

VETO MESSAGE ON SB 6243

March 30, 1996

To the Honorable President and Members,
The Senate of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval, Senate Bill No. 6243 entitled:

"AN ACT Relating to health care services for offenders sentenced to death;"

Senate Bill No. 6243 prohibits the Department of Corrections from providing "life saving health care procedures" to an offender who is under a sentence of death. The prohibition applies regardless of the stage of the inmate's appeal. Organ transplants, bone marrow transplants, open-heart surgery, and chemotherapy are the stated examples of prohibited life saving procedures. The bill, on the other hand, does allow the department to provide certain "basic emergency life-saving procedures" such as the Heimlich maneuver and cardiopulmonary resuscitation.

This legislation defines a life saving health care procedure as any "medical or surgical treatment or intervention to sustain, restore, or replace a bodily function, where failure to perform the treatment or intervention may result in the offender's death." This broad definition applies to a wide spectrum of treatments and interventions. Simple, routine procedures such as blood transfusions, insulin shots, and antibiotics for strep throat fall under the definition because they "sustain, restore, or replace bodily functions" without which death may result. This measure's expansive and vague definition also includes treatment services to alleviate pain and suffering. For instance, prescribing antibiotics for cancer treatment would be prohibited because "chemotherapy" encompasses all treatments by chemical agents. If a death row inmate had bone cancer, painful death would result without chemotherapy. Requiring the department to withhold treatment under these circumstances would almost certainly be determined unconstitutional cruel punishment.

The status of the offender's appeal is irrelevant under this bill. The prohibition applies whether the inmate has just appealed to the first level of the state appeals court or whether the inmate is waiting for the final word from the US Supreme Court. We must remember that the criminal justice system is not infallible. On occasion, a person sentenced to death will serve some time on death row and then receive a new trial or a pardon as the result of a successful appeal or clemency petition. Since 1973 when the death penalty was reinstated, there have been 43 cases across the country where a death row inmate was pardoned, acquitted, or had charges dropped in subsequent actions. It would be inhumane in such cases to cut short a person's life by withholding needed life saving treatment based on the assumption that in every instance of a death sentence, the individual deserves to die.

Moreover, Senate Bill No. 6243 fails to establish clear guidelines for the department as to the procedures it can provide. The definitional examples highlight the problem. The examples of permissible "basic, emergency life-saving procedures" and the examples of prohibited "life-saving health care procedures" do not

sufficiently distinguish one category from the other. Moreover, constitutionally required medical treatment may be improperly withheld by department health care providers because of the ambiguity. Vague definitions will likely lead to inmate litigation to determine which life saving procedures are constitutionally required.

Senate Bill No. 6243 provides that offenders are responsible for the costs of any health care they receive unless the medical service is required by law as determined to be binding on the state by a court of competent jurisdiction. Again, this invites litigation.

In sum, this legislation is most probably an unconstitutional violation of the prohibition against cruel and unusual punishment. Given the problematic definitions included, it would also be impossible for the department to implement.

For these reasons, I have vetoed Substitute Senate Bill No. 6243 in its entirety.

Respectfully submitted,
Mike Lowry
Governor