

BILL ANALYSIS

Senate Research Center

H.B. 1009
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1009 outlines a process for a decedent's family to provide for informed consent to an autopsy. The bill requires that a decedent's relative be given an opportunity to consent to the autopsy through a plain language form that provides an opportunity for the family to place restrictions on the autopsy as well as control the disposition of organs and tissues after the procedure. The bill also allows a decedent's family to request that a physician not affiliated with the institution where their family member died review the autopsy, or perform the autopsy at another hospital or institution.

H.B. 1009 amends current law relating to procedures for obtaining informed consent before certain postmortem examinations or autopsies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that this Act shall be known as the Jerry Carswell Memorial Act.

SECTION 2. Amends Chapter 49, Code of Criminal Procedure, by adding Subchapter C, as follows:

SUBCHAPTER C. INFORMED CONSENT FOR POSTMORTEM EXAMINATION OR AUTOPSY

Art. 49.31. **APPLICABILITY.** Provides that this subchapter does not apply to an autopsy that:

- (1) is ordered by the Texas Department of Criminal Justice (TDCJ) or an authorized official of TDCJ in accordance with Section 501.055 (Report of Inmate Death), Government Code; or
- (2) a justice of the peace or medical examiner determines is required under this chapter or other law.

Art. 49.32. **CONSENT TO POSTMORTEM EXAMINATION OR AUTOPSY.** (a) Prohibits a physician from performing, or assisting in the performance of, a postmortem examination or autopsy on the body of a deceased person unless the physician obtains the written informed consent of a person authorized to provide consent under Article 49.33 of this code, except as provided by Subsection (b) of this article. Requires that the consent be provided on the form prescribed under Article 49.34 of this code.

- (b) Authorizes a physician, if, after due diligence, the physician is unable to identify or contact a person authorized to give consent under Article 49.33 of this code, to, as authorized by a medical examiner, justice of the peace, or county judge, as appropriate, perform a postmortem examination or autopsy on the body

of a deceased person not less than 24 hours and not more than 48 hours from the time of the decedent's death or the time the physician or other person took possession of the body.

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

- (1) the spouse of the decedent;
- (2) the person acting as guardian of the person of the decedent at the time of death or the executor or administrator of the decedent's estate;
- (3) the adult children of the decedent;
- (4) the parents of the decedent; and
- (5) the adult siblings of the decedent.

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

(c) Prohibits a person from giving consent under this article if, at the time of the decedent's death, a person in a class granted higher priority under Subsection (a) of this article is reasonably available to give consent or to file an objection to a postmortem examination or autopsy.

Art. 49.34. POSTMORTEM EXAMINATION OR AUTOPSY CONSENT FORM. Requires the commissioner of state health services, in consultation with the Texas Medical Board, to prescribe a standard written consent form for a postmortem examination or autopsy. Requires that the form:

- (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 (Revised Uniform Anatomical Gift Act), 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 (Medical Examiners) 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) Authorizes a person authorized to consent to a postmortem examination or autopsy under Article 49.33 of this code to 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) Requires a representative of the hospital or other institution to 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) Requires a person requesting a nonaffiliated physician to perform or review a postmortem examination or autopsy to 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. Amends Section 501.055(d), Government Code, as follows:

(d) Requires TDCJ or an authorized official of TDCJ, if the next of kin consents to the autopsy or does not within eight hours of the time of death file an objection with TDCJ about the autopsy, to order an autopsy to be conducted on the inmate. Provides that the order of an autopsy under this subsection constitutes consent to an autopsy for the purposes of Article 49.32, Code of Criminal Procedure, rather than for the purposes of Article 49.13(b) (relating to consent to autopsy), Code of Criminal Procedure. Makes a nonsubstantive change.

SECTION 4. Repealer: Article 49.13 (Consent to Autopsy), Code of Criminal Procedure.

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

(b) Provides that, notwithstanding Subchapter C, Chapter 49, Code of Criminal Procedure, as added by this Act, a physician is not required to comply with the requirements of that subchapter until January 1, 2012.

SECTION 6. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Sections 3 and 4 of this Act: January 1, 2012.