

By: Representative Dixon

To: Judiciary B

HOUSE BILL NO. 1068

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: (a) the surviving spouse of the deceased; (b) either
15 parent of or any person in loco parentis to the deceased; (c) any
16 descendant of the deceased over the age of eighteen (18) years;
17 (d) a guardian of the deceased; or (e) any person related to the
18 deceased according to the civil law rule. If none of the persons
19 listed in this section are found by reasonable search and inquiry,
20 the autopsy may be performed without prior consent, and the person



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



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

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

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

164 (4) Before an autopsy authorized under this section may be
165 performed, the State Medical Examiner or the medical examiner
166 investigating the case must obtain the consent required by Section
167 2 of this act.

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



170 41-61-67. (1) In any case of death where the body is or has
171 been buried without investigation by a medical examiner as to the
172 cause and manner of death, or where sufficient cause develops for
173 further investigation after a body has been buried as determined
174 by a medical examiner, the State Medical Examiner shall authorize
175 an investigation and send a report of the investigation with
176 recommendations to the appropriate district attorney. The
177 district attorney may forward the report to the circuit court
178 having jurisdiction of the matter and petition the court for
179 disinterment. The circuit judge may order that the body be
180 exhumed and that an autopsy be performed by the State Medical
181 Examiner. A report of the autopsy and other pathological studies
182 shall be delivered to the judge. However, in cases of suspected
183 homicide, the State Medical Examiner shall be able to authorize
184 disinterment for the purposes of autopsy. The cost of the
185 exhumation, autopsy, transportation and disposition of the body
186 shall be paid by the county for which the service is provided.

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

191 (3) Before an autopsy authorized under this section may be
192 performed, the judge or the State Medical Examiner must obtain the
193 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, 2018.

