

By: Representative Dixon

To: Judiciary B

## HOUSE BILL NO. 1042

1 AN ACT TO PROVIDE THAT BEFORE AN AUTOPSY MAY BE PERFORMED  
2 UPON THE BODY OF A DECEASED PERSON, WRITTEN CONSENT TO THE AUTOPSY  
3 MUST BE OBTAINED FROM A PERSON WHO IS RELATED TO THE DECEASED; TO  
4 AMEND SECTIONS 41-37-9, 41-37-23, 41-61-65, 41-61-67, 47-5-151 AND  
5 99-41-15, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE  
6 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** This act shall be known as the "Broderick Dixon  
9 Autopsy Consent Act."

10 **SECTION 2.** (1) Before an autopsy may be performed upon the  
11 body of a deceased person, written consent to the autopsy must be  
12 obtained from any of the following persons, if they may be found  
13 by reasonable search and inquiry, in the priority of the order  
14 listed: the surviving spouse of the deceased; either parent of or  
15 any person in loco parentis to the deceased; any descendant of the  
16 deceased over the age of eighteen (18) years; a guardian of the  
17 deceased; or any person related to the deceased according to the  
18 civil law rule. If none of the persons listed in this section are  
19 found by reasonable search and inquiry, the autopsy may be  
20 performed without prior consent, and the person required to obtain



21 consent shall make and keep a record of the nature and extent of  
22 the search and inquiry that was performed to locate the persons in  
23 the list.

24 (2) This section shall not apply to any autopsy authorized  
25 to be performed under Section 41-37-25 where consent to the  
26 autopsy has already been given by a person authorized by that  
27 section to give consent.

28 **SECTION 3.** Section 41-37-9, Mississippi Code of 1972, is  
29 amended as follows:

30 41-37-9. A circuit judge, chancellor or county judge of the  
31 county or district where a person died or where the body of \* \* \*  
32 the deceased person may be or where the mortal stroke or other  
33 cause of death occurred, may, in his discretion, either in term  
34 time or in vacation, order an autopsy to be performed upon the  
35 body of \* \* \* the deceased person (1) upon the petition of a  
36 county prosecuting attorney of the county where the person died,  
37 or where the body of \* \* \* the deceased person may be at the time  
38 or where the mortal stroke or other cause of death occurred, or  
39 (2) upon petition of the district attorney of the district where  
40 the person died, or where the body of \* \* \* the deceased person  
41 may be at the time or where the mortal stroke or other cause of  
42 death occurred. \* \* \* If the petition is filed by the county  
43 prosecuting attorney or district attorney, it shall contain  
44 allegations that the petitioner believes, has reason to believe,  
45 or suspects that \* \* \* the deceased person came to his death by



46 some criminal means or agency, or that the cause of justice would  
47 be promoted by having an autopsy performed upon the body of \* \* \*  
48 the deceased person. \* \* \* The petition shall be sworn to and  
49 shall be filed in the court of the judge or chancellor who makes  
50 the order, and shall be docketed by the clerk as are other cases  
51 or suits. If the body of \* \* \* the deceased person has already  
52 been interred, the petition shall so state, and if an autopsy is  
53 ordered, the order shall order the disinterment of \* \* \* the body  
54 for \* \* \* the autopsy and shall order any lawful officer of the  
55 county where \* \* \* the body may be buried to employ suitable help  
56 to disinter \* \* \* the body and to keep it in a suitable place  
57 until \* \* \* the autopsy \* \* \* has been performed. If there has  
58 been no interment of the body of \* \* \* the deceased person, a copy  
59 of the order ordering an autopsy upon \* \* \* the deceased shall be  
60 served by the sheriff of the county, or any other person  
61 authorized to serve process, upon any person who may be found in  
62 charge of any funeral home where \* \* \* the body may be, and \* \* \*  
63 the funeral home shall hold \* \* \* the body for autopsy. If the  
64 body of \* \* \* the deceased person \* \* \* is not found in any  
65 funeral home the sheriff of the county where it \* \* \* is found  
66 shall take \* \* \* the body and keep it in a suitable place  
67 until \* \* \* the autopsy \* \* \* has been performed. If an autopsy  
68 is ordered as provided in this section, the petitioner shall  
69 immediately secure the services of a qualified person to  
70 perform \* \* \* the autopsy.



71 Before an autopsy authorized under this section may be  
72 performed, the judge or chancellor must obtain the consent  
73 required by Section 2 of this act.

74 **SECTION 4.** Section 41-37-23, Mississippi Code of 1972, is  
75 amended as follows:

76 41-37-23. The executive officer of the Mississippi State  
77 Board of Health or a county health officer may petition in like  
78 manner as is provided in Section 41-37-9 a circuit judge,  
79 chancellor, or county judge in any county in which a person dies  
80 or where the body of \* \* \* the deceased person may be, and \* \* \*  
81 the circuit judge, chancellor, or county judge may order an  
82 autopsy to be performed upon the body of \* \* \* the deceased person  
83 in the interest of public health and welfare in cases where the  
84 cause of death is not known and cannot be determined with  
85 reasonable certainty without an autopsy and when it would appear  
86 to \* \* \* the judge or chancellor by \* \* \* the petition and  
87 evidence in support thereof that death may have been due to  
88 communicable disease or contagious disease or to poison, foreign  
89 substance, radiation or for any other reason exact knowledge as to  
90 which would be of benefit to the public health and welfare.  
91 In \* \* \* those cases, the same fees as specified in criminal  
92 investigations to the autopsy physician and chemist shall be  
93 allowed by the board of supervisors out of the general fund of the  
94 county in which \* \* \* the petition is filed, except that no fee  
95 shall be allowed and paid to any physician or chemist who is a



96 regular salaried employee of the state or county. A copy of the  
97 report of the autopsy physician and chemist in \* \* \* those cases  
98 shall be filed with the clerk of the court in which \* \* \* the  
99 order was entered, with the county health officer of \* \* \* that  
100 county and with the executive officer of the State Board of  
101 Health.

102 Before an autopsy authorized under this section may be  
103 performed, the judge or chancellor must obtain the consent  
104 required by Section 2 of this act.

105 **SECTION 5.** Section 41-61-65, Mississippi Code of 1972, is  
106 amended as follows:

107 41-61-65. (1) If, in the opinion of the medical examiner  
108 investigating the case, it is advisable and in the public interest  
109 that an autopsy or other study be made for the purpose of  
110 determining the primary and/or contributing cause of death, an  
111 autopsy or other study shall be made by the State Medical  
112 Examiner, or the State Medical Examiner may choose a competent  
113 pathologist who is designated by the State Medical Examiner or the  
114 Department of Public Safety as a pathologist qualified to perform  
115 postmortem examinations and autopsies to perform the autopsy or  
116 study. To be eligible to be designated under this section, a  
117 pathologist must be an M.D. or D.O. who is certified in forensic  
118 pathology by the American Board of Pathology unless a certified  
119 forensic pathologist is not available to perform a postmortem  
120 examination or autopsy within a reasonable time. The State



121 Medical Examiner or designated pathologist may retain any tissues  
122 as needed for further postmortem studies or documentation. When  
123 the medical examiner has received notification under Section  
124 41-39-15(6) that the deceased is medically suitable to be an organ  
125 and/or tissue donor, the State Medical Examiner or designated  
126 pathologist may retain any biopsy or medically approved sample of  
127 the organ and/or tissue in accordance with the provisions of  
128 Section 41-39-15(6). A complete autopsy report of findings and  
129 interpretations, prepared on forms designated for this purpose,  
130 shall be submitted promptly to the State Medical Examiner. Copies  
131 of the report shall be furnished to the authorizing medical  
132 examiner, district attorney and court clerk. A copy of the report  
133 shall be furnished to one (1) adult member of the immediate family  
134 of the deceased or the legal representative or legal guardian of  
135 members of the immediate family of the deceased upon request. In  
136 determining the need for an autopsy, the medical examiner may  
137 consider the request from the district attorney or county  
138 prosecuting attorney, law enforcement or other public officials or  
139 private persons. However, if the death occurred in the manner  
140 specified in subsection (2)(j) of Section 41-61-59, an autopsy  
141 shall be performed by the State Medical Examiner or a designated  
142 pathologist who is qualified as required by this subsection, and  
143 the report of findings shall be forwarded promptly to the State  
144 Medical Examiner, investigating medical examiner, the State



Department of Health, the infant's attending physician and the local sudden infant death syndrome coordinator.

(2) Any medical examiner or duly licensed physician performing authorized investigations and/or autopsies as provided in Sections 41-61-51 through 41-61-79 who, in good faith, complies with the provisions of Sections 41-61-51 through 41-61-79 in the determination of the cause and/or manner of death for the purpose of certification of that death, shall not be liable for damages on account thereof, and shall be immune from any civil liability that might otherwise be incurred or imposed.

(3) Family members or others who disagree with the medical examiner's determination shall be able to petition and present written argument to the State Medical Examiner for further review. If the petitioner still disagrees, he may petition the circuit court, which may, in its discretion, hold a formal hearing. In all those proceedings, the State Medical Examiner and the county medical examiner or county medical examiner investigator who certified the information shall be made defendants. All costs of the petition and hearing shall be borne by the petitioner.

(4) Before an autopsy authorized under this section may be performed, the State Medical Examiner or the medical examiner investigating the case must obtain the consent required by Section 2 of this act.

**SECTION 6.** Section 41-61-67, Mississippi Code of 1972, is amended as follows:



41-61-67. (1) In any case of death where the body is or has been buried without investigation by a medical examiner as to the cause and manner of death, or where sufficient cause develops for further investigation after a body has been buried as determined by a medical examiner, the State Medical Examiner shall authorize an investigation and send a report of the investigation with recommendations to the appropriate district attorney. The district attorney may forward the report to the circuit court having jurisdiction of the matter and petition the court for disinterment. The circuit judge may order that the body be exhumed and that an autopsy be performed by the State Medical Examiner. A report of the autopsy and other pathological studies shall be delivered to the judge. However, in cases of suspected homicide, the State Medical Examiner shall be able to authorize disinterment for the purposes of autopsy. The cost of the exhumation, autopsy, transportation and disposition of the body shall be paid by the county for which the service is provided.

(2) Any person may petition the circuit court for an order of exhumation. Upon a showing of sufficient cause, the court may order the body exhumed. The cost incurred shall be assigned to the petitioner.

(3) Before an autopsy authorized under this section may be performed, the judge or the State Medical Examiner must obtain the consent required by Section 2 of this act.





194       **SECTION 7.** Section 47-5-151, Mississippi Code of 1972, is  
195 amended as follows:

196       47-5-151. The superintendent (warden) or other person in  
197 charge of prisoners, upon the death of any prisoner under his care  
198 and control, shall at once notify the county medical examiner or  
199 county medical examiner investigator (hereinafter "medical  
200 examiner") of the county in which \* \* \* the prisoner died, of the  
201 death of the prisoner, and it shall be the duty of \* \* \* the  
202 medical examiner, when so notified of the death of \* \* \* that  
203 person, to obtain a court order and notify the State Medical  
204 Examiner of the death of \* \* \* the prisoner. It shall be  
205 mandatory that the State Medical Examiner cause an autopsy to be  
206 performed upon the body of the deceased prisoner. Furthermore,  
207 the State Medical Examiner shall investigate any case where a  
208 person is found dead on the premises of the correctional system,  
209 in accordance with Sections 41-61-51 through 41-61-79. The State  
210 Medical Examiner shall make a written report of his investigation,  
211 and shall furnish a copy of the same, including the autopsy  
212 report, to the superintendent (warden) and a copy of the same to  
213 the district attorney of the county in which \* \* \* the prisoner  
214 died. The copy so furnished to the district attorney shall be  
215 turned over by the district attorney to the grand jury, and it  
216 shall be the duty of the grand jury, if there \* \* \* is any  
217 suspicion of wrongdoing shown by the inquest papers, to thoroughly  
218 investigate the cause of \* \* \* the death.



219           It shall be the duty of the medical examiner of the county in  
220   which \* \* \* the prisoner died to arrange for the remains to be  
221   transported to the State Medical Examiner for \* \* \* the autopsy,  
222   and accompanying the remains shall be the court order for autopsy  
223   and any documents or records pertaining to the deceased prisoner,  
224   institutional health records or other information relating to the  
225   circumstances surrounding the prisoner's death. The State Medical  
226   Examiner shall arrange for the remains to be transported to the  
227   county in which \* \* \* the prisoner died following completion of  
228   the autopsy. If the remains are not claimed for burial within  
229   forty-eight (48) hours after autopsy, then \* \* \* the remains may  
230   be delivered to the University of Mississippi Medical Center for  
231   use in medical research or anatomical study.

232           The provisions \* \* \* set forth in the first paragraph of this  
233   section shall likewise apply to any case in which any person is  
234   found dead on the premises of the Mississippi State Penitentiary,  
235   except that the autopsy to be performed on the body of such a  
236   person shall not be mandatory upon a person who is not a prisoner  
237   unless the medical examiner determines that the death resulted  
238   from circumstances raising questions as to the cause of death, in  
239   which case the medical examiner may cause an autopsy to be  
240   performed upon the body of \* \* \* the deceased person in the same  
241   manner as authorized to be performed upon the body of a deceased  
242   prisoner.



243           \* \* \* The provisions \* \* \* of this section shall apply with  
244   respect to any deceased prisoner who at the time of death is being  
245   detained by duly constituted state authority such as the Oakley  
246   Youth Development Center, Mississippi State Hospital at Whitfield,  
247   East Mississippi State Hospital, or any other state institution.

248           The provisions of this section shall not apply to a prisoner  
249   who was lawfully executed as provided in Sections 99-19-49 through  
250   99-19-55.

251           Before an autopsy authorized under this section may be  
252   performed, the State Medical Examiner or the medical examiner  
253   investigating the case must obtain the consent required by Section  
254   2 of this act.

255           Any officer or employee of the prison system or any other  
256   officer, employee or person having charge of any prisoner  
257   who \* \* \* fails to immediately notify the medical examiner of the  
258   death of \* \* \* the prisoner, shall be guilty of a misdemeanor and,  
259   upon conviction thereof, shall be punished by a fine of not less  
260   than One Hundred Dollars (\$100.00) nor more than Five Hundred  
261   Dollars (\$500.00) and by confinement in the county jail for not  
262   more than one (1) year.

263           **SECTION 8.** Section 99-41-15, Mississippi Code of 1972, is  
264   amended as follows:

265           99-41-15. (1) Any person filing a claim under the  
266   provisions of this chapter shall be deemed to have waived any  
267   physician-patient privilege as to the communications or records



268 relevant to an issue of the physical, mental or emotional  
269 conditions of the claimant. However, any record or report  
270 obtained by the director, the confidentiality of which is  
271 otherwise protected by any other law or regulation, shall remain  
272 confidential, subject to \* \* \* that law or regulation.

273 (2) If the mental, physical or emotional condition of a  
274 claimant is material to a claim, the director, upon good cause  
275 shown, may order the claimant to submit to a mental or physical  
276 examination and may order an autopsy of a deceased victim. The  
277 order shall specify the time, place, manner, conditions and scope  
278 of the examination or autopsy and the person by whom it is to be  
279 made. The order shall also require the person to file with the  
280 director a detailed written report of the examination or autopsy.  
281 The report shall set out the findings of the person making the  
282 report, including the results of all tests made, the diagnosis,  
283 prognosis and other conclusions and reports of earlier  
284 examinations of the same conditions. Before an autopsy authorized  
285 under this section may be performed, the director must obtain the  
286 consent required by Section 2 of this act.

287 (3) The director shall furnish a copy of the report  
288 examined. If the victim is deceased the director shall furnish a  
289 copy of the report to the claimant on request.

290 (4) The director may require the claimant to supply any  
291 additional medical or psychological reports available relating to  
292 the injury or death for which compensation is claimed.



293           **SECTION 9.** This act shall take effect and be in force from  
294 and after July 1, 2013.

