

STORAGE NAME: h0999.cp
DATE: March 23, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME & PUNISHMENT
ANALYSIS**

BILL #: HB 999
RELATING TO: Anatomical Gifts/Capital Defendants
SPONSOR(S): Representative Andrews
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME & PUNISHMENT
 - (2) CORRECTIONS
 - (3) GOVERNMENTAL RULES & REGULATIONS
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

HB 999 provides that any person who is convicted or adjudicated guilty of a capital felony and who is sentenced to death by lethal injection may choose to make an anatomical gift of all or any part of his or her body. The bill provides that the prisoner may choose one of two methods of execution as follows:

1. Introduction of "a suitable substance into the body which would cause the irreversible cessation of all brain functions other than autonomic nervous system functions for purposes of maintaining cardiac and pulmonary functions to preserve the tissues and organs of such person naturally, without resorting to artificial means of support, until appropriate donees for such tissues or organs can be located"; or
2. Introduction of "suitable substances into the body which would cause irreversible cessation of cardiac and pulmonary functions." The bill permits the prisoner to donate any organ or tissue that can be appropriately recovered after such irreversible cessation of cardiac and pulmonary functions.

The bill requires the Department of Corrections to notify each person who is sentenced to death of the person's right to make an anatomical gift pursuant to this section and the right of the person to rescind the gift before execution. The department is required to adopt rules to implement the section.

Note: It is expected that the sponsor will offer a strike everything amendment that will substantially change the bill to provide that the Department of Corrections shall 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. The amendment also states that nothing in the section 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.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. 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 Service 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 of Florida Statutes 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. Sec. 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 382.009, 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. Sec. 732.914, F.S. A procedure by which a person can revoke or amend a will or donor card is also provided. Sec. 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. Section 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. 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 systems.

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."

C. EFFECT OF PROPOSED CHANGES:

HB 999 provides that any person who is convicted or adjudicated guilty of a capital felony and who is sentenced to death by lethal injection may choose to make an anatomical gift of all or any part of his or her body.

The bill provides that the prisoner may choose one of two methods of execution as follows:

1. Introduction of "a suitable substance into the body which would cause the irreversible cessation of all brain functions other than autonomic nervous system functions for purposes of maintaining cardiac and pulmonary functions to preserve the tissues and organs of such person naturally, without resorting to artificial means of support, until appropriate donees for such tissues or organs can be located"; or
2. Introduction of "suitable substances into the body which would cause irreversible cessation of cardiac and pulmonary functions." The bill permits the prisoner to donate any organ or tissue that can be appropriately recovered after such irreversible cessation of cardiac and pulmonary functions.

The bill specifically requires any organs or tissues recovered pursuant to this section to first be made available to residents of Florida.

The bill also prohibits the organ donor from being compensated in any way.

The bill requires the Department of Corrections to notify each person who is sentenced to death of the person's right to make an anatomical gift pursuant to this section and the right

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

of the person to rescind the gift before execution. The department is required to adopt rules to implement the section.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Providing for anatomical gifts by capital defendants who are sentenced to death.

Section 2: Providing an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Corrections has not completed the bill analysis of this bill. However, according to the bill analysis from the Agency for Health Care Administration (ACHA), the Department of Corrections would need to have an operating room that "could accommodate the retrieval of organs, a ventilator system to maintain the body's functioning until organs are retrieved, and specialized staff (an anesthesiologist, and a critical care nurse)." According to ACHA, HB 999 would not have any fiscal impact on that agency.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill requires DOC to notify each person who is sentenced to death of the prisoner's right to make an anatomical gift pursuant to this section and requires the department to adopt rules to implement that requirement.

C. OTHER COMMENTS:

The bill requires the Department of Corrections to notify a inmate who has been sentenced to death of his or her "right" to make an anatomical gift pursuant to this section. The section allows a prisoner to choose between two methods of execution. Currently, there is apparently not a substance which can be introduced into the body which would cause the irreversible cessation of all brain functions except for cardiac and pulmonary functions, thus allowing for the preservation of tissues and organs without resorting to artificial means of support. It is possible that a death row inmate will attempt to use the "right" to donate his or her organs by a method of execution that currently does not exist in order to delay execution.

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."

Life Link Foundation, a Florida organ procurement organization, sent a letter to committee staff stating their objection to HB 999 on three grounds.

1. According to the organization, organs from prisoners are highly suspect for transmissible diseases such as AIDS and Hepatitis. The Federal Center for Disease Control requires Organ Procurement Agencies to identify any such organs as "high risk" for disease transmission and strongly discourages the use of such

organs. Also, Food and Drug Administration (FDA) regulations prohibit the use of non-organ tissues from prisoners.

2. The organization also claims that their medical experts are “united in their knowledge” that there is not a substance that “would cause the irreversible cessation of all brain functions other than autonomic nervous system functions for purposes of maintaining cardiac and pulmonary functions”.
3. According to the organization, the bill would create a second definition of “brain death”. The current statutory definition of brain death is contained in section 382.009 and requires a determination of “irreversible cessation of the functioning of the entire brain, including the brain stem.” This definition requires that respiration cease. The bill, by contrast, provides that the introduction of the substance should cause, “irreversible cessation of all brain functions other than autonomic nervous system functions for purposes of maintaining cardiac and pulmonary functions to preserve the tissues and organs of such person naturally, without resorting to artificial means of support.” This definition would require that respiration not cease.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

It is expected that the sponsor will offer a strike everything amendment that will provide that the Department of Corrections shall 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. The amendment also states that nothing in the section 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.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

Prepared by:

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