

SENATE BILL REPORT

SB 5190

As Reported By Senate Committee On:
Human Services & Corrections, February 19, 1997

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

Brief Description: Limiting health care for inmates sentenced to death.

Sponsors: Senators Goings, Long, Hargrove, Zarelli, Bauer, Schow, Oke, Winsley, McCaslin, Rasmussen and Haugen.

Brief History:

Committee Activity: Human Services & Corrections: 1/28/97, 2/19/97 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5190 be substituted therefor, and the substitute bill do pass.

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

Staff: Andrea McNamara (786-7483)

Background: The Department of Corrections (DOC) has recently adopted, and will be implementing in the spring of 1997, an Offender Health Plan which excludes organ transplants from the list of services provided to inmates, unless an exception is made on a case-by-case basis.

Current Washington law requires the department 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.

Currently, 13 offenders in the department's custody have been sentenced to death. Two of the 13 have had their death sentences overturned and are awaiting the outcome of the state's appeals to reinstate the death sentence.

Summary of Substitute Bill: Except as specified, 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. DOC may allow a transplant if it is the most cost-effective method of treatment or if the transplant could not be reasonably used by a non-inmate.

This prohibition applies unless the death sentence is (1) commuted by the Governor; (2) invalidated by any judgment; or (3) the death penalty itself is invalidated in a final decision binding on all state courts.

Organ transplant services– is defined to exclude blood and skin.

Substitute Bill Compared to Original Bill: A definition is added for organ transplant services.– DOC may allow transplants if they are the most cost-effective method of treatment or if a non-inmate could not utilize the organ. A transplant may occur if the case has been remanded for retrial or resentencing.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Limited state funds should not be expended for transplants for inmates on death row.

Testimony Against: Forty-three death row cases have been overturned. It would be better to handle this by department rule. Without a definition, this could prohibit blood transfusions or skin grafts. Many procedures could be more expensive to treat if transplants are prohibited.

Testified: Senator Goings, prime sponsor (pro); Terry Kohl, WA Association of Criminal Defense Lawyers, WA Defenders Assoc. (con); Beth Anderson, DOC.