

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4217

BY DELEGATES ELLINGTON, SOBONYA, ATKINSON,
QUEEN, SUMMERS, WHITE, WESTFALL, DEAN, CRISS,
ROHRBACH AND FRICH

[Introduced January 19, 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 an attending physician 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 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, the attending physician, or to the parties therein to whom the cause of death is a material
25 issue, except where the court determines that interests in a civil matter conflict with the interests
26 in a criminal proceeding, in which case the interests in the criminal proceeding shall take
27 precedence. The office of chief medical examiner shall be reimbursed a reasonable rate by the
28 requesting party for costs incurred in the production of records under this subsection and
29 subsection (c) of this section.

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

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

38 (g) In cases of the death of any infant in the State of West Virginia where sudden infant
39 death syndrome is the suspected cause of death and the chief medical examiner or the medical
40 examiner of the county in which the death in question occurred considers it advisable to perform
41 an autopsy, it is the duty of the chief medical examiner or the medical examiner of the county in
42 which the death occurred to notify the sudden infant death syndrome program within the division
43 of maternal and child health and to inform the program of all information to be given to the infant's
44 parents.

45 (h) If the chief medical officer determines that a drug overdose is the cause of death of a
46 person, the chief medical examiner shall provide notice of the death to the West Virginia

47 Controlled Substances Monitoring Program Database Review Committee established pursuant
48 to §60A-9-5(b) of this code and shall include in the notice any information relating to the cause of
49 the fatal 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.