

**STORAGE NAME:** h0999s1.cp

**DATE:** April 4, 2000

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

**BILL #:** CS/HB 999

**RELATING TO:** Anatomical Gifts/Capital Defendants

**SPONSOR(S):** Committee on Crime & Punishment and Representative Andrews

**TIED BILL(S):**

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

- (1) CRIME & PUNISHMENT YEAS 6 NAYS 0
- (2) CORRECTIONS
- (3) GOVERNMENTAL RULES & REGULATIONS
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

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I. SUMMARY:

Committee Substitute for HB 999 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. The committee substitute 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 organs<sup>1</sup> or tissues<sup>2</sup> :

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:**

CS/HB 999 requires the Department of Corrections to 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 bill also provides that nothing in the section shall be construed to confer 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 with prejudice by the court in which the action or claim is filed.

**D. SECTION-BY-SECTION ANALYSIS:**

Section 1: Requiring the Department of Corrections to provide each person remanded to the custody of the department the opportunity to obtain an anatomical gift card.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

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<sup>1</sup> The term "organ" is defined as "a human kidney, liver, heart, lung, or pancreas". 42 C.F.R. 121.

<sup>2</sup> 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

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 bill analysis prepared by the Department of Corrections on the original bill stated that any fiscal impact will result from training and preparing for the alternate methods of execution. However, according to the bill analysis from the Agency for Health Care Administration (ACHA) on the original bill, 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:

None.

C. OTHER COMMENTS:

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.”

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill, HB 999 provided 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 would have allowed the prisoner to 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 permitted 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 required any organs or tissues recovered pursuant to this section to first be made available to residents of Florida and prohibits the organ donor from being compensated in any way. The bill also required 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 original bill required 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 allowed 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 could have attempted to use the “right” to donate

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his or her organs by a method of execution that currently does not exist in order to delay execution.

In the April 4, 2000 meeting of the Committee on Crime & Punishment, Representative Andrews offered a strike everything amendment which was adopted by the committee. The bill with the strike everything amendment was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

Prepared by:

Staff Director:

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Trina Kramer

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David De La Paz