

1 AN ACT

2 relating to procedures for obtaining informed consent before
3 certain postmortem examinations or autopsies.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. This Act shall be known as the Jerry Carswell
6 Memorial Act.

7 SECTION 2. Chapter 49, Code of Criminal Procedure, is
8 amended by adding Subchapter C to read as follows:

9 SUBCHAPTER C. INFORMED CONSENT FOR POSTMORTEM EXAMINATION OR
10 AUTOPSY

11 Art. 49.31. APPLICABILITY. This subchapter does not apply
12 to an autopsy that:

13 (1) is ordered by the Texas Department of Criminal
14 Justice or an authorized official of the department in accordance
15 with Section 501.055, Government Code; or

16 (2) a justice of the peace or medical examiner
17 determines is required under this chapter or other law.

18 Art. 49.32. CONSENT TO POSTMORTEM EXAMINATION OR AUTOPSY.

19 (a) Except as provided by Subsection (b) of this article, a
20 physician may not perform, or assist in the performance of, a
21 postmortem examination or autopsy on the body of a deceased person
22 unless the physician obtains the written informed consent of a
23 person authorized to provide consent under Article 49.33 of this
24 code. The consent must be provided on the form prescribed under

1 Article 49.34 of this code.

2 (b) If, after due diligence, a physician is unable to
3 identify or contact a person authorized to give consent under
4 Article 49.33 of this code, the physician may, as authorized by a
5 medical examiner, justice of the peace, or county judge, as
6 appropriate, perform a postmortem examination or autopsy on the
7 body of a deceased person not less than 24 hours and not more than 48
8 hours from the time of the decedent's death or the time the
9 physician or other person took possession of the body.

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

15 (1) the spouse of the decedent;

16 (2) the person acting as guardian of the person of the
17 decedent at the time of death or the executor or administrator of
18 the decedent's estate;

19 (3) the adult children of the decedent;

20 (4) the parents of the decedent; and

21 (5) the adult siblings of the decedent.

22 (b) If there is more than one member of a class listed in
23 Subsection (a)(2), (3), (4), or (5) of this article entitled to give
24 consent to a postmortem examination or autopsy, consent may be
25 given by a member of the class unless another member of the class
26 files an objection with the physician, medical examiner, justice of
27 the peace, or county judge. If an objection is filed, the consent

1 may be given only by a majority of the members of the class who are
2 reasonably available.

3 (c) A person may not give consent under this article if, at
4 the time of the decedent's death, a person in a class granted higher
5 priority under Subsection (a) of this article is reasonably
6 available to give consent or to file an objection to a postmortem
7 examination or autopsy.

8 Art. 49.34. POSTMORTEM EXAMINATION OR AUTOPSY CONSENT FORM.

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

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

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

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

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

1 (5) provide for documented and witnessed consent;

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

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

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

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

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

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

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

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

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

1 consents to the postmortem examination or autopsy.

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

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

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

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

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

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

26 SECTION 6. (a) Except as provided by Subsection (b) of this
27 section, this Act takes effect September 1, 2011.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1009 was passed by the House on May 4, 2011, by the following vote: Yeas 137, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1009 was passed by the Senate on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor