

HOUSE BILL REPORT

SB 6243

As Reported By House Committee On:
Corrections

Title: An act relating to health care services for offenders sentenced to death.

Brief Description: Prohibiting state funding of organ transplants for offenders sentenced to death.

Sponsors: Senators Goings, Hargrove, Rasmussen, Quigley, Bauer, Fraser, Drew, Smith, Wojahn, Franklin, Sheldon, Pelz, Snyder, Haugen, Heavey, Long, Oke, Wood and Johnson.

Brief History:

Committee Activity:

Corrections: 2/14/96, 2/20/96 [DPA].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass as amended. Signed by 10 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Cole; Dickerson; Koster; Radcliff; Schoesler and D. Sommers.

Minority Report: Do not pass. Signed by 1 member: Representative Tokuda, Assistant Ranking Minority Member.

Staff: Diana Canzoneri (786-7156).

Background:

Inmates Sentenced to Death in Washington State. Eleven offenders in the custody of the Department of Corrections (DOC) have been sentenced to death. Of these, two have had their sentences overturned and are awaiting the outcome of state appeals to reinstate their death sentences.

Constitutional Mandates and Legal Standards Concerning Inmate Medical Care. State law requires DOC to provide basic medical services as mandated by the federal and state constitutions. Washington statutes provide little additional direction concerning the level of medical care that must be provided to incarcerated inmates, including

inmates on death row. Inmates' rights to medical care have, however, been addressed through judicial interpretation of the U.S. Constitution.

Under the Eighth Amendment's prohibition against cruel and unusual punishment, the state cannot act with "deliberate indifference" to an inmate's "serious medical needs." In interpreting this standard, the courts have not detailed a specific set of medical services that must be provided to inmates. Judicial decisions are instead made on a case-by-case basis.

Case law makes clear, however, that inmates do not have a right to every potentially beneficial medical procedure. Courts have held instead that prisoners have a right to "reasonable" or "adequate" medical care. Courts have, however, found that cost considerations and a lack of funds cannot justify an unconstitutional lack of medical care.

Some courts have determined whether a particular service is mandated by balancing the availability and expense of providing treatment against a number of factors, including the seriousness of the illness, the immediacy of the medical need, the duration of incarceration, and the likelihood of harm resulting from delay.

Departmental Policy and Practice. State rules require DOC to respond in a reasonable manner to serious medical needs. Serious medical needs are defined as those which, if not responded to, will cause or allow continued significant or debilitating pain or cause significant deterioration of the inmates's medical condition during the period of incarceration.

The Department of Corrections has provided organ transplants when physicians have determined the procedure to be medically necessary. The department reports that it has approved four major organ transplants to date: two kidney transplants, at a cost of \$35,000 each, and two bone marrow transplants, at the respective costs of \$220,000 and \$320,000. None of the offenders who received an organ transplant was on death row. Both of the offenders who received bone marrow transplants had aplastic anemia that had not responded to other treatments.

Criteria Used by the Medical Community to Allocate Organs. The American Medical Association (AMA) has issued guidelines on acceptable criteria for allocating organs and other scarce resources among patients. The AMA criteria are designed to maximize the number of lives saved, the number of years of life saved, and improvements in quality of life. These criteria include

- the likelihood of benefit to the patient;
- the impact of treatment in improving the quality of the patient's life;
- the duration of benefit;
- the urgency of the patient's condition; and

- the amount of resources required for successful treatment.

The United Network for Organ Sharing (UNOS) provides the U.S. Department of Health and Human Services and the medical community with a centralized allocation mechanism to rank potential organ recipients based on a number of factors, including many of those recommended by the AMA. Local transplant centers across the nation use the UNOS system to develop patient waiting lists and to determine who receives transplants.

Summary of Amended Bill: Expenditure of public funds is prohibited for organ transplants and for bone marrow transplants for any offender who has been sentenced to death. In addition, the Department of Corrections' health service delivery plan may include neither organ transplants nor bone marrow transplants for offenders sentenced to death.

This prohibition applies regardless of any pending appeals on the offender's case unless

- 1) the Governor has commuted the sentence;
- 2) the sentence has been invalidated by a final judgment after all available appeals have been exhausted; or
- 3) the death penalty itself has been held to be invalid in a final judgment that is binding on all courts in the state.

Amended Bill Compared to Original Bill: The amended bill added the language specifically addressing bone marrow transplants.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: It is deeply horrifying to consider the prospect that Mitchell Rupe, a convicted double-murderer, could be on the same list to receive an organ transplant alongside an innocent child who needs an organ transplant. The use of public funds to pay for organ transplants for death row inmates is an outrage that the citizens of the state will not tolerate. Prohibiting the use of public funds for this purpose is a common sense approach to prevent such an injustice and to accomplish what is right.

Testimony Against: Denial of organ transplants could lead to prolonged suffering, thereby violating the constitutional protection afforded inmates against cruel and unusual punishment. The bill presents a double jeopardy problem because it imposes

an additional punishment that is not the outcome of a fair judicial process. An inmate's right to appeal could be infringed on by allowing the inmate to die from a treatable condition. There is no way to categorically deny organ transplants to all death row inmates using commonly accepted criteria for allocating organs. Despite our feelings about the unworthiness of death row inmates for organ transplants, the medical ethics community has rejected "social worth" as a criterion for organ allocation. The bill threatens the relationship between inmates and their physicians. The legislation is not cost-effective given that transplants are often a cost-effective treatment compared to alternate measures. For example, a kidney transplant can cost less than ongoing dialysis. A preferable approach to controlling costs would be to draft legislation that develops criteria for settings priorities and limits on the types of procedures provided to inmates within the overall budget the penal system has to expend on health care.

Testified: Senator Goings, prime sponsor; and Clarence H. Braddock III, MD, MPH, Assistant Professor, Medicine and Ethics, University of Washington (con).