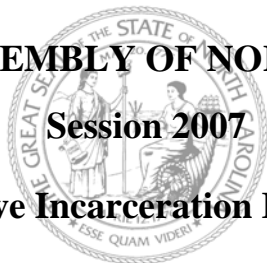


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1372 (Fourth Edition)

SHORT TITLE: Organ & Tissue Donation/The Heart Prevails.

SPONSOR(S): Representatives Folwell, Holliman, Clary, and Wainwright

	FISCAL IMPACT				
	Yes (xx)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction					
Recurring					
Nonrecurring					
Judicial					
Recurring					
Nonrecurring					
Health & Human Services					
ADDITIONAL PRISON BEDS: (cumulative)*					
POSITIONS: (cumulative)					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	Effective when act becomes law.				
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY: Enacts new Article 16A of GS Chapter 130A establishing the Revised Uniform Anatomical Gift Act, which applies to an anatomical gift, and changes to, revocation of, or refusal to make an anatomical gift. Allows adults, minors at least 16 years old or emancipated, a

donor's agent, the parent of an unemancipated minor, or the donor's guardian to make an anatomical gift during the donor's life for transplant, therapy, research, or education purposes. Establishes the manner in which the anatomical gift may be made, including indicating that the donor has made a gift on the donor's drivers license or identification card. Provides methods by which an anatomical gift may be amended or revoked. Also provides methods for refusing to make an anatomical gift, which bars another person from making a gift of the individual's body, except parents of an unemancipated minor may revoke the minor's refusal.

Provides for when a person may make a gift of decedent's body or body parts, for who has the authority to do so, and for the manner in which the gift may be made, amended, or revoked. Allows anatomical gifts to be made to institutions for research or education, to named individuals, or to an eye or tissue bank; provides to whom the gift goes in the absence of a named recipient or gift purpose. Requires hospitals and other emergency and rescue personnel to search individuals for donor information. Establishes the rights and duties of procurement organizations, gift recipients, and physicians. Makes purchasing or selling a body part that is to be removed from an individual after death for transplantation or therapy and falsifying or obliterating a document gifting, amending, or revoking a gift a Class H felony; establishes immunity for specific persons and circumstances.

Provides that the online Organ Donor Registry Internet Site is the state donor registry and makes conforming changes to GS 20-43.2. Requires the Division of Motor Vehicles, in cooperation with the License to Give Trust Fund Commission, to use available state and federal grant-in-aid funds to enhance online access so that donors may update information on their license or donor card. Provides that when a prospective donor has a health care directive, measures needed to ensure that the organ is suitable for use may not be withheld from the donor unless the directive expressly provides to the contrary. Requires cooperation between procurement organizations and medical examiners and establishes requirements to facilitate gifts from a decedent whose body is under the medical examiner's jurisdiction; makes conforming changes to GS 130A-391 and makes conforming enactment of GS 130A-396. Recodifies GS 130A-410 through GS 130A-412.2 as GS 130A-412.26 through 130A-412.30 in new Article 16A and repeals the remainder of Part 3 (Uniform Anatomical Gift Act) of Article 16 of GS Chapter 130A. Provides that the act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, with exceptions.

May 2, 2007

H 1372. ORGAN & TISSUE DONATION/THE HEART PREVAILS (NEW). Filed 4/5/07. House committee substitute makes the following changes to 1st edition. Enacts provisions in new Part 3A of Article 16 instead of new Article 16A. Changes the term part to body part in the definition section and throughout the bill. Modifies proposed GS 130A-412.20 to require a person to act with due care in accordance with the part or with applicable law of another state to be immune in civil actions, criminal prosecution, or administrative proceedings. Modifies proposed GS 130A-412.25 to require medical examiners to release to procurement organizations various information for bodies that will come under the medical examiner's jurisdiction (was, only for bodies under the medical examiner's jurisdiction). Also provides that a medicolegal examination also includes physical examination of a donor or prospective donor and allows the medical examiner to conduct a medicolegal examination for a donor or prospective donor whose body would be under the medical examiner's jurisdiction upon death (was, whose body is under the medical examiner's jurisdiction). Also requires the medical examiner to consult with the procurement organization when the medial examiner believes the recovery of a body part may interfere with the collection of evidence, or the description, documentation, or interpretation of injuries on the body (was, limited

to interference with the postmortem investigation into the decedent's cause or manner of death). Allows the medical examiner to allow or deny the recovery after consultation with the procurement organization and removes proposed provisions concerning the procurement organization attending the removal procedure, requiring the medical examiner or designee denying recovery to include specified information in a record, and for requiring the procurement organization to reimburse the medical examiner or designee for additional costs. If the medical examiner or designee allows recovery of a body part, the procurement organization must provide a record describing the condition of the body part, signed by the physician or technician who removed the body part, and any other information and observations that assist in the postmortem exam (was, if requested, the procurement organization must require the physician or technician who removed the part to provide the medical examiner with a record describing the condition of the part, biopsy, a photograph, and any other information and observations). Removes amendments to GS 130A-391 (corneal tissue removal) and removes proposed new GS 130A-396 (cooperation between medial examiner and organ procurement organizations; facilitation of anatomical gift). Makes technical and conforming changes to GS 20-43.2. Amends the title to include tissue donation.

June 20, 2007

H 1372. ORGAN & TISSUE DONATION/THE HEART PREVAILS. Filed 4/5/07. Senate committee substitute makes the following changes to 2nd edition. Modifies proposed new GS 130A-412.7 to provide that anatomical gifts made by use of an authorizing statement or symbol imprinted on the donor's license or identification card may not include a donation of tissue or the donor's body. Clarifies that a donor may make an anatomical gift by any of the listed methods. Modifies the catchline for proposed new GS 130A-412.23 to read Effect of anatomical gift on advanced directive (was, on health care power of attorney). Makes organizational and stylistic changes affecting proposed GS 130A-412.4 and GS 130A-412.23.

July 23, 2007

H 1372. ORGAN & TISSUE DONATION/THE HEART PREVAILS. Filed 4/5/07. Senate committee substitute makes the following changes to 3rd edition. Modifies proposed new GS 130A-412.4 to amend the definitions of agent and disinterested witness and delete the definition of advanced directive. Modifies proposed new GS 130A-412.6 to provide that an anatomical gift may be made by an agent of the donor to the extent authorized under a power of attorney for health care or other record (was, unless the power of attorney for health care or other record prohibits the agent from making the gift). Modifies proposed new GS 130A-412.7 to clarify that a donor card must be signed. Modifies proposed new GS 130A-412.18 and GS 130A-412.19 to provide that a person convicted of a Class H felony may be fined up to \$50,000 for each offense (was, is subject to a fine of no more than \$50,000 or imprisonment of up to five years, or both). Deletes proposed new GS 130A-412.23 (effect of anatomical gift on advanced directive). Requires the NC General Statutes Commission to review statutes related to organ donation to determine whether the statutes should be amended to be consistent with the Revised Uniform Anatomical Gift Act and requires the commission to make its recommendations upon the convening of the 2008 legislative session. Makes technical and conforming changes to several statutes.

Source: Bill Digest H.B. 1372 (04/05/0200)

House Bill 1372 repeals the Uniform Anatomical Act (Part 3 of Article 16 of Chapter 130A) and creates the Revised Uniform Anatomical Act (Part 3A of Article 16 of Chapter 130A), which applies to an anatomical gift, and changes to, revocation of, or refusal to make an refusal to make an anatomical gift.

Source: Bill Digest H.B. 1372 (04/05/0200).

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

House Bill 1372 creates a Class H felony related to the sale or purchase of body parts (G.S. 130A-412.18). In addition, it subjects a person to a Class H felony that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal (G.S. 130A-412.19).

The Sentencing Commission notes this bill creates new offenses and therefore there is no historical data from which to estimate the impact of this bill. The PCS calls for violations to be punishable by a fine not to exceed \$50,000, but removes the prospect of imprisonment.

Other Agencies

The Department of Health and Human Services and the Department of Transportation have analyzed this bill and concluded there will be no fiscal impact on either agency.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC has no offense codes for relevant offenses under the current statute. Presently, the AOC estimates a cost of \$9,902 per trial for a Class H felony, and \$539 per plea for the same offense. AOC cost estimates account for indigent defense.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: The punishment for the proposed offenses is outside of Structured Sentencing.

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DATE: July 26, 2007



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