

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4559**

BY DELEGATES HANSHAW (MR. SPEAKER), STEELE, AND

LOVEJOY

[Introduced February 07, 2022; referred to the

Committee on the Judiciary]



1 A BILL to amend and reenact §61-12-3, §61-12-5, §61-12-6, §61-12-7, §61-12-10, §61-12-10a,  
2 §61-12-11, §61-12-12, §61-12-13, §61-12-14 and §61-12-15 of the Code of West Virginia,  
3 1931, as amended, all relating to Office of the Chief Medical Examiner and the disposition  
4 of unidentified and unclaimed remains; authorizing the Office of the Chief Medical  
5 Examiner to locate lands suitable for use as a cemetery; authorizing the Office of the Chief  
6 Medical Examiner to determine the appropriate length of time a decedent may be kept  
7 prior to burial or cremation; establishing burial for certain conditions; establishing  
8 cremation of certain conditions; authorizing the Chief Medical Officer or a designee to  
9 return a decedent's remains to next of kin and remove a decedent from the cemetery; and  
10 prohibiting any cause of action against the Office of the Medical Examiner.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 12. POSTMORTEM EXAMINATIONS.**

**§61-12-3. Office of chief medical examiner established; appointment, duties, etc., of chief  
medical examiner; assistants and employees; promulgation of rules.**

1 (a) The Office of Chief Medical Examiner is ~~hereby established~~ continued within the  
2 ~~division of health~~ Bureau for Public Health in the Department of Health and Human Resources.  
3 The office shall be directed by a chief medical examiner, who may employ pathologists,  
4 toxicologists, other forensic specialists, laboratory technicians, and other staff members, as  
5 needed to fulfill the responsibilities set forth in this article.

6 (b) All persons employed by the chief medical examiner shall be responsible to him or her  
7 and may be discharged for any reasonable cause. The chief medical examiner shall specify the  
8 qualifications required for each position in the Office of Chief Medical Examiner. ~~and each position~~  
9 ~~shall be subject to rules prescribed by the secretary of the Department of Health and Human~~  
10 ~~Resources~~

11 (c) The chief medical examiner shall be a physician licensed to practice medicine or  
12 osteopathic medicine in the State of West Virginia, who is a diplomat of the American Board of

13 Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The  
14 chief medical examiner shall be appointed by the ~~director of the division of health~~ Commissioner  
15 for the Bureau for Public Health to serve a five-year term unless sooner removed, but only for  
16 cause, by the Governor or by the ~~director~~ commissioner.

17 (d) The chief medical examiner shall be responsible to the ~~director of the division of health~~  
18 commissioner in all matters except that the chief medical examiner shall operate with independent  
19 authority for the purposes of:

20 (1) The performance of death investigations conducted pursuant to section eight of this  
21 article;

22 (2) The establishment of cause and manner of death; and

23 (3) The formulation of conclusions, opinions or testimony in judicial proceedings.

24 (e) The chief medical examiner, or his or her designee, shall be available at all times for  
25 consultation as necessary for carrying out the functions of the Office of the Chief Medical  
26 Examiner.

27 (f) The Secretary of the Department of Health and Human Resources is ~~hereby directed~~  
28 ~~to~~ shall propose legislative rules in accordance with the provisions of §29-3-1 *et seq.* of this code  
29 concerning:

30 (1) The proper conduct of medical examinations into the cause of death;

31 (2) The proper methods and procedures for postmortem inquiries conducted by county  
32 medical examiners and coroners;

33 (3) The examination of substances taken from human remains in order to determine the  
34 cause and manner of death; and

35 (4) The training and certification of county medical examiners and coroners.

36 (g) The chief medical examiner is ~~authorized to~~ may prescribe specific forms for record  
37 books and official papers which are necessary to the functions and responsibilities of the office of  
38 the chief medical examiner.

39 (h) The chief medical examiner, or his or her designee, ~~is authorized to~~ may order and  
40 conduct an autopsy in accordance with the provisions of this article and this code. The chief  
41 medical examiner, or his or her designee, shall perform an autopsy upon the lawful request of any  
42 person authorized by the provisions of this code to request the performance of the autopsy.

43 (i) The salary of the chief medical examiner and the salaries of all assistants and  
44 employees of the Office of the Chief Medical Examiner shall be fixed by the Legislature from funds  
45 appropriated for that purpose. The chief medical examiner shall take an oath ~~and provide a bond~~  
46 as required by law. ~~Within the discretion of the director of the division of health~~ The chief medical  
47 examiner and his or her assistants shall may lecture or instruct in the field of legal medicine and  
48 other related subjects to the West Virginia University or Marshall University School of Medicine,  
49 the West Virginia School of Osteopathic Medicine, the West Virginia State Police, other law-  
50 enforcement agencies and other interested groups.

**§61-12-5. Certain salaries and expenses paid by state.**

1 The salaries of the chief medical examiner, the salaries of all assistants and employees  
2 employed in the central office and laboratory, the expenses of maintaining the central office and  
3 laboratory and the cost of pathological, bacteriological and toxicological services rendered by  
4 persons other than the chief medical examiner and his or her assistants shall be paid by the state  
5 out of funds appropriated for that purpose.

**§61-12-6. Chief medical examiner may obtain additional services and facilities.**

1 ~~Subject to the approval of the director of the division of health~~ The chief medical examiner  
2 may ~~in order to provide for the investigation of the cause of death as authorized in this article~~  
3 employ and pay qualified pathologists and toxicologists to make autopsies and such pathological  
4 and chemical studies and investigations as he or she considers necessary. ~~in the several counties~~  
5 ~~or regions of the state and he or she may arrange for the use of existing laboratory facilities for~~  
6 ~~such purposes~~ Qualified pathologists shall hold board certification or board eligibility in forensic

7 pathology, or equivalent, or have completed an American Board of Pathology fellowship in  
8 forensic pathology.

**§61-12-7. Medical examiners.**

1 (a) The chief medical examiner shall appoint for each county in the state a county medical  
2 examiner to serve for a term of three years under the supervision of the chief medical examiner.  
3 A county medical examiner shall be medically trained and licensed by the State of West Virginia  
4 as a physician, registered nurse, paramedic, emergency medical technician or a physician  
5 assistant, be certified in the practice of medicolegal death investigation. ~~and be of good moral~~  
6 ~~character.~~ County medical examiners are authorized to establish the fact of death, and to make  
7 investigations into all deaths in their respective counties that come within the provisions of §61-  
8 2-8 and §61-2-10 of this code and shall in timely fashion record findings of an investigation using  
9 forms prescribed by the chief medical examiner. A county medical examiner may be removed  
10 from office for cause at any time by the chief medical examiner. Any vacancy in the office of  
11 county medical examiner shall be filled by the chief medical examiner. One person may be  
12 appointed to serve as county medical examiner for more than one county, and a county medical  
13 examiner need not be a resident of the county which he or she serves. If the chief medical  
14 examiner determines that it is necessary, he or she may appoint any person medically trained  
15 and licensed by the State of West Virginia as a physician, registered nurse, paramedic,  
16 emergency medical technician or a physician assistant ~~and of good moral character~~ to act as an  
17 assistant county medical examiner for a term of three years. An assistant shall have the same  
18 powers and duties as a county medical examiner and shall perform his or her duties under the  
19 supervision of the chief medical examiner.

20 (b) A county medical examiner or his or her assistant county medical examiner shall, at all  
21 times, be available to perform the duties required under this article. He or she shall, additionally,  
22 be paid a fee, as determined by the chief medical examiner, but only for the actual performance  
23 of his or her duties.

24 (c) County medical examiners and assistant county medical examiners are authorized to  
25 determine the cause and manner of death in any case falling within the provisions of section eight  
26 of this article, subject to the supervision of the chief medical examiner, and may exercise any of  
27 the powers attendant to the investigation of deaths.

**§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 of this code. A full record  
12 and report of the findings developed by the autopsy shall be filed with the office of the chief  
13 medical examiner 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~~ may release investigation records and  
30 autopsy reports to the multidisciplinary team authorized by §49-4-402 of this code and as  
31 authorized in subsection (j) of this section. ~~At the direction of the Secretary of the Department of~~  
32 ~~Health and Human Resources~~ The chief medical examiner may release records and information  
33 to other state agencies when considered to be in the public interest.

34 (f) The chief medical examiner ~~is authorized to~~ may 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 of this code for purposes of quality review and medical record completion.

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

45 (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 (j) If the chief medical ~~officer~~ examiner determines that a drug overdose is the cause of  
53 death of 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.

**§61-12-10a. Costs of transportation of bodies; when state will pay; amount of payment.**

1 Whenever an examination of a body is ordered pursuant to §61-12-8 and §16-12-10 of  
2 this code and the body of the deceased is transported to the central laboratory or other place of  
3 examination, the reasonable cost of the transportation shall be paid by the state out of funds  
4 appropriated to or for the use of the Office of the Chief Medical Examiner. Transportation at state  
5 expense shall be provided from the place where the body is being kept at the time the examination  
6 is ordered to the central laboratory or other place of examination, and, upon completion of the  
7 examination, to the place designated by the person entitled to possession of the body: *Provided,*  
8 That if the body is to be returned a greater distance than it was taken for the examination, the  
9 state shall only be obligated for the cost of return of the body equal to or less than that incurred  
10 to take the body for the examination. The payment shall be of a reasonable amount set by the  
11 Office of the Chief Medical Examiner, including, but not limited to, payment of any part of the total  
12 cost as the Office of the Chief Medical Examiner allows.

**§61-12-11. Exhumation; when ordered.**

1 If, in any case of sudden, violent or suspicious death, the body is buried without any  
2 investigation by the chief medical examiner, or by a county medical examiner or coroner, it is the

3 duty of the chief medical examiner or the county medical examiner or coroner, upon being advised  
4 of this fact, to notify the prosecuting attorney of the county, who shall communicate the same to  
5 the judge of the circuit court or other court of record having jurisdiction in the county and the judge  
6 may order that the body be exhumed and an autopsy performed thereon, as provided in §61-12-  
7 10 of this code and the pertinent facts disclosed by the autopsy shall be communicated to the  
8 prosecuting attorney of the county.

**§61-12-12. Facilities and services available to medical examiners.**

1 Pursuant to rules promulgated by the Secretary of the Department of Health and Human  
2 Resources, the facilities of the Office of the Chief Medical Examiner and its laboratory, and the  
3 services of its professional staff, shall be made available to the county medical examiners and  
4 coroners in their investigations under the provisions of §61-12-8 of this code, and to the persons  
5 conducting autopsies under the provisions of §61-12-10 of this code.

**§61-12-13. Reports and records received as evidence; copies.**

1 Reports of investigations and autopsies, and the records thereof, on file in the Office of  
2 the Chief Medical Examiner or in the office of any county medical examiner, shall be received as  
3 evidence in any court or other proceeding, and copies of records, photographs, laboratory findings  
4 and records on file in the Office of the Chief Medical Examiner or in the office of any county  
5 medical examiner, when ~~duly~~ attested by the chief medical examiner or by the county medical  
6 examiner, assistant county medical examiner or coroner in whose office the same are filed, shall  
7 be received as evidence in any court or other proceeding for any purpose for which the original  
8 could be received without any proof of the official character of the person whose name is signed  
9 thereto unless objected to by counsel: *Provided*, That statements of witnesses or other persons  
10 and conclusions upon extraneous matters are not hereby made admissible.

**§61-12-14. County coroners; appointment, oath, etc.; duties; fees.**

1 ~~It is the duty of~~ The county commission of every county ~~from time to time, to~~ may appoint  
2 a coroner for the county, who shall hold the office ~~during~~ at the pleasure of the commission and

3 shall take the oath of office prescribed for other county officers. The county coroners shall be  
4 certified in medicolegal investigations, be continually available to perform the duties required  
5 under this article and shall be paid such fees or amounts for the services as may be fixed by the  
6 chief medical examiner.

**§61-12-15. Invalidation of any provision or application Disposition of unidentified and unclaimed remains.**

1 ~~If any provision or application of this article is held invalid such invalidity shall not affect~~  
2 ~~other provisions or application of this article which can be given effect without the invalid~~  
3 ~~provisions or application, and to this end the provisions of this article are declared to be severable~~

4 (a) The Office of the Chief Medical Examiner shall cremate unclaimed human remains and  
5 shall bury unidentified human remains from its facilities.

6 (b) The Office of the Chief Medical Examiner, with the assistance of the city of Charleston,  
7 shall locate an appropriate cemetery.

8 (c) Unidentified remains shall be buried after 6 months and after efforts to identify the  
9 person and his or her next of kin have been exhausted by the Office of Chief Medical Examiner.  
10 In the event the death is determined to be the result of a crime, physical evidence shall be  
11 collected from the decedent's body prior to any burial.

12 (d) Any identified but unclaimed remains shall be cremated after 30 days has passed and  
13 after efforts to contact the decedent's next of kin have been exhausted, as determined by the  
14 Office of the Chief Medical Examiner, and placed in a cemetery in a manner that the remains may  
15 be easily retrieved by the Office of the Chief Medical Examiner in the event the decedent's next  
16 of kin wishes to claim the remains.

17 (e) The chief medical examiner, or his or her designee, may enter onto the premises of  
18 the cemetery and cause to be removed from the cemetery any decedent who has been identified  
19 and claimed by his or her next of kin upon the next of kin providing proper documentation.

20           (f) No person may file any cause of action against the Office of the Medical Examiner or  
21 against any medical examiner acting in his or her capacity as a medical examiner for any liability  
22 or damages relating to burial, cremation, or other disposition of a decedent's remains, consistent  
23 with the provisions of this section, prior to a person claiming a decedent.