
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1419 **Hearing Date:** April 19, 2016
Author: Galgiani
Version: April 13, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Uniform Anatomical Gift Act: Prison Inmates*

HISTORY

Source: Author

Prior Legislation: SB 1395 (Alquist)—Chapter 217, Statutes of 2010
AB 2440 (Berryhill, of 2010)—died in the Assembly Health Committee
AB 289 (Plescia, of 2003)—died in the Assembly Health Committee

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill is to require the Department of Corrections and Rehabilitation (CDCR) to develop a form, as specified, allowing a prisoner to elect to make an anatomical gift in the event of his or her death, as specified.

Existing law establishes the Uniform Anatomical Gift Act, which regulates the making and distribution of organ donations. (Health and Safety Code § 7150, et seq.)

This bill requires CDCR to develop and adopt a form that allows a prisoner to elect to make an anatomical gift in the event of his or her death, as specified.

This bill requires the form to be titled “Document of Gift—Donate Life California Organ and Tissue Donor Registry” and to have at a minimum the following characteristics:

- Clearly indicates the prisoner’s election to be added to the donor registry.
- Allows the prisoner to designate whether the prisoner would like to donate his or her organs or tissues for transplantation or research, or both.
- Allows the prisoner to state any donation limitations specifying the organs and tissues that the prisoner does not provide legal consent to be recovered.
- Contains an advisement that states all of the following:
 - Electing to make an anatomical gift is completely voluntary.
 - There are no repercussions for declining to, or benefits for agreeing to, elect to make an anatomical gift.

- The prisoner may consult with a medical professional or counselor about his or her decision.
- The prisoner may revoke his or her election to make an anatomical gift at any time, as specified.
- Contains a statement notifying the prisoner that by signing or placing his or her mark on the form that the prisoner is legally authorizing the recovery of organs or tissues in the event of his or her death; and,
- Contains the prisoner's signature or mark if the prisoner cannot write.

This bill requires the form to be presented to the prisoner upon his or her first admittance into the state prison system and allows the prisoner to elect to sign the form or refuse to sign at that time.

This bill requires the form to be made available for completion and signature at the prisoner's request, consistent with the policies and procedures of CDCR.

This bill allows the prisoner to revoke his or her election to make an anatomical gift at any time by delivery of a written statement to the official in charge of the facility where the prisoner is confined. Also, requires CDCR, upon receipt of this statement to mark the form above as revoked and to retain the revoked document of gift and the statement revoking the gift in the prisoner's central file.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for this Legislation

According to the author:

California’s Health and Safety Code does not provide a process for prison inmate organ donation. Currently, inmates who would like to sign up to be an organ donor are not provided a chance to register, as there is no official procedure in place. Federally, the Federal Bureau of Prisons allows organ and tissue donation by inmates *only when* the recipient is a member of the inmate donor’s immediate family, defined as parents, siblings, and biological children.

The United States is currently facing a shortage of anatomical gift donors, with California making up 20% of the national donor waiting list. Additionally, less than one percent of hospital deaths meet the criteria for organ donation. It is estimated that one individual organ donor can save the lives of up to eight people, and tissue donors can help more than 50 people. Due to the fact that there is no process in place to provide inmates with the chance to donate, potential donors are prevented from registering. This bill will create a voluntary process for an inmate to register as an organ donor, which could increase the donor pool. It is important to note that this bill also requires a process to be in place for the inmate to remove him- or herself from registration at any time. In Utah, where similar legislation allowing for voluntary sign up has been enacted into law, over 250 inmates have signed up.

2. The Organ Procurement and Transplantation Network

The Organ Procurement and Transplantation Network (OPTN) is a public-private partnership that links all professionals involved in the United States donation and transplantation system. The United Network for Organ Sharing (UNOS) serves as the OPTN under contract with the Health Resources and Services Administration of the U.S. Department of Health and Human

Services. Currently, every transplant hospital program and organ procurement organization in the U.S. is an OPTN member. Membership means that their transplant programs are certified by UNOS and that they play an active role in forming the policies that govern the transplant community. In California, there are 21 transplant centers (hospitals) and four organ procurement organizations (OPOs), which are authorized by the Centers for Medicare and Medicaid Services to procure organs for transplantation. Each individual hospital comes up with their own policies to evaluate patients and determine eligibility to receive an organ transplant. UNOS develops the policies to determine how available organs are distributed among eligible patients waiting for a transplant. According to Donate Life California's Web site, there are currently more than 123,000 people in the U.S. waiting for a life-saving organ transplant, and nearly 22,000 live in California. Every 10 minutes another person is added to the waiting list.

3. Effect of this Legislation

According to CDCR, inmates are screened at intake by a nurse to identify any physical and mental health care needs. The inmate is tested for tuberculosis and hepatitis C, and, if requested, for HIV. Within 14 days of entering CDCR's custody, all inmates undergo a comprehensive medical evaluation in which a physician obtains a medical history from the inmate. Any information obtained during the medical evaluation is self-disclosed by the inmate, as CDCR does not have access to any prior medical records. Any process involving informed consent is required to be done by a physician during the comprehensive medical evaluation. CDCR does not solicit an inmate's interest in being an organ and tissue donor. Inmates are responsible for disclosing whether they are already registered as organ and tissue donors during the medical evaluation, and that information is noted in the medical record.

CDCR provides an Advance Directive for Health Care to an inmate if it is requested specifically by the inmate or the inmate's medical condition warrants it because the inmate is facing a life-threatening condition or treatment. This document consists of a durable power of attorney, which allows inmates to designate someone to make decisions on their behalf if they are unable to do it on their own, and a living will, which allows inmates to state their goals or desires for the types of health care they do or do not want. The advance directive form includes an optional section for an inmate to choose whether or not he or she is willing to donate organs or other tissues upon death. If an inmate chooses to complete this part of the form, the inmate is instructed to check the box that applies to the inmate's wish. The inmate may give any needed organs or tissues, may specify which organs and tissues he or she wants to donate, or may select the box choosing not to donate. The inmate may also designate whether his or her gift is for purposes of transplantation, therapy, research, or education. Before an inmate signs the advance directive, a medical staff person is required to document that the inmate has been fully informed and understands the form, and two additional witnesses are required to verify that the inmate has willingly signed the form and completed it according to the inmate's wishes.

This bill would require that, in addition to the form currently provided, CDCR provide an inmate with an organ donation form upon first admittance.