

1-1 By: Callegari (Senate Sponsor - Hegar) H.B. No. 1009  
1-2 (In the Senate - Received from the House May 5, 2011;  
1-3 May 9, 2011, read first time and referred to Committee on Criminal  
1-4 Justice; May 21, 2011, reported favorably by the following vote:  
1-5 Yeas 6, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to procedures for obtaining informed consent before  
1-9 certain postmortem examinations or autopsies.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. This Act shall be known as the Jerry Carswell  
1-12 Memorial Act.

1-13 SECTION 2. Chapter 49, Code of Criminal Procedure, is  
1-14 amended by adding Subchapter C to read as follows:

1-15 SUBCHAPTER C. INFORMED CONSENT FOR POSTMORTEM EXAMINATION OR  
1-16 AUTOPSY

1-17 Art. 49.31. APPLICABILITY. This subchapter does not apply  
1-18 to an autopsy that:

1-19 (1) is ordered by the Texas Department of Criminal  
1-20 Justice or an authorized official of the department in accordance  
1-21 with Section 501.055, Government Code; or

1-22 (2) a justice of the peace or medical examiner  
1-23 determines is required under this chapter or other law.

1-24 Art. 49.32. CONSENT TO POSTMORTEM EXAMINATION OR AUTOPSY.

1-25 (a) Except as provided by Subsection (b) of this article, a  
1-26 physician may not perform, or assist in the performance of, a  
1-27 postmortem examination or autopsy on the body of a deceased person  
1-28 unless the physician obtains the written informed consent of a  
1-29 person authorized to provide consent under Article 49.33 of this  
1-30 code. The consent must be provided on the form prescribed under  
1-31 Article 49.34 of this code.

1-32 (b) If, after due diligence, a physician is unable to  
1-33 identify or contact a person authorized to give consent under  
1-34 Article 49.33 of this code, the physician may, as authorized by a  
1-35 medical examiner, justice of the peace, or county judge, as  
1-36 appropriate, perform a postmortem examination or autopsy on the  
1-37 body of a deceased person not less than 24 hours and not more than 48  
1-38 hours from the time of the decedent's death or the time the  
1-39 physician or other person took possession of the body.

1-40 Art. 49.33. PERSONS AUTHORIZED TO CONSENT TO POSTMORTEM  
1-41 EXAMINATION OR AUTOPSY. (a) Subject to Subsections (b) and (c) of  
1-42 this article, consent for a postmortem examination or autopsy may  
1-43 be given by any member of the following classes of persons who is  
1-44 reasonably available, in the order of priority listed:

1-45 (1) the spouse of the decedent;

1-46 (2) the person acting as guardian of the person of the  
1-47 decedent at the time of death or the executor or administrator of  
1-48 the decedent's estate;

1-49 (3) the adult children of the decedent;

1-50 (4) the parents of the decedent; and

1-51 (5) the adult siblings of the decedent.

1-52 (b) If there is more than one member of a class listed in  
1-53 Subsection (a)(2), (3), (4), or (5) of this article entitled to give  
1-54 consent to a postmortem examination or autopsy, consent may be  
1-55 given by a member of the class unless another member of the class  
1-56 files an objection with the physician, medical examiner, justice of  
1-57 the peace, or county judge. If an objection is filed, the consent  
1-58 may be given only by a majority of the members of the class who are  
1-59 reasonably available.

1-60 (c) A person may not give consent under this article if, at  
1-61 the time of the decedent's death, a person in a class granted higher  
1-62 priority under Subsection (a) of this article is reasonably  
1-63 available to give consent or to file an objection to a postmortem  
1-64 examination or autopsy.

Art. 49.34. POSTMORTEM EXAMINATION OR AUTOPSY CONSENT FORM.

The commissioner of state health services, in consultation with the Texas Medical Board, shall prescribe a standard written consent form for a postmortem examination or autopsy. The form must:

(1) include the name of the hospital or other institution and the department that will perform the examination or autopsy;

(2) include a statement that the removal from the deceased person's body and retention by the physician of organs, fluids, prosthetic devices, or tissue may be required for purposes of comprehensive evaluation or accurate determination of a cause of death;

(3) provide the family of the deceased person with an opportunity to place restrictions or special limitations on the examination or autopsy;

(4) include a separate section regarding the disposition of organs, fluids, prosthetic devices, or tissue after the examination or autopsy, including a prioritized list of the persons authorized to control that disposition, as provided by Chapter 692A, Health and Safety Code;

(5) provide for documented and witnessed consent;

(6) allow authorization for the release of human remains to a funeral home or individual designated by the person giving consent for the postmortem examination or autopsy;

(7) include information regarding the rights described by Article 49.35 of this code;

(8) list the circumstances under which a medical examiner is required by law to conduct an investigation, inquest, or autopsy under Article 49.25 of this code;

(9) include a statement that the form is required by state law; and

(10) be written in plain language designed to be easily understood by the average person.

Art. 49.35. RIGHT TO NONAFFILIATED PHYSICIAN. (a) A person authorized to consent to a postmortem examination or autopsy under Article 49.33 of this code may request that a physician who is not affiliated with the hospital or other institution where the deceased person died:

(1) perform the postmortem examination or autopsy at another hospital or institution; or

(2) review the postmortem examination or autopsy conducted by a physician affiliated with the hospital or other institution where the deceased person died.

(b) A representative of the hospital or other institution shall inform the person of the person's right to request the performance or review of a postmortem examination or autopsy by a nonaffiliated physician under Subsection (a) before the person consents to the postmortem examination or autopsy.

(c) A person requesting a nonaffiliated physician to perform or review a postmortem examination or autopsy shall bear the additional costs incurred as a result of the nonaffiliated physician's performance or review of the examination or autopsy under Subsection (a) of this article.

SECTION 3. Section 501.055(d), Government Code, is amended to read as follows:

(d) If the next of kin consents to the autopsy or does not within eight hours of the time of death file an objection with ~~[object to]~~ the department about the autopsy, the department or an authorized official of the department shall order an autopsy to be conducted on the inmate. The order of an autopsy under this subsection constitutes consent to an autopsy for the purposes of Article 49.32 ~~[49.13(b)]~~, Code of Criminal Procedure.

SECTION 4. Article 49.13, Code of Criminal Procedure, is repealed.

SECTION 5. (a) Not later than December 31, 2011, the Department of State Health Services shall prescribe the written consent form required under Article 49.34, Code of Criminal Procedure, as added by this Act.

(b) Notwithstanding Subchapter C, Chapter 49, Code of

3-1 Criminal Procedure, as added by this Act, a physician is not  
3-2 required to comply with the requirements of that subchapter until  
3-3 January 1, 2012.

3-4 SECTION 6. (a) Except as provided by Subsection (b) of this  
3-5 section, this Act takes effect September 1, 2011.

3-6 (b) Sections 3 and 4 of this Act take effect January 1, 2012.

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