

H.111: VITAL RECORDS BACKGROUND

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1) Terminology: what are vital events, vital event certificates, and vital records? What are the differences between these terms?

- Interested parties appear to agree that births, deaths, marriages, and civil unions¹ are “vital events.”
- The interested parties appear not to agree that divorces, annulments, and dissolutions (hereafter, collectively “divorce”) are vital events.
 - Note:* Staff take no position on this issue. However, because the bill does not include copies of a “record of divorce or annulment” within the definition of “vital event certificates,” in this overview document, staff follow the terminology used in the bill.
- The collection and official registration of information about vital events serves at least two distinct purposes:
 - (a) Health and demographic statistics are used by government agencies and researchers.
 - (b) Assists individuals in proving their identity, age, and legal status.
- For purpose (b), qualified custodians issue “certificates” for birth, death, marriage, and civil union, which the bill refers to collectively as “vital event certificates.”
- For purpose (a), the Department of Health receives a “report” with more information than is shown in the “certificate.”
- “Vital record” is an umbrella term that includes vital event certificates, but also many other documents, such as reports of vital events, applications for a marriage license, burial-transit permits, preliminary reports of death, etc.

→ See document on Committee Information Page with examples of vital event certificates and certain other vital records.

2) Why are we here?

- Based on information from a prior report (see below), Vermont, Ohio, and Kentucky are the only three states in the United States that issue certified copies of vital event certificates to any person upon request and payment of the required fee.
- In 2011, the House passed H.454 (an act relating to the administration and issuance of vital records). In 2012, H.454 passed out of Senate Government Operations, but was committed to the Senate Committee on Judiciary, and did not pass out of that committee.
 - Among other provisions, H.454 As Passed the House would have limited (primarily to family members) who can receive a certified copy of a birth or death certificate.
- The General Assembly has directed the Department of Health to prepare reports and recommendations regarding updating the State’s vital records laws. The Department’s

¹ Since the effective date of Act 3 of 2009, September 1, 2009, civil unions have not been celebrated in Vermont. See <http://legislature.vermont.gov/assets/Documents/2010/Docs/ACTS/ACT003/ACT003%20As%20Enacted.pdf>

reports have recommended that Vermont law be amended to limit access to certified copies of birth and death certificates.²

→ *See the most recent (January 2015) report on the Committee Information Page*

- In 2016, the General Assembly passed a bill which became Act 110.³ Act 110 created a Vital Records Study Committee and directed the Committee to “study Vermont’s laws governing the administration and issuance of vital records and best practices in other jurisdictions with regard to the administration and issuance of vital records, and recommend proposed legislation to reform Vermont’s vital records laws.”

→ *See copy of Act 110 on the Committee Information Page*

- The Study Committee had 5 members:
 - i. Tanya Marshall, State Archivist, Chair
 - ii. Probate Judge Jeffrey Kilgore, Clerk
 - iii. Rich McCoy, Public Health Statistics Chief, Public Health Statistics Section, Division of Health Surveillance, Department of Health
 - iv. Cassandra Barbeau, town clerk, Bennington
 - v. Stacy Jewell, town clerk, St. Johnsbury

- The Study Committee met throughout the summer and fall, and issued a report in November 2016.⁴

→ *See copy of report on the Committee Information Page*

3) What laws address or affect vital records?

- Title 18, Part 6 (Births, Marriages, and Deaths) is the primary set of laws.
- Many of these laws have been on the books for a long time. Many use inconsistent terminology, are not well-organized, and do not reflect existing practice.

Additionally:

- Title 4, § 311a (Venue) (within ch. 7, “Probate Courts” chapter)
- Title 15, chapter 5, subch. 3A (Parentage Proceedings)
- Title 15, chapter 13 (Change of Name)
- Title 15, chapter 21, subch. 3 (Address Confidentiality for Victims of Domestic Violence)
- Title 15A, chapter 3, subch. 8 (Adoption Act; Birth Certificate)
- Title 24, § 1164 (Certified copies; form) (within ch. 35, “Town Clerks” chapter)
- Title 24, § 1178 (Safes; vaults) (within ch. 35, “Town Clerks” chapter)
- Title 32, chapter 17 (Fees and Costs), subch. 9 (Vital Registration)

² The most recent report—from January 2015—is entitled “Fraud and Identity Theft Concerns with Vermont’s Certified Copies of Birth and Death Certificates,” and is available at <http://legislature.vermont.gov/assets/Legislative-Reports/Vital-records-leg-report1.14.15.pdf>

³ See <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT110/ACT110%20As%20Enacted.pdf>

⁴ See <http://legislature.vermont.gov/assets/Legislative-Reports/2016-VitalRecordsStudyCommitteeReport.pdf>

4) Vital event certificates: “creation,” “correction” (and completion), “amendment,” “delayed,” “new”

- General overview of concepts

5) Under current law, who is supposed to report and register vital event certificates and records of divorce, and handle corrections, amendments, and delayed certificates?

→ *See powerpoint slides on Committee Information Page*

6) What other entities are involved with creation and corrections to other vital records?

- Towns are responsible for the creation and storage of burial-transit permits.
- The Office of the Chief Medical Examiner is responsible for the creation and storage of cremation permits.

7) Who has authority to issue certified copies of vital event certificates and certified copies of records of divorce?

- Towns, the Commissioner of Health, and the State Archivist of the Vermont State Archives and Records Administration (VSARA) each are authorized to issue certified copies of vital event certificates and records of divorce.
- Statute requires the Commissioner of Health to “periodically transmit the original returns” of “births, marriages, civil unions, deaths, fetal deaths, and divorces” to the State Archivist. Under an agreement, the Department of Health sends these records to VSARA after five years.
- In addition, the Family Division likely has authority to issue certified copies of records of divorce.

8) Study Committee Report, McCoy/Kilgore Joint Recommendations, and Other Study Committee Discussion and Documents

- Review recommendations in Study Committee’s Nov. 2016 report.
- Review McCoy/Kilgore Joint Recommendations.
→ *See document on Committee Information Page dated 10/21/16 entitled “Feedback to Streamline Probate Court and Vital Records’ Statutes”*
- The Study Committee also discussed confusion surrounding “cremated remains,” persons authorized to solemnize marriage, and other vital records-related topics.
- The Department of Health submitted a 268-page analysis of deficiencies in existing laws that identified additional issues.

9) Bill process preview

- “Main bill” and related bills:
 - i. H.111 is the main vital records bill, and is 101 pages.
 - ii. H.107 would amend laws related to persons authorized to solemnize marriages.
 - iii. H.120 would amend laws related to changes of name.
- Ways and Means Committee review, JFO involvement.
- Judiciary Committee interest/review, Chair already notified, and Judiciary Committee members designated as point persons. Health Care Committee interest/review?
- “Prescribing” vs. “rulemaking” vs. “legislating” specifics regarding vital records creation and administration likely will emerge as a theme in discussion of the bill.

Prescribing is done by an implementing agency without specific legislative oversight or public input, but is subject to standards imposed by the General Assembly in the statutes that confer authority on the implementing agency.

Rulemaking must be done under the Administrative Procedure Act (APA), 3 V.S.A. chapter 25, which involves a series of steps that include public comment and legislative oversight committee input. Once adopted, a rule has the force and effect of law; amendments to a rule require a new APA rulemaking process. The APA rulemaking process involves:

- i. Prefiling with the Interagency Committee on Administrative Rules (ICAR)
- ii. Initial filing with Secretary of State (SOS);
- iii. Notice and opportunity for comment; public hearing
- iv. Final proposal sent to SOS and the Legislative Committee on Administrative Rules (LCAR)
- v. Review by LCAR
- vi. Final adoption

Legislating means details are fleshed out in statute, and cannot be changed without an amendment to the statute by the General Assembly.

→ *See, e.g., p.49 of H.454 As Passed House, on Committee Information Page*

10) Heart of the “main bill,”H.111

- i. Access to certified copies of birth and death certificates.
 - ii. Rationalizing and centralizing the process for creation, registration, and correction/amendment of vital event certificates.
 - iii. Creation of Statewide Registration System to be the sole, official repository of vital event certificate data.
- ***Appropriate effective dates will be critical to the bill.*** As currently drafted, the birth and death portions of the bill will take effect on July 1, 2018, and the marriage and civil union portions will take effect on July 1, 2019.