



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNSEL

**MEMORANDUM**

To: Senator Nader Hashim  
From: Michele Childs  
Date: April 15, 2025  
Subject: H.41 Amendment

**A. Question Presented**

You asked whether the language in the Senate Committee on Judiciary's amendment to H.41, which creates a new crime of abuse of the dead body of a person, could be interpreted to apply to a person who has a miscarriage or stillbirth and does not dispose of the fetal remains in accordance with [18 V.S.A. chapter 107 \(deaths, burials, and autopsies; general requirements\)](#).

**B. Current Law**

Current law requires a person who buries, entombs, or removes the dead body of a person to obtain a burial-transit permit issued by certain individuals identified in statute. [18 V.S.A. § 5201](#).

A person who violates the statute by either not obtaining a permit or failing to comply with the terms of the permit is subject to a penalty of five years imprisonment or a fine of not more than \$1,000.00, or both. [18 V.S.A. § 5211](#).

Both of these statutes are codified in 18 V.S.A. chapter 107, subchapter 1.

A separate subchapter, subchapter 2, regulates fetal deaths.

"Fetal death" means a death prior to the complete expulsion or extraction from the mother of a product of conception; the death is indicated by the fact that after such separation, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. [18 V.S.A. § 5221](#).

A disposition permit is required when the fetal remains are to be privately buried or disposed of by a disposition facility. Failure to obtain a permit is subject to the penalty in 18 V.S.A. § 5211 because the language states that “all other provisions of sections 5209–5216 of this title [shall] be applicable to *fetal remains* as are applicable to *dead bodies*. (18 V.S.A. § 5224.)

Thus, if a fetal death occurs and a person disposes of the fetal remains without the required permit, that person would be subject to the five-year felony provided in 18 V.S.A. § 5211.

In *State v. Chambers*, 144 Vt. 234 (1984), the defendant was charged with burying the dead body of his stillborn daughter without a burial permit. The defendant challenged the charge alleging that “the State must show that the buried dead body was a *person* and not a *fetal death*.” The court rejected this argument stating,

The defendant’s argument is without merit. Subchapters 1 and 2 of chapter 107 differentiate between dead “persons” and “fetal deaths.” However, [§ 5224\(b\)](#) of subchapter 2, which deals with disposition of fetal remains and required permits, specifically states that “sections 5209–5216 of this title [shall] be applicable to fetal remains as are applicable to dead bodies.” Thus, for purposes of [18 V.S.A. § 5211](#), it is irrelevant whether the buried body was a dead “person” or a “fetal death,” and the State did not have to prove beyond a reasonable doubt that the defendant’s daughter was a “person.”

### **C. Senate Committee on Judiciary Amendment to H.41**

The Senate Committee on Judiciary amendment to H.41, Sec. 1, 13 V.S.A. § 3761a, subsections (a)–(d) provides,

- (a) No person shall, knowingly without legal authorization, intentionally burn, mutilate, disfigure, dismember, or destroy the dead body of a person.
- (b) No person shall violate subsection (a) of this section for the purpose of concealing a crime or avoiding apprehension, prosecution, or conviction of a crime.
- (c) No person shall commit sexual conduct upon the dead body of a person.
- (d)(1) A person who violates subsection (a) of this section shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.
- (2) A person who violates subsection (b) or (c) of this section shall be imprisoned not more than 15 years or fined not more than \$10,000.00, or both.

The use of the term “dead body of a person” was intentionally used in this amendment, as opposed to the term “corpse,” which was used in the bill as introduced ([H.41 as](#)

[introduced](#)) and commonly used in similar statutes in other states, because this term is currently used in Vermont law and distinguished from fetal remains.

Sec. 2 of the amendment reduces the five-year felony for either not obtaining a permit or failing to comply with the terms of the permit to a civil violation subject to a penalty of not more than \$1,000.00.

#### **D. Conclusion**

Under the language of the amendment, the new crime in Sec. 1 applies to abuse of the dead body of a person and does not apply to fetal remains. Improper disposal of fetal remains would continue to be subject to the provisions of 18 V.S.A. § 5211, but with a reduced penalty.