WEST VIRGINIA CODE CHAPTER 16 ARTICLE 5

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§16-5-1. Definitions.

As used in this article, unless the context otherwise requires, the following terms have the following meanings:

(1) "Bureau" means the Bureau for Public Health.

(2) "Commissioner" means the Commissioner of the Bureau for Public Health.

(3) "Date of filing" means the date a vital record is accepted for registration by the section of vital statistics of the state Bureau for Public Health.

(4) "Dead body" means a human body or parts of a human body or bones from the condition of which it reasonably may be concluded that death occurred.

(5) "Department" means the Department of Health.

(6) "Deputy local registrar" means a person appointed by and working under the supervision of a local registrar in the discharge of the vital statistics functions specified to be performed in and for the county or other district of the local registrar.

(7) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy, such death being indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles.

(8) "Filing" means the presentation and acceptance of a vital record or report provided in this article for registration by the section of vital statistics of the state Bureau for Public Health.

(9) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(10) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant, and which does not result in live birth. The definition excludes management of prolonged retention of products of conception following fetal death.

(11) "Institution" means any establishment, public or private, which provides inpatient or outpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care to two or more unrelated individuals or to which persons are committed by law.

(12) "Licensed health professional" means an individual who is licensed by the State of West

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Virginia to practice a health profession.

(13) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(14) "Local registrar" means the person appointed by the state Registrar of Vital Statistics for a county or other district to perform the vital statistics functions specified to be performed in and for the county or other district.

(15) "Physician" means a person licensed to practice medicine or osteopathy pursuant to the laws of this state.

(16) "Registration" means the process by which vital records are completed, filed and incorporated into the official records of the section of vital statistics.

(17) "Research" means a systematic investigation designed primarily to develop or contribute to general knowledge.

(18) "System of vital statistics" means the registration, collection, preservation, amendment, certification of vital records, the collection of other reports required by this article, and related activities, including, but not limited to, the tabulation, analysis, publication and dissemination of vital statistics.

(19) "Vital records" means certificates or reports and data related to birth, death, and marriage, including divorce, dissolution of marriage, and annulment.

(20) "Vital reports" means reports and related data designated in this article and in rules.

(21) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, marriage, divorce, annulment and related records and reports.

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§16-5-2. Establishment of section of vital statistics in Bureau for Public Health.

(a) There is established in the state Bureau for Public Health a section of vital statistics which shall install, maintain and operate the only system of vital statistics throughout this state.

(b) The section of vital statistics shall be provided with sufficient staff, suitable offices with a fireproof vault and a nonliquid fire suppression system for the protection of paper records and magnetic media and other resources for the proper administration of the system of vital statistics and for the preservation and security of its official records.

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§16-5-3. Department of Health to propose legislative rules.

(a) The Department of Health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide for:

(1) Adequate standards of security and confidentiality of vital records;

(2) Requirements for individuals in the state who may be designated by the state Registrar to aid in the administration of the system of vital statistics;

(3) Criteria for registration districts throughout the state;

(4) Requirements for the completion, filing, correction and amendment of certificates, reports and other documents required by this article;

(5) Requirements for registering a delayed certificate of birth, including provisions for dismissing an application which is not actively pursued;

(6) Inspection of evidence of adoption, annulment of adoption, legitimation or court determination of paternity;

(7) Completion of the medical certification of the cause of death;

(8) Record keeping requirements for receipt, removal, delivery, burial, cremation or other final disposition of a dead body or a fetus;

(9) Authorization for the disinterment and reinterment of a dead body or a fetus;

(10) Extension of prescribed time periods for the filing of certificates of death, reports of fetal death and authorizations for disposition and disinterment and reinterment, including authorization for disposition prior to filing a certificate of death;

(11) Disposal of original records from which permanent reproductions have been made;

(12) Disclosure of confidential information for administrative, statistical or research purposes;

(13) Release of records of birth, death, fetal death, marriage, divorce or annulment, subject to the provisions of section twenty-seven of this article;

(14) Authorization for preparing, issuing or obtaining copies of vital records;

(15) Requirements for matching and marking certificates of birth and death for the purpose of preventing the fraudulent use of birth certificates;

(16) Utilization of social security numbers to meet requirements of federal law;

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(17) Requirements for a statewide system of registering, indexing and preserving records of marriage, divorce and annulment of marriage; and

(18) Any other purpose to carry out the requirements of this article.

(b) Any rules in effect as of the passage of this article will remain in effect until amended, modified, repealed or replaced, except that references to provisions of former enactments of this article are interpreted to mean provisions of this article.

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§16-5-4. Appointment of State Registrar of Vital Statistics.

The Commissioner of the Bureau for Public Health shall appoint the state Registrar of Vital Statistics, hereinafter referred to as the "State Registrar."

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§16-5-5. Powers and duties of State Registrar.

(a) The State Registrar shall:

(1) Administer and enforce the provisions of this article and the rules promulgated pursuant to this article, and issue instructions for the efficient administration of the system of vital statistics;

(2) Direct and supervise the system of vital statistics and the operation of the section of vital statistics, and act as custodian of its records;

(3) Direct, supervise, and control all activities pertaining to the operation of the system of vital statistics;

(4) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

(5) Prescribe, furnish, and distribute forms required by this article and the rules promulgated pursuant to this article, and prescribe means for transmission of data to accomplish the purpose of complete and accurate reporting and registration;

(6) Prepare and publish annual reports of vital statistics of this state, and other reports required by the commissioner;

(7) Provide to local health agencies copies of or data derived from certificates and reports required under this article as the state Registrar may determine are necessary for local health planning and program activities: Provided, That the copies and data remain the property of the section of vital statistics, and the uses that may be made of them are governed by the state Registrar; and

(8) Offer voluntary paternity establishment services in accordance with federal regulations set forth in 45 CFR 303.5(g).

(b) The State Registrar may:

(1) Designate individuals in the state as meet the requirements provided by rule to aid in the efficient administration of the system of vital statistics;

(2) Delegate functions and duties to employees of the section of vital statistics and to individuals designated under subdivision (1) of this subsection;

(3) Investigate, personally or by a duly delegated representative, cases of irregularity or violation of law arising under the provisions of this article;

(4) Report cases of violation of any of the provisions of this article to the prosecuting attorney of the county, with a statement of the facts and circumstances. The prosecuting

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attorney may prosecute the person or corporation responsible for the alleged violation of law. Upon request of the state Registrar, the Attorney General shall assist in the enforcement of the provisions of this article.

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§16-5-6. Registration districts.

Subject to the rules promulgated by the department, the commissioner may establish, eliminate, consolidate, subdivide or alter the boundaries of, registration districts throughout the state.

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§16-5-7. Appointment and removal of local registrars and deputy local registrars.

(a) The State Registrar may appoint one or more local registrars and deputy local registrars, and may assign them to one or more registration districts.

(b) The State Registrar may remove a local registrar or a deputy local registrar for reasonable cause.

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§16-5-8. Duties of local registrars and deputy local registrars.

(a) A local registrar shall:

(1) Administer and enforce the provisions of this article and the rules promulgated pursuant to this article, according to the instructions of the state Registrar;

(2) Require that certificates be completed and filed in accordance with provisions of this article and the rules promulgated pursuant to this article;

(3) Transmit, by mail or an approved electronic process, all certificates, reports or other returns to the state Registrar on a schedule to be determined by the state Registrar;

(4) Maintain records, make reports and perform other duties as required by the state Registrar.

(b) A deputy local registrar shall perform the duties of the local registrar in the absence or incapacity of the local registrar, and shall perform other duties as prescribed by the state Registrar.

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§16-5-9. Content of certificates and reports.

(a) To promote uniformity in the system of vital statistics, in addition to the items required by state law, the forms of certificates, reports and other returns required by this article or by rules promulgated pursuant to this article shall include the items recommended by the federal agency responsible for national vital statistics, subject to the commissioner's approval or modification.

(b) The State Registrar shall approve the form and format for each certificate, report, and other documents required by this article.

(c) All vital records shall contain the date of filing.

(d) Information required in certificates, forms, records, or reports authorized by this article may be filed, verified, registered and stored by photographic, electronic, or other means as prescribed by the state Registrar.

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§16-5-9a. Legal residences to be included on certificates of death.

In order to assist clerks of county commission fulfill their responsibilities under chapter forty-four of this code, the State Registrar shall require persons completing certificates of death, to include any known legal residences of the decedent, if different than the place of death.

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§16-5-10. Birth registration acknowledgment and rescission of paternity.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the state Registrar, within seven days after the birth and shall be registered if it has been completed and filed in accordance with this section.

(b) When a birth occurs in transit to or in an institution, the person in charge of the institution or his or her authorized designee shall obtain all data required by the certificate, prepare the certificate, certify either by signature or by an approved electronic process that the child was born alive at the place and time and on the date stated, and file the certificate as directed in subsection (a) of this section. The physician or other person in attendance, or any person providing prenatal care shall provide the medical information required by the certificate within seventy-two hours after the birth.

(c) When a birth occurs other than in transit to or in an institution, the certificate shall be prepared and filed by one of the following persons in the indicated order of priority in accordance with legislative rule:

(1) The physician in attendance at or immediately after the birth;

(2) Any other person in attendance at or immediately after the birth;

(3) The father or the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(4) Any other person qualified by the department by rule to establish the facts of birth.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state, and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth insofar as can be determined.

(e) For the purposes of birth registration, the woman who gives birth to the child is presumed to be the mother, unless otherwise specifically provided by state law or determined by a court of competent jurisdiction prior to the filing of the certificate of birth.

(f) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the most recent husband shall be entered on the certificate as the father of the child, unless:

(1) Paternity has been determined otherwise by a court of competent jurisdiction pursuant to §48-24-1 *et seq*. of this code or other applicable law, in which case the name of the father as

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determined by the court shall be entered on the certificate; or

(2) Genetic testing shows that the alleged father is the biological father of the child pursuant to the following guidelines:

(A) The tests show that the inherited characteristics including, but not limited to, blood types, have been determined by appropriate testing procedures at a hospital, independent medical institution or independent medical laboratory duly licensed under the laws of this state, or any other state, and an expert qualified as an examiner of genetic markers has analyzed, interpreted and reported on the results; and

(B) The blood or tissue or other genetic test results show a statistical probability of paternity of more than 98 percent; or

(3) The mother, her husband, and an alleged father acknowledge that the husband is not the biological father and that the alleged father is the true biological father: *Provided*, That the conditions set forth in paragraphs (A) through (D) are met:

(A) The mother executes an affidavit of nonpaternity attesting that her husband is not the biological father of the child and that another man is the biological father; and

(B) The man named as the alleged biological father executes an affidavit of paternity attesting that he is the biological father; and

(C) The husband executes an affidavit of nonpaternity attesting that he is not the biological father; and

(D) Affidavits executed pursuant to the provisions of this subdivision may be joint or individual or a combination thereof, and each signature shall be individually notarized. If one of the parties is an unemancipated minor, his or her parent or legal guardian must also sign the respective affidavit.

(4) If the affidavits are executed as specified in subdivision (3) of this section, or genetic tests as specified in subdivision (2) of this section verify that the alleged father is the biological father, the alleged father shall be shown as the father on the certificate of live birth. Paternity established pursuant to subdivision (2) or (3) of this section establishes the father for all legal purposes including, but not limited to, the establishment and enforcement of child support orders, and may be rescinded only by court order upon a showing of fraud, duress or material mistake of fact.

(5) Paternity may be established pursuant to subdivision (2) or (3) of this section only when the husband's name does not appear as the father of a child on a registered and filed certificate of live birth and the affidavits or genetic tests are completed and submitted to the section of vital statistics within one year of the date of birth of the child.

(g) If the mother was not married at the time of either conception or birth, or between

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conception and birth, the name of the father may not be entered on the certificate of birth without an affidavit of paternity signed by the mother and the person to be named as the father. The affidavit may be joint or individual and each signature shall be individually notarized.

(h) A notarized affidavit of paternity, signed by the mother and the man to be named as the father, acknowledging that the man is the father of the child, legally establishes the man as the father of the child for all purposes, and child support may be established pursuant to chapter 48 of this code.

(1) The notarized affidavit of paternity shall include filing instructions, the parties' social security number and addresses and a statement that parties were given notice of the alternatives to, the legal consequences of, and the rights and obligations of acknowledging paternity, including, but not limited to, the duty to support a child. If either of the parents is a minor, the statement shall include an explanation of any rights that may be afforded due to the minority status.

(2) The failure or refusal to include all information required by subdivision (1) of this subsection does not affect the validity of the affidavit of paternity, in the absence of a finding by a court of competent jurisdiction that it was obtained by fraud, duress or material mistake of fact, as provided in subdivision (4) of this subsection.

(3) The original notarized affidavit of paternity shall be filed with the state Registrar. If a certificate of birth for the child has been previously issued which is incorrect or incomplete, a new certificate of birth will be created and placed on file. The new certificate of birth will not be marked "Amended".

(4) Upon receipt of any notarized affidavit of paternity executed pursuant to this section, the state Registrar shall forward a copy to the Bureau for Child Support Enforcement.

(5) An acknowledgment executed under the provisions of this subsection may be rescinded as follows:

(A) The parent wishing to rescind the acknowledgment shall file with the clerk of the circuit court of the county in which the child resides a verified complaint stating the name of the child, the name of the other parent, the date of the birth of the child, the date of the signing of the affidavit of paternity, and a statement that he or she wishes to rescind the acknowledgment of the paternity. If the complaint is filed more than 60 days from the date of execution of the affidavit of paternity or the date of an administrative or judicial proceeding relating to the child in which the signatory of the affidavit of paternity is a party, the complaint shall include specific allegations concerning the elements of fraud, duress or material mistake of fact.

(B) The complaint shall be served upon the other parent as provided in Rule 4 of the West Virginia Rules of Civil Procedure.

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(C) The family court judge shall hold a hearing within 60 days of the service of process upon the other parent.

(D) If the complaint was filed within 60 days of the date the affidavit of paternity was executed, the court shall order the acknowledgment to be rescinded without any requirement of a showing of fraud, duress, or material mistake of fact.

(E) If the complaint was filed more than 60 days from the date of execution of the affidavit of paternity or the date of an administrative or judicial proceeding relating to the child in which the signatory of the affidavit of paternity is a party, the court may set aside the acknowledgment only upon a finding, by clear and convincing evidence, that the affidavit of paternity was executed under circumstances of fraud, duress or material mistake of fact.

(F) The circuit clerk shall forward a copy of any order entered pursuant to this proceeding to the state Registrar by certified mail. The order shall state all changes to be made, if any, to the certificate of birth. The certificate of birth may not be marked "Amended."

(i) In any case in which paternity of a child is determined by a court of competent jurisdiction pursuant to §48-24-1 *et seq*. of this code or other applicable law, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(j) If the father is not named on the certificate of birth, no other information about the father may be entered on the certificate.

(k) In order to permit the filing of the certificate of birth within the seven days prescribed in subsection (a) of this section, one of the parents of the child must verify the accuracy of the personal data to be entered on the certificate. Certificates of birth filed after seven days, but within one year from the date of birth, will be registered on the standard form of the certificate of birth and will not be marked "Delayed." The State Registrar may require additional evidence in support of the facts of birth for certificates filed after seven days from the date of birth.

(l) In addition to the personal data furnished for the certificate of birth issued for a live birth in accordance with the provisions of this section, a person whose name is to appear on the certificate of birth as a parent shall contemporaneously furnish to the person preparing and filing the certificate of birth the social security number or numbers issued to the parent. A record of the social security number or numbers shall be filed with the local registrar of the district in which the birth occurs within seven days after the birth, and the local registrar shall transmit the number or numbers to the state Registrar in the same manner as other personal data is transmitted to the state Registrar.

(m) The local registrar shall transmit by mail or an approved electronic process each month to the county clerk of each county the copies of the certificates of all births occurring in the county or the data extracted therefrom, from which copies the clerk shall compile records of

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the births and shall create an index to the birth records that shall be a matter of public record. The State Registrar shall prescribe the form of the index of births.

(n) The birth certificate shall list the child's sex at birth as male or female and may not use the term "non-binary."

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§16-5-11. Registration of infants and minors born with specified birth defects.

(a) When a live birth occurs, the physician or midwife in attendance at, or present immediately after, the birth shall examine the infant for any of the following birth defects:

(1) Anencephaly;

(2) Spina bifida;

(3) Hydrocephaly;

(4) Cleft palate;

(5) Total cleft lip;

(6) Esophageal atresia and atenosis;

(7) Rectal and anal atresia;

(8) Hypospadias;

(9) Reduction and deformity - upper limb;

(10) Reduction and deformity - lower limb;

(11) Congenital dislocation of the hip;

(12) Down's syndrome;

(13) Visual impairments;

(14) Sickle cell anemia; and

(15) Others as may be requested by the commissioner.

(b) If any such impairment is found in an infant, or in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife or other health care provider licensed under chapter thirty of the code shall within thirty days of the examination make a report of the diagnosis to the state Registrar or other agency within the bureau as designated by the commissioner on forms provided by the bureau. The report shall include the name of the child, the name or names of the parents or parent or guardian, a description of the impairment and other related information as specified by the commissioner.

(c) The information received by the state Registrar or other agency within the bureau as designated by the commissioner pursuant to this section pertaining to the identity of the persons named shall be kept confidential: Provided, That if consent of a parent, or of the

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guardian is obtained, the state Registrar or other agency within the bureau as designated by the commissioner may provide the information to federal, state, and local government agencies so that the information can be utilized to provide assistance or services for the benefit of the child.

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§16-5-12. Notation on birth records of missing children.

(a) Upon receiving a report of the disappearance of any child born in this state, the state Registrar shall indicate in a clear and conspicuous manner in the child's birth record or by an electronic process that the child has been reported as missing, including the title and location of the law-enforcement agency providing the report.

(b) Upon receiving a request for any birth records containing a report of the disappearance of any child, the state Registrar shall immediately notify the local law-enforcement agency which provided the missing child report. The State Registrar shall transmit any relevant information concerning the applicant's identity, address and other pertinent data immediately to the relevant local law-enforcement agency.

(c) The State Registrar shall retain the original written request, or the details in an electronic format, until notified of the missing child's recovery or the child attains the age of eighteen.

(d) Upon notification that any missing child has been recovered, the state Registrar shall remove the report of the disappearance from the child's birth record.

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§16-5-12a.

Repealed.

Acts, 2006 Reg. Sess., Ch. 249.

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§16-5-12b.

Repealed.

Acts, 2006 Reg. Sess., Ch. 249.

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§16-5-13. Registration of infants of unknown parentage.

(a) Whoever assumes the custody of a live-born infant of unknown parentage shall report, to the state Registrar, on a form and in a manner prescribed by the state Registrar, the following information:

(1) The date and city or county, or both, of finding;

(2) Sex and approximate birth date of child;

(3) Name and address of the person with whom or the institution with which the child has been placed for care;

(4) Name given to the child by the custodian of the child; and

(5) Other data required by the state Registrar.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this section shall constitute the certificate of birth for the child.

(d) If the child is identified and a certificate of birth is found or obtained, the report registered under this section shall be placed in a special file and may not be subject to inspection except upon order of a court of competent jurisdiction or as provided by rule.

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§16-5-14. Delayed registration of births.

(a) The State Registrar may register a delayed certificate of birth in accordance with a legislative rule to be promulgated by the department, which rule will provide for qualifications for applicants and the evidentiary documentation required. The rule may provide for the dismissal of an application which is not actively pursued.

(b) When a certificate of birth of a person born in West Virginia has not been filed within one year, a delayed certificate of birth may be filed in accordance with the legislative rule.

(c) A certificate of birth registered one year or more after the date of birth shall be registered on a delayed certificate of birth form. The delayed certificate of birth will show on its face the date of registration and will contain a summary statement of the evidentiary documentation submitted in support of the delayed registration.

(d) A delayed certificate of birth may not be registered for a deceased person.

(e) If the evidentiary documentation required is not filed with the application for a delayed registration of birth or the state Registrar has cause to question the validity or adequacy of the evidentiary documentation, the state Registrar may not register the delayed certificate of birth and shall advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

(f) In addition to the required documentation and other data furnished in an application for a delayed registration of birth in accordance with the provisions of this section, a person whose name is to appear on the certificate of birth as a parent shall contemporaneously furnish with the application the social security number or numbers issued to the parent.

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§16-5-15. Judicial procedure to establish facts of birth.

(a) If the state Registrar refuses to file a certificate of birth under the provisions of section ten or section fourteen of this article, a petition signed and sworn to by the petitioner may be filed in the circuit court of the county in which the petitioner resides or in the circuit court of Kanawha County for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(b) The petition may be made on a form prescribed and furnished or approved by the state Registrar, and must allege:

(1) That the person for whom a certificate of birth is sought was born in this state;

(2) That no certificate of birth can be found in the section of vital statistics or the office of any local custodian of certificates of birth;

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with section ten or section fourteen of this article and of any rules promulgated pursuant to this article;

(4) That the state Registrar has refused to register a certificate of birth; and

(5) Such other allegations as may be required.

(c) The petition must be accompanied by a copy of the statement of the state Registrar made in accordance with section ten or section fourteen of this article and by copies of all evidentiary documentation which was submitted to the state Registrar in support of the registration.

(d) The court shall fix a time and place for hearing the petition and shall give the state Registrar not less than twenty days' notice of the hearing. The State Registrar, or his or her authorized representative, may appear and testify in the proceeding.

(e) If the court finds from the evidence presented that the person for whom a certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and other findings as may be required and shall issue an order, on a form prescribed and furnished or approved by the state Registrar, to establish a record of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

(f) The clerk of the court shall forward each order establishing a record of birth to the state Registrar not later than the tenth day of the calendar month following the month in which it was entered. The State Registrar shall register the order, which shall constitute the court order certificate of birth.

(g) Any order is final unless reversed, vacated or modified on appeal, and any appeal must

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be sought in the manner and within the time provided by law for appeals in other civil cases.

(h) In addition to the evidence presented to establish a court order certificate of birth in accordance with the provisions of this section, a person whose name is to appear on the court order certificate of birth as a parent shall furnish to the clerk of the circuit court the social security number or numbers issued to the parent. A record of the social security number or numbers shall be forwarded to the state Registrar along with the order establishing a court order certificate of birth.

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§16-5-16. Certificate of adoption.

(a) When a court of competent jurisdiction has entered an order of adoption in this state, it shall require the preparation of a certificate of adoption on a form prescribed and furnished by the state Registrar. The certificate of adoption shall be certified by the clerk of the court and shall provide:

(1) Facts necessary to locate and identify the certificate of birth of the person adopted or, in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the court as to the date and place of birth;

(2) Information necessary to establish a new certificate of birth of the person adopted; and

(3) Information sufficient to identify the order of adoption.

(b) Each petitioner shall furnish the information necessary to prepare the certificate of adoption. The court may require any social service or welfare agency or any person having knowledge of the facts to provide the additional information as may be necessary to complete the certificate of adoption.

(c) Whenever an order of adoption is amended, vacated or annulled, the clerk of the court shall prepare a report, which shall include the facts necessary to identify the original certificate of adoption and the facts in the new order necessary to amend the birth record.

(d) Not later than the tenth day of each calendar month, the clerk of the court shall forward to the state Registrar certificates of adoption and reports of annulments or amendments entered in the preceding month, together with the related reports as the state Registrar shall require.

(e) When the state Registrar receives a certificate of adoption, report of annulment of adoption, or amendment of an order of adoption for a person born in a state other than West Virginia, he or she shall forward the certificate or report to the state Registrar in the state of birth.

(f) When the state Registrar receives a certificate of adoption, report of annulment of adoption, or amendment of an order of adoption for a person born in a foreign country, and the person was not a citizen of the United States at the time of birth, the state Registrar shall prepare a "Certificate of Foreign Birth" as provided by subsection (h), section eighteen of this article. If the person was born in Canada, the state Registrar shall send a copy of the certificate of adoption, report of annulment of adoption, or amendment of an order of adoption to the registration authority in Canada.

(g) When the state Registrar receives a certificate of adoption, report of annulment of adoption, or amendment of order of adoption for a person born in a foreign country who was a citizen of the United States at the time of birth, the state Registrar may not prepare a "Certificate of Foreign Birth" but shall notify the adoptive parents or the registrant of the

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procedures for obtaining a revised certificate of birth through the United States Department of State.

(h) In addition to the information furnished in accordance with subsection (b) of this section, each person whose name is to appear on the certificate of adoption as a parent, whether as an adoptive parent or as a natural parent who joins in the adoption without relinquishing parental rights, shall furnish to the clerk of the circuit court the social security number or numbers issued to the parent. A record of the social security number or numbers shall be forwarded to the state Registrar along with the certificate of adoption, as provided in subsection (d) of this section.

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§16-5-17. Court reports of determination of paternity.

(a) When a court of competent jurisdiction has entered an order of paternity, the petitioner shall provide the information necessary for the clerk of the court to complete and certify a certificate of paternity on a form prescribed and furnished by the state Registrar. The certificate of paternity shall provide:

(1) Facts necessary to locate and identify the certificate of birth of the person whose paternity is determined;

(2) Information necessary to establish a new certificate of birth of the person whose paternity is determined; and

(3) Information sufficient to identify the order of paternity.

(b) Not later than the tenth day of each calendar month, the clerk of the court shall forward to the state Registrar certificates of paternity entered in the preceding month, together with related reports as the state Registrar shall require.

(c) In addition to providing the information necessary to establish a new certificate of birth of the person whose paternity has been determined, a person whose name is to appear on the certificate of paternity as a parent shall furnish to the clerk of the circuit court the social security number or numbers issued to the parent. A record of the social security number or numbers shall be forwarded to the state Registrar along with the certificate of paternity, as provided in subsection (b) of this section.

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§16-5-18. Certificates of birth following adoption, legitimation, paternity acknowledgment and court determination of paternity.

(a) The State Registrar shall establish a new certificate of birth for a person born in West Virginia when he or she receives the following:

(1) A certificate of adoption as provided in section sixteen of this article or a certificate of adoption prepared and filed in accordance with the laws of another state, or a certified copy of the order of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(2) A request that a new certificate be established as prescribed by legislative rule, based upon evidence that:

(A) The person for whom the certificate is sought has been legitimated;

(B) A court of competent jurisdiction has determined the paternity of the person; or

(C) Both parents have acknowledged the paternity of the person.

(b) A new certificate of birth shall show the actual city, county and date of birth, if known, and shall be substituted for the original certificate of birth on file. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or affidavit of paternity may not be inspected except for the administration of the system of vital statistics or the Bureau for Child Support Enforcement, or upon order of a court of competent jurisdiction, or, in the case of an affidavit of paternity, the signatories to the affidavit or the adult subject of the affidavit, or as provided by legislative rule or as otherwise provided by state law.

(c) Upon receipt of a report of an amended order of adoption, the state Registrar shall amend the certificate of birth as provided by legislative rule.

(d) Upon receipt of a report or order of annulment of adoption, the state Registrar shall restore the original certificate of birth to its place in the files and the new certificate and evidence may not be inspected except for the administration of the system of vital statistics or Bureau for Child Support Enforcement, or upon order of a court of competent jurisdiction, or as provided by legislative rule or as otherwise provided by state law.

(e) Upon receipt of a written request and a sworn affidavit of paternity signed by both parents of a child born out of wedlock, the state Registrar shall place the name of the father on the certificate of birth and, if the child is under the age of eighteen and at the request of the parents, change the surname of the child in the manner prescribed by legislative rule.

(f) If no certificate of birth is on file for the person for whom a new certificate of birth is to be established under this section, a delayed certificate of birth must be filed with the state Registrar as provided in section fourteen or fifteen of this article before a new certificate of

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birth is established, except that when the date and place of birth and parentage have been established by a court of competent jurisdiction, a delayed certificate is not required.

(g) When a new certificate of birth is established by the state Registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this state shall be sealed from inspection or forwarded to the state Registrar, as he or she shall direct.

(h) Upon receipt of the documentation set forth in subdivision (1) of this subsection, the state Registrar shall prepare and register a certificate in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a court of competent jurisdiction in this state.

(1) The State Registrar shall establish the certificate upon receipt of:

(A) A certificate of adoption from the court ordering the adoption;

(B) Proof of the date and place of the child's birth; and

(C) A request that the certificate be prepared, from the court, the adopting parents, or the adopted person if he or she has attained the age of eighteen years.

(2) The certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual country of birth. The certificate shall include a statement that it is not evidence of United States citizenship for the person for whom it is issued.

(3) After registration of the certificate of birth in the new name of the adopted person, the state Registrar shall seal and file the certificate of adoption, which may not be inspected except for the administration of the system of vital statistics, or upon order of a court of competent jurisdiction, or as provided by legislative rule or as otherwise provided by state law.

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§16-5-18a.

Repealed.

Acts, 2006 Reg. Sess., Ch. 249.

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§16-5-18b.

Repealed.

Acts, 2006 Reg. Sess., Ch. 249.

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§16-5-19. Death registration.(a) A certificate of death for each death which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the State Registrar, within five days after death, and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown, but the dead body is found in this state, the place where the body was found shall be shown as the place of death.

(2) If the date of death is unknown, it shall be approximated. If the date cannot be approximated, the date found shall be shown as the date of death.

(3) If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death.

(4) If death occurs in a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined.

(5) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) The funeral director or other person who assumes custody of the dead body shall:

(1) Obtain the personal data from the next of kin or the best qualified person or source available including the deceased person's social security number or numbers, which shall be placed in the records relating to the death and recorded on the certificate of death;

(2) Within forty-eight hours after death, provide the certificate of death containing sufficient information to identify the decedent to the physician nurse responsible for completing the medical certification as provided in subsection (c) of this section; and

(3) Upon receipt of the medical certification, file the certificate of death: Provided, That for implementation of electronic filing of death certificates, the person who certifies to cause of death will be responsible for filing the electronic certification of cause of death as directed by the State Registrar and in accordance with legislative rule.

(c) The medical certification shall be completed and signed within twenty-four hours after receipt of the certificate of death by the physician, physician assistant or advanced practice registered nurse in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code.

(1) In the absence of the physician, physician assistant or advanced practice registered

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nurse or with his or her approval, the certificate may be completed by his or her associate physician, any physician who has been placed in a position of responsibility for any medical coverage of the decedent, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided inquiry is not required pursuant to chapter sixty-one, article twelve of this code.

(2) The person completing the cause of death shall attest to its accuracy either by signature or by an approved electronic process.

(d) When inquiry is required pursuant to article twelve, chapter sixty-one or other applicable provisions of this code, the state Medical Examiner or designee or county medical examiner or county coroner in the jurisdiction where the death occurred or where the body was found shall determine the cause of death and shall complete the medical certification within forty-eight hours after taking charge of the case.

(1) If the cause of death cannot be determined within forty-eight hours after taking charge of the case, the medical examiner shall complete the medical certification with a "Pending" cause of death to be amended upon completion of medical investigation.

(2) After investigation of a report of death for which inquiry is required, if the state Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the state Medical Examiner or designee or county medical examiner or county coroner may direct the decedent's family physician or the physician who pronounces death to complete the certification of death: Provided, That the physician is not civilly liable for inaccuracy or other incorrect statement of death unless the physician willfully and knowingly provides information he or she knows to be false.

(e) When death occurs in an institution and the person responsible for the completion of the medical certification is not available to pronounce death, another physician may pronounce death. If there is no physician available to pronounce death, then a designated licensed health professional who views the body may pronounce death, attest to the pronouncement by signature or an approved electronic process and, with the permission of the person responsible for the medical certification, release the body to the funeral director or other person for final disposition: Provided, That if the death occurs in an institution during court-ordered hospitalization, in a correctional facility or under custody of law-enforcement authorities, the death shall be reported directly to a medical examiner or coroner for investigation, pronouncement and certification.

(f) If the cause of death cannot be determined within the time prescribed, the medical certification shall be completed as provided by legislative rule. The attending physician or medical examiner, upon request, shall give the funeral director or other person assuming custody of the body notice of the reason for the delay, and final disposition of the body may not be made until authorized by the attending physician, medical examiner or other persons authorized by this article to certify the cause of death.

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(g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or investigation provides additional information that would change the information on the certificate of death from that originally reported, the certifier or any State Medical Examiner who provides such inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file a supplemental report of cause of death or other information with the section of vital statistics to amend the record, but only for purposes of accuracy.

(h) When death is presumed to have occurred within this state but the body cannot be located, a certificate of death may be prepared by the state Registrar only upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the certificate of death. The certificate of death will be marked "Presumptive" and will show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the order.

(i) The local registrar shall transmit each month to the county clerk of his or her county a copy of the certificates of all deaths occurring in the county, and if any person dies in a county other than the county within the state in which the person last resided prior to death, then the state Registrar shall furnish a copy of the death certificate to the clerk of the county commission of the county where the person last resided, from which copies the clerk shall compile a register of deaths, in a form prescribed by the state Registrar. The register shall be a public record.

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§16-5-20. Delayed registration of death.

(a) When a death occurring in this state has not been registered within the time period described by section nineteen of this article, a certificate of death may be filed subject to evidentiary documentation and other requirements as prescribed by legislative rule.

(b) If the required evidentiary documentation is not filed with the application for a delayed registration of death or the state Registrar has cause to question the validity or adequacy of the evidentiary documentation, the state Registrar may not register the delayed certificate of death and shall advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

(c) A certificate of death registered one year or more after the date of death shall be marked "Delayed" and shall show on its face the date of the delayed registration.

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§16-5-21. Reports of fetal death.

(a) Each fetal death of three hundred fifty grams or more, and if weight is unknown, of twenty completed weeks of gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, which occurs in this state, shall be reported within five days after delivery to the section of vital statistics or as otherwise directed by the state Registrar.

(1) When a fetal death occurs, the person in charge of the institution or his or her designated representative shall prepare and file the report. In obtaining the information required by the report, all institutions shall use information gathering procedures, including worksheets, provided or approved by the state Registrar.

(2) When a fetal death occurs, the physician in attendance at or immediately after delivery shall prepare and file the report.

(3) When inquiry is required pursuant to article twelve, chapter sixty-one, or other applicable provisions of this code, the state Medical Examiner or designee or county medical examiner or county coroner shall investigate the cause of fetal death and shall prepare and file the report within five days. If after investigation, the state Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the person declining jurisdiction may direct the local health officer to investigate the cause of fetal death and prepare and file the report.

(4) When a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state, the place where the fetus was first removed from the conveyance will be considered the place of fetal death.

(b) When a fetus is found in this state and the place of death is unknown, the fetal death shall be recorded in this state, and the place where the fetus was found will be considered the place of fetal death.

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§16-5-21a. Noah's Law; certificate of birth for a stillbirth; and contents of certificate.

(a) This section of the code shall be known as "Noah's Law".

(b) For the purposes of this section, the term "stillbirth" or "stillborn" means an unintended intrauterine fetal death occurring in this state.

(c) Following a report of fetal death as required by section twenty-one of this article, either the mother or father of a stillborn child may request that a certificate of birth resulting in stillbirth be issued by the State Registrar. Only the mother of the child may request a certificate if:

(1) The child has not been legitimized;

(2) A court has not determined the paternity of the child;

(3) If no father has been identified; or

(4) If the child was conceived as a result of a sexual assault as defined in article eight-b, chapter sixty-one of this code.

(d) The State Registrar may charge a fee for the issuance of the certificate. The fee shall be the same as the fee for a death certificate issued by the State Registrar.

(e) The certificate shall include, but is not limited to:

(1) The name of the stillborn child;

(2) The date of delivery;

(3) The county of delivery;

(4) The mother's name and birthplace;

(5) The father's name and birthplace; and

(6) The statement: "This certificate is not proof of live birth."

(f) The certificate does not affect the registration, filing or record requirements of this article, nor does the issuance of the certificate impose upon a coroner or medical examiner any additional duties to conduct an investigation.

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§16-5-22. Reports of abortions.

(a) Each abortion, as defined in §16-2R-2 of this code, which occurs in this state, shall be reported to the section of vital registration no later than the 10th day of the month following the month the procedure was performed by the person in charge of the hospital in which the abortion was performed. The State Registrar shall prepare a form or provide a suitable electronic process for the transmission of the reports from the institution or physician to the section of vital registration. Information to be collected shall include:

(1) The gestational age of the fetus;

(2) The state and county of residence of the patient;

(3) The age of the patient;

(4) The type of medical or surgical procedure performed;

(5) The method of payment for the procedure;

(6) Whether birth defects were known, and if so, what birth defects;

(7) The date the abortion was performed;

(8) The exception contained in §16-2R-3 of this code under which the abortion was performed; and

(9) Related information as required by the commissioner, other applicable sections of this code, or by the legislative rule: *Provided*, That:

(A) No personal identifiers, including, but not limited to, name, street address, city, zip code, or social security number, will be collected; and

(B) Individual records may only be released for research purposes as approved by the state Registrar and may be released in a format designed to further protect the confidentiality of the woman as the state Registrar deems necessary.

(b) An analysis of the compiled information relating to induced terminations of pregnancy shall be included in the annual report of vital statistics.

(c) An electronic report of the compiled information under this section shall be provided to the licensing boards of the licensed medical professionals, as defined in §16-2R-2 of this code, and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

(d) The provisions of this section do not apply to an termination of an ectopic pregnancy.

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§16-5-23. Authorization for disposition and disinterment and reinterment permits.

(a) The funeral director or other person who assumes custody of a dead body shall obtain authorization prior to final disposition of the body.

(1) The physician or State Medical Examiner, county medical examiner or designee shall authorize final disposition of the body on a form or in a format prescribed by the state Registrar.

(2) If the body is to be cremated, authorization for cremation must be obtained from the state Medical Examiner, county medical examiner or county coroner on a form or in a format prescribed by the state Medical Examiner's office.

(b) Prior to final disposition of a fetus, irrespective of the duration of pregnancy, the funeral director, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from a parent authorization for final disposition on a form or in a format prescribed by the state Registrar.

(c) With the consent of the physician or State Medical Examiner or county medical examiner or designee who is to certify the cause of death, a dead body may be moved from the place of death for the purpose of being prepared for final disposition.

(d) An authorization for disposition issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(e) No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made may inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by authorization for final disposition.

(f) Each person in charge of any place for final disposition shall return all authorizations to the funeral director or person acting as such within ten days after the date of disposition and shall indicate the date of disposition on the authorization.

(g) Each person in charge of any place for final disposition shall keep a record of all bodies interred or otherwise disposed of on the premises under his or her charge. The record must contain the name of the deceased person, place of death, date of burial or disposal, name and address of the funeral director or person acting for him or her, and other information as may be required by legislative rule. The record shall at all times be open to official inspection.

(h) When there is no person in charge of the place for final disposition, the funeral director or person acting as such shall complete the authorization and write across the face of the authorization "No person in charge."

(i) Not later than the tenth day of each month, the funeral director or person acting as such

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shall transmit to the state Registrar, in the state where the death occurred, all authorizations received during the month.

(j) Authorization for disinterment and reinterment is required prior to disinterment of a dead body or fetus, except as authorized by legislative rule or otherwise provided by law or by order of a court of competent jurisdiction. The authorization must be issued by the local registrar to a licensed funeral director, embalmer, or other persons acting on their behalf, upon proper application.

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§16-5-24. Extension of time for filing certificates, reports and authorizations.

(a) The department shall, by legislative rule, provide for the extension of the time periods prescribed in sections nineteen, twenty-one, twenty-two and twenty-three of this article for the filing of certificates of death, reports of fetal death, reports of induced termination of pregnancy, medical certifications of the cause of death, and for obtaining authorization for disposition, in cases in which compliance with the applicable prescribed period would result in undue hardship.

(b) The legislative rules shall provide for the authorization for disposition under section twenty-three of this article prior to the filing of a certificate of death in circumstances in which compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship.

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§16-5-25. Correction and amendment of vital records.

(a) In order to protect the integrity and accuracy of vital records, a certificate or report registered under this article may be amended only in accordance with the provisions of this article or legislative rule.

(b) A certificate or report that is amended under this section must indicate that it has been amended, except as otherwise provided in this section or by legislative rule: Provided, That the department shall prescribe by legislative rule the conditions under which additions or corrections of minor deficiencies, including, but not limited to, the omission or misspelling of a first name, may be made to certificates or records within one year of the event without the certificate indicating that it has been amended.

(c) The State Registrar shall maintain a record which identifies the evidence upon which the amendment was based, the date of amendment, and the identity of the person making the amendment.

(d) Upon receipt of a certified copy of a court order of a court of competent jurisdiction changing the name of a person born in this state, and upon request of the person whose name is to be changed or his or her parent, guardian or legal representative, the state Registrar shall amend the certificate of birth to reflect the new name.

(e) If the required evidentiary documentation is not filed with the application for amending a vital record or the state Registrar has cause to question the validity or adequacy of the evidentiary documentation, the state Registrar may not amend the vital record and shall advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

(f) When the state Registrar amends a certificate or report, he or she shall report the amendment to any other custodian of the vital record.

(g) When an amendment is made to a certificate of marriage or record of divorce or annulment, the local official issuing the marriage license or the court ordering the divorce or annulment shall forward copies of the amendment to the state Registrar.

(h) In addition to providing the information necessary to amend a certificate or record, a person whose name is to appear on the amended certificate as a parent shall furnish the social security number or numbers, issued to the parent, which must be forwarded to the state Registrar along with the information required for the amended certificate.

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§16-5-26. Reproduction and preservation of records.

To preserve vital records and other original documents, the state Registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports and files in the section of vital statistics. When verified and approved by the state Registrar, the reproductions shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by legislative rule or other provisions of state law.

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§16-5-27. Disclosure of information from vital records or vital reports.

In accordance with section twenty-six of this article and the legislative rules promulgated thereunder:

(a) The department shall, by legislative rule, provide for the disclosure of confidential information contained in vital records and reports for statistical research purposes. The legislative rule must require the submission of written requests for information and the execution of research agreements between the researcher and the state Registrar or local custodian of vital records and reports, which prohibit the release by the researcher of any information that may identify any person except as provided in the agreement.

(b) To protect the integrity and to ensure the proper use of vital records or reports, and to ensure the efficient and proper operation of the system of vital statistics, it shall be unlawful for any person to permit inspection of, or to disclose, confidential information contained in vital records or reports, or to copy or issue a copy of all or part of any vital record or report unless authorized by this article, by legislative rule or by order of a court of competent jurisdiction: Provided, That nothing in this article prohibits the release of information or data that would not identify any person named in a vital record or report.

(c) Appeals from decisions of the custodians of permanent local records refusing to disclose confidential information, or to permit inspection of or copying of confidential information under the authority of this section and legislative rules shall be made to the state Registrar, whose decisions shall be binding upon the local custodians of permanent local records.

(d) When one hundred years have elapsed after the date of birth, or fifty years have elapsed after the date of death, fetal death, marriage, or divorce or annulment, the records of these events in the custody of the state Registrar and local custodians shall, become available to the public without restriction unless otherwise prohibited or restricted by law, except for the release of social security numbers recorded on certificates or reports of birth, marriage, fetal death, or divorce, in accordance with legislative rule: Provided, That confidential information contained in the "Information for Medical and Health Use Only" section of the certificate of birth or report of fetal death shall never become available to the public.

(e) The federal agency responsible for national vital statistics may be furnished copies of records, reports, or data from the system of vital statistics as it may require for national statistics. The department shall enter into an agreement with the federal agency indicating the statistical or research purposes for which records, reports, or data may be used, and setting forth the support to be provided by the federal agency for the collection, processing and transmission of the records, reports or data. Upon written request, the state Registrar may approve, in writing, additional statistical or research uses of the records, reports or data supplied under the agreement.

(f) The State Registrar may furnish copies of records or data from the system of vital statistics to federal, state and local governmental agencies, provided that the copies or data

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are used solely in the conduct of their official duties.

(g) The State Registrar may, by agreement, transmit copies of records and other reports required by this article to offices of vital statistics outside this state when the records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used and must provide instructions for the proper retention and disposition of the copies. Copies received by the section of vital statistics from offices of vital statistics in other states must be handled in the same manner as prescribed in this section.

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§16-5-28. Copies from the system of vital statistics.

In accordance with §16-5-27 of this code and the legislative rules promulgated thereunder:

(a) The State Registrar and other custodians of vital records authorized to issue certified copies shall upon receipt of an application, issue a certified copy of a vital record in his or her custody to the registrant, his or her parents, spouse, adult children, grandchildren or great-grandchildren, legal guardian, or their respective authorized representative. Additionally, the State Registrar and other custodians of vital records, upon receipt of an application, shall issue a certified copy of a vital record in his or her custody to a child placing agency completing adoption on behalf of the department. Others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of his or her personal or property right. The department may promulgate rules to further define others who may obtain copies of vital records filed under this article.

(b) All forms and procedures used in the issuance of certified copies of vital records in the state shall be approved by the State Registrar. All certified copies of certificates of birth issued shall have security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection in compliance with regulations issued by the federal government.

(c) Each copy or abstract issued shall show the date of registration, and copies or abstracts issued from records marked "Amended" shall be similarly marked and, when possible, show the effective date of the amendment. Copies issued from records marked "Delayed" shall be similarly marked and shall include the date of registration and a description of the evidence used to establish the delayed certificate. Any copy issued of a "Certificate of Foreign Birth" shall indicate the foreign birth and show the actual place of birth and the statement that the certificate is not proof of United States citizenship for the person for whom it is issued.

(d) A certified copy of a vital record issued in accordance with this section shall be considered for all purposes the same as the original, and shall be prima facie evidence of the facts stated in the record: *Provided*, That the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, or a certificate of foreign birth, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(e) Nothing in this section shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the certificate of birth or the "Information for Statistical Purposes Only" section of the certificate of marriage or certificate of divorce or annulment unless specifically authorized by the State Registrar for statistical or research purposes. This information is not subject to subpoena or court order and is not admissible before any court, tribunal, or judicial body. Information collected for administrative use may not be included on certified copies of records, and may be disclosed only for administrative, statistical, or research purposes authorized by state or federal law

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and legislative rule.

(f) When the State Registrar receives information that a certificate may have been registered through fraud or misrepresentation, he or she may withhold issuance of any copy of that certificate.

(1) The State Registrar shall inform the registrant or the registrant's authorized representative of the right to request a hearing by the commissioner.

(2) The secretary of the department may authorize the State Registrar or another person to hold an investigation or hearing to determine if fraud or misrepresentation has occurred.

(3) If upon conclusion of a hearing or investigation no fraud or misrepresentation is found, copies may be issued.

(4) If fraud or misrepresentation is found by a preponderance of the evidence, the State Registrar shall remove the certificate from the file. The certificate and evidence will be retained but will not be subject to inspection or copying except upon order of a court of competent jurisdiction or by the State Registrar for purposes of prosecution or administration of the system of vital statistics.

(g) No person may prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record, except as authorized by this article, or by legislative rule.

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§16-5-29. Fees for copies and searches.

(a) The commissioner shall prescribe the fees to be charged and collected by the State Registrar for certified copies of certificates or records, not to exceed $10 per copy, or for a search of the files or records when no copy is made: *Provided*, That the fee may be increased to a maximum of $12 per copy, at the discretion of the commissioner, after July 1, 2008.

(b) The commissioner may prescribe additional fees for the priority production or express delivery of certified copies.

(c) The State Registrar may furnish certified copies of birth and death records to state agencies and to organized charities free of charge when the certificates are needed in presenting claims to the federal government or to a state for public assistance. Further, the State Registrar shall furnish, free of charge, a certified copy of an individual's West Virginia birth certificate upon application and a written affirmation of that individual's homelessness: *Provided*, That the individual is under the age of 18 years. The State Registrar will keep a record of all certificates furnished pursuant to this subsection. For purposes of this subsection, “homelessness” means lacking a fixed, regular, and adequate nighttime residence, or having a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, nor ordinarily used as, a regular accommodation for human beings.

(d) Subject to the provisions set forth in §12-2-2 of this code, there is hereby continued in the state Treasury a separate account which shall be designated the Vital Statistics Account.

(e) After July 1, 2006, and subject to the provisions set forth in §12-2-2 of this code, there is established in the state Treasury a separate account which shall be designated the Vital Statistics Improvement Fund. Funds deposited in this account will be used to modernize and automate the system of vital statistics in this state and may not be used to supplant existing funding necessary for the daily operation of the system of vital statistics. Funds in this account will be retained in a non-lapsing fund for the improvement of the system of vital statistics.

(f) The commissioner shall deposit $1 received under the provisions of this section for each certified copy to the Vital Statistics Improvement Fund and shall deposit $4 received under the provisions of this section for each certified copy to the General Revenue Fund account. The commissioner shall deposit the remainder of all fees received under the provisions of

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this section for certified copies and for priority production and express delivery to the vital statistics account.

(g) The commissioner is authorized to expend the moneys deposited in the Vital Statistics Account in accordance with the laws of this state as necessary to implement this article. The Legislature shall appropriate all moneys in the Vital Statistics Account as part of the annual state budget.

(h) The commissioner shall make an annual report to the Legislature on the Vital Statistics Account, including the previous fiscal year's expenditures and projected expenditures for the next fiscal year.

WV Legislature

§16-5-30. Persons required to keep records.

(a) Every person in charge of an institution as defined in this article shall keep a record of personal data concerning each person admitted or confined to the institution. The record must include information required for the certificates of birth and death and the reports of fetal death required by this article. The record shall be made at the time of admission from information provided by the person being admitted or confined, but when it cannot be so obtained, the information will be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information will be included in the record.

(b) When a dead body or fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released, and date of removal from the institution. If final disposition is made by the institution, the date, place and manner of disposition will be recorded.

(c) A funeral director, embalmer, sexton or other person who removes from the place of death or transports or makes final disposition of a dead body or fetus, in addition to filing any certificate or other report required by this article or legislative rule, shall keep a record which identifies the body, and information as required by legislative rule pertaining to the receipt, removal, delivery, and burial or cremation of the body.

(d) Records maintained under this section must be retained for at least three years and must be made available for inspection by the state Registrar or his or her representative upon request.

WV Legislature

§16-5-31. Duty to furnish information relative to vital events.

(a) Any person or institution required under this article to collect and maintain information regarding any birth, death, fetal death, marriage, or divorce or annulment, shall furnish the information to the state Registrar upon request.

(b) Any person or institution that in good faith provides information required by this article or legislative rules shall not be subject to criminal prosecution or any action for damages.

(c) Not later than the tenth day of the month following the month of occurrence, the administrator of each institution shall send to the section of vital statistics a list showing all births, deaths and fetal deaths occurring in that institution during the preceding month, on forms provided or approved by the state Registrar.

(d) Not later than the tenth day of the month following the month of occurrence, each funeral director shall send to the section of vital statistics a list showing all dead bodies embalmed or otherwise prepared for final disposition, or dead bodies finally disposed of, by the funeral director during the preceding month, on forms provided or approved by the state Registrar.

WV Legislature

§16-5-32. Matching of birth and death certificates.

To protect the integrity of vital records and to prevent the fraudulent use of certificates of birth of deceased persons, the state Registrar is authorized to match certificates of birth and death, in accordance with legislative rule which requires that the fact of death and the matching identities be determined with reasonable certainty and to post the fact of death to the appropriate birth certificate. Copies issued from certificates of birth marked deceased shall be similarly marked.

WV Legislature

§16-5-33. Limitation on use of social security numbers.

(a) A social security number obtained in the filing of a certificate of live birth, an application for a delayed registration of birth, a judicial order establishing a record of birth, an order of adoption, an affidavit of paternity or a judicial order establishing paternity, or any other record may not be transmitted to the clerk of the county commission.

(b) No social security number may appear upon the public record of the index of births or upon any certificate of birth registration issued by the state Registrar, local registrar, county clerk or any other issuing authority.

(c) The State Registrar may make social security numbers available to the Bureau for Child Support Enforcement upon its request, to be used solely in connection with the enforcement of child support orders.

(d) The section of vital statistics may utilize social security numbers in accordance with legislative rules of the department, as allowed by or to meet the requirements of federal regulations.

WV Legislature

§16-5-34. Uniform system of registration of marriage, divorce and annulment of marriage.

(a) To encourage an efficient and uniform system of registration of marriage, divorce and annulment of marriage may be established in this state, the state Registrar shall provide for the registration of each marriage, divorce and annulment of marriage which occurs in this state.

(b) The commissioner may, subject to legislative rule:

(1) Install a statewide system of registering, indexing, and preserving records of marriage, divorce and annulment of marriage;

(2) Give instructions, and prescribe and furnish forms, for collecting, transcribing, compiling and preserving records and statistics of marriage, divorce and annulment of marriage; and

(3) Make and publish a statistical report of marriage, divorce and annulment of marriage in this state.

WV Legislature

§16-5-35. Registration of marriages.

(a) On or before the tenth day of each month, the county clerk of each county shall forward to the state Registrar a report of all marriage records made by him or her during the previous month, on a form prescribed or furnished by the state Registrar.

(b) The State Registrar shall preserve and index all records received under the provisions of this section and shall upon request issue a certified copy of the records, which shall be prima facie evidence of the facts stated in the certified copies in all courts in this state.

WV Legislature

§16-5-36. Registration of divorces and annulments of marriages.

(a) On and after July 1, 2006, a record of each divorce or annulment ordered by any court of competent jurisdiction in this state shall be filed by the clerk of the court with the section of vital statistics, and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the petitioner or his or her legal representative in the form prescribed or furnished by the state Registrar and shall be presented to the clerk of the court with the petition.

(b) The clerk of the court shall complete and certify each record. On or before the tenth day of each calendar month, the clerk shall forward to the section of vital statistics the records of each divorce or annulment order entered during the preceding calendar month.

(c) Failure of the clerk of the court to comply with the provisions of this section does not affect the validity of any order of divorce or annulment of marriage.

(d) The State Registrar shall preserve and index all records received under provisions of this section and shall upon request issue certified copies of the records, which shall be prima facie evidence of the facts stated in the certified copies in all courts in this state.

WV Legislature

§16-5-37. Applicability to previously received certificates and reports.

The provisions of this article apply to all certificates of birth, death, marriage and divorce or annulment, reports of fetal death and induced terminations of pregnancy previously received by the section of vital statistics and in the custody of the state Registrar or any other custodian of vital records.

WV Legislature

§16-5-38. Penalties.

(a) For acts which occur on or after the effective date of this section, a person shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned in a state correctional facility not more than five years, or both fined and imprisoned, if he or she:

(1) Willfully and knowingly makes any false statement in a report, record or certificate required to be filed under this article, or in an application for an amendment thereof, or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record or certificate, or amendment thereof, or in an application for a certified copy of a vital record required by this article; or

(2) Without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends or mutilates any record, report, or certificate required by this article, or any certified copy of the record, report or certificate; or

(3) Willfully and knowingly obtains, possesses, uses, sells, furnishes or attempts to obtain, possess, use, sell or furnish to another, for any purpose of deception, any certificate, record, report, or certified copy required by this article, which was made, counterfeited, altered, amended, or mutilated, or that is false, in whole or in part, or that relates to the birth of another person, whether living or deceased; or

(4) Is an employee of the section of vital statistics or of any office of any custodian of vital records, and willfully and knowingly furnishes or processes a certificate of birth, or certified copy of a certificate of birth, with the knowledge or intention that it be used for the purposes of deception; or

(5) Without lawful authority, possesses any certificate, record or report required by this article or a copy or a certified copy of the certificate, record or report knowing it to have been stolen or otherwise unlawfully obtained.

(b) A person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in jail not more than one year, or both fined and confined, if he or she:

(1) Willfully and knowingly transports or accepts for transportation, interment or other disposition a dead body without an accompanying permit as provided in this article;

(2) Willfully and knowingly refuses to provide information required by this article or legislative rules adopted pursuant to this article; or

(3) Willfully and knowingly violates any of the provisions of this article or refuses to perform any of the duties imposed upon him or her by this article.

WV Legislature