

**REPORT OF THE
JOINT COMMISSION ON HEALTH CARE**

Public Access to Vital Records

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



REPORT DOCUMENT NO. 108

**COMMONWEALTH OF VIRGINIA
RICHMOND
2012**

Code of Virginia § 30-168.

The Joint Commission on Health Care (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to study, report and make recommendations on all areas of health care provision, regulation, insurance, liability, licensing, and delivery of services. In so doing, the Commission shall endeavor to ensure that the Commonwealth as provider, financier, and regulator adopts the most cost-effective and efficacious means of delivery of health care services so that the greatest number of Virginians receive quality health care. Further, the Commission shall encourage the development of uniform policies and services to ensure the availability of quality, affordable and accessible health services and provide a forum for continuing the review and study of programs and services.

The Commission may make recommendations and coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting the provision and delivery of health care.

For the purposes of this chapter, "health care" shall include behavioral health care.

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Preface

Senate Bill 865, introduced by Senator Harry B. Blevins, sought to make genealogical records in Virginia more accessible to the public by amending the *Code of Virginia* § 32.1-271(D) to require the State Registrar to make birth, death, marriage, and divorce records available to the public when statutory timeframes for privacy expire. SB 865 was passed by indefinitely in the Senate Committee on Education and Health and a letter was sent to the Joint Commission on Health Care requesting the submission of a written report to the Chair of the Senate Education and Health Committee, the bill patron, and the Senate Clerk's Office.

The Office of Vital Records, which is housed in the Virginia Department of Health and supervised by the State Registrar, is the primary repository of vital records in the Commonwealth. *Code of Virginia* § 32.1-271(D) establishes the following timeframes for the public release of records maintained by the State Registrar:

Birth records – 100 years after the date of birth.

Death, marriage, and divorce records – 50 years after the date of occurrence.

In addition, the Library of Virginia maintains birth, death, and marriage registers for 1853-1896, which are accessible to the public. Also, local circuit courts maintain marriage and divorce records that are open for public inspection.

Allowing public access to vital records is a policy decision which requires balancing the competing priorities of the privacy of an individual's records and public access to those records. There are numerous reasons that descendants or genealogists may be interested in accessing vital records including: to determine genealogy, to understand family medical histories including hereditary diseases, or to fulfill religious practices. Concerns related to allowing increased public access include: identity theft, privacy of personal and family records, and potential loss of revenue for the Office of Vital Records. Based on the study findings, Joint Commission members voted to introduce legislation to decrease from 50 to 25 years the time period that marriage, divorce, annulment, and death records maintained by the State Registrar may be made public information. Three bills, Senate Bill 309 and Senate Bill 310 by Senator Harry B. Blevins and House Bill 272 by Delegate Christopher K. Peace, were introduced during the 2012 General Assembly Session.

Joint Commission members and staff would like to thank the numerous individuals who assisted in this study, including representatives from: Ancestry.com, Centers for Disease Control and Prevention, Center for Identity Management and Information Protection, Coalition for Sensible Public Records Access, eCitizen Foundation, Experian, Federal Bureau of Investigation, Library of Virginia, Missouri Department of Health, National Conference of State Legislatures, National Technical Information Service, Office of the Attorney General of Virginia, Social Security Administration, Supreme Court of Virginia, TransUnion, U. S. Secret Service, Vermont Department of Health, Virginia Bankers Association, Virginia State Police, Virginia Department of Health, and the Virginia Genealogical Society,

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REPORT TO COMMITTEE CHAIR/BILL PATRON

Public Access to Vital Records

Senate Bill 865, introduced by Senator Harry B. Blevins in 2011, sought to make genealogical records in Virginia more accessible to the public by amending the *Code of Virginia* § 32.1-271(D) to state:

“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.”

SB 865 was passed by indefinitely in the Senate Committee on Education and Health and a letter was sent to the Joint Commission on Health Care requesting the submission of a written report to the Chair of the Senate Education and Health Committee, the bill patron, and the Senate Clerk’s Office. (The report was submitted October 31, 2011.)

Background

The Office of Vital Records, which is housed in the Virginia Department of Health (VDH) and supervised by the State Registrar, is the primary repository of vital records in the Commonwealth. As noted previously, *Code of Virginia* § 32.1-271(D) establishes the following timeframes for the public release of records maintained by the State Registrar:

Birth records – 100 years after the date of birth.

Death, marriage, and divorce records – 50 years after the date of occurrence.

State statute and regulations provide that certain family members may present valid identification and pay a \$12 processing fee in order to access vital records prior to their public release. Specifically, immediate family may access all records, grandparents may request birth records by presenting evidence of need, and grandchildren and great grandchildren may access death records.

In addition, the Library of Virginia maintains birth, death, and marriage registers for 1853-1896, which are accessible to the public. Also, local circuit courts maintain marriage and divorce records that are open for public inspection.

Findings

Allowing public access to vital records is a policy decision which requires balancing the competing priorities of the privacy of an individual’s records and public access to those records. There are numerous reasons that descendants or genealogists may be interested in accessing vital records including: to determine genealogy, to understand family medical histories including hereditary diseases, or to fulfill religious practices. Concerns related to allowing increased public access include: identity theft, privacy of personal and family records, and potential loss of revenue for the Office of Vital Records.

Identity Theft. Considering that so much personal information is available already through Internet searches, the primary concern is that vital records often include Social Security numbers (SSNs). To some extent, SSNs are available online and within Virginia court records. For

example, the Social Security Administration (SSA) contracts to publish the “Social Security Death Index” which includes the name, date of birth and death, last address, and SSN for many SSA beneficiaries soon after their deaths.¹ Also some Virginia court records include SSNs; the General Assembly has enacted reforms to address public access to SSNs in current court filings, but some documents that included SSNs prior to the reforms continue to be publicly available through offices of the Clerk of Court.

Privacy of Personal and Family Records. Although, a great deal of personal information is already available via an Internet search, there are instances such as highly-publicized events (such as the 9-11 attack or Virginia Tech shootings) or causes of death that families might prefer remain private.

Potential Loss of Revenue. The operations of the Office of Vital Records are funded by fees collected when searches and copies of vital records are requested; in FY 2010, \$4.4 million in fees was collected. It is unclear what the financial impact of increasing public access to vital records would be; however, the need and demand for official birth, marriage, divorce, annulment, and death records is likely to continue.

Potential Operational Enhancements. The Office of Vital Records does not have a complete digitized index for all of the vital records in its possession; furthermore, the Office does not have digitized copies of all of its vital records. Individuals and genealogists do not always know sufficient and correct details about the life of an ancestor in order to request and obtain the desired vital record. A publicly-available index would often include enough information to allow individuals and genealogists to identify and request the proper record. While it would be time-consuming and costly for the Office of Vital Records to construct an index and digitize its records, it would allow for the records to be published online. There are alternatives to that Office directly completing these tasks. For instance, Ancestry.com officials have indicated a willingness to create an index and/or digitized copies of the vital records at no expense to the Commonwealth.

Policy Options and Public Comment

Eight policy options were presented for JCHC-member consideration.

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*)

¹ Prior to November 2011, deceased individuals’ information submitted by state registrar’s offices publicly was disclosed, including SSN. Going forward SSA will not publish deceased individuals information stemming from information received from protected state records, such as vital records that are not publicly available. However, the Social Security Death Index will continue to provide deceased individuals information stemming from other types of records.

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 Circuit Courts are open for public inspection already*)

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 (*§2 2-381 states that SSNs should not be disclosed on agency documents except to self or if parent or guardian for person under 18*)

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.

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.

- Degree of lineal kinship to record requestor would need to be determined.
 - *Code of Virginia* § 6.2-1074 uses 5th degree kinship language
- 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.

- Degree of lineal kinship to record requestor would need to be determined.

Option 8: Introduce a budget amendment to require the State Registrar to create by 2014, a publicly-available index of 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 index will be created within the Office of Vital Records.
 - Budget language and funding – VDH estimates \$2.6 million over 2.5 years to create an online index of public records
- 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

A total of 387 written comments on the policy options were received by November 7, 2011.² The majority of the comments opposed further restrictions on access to vital records and supported expansion of public access. Seventy-two percent (277 of 387) of the respondents appeared to live in Virginia and 16 genealogical or historical organizations commented. In general, the comments fell into two broad categories: those that provided general feedback and those that supported or opposed a particular policy option. Many of the general comments indicated that access to vital records should not be restricted further (123 comments) and/or that public access to vital records should be expanded (89 comments). The Library of Virginia and one individual commenter recommended making no changes to existing policy and the Virginia Department of Health submitted a comment in support of further restricting access to vital records.

Public comments proposing the following additional policy options were received also:

- ***Potential 8D*** – Support the Library of Virginia creating and operating any index of vital records. (145 comments)
- ***Potential 8E*** – Support requiring VDH to turn over records to Library of Virginia, once the vital records are no longer closed. (96 comments)

The following public comment summaries highlight the range of differing views regarding the proposed policy options.

Library of Virginia (LVA)

- A. Vital record date restrictions should be kept as they are currently written
- B. Electronic vital records indices should be compiled, beginning with those that are currently open public records
- C. Indexing should be accomplished under the auspices of a state agency
- D. Microfilm copies of open records should be made available for research at LVA

Virginia Bankers Association (VBA)

- A. Oppose any release of SSNs; it would increase the likelihood of financial fraud and coupled with birth and death records could facilitate the use of false identities

Virginia Department of Health (VDH)

- A. Increase the closed period for birth certificates to 125 year
- B. Increase the closed period for marriage, divorce, annulment and death records to 75 years
- C. Allow the Office of Vital Statistics (OVS) to provide the Social Security Number on all vital statistics
- D. An undue burden on OVS if additional family members may receive vital records during the closed period because it will be necessary for the customer to prove their kinship and for OVS to verify the information
- E. Exploring a public-private partnership in creating a publicly available index is worthwhile
- F. Digital copies of vital records should not be placed on line

² In instances in which individuals or organizations provided multiple comments only the most recent comment was incorporated within the public comment counts presented.

Virginia Genealogical Society (VGS)

(The following recommendations reflect the preferences of 127 other commenters).

- A. Decrease the closed period for the birth certificate to 75 years
- B. Make marriage, divorce, annulment and death records immediately available in the public domain
- C. Allow family members that “descended from a common ancestor” to be granted access to vital records during the closed period
- D. Allow the Office of Vital Statistics to provide the Social Security Number on death certificates
- E. LVA should control or supervise indexing publicly available vital records

Virginia Press Association (VPA)

- A. Opposes the lengthening of statutory non-disclosure periods
- B. Opposes a vital records index if it would only be available to the public through an exclusive provider at costs exceeding what the Freedom of Information Act provides.

Subsequent Action by the Joint Commission on Health Care. During the Joint Commission’s 2011 decision matrix meeting, JCHC members voted to introduce legislation to accomplish the changes proposed in Policy Options (Potential) 3C and 4B. Option 3C would 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 25 years; and Option 4B would change the time period that death records “in the custody of the State Registrar may become public information” from 50 years to 25 years.

Three bills, Senate Bill 309 and Senate Bill 310 by Senator Harry B. Blevins and House Bill 272 by Delegate Christopher K. Peace, were introduced during the 2012 General Assembly Session. House Bill 272 was passed unanimously by both chambers and subsequently approved by the Governor on February 28, 2012. Senate Bills 309 and 310 were tabled by the House Committee on Health, Welfare and Institutions since the statutory changes contained in the bills were included in Senator Blevins’ Senate Bill 660. Senate Bill 660 also directed the State Registrar to seek to enter into a public-private partnership to digitally copy and index vital records. Senate Bill 660 passed both chambers and was signed by the Governor on March 22, 2012 (*2012 Acts of Assembly*, Chapter 356).

JCHC Staff for this Report

Stephen W. Bowman
Senior Staff Attorney/Methodologist

Summary of Public Comments

	Comments in Support	Comments in Opposition
Option 1: Provide required reports and take no other action.	2	145
Option 2: Change time period for birth records to become public information to		
2A 125 years	1	8
2B 75 years	247	0
Option 3: Change time period for marriage, divorce, and annulment records to		
3A 75 years	1	7
3B immediately	151	0
<i>Potential 3C Individuals wrote in support of making marriage records available in 25 years</i>	96	n/a
Option 4: Change time period for death records to become public information to		
4A 75 years	1	6
4B 25 years	147	0
<i>Potential 4C Individuals wrote in support of making death records available immediately.</i>	241	n/a
Option 5: Allow State Registrar to disclose entire SSN on death record.	148	1
Option 6: Allow additional family members to receive birth, marriage, divorce, and annulment records in keeping with the authority that immediate family members have now.	251	0
Option 7: Allow additional family members to receive death records in keeping with the authority that immediate family members have now.	255	0
Option 8: Introduce budget amendment to require the State Registrar to develop a publicly-available index by 2014 with		
8A index created by Vital Records VDH estimates cost of \$2.6 million over 2.5 years	0	0
8B index created using public-private partnership	0	1
8C index and digital copies of records created using public-private partnership	3	1
<i>Individuals wrote in support of the principle of Option 8</i>	147	n/a
<i>Potential 8D Individuals wrote in support of allowing the Library of VA (due to its expertise) to create and operate an index of vital records.</i>	145	n/a
<i>Potential 8E Individuals wrote to suggest that once vital records are no longer "closed," VDH should be required to turn over records to Library of VA.</i>	96	n/a

Attachments

Public Access to Vital Records

SB 865 (Senator Blevins)

HEALTHY LIVING/HEALTH SERVICES SUBCOMMITTEE

Stephen W. Bowman – Senior Policy Analyst/Methodologist



September 19, 2011

Agenda

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



2

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.

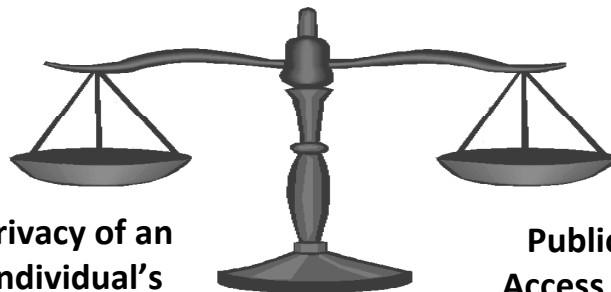
BACKGROUND



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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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).

11

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

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. 13

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. 14

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



18

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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A: DISCLOSURE TIMELINES AND INFORMATION

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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B: EXPAND ANCESTOR ACCESS TO RECORDS

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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A: DISCLOSURE TIMELINES AND INFORMATION

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.



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A: DISCLOSURE TIMELINES AND INFORMATION

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.



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B: EXPAND ANCESTOR ACCESS TO RECORDS

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*



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

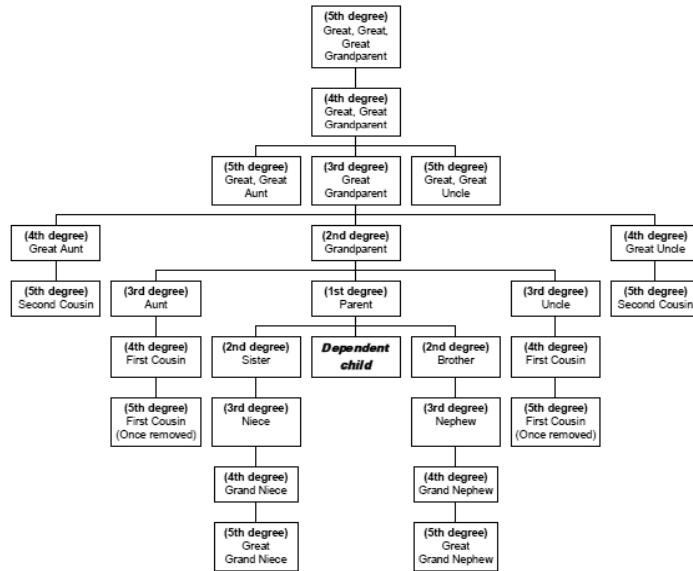
Comments will be summarized and presented during the JCHC meeting on October 17th.



APPENDIX



5th Degree Lineal Kinship Chart



Source: www.colorado.gov

11101705D

SENATE BILL NO. 865

Offered January 12, 2011

Prefiled January 10, 2011

A *BILL to amend and reenact § 32.1-271 of the Code of Virginia, relating to disclosure of vital records.*

Patron—Blevins

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-271 of the Code of Virginia is amended and reenacted as follows:

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

A. To protect the integrity of vital records and to ensure the efficient and proper administration of the system of vital records, it shall be unlawful, notwithstanding the provisions of §§ 2.2-3700 through 2.2-3714, for any person to permit inspection of or to disclose information contained in vital records or to copy or issue a copy of all or part of any such vital records except as authorized by this section or regulation of the Board or when so ordered by a court of this Commonwealth.

B. Data contained in vital records may be disclosed for valid and substantial research purposes in accordance with the regulations of the Board.

C. Any person aggrieved by a decision of a county or city registrar may appeal to the State Registrar. If the State Registrar denies disclosure of information or inspection of or copying of vital records, such person may petition the court of the county or city in which he resides if he resides in the Commonwealth or in which the recorded event occurred or the Circuit Court of the City of Richmond, Division I, for an order compelling disclosure, inspection or copying of such vital record. The State Registrar or his authorized representative may appear and testify in such proceeding.

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. All records that are public information on July 1, 1983, shall continue to be public information.

E. The State Registrar or the city or county registrar shall disclose data about or issue a certified copy of a birth certificate of a child to the grandparent of the child upon the written request of the grandparent when the grandparent has demonstrated to the State Registrar evidence of need, as prescribed by Board regulation, for the data or birth certificate.

F. The State Registrar or the city or county registrar shall issue a certified copy of a death certificate to the grandchild or great-grandchild of a decedent in accordance with procedures prescribed by the Board in regulation.

INTRODUCED

SB865

COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR
CLERK OF THE SENATE
P.O. BOX 396
RICHMOND, VIRGINIA 23218



SENATE

March 4, 2011

Ms. Kim Snead, Executive Director
Joint Commission on Health Care
900 E. Main Street, 1st Floor West
P.O. Box 1322
Richmond, Virginia 23219

Dear Ms. Snead:

This is to inform you that, pursuant to Rule 20(1) of the Rules of the Senate of Virginia, the subject matter contained in Senate Bill 865 has been referred by the Senate Committee for Education and Health to the Joint Commission on Health Care for study. It is requested that the appropriate committee chair and bill patron receive a written report, with a copy to this office, by November 1, 2011.

With kind regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Susan Clarke Schaar".

Susan Clarke Schaar

SCS:pjl

cc: Sen. R. Edward Houck, Chair, Committee on Education and Health
Del. Ben L. Cline, Chair, Joint Commission on Health Care
Sen. Harry B. Blevins, Patron of SB 865



COMMONWEALTH of VIRGINIA

Joint Commission on Health Care

Delegate Benjamin L. Cline
Chairman

Kim Snead
Executive Director

900 E. Main Street, 1st Floor
P.O. Box 1322
Richmond, Virginia 23218
804.786.5445
804.786.5538 (facsimile)

TO: The Honorable R. Edward Houck, Chair
Senate Committee on Education and Health
The Honorable Harry B. Blevins

FROM: Kim Snead

RE: Required Report Regarding JCHC Review of Senate Bill 865 (2011)

DATE: October 31, 2011

In response to your letter request, I have attached a report regarding the work of the Joint Commission on Health Care in reviewing the issues presented in Senate Bill 865 (introduced by Senator Harry B. Blevins during the 2011 General Assembly Session). The report includes a summary of the study findings, proposed policy options, and public comments on those options.

Joint Commission members will vote on whether to take any legislative actions, during our November 22, 2011 meeting.

Cc: The Honorable Benjamin L. Cline
The Honorable Susan Clarke Schaar



Joint Commission on Health Care

Summary Report

Public Access to Vital Records

Senate Bill 865 (Senator Harry B. Blevins)

Public Access to Vital Records

SB 865 – Senator Harry B. Blevins

SB 865 sought to make genealogical records in Virginia more accessible to the public by amending the *Code of Virginia* § 32.1-271(D) to require the State Registrar to make birth, death, marriage, and divorce records available to the public when statutory timeframes for privacy expire. (Currently the *Code* reads that the records may become public information.) SB 865 was passed by indefinitely in the Senate Committee on Education and Health and a letter was sent to the Joint Commission on Health Care requesting the submission of a written report to the Chair of the Senate Education and Health Committee, the bill patron, and the Senate Clerk's Office.

Lead Staff for Report

Stephen W. Bowman

Background

The Office of Vital Records, which is housed in the Virginia Department of Health and supervised by the State Registrar, is the primary repository of vital records in the Commonwealth. *Code of Virginia* § 32.1-271(D) establishes the following timeframes for the public release of records maintained by the State Registrar:

Birth records – 100 years after the date of birth.

Death, marriage, and divorce records – 50 years after the date of occurrence.

Some family members are allowed to access vital records prior to their public release by presenting valid identification and paying a \$12 processing fee (immediate family may access all types of records, grandparents may request birth records by presenting evidence of need, and grandchildren and great grandchildren may access death records).

In addition, the Library of Virginia maintains birth, death, and marriage registers which may be accessed by the public, while local circuit courts maintain marriage and divorce records which are open for public inspection.

Concerns Related to Public Access

Allowing public access to vital records is a policy decision which requires balancing the competing priorities of the privacy of an individual's records and public access to those records. Concerns related to allowing increased public access include: identity theft, the privacy of personal and family records, and potential loss of revenue for the Office of Vital Records.

Identity Theft. Considering that so much personal information is available already through Internet searches, the primary concern relates to the fact that vital records often include social security numbers. Social security numbers may be redacted from records and indexes, although this is less of a concern for death records since the federal government maintains a Social Security Death Index, a publicly-accessible listing that includes such personal information as name, date of birth and death, last address, and social security number.

Privacy of Personal and Family Records. As noted previously, a great deal of personal information is already available via Internet search. However, there are instances such as highly-publicized events (such as the 9-11 attack or Virginia Tech shootings) or causes of death that families might prefer remain private.

Potential Loss of Revenue for the Office of Vital Records. The Office's operations are funded by fees collected for searches and copies of vital records; in FY 2010, \$4.4 million in fees was collected. It is unclear what the financial impact of increasing public access to vital records would be; however, the demand for official birth, marriage, divorce, annulment, and death records is likely to continue.

The Office of Vital Records does not have a complete index or digitized copies of all records in its possession. Constructing an index and digitized records would be time-consuming and costly, but would allow records to be published online. Ancestry.com officials have indicated a willingness to create digitized records and/or an index of those records in exchange for a period of exclusive use.

Policy Options and Public Comments¹

A total of 289 written comments were received regarding this study. Seventy-six percent (221 of 289) of the respondents appear to live in Virginia and 15 genealogical or historical organizations commented. The majority of comments supported not further restricting access to vital records, but to expand public access.

In general, the comments fall into two broad categories: those that provided general feedback and those that addressed support or opposition to a particular policy option. Most of the general comments indicated that access to vital records should not be restricted further (118 comments) and/or that public access to vital records should be expanded (89 comments). Only three commenters recommended making no changes to existing policy and only one commented in support of further restricting access to vital records.

Brief summaries of the specific comments submitted by the Library of Virginia (LVA), Virginia Genealogical Society (VGA), Virginia Bankers Association, Virginia Department of Health (VDH), and Virginia Press Association (VPA) follow. (*The entire submitted-comment texts for LVA, VDH, VGS, and VPA are included in the attached Appendix.*)

- *Library of Virginia*
 - A. Vital record date restrictions should be kept as they are currently written
 - B. Electronic vital records indices should be compiled, beginning with those that are currently open public records
 - C. Indexing should be accomplished under the auspices of a state agency
 - D. Microfilm copies of open records should be made available for research at LVA

¹ Public comments represented were those received by Oct 27, 2011.

- *Virginia Bankers Association*
 - A. Oppose any release of SSNs; it would increase the likelihood of financial fraud and coupled with birth and death records could facilitate the use of false identities
- *Virginia Department of Health*
 - A. Increase the closed period for birth certificates to 125 years
 - B. Increase the closed period for marriage, divorce, annulment and death records to 75 years
 - C. Allow the Office of Vital Statistics (OVS) to provide the Social Security Number on all vital statistics
 - D. An undue burden on OVS if additional family members may receive vital records during the closed period because it will be necessary for the customer to prove their kinship and for OVS to verify the information
 - E. Exploring a public-private partnership in creating a publicly available index is worthwhile
 - F. Digital copies of vital records should not be placed on line
- *Virginia Genealogical Society*
(*These recommendations reflect the same preferences of 127 other comments*).
 - A. Decrease the closed period for the birth certificate to 75 years
 - B. Make marriage, divorce, annulment and death records immediately available in the public domain
 - C. Allow family members that “descended from a common ancestor” to be granted access to vital records during the closed period
 - D. Allow the Office of Vital Statistics to provide the Social Security Number on death certificates
 - E. LVA should control or supervise indexing publicly available vital records
- *Virginia Press Association*
 - A. Opposes the lengthening of statutory non-disclosure periods
 - B. Opposes a vital records index if it would only be available to the public through an exclusive provider at costs exceeding what the Freedom of Information Act provides

Summary of Public Comments Received

The number of public comments received in support or opposition is shown for each policy option.

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.

	Comments in Support	Comments in Opposition
Option 1	3	153

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*)

	Comments in Support	Comments in Opposition
Option 2 - A	1	7
Option 2 - B	159	0

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 Circuit Courts are open for public inspection already*)

	Comments in Support	Comments in Opposition
Option 3 - A	1	6
Option 3 - B	159	0

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*)

	Comments in Support	Comments in Opposition
Option 4 - A	1	6
Option 4 - B	155	0

In addition, 153 comments supported making death records immediately available instead of after 25 years.

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.

	Comments in Support	Comments in Opposition
Option 5	156	1

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.

- Degree of lineal kinship to record requestor would need to be determined.
 - *Code of Virginia* § 6.2-1074 uses 5th degree kinship language
- The vital record disclosed may be of a living person.

	Comments in Support	Comments in Opposition
Option 6	163	0

The vast majority of the comments supporting Option 6 urged that “family members” be defined liberally.

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.

- Degree of lineal kinship to record requestor would need to be determined.

	Comments in Support	Comments in Opposition
Option 7	167	0

The vast majority of the comments supporting Option 7 urged that “family members” be defined liberally.

Option 8: Introduce a budget amendment to require the State Registrar to create by 2014, a publicly-available index of 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.)*

- The index will be created within the Office of Vital Records.
 - *Budget language and funding (amount to be determined)*
- 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*
- 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*

	Comments in Support	Comments in Opposition
Option 8 - A	0	0
Option 8 - B	0	1
Option 8 - C	3	1

In addition, 153 comments suggested that they agreed with Option 8 in principle, but “the Library of Virginia should create and operate any index of vital records, since it has the expertise to do this.”

Public Access to Vital Records – SB 865 (Senator Blevins)

Summary of Public Comments Received

		Comments in Support	Comments in Opposition
Option 1	Take no action.	3	153
Option 2	Change time period for <u>birth records</u> to become public information from 100 years.		
	2-A – to 125 years	1	7
	2-B – to 75 years	159	0
Option 3	Change time period for <u>marriage, divorce, and annulment records</u> to become public information from 50 years.		
	3-A – to 75 years	1	6
	3-B – to immediately	159	0
Option 4	Change time period for <u>death records</u> to become public information from 100 years.		
	4-A – to 75 years	1	6
	4-B – to 25 years	155	0
	Individuals wrote in support of making death records available immediately	153	n/a
Option 5	Allow State Registrar to disclose entire SSN on death record.	156	1
Option 6	Allow additional family members to receive birth, marriage, divorce, and annulment records in keeping with the authority that immediate family members have now.	163	0
Option 7	Allow additional family members to receive death records in keeping with the authority that immediate family members have now.	167	0
Option 8	Introduce budget amendment to require the State Registrar to develop a publicly-available index by 2014		
	8-A – index created by Vital Records <u>which would require State general funds</u>	0	0
	8-B – index created using public-private partnership	0	1
	8-C – index and digital copies of records created using public-private partnership	3	1
	Individuals wrote in support of the principle of Option 8	155	n/a
	Individuals wrote in support of allowing the Library of VA (due to its expertise) to create and operate an index of vital records	153	n/a

Joint Commission on Health Care
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