

Public Access to Vital Records

SB 865 (Senator Blevins)

HEALTHY LIVING/HEALTH SERVICES SUBCOMMITTEE

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Agenda

- Background
- Vital Record Laws and Processes
- Concerns about Increasing Public Access
- Avenues for Disclosure of Vital Records
- Policy Options



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SB 865 (Blevins) Sought to Make Vital Records in Virginia More Accessible

§ 32.1-271 Disclosure of information in records; when unlawful; when permitted; proceeding to compel disclosure; when certain records made public.

D. When 100 years have elapsed after the date of birth, or 50 years have elapsed after the date of death, marriage, or divorce, the records of these events in the custody of the State Registrar ~~may~~ **shall** become public information and be made available in accordance with regulations that shall provide for the continued safekeeping of the records....

Referred to JCHC for study; written report to be submitted by November 1, 2011



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BACKGROUND

Vital Records Are Key for Genealogical Searching

Virginia Vital Record Holders

State Registrar (VDH)
Library of Virginia
Local City and County Courts

Vital records "mark the milestones of our lives, and are the foundation of family history research.....Can offer details often found through no other genealogical resource. They can be useful in proving or disproving other sources...."

- Ancestry.com



Sources: About.com <http://genealogy.about.com/library/lessons/blintro4e.htm> and Ancestry.com http://learn.ancestry.com/FindAnswers/FindAnswers.aspx?id=12956&ekmense=c580fa7b_8_12_btlink#top. Also JCHC staff interview with Virginia State Registrar.

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Usual Vital Records Information

Birth: Name of the child, gender, date and place born, parents' names and sometimes other data, such as parents' birthplaces and social security number (SSN).

Marriage: Names of the bride and groom, date and place married, SSN, and sometimes other information, such as ages.

Divorce: Family member information, SSN, marital history (including marriage date and place), marital property, residences, and dates of other important events such as the children's births.

Death : Marital status, cause of death, SSN, date and place of death and burial, and sometimes the occupation, date and place of birth, age, parents' names and their birthplaces.

Note: Vital record information collected by localities and the State has varied over the years

BACKGROUND

What Drives People to Research Their Genealogy?

Understand family's history and learn about relatives

Family history plays a part in the practice of some religious belief systems

Understand family health history

- **Disease assessment:** Family health history is an important risk factor for common diseases, independent from traditional risk factors
- **Disease prevention:** People who are at increased risk for hereditary diseases may reduce their risk through evidence-based interventions.

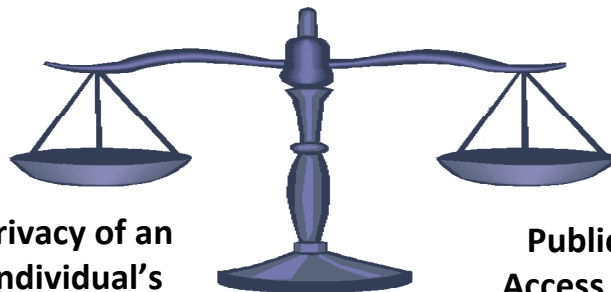


Source: <http://www.healthypeople.gov/2020/topicsobjectives2020/overview.aspx?topicid=15> and David H. Pratt, Family History Library, Encyclopedia of Mormonism, McMillan :1992 at <http://contentdm.lib.byu.edu/cgi-bin/showfile.exe?CISOROOT=/EoM&CISOPTR=3677&filename=3678.pdf>

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BACKGROUND

Public Access Requires a Balance of Two Competing Priorities



Privacy of an Individual's Records

Public Access to Records

Concerns About Making Vital Records More Public

1. Identity theft
2. Personal and family records privacy
3. Potential loss of revenue for VDH Office of Vital Records



Source: Image from http://www.e-archives.ky.gov/_govpatton/dec_2003/gov.state.ky.us/cabinets/ppr.ky.gov/boc.htm

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Virginia's Disclosure Policies Vary by Type of Vital Record

Code §32.1-271(D) - provides State Registrar discretion on releasing vital records publicly after statutorily mandated holding has passed

- Birth records – 100 years
- Marriage, divorce and death records – 50 years
 - *Acts of Assembly* Chapter 240 (1983)



Immediate family has access to vital records prior to the public release

- Mother, father, husband, wife, child, brother, sister
 - "Immediate family" defined in 12VAC5-550-470(B)
- Must present valid ID

Statutory expansions for vital records access in §32.1-271

- Grandparents when birth records are needed
 - *Acts of Assembly* Chapter 60 (2005)
- Grandchild or great-grandchild of decedent for death records
 - *Acts of Assembly* Chapter 505 (2009)



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State Registrar Makes Vital Records Public Once Statutory Closed Period Has Lapsed

Public release means that with sufficient information to identify a record (e.g. name and date of birth) the record will be released

- Records can be released to anyone

State Registrar is not equipped to do genealogical research

- Limited searching ability for:
 - Sound indexing for similar sounding records
 - e.g. Stephen and Steven
 - Name variants for commonly misinterpreted spellings
 - e.g. Letters N and M within Norris and Morris

Charge of \$12 for records search with no refund if record is not furnished



Sources: VDH website - http://www.vdh.state.va.us/vital_records/faq.htm and http://www.vdh.state.va.us/vital_records/documents/regulations.pdf

Publicly Available Vital Records

State Registrar vital records availability

- In 2012, birth records from 1912
 - 100 years after birth
 - Office of Vital Records began collecting records in 1912
- Marriage, Divorce, and Death Records from 1961 and before
 - 50 years after date of event

Marriage and divorce records held by Clerk of the Circuit Court are open for public inspection

- No statutory closed period per official Attorney General Opinion 00-058 (September 27, 2000)

Birth, death, and marriage registers as well as marriage indexes for 1853-1896

- Held by Library of Virginia and State Registrar.



Source: VDH Office of Vital Records website, http://www.vdh.state.va.us/vital_records/gene.htm

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The State Registrar Does Not Make a Searchable Index Publicly Available

ISSUE: Genealogists do not always know sufficient and correct details about a target person's life, details needed to obtain a vital record. A publicly-available index would often include desired information needed to request the proper record.

1. State registrar does not have an electronic searchable index for most vital records deemed public information
2. State Registrar does not publish vital record indexes

State Registrar's Electronically Searchable Vital Record Indexes

	Dates of Index	Years after event record may be public	# of Years of Indexed Publicly Available Records
Birth Certificate	1912 - present	100	0
Marriage license*	1960 – present	50	1
Divorce or Annulment*	1960 - present	50	1
Death Certificate*	1955 - present	50	6

*These are indexed in books organized by location and date recorded



Source: JCHC staff interview with Janet Rainey, Virginia State Registrar

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Other States' Disclosure Laws Vary Significantly

50 States' Vital Records Public Disclosure Laws

Records closed to Public	Birth	Marriage	Divorce	Death
None	5	13	11	11
25 years	0	0	0	2
30-50 years	2	14	10	23
70-80 years	9	4	2	4
100 years	18	1	0	1
125 years	2	0	0	0
Forever	11	7	4	7
Other/ Unspecified	3	11	23	2



Source: Combination of Ancestry.com correspondence with JCHC staff, independent JCHC research and Open Access to Public Records: A Genealogical Perspective by The Federation of Genealogical Societies and The National Genealogical Society (2009).

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SSNs Are on Some Vital Records

SSNs on Vital Records

	Enacted	Va. Code §	Requirement
Birth Certificate	1991	§ 32.1-257.1	Parent SSNs required
Marriage license	1997	§ 32.1-267	A control number issued by Department of Motor Vehicles may be used instead of SSN
Divorce or Annulment	1997	§ 32.1-268	
Death Certificate	1997	§ 32.1-263	

**Some vital record forms requested SSNs prior to legislative enactments*

SSN Disclosure Laws

Code §2.2-3815 – Agency may not disclose first 5 digits of SSN

- Exception for self or if parent or guardian for person under 18
- Does not apply to courts of record or courts not of record

Code §32.1-267 – Public inspection of marriage records is not allowed unless technology is available to prevent disclosure of SSN on marriage record



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SSNs of Deceased Individuals Are Publicly Disclosed by Federal Government

Social Security Death Index is a publicly-accessible listing that provides the following information:

- Name, date of birth and death, age, last address, last benefit, state issuing death certificate, and SSN for deceased individuals
- Not all deaths are reported to Social Security Administration

Image Compiled from Social Security Death Index

Name	Birth	Death	Last Address of Record	SSN
CU First and Last Name	23 Jul 1935	Jun 1998	97116 (Forest Grove, Washington, OR)	073-28-6340
CU	06 Dec 1962	Apr 1993	19802 (Wilmington, New Castle, DE)	221-60-8217
CU	21 Jan 1959	Jul 1979	(not specified)	245-08-8633
CU	26 Jun 1962	12 Nov 2004 (V)	28645 (Lenoir, Caldwell, NC)	245-15-6581

Credit Report Agencies

- Update records monthly from Social Security Death Index
- Flag accounts with no activity for 10 years



Sources: Social Security Death Index link <http://search.ancestry.com/search/db.aspx?dbid=3693> and JHC staff conversations with Tony Hadley, Experian and Steve Rieger & Eric Rosenberg, Transunion.

Financial Crimes: Disclosing SSNs Increases the Risk of Identity Theft and Fraud

Key identity theft information:

- Name (*already publicly available*)
- Address (*already publicly available*)
- Date of Birth
- Social Security
- Telephone (mobile)

Note: Likelihood of identity fraud stemming from SSN disclosure of deceased individuals is low.

Publishing date of birth, mother's maiden name, or SSN of living individuals increases the likelihood of identity theft

- SSN is the most useful for criminals
- Date of birth and mother's maiden name are often available in the public domain (e.g. birth and marriage announcements)

Identity crime by family members is more likely to be done with existing open credit card accounts not through identity theft



Sources: JHC staff interview with Tony Hadley, Experian and Dr. Donald Rebovich, Center for Identity Management and Information Protection.

Privacy: Individuals and Families May Not Want Information Made Public

Individual Concerns

- Some individuals do not want records or information of their life events in the public domain
 - Concerns could apply to indexes holding vital record information and vital records

Family Concerns for Death Records

- Some families want the death records closed to the public
 - Highly-publicized situations
(e.g. 9-11 attacks, Virginia Tech shooting)
 - Family member's cause of death
(e.g. suicide, overdose, or certain diseases)



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CONCERNS

Funding: Changing Availability of Vital Records Could Affect Office of Vital Records Revenues

Office of Vital Records is funded by fees collected for vital record requests

- Total records issued in 387,789 (FY 2010)
 - \$12 charge per record requested
- Total revenue \$4,412,292 (FY 2010)
- 0.9% of mail-in record requests are genealogical searches
 - Revenue estimate from genealogical searches - \$35,000 (annually)

Vital Records Issued and Revenue, FY 2010

	Births	Deaths	Marriages	Divorces	Total
# of Records	337,827	15,326	11,815	2,723	367,691
Revenue	\$ 4,053,924	\$ 183,912	\$ 141,780	\$ 32,676	\$4,412,292



Note: Data available for financial analysis coupled FY 2011 mail-in vital records request data with FY 2010 data.

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CONCERNS

Additional Considerations

1. State Registrar is investigating granting the Library of Virginia full ownership of the birth, death, and marriage registers and marriage indexes for 1853-1896 that are currently in the Library's possession
 - This would allow the registers to be indexed, digitized, and published online at the Library's sole discretion
 - State Registrar currently awaiting guidance from OAG
2. Full vital records are currently released to qualified individuals. SSN should not be provided except to the subject of the record or a child's parent or legal guardian if the child is younger than 18 (*pursuant to Code § 2.2-3815*)
 - State Registrar currently reviewing SSN vital records disclosure policies
3. Divorce records held by courts are not covered by existing SSN non-disclosure laws



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Vital Records Disclosure Avenues

- A. Disclosure timelines and information
- B. Individuals with access to records
- C. Create an index the public can use to determine the vital records that may be requested



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Timelines Can Be Altered to Encourage Public Access or Privacy

Privacy



Public Access

Increase public disclosure periods by 25 years

- Individuals are living longer than when initial record period set in 1983
 - # of Virginians ages 85 and older
 - 31,707 in 1980
 - 122,403 in 2010
- The Centers for Disease Control and Prevention (CDC) is currently revising Model State Vital Statistic Act and considering a recommendation for public disclosure of vital records. *(These recommendations are under internal review and subject to change.)*
 - 125 years birth certificate
 - 75 years for marriage, divorce, and death



Decrease disclosure period by 25 years for birth record

- Confidential records held by Library of Va. are opened after 75 years (Code § 42.1-78)

Allow marriage and divorce records to become public information

- Currently these records are available for public inspection at court Clerks' offices
- SSN would not be disclosed

Allow death records to become public information after 25 years

- Different expectation of privacy for deceased individuals

For death records, allow deceased SSN to be disseminated, if listed.

- Does not measurably increase risk of identity theft

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Expanding Access for Someone of Common Ancestry

Privacy



Public Access

Registrar Policy:
Allows for disclosure of vital record to a non-immediate family member when proof has been provided that no immediate family member is able to request the record.

All vital records - Expand access from current policy of immediate family member to common ancestor.

Helpful for:

- **Individuals attempting to prove lineage for social organizations** (e.g. Daughters and Sons of American Revolution)
 - **Drawback:** Depending on the identification requirements set in regulation, they may be difficult for the individual to meet and time-consuming for the State Registrar to verify.
- **Death records - Expand access to death records to individuals of common ancestry**
 - **Drawback:** Same drawbacks as previous. Also individuals who are unaware of their lineage may not be able to provide sufficient documentation.



Note: This is helpful for individuals who do not know family history and an oral history through family relative's not possible

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An Index Would Allow the Public to Know which Records Are Available to Request

Privacy



Public Access

Current Registrar Indexing

- Without an index, the public's access to vital records is limited
- A complete index for publicly-available information has not been constructed by the State Registrar
- The State Registrar's index for records that are public information is not publicly accessible

Creating an index of publicly-available vital records

- A searchable index would allow for the public's searching of available vital records. This assists in situations when:
 - Individuals do not have enough specific information to request a vital record
 - Genealogical techniques to identify the record are needed. For example when a name's spelling has been changed over time

Publishing record online

- Creating an index might require creating digital copies of documents that could be published online
- Public would have electronic access to records that are public information



Note: Some genealogists will still desire a certified copy of the vital record even if its information is online or a free digital copy is available.

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C: CREATE PUBLICLY-AVAILABLE INDEX

Ancestry.com Is Willing to Create Digitized Records in Exchange for a Period of Exclusivity

Ancestry.com provides some vital records for all 50 states online

- Includes indexing and digitized vital records

Ancestry.com is willing to digitize and index Virginia's vital records

- Digital copies of records and indexes would be provided to the State
 - Paper record digitization would be done on-site
 - 5,000-10,000 records per week
 - Microfiche and microfilm at Ancestry.com's U.S. offices
 - Willing to exclude certain data elements (e.g. SSN and "cause of death") on published index or records

Typical contract arrangement in exchange:

- Period of exclusivity for digitized copies of public vital records (2-5 years)
- Limited use or resale for digitized copies
 - Underlying interest is related to genealogical business competitors



JCHC staff discussion and email correspondence with Quinton Atkinson, Ancestry.com Director of Acquisition

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C: CREATE PUBLICLY-AVAILABLE INDEX

Policy Options: Summary

Option 1	Provide required reports and take no other action
Option 2	Change when State Registrar's birth records become public information
Option 3	Change when State Registrar's marriage, divorce and annulment records become public information
Option 4	Change when State Registrar's death records become public information
Option 5	Allow State Registrar to disclose social security number of deceased individual
Option 6	Allow additional family members to access the State Registrar's birth, marriage, divorce and annulment records
Option 7	Allow additional family members to access the State Registrar's death records
Option 8	Require State Registrar to create a publicly-available index of vital records that may be released to the public



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Policy Options

Option 1: Provide a written report to the Chair of the Senate Committee for Education and Health, the chief patron of SB 865 (Sen. Blevins), and the Clerk of the Senate, without taking any other action.

Option 2: Introduce legislation to amend the *Code of Virginia* § 32.1-271(D) to change the time period that birth records "in the custody of the State Registrar may become public information" from 100 years to:

- A. 125 years (*preliminary recommendation of CDC*)
- B. 75 years (*in compliance with the Library of Virginia's statutory confidential records time period*)

Option 3: Introduce legislation to amend the *Code of Virginia* § 32.1-271(D) to change the time period that marriage, divorce and annulment records "in the custody of the State Registrar may become public information" from 50 years to:

- A. 75 years (*preliminary recommendation of CDC*)
- B. Immediately (*the records held by Clerks of the Circuit Courts are open for public inspection already*)



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Policy Options

Option 4: Introduce legislation to amend the *Code of Virginia* § 32.1-271(D) to change the time period that death records “in the custody of the State Registrar may become public information” from 50 years to:

- A. 75 years (*preliminary recommendation of CDC*)
- B. 25 years (*Social Security Death Index provides extensive information already*)

Option 5: Introduce legislation to amend the *Code of Virginia* § 2.2-3815 to allow the State Registrar to disclose the entire social security number on a deceased individual’s death record.



Policy Options

Option 6: Introduce legislation to amend the *Code of Virginia* § 32.1-271 to allow additional family members to receive birth, marriage, divorce and annulment records from the State Registrar in keeping with the authority that immediate family members currently have.

- The degree of kinship for “family members” needs to be determined.
 - *Code of Virginia* § 6.2-1074 uses 5th degree kinship language (*see appendix for illustration*)
- The vital record disclosed may be of a living person.

Option 7: Introduce legislation to amend the *Code of Virginia* § 32.1-271 to allow additional family members to receive death records from the State Registrar in keeping with the authority that immediate family members currently have.

- The degree of kinship for “family members” needs to be determined.



Policy Options

Option 8: Introduce a budget amendment to require the State Registrar to create by 2014, a publicly-available index of **the** vital records that are authorized for release to the public. *(At a minimum, the index would include first and last name, year of birth, and gender.)*

- A. The Office of Vital Records will create an index.
 - *Budget language and funding (amount to be determined)*
- B. VDH will seek to enter into a public-private partnership to create a publicly-available index by an organization that has demonstrated experience in copying and indexing historical vital records. *(State registrar and the Library of Virginia may publish the index as well.)*
 - *Budget language*
- C. VDH will seek to enter into a public-private partnership to create a publicly-available index and digital copies of public vital records by an organization that has demonstrated experience in copying and indexing historical vital records. *(State registrar and the Library of Virginia may publish the index as well.)*
 - *Budget language*



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Public Comment

Written public comments on the proposed options may be submitted to JCHC by close of business on October 6, 2011. Comments may be submitted via:

E-mail: sreid@jhc.virginia.gov
Facsimile: 804-786-5538
Mail to: Joint Commission on Health Care
P.O. Box 1322
Richmond, Virginia 23218

Comments will be summarized and presented during the JCHC meeting on October 17th.

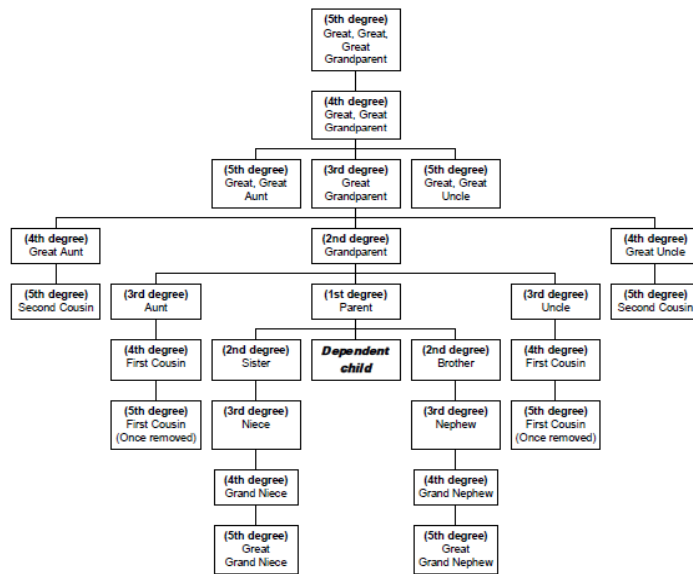


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APPENDIX



5th Degree Lineal Kinship Chart



Source: www.colorado.gov