

SB 390

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WEST VIRGINIA SENATE
SALT SPRING 2001

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

Committee Substitute for
SENATE BILL NO. 540
(Originating in the Committee
~~on~~ on Finance)



PASSED March 11, 2000
In Effect ninety days from Passage

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CLERK OF SENATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 540

(Originating in the Committee on Finance)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, four, five, six, seven, eight, nine, ten, ten-a, eleven, twelve, thirteen and fourteen, article twelve, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to postmortem examinations and the office of the chief medical examiner; stating more explicit qualifications for position of chief medical examiner; specifying term of appointment for same; providing independent authority of same for certain purposes; requiring continuous availability for consultation; directing the secretary of the department of health and human resources to propose certain legislative rules; authorizing certain

agreements for use of fixtures, facilities and services; specifying additional qualifications and providing for compensation of pathologists performing services for the chief medical examiner; providing for appointment, compensation and removal of county medical examiners and assistant county medical examiners; powers and duties of same; providing for disclosure of certain medical records in death investigations; providing for certain fines and fees; providing for release of certain records under certain circumstances; requiring certain notice in cases of sudden infant death syndrome; and making technical changes and corrections.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, seven, eight, nine, ten, ten-a, eleven, twelve, thirteen and fourteen, article twelve, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-3. Office of chief medical examiner established; appointment, duties, etc., of chief medical examiner; assistants and employees; promulgation of rules.

- 1 (a) The office of chief medical examiner is hereby
2 established within the division of health in the department
3 of health and human resources. The office shall be directed
4 by a chief medical examiner, who may employ patholo-
5 gists, toxicologists, other forensic specialists, laboratory
6 technicians, and other staff members, as needed to fulfill
7 the responsibilities set forth in this article.

- 8 (b) All persons employed by the chief medical examiner
9 shall be responsible to him or her and may be discharged
10 for any reasonable cause. The chief medical examiner
11 shall specify the qualifications required for each position

12 in the office of chief medical examiner, and each position
13 shall be subject to rules prescribed by the secretary of the
14 department of health and human resources.

15 (c) The chief medical examiner shall be a physician
16 licensed to practice medicine or osteopathic medicine in
17 the state of West Virginia, who is a diplomat of the
18 American board of pathology in forensic pathology, and
19 who has experience in forensic medicine. The chief medi-
20 cal examiner shall be appointed by the director of the
21 division of health to serve a five-year term unless sooner
22 removed, but only for cause, by the governor or by the
23 director.

24 (d) The chief medical examiner shall be responsible to
25 the director of the division of health in all matters except
26 that the chief medical examiner shall operate with inde-
27 pendent authority for the purposes of:

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

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

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

33 (e) The chief medical examiner, or his or her designee,
34 shall be available at all times for consultation as necessary
35 for carrying out the functions of the office of the chief
36 medical examiner.

37 (f) The secretary of the department of health and human
38 resources is hereby directed to propose legislative rules in
39 accordance with the provisions of article three, chapter
40 twenty-nine-a of this code concerning:

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

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

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

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

51 (g) The chief medical examiner is authorized to prescribe
52 specific forms for record books and official papers which
53 are necessary to the functions and responsibilities of the
54 office of the chief medical examiner.

55 (h) The chief medical examiner, or his or her designee, is
56 authorized to order and conduct an autopsy in accordance
57 with the provisions of this article and this code. The chief
58 medical examiner, or his or her designee, shall perform an
59 autopsy upon the lawful request of any person authorized
60 by the provisions of this code to request the performance
61 of the autopsy.

62 (i) The salary of the chief medical examiner and the
63 salaries of all assistants and employees of the office of the
64 chief medical examiner shall be fixed by the Legislature
65 from funds appropriated for that purpose. The chief
66 medical examiner shall take an oath and provide a bond as
67 required by law. Within the discretion of the director of
68 the division of health, the chief medical examiner and his
69 or her assistants shall lecture or instruct in the field of
70 legal medicine and other related subjects to the West
71 Virginia University or Marshall University school of
72 medicine, the West Virginia school of osteopathic medi-
73 cine, the West Virginia state police, other law-enforcement
74 agencies and other interested groups.

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

1 The office of the chief medical examiner shall establish
2 and maintain a central office and a laboratory having
3 adequate professional and technical personnel and medical
4 and scientific facilities for the performance of the duties
5 imposed by this article. In order to secure facilities
6 sufficient to meet the duties imposed by the provisions of
7 this code, the chief medical examiner is authorized to enter
8 into agreements, subject to the approval of the director of
9 the division of health, with other state agencies or depart-
10 ments, with public or private colleges or universities,
11 schools of medicine or hospitals for the use of laboratories,
12 personnel, equipment and other fixtures, facilities or
13 services.

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

1 The salaries of the chief medical examiner, the salaries
2 of all assistants and employees employed in the central
3 office and laboratory, the expenses of maintaining the
4 central office and laboratory and the cost of pathological,
5 bacteriological and toxicological services rendered by
6 persons other than the chief medical examiner and his
7 assistants shall be paid by the state out of funds appropri-
8 ated for that purpose.

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

1 Subject to the approval of the director of the division of
2 health, the chief medical examiner may, in order to
3 provide for the investigation of the cause of death as
4 authorized in this article, employ and pay qualified
5 pathologists and toxicologists to make autopsies and such
6 pathological and chemical studies and investigations as he
7 or she considers necessary, in the several counties or
8 regions of the state and he or she may arrange for the use
9 of existing laboratory facilities for such purposes.

10 Qualified pathologists shall hold board certification or
11 board eligibility in forensic pathology or have completed
12 an American board of pathology fellowship in forensic
13 pathology.

§61-12-7. Medical examiners.

1 (a) The chief medical examiner shall appoint for each
2 county in the state a county medical examiner to serve for
3 a term of three years under the supervision of the chief
4 medical examiner. A county medical examiner shall be
5 medically trained and licensed by the state of West
6 Virginia as a physician, registered nurse, paramedic,
7 emergency medical technician or a physician assistant, be
8 certified in the practice of medicolegal death investigation
9 and be of good moral character. County medical examin-
10 ers are authorized to establish the fact of death, and to
11 make investigations into all deaths in their respective
12 counties that come within the provisions of section eight
13 or ten of this article and shall in timely fashion record
14 findings of an investigation using forms prescribed by the
15 chief medical examiner. A county medical examiner may
16 be removed from office for cause at any time by the chief
17 medical examiner. Any vacancy in the office of county
18 medical examiner shall be filled by the chief medical
19 examiner. One person may be appointed to serve as
20 county medical examiner for more than one county, and a
21 county medical examiner need not be a resident of the
22 county which he or she serves. If the chief medical
23 examiner determines that it is necessary, he or she may
24 appoint any person medically trained and licensed by the
25 state of West Virginia as a physician, registered nurse,
26 paramedic, emergency medical technician or a physician
27 assistant and of good moral character to act as an assistant
28 county medical examiner for a term of three years. An
29 assistant shall have the same powers and duties as a
30 county medical examiner and shall perform his or her

31 duties under the supervision of the chief medical exam-
32 iner.

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

39 (c) County medical examiners and assistant county
40 medical examiners are authorized to determine the cause
41 and manner of death in any case falling within the provi-
42 sions of section eight of this article, subject to the supervi-
43 sion of the chief medical examiner, and may exercise any
44 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 re-
ports; authority of medical examiners to adminis-
ter oaths, etc., fees.**

1 (a) When any person dies in this state from violence, or
2 by apparent suicide, or suddenly when in apparent good
3 health, or when unattended by a physician, or when an
4 inmate of a public institution, or from some disease which
5 might constitute a threat to public health, or in any
6 suspicious, unusual or unnatural manner, the chief medical
7 examiner, or his or her designee or the county medical
8 examiner, or the coroner of the county in which death
9 occurs shall be immediately notified by the physician in
10 attendance, or if no physician is in attendance, by any law-
11 enforcement officer having knowledge of the death, or by
12 the funeral director, or by any other person present or
13 having knowledge. Any physician or law-enforcement
14 officer, funeral director or embalmer who willfully fails to
15 comply with this notification requirement is guilty of a
16 misdemeanor and, upon conviction, shall be fined not less

17 than one hundred dollars nor more than five hundred
18 dollars. Upon notice of a death under this section, the
19 chief medical examiner, or his or her designee or the
20 county medical examiner, shall take charge of the body
21 and any objects or articles which, in his or her opinion,
22 may be useful in establishing the cause or manner of
23 death, and deliver them to the law-enforcement agency
24 having jurisdiction in the case.

25 In the course of an investigation of a death required to
26 be reported by this section, the chief medical examiner
27 shall, upon written request to any law-enforcement agency
28 or any state or regional correctional facility, be provided
29 with all records of the investigation of decedent's death
30 and all records of decedent's incarceration. Where a
31 decedent received therapeutic, corrective or medical
32 treatment prior to death, the chief medical examiner may
33 request in writing that any person or other entity which
34 rendered the treatment promptly provide all records
35 within its possession or control pertaining to the decedent
36 and the treatment rendered: *Provided*, That nothing
37 contained in this section may be construed as precluding
38 the chief medical examiner from directly inspecting or
39 obtaining investigation records, incarceration records or
40 medical records related to the case. Where records of a
41 decedent become part of the chief medical examiner's file,
42 they are not subject to subpoena or a request for produc-
43 tion directed to the chief medical examiner.

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

52 (c) A county medical examiner or assistant medical
53 examiner shall receive a fee for each investigation per-
54 formed under the provisions of this article, including the
55 making of required reports, which fee shall be determined
56 by the chief medical examiner and paid out of funds
57 appropriated therefor.

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

1 It shall be the duty of any person cremating, or causing
2 or requesting the cremation of, the body of any dead
3 person who died in this state, to secure a permit for the
4 cremation from the chief medical examiner, the county
5 medical examiner or county coroner of the county wherein
6 the death occurred, and any person or persons who
7 willfully fail to secure the permit, upon conviction thereof,
8 shall be fined not less than two hundred dollars. A permit
9 for cremation shall be acted upon by the chief medical
10 examiner, the county medical examiner or the county
11 coroner after review of the circumstances surrounding the
12 death, as indicated by the death certificate. The person
13 requesting issuance of a permit for cremation shall pay a
14 reasonable fee, as determined by the chief medical exam-
15 iner, to the county medical examiner or coroner or to the
16 office of the chief medical examiner, as appropriate, for
17 issuance of the permit.

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

1 (a) If in the opinion of the chief medical examiner, or of
2 the county medical examiner of the county in which the
3 death in question occurred, it is advisable and in the
4 public interest that an autopsy be made, or if an autopsy
5 is requested by either the prosecuting attorney or the judge
6 of the circuit court or other court of record having crimi-

7. nal jurisdiction in that county, an autopsy shall be con-
8 ducted by the chief medical examiner or his or her
9 designee, by a member of his staff, or by a competent
10 pathologist designated and employed by the chief medical
11 examiner under the provisions of this article. For this
12 purpose, the chief medical examiner may employ any
13 county medical examiner who is a pathologist who holds
14 board certification or board eligibility in forensic pathol-
15 ogy or has completed an American Board of Pathology
16 fellowship in forensic pathology to make the autopsies,
17 and the fees to be paid for autopsies under this section
18 shall be in addition to the fee provided for investigations
19 pursuant to section eight of this article. A full record and
20 report of the findings developed by the autopsy shall be
21 filed with the office of the chief medical examiner by the
22 person making the autopsy.

23 (b) Within the discretion of the chief medical examiner,
24 or of the person making the autopsy, or if requested by the
25 prosecuting attorney of the county, or of the county where
26 any injury contributing to or causing the death was
27 sustained, a copy of the report of the autopsy shall be
28 furnished to the prosecuting attorney.

29 (c) The office of the chief medical examiner shall keep
30 full, complete and properly indexed records of all deaths
31 investigated, containing all relevant information concern-
32 ing the death and the autopsy report if such be made. Any
33 prosecuting attorney or law-enforcement officer may
34 secure copies of these records or information necessary for
35 the performance of his or her official duties.

36 (d) Copies of these records or information shall be
37 furnished, upon request, to any court of law, or to the
38 parties therein to whom the cause of death is a material
39 issue, except where the court determines that interests in
40 a civil matter conflict with the interests in a criminal

41 proceeding, in which case the interests in the criminal
42 proceeding shall take precedence. The office of chief
43 medical examiner shall be reimbursed a reasonable rate by
44 the requesting party for costs incurred in the production of
45 records under this subsection and subsection (c) of this
46 section.

47 (e) The chief medical examiner is authorized to release
48 investigation records and autopsy reports to the
49 multidisciplinary team authorized by section three, article
50 five-d, chapter forty-nine of this code. At the direction of
51 the secretary of the department of health and human
52 resources the chief medical examiner may release records
53 and information to other state agencies when considered
54 to be in the public interest.

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

60 (g) In cases of the death of any infant in the state of West
61 Virginia where sudden infant death syndrome is the
62 suspected cause of death and the chief medical examiner
63 or the medical examiner of the county in which the death
64 in question occurred considers it advisable to perform an
65 autopsy, it is the duty of the chief medical examiner or the
66 medical examiner of the county in which the death oc-
67 curred to notify the sudden infant death syndrome pro-
68 gram within the division of maternal and child health and
69 to inform the program of all information to be given to the
70 infant's parents.

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

1 Whenever an examination of a body is ordered pursuant
2 to section eight or ten of this article and the body of the
3 deceased is transported to the central laboratory or other
4 place of examination, the reasonable cost of the transpor-
5 tation shall be paid by the state out of funds appropriated
6 to or for the use of the office of the chief medical exam-
7 iner. Transportation at state expense shall be provided
8 from the place where the body is being kept at the time the
9 examination is ordered to the central laboratory or other
10 place of examination, and, upon completion of the exami-
11 nation, to the place designated by the person entitled to
12 possession of the body: *Provided*, That if the body is to be
13 returned a greater distance than it was taken for the
14 examination, the state shall only be obligated for the cost
15 of return of the body equal to or less than that incurred to
16 take the body for the examination. The payment shall be
17 of a reasonable amount set by the office of the chief
18 medical examiner, including, but not limited to, payment
19 of any part of the total cost as the office of the chief
20 medical examiner allows.

§61-12-11. Exhumation; when ordered.

1 If, in any case of sudden, violent or suspicious death, the
2 body is buried without any investigation by the chief
3 medical examiner, or by a county medical examiner or
4 coroner, it is the duty of the chief medical examiner or the
5 county medical examiner or coroner, upon being advised
6 of this fact, to notify the prosecuting attorney of the
7 county, who shall communicate the same to the judge of
8 the circuit court or other court of record having jurisdic-
9 tion in the county and the judge may order that the body
10 be exhumed and an autopsy performed thereon, as pro-
11 vided in section ten of this article and the pertinent facts
12 disclosed by the autopsy shall be communicated to the
13 prosecuting attorney of the county.

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

1 Pursuant to rules promulgated by the secretary of the
2 department of health and human resources, the facilities
3 of the office of the chief medical examiner and its labora-
4 tory, and the services of its professional staff, shall be
5 made available to the county medical examiners and
6 coroners in their investigations under the provisions of
7 section eight of this article, and to the persons conducting
8 autopsies under the provisions of section ten of this article.

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

1 Reports of investigations and autopsies, and the records
2 thereof, on file in the office of the chief medical examiner
3 or in the office of any county medical examiner, shall be
4 received as evidence in any court or other proceeding, and
5 copies of records, photographs, laboratory findings and
6 records on file in the office of the chief medical examiner
7 or in the office of any county medical examiner, when duly
8 attested by the chief medical examiner or by the county
9 medical examiner, assistant county medical examiner or
10 coroner in whose office the same are filed, shall be re-
11 ceived as evidence in any court or other proceeding for any
12 purpose for which the original could be received without
13 any proof of the official character of the person whose
14 name is signed thereto unless objected to by counsel:
15 *Provided*, That statements of witnesses or other persons
16 and conclusions upon extraneous matters are not hereby
17 made admissible.

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

1 It is the duty of the county commission of every county,
2 from time to time, to appoint a coroner for the county,
3 who shall hold the office during the pleasure of the
4 commission and shall take the oath of office prescribed for

5 other county officers. The county coroners shall be
6 certified in medicolegal investigations, be continually
7 available to perform the duties required under this article
8 and shall be paid such fees or amounts for the services as
9 may be fixed by the chief medical examiner.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within..... *approved* this the *7th*
Day of..... *April* 2000.
[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/00

Time 4:10 pm