo the cryonic process is still legally protected, despite the Personal Preference Act not explicitly allowing for a decedent to make specific instructions.²⁵³

The *Richardson* case stands for the ultimate proposition that, even in states that have restrictive Personal Preference Acts, a court will seemingly err on the side of respecting a decedent's disposition wishes.²⁵⁴ Therefore, despite the analysis of the different types of Personal Preference Acts in this subsection and the problems they pose, the question of whether an individual's desire to be frozen after death will be respected is still up in the air. Consequently, legislative clarification is needed, or future lawsuits brought by and against an individual's loved ones will likely increase in number as cryonics slowly but steadily becomes more accepted.

2. Autopsy Requirements

The next state legal area that proves especially problematic for cryonic patients is the requirement of autopsies. Obviously, with a full autopsy in which the brain is removed, cut, and sometimes even liquefied, any hope of cryonic revival is gone forever.²⁵⁵ Even in instances of "limited" autopsies however, when a brain is left intact, such a delay can cause issues for the cryonic process and ultimately render it impossible.²⁵⁶

With respect to hopeful cryonic patients, the particularly challenging aspect of an autopsy requirement is that, oftentimes, there is no rigid set of

248. *Id.* at 732.

249. Compare CAL. HEALTH & SAFETY CODE § 7100.1 (West 2021), with IOWA CODE ANN. § 144C.3 (West 2020).

250. § 144C.3 (West 2020).

251. *See id.*

252. *Richardson*, 785 N.W.2d at 727.

253. *See id.*

254. *See id.*

255. Bridge, *supra* note 177.

256. *Id.*

rules that dictate when an autopsy must be required.²⁵⁷ Generally, state coroners, medical examiners, and police investigators have broad discretion as to when an autopsy is necessary.²⁵⁸ For example, in most states, an autopsy can be required, even without permission of the family, if there is a suspicion of “foul play” or murder.²⁵⁹ Another instance in which an autopsy is usually required is when the decedent is an infant or a child.²⁶⁰ However, in many other situations, whether or not an autopsy will be required is less clear. The Center for Disease Control and Prevention (CDC) lists thirty-one different characteristics of death requiring an autopsy.²⁶¹ Such characteristics are often astoundingly broad including “Violence,” “Accident,” and “Suspicious.”²⁶² In fact, the most common characteristic, which thirty-two states list as a reason for requiring an autopsy is “if necessary, in the opinion of/believed to be in the public interest.”²⁶³

Given these broad enumerated “characteristics,” one can conclude that an autopsy is essentially deemed required at the whim of a coroner, medical examiner, or the police.²⁶⁴ The problem with the lack of clarification or any real rules surrounding autopsy requirements is that if deemed necessary, the autopsy is done without permission from the family.²⁶⁵ In the context of cryonics, this means that even if a family tries their best to fulfill their loved one’s wish of being cryonically frozen, should an appropriate party consider an autopsy “necessary in the opinion of/ believed to be in the public interest,” that individual’s wish is ignored.²⁶⁶

The only argument proponents of cryonic freezing really have against the requirement of an autopsy is to argue that such a practice should be severely restricted, a sentiment that has been echoed by some, including a Georgia Attorney General who stated:

It would be unwise to undertake an examination of the head or other parts of the body without complete authority to do so, especially in those cases in which the autopsy is not necessary to dis-

257. See CTRS. FOR DISEASE CONTROL & PREVENTION, INVESTIGATIONS, AND AUTOPSIES (Jan. 15, 2015).

258. Bridge, *supra* note 177.

259. CTRS. FOR DISEASE CONTROL & PREVENTION, TABLE 2: SELECTED CHARACTERISTICS OF DEATHS REQUIRING AUTOPSY BY STATE (Jan. 2015).

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. See *id.*

265. See Bridge, *supra* note 177.

266. See TABLE 2: SELECTED CHARACTERISTICS OF DEATHS REQUIRING AUTOPSY BY STATE, *supra* note 259.

cover the cause of death or it is definitely known that the cause of death arose from a condition existing in some part of the body other than the head.²⁶⁷

Additionally, legislatures in California, New Jersey, New York, Ohio, and Rhode Island have addressed the concerns of those who wish to forgo a required autopsy by passing “Religious Objection to Autopsy” laws.²⁶⁸ These laws help prevent or limit the scope of a required autopsy due to religious reasons.²⁶⁹ For example, Orthodox Judaism disallows any mutilation of the body after death.²⁷⁰ In order to apply for a religious exemption in any of these five states, one must simply sign a form certificate that states an autopsy is against your religious belief.²⁷¹ The loophole for cryonicists is that the certificate does not require an individual to list a specific religion when objecting to a future autopsy.²⁷² Cryonicists have supposedly successfully used this provision on two separate occasions to avoid an autopsy.²⁷³ The problem here, too, remains the same. With such ambiguity and inconsistency in application of required autopsies, the law creates another vague hurdle for practicing cryonicists.

3. Funeral Practice Laws

Lastly, like the two subsections above, no state funeral practice laws specifically prohibit the practice of cryonics, yet tangentially related laws requiring embalming make it near impossible in most states. For example, bodies in Alabama must be embalmed if the body is transported across state lines.²⁷⁴ The clear issue for potential cryonics patients here is that embalming must be avoided as mixing formaldehyde and other embalming chemicals into the body destroys one’s brain structure, making reanimation essentially impossible.²⁷⁵ Similarly, bodies in Arkansas, California, Minnesota, Mississippi, or New Jersey must be embalmed if they are transported on common

267. Bridge, *supra* note 177.

268. *Id.*

269. *Id.*

270. *Id.*

271. See CAL. GOV’T CODE § 27491.43 (West 2021).

272. Bridge, *supra* note 177.

273. *Id.*

274. ALA. CODE § 22-19-2 (2021).

275. John Paul LaBouff, *He Wants to Do What? - Cryonics: Issues in Questionable Medicine and Self-Determination*, 8 SANTA CLARA COMPUT. & HIGH TECH. L. J. 469, 474–75 (1992).

carriers, such as trains or planes.²⁷⁶ Even more, in Arizona, Arkansas, Colorado, Delaware, Florida, Hawaii, Idaho, Kansas, Louisiana, New Mexico, and Texas, bodies are required to be embalmed if they have been dead for over twenty-four hours.²⁷⁷ As such, the seventeen states just listed effectively prohibit any cryonic procedure for anyone who dies out of state.²⁷⁸ Further, the states that require bodies to be embalmed if they have been dead over twenty-four hours essentially prevent such a procedure for anyone who dies in their home and is not found within a short period of time.²⁷⁹ Anyone who falls under this category of individuals, even if they have made the appropriate arrangements, paid the money, and managed to avoid all of the other legal hurdles, will no longer be able to be cryonically frozen.²⁸⁰ Or if they are, they will not have a high chance of success, even if reanimation does become possible in the future.²⁸¹

Cryonic companies have little arguments against these laws, and thus far, no loopholes exist—unlike the autopsy requirements.²⁸² Perhaps cryonic companies can argue against the states that require “embalming or refrigeration” of a dead body if it has been dead over twenty-four hours as their service is an “extreme” form of refrigeration. Even if successful, however, this argument is of little help when a body must be transported across state lines.

Transportation is an even bigger problem than it would appear; there are very few cryonic facilities in the United States and transportation is often required.²⁸³ Therefore, if one wishes to pursue cryonic freezing, but is unlucky enough to pass away in a state without a cryonics company, they may be unable to have their final disposition wishes fulfilled. This is even more problematic if the person who passes away has already named a cryonics company as a beneficiary under their life insurance policy because even if

276. 007-12-1 Ark. Code R. § 8.0(c) (West 1995); CAL. HEALTH & SAFETY CODE § 7355 (West 2018); MINN. STAT. § 149A.91 (West 2013); 15 MISS. CODE. R. Pt. 5, Subpt. 85, R. 4.6 (West 2012); N.J. ADMIN. CODE §8:9-1.7 (1996).

277. ARIZ. ADMIN. CODE § R4-12-303 (1985); COLO. REV. STAT. ANN. § 12-54-105 (2018) (Repealed 2019); DEL. CODE REGS. § 4204-3.0 (West 2002); FLA. STAT. ANN. § 497.386 (West 2005); HAW. CODE R. §11-22-4 (West 1981); IDAHO ADMIN. CODE R. 24.08.01.542 (2020); KANSAS ADMIN. REGS. § 63-3-11 (2021); LA. STAT. ANN. §37:848 (2016); N.M. STAT. ANN. § 61-32-20 (1996) (Repealed 2018); 25 TEX. ADMIN. CODE § 181.4 (2003).

278. See LaBouff, *supra* note 275, at 474–75.

279. See HEALTH & SAFETY *supra* note 236.

280. See LaBouff, *supra* note 275, at 474–75.

281. *Id.*

282. Cf. Bridge, *supra* note 177.

283. See Lacey Evans, *Oregon Cryonics: ‘The Ultimate Lottery Ticket,’* KOIN (Feb. 17, 2016, 3:57 PM), <https://www.koin.com/news/oregon-cryonics-the-ultimate-lottery-ticket/> [<https://perma.cc/3RLE-M325>].

the cryonic services are jeopardized, the company is still the legal beneficiary and entitled to the insurance money so long as there is no other designated beneficiary listed.²⁸⁴

As such, the laws aforementioned, coupled with the Personal Preference Acts and autopsy requirements, create quite a tricky and incoherent system of legality surrounding the practice of cryonic freezing. In all likelihood, there are significant legal hurdles to cryopreservation that are not readily apparent and can lead to unfortunate consequences even if a prospective patient follows all of the required steps.

V. CONCLUSION

Although Cryonics is widely regarded as an untested science with many “shady” practices, some champion the practice as the future of medicine. Regardless of whether cryosuspension is an elaborate experiment doomed to fail or the end of death as we know it, there are several different legal areas implicated by the practice in the present. This includes issues of life insurance and the legal and moral implications of suggesting a cryonics company be named the life insurance beneficiary. Further, cryonics requires the use of complicated trusts, and an unorthodox use of the UAGA. All of this coupled with the near endless variations and inconsistencies in state laws concerning Personal Preference Acts, required autopsies, and various funeral practice laws, make it near impossible for an individual to know if their final wishes will ever actually be fulfilled.

In addition, cryopreservation often takes an emotional and financial toll on the families of those who elect to pursue it, which is only exacerbated by the lack of legal clarity surrounding the practice. Nevertheless, this must be balanced with the right of an individual to choose what happens with their remains after they die. Cryonics may seem like a sci-fi fantasy, and perhaps it is. Regardless, citizens have a right to know what is and is not available to them now, not in the future. State and federal legislators have an obligation to address these problems to amend and clarify, with specificity, what is and is not allowed as a viable funeral alternative.

284. ALCOR LIFE EXTENSION FOUND., CRYOPRESERVATION AGREEMENT (2012).