

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4559**

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

LOVEJOY

[Passed March 11, 2022; in effect ninety days from passage.]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §61-12-16; and to amend and reenact §61-12-3, §61-12-5, §61-12-6, §61-12-  
3 7, §61-12-10, §61-12-10a, §61-12-11, §61-12-12, §61-12-13, §61-12-14 and §61-12-15  
4 of said Code, all relating to the Office of the Chief Medical Examiner and the disposition  
5 of unidentified and unclaimed remains; authorizing the Office of the Chief Medical  
6 Examiner to locate lands suitable for use as a cemetery; authorizing the Office of the Chief  
7 Medical Examiner to determine the appropriate length of time a decedent may be kept  
8 prior to burial or cremation; establishing burial for certain conditions; establishing  
9 cremation of certain conditions; authorizing the Chief Medical Examiner or a designee to  
10 return a decedent's remains to next of kin and remove a decedent from the cemetery;  
11 prohibiting any cause of action against the Office of the Chief Medical Examiner for  
12 disposal of remains consistent with these provisions; providing for the final disposition of  
13 unidentified and unclaimed remains in the possession of the Office of the Chief Medical  
14 Examiner pursuant to legislative rule; and providing for emergency legislative rulemaking  
15 allowing for the final disposition of unidentified and unclaimed remains.

*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 continued within the Bureau for Public Health  
2 in the Department of Health and Human Resources. The office shall be directed by a chief medical  
3 examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory  
4 technicians, and other staff members, as needed to fulfill the responsibilities set forth in this article.

5 (b) All persons employed by the chief medical examiner shall be responsible to him or her  
6 and may be discharged for any reasonable cause. The chief medical examiner shall specify the  
7 qualifications required for each position in the Office of Chief Medical Examiner.

8 (c) The chief medical examiner shall be a physician licensed to practice medicine or  
9 osteopathic medicine in the State of West Virginia, who is a diplomat of the American Board of  
10 Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The  
11 chief medical examiner shall be appointed by the Commissioner for the Bureau for Public Health  
12 to serve a five-year term unless sooner removed, but only for cause, by the Governor or by the  
13 commissioner.

14 (d) The chief medical examiner shall be responsible to the commissioner in all matters  
15 except that the chief medical examiner shall operate with independent authority for the purposes  
16 of:

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

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

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

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

24 (f) The Secretary of the Department of Health and Human Resources shall propose  
25 legislative rules in accordance with the provisions of §29-3-1 *et seq.* of this code concerning:

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

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

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

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

32 (g) The chief medical examiner may prescribe specific forms for record books and official  
33 papers which are necessary to the functions and responsibilities of the office of the chief medical  
34 examiner.

35 (h) The chief medical examiner, or his or her designee, may order and conduct an autopsy  
36 in accordance with the provisions of this article and this code. The chief medical examiner, or his  
37 or her designee, shall perform an autopsy upon the lawful request of any person authorized by  
38 the provisions of this code to request the performance of the autopsy.

39 (i) The salary of the chief medical examiner and the salaries of all assistants and  
40 employees of the Office of the Chief Medical Examiner shall be fixed by the Legislature from funds  
41 appropriated for that purpose. The chief medical examiner shall take an oath as required by law.  
42 The chief medical examiner and his or her assistants may lecture or instruct in the field of legal  
43 medicine and other related subjects to the West Virginia University or Marshall University School  
44 of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia State Police,  
45 other law-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 The chief medical examiner may employ and pay qualified pathologists and toxicologists  
2 to make autopsies and such pathological and chemical studies and investigations as he or she  
3 considers necessary. Qualified pathologists shall hold board certification or board eligibility in  
4 forensic pathology, or equivalent, or have completed an American Board of Pathology fellowship  
5 in 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. County medical  
6 examiners are authorized to establish the fact of death, and to make investigations into all deaths  
7 in their respective counties that come within the provisions of §61-2-8 and §61-2-10 of this code  
8 and shall in timely fashion record findings of an investigation using forms prescribed by the chief  
9 medical examiner. A county medical examiner may be removed from office for cause at any time  
10 by the chief medical examiner. Any vacancy in the office of county medical examiner shall be filled  
11 by the chief medical examiner. One person may be appointed to serve as county medical  
12 examiner for more than one county, and a county medical examiner need not be a resident of the  
13 county which he or she serves. If the chief medical examiner determines that it is necessary, he  
14 or she may appoint any person medically trained and licensed by the State of West Virginia as a  
15 physician, registered nurse, paramedic, emergency medical technician or a physician assistant  
16 to act as an assistant county medical examiner for a term of three years. An assistant shall have  
17 the same powers and duties as a county medical examiner and shall perform his or her duties  
18 under the supervision of the chief medical examiner.

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

23           (c) County medical examiners and assistant county medical examiners are authorized to  
24 determine the cause and manner of death in any case falling within the provisions of section eight

25 of this article, subject to the supervision of the chief medical examiner, and may exercise any of  
26 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 may release investigation records and autopsy reports to  
30 the multidisciplinary team authorized by §49-4-402 of this code and as authorized in subsection  
31 (j) of this section. The chief medical examiner may release records and information to other state  
32 agencies when considered to be in the public interest.

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

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

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

43 (i) In cases of the death of any infant, where sudden infant death syndrome is the  
44 suspected cause of death and the chief medical examiner or the medical examiner of the county  
45 in which the death in question occurred considers it advisable to perform an autopsy, it is the duty  
46 of the chief medical examiner or the medical examiner of the county in which the death occurred  
47 to notify the sudden infant death syndrome program within the Division of Maternal and Child  
48 Health and to inform the program of all information to be given to the infant's parents.

49 (j) If the chief medical examiner determines that a drug overdose is the cause of death of  
50 a person, the chief medical examiner shall provide notice of the death to the West Virginia  
51 Controlled Substances Monitoring Program Database Review Committee established pursuant  
52 to §60A-9-5(b) and shall include in the notice any information relating to the cause of the fatal  
53 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 §61-12-10 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 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 The county commission of every county may appoint a coroner for the county, who shall  
2 hold the office at the pleasure of the commission and shall take the oath of office prescribed for  
3 other county officers. The county coroners shall be certified in medicolegal investigations, be  
4 continually available to perform the duties required under this article and shall be paid such fees  
5 or amounts for the services as may be fixed by the chief medical examiner.

**§61-12-15. Disposition of unidentified and unclaimed remains.**

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

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

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

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

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

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

**§61-12-16. Disposition of unidentified or unclaimed remains pursuant to legislative rule.**

1 The Office of the Chief Medical Examiner shall propose rules for legislative approval in  
2 accordance with the provisions of §29A-3-1 *et seq.* of this code which provide for the disposition  
3 of unidentified or unclaimed remains in the possession of the Office of the Chief Medical  
4 Examiner, in a manner which does not conflict with the provisions of this article.

5 Further, the Office of the Chief Medical Examiner shall promulgate emergency rules  
6 pursuant to §29A-3-15 of this code providing for the disposition of unidentified or unclaimed  
7 remains in their possession, in a manner which does not conflict with the provisions of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2022.

.....  
*Governor*