

§2843-A. Custody of remains of deceased persons

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "At-need funeral arrangements" means funeral arrangements made after death. [PL 1993, c. 609, §1 (NEW).]

B. "Custody and control" means the right to make all decisions, consistent with applicable laws, regarding the handling of a dead body, including, but not limited to, possession, at-need funeral arrangements, final disposition and disinterment. [PL 1993, c. 609, §1 (NEW).]

B-1. "Dead body" or "dead human body" means a body or fetus for which it reasonably can be determined that death occurred. [PL 2009, c. 601, §28 (NEW).]

C. "Estranged" means living in separate residences and having a relationship characterized by hostility or indifference. [PL 1993, c. 609, §1 (NEW).]

D. "Next of kin" means a person having the following relationship to the subject, in the following order of priority:

(1) The spouse;

(1-A) A domestic partner. For purposes of this section, "domestic partner" means a registered domestic partner or one of 2 unmarried adults who had been domiciled together under long-term arrangements that evidenced a commitment to remain responsible indefinitely for each other's welfare, including evidence of an emotional, physical or financial relationship with the subject similar to that of a spouse;

(2) An adult child;

(3) A parent;

(4) An adult sibling;

(5) An adult grandchild;

(6) An adult child of a sibling;

(7) A maternal grandparent;

(8) A paternal grandparent;

(9) An adult sibling of the subject's parent or that sibling's spouse;

(10) An adult first cousin;

(11) Any other adult relative in descending order of blood relationship; or

(12) If the subject is a veteran and has no known living spouse or adult relative, the Adjutant General or the Adjutant General's designee. For purposes of this paragraph, "veteran" has the same meaning as in section 2900, subsection 1, paragraph B. [RR 2021, c. 2, Pt. B, §§141-144 (COR).]

E. "Subject" means the person whose remains are placed in the custody and control of another person pursuant to this section. [PL 1993, c. 609, §1 (NEW).]
[RR 2021, c. 2, Pt. B, §§141-144 (COR).]

2. Custody and control generally. The custody and control of the remains of deceased residents of this State, dead bodies or dead human bodies are governed by the following provisions in the following order of priority:

A. If the subject has designated another person to have custody and control in a written and signed document, custody and control belong to that designated person; [PL 2017, c. 475, Pt. A, §31 (RPR).]

B. If the subject has not left a written and signed document designating a person to have custody and control, or if the person designated by the subject refuses custody and control, custody and control belong to the next of kin; and [PL 2017, c. 475, Pt. A, §31 (RPR).]

C. If the next of kin is 2 or more persons with the same relationship to the subject, the majority of the next of kin have custody and control. If the next of kin cannot, by majority vote, make a decision regarding the subject's remains, the court shall make the decision upon petition under subsection 4, paragraph D. [PL 2017, c. 475, Pt. A, §31 (RPR).]

If a person who has the right of custody and control under this subsection does not exercise the rights and responsibilities of custody and control within 4 days after the death of the subject, custody and control belong to a person from the next lower level of priority as established in paragraphs A to C.

If a person who has custody and control under this subsection does not complete decision making regarding final disposition within 30 days after taking custody and control, a funeral director or practitioner of funeral service who has physical possession of the remains or dead body may bury the remains or dead body at the expense of the funeral director or practitioner.

A person who has been charged with murder, as described in Title 17-A, section 201, or manslaughter, as described in Title 17-A, section 203, subsection 1, paragraph B, forfeits the right of custody and control provided under this subsection; and a funeral director or practitioner of funeral service who is aware of the charges may not release the remains or a dead body to that person who has been charged with murder or manslaughter. If the charges against the person are dismissed or the person is acquitted of the charges before the final disposition takes place, the person regains the right of custody and control in the same position of priority established in this subsection.

The remains or a dead body is considered abandoned if no one takes custody and control of the remains or dead body for a period of 15 days. A funeral director or practitioner of funeral service who has physical possession of abandoned remains or an abandoned dead body may bury or cremate the remains or dead body. The funeral director or practitioner of funeral service may embalm or refrigerate abandoned remains or an abandoned dead body without authorization. A certificate of abandonment that indicates the means of disposition must be filed in the municipality where the death occurred. [PL 2017, c. 475, Pt. A, §31 (RPR).]

3. Estranged spouse or domestic partner. Notwithstanding subsection 2, if the surviving spouse or surviving domestic partner and the subject were estranged at the time of death, the spouse or domestic partner may not have custody and control of the subject's remains. In these cases, custody and control belong to the next of kin following the spouse or domestic partner. [PL 2003, c. 672, §20 (AMD).]

4. Court determination. Notwithstanding other provisions of this section, the court of probate for the residence of the deceased may award custody and control to the person determined by the court most fit and appropriate to carry out the responsibilities of custody and control, and may make decisions regarding the subject's remains if those having custody and control can not agree. The following provisions apply to court determinations under this subsection.

A. Before the subject's death, the subject or the subject's legal representative may file a petition regarding custody and control of the subject's remains. [PL 1993, c. 609, §1 (NEW).]

B. A relative of the subject may file a petition. [PL 1993, c. 609, §1 (NEW).]

C. A person who claims and establishes through evidence that that person has or had a closer personal relationship to the subject than the next of kin may file a petition, if that person lived with

the subject and was not in the employ of the subject or the subject's family. [PL 1993, c. 609, §1 (NEW).]

D. If the next of kin is 2 or more persons with the same relationship to the subject, and the next of kin can not, by majority vote, make a decision regarding the subject's remains, 2 or more persons who have custody or control or a funeral director may file a petition asking the court to make a determination in the matter. The court shall consider the following in making its determination:

- (1) The reasonableness and practicality of the proposed arrangements;
- (2) The degree of the personal relationship between the subject and each of the 2 or more persons with custody and control;
- (3) The desires of the person or persons who are ready, able and willing to pay the costs of the arrangements;
- (4) The convenience and needs of other family and friends wishing to pay respect;
- (5) The expressed written desires of the subject; and
- (6) The degree to which the arrangements will allow maximum participation by all wishing to pay respect. [PL 1993, c. 609, §1 (NEW).]

[PL 1993, c. 609, §1 (NEW).]

5. Wishes of subject. If the subject has left written and signed instructions regarding funeral arrangements and disposal of the subject's remains, the person having custody and control shall abide by those wishes to the extent that the subject paid for those arrangements in advance or left resources for the purpose of carrying out those wishes.

[PL 1993, c. 609, §1 (NEW).]

6. Effect of payment by others. Except to the degree it must be considered by the court under subsection 4, paragraph D, the fact that a person other than the subject has paid or agreed to pay for all or part of arrangements does not give that person a greater right to custody and control than that person would otherwise have.

[PL 1993, c. 609, §1 (NEW).]

7. Authority of personal representative. The personal representative of the estate of the subject does not, by virtue of being the personal representative, have a greater right to custody and control than the person would otherwise have.

[PL 1993, c. 609, §1 (NEW).]

8. Immunity. A party, including but not limited to a funeral director or practitioner of funeral service, who, in good faith, acts upon the instructions of the party having custody and control is not liable for having carried out those instructions, may not be held civilly or criminally liable and is not subject to disciplinary action for acting in accordance with those instructions.

[PL 2015, c. 188, §1 (AMD).]

9. Application. This section does not apply to the disposition of the remains of a deceased person under chapter 709. This section does not diminish or otherwise alter the authority of a medical examiner or other official authorized under chapter 711. This section does not alter the rights and obligations of the decedent's next of kin under Title 18-C.

[PL 2017, c. 402, Pt. C, §49 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Funeral director or practitioner of funeral service. The following provisions apply to the actions and liability of a funeral director or practitioner of funeral service, cemeteries and crematories and their employees.

A. If there is a dispute regarding custody and control, a funeral director or practitioner of funeral service may refuse to accept the remains or dead body, inter or otherwise dispose of the remains or

dead body or complete funeral arrangements until the funeral director or practitioner of funeral service is provided with a court order under subsection 4 or a written agreement of the person who has custody and control. [PL 2011, c. 387, §3 (NEW).]

B. If there is a dispute regarding custody and control, pending a court determination under subsection 4 a funeral director or practitioner of funeral service who has physical possession of the remains or a dead body may embalm or refrigerate and shelter the remains or a dead body and may bill the estate of the subject for those costs, plus attorney's fees and court costs. [PL 2011, c. 387, §3 (NEW).]

C. A person who signs a statement of funeral goods and services, cremation authorization form or other authorization for disposition of the remains or a dead body is deemed to warrant the truthfulness of the facts set forth in the document, including but not limited to the existence of custody and control and the identity of the subject. [PL 2011, c. 387, §3 (NEW).]

D. A funeral director or practitioner of funeral service, cemetery or crematory may rely on a statement of funeral goods and services, cremation authorization form or other authorization signed by a person who has custody and control of the remains or a dead body and may carry out the instructions provided for in the statement of funeral goods and services or on the form or authorization unless the funeral director or practitioner of funeral service, cemetery or crematory knows of objections from another person. [PL 2011, c. 387, §3 (NEW).]

E. A funeral director or practitioner of funeral service, cemetery or crematory is not required to independently investigate custody and control of the remains or a dead body or who is next of kin. [PL 2011, c. 387, §3 (NEW).]

F. Upon cremation of the remains or dead body, the crematory shall prepare a certificate of cremation signed and dated by the person in charge of the cremation indicating the date of cremation and the identity of the cremated remains or dead body as identified by the funeral director or practitioner of funeral service or the cremation authorization form, including the deceased person's full name, date and place of death, gender and veteran status. The crematory shall provide the certificate of cremation to the funeral director or practitioner of funeral service or the person who has custody and control of the remains or dead body. [PL 2017, c. 101, §3 (NEW).]

[PL 2017, c. 101, §3 (AMD).]

SECTION HISTORY

PL 1993, c. 609, §1 (NEW). PL 2003, c. 672, §§19,20 (AMD). PL 2009, c. 159, §1 (AMD). PL 2009, c. 601, §§28, 29 (AMD). PL 2011, c. 387, §§1-3 (AMD). PL 2015, c. 188, §1 (AMD). PL 2015, c. 208, §1 (AMD). PL 2017, c. 38, §1 (AMD). PL 2017, c. 70, §1 (AMD). PL 2017, c. 101, §3 (AMD). PL 2017, c. 402, Pt. C, §49 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2017, c. 475, Pt. A, §31 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 567, §20 (AMD). RR 2021, c. 2, Pt. B, §§141-144 (COR).

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