

# SENATE BILL REPORT

## SB 6243

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As Passed Senate, January 29, 1996

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

**Brief Description:** Prohibiting 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:** Human Services & Corrections: 1/17/96 [DP].  
Passed Senate, 1/29/96, 42-0.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass.

Signed by Senators Hargrove, Chair; Franklin, Vice Chair; Long, Moyer, Schow, Strannigan and Zarelli.

**Staff:** Andrea McNamara (786-7483)

**Background:** Currently, 11 offenders in the department's custody have been sentenced to death. Two of the 11 have had their death sentences overturned and are awaiting the outcome of the state's appeals to reinstate the death sentence.

Current Washington law requires the Department of Corrections to provide medical services as may be mandated by the federal Constitution and the Constitution of the state of Washington. The United States Supreme Court ruled in 1976 that states have an obligation to provide health care to the individuals they incarcerate. Generally, the proscription against cruel and unusual punishment requires that states not be deliberately indifferent to the serious medical needs of the offender, but neither the Supreme Court nor the lower courts have clearly identified the quality, quantity, or accessibility to health care to which prisoners are entitled.

Serious medical needs are defined in rule as those which, if not responded to, will cause or allow to continue significant or debilitating pain or cause significant deterioration of the inmate's medical condition during the period of his or her incarceration.

The department spent \$30.33 million for inmate health care in 1994 (\$24.7 million for medical, \$3.6 million for dental, and \$2.0 million for mental health), a 176 percent increase since 1986, during which time the offender population grew by 49 percent. The department's average expenditure for health care increased from \$1,708 to \$3,172 per offender (86 percent) from 1986 to 1994. During the same time period, the Consumer Price Index for medical care in the western United States increased 76 percent.

**Summary of Bill:** No public funds may be expended for, nor may the Department of Corrections' health service delivery plan include, organ transplant services for offenders sentenced to death.

This prohibition applies regardless of whether the offender's case is on appeal, unless the death sentence is (1) commuted by the Governor; (2) invalidated by a final judgment after exhaustion of all available appeals; or (3) the death penalty itself is invalidated in a final decision binding on all state courts.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** This bill is a common sense approach to remedying what is publicly perceived as the state providing unfair advantages to death row inmates. It would codify what the department contends is its current policy. No death row inmate has ever received or requested an organ transplant in Washington.

**Testimony Against:** Nationwide, many offenders sentenced to death have their death sentences lifted, either through appeals or by commutation. This bill would not allow a transplant for an offender whose death sentence had been overturned if the state was appealing to reinstate it. A blanket prohibition on transplants, without the ability to consider individual circumstances, is unfair.

**Testified:** Senator Calvin Goings, (prime sponsor); Ruben Cedeño, Director of the Division of Offender Programs, Department of Corrections (not opposed); Terry Kohl, Washington Defender Association and Washington Association of Criminal Defense Attorneys (con).

**House Amendment(s):** The House striking amendment replaces the underlying bill in its entirety.

The Department of Corrections is prohibited from using public funds to provide life-saving health care procedures for an inmate who is under a sentence of death or whose death sentence is under appellate review. However, the department may provide basic medical services and basic emergency life-saving procedures (such as CPR) for such inmates.

The inmate is responsible for the costs of any health care services obtained or provided. If the balance of an offender's institution account is insufficient to meet the costs of the health care services, the department may obtain a judgment and lien against any real property owned by the offender. The inmate is entitled to due process to defend against the lien before a judgment may be enforced.