

By: Peranich

To: Public Health and
Welfare; Judiciary B

HOUSE BILL NO. 1106

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

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

8 SECTION 1. (1) Before an autopsy may be performed upon the
9 body of a deceased person, notice shall be given to any of the
10 following persons, if they may be found by reasonable search and
11 inquiry, in the priority of the order listed: the surviving
12 spouse of the deceased; either parent of or any person in loco
13 parentis to the deceased; any descendant of the deceased over the
14 age of eighteen (18) years; a guardian of the deceased; or any
15 person related to the deceased according to the civil law rule.
16 If none of the persons listed in this section may be found by
17 reasonable search and inquiry, the person required to give this
18 notice shall make and keep a record of the nature and extent of
19 the search and inquiry that was performed to locate the persons in
20 the list.

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

25 SECTION 2. Section 41-37-9, Mississippi Code of 1972, is
26 amended as follows:

27 41-37-9. A circuit judge, chancellor or county judge of the
28 county or district where a person died or where the body of such

29 deceased person may be or where the mortal stroke or other cause
30 of death occurred, may, in his discretion, either in term time or
31 in vacation, order an autopsy to be performed upon the body of
32 such deceased person (1) upon the petition of a county prosecuting
33 attorney of the county where the person died, or where the body of
34 such deceased person may be at the time or where the mortal stroke
35 or other cause of death occurred, or (2) upon petition of the
36 district attorney of the district where the person died, or where
37 the body of such deceased person may be at the time or where the
38 mortal stroke or other cause of death occurred. In the event that
39 the petition is filed by the county prosecuting attorney or
40 district attorney, it shall contain allegations that the
41 petitioner believes, has reason to believe, or suspects that such
42 deceased person came to his death by some criminal means or
43 agency, or that the cause of justice would be promoted by having
44 an autopsy performed upon the body of such deceased person. The
45 petition shall be sworn to and shall be filed in the court of the
46 judge or chancellor who makes the order, and shall be docketed by
47 the clerk as are other cases or suits. If the body of such
48 deceased person has already been interred, the petition shall so
49 state, and if an autopsy is ordered, the order shall order the
50 disinterment of such body for such autopsy and shall order any
51 lawful officer of the county where the body may be buried to
52 employ suitable help to disinter the body and to keep it in a
53 suitable place until the autopsy shall have been performed. If
54 there has been no interment of the body of such deceased person, a
55 copy of the order ordering an autopsy upon the deceased shall be
56 served by the sheriff of the county, or any other person
57 authorized to serve process, upon any person who may be found in
58 charge of any funeral home where the body may be, and such funeral
59 home shall hold the body for autopsy. If the body of such
60 deceased person be not found in any funeral home the sheriff of
61 the county where it may be found shall take the body and keep it
62 in a suitable place until the autopsy shall have been performed.
63 If an autopsy is ordered as provided in this section, the
64 petitioner shall immediately secure the services of a qualified
65 person to perform such autopsy.

66 Before an autopsy authorized under this section may be
67 performed, the judge or chancellor shall give the notice required
68 by Section 1 of this act.

69 SECTION 3. Section 41-37-23, Mississippi Code of 1972, is
70 amended as follows:

71 41-37-23. The executive officer of the Mississippi State
72 Board of Health or a county health officer may petition in like
73 manner as is provided in Section 41-37-9 a circuit judge,
74 chancellor, or county judge in any county in which a person dies
75 or where the body of such deceased person may be, and such circuit
76 judge, chancellor, or county judge may order an autopsy to be
77 performed upon the body of such deceased person in the interest of
78 public health and welfare in cases where the cause of death is not
79 known and cannot be determined with reasonable certainty without
80 an autopsy and when it would appear to such judge or chancellor by
81 such petition and evidence in support thereof that death may have
82 been due to communicable disease or contagious disease or to
83 poison, foreign substance, radiation or for any other reason exact
84 knowledge as to which would be of benefit to the public health and
85 welfare. In such cases the same fees as specified in criminal
86 investigations to the autopsy physician and chemist shall be
87 allowed by the board of supervisors out of the general fund of the
88 county in which such petition is filed, except that no fee shall
89 be allowed and paid to any physician or chemist who is a regular
90 salaried employee of the state or county. A copy of the report of
91 the autopsy physician and chemist in such cases shall be filed
92 with the clerk of the court in which such order was entered, with
93 the county health officer of such county and with the executive
94 officer of the State Board of Health.

95 Before an autopsy authorized under this section may be
96 performed, the judge or chancellor shall give the notice required
97 by Section 1 of this act.

98 SECTION 4. Section 41-61-65, Mississippi Code of 1972, is

99 amended as follows:

100 41-61-65. (1) If, in the opinion of the medical examiner
101 investigating the case, it is advisable and in the public interest
102 that an autopsy or other study be made for the purpose of
103 determining the primary and/or contributing cause of death, an
104 autopsy or other study shall be made by the State Medical Examiner
105 or by a competent pathologist designated by the State Medical
106 Examiner. The State Medical Examiner or designated pathologist
107 may retain any tissues as needed for further postmortem studies or
108 documentation. A complete autopsy report of findings and
109 interpretations, prepared on forms designated for this purpose,
110 shall be submitted promptly to the State Medical Examiner. Copies
111 of the report shall be furnished to the authorizing medical
112 examiner, district attorney and court clerk. A copy of the report
113 shall be furnished to one (1) adult member of the immediate family
114 of the deceased or the legal representative or legal guardian of
115 members of the immediate family of the deceased upon request. In
116 determining the need for an autopsy, the medical examiner may
117 consider the request from the district attorney or county
118 prosecuting attorney, law enforcement or other public officials or
119 private persons. However, if the death occurred in the manner
120 specified in subsection (2)(j) of Section 41-61-59, an autopsy
121 shall be performed by the State Medical Examiner or his designated
122 pathologist, and the report of findings shall be forwarded
123 promptly to the State Medical Examiner, investigating medical
124 examiner, the infant's attending physician and the local sudden
125 infant death syndrome coordinator.

126 (2) Any medical examiner or duly licensed physician
127 performing authorized investigations and/or autopsies as provided
128 in Sections 41-61-51 through 41-61-79, who in good faith complies
129 with the provisions of Sections 41-61-51 through 41-61-79 in the
130 determination of the cause and/or manner of death for the purpose
131 of certification of that death, shall not be liable for damages on

132 account thereof, and shall be immune from any civil liability that
133 might otherwise be incurred or imposed.

134 (3) Family members or others who disagree with the medical
135 examiner's determination shall be able to petition and present
136 written argument to the State Medical Examiner for further review.
137 If the petitioner still disagrees, he may petition the circuit
138 court which may, in its discretion, hold a formal hearing. All
139 cost of the petitioning and hearing shall be borne by the
140 petitioner.

141 (4) Before an autopsy authorized under this section may be
142 performed, the State Medical Examiner or the medical examiner
143 investigating the case shall give the notice required by Section 1
144 of this act.

145 SECTION 5. Section 41-61-67, Mississippi Code of 1972, is
146 amended as follows:

147 41-61-67. (1) In any case of death where the body is or has
148 been buried without investigation by a medical examiner as to the
149 cause and manner of death, or where sufficient cause develops for
150 further investigation after a body has been buried as determined
151 by a medical examiner, the State Medical Examiner shall authorize
152 an investigation and send a report of the investigation with
153 recommendations to the appropriate district attorney. The
154 district attorney may forward the report to the circuit court
155 having jurisdiction of the matter and petition the court for
156 disinterment. The circuit judge may order that the body be
157 exhumed and that an autopsy be performed by the State Medical
158 Examiner. A report of the autopsy and other pathological studies
159 shall be delivered to the judge. However, in cases of suspected
160 homicide, the State Medical Examiner shall be able to authorize
161 disinterment for the purposes of autopsy. The cost of the
162 exhumation, autopsy, transportation and disposition of the body
163 shall be paid by the county for which the service is provided.

164 (2) Any person may petition the circuit court for an order

165 of exhumation. Upon a showing of sufficient cause, the court may
166 order the body exhumed. The cost incurred shall be assigned to
167 the petitioner.

168 (3) Before an autopsy authorized under this section may be
169 performed, the judge or the State Medical Examiner shall give the
170 notice required by Section 1 of this act.

171 SECTION 6. Section 47-5-151, Mississippi Code of 1972, is
172 amended as follows:

173 47-5-151. The superintendent (warden) or other person in
174 charge of prisoners, upon the death of any prisoner under his care
175 and control, shall at once notify the county medical examiner or
176 county medical examiner investigator (hereinafter "medical
177 examiner") of the county in which the prisoner died, of the death
178 of the prisoner, and it shall be the duty of such medical
179 examiner, when so notified of the death of such person, to obtain
180 a court order and notify the State Medical Examiner of the death
181 of such prisoner. It shall be mandatory that the State Medical
182 Examiner cause an autopsy to be performed upon the body of the
183 deceased prisoner. Furthermore, the State Medical Examiner shall
184 investigate any case where a person is found dead on the premises
185 of the correctional system, in accordance with Sections 41-61-51
186 through 41-61-79. The State Medical Examiner shall make a written
187 report of his investigation, and shall furnish a copy of the same,
188 including the autopsy report, to the superintendent (warden) and a
189 copy of the same to the district attorney of the county in which
190 the prisoner died. The copy so furnished to the district attorney
191 shall be turned over by the district attorney to the grand jury,
192 and it shall be the duty of the grand jury, if there be any
193 suspicion of wrongdoing shown by the inquest papers, to thoroughly
194 investigate the cause of such death.

195 It shall be the duty of the medical examiner of the county in
196 which the prisoner died to arrange for the remains to be
197 transported to the State Medical Examiner for the autopsy, and

198 accompanying the remains shall be the court order for autopsy and
199 any documents or records pertaining to the deceased prisoner,
200 institutional health records or other information relating to the
201 circumstances surrounding the prisoner's death. The State Medical
202 Examiner shall arrange for the remains to be transported to the
203 county in which the prisoner died following completion of the
204 autopsy. If the remains are not claimed for burial within
205 forty-eight (48) hours after autopsy, then the remains may be
206 delivered to the University of Mississippi Medical Center for use
207 in medical research or anatomical study.

208 The provisions herein set forth in the first paragraph shall
209 likewise apply to any case in which any person is found dead on
210 the premises of the Mississippi State Penitentiary except that the
211 autopsy to be performed on the body of such a person shall not be
212 mandatory upon a person who is not a prisoner unless the medical
213 examiner determines that the death resulted from circumstances
214 raising questions as to the cause of death, in which case the
215 medical examiner may cause an autopsy to be performed upon the
216 body of such deceased person in the same manner as authorized to
217 be performed upon the body of a deceased prisoner.

218 Provided further, that the provisions herein shall apply with
219 respect to any deceased prisoner who at the time of death is being
220 detained by duly constituted state authority such as the Columbia
221 Training School, Oakley Training School, Mississippi State
222 Hospital at Whitfield, East Mississippi State Hospital, or any
223 other state institution.

224 The provisions of this section shall not apply to a prisoner
225 who was lawfully executed as provided in Sections 99-19-49 through
226 99-19-55.

227 Before an autopsy authorized under this section may be
228 performed, the State Medical Examiner or the medical examiner
229 investigating the case shall give the notice required by Section 1
230 of this act.

231 Any officer or employee of the prison system or any other
232 officer, employee or person having charge of any prisoner who
233 shall fail to immediately notify the medical examiner of the death
234 of such prisoner, shall be guilty of a misdemeanor and, upon
235 conviction thereof, shall be punished by a fine of not less than
236 One Hundred Dollars (\$100.00) nor more than Five Hundred dollars
237 (\$500.00) and by confinement in the county jail for not more than
238 one (1) year.

239 SECTION 7. Section 99-41-15, Mississippi Code of 1972, is
240 amended as follows:

241 99-41-15. (1) Any person filing a claim under the
242 provisions of this chapter shall be deemed to have waived any
243 physician-patient privilege as to the communications or records
244 relevant to an issue of the physical, mental or emotional
245 conditions of the claimant. However, any record or report
246 obtained by the director, the confidentiality of which is
247 otherwise protected by any other law or regulation, shall remain
248 confidential, subject to such law or regulation.

249 (2) If the mental, physical or emotional condition of a
250 claimant is material to a claim, the director, upon good cause
251 shown, may order the claimant to submit to a mental or physical
252 examination and may order an autopsy of a deceased victim. The
253 order shall specify the time, place, manner, conditions and scope
254 of the examination or autopsy and the person by whom it is to be
255 made. The order shall also require the person to file with the
256 director a detailed written report of the examination or autopsy.
257 The report shall set out the findings of the person making the
258 report, including the results of all tests made, the diagnosis,
259 prognosis and other conclusions and reports of earlier
260 examinations of the same conditions. Before an autopsy authorized
261 under this section may be performed, the director shall give the
262 notice required by Section 1 of this act.

263 (3) The director shall furnish a copy of the report

264 examined. If the victim is deceased the director shall furnish a
265 copy of the report to the claimant on request.

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

269 SECTION 8. This act shall take effect and be in force from
270 and after July 1, 2000.