

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4340**

BY DELEGATES ROHRBACH, D. JEFFRIES, SUMMERS,  
REED, TULLY, PACK, G. WARD, BATES, WORRELL,  
ROWAN, AND JENNINGS

[Originating in the Committee on the Judiciary;  
reported on February 14, 2022]



1 A BILL to amend and reenact §16-19-9, §16-19-14 and §16-19-22 of the Code of West Virginia,  
2 1931, as amend; and to amend and reenact §61-12-3 of said code, all relating to  
3 anatomical gifts; authorizing the Department of Health and Human Resources to be  
4 guardian to make an anatomical gift without a court order; clarifying the duties of  
5 procurement organization with regard to state medical examiner; requiring the state  
6 medical examiner to cooperate with procurement organizations to maximize the  
7 opportunity to recover anatomical gifts; authorizing procurement organizations to conduct  
8 a test to evaluate the medical suitability of the body part; requiring a prosecuting attorney  
9 who denies the release of a body or part that is the subject of an anatomical gift to consult  
10 with the procurement organization about the proposed recovery; and authorizing the  
11 state's chief medical examiner to enter into agreements with a procurement organization  
12 to facilitate the recovery of anatomical gifts.

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

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 19. ANATOMICAL GIFT ACT.**

#### **§16-19-9. Who may make anatomical gift of decedent's body or part.**

1 (a) Unless barred by §16-19-7 or §16-19-8, an anatomical gift of a decedent's body or part  
2 for purpose of transplantation, therapy, research or education may be made by any member of  
3 the following classes of persons who is reasonably available, in the order of priority listed:

4 (1) A person holding a medical power of attorney or another agent of the decedent at the  
5 time of death who could have made an anatomical gift under §16-19-4 immediately before the  
6 decedent's death;

7 (2) The spouse of the decedent, ~~unless in the six (6) months prior to the decedent's death~~  
8 ~~the spouse has lived separate and apart from the decedent in a separate place of abode without~~  
9 ~~cohabitation~~ an action for divorce is pending;

10 (3) Adult children of the decedent;

11 (4) The person acting as the guardian of the decedent at the time of death. If the guardian  
12 is the Department of Health and Human Resources, the department may make an anatomical gift  
13 of a decedent's body or part for purpose of transplantation, therapy, research or education without  
14 a court order: *Provided*, That if the Department of Health and Human Resources is the legal  
15 guardian and elects to make the anatomical gift, the most immediate relative of the donor must  
16 be notified at the time of consent the donation is signed, if able to be located. The medical record  
17 shall reflect documentation of the notification or attempted notification. The same effort should  
18 be made regarding notification of a family member in the case of an incarcerated individual.

19 (5) An appointed health care surrogate;

20 (6) Parents of the decedent;

21 (7) Adult siblings of the decedent;

22 (8) Adult grandchildren of the decedent;

23 (9) Grandparents of the decedent; or

24 (10) An adult who exhibited special care and concern for the decedent; or

25 (11) A person authorized or obligated to dispose of the decedent's body.

26 (b) If there is more than one member of a class entitled to make an anatomical gift, any  
27 member of the class may make the anatomical gift unless he or she, or a person to whom the  
28 anatomical gift may pass pursuant to §16-19-11, knows of an objection by another member of the  
29 class. If an objection is known, the majority of the members of the same class must be opposed  
30 to the donation in order for the donation to be revoked. In the event of a tie vote, ~~the attending~~  
31 ~~physician or advanced nurse practitioner shall appoint a health care surrogate to decide whether~~  
32 ~~to make an anatomical gift of the decedent's body or part for the purpose of transplantation,~~  
33 ~~therapy, research or education~~ the anatomical gift may proceed despite the objection by a  
34 member or members of a class.

35 (c) A person may not make an anatomical gift if, at the time of the decedent's death, a  
36 person in a prior class is reasonably available to make or to object to the making of an anatomical  
37 gift.

**§16-19-14. Rights and duties of procurement organization and others.**

1 (a) When a hospital refers an individual at or near death to a procurement organization,  
2 the organization shall make a reasonable search of the records of the Division of Motor Vehicles  
3 and any donor registry it knows of for the geographical area in which the individual resides to  
4 ascertain whether the individual has made an anatomical gift.

5 (b) The Division of Motor Vehicles shall allow a procurement organization reasonable  
6 access to information in the division's records to ascertain whether an individual at or near death  
7 is a donor. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for  
8 promulgation pursuant to §29A-3-1 *et seq.* of this code to facilitate procurement agencies' access  
9 to records pursuant to this subsection.

10 (c) When a hospital refers an individual at or near death to a procurement organization,  
11 the organization may conduct any reasonable examination necessary to ensure the medical  
12 suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy,  
13 research, or education from a donor or a prospective donor. During the examination period,  
14 measures necessary to ensure the medical suitability of the part may not be withdrawn unless the  
15 hospital or procurement organization knows that the prospective donor expressed a contrary  
16 intent.

17 (d) Unless prohibited by law, at any time after a donor's death, a person to whom a  
18 decedent's part passes under §16-19-11 may conduct any reasonable examination necessary to  
19 ensure the medical suitability of the body or part for its intended purpose.

20 (e) Unless prohibited by law, an examination under subsection (c) or (d) of this section  
21 may include an examination of all medical and dental records of the donor or prospective donor.

22 (f) Upon the death of a minor who was a donor or had signed a refusal, unless a  
23 procurement organization knows the minor is emancipated, the procurement organization shall  
24 conduct a reasonable search for the parents of the minor and provide the parents with an  
25 opportunity to revoke or amend the anatomical gift or revoke the refusal.

26 (g) Upon referral by a hospital under subsection (a) of this section, a procurement  
27 organization shall make a reasonable search for any person listed in §16-19-9 having priority to  
28 make an anatomical gift on behalf of a prospective donor. If a procurement organization receives  
29 information that an anatomical gift to any other person was made, amended or revoked, it shall  
30 promptly advise the other person of all relevant information.

31 (h) Except as provided in §16-19-22, the rights of the person to whom a part passes under  
32 §16-19-11 are superior to the rights of all others. A person may accept or reject an anatomical  
33 gift, in whole or in part. Subject to the terms of the document of gift and this article, a person that  
34 accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use  
35 of remains in a funeral service. If the gift is of a part, the person to whom the part passes under  
36 §16-19-11 shall, upon the death of the donor and before embalming, burial or cremation, cause  
37 the part to be removed without unnecessary mutilation.

38 (i) Neither the physician or the physician assistant who attends the decedent at death nor  
39 the physician or the physician assistant who determines the time of death may participate in the  
40 procedures for removing or transplanting a part from the decedent.

41 (j) A physician or technician may remove a donated part from the body of a donor that the  
42 physician or technician is qualified to remove.

43 (k) A medical examiner shall cooperate with any procurement organization to maximize  
44 the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research,  
45 or education.

46 (l) A part may not be removed from the body of a decedent under a medical examiner's  
47 jurisdiction for transplantation, therapy, research, or education, nor delivered to a person for  
48 research or education, unless the part is the subject of an anatomical gift.

49 (m) Upon the request of a procurement organization, the medical examiner shall release  
50 to the procurement organization the name, contact information, name of the next of kin, and  
51 available medical and social history of a decedent whose body is under the medical examiner's  
52 jurisdiction. If the decedent's body or part is medically suitable for transplantation, therapy,  
53 research, or education, the medical examiner shall release the post-mortem examination results  
54 to the procurement organization. The procurement organization may not make a subsequent  
55 disclosure of the post-mortem examination results or other information received from the medical  
56 examiner unless the subsequent disclosure is relevant to transplantation, therapy, research, or  
57 education.

58 (n) If a hospital refers an individual whose death is imminent or who has died in a hospital  
59 to an organ procurement organization, and the organ procurement organization, in consultation  
60 with the individual's attending physician or a designee, determines based upon a medical record  
61 review and other information supplied by the individual's attending physician or a designee, that  
62 the individual may be a prospective donor; and the individual:

63 (1) Has not indicated in any document an intention to either limit the anatomical gifts of  
64 the individual to parts of the body which do not require a ventilator or other life-sustaining  
65 measures, or

66 (2) Has not indicated in any document an intention to deny making or refusing to make an  
67 anatomical gift; or

68 (3) Amended or revoked an anatomical gift in any document, the organ procurement  
69 organization may conduct a blood or tissue test or minimally invasive examination which is  
70 reasonably necessary to evaluate the medical suitability of a body part that is or may be the  
71 subject of an anatomical gift.

72 (o) Testing and examination conducted pursuant to subsection (n) shall comply with a  
73 denial or refusal to make an anatomical gift or any limitation expressed by the individual with  
74 respect to the part of the body to donate or a limitation the provision of a ventilator or other life-  
75 sustaining measures, or a revocation or amendment to an anatomical gift. The results of tests  
76 and examinations conducted pursuant to subsection (n) shall be used or disclosed only:

77 (1) To evaluate medical suitability for donation and to facilitate the donation process; and

78 (2) As otherwise required or permitted by law.

79 (p) A hospital may not withdraw or withhold any measures necessary to maintain the  
80 medical suitability of a body part that may be the subject of an anatomical gift until the organ  
81 procurement organization or designated requestor, as appropriate, has had the opportunity to  
82 advise the applicable persons under this article of the option to make an anatomical gift and has  
83 received or been denied authorization to proceed with recovery of the part.

84 (q) Subject to the individual's wishes under §16-19-11(c)(3) of this code, after an  
85 individual's death, persons who may receive anatomical gift pursuant to §16-19-11 of this code  
86 may conduct any test or examination reasonably necessary to evaluate the medical suitability of  
87 the body or part for its intended purpose.

88 (r) The provisions of this section may not be construed to preclude a medical examiner  
89 from performing an investigation of a decedent under the medical examiner's jurisdiction.

**§16-19-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction  
of medical examiner.**

1 ~~(a) Except as provided in subsection (e) of this section,~~ The medical examiner shall, upon  
2 request of a procurement organization, release to the procurement organization the name, contact  
3 information and available medical and social history of a decedent whose body is in the custody  
4 of the medical examiner. If the decedent's body or part is medically suitable for transplantation,  
5 therapy, research or education, the medical examiner shall release post-mortem examination  
6 results after being paid in accordance with the fee schedule established in rules to the



7 procurement organization, ~~subject to subsection (e) of this section.~~ The procurement organization  
8 may make a subsequent disclosure of the post-mortem examination results or other information  
9 received from the medical examiner only if relevant to transplantation or therapy.

10 (b) The medical examiner may conduct a medicolegal examination by reviewing all  
11 medical records, laboratory test results, x-rays, other diagnostic results and other information that  
12 any person possesses about a donor or prospective donor whose body is under the jurisdiction  
13 of the medical examiner which the medical examiner determines may be relevant to the  
14 investigation.

15 (c) A person with any information requested by a medical examiner pursuant to subsection  
16 (b) of this section shall provide that information as soon as possible to allow the medical examiner  
17 to conduct the medicolegal investigation within a period compatible with the preservation of parts  
18 for the purpose of transplantation, therapy, research or education.

19 (d) If the medical examiner determines that a post-mortem examination is not required or  
20 that a post-mortem examination is required but that the recovery of the part that is the subject of  
21 an anatomical gift will not interfere with the examination, the medical examiner and procurement  
22 organization shall cooperate in the timely removal of the part from the decedent for the purpose  
23 of transplantation, therapy, research or education.

24 ~~(e) If the decedent's death is the subject of a criminal investigation, the medical examiner  
25 may not release the body or part that is the subject of an anatomical gift or the social history,  
26 medical history or post-mortem examination results without the express authorization of the  
27 prosecuting attorney of the county having jurisdiction over the investigation~~

28 (f) If an anatomical gift of a part from the decedent under the jurisdiction of the medical  
29 examiner has been or might be made, but the medical examiner initially believes that the recovery  
30 of the part could interfere with the post-mortem investigation into the decedent's cause or manner  
31 of death, the medical examiner shall consult with the procurement organization about the  
32 proposed recovery. After the consultation, the medical examiner may ~~allow~~ deny the recovery at

33 his or her discretion. The medical examiner may attend the removal procedure for the part before  
34 making a final determination not to allow the procurement organization to recover the part.

35 ~~(g)~~ (f) If the medical examiner denies recovery of the part, he or she shall:

36 (1) Provide the procurement organization with a written explanation of the specific reasons  
37 for not allowing recovery of the part; and

38 (2) Include in the medical examiner's records the specific reasons for denying recovery of  
39 the part.

40 ~~(h)~~ (g) If the medical examiner allows recovery of a part, the procurement organization  
41 shall, upon request, cause the physician or technician who removes the part to provide the  
42 medical examiner with a written report describing the condition of the part, a biopsy, a photograph  
43 or any other information and observations that would assist in the post-mortem examination.

44 ~~(i)~~ (h) A medical examiner who decides to be present at a removal procedure ~~pursuant to~~  
45 ~~subsection (f) of this section~~ is entitled to reimbursement for the expenses associated with  
46 appearing at the recovery procedure from the procurement organization which requested his or  
47 her presence.

48 ~~(j)~~ (i) A medical examiner performing any of the functions specified in this section shall  
49 comply with all applicable provisions of §61-12-1 *et seq.* of this code.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### 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~~ within the ~~division of health~~  
2 Bureau of Public Health in the Department of Health and Human Resources. The office shall be  
3 directed by a chief medical examiner, who may employ pathologists, toxicologists, other forensic

4 specialists, laboratory technicians, and other staff members, as needed to fulfill the  
5 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, and who has experience in forensic medicine. The chief medical  
14 examiner shall be appointed by ~~the director of the division of health~~ the Commissioner for the  
15 Bureau of Public Health to serve a five-year term unless sooner removed, but only for cause, by  
16 the Governor or by the director.

17 (d) The chief medical examiner shall be responsible to the ~~director of the division of health~~  
18 Commissioner of the Bureau for Public Health in all matters except that the chief medical examiner  
19 shall operate with independent 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 examiner.

26 (f) The chief medical examiner shall cooperate with procurement organizations as defined  
27 in §16-19-3 of this code to maximize the opportunity to recover anatomical gifts for the purpose  
28 of transplantation, therapy, research, or education. The chief medical examiner may enter into  
29 contracts and agreements with a procurement organization when necessary to facilitate the

30 efficient and economical recovery of anatomical gifts, including contracts or agreements  
31 authorizing persons approved or assigned by the procurement organization to perform a specific  
32 type of duty or duties at the office of the chief medical examiner.

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

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

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

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

41 (4) The training and certification of county medical examiners and coroners; and

42 (5) The procedures necessary to maximize the recovery of anatomical gifts for the purpose  
43 of transplantation, therapy, research, or education.

44 ~~(g)~~ (h) The chief medical examiner is authorized to prescribe specific forms for record  
45 books and official papers which are necessary to the functions and responsibilities of the office of  
46 the chief medical examiner.

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

51 ~~(i)~~ (j) The salary of the chief medical examiner and the salaries of all assistants and  
52 employees of the office of the chief medical examiner shall be fixed by the Legislature from funds  
53 appropriated for that purpose. The chief medical examiner shall take an oath and provide a bond  
54 as required by law. Within the discretion of the ~~director of the division of health~~ Commissioner of  
55 the Bureau for Public Health, the chief medical examiner and his or her assistants shall lecture or

- 56 instruct in the field of legal medicine and other related subjects to the West Virginia University or  
57 Marshall university school of medicine, the West Virginia school of osteopathic medicine, the West  
58 Virginia state police, other law-enforcement agencies and other interested groups.

NOTE: The purpose of this bill is to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

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