

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4217

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[Reported February 23, 2018; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend and reenact §61-12-10 of the Code West Virginia, 1931, as amended, relating
2 to permitting a designated representative of a health care facility or an attending physician
3 to obtain a patient's autopsy report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. POSTMORTEM EXAMINATIONS.

**§61-12-10. When autopsies made and by whom performed; records of date investigated;
copies of records and information; reporting requirements.**

1 (a) If in the opinion of the chief medical examiner, or of the county medical examiner of
2 the county in which the death in question occurred, it is advisable and in the public interest that
3 an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge
4 of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy
5 shall be conducted by the chief medical examiner or his or her designee, by a member of his or
6 her staff, or by a competent pathologist designated and employed by the chief medical examiner
7 under the provisions of this article. For this purpose, the chief medical examiner may employ any
8 county medical examiner who is a pathologist who holds board certification or board eligibility in
9 forensic pathology or has completed an American Board of Pathology fellowship in forensic
10 pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be
11 in addition to the fee provided for investigations pursuant to §61-12-8. A full record and report of
12 the findings developed by the autopsy shall be filed with the office of the chief medical examiner
13 by the person making the autopsy.

14 (b) Within the discretion of the chief medical examiner, or of the person making the
15 autopsy, or if requested by the prosecuting attorney of the county, or of the county where any
16 injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall
17 be furnished to the prosecuting attorney.

18 (c) The office of the chief medical examiner shall keep full, complete and properly indexed
19 records of all deaths investigated, containing all relevant information concerning the death and

20 the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement
21 officer may secure copies of these records or information necessary for the performance of his or
22 her official duties.

23 (d) Copies of these records or information shall be furnished, upon request, to any court
24 of law, or to the parties therein to whom the cause of death is a material issue, except where the
25 court determines that interests in a civil matter conflict with the interests in a criminal proceeding,
26 in which case the interests in the criminal proceeding shall take precedence. The office of chief
27 medical examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred
28 in the production of records under this subsection, and subsection (c), ~~(f)~~ and ~~(g)~~ of this section.

29 (e) The chief medical examiner is authorized to release investigation records and autopsy
30 reports to the multidisciplinary team authorized by §49-5D-3 and as authorized in subsection ~~(h)~~
31 (i) of this section. At the direction of the Secretary of the Department of Health and Human
32 Resources the chief medical examiner may release records and information to other state
33 agencies when considered to be in the public interest.

34 (f) The chief medical examiner is authorized to release a copy of the autopsy and
35 toxicology reports upon the request from a designated representative of a hospital as defined in
36 §16-2D-2 of this code, to said facility who has reported a death under the provisions of §61-12-8
37 for purposes of quality review and medical record completion.

38 (g) The chief medical examiner is authorized to release a copy of the autopsy and
39 toxicology reports upon the request of an attending physician as defined in §16-30C-3 of this
40 code, to said physician whose patient has died for purposes of quality review and medical record
41 completion.

42 ~~(f)~~ (h) Any person performing an autopsy under this section is empowered to keep and
43 retain, for and on behalf of the chief medical examiner, any tissue from the body upon which the
44 autopsy was performed which may be necessary for further study or consideration.

45 ~~(g)~~ (i) In cases of the death of any infant in the State of West Virginia where sudden infant
46 death syndrome is the suspected cause of death and the chief medical examiner or the medical
47 examiner of the county in which the death in question occurred considers it advisable to perform
48 an autopsy, it is the duty of the chief medical examiner or the medical examiner of the county in
49 which the death occurred to notify the sudden infant death syndrome program within the division
50 of maternal and child health and to inform the program of all information to be given to the infant's
51 parents.

52 ~~(h)~~ (j) If the chief medical officer determines that a drug overdose is the cause of death of
53 a person, the chief medical examiner shall provide notice of the death to the West Virginia
54 Controlled Substances Monitoring Program Database Review Committee established pursuant
55 to §60A-9-5(b) and shall include in the notice any information relating to the cause of the fatal
56 overdose.

NOTE: The purpose of this bill is to permit an attending physician to obtain his or her patient's autopsy report.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.