

SUBJECT: Requiring informed consent before autopsy

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Zedler
0 nays
1 absent — Rodriguez

WITNESSES: For — Linda Carswell (*Registered, but did not testify*: Terri Carswell Moore)
Against — None

DIGEST: CSHB 1009 would establish the Jerry Carswell Memorial Act, a new subchapter in the Code of Criminal Procedure on informed consent for postmortem examination or autopsy. The bill would require a physician to obtain informed consent before performing an autopsy, unless the physician was unable after due diligence to identify or contact a person authorized to give consent.

Authorized consent could be given by any member of the following classes who was reasonably available, in the following order of priority:

- the spouse of the deceased;
- the guardian of the deceased at the time of death or the executor or administrator of the deceased's estate;
- the adult children of the deceased;
- the parents of the deceased; and
- the adult siblings of the deceased.

If a person with higher priority was reasonably available at the time of the death, then a person with a lower priority could not give consent. If more than one member of any class above, except the spouse, was entitled to give consent, it could be given by any member of the class unless the member knew of an objection by another member of the class. If an

objection was known, consent could only be given by a majority of the members of the class who were reasonably available.

The person authorized to give consent also would be allowed to request that a physician unaffiliated with the hospital where the person died perform the autopsy at another hospital or review the autopsy conducted by the hospital-affiliated physician. The person requesting the services of the unaffiliated physician would have to pay for the additional cost of those services. Hospital representatives would be required to inform people of their rights to have unaffiliated physicians review or perform the autopsies before obtaining consent.

The bill would prescribe the content of the standard written consent form, which the commissioner of State Health Services would have to develop in consultation with the Texas Medical Board by December 31, 2011. The form would have to be written in plain language designed to be easily understood by the average person and explain the autopsy procedure, provide the family of the deceased an opportunity to place restrictions or special limitations on the autopsy, and list the circumstances under which a medical examiner was legally required to conduct an autopsy by law.

The new subchapter on informed consent for autopsies would not apply to an autopsy ordered by the Texas Department of Criminal Justice or determined by a justice of the peace or medical examiner to be required by law.

HB 1009 would repeal current law regarding consent to an autopsy, effective January 1, 2012. A physician would not be required to comply with the new informed consent subchapter until January 1, 2012.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

HB 1009 would provide dignity, disclosure, and choice in the autopsy process after a loved one dies. This new informed consent subchapter would be named for Jerry Carswell. His case illustrates why the new informed consent law is necessary. Mr. Carswell died unexpectedly after being admitted to the hospital for kidney stones. Mrs. Carswell asked for an autopsy by the medical examiner, but the medical examiner declined. Mrs. Carswell signed a form consenting to a hospital autopsy because she did not know she could request an autopsy by an unaffiliated physician and was not told the circumstances under which an autopsy must be done

by a medical examiner. Later, Mrs. Carswell learned some disturbing news: that the hospital did not perform certain autopsy tests and that her husband's heart had been kept after the autopsy.

The informed consent form that would be required under HB 1009 would provide the information that Mrs. Carswell did not have. The form would have to explain in plain language what a person's rights were under the law regarding the disposition of organs and that the family member had the right to choose an unaffiliated physician to perform the autopsy at another hospital. The form also would have to include an explanation of when a medical examiner was required by law to conduct an autopsy and would provide an opportunity for the family member to place limitations on the autopsy.

HB 1009 would not be a hardship on hospitals because families would be required to pay for the expenses of having unaffiliated physicians perform autopsies. Doctors would benefit from being able to obtain informed consent forms and knowing that the family members knew all of their options. The rules for when medical examiners are required to perform an autopsy under the law would not change. HB 1009 simply would ensure that family members have the information and choice they need to respectfully honor their loved ones in death.

**OPPONENTS
SAY:**

While HB 1009 would provide very needed informed consent for the autopsy process, it should contain penalties or some other enforcement mechanism to ensure that informed consent always was obtained.