

Report Related to the

Administration and Issuance of Vital Records

(Required by Sec. 1, Act No. 110 of 2016)

Vital Records Study Committee

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Brief History of Vital Records in Vermont

18 V.S.A. § 5002 – Vital Records Generally: Returns, Tables

The commissioner of health shall prepare from the returns of births, marriages, civil unions, deaths, fetal deaths, and divorces required by law to be transmitted to the commissioner such tables and append thereto such recommendations as he or she deems proper, and during the month of July in each even year, shall cause the same to be published as directed by the board. The commissioner shall file and preserve all such returns. The commissioner shall periodically transmit the original returns or photostatic or photographic copies to the state archivist who shall keep the returns, or photostatic or photographic copies of the returns, on file for use by the public. The commissioner and the state archivist shall each, independently of the other, have power to issue certified copies of such records. (Amended 1959, No. 329 (Adj. Sess.), § 27, eff. March 1, 1961; 1969, No. 265 (Adj. Sess.), § 4; 1979, No. 56, § 7; 1999, No. 91 (Adj. Sess.), § 7; 2007, No. 96 (Adj. Sess.), § 7.)

Vermont town clerks have been mandated to record all births, deaths and marriages occurring in their respective towns since 1779. In 1856, the Vermont legislature charged the Vermont Secretary of State with establishing the first state registry of births, deaths and marriages, which was expanded in 1896 to include divorces as recorded by the county clerks. The state registry was comprised of certified lists (“returns”) submitted annually to the Secretary of State by the town and county clerks. The lists were subsequently indexed and bound.

In 1902, the Vermont State Board of Health was charged with preparing and publishing statistical tables regarding births, deaths and marriages. To facilitate the process, town clerks had to submit returns of births, deaths and marriages directly to the Board of Health on a semiannual basis. The State Board of Health, after gleaned statistical information from the returns, was then responsible for forwarding the returns to the Secretary of State for “indexing, binding and preservation.” Two years later, divorce returns were added to the State Board of Health’s mandate.

Changes to the forms, filing and transmittal requirements between town and county clerks and the State Board of Health and, later, the Department of Health were enacted between the 1920s and 1979. During this time, the Secretary of State’s Office remained the final destination for all returns related to the state registry and served as the public-facing office for citizens doing research and requesting certified copies.

In 1980, Act 142 (*An Act to Modernize and Improve Laws Relating to Vital Records*) was passed, reassigning responsibilities previously mandated to the Secretary of State to the Department of Health but making few, if any changes, in regard to town and county clerks. With the exception of later adding the Director of Public Records to 18 V.S.A. § 5002 (a position which was consolidated under the Secretary of State’s Office in 2008 and is now cited in statute as “State Archivist”), there have been minimal statutory changes in the past 36 years.

Executive Summary

The Vital Records Study Committee was established by Act No. 110 of 2016 and is comprised of: the Commissioner of Health or designee; the State Archivist or designee; a Probate judge appointed by the Chief Justice of the Vermont Supreme Court; one municipal clerk designated by the Vermont Municipal Clerks' and Treasurers' Association; and one municipal clerk designated by the Vermont League of Cities and Towns, who is the clerk of a municipality that is not a member of the Vermont Municipal Clerks' and Treasurers' Association.

The Committee's charge is studying 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 recommending proposed legislation to reform Vermont's vital records laws. At a minimum, the Committee's recommendations are required to address the following issues:

1. The persons who should be entitled to receive certified copies of birth and death certificates and the process and evidence used to verify the identity of such persons;
2. The collection and maintenance of information about persons who request certified copies of vital records;
3. The persons who should have authority to issue certified copies of vital records and the process and standards under which such persons should be granted such authority and audited for compliance;
4. Physical requirements and security standards for storage of vital record certificates and related supplies;
5. Whether the existing process for filing and registering birth certificates should be streamlined;
6. The penalties that should be associated with fraudulent activities related to vital records;
7. Which vital records or specific information contained in vital records should be designated confidential and any exceptions to confidentiality that should be created;
8. Rulemaking that the Department of Health should be required to carry out related to the administration and issuance of vital records;
9. Appropriate fees for certified and informational copies of vital records; and
10. Effective dates and any transition provisions needed to implement the Committee's recommendations.

The first meeting of the Vital Records Study Committee occurred on July 21, 2016 and the Committee selected State Archivist Tanya Marshall as its chair and Judge Jeffrey Kilgore as its clerk. The Committee subsequently met in person or by conference call on August 18, 2016; September 30, 2016; October 13, 2016; and October 25, 2016. To facilitate communication, collaboration and the sharing of information outside of meetings, the Committee also used an online collaboration tool.

The committee's six recommendations speak to its core finding that the majority of Vermont's laws governing "the administration and issuance of vital records" are woefully out-of-date and antiquated. Further, the Committee finds that reform can largely be accomplished by

streamlining the administration for the data collection and registration of vital events under one single administration with rulemaking authority.

The Vital Records Study Committee welcomes the opportunity to continue working together, along with Legislative Council, through January 15, 2017 on the following recommendations:

1. Enacting clear and accurate legislation.
2. Establishing a single point of administration to be responsible for the complete, timely, accurate, and reliable collection (and correction and amendment when necessary) of vital event information for both civil registration and vital statistics purposes.
3. Implementing a single civil registration system for all Vermont vital events.
4. Enabling the delegation of authority.
5. Limiting the issuance of legal instruments certifying the occurrence of a vital event to individuals whose identities can be verified.
6. Modest fee increase.

INTRODUCTION

Like most jurisdictions within and outside of the United States, “vital records” in Vermont means a combination of civil registration (the recording of vital events, specifically live births, deaths, marriages, and divorces) and vital statistics (the data collection and subsequent analysis of vital event information). Civil registration establishes and protects the rights of individuals for legal, social, economic, and other personal reasons whereas vital statistics provide information on the population as a whole that can be used for demographic, health, statistical, and other research.

While the Vital Records Study Committee’s charge is largely focused on the civil registration aspect of Vermont vital records, specifically the issuance of a legal instrument certifying the occurrence of a vital event, it is important to recognize the phrase “vital record” is a misnomer. Currently, “vital record” does not represent a single distinct object or succinct set of information about any specific event as implied in the charge. A vast amount of medical and personal health information, for example, is collected for vital statistics purposes and much of this information is neither required nor necessary to establish or protect the rights of individuals in terms of civil registration.

The complete, timely, accurate, and reliable collection of vital event information for both civil registration and vital statistics purposes are critical. For this reason, and to avoid confusion, the Committee has chosen to focus its recommendations around the data collection and registration of vital events rather than “vital records.”

No 1: Clear and Accurate Legislation

In Vermont, the data collection and registration of vital events have largely been a shared responsibility between local and state entities for the last 160 years. This is evident through the current patchwork of vital records statutes, many of which reflect physical characteristics of, as well as registration and statistical procedures for, “vital records” that are no longer practical and, in some cases, no longer being done in practice.

Exacerbating the issue is that under the current law the dual data collection and registration of vital events at both the local and state levels have resulted in inconsistencies in vital event information. This means that the data collected and registered at the local level for a vital event may vary from the data collected and registered at the state level for the same event, especially if there has been a correction or amendment.

The Vital Records Study Committee recommends enacting clear and accurate legislation. Statutory provisions for the complete, timely, accurate, and reliable collection of vital event information for both civil registration and vital statistics purposes, and the effective management of such information under Vermont’s Public Records Act, cannot be achieved by perpetuating antiquated laws or trying a piecemeal approach to revisions. Further, many of the current statutes are largely procedural in nature and can be addressed through internal procedures and, where appropriate, rulemaking. The Committee recommends far simpler legislation and believes this is achievable in the upcoming session through the following recommendations.

No. 2: Single Point of Administration

While the current law alludes to a single point of administration – the Vermont Department of Health – there are several instances in current statute that conflict or negate this concept. In addition to the aforementioned issues with dual data collection and registration at both the local and state levels, authority to correct or amend vital event information when, for example, there are transcription and data entry errors, largely resides with the Probate Division of the Superior Court. As a result, a simple change, such as correcting a misspelling in a last name, requires court action with a formal order to make the change in not only the state registry but also the recording as it appears at the town of residence and, if different, also the town where the event occurred.

From an administrative standpoint, the Vital Records Study Committee recommends a single point of administration to be responsible for the complete, timely, accurate, and reliable collection (and correction and amendment when necessary) of vital event information for both civil registration and vital statistics purposes and that administration be granted rulemaking authority to assure that this mandate can be met. Only a few exceptions should remain as judicial functions.

No. 3: One Single Civil Registration System

The Vital Records Study Committee further recommends that if one single point of administration is established, the administration should be responsible for implementing one single civil registration system for all Vermont vital events, which are currently defined in statute as: births, deaths, divorces, foreign born births, and marriages. The authority to adopt rules to implement and manage this system is also suggested.

While a single civil registration system does not currently exist, the Committee did not find reason why it could not. The Vermont Department of Health has already implemented systems to facilitate the data collection, statistical analysis and reporting of birth and death vital event information. Further, in regards to recent death vital events, the system also enables the issuance of a legal instrument certifying the occurrence of a death.

A single civil registration system, if required to be established from a certain date forward, e.g. all events beginning in specific year and thereon after, would be a reasonable expectation. If feasible, the system could also include prior years if information for those events could be accurately and reliably added. Once established, this would be the only system where the data collection and registration of vital events would occur. Should this system be implemented, the Committee recommends that the management and preservation of legacy or source vital event information at both the local and state levels be addressed under the State's current records management laws.

There is a minority opinion on the Committee from the Vermont Department of Health that divorces should not be included in the single point of administration. The Department's position is that divorces are not vital events created or registered at the town level or at the Department; they are legal proceedings carried out by the Superior Court. Those proceedings result in a legal outcome and are not "registered" by the Department. Divorce records are more appropriately

treated as court records and the Department recommends all responsibilities related to the certification of divorce be assigned to the Superior Court.

Additionally, the Department recommends that divorces not be categorized as “vital events.” There are many different types of court activities and responsibilities handled in a similar manner as divorces and those are not considered vital events. Therefore, it can be argued that divorces are the aberration and should be consolidated within the Superior Court’s responsibilities.

No. 4: Delegated Authority

Should the State of Vermont enact legislation establishing one single point of administration and one single civil registration system, as suggested, the Vital Records Study Committee recommends that the administration be granted the ability to delegate authority, particularly for issuing legal instruments certifying the occurrence of vital events.

Presently, an individual seeking a certification can obtain one locally through the town of residence or the town where the event occurred – or through the state. Eliminating local access would prove to be a hardship. On the other hand, duly authorized representatives at the local and state level, all using the same single civil registration system, could serve any constituent regardless of where the event occurred.

To delegate authority, the Committee recommends that the administration also be granted rulemaking authority to establish: (1) the application and review process for any local or state entity that may request delegation; and (2) the responsibilities and obligations of duly authorized representatives, including requirements related to information security, training and use of the system, etc.

No. 5: Limiting the Issuance of a Legal Instrument Certifying the Occurrence of a Vital Event.

There are 57 state and territorial jurisdictions in the United States responsible for the complete, timely, accurate and reliable collection (and correction and amendment when necessary) of vital event information, as well as the protection of rights established through the civil registration process. The Vital Records Study Committee recognizes that increased reliance nationally and internationally on vital event information for identity management requires greater limits on the issuance of legal instruments certifying the occurrence of vital events.

Currently there are no limitations on who can be issued a certification of a vital event. The Vital Records Study Committee recommends limiting certifications to individuals whose identities can be verified through a formal application; however, the Committee strongly feels that the process needs to be both reasonable and simple on the part of the constituent and those responsible for issuing the certification. For that reason, the Committee struggled with feasible options for streamlining the application, vetting and, possibly tracking, process within the current environment.

Should the State of Vermont have one single civil registration system administered by one single point of administration, the State’s ability to carry out this recommendation, and track who issued certifications, would be easier. The Committee also recognizes that tools and systems for conducting identity verification exist and are in widespread use in the 57 states and territorial jurisdictions, with decades of experience for leveraging the most efficient and accurate methods. These tools and systems can be reviewed and assessed to determine which would best match the State of Vermont’s business and technology environments to establish a credible, efficient and cost-effective application and vetting process for certifications of vital events. At this time, however, the Committee could not identify any practical means to verify an individual’s *relationship* to the individual who is the subject of a vital event. Therefore limiting certifications to only certain parties is not an option at this time.

As with the previous recommendations, the Committee suggests that the administration, should the State of Vermont enact legislation establishing one single point of administration, be granted rulemaking authority to (1) define the legal instrument through which vital event information would be certified; and (2) establish the application, vetting and tracking process for such certifications.

Regarding fraudulent activity in general, the proposed legislation in H.629 of 2016, specifically 18 V.S.A. § 5037 (Violations; Penalties) was reviewed by the Vital Records Study Committee and is recommended with minimal revisions to the language presented in the draft bill.

No. 6: Modest Fee Increase

Should the State of Vermont enact legislation establishing one single point of administration and one single civil registration system, the administration will be better able to recommend fees. Therefore, the Vital Records Study Committee does not recommend any significant fee changes at this time with the exception of a modest \$5 increase to better address current costs associated with certifications.

For comparison purposes, fees associated with issuance of certifications in neighboring states is as follows:

State	Birth	Death	Marriage	Divorce
Connecticut	\$20 (town) \$30 (state)	\$20	\$20	n/a
Maine	\$15	\$15	\$15	\$15
Massachusetts	\$20 (in person) \$32 (by mail)	\$20 (in person) \$32 (by mail)	\$20 (in person) \$32 (by mail)	n/a

New Hampshire	\$15	\$15	\$15	\$15
New York	\$30	\$30	\$30	\$30
Rhode Island	\$20	\$20	\$20	n/a
Vermont	\$10	\$10	\$10	\$10

SUMMARY

Vermont’s current patchwork of vital records statutes are unwieldy and problematic and members of the Vital Records Study Committee have first-hand knowledge and experience on how these laws currently impede the collection of complete, timely, accurate, and reliable vital event information for both civil registration and vital statistics purposes. Moreover, the Committee recognizes that the impracticalities within current law result in inconsistencies in vital event information at the local and state levels.

It is the recommendation of the Vital Records Study Committee that the State of Vermont enact clear and accurate legislation – legislation that would mandate, for the first time, a single point of administration for vital event information. Once established, the Committee recommends that the administration be responsible for the complete, timely, accurate, and reliable collection (and correction and amendment when necessary) of vital event information for both civil registration and vital statistics purposes and, in doing so, be required to implement a single civil registration system for all Vermont vital events.

The Vital Records Study Committee also recognizes that the increased reliance nationally and internationally on vital event information for identity management requires greater limits on the issuance of a legal instrument certifying the occurrence of vital events. Therefore it is recommended that the administration be required to define, through rulemaking, the legal instrument through which vital event information would be certified and also establish the means through which certification requests can be reasonably vetted and fulfilled.

Eliminating local access to vital record information would prove to be a hardship to Vermonters. Therefore, the Vital Records Study Committee recommends that the administration be given the option to delegate authority, particularly for the issuance of certifications, should it wish to do so. Duly authorized representatives at the local and state levels, all using the same single civil registration system, could serve any constituent regardless of where the event occurred.

The Vital Records Study Committee welcomes the opportunity to continue working together, along with Legislative Council, through January 15, 2017 on the above recommendations and believes that enacting clear and accurate legislation is achievable in the upcoming session.