

TO: Tanya Marshall – Vital Records Workgroup
FROM: Judge Jeffrey Kilgore; Health Statistics Chief Richard McCoy
DATE: October 21st, 2016

RE: Feedback to Streamline Probate Court and Vital Records' Statutes

We met earlier this week with Cindy Hooley (Vital Records) to discuss statutes pertaining to both the probate court and Vital Records. It was a very positive and productive meeting, and the three of us identified several areas in which the statutes should be updated to provide enhanced service to Vermonters, improve security of vital records' documents, and address some long-standing grey areas and conflicts in statute. Our recommendations are as follows:

All sections are within Title 18.

§ 5075. Issuance of new or corrected birth certificate by Probate division of the superior court-Application

- The responsibility to review and make changes to a birth certificate should be moved to the Vital Records Office to do simple corrections for the public, such as transcription and data entry errors, missing or left off information, accidental information, errors resulting from errors on court orders, etc.
- The responsibility to review applications and issue a Delayed Birth Certificate should be moved to the Vital Records Office.
- In all cases (not just this section), the statutes should be updated to include an appeals process if the Vital Records Office rejects or refuses a change, correction or to issue a new birth certificate (including Delayed Birth Certificate). The recommendation is that the process would be to appeal the matter to the probate court as a de novo case. This would allow Vital Records to send a copy of all documentation to the court and a fresh review would be conducted by the probate court.

§ 5076. Notice; hearing; decree; record

- We recommend that the entire section (5076) be removed. First, the "posting" requirement is unnecessary. And second, the appeals process and other changes proposed above would make this section obsolete.

§ 5077. New birth certificate of child of unwed parents who subsequently marry

- We recommend removing the petition requirement and move the responsibility to the Vital Records Office to handle these like a standard correction. There are only six (6) or so of these each year and it doesn't appear to be necessary to issue a "new" certificate under these circumstances.

§ 5077a. New birth certificate due to parentage form

- This statute is unnecessary and can be removed. The Vital Records Office implemented changes to all these vital records that make them gender-neutral long before this statute was written. If, for some reason, there is a record that was not changed or should there be a problem, the parties could appeal to the probate court.

§ 5112. Issuance of new birth certificate; change of sex

- We recommend that this responsibility be transferred to the Vital Records Office. This is an administrative task that doesn't require the probate court to necessarily review, given that Vital Records staff already review similar documentation and is the party that creates the new certificate. If there was a concern or problem, then the appeals process described earlier could be utilized.

§ 5144. Persons authorized to solemnize marriage

- There are several problems with this statute, which have been identified previously by both the Vital Records Office and by the probate court. Additionally, there is confusion in regards to the role of the probate court and Secretary of State's Office. We recommend that Legislative Council interview the major stakeholders and draft new language to clarify everyone's responsibilities and address the various loopholes that are discussed in the document provided to the Workgroup by the Health Statistics Chief.

§ 5150. Correction of civil marriage certificate

- We recommend that this responsibility be moved to the Vital Records Office for similar reasons as birth certificates.

§ 5151. Delayed certificates of civil marriage

- We recommend that this responsibility be moved to the Vital Records Office for similar reasons as delayed birth certificates.

§ 5168. Correction of civil union certificate

- The section regarding corrections can be removed from statute since there will not be any more civil union certificates requiring changes within six months. However, the section for amending civil union certificates should remain, but transferred to the Vital Records Office. Again, any concerns or problems would be appealed to the probate court as described earlier.
- Also, we recommend removal of the section regarding the posting of information since that is unnecessary.

§ 5169. Delayed certificates of civil union

- We recommend that this responsibility be transferred to the Vital Records Office for the same reasons as delayed birth certificates.
- Also, we recommend removal of the section regarding the posting of information since that is unnecessary.

§ 5202a. Correction of death certificate

- We recommend that this responsibility be clarified as a Vital Records Office activity. The Office is already filling this role (since 2008), but it would be helpful to make it explicit in statute.
- The section for amending death certificates should be transferred to the Vital Records Office. Again, any concerns or problems would be appealed to the probate court as described earlier.
- Also, we recommend removal of the section regarding the posting of information since that is unnecessary.

§ 5212a. Removal; objections

- We recommend that this remain as a probate court responsibility.

§ 5227. Right to disposition

- We recommend that this remain as a probate court responsibility.

§ 5228. Forfeiture

- We recommend that this remain as a probate court responsibility.

§ 5230. Rights of funeral director or crematory operator

- We recommend that this remain as a probate court responsibility.

§ 5231. Civil action

- We recommend that this remain as a probate court responsibility.

§ 5232. Procedures generally

- We recommend that this remain as a probate court responsibility.

Additionally, we ask that Legislative Council review **Title 15 § 816. Certificate of change; correction of birth and civil marriage records** and interview the stakeholders and draft a new version. We have identified that there are significant inconsistencies and confusion related to this statute. Upon rewrite of §816, the procedure outlining notice, hearing, eligibility for name change, and standards for determining a name change should be considered in place of the existing **Title 15 § 811**. The referenced form should be as prescribed by the Chief Administrative Judge.