

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

1900 Kanawha Blvd. East  
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**John Sylvia**  
**Director**

November 15, 2021

The Honorable Craig Blair, President  
West Virginia Senate  
Room 229M, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

The Honorable Roger Hanshaw, Speaker  
West Virginia House of Delegates  
Room 228M, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Dear Chairmen:

Pursuant to *West Virginia Code* §4-2-5, the Legislative Auditor conducted this review of the Office of the Chief Medical Examiner's (OCME) management of unclaimed and unidentified decedents. While conducting fieldwork for a separate project, the Performance Evaluation and Research Division (PERD) learned that the OCME is currently retaining 248 unidentified and unclaimed decedents in frozen storage and as cremated remains dating back to the 1970s. This creates an administrative burden on the OCME, since remains may never be identified or claimed.

**The Office of the Chief Medical Examiner is Retaining Unclaimed and Unidentified Decedents, Both As Cremated Remains and In Frozen Storage Dating Back to 1977**

Unclaimed remains are those whose identities are known to the OCME but a next of kin has not been identified, cannot be identified, or instances where the next of kin has refused the remains for whatever reason. Unidentified remains are those whose identities are unknown to the OCME, and all possible investigation efforts have been inconclusive to date. The OCME stores decedents in these manners because it has no other options under *West Virginia Code*. As evidenced in Figure 1, the OCME's freezer is overcrowded, it requires that multiple sets of remains be stored in spaces typically designed to store a single set of remains, and there is no space for additional shelving. According to the OCME, special care is taken to prevent damage to any of the remains and maintain the dignity of the individuals while they are being stored. Many of these decedents may never be identified or claimed and will remain in the OCME's custody indefinitely. Furthermore, under

current practices, retaining these individuals leaves them in a state of limbo without the possibility of having a final resting place.

**Figure 1**  
**The Office of the Chief Medical Examiner's Freezer for Long-Term Storage of Decedents**



The OCME is responsible for conducting medicolegal death investigations for certain deaths reported to chief medical examiner or his or her designee, a county medical examiner, or a county coroner, pursuant to §61-12-8 of *W.Va. State Code*. A medicolegal death investigation is initiated in order to investigate and certify the cause and manner of an unnatural or unexplained death. The OCME does not investigate all deaths that occur in the state; however, the cases it investigates include when any person in this state dies:

- by violence, or by apparent suicide;
- suddenly when in apparent good health;
- when unattended by a physician;
- when an inmate of a public institution;
- from some disease which might constitute a threat to public health; or
- in any suspicious, unusual, or unnatural manner.

Additionally, the chief medical examiner, at his or her discretion or when requested by a prosecuting attorney, a circuit court judge, or a judge in another court with criminal jurisdiction, shall conduct an autopsy pursuant to §31-12-10 of *W.Va. State Code*. Furthermore, the OCME can waive its jurisdiction when it is determined that an investigation is not necessary.

As Table 1 below shows, the OCME is currently retaining the remains of 248 individuals in frozen storage and as cremated remains as of October 11, 2021. This includes 86 decedents in a freezer, of which 36 are unclaimed and 49 are unidentified remains. Some of these are whole remains while others are only partial. Furthermore, these data do not account for the remains that

the OCME has identified and released to a next of kin. Identification and investigation efforts are ongoing, and the number of unclaimed remains in the OCME's custody changes over time when remains are released from their custody. According to the OCME, the oldest remains in frozen storage have been there since 1977. The OCME also currently retains 162 cremated decedents, which are stored in separate boxes in its evidence storage room on archival shelving, as illustrated in Figure 2.

Decade of Death	Cremated Remains	Frozen Storage	Total by Decade
1970s	3	1	4
1980s	1	3	4
1990s	2	6	8
2000s	29	9	38
2010s	92	58*	150
2020s	35	9	44
<b>Total</b>	<b>162</b>	<b>86</b>	<b>248</b>

*Source: Census of decedent remains provided by the OCME as of October 11, 2021.*  
*Note: \* One decedent from the 2010s is being held at the request of a prosecuting attorney and is not classified as unidentified or unclaimed.*

**Figure 2**  
**Cremated Remains of Unclaimed Decedents at the Office of the Chief Medical Examiner**



### **The OCME Has Established Informal Procedures for Releasing and Retaining Unclaimed and Unidentified Decedents**

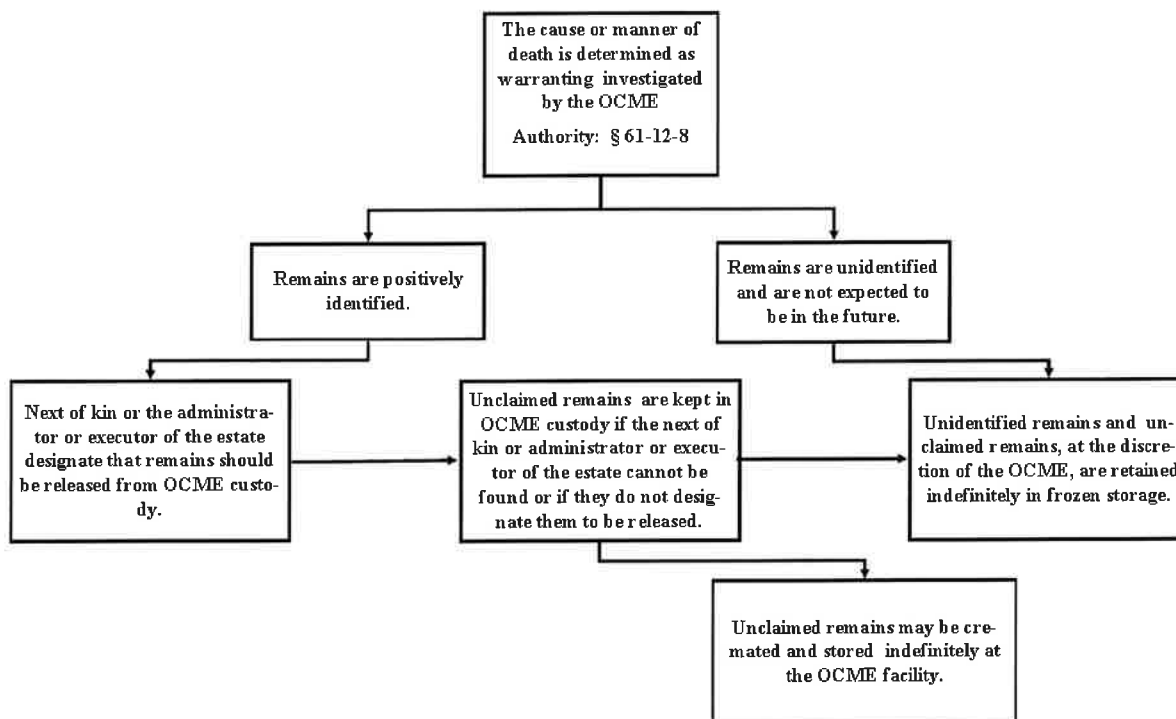
Figure 3 shows the OCME's process for the release and retention of unclaimed and unidentified decedents. According to *Code of State Rules* §64-84-8.2.k, a decedent is labeled as an "unidentified person" when, "all applicable methods for establishing identity were attempted, were unsuccessful, and without the expectation of being able to establish identity of the decedent by any known means in the foreseeable future." Unclaimed remains are those that the OCME has positively identified the decedent but the next of kin has not presently been identified, those awaiting release designations from an identified next of kin, and those that have not been designated for release by an identified next of kin. In other words, the agency knows the identity of the decedent but cannot release the remains.

According to the OCME, the agency works with law enforcement and the Department of Health and Human Resources' (DHHR) Adult Protective Services and Child Protective Services divisions to identify the next of kin. The OCME will retain an identified decedent for seven days. If the OCME has not been contacted or received confirmation with the next of kin at that time, it will make a referral to Adult or Child Protective Services depending on the age of the decedent. Adult or Child Protective Services staff will then conduct research to locate the next of kin who are willing to take responsibility for the final disposition of the decedent's remains. If Adult or Child Protective Services cannot locate and confirm with the next of kin within 30 days, that division will

contract with a funeral home or crematorium to arrange for final disposition. This utilizes funds dedicated for indigent burial under *W. Va. Code* §9-5-18 and *Code of State Rules* §6-1-24. The same process is followed regarding decedents for whom next of kin have been identified but for whatever reason does not take responsibility or arrange for the disposition of the decedent remains. The OCME has no knowledge of the procedures followed by Adult or Child Protective Services concerning this process.

Unclaimed remains are retained intact in frozen storage if they are considered to have evidentiary value in a criminal case. When a criminal case is closed, the remains involved cease to have evidentiary value, and their disposition can be arranged. According to the OCME, it has unclaimed decedents in its custody both with and without evidentiary value. Those without evidentiary value can be stored as cremated remains. Those that still have evidentiary value are retained in frozen storage until a time when they no longer maintain evidentiary value. Prosecutors, circuit court judges, and judges in another court of record having jurisdiction may inform the OCME that a body should not be cremated and should be kept intact. The OCME conducts autopsy investigations on all decedents that are unidentifiable at the death scene, many of which are later identified. All cases involving unidentified decedents are considered open in perpetuity since a proper medicolegal death investigation cannot be completed without a review of records and known medical history. These efforts cannot be undertaken for unidentified decedents, as there is no manner by which the OCME is able to establish next of kin without proper identification.

**Figure 3.**  
**OCME Process for the Release and Retention of Decedent Remains**



Source: PERD Analysis of *W.Va. State Code §61-12-3 et seq.*, *Code of State Rule §64-84-1 et seq.*, and OCME internal policies and procedures.

### **Code and Rule Do Not Align and Agency Policy and Procedures Do Not Exist**

The OCME cannot dispose of remains because State Code is mute on the issue. State Code currently does not codify any specific disposition methods or processes for the interment of decedent remains, both unidentified and unclaimed, in the long-term custody of the OCME. A legal opinion acquired by PERD from the Legislative Services Division of the Office of the Legislative Auditor confirms this understanding and states that “there is no statutory authorization or process for the disposition of unidentified remains. Legislation which creates a mechanism and procedure for disposal is necessary to allow the OCME to dispose of unidentified remains after a certain time.”

While *West Virginia Code* does not specify methods for the disposition of remains, it does allow unclaimed remains to be cremated in certain situations. Specifically, *W.Va. Code §61-12-9(f)(5)* states that a public official charged with arranging the final disposition of an indigent deceased person or an unclaimed corpse may enter a contract with a crematorium for its services. The OCME stores these cremated remains indefinitely because statute also does not authorize their disposal or interment. State Code and State Rule are entirely mute on the disposition of unidentified decedent remains. The OCME’s current practice, due to the lack of statutory authorization of alternatives, is to place unidentified decedent remains, along with non-cremated, unclaimed remains, in frozen storage at its facility. The DHHR considers this to be the only option currently available to the OCME for the long-term retention of remains. This conflict creates ambiguity in the OCME’s operations because some form of disposition is necessary for the long-term retention

of remains in their custody with none being authorized by statute. **The legislative auditor therefore recommends that the Legislature amend West Virginia Code to authorize the DHHR to establish methods for the disposition of unidentified and unclaimed remains including those that are cremated.** The West Virginia State Police provided a statement on the disposition of unidentified decedents and expressed that it has no objection to an authorization for burial as long as all possible means of identification are exhausted, and records of decedents general and unique characteristics are retained. These matters are already required in State Rule.

The decision on whether an unclaimed decedent is cremated is currently decided on a case-by-case basis based on informal OCME operating procedure, the involvement of prosecuting attorneys and judges from courts of relevant jurisdiction, and Adult and Child Protective Services' procedures regarding locating next of kin and the cremation contract process are unknown to the OCME. **Therefore, the OCME should develop policies and procedures enumerating evidentiary standards for the retention of decedent remains.**

While Code clearly does not address this issue, language in State Rule incorrectly implies that it allows for the disposition of unidentified remains in OCME custody. As this report has already established, Code does not set forth any manner in which unidentified remains may be disposed of. *State Code of Rules §64-84-8.2.k.5* states that the OCME *shall*,

*...authorize final disposition of unidentified remains to be embalmed, frozen, interred, or otherwise disposed, after completion of a final death certificate, in a manner set forth in WV Code.<sup>1</sup>*

Any future amendment of State Code regarding the disposition of unclaimed and unidentified remains may impact the interpretation of current State Rule and because of this **the Department of Health and Human Resources should review and update §64-84-1 et seq. of the Code of State Rules to ensure that it aligns with any changes to West Virginia State Code.** If the Legislature chooses to amend State Code pursuant to this matter, relevant State Rule should be amended to align with that change to prevent references to nonexistent State Code in the future.

Several other states authorize disposition through the methods mentioned in *W.Va. Code of State Rules §64-84*. A common practice for burial is to allow those remains, both unclaimed and unidentified, to be interred in a "potter's field." These burial sites are usually reserved for unidentified, unclaimed, or indigent decedents and are operated by the states or localities in which they are authorized. This method of disposition allows for the interment of decedents, while also retaining officials' ability to exhume a decedent if it is relevant pursuant to an ongoing investigation. Common considerations for the disposition of remains in other states include accommodating investigative processes, religious considerations, indigency, and others as determined by statute.

## Conclusion

Releasing positively identified decedents for their final disposition is ultimately the OCME's goal for decedents in its custody. However, the OCME will continue to receive decedents that it will never be able to identify and release for the reasons discussed in this report. Authorizing alternative disposition methods, whether in State Code or in State Rule, do not inhibit the ongoing

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<sup>1</sup> The current State Rule has been in effect since 2014. Previous versions of the rule enumerated a 30-day timeline for disposition.

efforts of the OCME to positively identify decedents or locate their next of kin nor their release for final disposition. Furthermore, if the Legislature were to authorize alternative disposition methods, families would still be able to claim their relative's remains in the future. It is a meaningful solution that addresses the ongoing operational concerns of the OCME and provides alternatives to retaining bodies indefinitely in a freezer. Finally, finding alternatives will retain the dignity of the decedents' remains for their possible release to their families.

**Recommendations:**

1. *The Legislature should amend West Virginia. Code to authorize the Department of Health and Human Resources to establish methods for the disposition of unidentified and unclaimed remains including those that are cremated.*
2. *The Department of Health and Human Resources should review and update §64-84-1 et seq. of the Code of State Rules to ensure that it aligns with West Virginia State Code.*
3. *The Office of the Chief Medical Examiner should develop policies and procedures enumerating evidentiary standards for the retention of decedent remains.*

Sincerely,



John Sylvia





**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**Bill J. Crouch  
Cabinet Secretary**

November 10, 2021

John Sylvia, Director  
Performance Evaluation and Research Division  
West Virginia Legislative Auditor's Office  
1900 Kanawha Boulevard East, Room W-314  
Charleston, West Virginia 25305-0610

Dear Mr. Sylvia:

The West Virginia Department of Health and Human Resources (DHHR) and the Office of the Chief Medical Examiner (OCME) in the Bureau for Public Health have reviewed the draft letter-report on the Chief Medical Examiner's management of unclaimed and unidentified decedents, as prepared by the West Virginia Legislative Auditor's Office, Performance Evaluation and Research Division (PERD).

The DHHR concurs with the recommendations within the report, particularly the central conclusion that specific methods for the disposition of unidentified and unclaimed remains, including those that are cremated, should be codified. The DHHR will update the Code of State Rules to align with any statutory amendment enacted by the West Virginia Legislature that creates a mechanism and procedure for the disposition of remains.

The DHHR will continue to follow current OCME operating procedures involving the disposition of decedent remains while developing written policies and procedures that preserve the evidentiary value of a decedent when relevant.

Although the staff at the OCME did not discuss the internal policies and procedures of a separate DHHR office with PERD representatives, OCME and Adult Protective Services (APS) in the Bureau for Social Services routinely collaborate to determine whether an unclaimed decedent had any advance directives, or to identify the next of kin or an authorized representative who is willing to take charge of the decedent. Once a referral is made by OCME, an APS worker conducts a reasonable and thorough search utilizing resources according to internal APS policies and procedures. APS concludes its search within 30 days and communicates the results to OCME, at which time, APS proceeds with arrangements for final disposition within seven days.

On behalf of the DHHR, I thank the staff members at the PERD for their time and effort and for the conclusions and recommendations reflected within the report. The DHHR looks forward to the PERD's continued input and support as we work towards ensuring that the State not only has methods for the disposition of unclaimed and unidentified remains, but also guarantees that such methods honor the dignity of the deceased.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Crouch", with a large, stylized flourish extending from the end of the name.

Bill J. Crouch



**West Virginia State Police**  
**725 Jefferson Road**  
**South Charleston, West Virginia 25309-1698**  
**Executive Office**

**Colonel Jan Cahill**  
**Superintendent**

October 29, 2021

**PERFORMANCE EVALUATION**

**NOV 3 2021**

**AND RESEARCH DIVISION**

Keith M. Brown  
West Virginia Legislature  
Performance Evaluation and Research Division  
1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610

**Re: Potter's Field**  
**Incoming letter dated October 25, 2021**

Dear Mr. Brown,

The West Virginia State Police has received your October 25, 2021 letter regarding the Legislative Auditor's consideration of a recommendation to create legislation to establish a potter's field for the interment of unidentified remains. Our legal division and our forensic laboratory have reviewed the letter and discussed it. We greatly appreciate your solicitation of our feedback and would respectfully offer the following general thoughts as a starting point for further discussion.

The West Virginia State Police has no objection to the potential recommendation, but to the extent that interment would contaminate or destroy these unidentified remains, we would recommend that such legislation address the need to first exhaust all possible means of identifying them and the need to preserve records of their general and unique characteristics for potential use in any investigations and prosecutions later undertaken.

Thank you for reaching out to us and please feel free to contact us if you have any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to be "RM", written over a horizontal line.

Captain Roy Moss  
Director, WVSP Legal Division

Cc: Colonel Jan L. Cahill  
Sharon E. Lemons



# WEST VIRGINIA PROSECUTING ATTORNEYS ASSOCIATION

Catie Wilkes Delligatti, Berkeley County, President  
D. Luke Furbee, Tyler County, Vice-President  
Michael Parker, Randolph County, Secretary  
Rachel Romano, Harrison County, Treasurer

November 10, 2021

Keith M. Brown  
Senior Research Analyst  
West Virginia Legislature, Performance Evaluation and Research Division  
1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610

Re: Disposition of Unidentified and Unclaimed Remains

Dear Mr. Brown:

I have reviewed your letter of November 5, 2021 regarding the OCME's management of unidentified and unclaimed remains, and discussed it with the other officers of the West Virginia Prosecuting Attorneys' Association.

We do not oppose a recommendation to create legislation to enable DHHR to arrange for disposition of unidentified and unclaimed remains, with the following provisions:

1. Any remains where the cause of death is determined to be homicide will be retained unless disposition is approved by the prosecuting attorney of the county in which the remains were located;
2. Any remains where there is an associated criminal case will be retained unless disposition is approved by the prosecuting attorney of the county where the criminal case originated; and
3. DNA samples from the remains are retained and cataloged.

Please contact me with any questions. Thank you very much for reaching out and requesting our opinion regarding this recommendation.

Very truly yours,

A handwritten signature in blue ink that reads "Catie Wilkes Delligatti".

Catie Wilkes Delligatti  
President, WVPAA