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RESTRICTIONS ON ORGAN REMOVAL

House Bill 4025 (Substitute H-3)
Sponsor: Rep. Andrew Richner

House Bill 4466 (Substitute H-2)
Sponsor: Rep. Alan Sanborn

Senate Bill 381 (Substitute H-1)
Sponsor: Sen. Leon Stille

First Analysis (4-29-99)
**Committee: Criminal Law and
Corrections**

THE APPARENT PROBLEM:

In October 1997, Jack Kevorkian, who reportedly has attended or assisted in the suicides of over 100 people, held a news conference to announce his plan to harvest the organs of assisted-suicide patients for use in transplants. Last summer, on June 7, 1998, Kevorkian attended the death of a 45-year-old quadriplegic from Las Vegas. Reportedly, he then removed the dead man's kidneys and offered them for transplant. Evidently, though Kevorkian's lawyer's office and hospitals in the Detroit area received numerous inquiries about the kidneys from persons waiting for transplants, none of the hospitals was willing to accept the kidneys. Medical authorities reportedly stated that federal transplant regulations provide that organs for transplant may be removed only in a hospital setting under controlled, sterile conditions. Also, the organs are supposed to be documented and entered into a national organ donation database. Further, it was reported that the removal of the organs was performed in a fashion that rendered the organs unfit for transplant.

Under the Public Health Code, it is a felony for a person knowingly to receive, acquire, or otherwise transfer a human organ or part of an organ for valuable consideration for any purpose, including but not limited to, transplantation, implantation, infusion, injection, or other medical or scientific purpose. (This prohibition does not apply to the removal and use of human corneas or pituitary glands as provided in the code; to anatomical gifts made under the Uniform Anatomical Gift Act; or the acquisition or distribution of bodies or parts designated for scientific uses and allocated to hospitals and educational institutions for use in medical instruction or other health sciences.)

Some people believe that in addition to this restriction, to ensure that organ transplant procedures are performed in a safe and ethical manner, the code should specify who would be allowed to remove human organs for transplantation, and where those surgeries could be performed.

THE CONTENT OF THE BILLS:

House Bill 4025 would amend the Public Health Code (MCL 333.10204) to restrict who could surgically remove human organs for transplantation or other medical or scientific purpose. Removal of human organs by someone who was not permitted to do so under the bill would be a felony. Generally, only licensed physicians or those acting under the delegated authority of a licensed physician could legally remove a human organ for any medical or scientific purpose. Persons whose medical license had been suspended would be prohibited from removing an organ even if under the delegated authority of a licensed physician. Currently, a task that would require the use of a surgical instrument may only be delegated to an unlicensed individual if the individual is a medical or osteopathic student or is enrolled in a physician's assistant training program and the individual is under the direct supervision of a licensed physician who is physically present during the procedure, or is performing acupuncture. The bill would additionally allow for an unlicensed individual to surgically remove bone, skin, blood vessels, cartilage, dura mater, ligaments, tendons, pericardial tissue, or heart valves from deceased persons for transplantation or other

medical and scientific purpose without the direct supervision of the delegating physician. In addition,

individuals who were certified by a state medical school would be allowed to surgically remove an eye or a physical part of an eye without committing a felony.

The bill would also make a specific exception to allow a licensed physician from another state who was called into this state by a licensed, local physician and was authorized by a licensed hospital to remove and transport one or more of the following organs: heart, liver, lung, pancreas, kidney, and/or all or part of the intestine back to the other state.

Finally, the bill would not take effect unless Senate Bill 381 was also enacted into law.

Senate Bill 381 would amend the Public Health Code (MCL 333.10205) to make it a felony to surgically remove human organs for transplantation, implantation, infusion, injection, or any other medical or scientific purpose in a place other than a licensed hospital, or another facility that had been approved by the director of the Department of Consumer and Industry Services, who could also promulgate rules to designate approved facilities. An exception would exist for the removal of a human organ consisting of tissue, a cornea, or a whole eye; in addition to licensed hospitals and approved facilities, such surgeries could be performed in a mortuary that was part of a funeral establishment owned or operated by the holder of a license for the practice of mortuary science, or in a morgue or a facility operated by an appointed county medical examiner. Another exception would allow a licensed physician to perform a biopsy or other routine removal of human tissue for the diagnosis or treatment of that particular patient in the physician's office or other licensed health facility.

The bill would not take effect unless House Bill 4025 was also enacted into law.

House Bill 4466 would amend the Code of Criminal Procedure (MCL 777.13) to add the following crimes to the statutory sentencing guidelines:

-- Removal of a human organ by an unauthorized individual, which would be categorized as a crime against public safety and listed as a class F crime with a maximum sentence of four years.

-- Removal of a human organ in an unapproved facility, which would be categorized as a crime against public safety and listed as a class F crime with a maximum sentence of four years.

In addition, the bill would make technical amendments to the descriptions of some of the crimes already listed in the guidelines. The bill would not take effect unless both Senate Bill 381 (which would prohibit removal of a human organ in an unapproved facility) and House Bill 4025 (which would prohibit an unauthorized person from removing human organs) were also enacted.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, The bills would have indeterminate state and local cost implications associated with the prosecution, conviction and incarceration of persons accused of violating the bills' provisions. Actual state or local costs would depend on the numbers of convictions obtained for the offenses involved, on the offense and prior record characteristics employed in calculating the recommended minimum sentence, and on other factors that may affect the length of the individual's stay in a correctional setting. (4-26-99)

ARGUMENTS:

For:

According to newspaper articles, Jack Kevorkian's proposal to harvest organs was widely criticized by the medical community as being ethically unacceptable, as well as medically unfeasible because it would not meet the accepted standards for transplantation of human organs. In addition, many people outside the medical community also believe that unregulated organ removal is intolerable. While organ transplant procedures have saved, extended, and enhanced the quality of life of thousands of patients, and offer hope to thousands of others who live every day with pain and/or impending death, these procedures, as with most surgical procedures, are highly unsafe unless conducted under strict medical protocols during both extraction and implantation. Organ harvesting and transplant must be performed only by trained professionals operating in an appropriate, legitimate setting. Jack Kevorkian's actions highlighted a possible failing in the law and these bills would attempt to set that right. The package of bills would specify who and who could not remove organs for transplant, and the facilities in which removals could be performed. By prescribing these standards, and making a violation a felony, the bills would discourage the practice of illegitimate organ harvesting, as well as reduce the potential for profiteering in organ harvesting. At the same time, the bills would do

nothing to reduce the incidence of legitimate organ removal for use in saving lives.

Against:

The bills are simply an overreaction to the admittedly inappropriate behavior of one individual. This is not the sort of behavior that needs to be deterred with specific laws prohibiting it. There has been no resultant rush of unqualified people attempting to remove organs from the recently deceased. The only person who was likely to engage in such behavior has recently been imprisoned and is not likely to repeat the effort any time soon. Further, the original action which precipitated the legislation was successful only as a publicity stunt; it should be noted that no one accepted the organs that were offered.

Response:

The bills are not solely a response to Jack Kevorkian's behavior, and the fact that others have not followed his lead does not nullify the need for clear laws regarding the removal of organs for transplant. The regulation of who may remove human organs for transplant is important to maintain public confidence in the process. An individual who is uncertain about whether to become an organ donor is not likely to be positively influenced by the idea that anyone, regardless of medical training, background, or lack thereof, could legally remove his or her organs. The law needs to be clear that this is a medical procedure that may only legally be performed by qualified personnel in specific settings and, further, that those who are not so qualified will do so at the risk of prosecution. That is not the situation under current law.

POSITIONS:

The Transplantation Society of Michigan supports the bills. (4-28-99)

The Detroit Medical Center supports the bills. (4-27-99)

The Michigan Eye Bank supports the bills. (4-27-99)

The Michigan State Medical Society supports House Bill 4025 and Senate Bill 381 and has not taken an official position on House Bill 4466. (4-27-99)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.