
WEST VIRGINIA CODE CHAPTER 61
ARTICLE 12

WV Legislature

§61-12-1.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

WV Legislature

§61-12-2.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

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§61-12-3. Office of Chief Medical Examiner established; appointment, duties, etc., of Chief Medical Examiner; assistants and employees; promulgation of rules.

(a) The Office of Chief Medical Examiner is continued within the department. The office shall be directed by a Chief Medical Examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory technicians, and other staff members as needed to fulfill the responsibilities set forth in this article.

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

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

(d) The Chief Medical Examiner shall be responsible to the secretary in all matters except that the Chief Medical Examiner shall operate with independent authority for the purposes of:

- (1) The performance of death investigations conducted pursuant to §61-12-8 of this article;
- (2) The establishment of cause and manner of death; and
- (3) The formulation of conclusions, opinions, or testimony in judicial proceedings.

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

(f) The Chief Medical Examiner shall cooperate with procurement organizations as defined in §16-19-3 of this code to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. To facilitate the efficient and economical recovery of anatomical gifts, the Chief Medical Examiner, shall authorize the presence of persons approved or assigned by the procurement organization to perform duties at the office of the Chief Medical Examiner necessary to the timely recovery of anatomical gifts including access to records or information necessary to identify a potential donor, evaluate donor eligibility, and obtain authorization for recovery, but not including records or information that directly conflict with investigations conducted pursuant to §61-12-8 of this code. The procurement organization is liable for all costs related to the placement of persons authorized by this subsection and the Chief Medical Examiner's liability for payment of services is zero.

(g) The secretary shall propose legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code concerning:

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

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

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

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

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

(h) The Chief Medical Examiner may prescribe specific forms for record books and official papers which are necessary to the functions and responsibilities of the office of the Chief Medical Examiner.

(i) The Chief Medical Examiner, or his or her designee, may order and conduct an autopsy in accordance with the provisions of this code. The Chief Medical Examiner, or his or her designee, shall perform an autopsy upon the lawful request of any person authorized by the provisions of this code to request the performance of the autopsy.

(j) The salary of the Chief Medical Examiner and the salaries of all assistants and employees of the office of the Chief Medical Examiner shall be fixed by the Legislature from funds appropriated for that purpose. The Chief Medical Examiner shall take an oath as required by law. The Chief Medical Examiner and his or her assistants may lecture or instruct in the field of legal medicine and other related subjects to the West Virginia University or Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia State Police, other law-enforcement agencies and other interested groups.

§61-12-4. Central office and laboratory.

The office of the chief medical examiner shall establish and maintain a central office and a laboratory having adequate professional and technical personnel and medical and scientific facilities for the performance of the duties imposed by this article. In order to secure facilities sufficient to meet the duties imposed by the provisions of this code, the chief medical examiner is authorized to enter into agreements, subject to the approval of the director of the division of health, with other state agencies or departments, with public or private colleges or universities, schools of medicine or hospitals for the use of laboratories, personnel, equipment and other fixtures, facilities or services.

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

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

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

The chief medical examiner may employ and pay qualified pathologists and toxicologists to make autopsies and such pathological and chemical studies and investigations as he or she considers necessary. Qualified pathologists shall hold board certification or board eligibility in forensic pathology, or equivalent, or have completed an American Board of Pathology fellowship in forensic pathology.

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§61-12-7. Medical examiners.

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

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

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

§61-12-8. Certain deaths to be reported to medical examiners; failure to report deaths; investigations and reports; authority of medical examiners to administer oaths, etc., fees.

(a) When any person dies in this state from violence, or by apparent suicide, or suddenly when in apparent good health, or when unattended by a physician, or when an inmate of a public institution, or from some disease which might constitute a threat to public health, or in any suspicious, unusual or unnatural manner, the chief medical examiner, or his or her designee or the county medical examiner, or the coroner of the county in which death occurs shall be immediately notified by the physician in attendance, or if no physician is in attendance, by any law-enforcement officer having knowledge of the death, or by the funeral director, or by any other person present or having knowledge. Any physician or law-enforcement officer, funeral director or embalmer who willfully fails to comply with this notification requirement is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$500. Upon notice of a death under this section, the chief medical examiner, or his or her designee or the county medical examiner, shall take charge of the body and any objects or articles which, in his or her opinion, may be useful in establishing the cause or manner of death, and deliver them to the law-enforcement agency having jurisdiction in the case. In the course of an investigation of a death required to be reported by this section, the chief medical examiner shall, upon written request to any law-enforcement agency or any state or regional correctional facility, be provided with all records of the investigation of decedent's death and all records of decedent's incarceration. Where a decedent received therapeutic, corrective or medical treatment prior to death, the chief medical examiner may request in writing that any person or other entity which rendered the treatment promptly provide all records within its possession or control pertaining to the decedent and the treatment rendered: Provided, That nothing contained in this section may be construed as precluding the chief medical examiner from directly inspecting or obtaining investigation records, incarceration records or medical records related to the case. Where records of a decedent become part of the chief medical examiner's file, they are not subject to subpoena or a request for production directed to the chief medical examiner.

(b) A county medical examiner, or his or her assistant, shall make inquiries regarding the cause and manner of death, reduce his or her findings to writing, and promptly make a full report thereof to the chief medical examiner on forms prescribed by the chief medical examiner, retaining one copy of the report for his or her own office records and providing one copy to the prosecuting attorney of the county in which the death occurred.

(c) A county medical examiner or assistant medical examiner shall receive a fee for each investigation performed under the provisions of this article, including the making of required reports, which fee shall be determined by the chief medical examiner and paid out of funds appropriated therefor.

§61-12-9. Permits required for cremation; fee.

(a) It is the duty of any person cremating, or causing, or requesting the cremation of, the body of any dead person who died in this state, to secure a permit for the cremation from the Chief Medical Examiner, the county medical examiner, or county coroner of the county wherein the death occurred. Any person, excluding those persons set forth in subsection (d) of this section, who willfully fails to secure a permit for a cremation, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200. A permit for cremation shall be acted upon by the Chief Medical Examiner, the county medical examiner, or the county coroner after review of the circumstances surrounding the death, as indicated by the death certificate. The person requesting issuance of a permit for cremation shall pay a reasonable fee, as determined by the Chief Medical Examiner, to the county medical examiner or coroner, or to the Office of the Chief Medical Examiner, as appropriate, for issuance of the permit.

(b) Any person operating a crematory who does not perform a cremation pursuant to the terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within 21 days of receipt of the deceased person's remains by the crematory, whichever time is less, is guilty of a misdemeanor.

(c) Any person operating a crematory who fails to deliver the cremated remains of a deceased person, pursuant to the terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within 35 days of receipt of the deceased person's remains by the crematory, whichever time is less, is guilty of a misdemeanor.

(d) Any representative of an institution who is charged with arranging the final disposition of a decedent who donated his or her body to science is exempt from the provisions of this section: *Provided*, That all representatives charged with arranging the final disposition of a decedent who donated his or her body to science shall make the Office of Chief Medical Examiner aware of any foul play regarding the decedent prior to any final disposition.

(e) Any person convicted of a violation of the provisions of subsection (b) or (c) of this section shall be fined not less than \$1,000 nor more than \$5,000 or confined in jail for a period not to exceed six months, or both.

(f) In any criminal proceeding alleging that a person violated the time requirements of this section, it is a defense to the charge that a delay beyond the time periods provided for in this section were caused by circumstances wholly outside the control of the defendant.

(g) For purposes of this section, "cremation contract" means an agreement to perform a cremation, as a "cremation" is defined in §30-6-3 of this code. A cremation contract is an agreement between a crematory and any authorized person or entity, including, but not limited to, the following persons in order of precedence:

- (1) The deceased, who has expressed his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive, or preneed funeral contract, as defined in §47-14-2 of this code;
- (2) The surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent's death;
- (3) An individual previously designated by the deceased as the person with the right to control disposition of the deceased's remains in a writing signed and notarized by the deceased: *Provided*, That no person may be designated to serve in such capacity for more than one nonrelative at any one time;
- (4) The deceased person's next of kin;
- (5) A public official charged with arranging the final disposition of an indigent deceased person or an unclaimed corpse;
- (6) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science;
- (7) A public officer required by statute to arrange the final disposition of a deceased person;
- (8) Another funeral establishment; or
- (9) An executor, administrator, or other personal representative of the deceased.

§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.

(a) If in the opinion of the chief medical examiner, or of the county medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy shall be conducted by the chief medical examiner or his or her designee, by a member of his or her staff, or by a competent pathologist designated and employed by the chief medical examiner under the provisions of this article. When requested by either the prosecuting attorney or judge of the circuit court or other court of record having criminal jurisdiction in that county, the autopsy shall be conducted within 72 hours of the time the decedent was received by the Office of the Chief Medical Examiner. For this purpose, the chief medical examiner may employ any county medical examiner who is a pathologist who holds board certification or board eligibility in forensic pathology or has completed an American Board of Pathology fellowship in forensic pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be in addition to the fee provided for investigations pursuant to §61-12-8 of this code. A full record and report of the findings developed by the autopsy shall be filed with the Office of the Chief Medical Examiner by the person making the autopsy.

(b) Within 24 hours of completion, a copy of the report of autopsy, including any death investigation reports made by the county level medical examiner submitted to the Office of the Chief Medical Examiner, shall be furnished to the prosecuting attorney of the county, or of the county where any injury contributing or causing the death was sustained.

(c) The Office of the Chief Medical Examiner shall keep full, complete and properly indexed records of all deaths investigated, containing all relevant information concerning the death and the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement officer may secure copies of these records or information necessary for the performance of his or her official duties.

(d) Copies of these records or information shall be furnished, upon request, to any court of law, or to the parties therein to whom the cause of death is a material issue, except where the court determines that interests in a civil matter conflict with the interests in a criminal proceeding, in which case the interests in the criminal proceeding shall take precedence. The Office of Chief Medical Examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred in the production of records under this subsection, and subsection (c), (f), and (g) of this section.

(e) The chief medical examiner may release investigation records and autopsy reports to the multidisciplinary team authorized by §49-4-402 of this code and as authorized in subsection (j) of this section. The chief medical examiner may release records and information to other state agencies when considered to be in the public interest.

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

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

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

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

(j) If the chief medical examiner determines that a drug overdose is the cause of death of a person, the chief medical examiner shall provide notice of the death to the West Virginia Controlled Substances Monitoring Program Database Review Committee established pursuant to §60A-9-5(b) and shall include in the notice any information relating to the cause of the fatal overdose.

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

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

§61-12-11. Exhumation; when ordered.

If, in any case of sudden, violent or suspicious death, the body is buried without any investigation by the chief medical examiner, or by a county medical examiner or coroner, it is the duty of the chief medical examiner or the county medical examiner or coroner, upon being advised of this fact, to notify the prosecuting attorney of the county, who shall communicate the same to the judge of the circuit court or other court of record having jurisdiction in the county and the judge may order that the body be exhumed and an autopsy performed thereon, as provided in §61-12-10 of this code and the pertinent facts disclosed by the autopsy shall be communicated to the prosecuting attorney of the county.

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

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

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

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

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

The county commission of every county may appoint a coroner for the county, who shall hold the office at the pleasure of the commission and shall take the oath of office prescribed for other county officers. The county coroners shall be certified in medicolegal investigations, be continually available to perform the duties required under this article and shall be paid such fees or amounts for the services as may be fixed by the chief medical examiner.

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

- (a) The Office of the Chief Medical Examiner shall cremate unclaimed and unidentified human remains from its facilities.
- (b) The Office of the Chief Medical Examiner, with the assistance of the city of Charleston, shall locate an appropriate cemetery.
- (c) Unidentified remains shall be cremated after 30 days and after efforts to identify the person and his or her next of kin have been exhausted as determined by the Office of Chief Medical Examiner. Any data or biological sample helpful toward possible future identification of the unidentified remains including but not limited to teeth, bone, tissue, or blood samples shall be preserved within the database. In the event the death is determined to be the result of a crime, physical evidence shall be collected from the decedent's body prior to any disposition.
- (d) Identified but unclaimed remains shall be cremated after 30 days and after efforts to contact the decedent's next of kin have been exhausted, as determined by the Office of the Chief Medical Examiner, and placed in a cemetery in a manner that the remains may be easily retrieved by the Office of the Chief Medical Examiner in the event the decedent's next of kin wishes to claim the remains.
- (e) The chief medical examiner, or his or her designee, may enter onto the premises of the cemetery and cause to be removed from the cemetery any decedent who has been identified and claimed by his or her next of kin upon the next of kin providing proper documentation.
- (f) A person may not file any cause of action against the Office of the Medical Examiner or against any medical examiner acting in his or her capacity as a medical examiner for any liability or damages relating to cremation or other disposition of a decedent's remains, consistent 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.

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

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