

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1970

SPONSOR: Criminal Justice Committee and Senator King

SUBJECT: Anatomical gifts by capital defendants

DATE: April 25, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill requires that the Department of Corrections provide each person remanded to the custody of the department the opportunity to obtain an anatomical gift donor card as provided in s. 732.914, F.S.

The bill also states that nothing in it shall be construed as conferring a right on the part of an inmate to make an anatomical gift. Further, any claim or action filed on behalf of an inmate which seeks to enforce an alleged right to make or donate an anatomical gift is a nullity and shall be summarily dismissed by the court.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Federal law requires organ procurement organizations to participate in the Organ Procurement Transplantation Network (OPTN) for the purpose of matching donor organs to waiting recipients. 42 U.S.C. 274. The OPTN is managed by the United Network for Organ Sharing within the Public Health Service of the Department of Health and Human Services which cooperates with organ procurement organizations throughout the country to place organs and tissues.

An individual who is brain dead but is on a respirator and has a beating heart can be a donor for heart, heart valves, pancreas, liver, skin, corneas, lungs, bone, kidney, and small bowel. An individual who has died and is no longer breathing and does not have a heartbeat can be a donor for corneas, blood vessels, cartilage, skin and bone.

Part X of Chapter 732, F.S., is titled "Anatomical Gifts." This section sets forth procedures by which a person or the person's family may donate all or part of his or her body upon death. s. 732.912, F.S. The term "death" is defined to mean "the absence of life as determined, in accordance with currently acceptable medical standards, by the irreversible cessation of all

respiration and circulatory function, or as determined, in accordance with s. 382.009, F.S., by the irreversible cessation of the functions of the entire brain, including the brain stem.”

An anatomical gift may be made by will or by way of a donor card that has been signed in the presence of two witnesses. s. 732.914, F.S. Section 732.914, F.S., provides a form of written instrument for a uniform donor card. A procedure by which a person can revoke or amend a will or donor card is also provided. s. 732.916, F.S. The Florida Organ and Tissue Donor Education and Procurement Trust Fund is used by the Agency for Health Care Administration to pay for an organ and tissue donation registry which allows hospitals and organ and tissue procurement agencies access to organ and tissue donation documents. s. 732.92155, F.S.

A person who is an inmate of a correctional facility is at high risk of exposure to a communicable disease. It is possible that AIDS, Hepatitis B and Hepatitis C could be transmitted to a recipient of an organ donation. According to the bill analysis provided by the Agency for Health Care Administration, “[r]epresentatives from the Organ and Tissue Procurement and Transplantation Advisory Board indicated in an advisory board meeting held March 3, 2000, the chance of a transplant center accepting such high risk prisoners as a donor would be very remote.”

The Federal Department of Health and Human Services has published “Guidelines for Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs”. 42 C.F.R. 486. According to these guidelines, persons who meet any of a specified list of criteria should be excluded from donation of organs¹ or tissues²:

unless the risk to the recipient of not performing the transplant is deemed to be greater than the risk of HIV transmission and disease (e.g., emergent, life-threatening illness requiring transplantation when no other organs/tissues are available and no other lifesaving therapies exist). In such a case, informed consent regarding the possibility of HIV transmission should be obtained from the recipient.

Included in this list are inmates of correctional institutions.

The Food and Drug Administration has published “Guidance for Industry: Screening and Testing of Donors of Human Tissue Intended for Transplantation” that states that tissue should not be accepted for transplantation from donors who have any of a specified list of “exclusionary risk factors.” Included in the list are “current inmates of correctional systems (including jails and prisons) and individuals who have been incarcerated for more than 72 consecutive hours during the previous 12 months.”

¹ The term “organ” is defined as “a human kidney, liver, heart, lung, or pancreas”. 42 C.F.R. 121.

² The term “human tissue” means any tissue derived from the human body other than the kidney, lungs, heart, liver or pancreas. 21 C.F.R. 1270.3

III. Effect of Proposed Changes:

This bill requires that the Department of Corrections provide each person remanded to the custody of the department the opportunity to obtain an anatomical gift donor card as provided in s. 732.914, F.S.

The bill also states that nothing in it shall be construed as conferring a right on the part of an inmate to make an anatomical gift. Further, any claim or action filed on behalf of an inmate which seeks to enforce an alleged right to make or donate an anatomical gift is a nullity and shall be summarily dismissed by the court.

The bill shall take effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Corrections this bill should not have a fiscal impact on the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
