

A Discussion on Prisoners and Organ Donation

Tracy Winston, J.D., LL.M candidate (Health Law)
tdwinsto@central.uh.edu

It is no secret that within the United States there is a huge shortage of organs. According to United Network for Organ Sharing (UNOS) as of September 25, 2014, there are 123,528 candidates waiting for an organ transplant.¹ Reported data from Donate Life shows that every 10 minutes another name is added to the national organ transplant waiting list and an average of 18 people die each day from the lack of available organs for transplant.² These staggering facts attach immediacy to finding a solution to the organ shortage.

A suggested solution: allowing prisoners to donate their organs. This article will introduce the concerns raised with allowing prisoners the opportunity to donate organs. It is not my goal to take a position on whether or not prisoners should be allowed to donate their organs, simply to provide initial information to begin the discussion toward a possible solution of saving lives.

Free will vs. Coercion

Exposed to less than favorable living conditions, a prisoner could be viewed as being incapable of making a free standing decision to donate organs. Previous discussions have highlighted that prisoners make decisions to survive and if given the chance will always elect to donate organs if it serves to benefit them personally. Lawrence Gostin believes that prisoners are too vulnerable to make a decision of that magnitude. He explains:

*I have talked with many prisoners and seen the conditions in which they exist. Prisoners' lives are determined almost completely by their keepers, and they will do almost anything to make their lives better, in the hopes of less isolation, better conditions and even parole. Despite rules that organ donations should not affect prisoner conditions, they will believe otherwise. Free consent is not truly possible under coercive conditions.*³

¹ United Network for Organ Sharing, *Transplant Trends*, <http://www.unos.org/> (follow "Learn" tab), (last visited Sept. 25, 2014).

² Donate Life America, *Statistics*, <http://donatelife.net/statistics/> (last visited Sept. 25, 2014).

³ Lawrence O. Gostin, *The Incarcerated Are Too Vulnerable to Consent*, N.Y. TIMES (Apr. 26, 2014), <http://www.nytimes.com/roomfordebate/2013/04/25/should-prisoners-be-allowed-to-donate-their-organs/prisoners->

Gostin highlights a true concern. Being a donor is the opportunity to give a gift; a donor should never feel compelled to donate. Allowing prisoners to donate creates an opportunity to manipulate those who may feel they do not have a right to deny authority.

On its face this argument of vulnerability is very valid. A prisoner might trade organs they do not need when they die for an easier path while living, but the weight of this argument requires some level of assumption. It must be assumed that the idea of becoming an organ donor would be presented to the prisoners as a trade of some sort and that prisoners will assume they will get more favorable treatment even if told otherwise. Outside of being mentally incompetent or coerced it is plausible that prisoners who expect to die while in prison may want to donate organs with no strings attached.

In November of 2013, Ronald Phillips, a death row inmate in Ohio, requested that he be allowed to donate a kidney and his heart to ailing family members.⁴ The State of Ohio denied his request. The prison's official statement explained it was too difficult to transport the body to a hospital and follow safety guidelines simultaneously.⁵ Presumably Ronald Phillip had the mental capacity to decide to donate his organs because incompetence was never discussed as a determining factor. Reportedly his request just was not feasible.

It is the opinion of many that a prisoner is only able to give a free-willed and informed consent for organ donations if the organ is for a family member. To grant a prisoner the ability to give to family and not others may strike some as confusing. Some could assume that the same factors are taken into consideration by the donor regardless of who is receiving the organ. Prisoners have shown that they will donate and are capable of deciding to donate organs without the promise of any special treatment because they are already allowed to do so with

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⁴ Michael Muskal, *Ohio stay of execution raises questions about inmate organ donations*, L.A. TIMES (Nov. 14, 2013), <http://www.latimes.com/nation/nationnow/la-na-nn-ohio-execution-stay-inmate-organ-donations-ethics-20131114-story.html>.

⁵ CBS News/AP, *Ronald Phillips Update: Ohio Governor delays execution of convicted child-killer*, CBSNEWS.COM (Nov. 14, 2013), <http://www.cbsnews.com/news/ronald-phillips-update-ohio-governor-delays-execution-of-convicted-child-killer/>.

their family members in some states.⁶ Prisoners have not been able to show they are able to make informed decisions relating to organ donations for non-family members because they have not been given the chance. Either prisoners lack the mental capacity to decide to donate organs to all persons or their mental capacity is not a factor currently when allowing a prisoner to donate organs to a family member.

What would the opposition be if prisoners were simply given the option to be donors as standard protocol, similar to asking drivers if they want to become organ donors when they renew their driver's license? Presenting prisoners with the option to donate organs as a standard procedure has the potential to eliminate the arguments hung on mental capacity and hopeful special treatment.

Family vs. Non-family recipients

In some states prisoners are only allowed to be living donors to family members while in prison. Unfortunately this limitation does little to help the organ shortage. Allowing prisoners to become living donors increases the pool of people who can benefit from prisoner organ donations and could make a substantial impact on the organ shortage. As of September 25, 2014, there are 101,440 candidates waiting for a kidney transplant.⁷ The possibility that a prisoner's family member will need an organ transplant that they can donate to is very small compared to the possibility of a prisoner having the opportunity to be a living donor to a non-family member. Perhaps allowing dying and death row prisoners to donate is pushing the bar too far, but perhaps removing the family member limitation is a step in the right direction to reduce the organ shortage.

Because prisoners in some states may currently donate to family members, a protocol exists to coordinate and manage prisoner live donors. If the frequency of donations were to increase there would be an increase in the amount of medical attention the government would have to

⁶ Delaware and Utah are two states which have allowed organ donation for inmates. See Paul McLean, *Should a death row inmate be allowed to donate his organs?*, THE GUARDIAN (Nov. 15, 2013), <http://www.theguardian.com/commentisfree/2013/nov/15/ohio-death-row-inmate-organ-donation>.

⁷ U.S. Dept. of Health and Human Services, Organ Procurement and Transplantation Network, *Data: Waiting list of candidates as of today at 1:23pm*, <http://optn.transplant.hrsa.gov/data/default.asp> (last visited Sept. 25, 2014).

provide and pay for. Nevertheless, removing the family member limitation for prisoner donors could encourage more prisoners to donate and increase the availability of organs.

Prisoner health vs. Non-prisoner health

It is no mystery that the living conditions within a prison are less than favorable. Crowded living quarters and limited medical exposure make a perfect environment for the breeding and transferring of disease. Hepatitis C and HIV are just a few of the transferable diseases that can prevent a prisoner from being an eligible organ donor. Because contagious diseases may be more easily contracted in prisons, some argue prisoners should not be able to donate organs. There is a fear that donated organs from prisoners have diseases that are in a dormant stage. The easiest way to prevent the transfer of disease is to prevent prisoners from being donors. Sally Satel has a different approach. She argues:

It is true that H.I.V. and Hepatitis C are prevalent in prisons. But the remedy is to sequester the prisoners for three weeks between final medical testing and the transplant date so they can't acquire, and subsequently pass on, a virus before it can be detected.⁸

Whether or not Satel's approach would be sufficient to prevent the transfer of disease is a medical question. Normally non-prisoner live donors are tested for disease during an initial clearance process and sequestering the donors is not necessary. Satel does present at least one option to encourage organ donations within prisons and a solution to a huge possible road block.

There are many obstacles to solve in order to allow prisoners the opportunity to donate organs to persons outside their family. For many in need of a donation, an organ is an organ regardless of who it comes from, but is it that simple? Organs are rare and prisoners might be a very plausible avenue to increase the life span of thousands of people.

⁸ Sally Satel, *Let Prisoners Donate Their Organs*, N.Y. TIMES (Apr. 25, 2013), <http://www.nytimes.com/roomfordebate/2013/04/25/should-prisoners-be-allowed-to-donate-their-organs/let-prisoners-donate-their-organs>.

Health Law Perspectives (September 2014)

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