

January 28, 2020

Representative \_\_\_\_\_  
201 W Capitol Ave., Rm \_\_\_\_\_  
Jefferson City, MO 65101



Dear Representative \_\_\_\_\_,

On behalf of Mid-America Transplant (MAT) and Midwest Transplant Network (MTN), we are writing to you thank you for your interest in increasing the number of potential organ and tissue donors in Missouri; however, we strongly oppose HB 2228.

As the two federally-designated organ procurement organizations in Missouri, MAT and MTN are committed to saving the lives of Missourians every day by facilitating the donation process as mandated under federal law (42 U.S.C. § 273). **Despite our tremendous efforts, in 2018, 88 Missourians died waiting for a transplant.** MAT and MTN are too familiar with the effects of an inadequate donor population on patients awaiting lifesaving transplants, but HB 2228 is not a solution to the donor shortage and raises several practical and ethical concerns.

### **Practical Concerns**

If enacted, HB 2228 would not have a significant impact on the number of organs available for transplantation. First, executions and death sentences nationwide remained near historic lows in 2018, according to the Death Penalty Information Center (DPIC). In addition, 2018 marked the fourth consecutive year with fewer than 30 executions and 50 death sentences nationally, reflecting a long-term decline of capital punishment across the United States. Similarly, in 2019, Missouri had only one execution and currently there are no inmates on death row.

Second, challenges and appeals are regularly mounted against death sentences which extend the amount of time between sentencing and execution, meaning prisoners are often older and more likely to become infected with communicable diseases while in prison, which makes inmate organs a high risk for recipients. Inmates are already ruled out by tissue processors for donation due to high communicable disease rates. Further, potential recipients may not be willing to accept organs from executed prisoners knowing the health risks involved or because of moral/ethical objections.

Third, HB 2228 permits the administration of lethal gas or lethal injection “in a manner that allows consenting inmates to make organ and anatomical donations.” Inmates executed by lethal gas or injection do not die on life support which means that donation must, if at all feasible, be accomplished using donation after circulatory death (DCD) protocols which exclude heart donation and require rapid organ retrieval after a five-minute waiting period. Because most prisons lack a sterile facility where DCD procurement could occur, inmate donors would have to be moved to a different location which would make the timing of DCD procurement impracticable.

### **Ethical Considerations**

The proposed revisions to HB 2228 contemplate the logistical hurdles to organ procurement at prison facility; therefore, drafters removed the language requiring executions to occur “within the walls of a correctional facility of the department of corrections.” However, HB 2228 falsely assumes that medical personnel will be available and willing to assist in organ procurements occurring on inmate donors inside or outside of the walls of a correctional facility. A likely proposal will be that executions occurring outside

of a correctional facility be performed at a hospital, a suggestion that would be unwelcome by most hospital administrators, place an additional burden on hospitals and raise ethical issues for physicians and nurses who are caretakers, not executioners. Moreover, executions occurring outside of correctional facilities could easily conflict with a Missouri law prohibiting physicians who attended to a decedent prior to or at the time of the decedent's death from participating in the procedures for removing or transplanting a body part from the decedent (Mo. Rev. Stat. § 194.265).

Further, it is unjust to place the burden of resolving these practical and ethical concerns as well as the administration of the proposed provisions on the Department of Corrections (DOC) as provided by Section 5 of the Bill. The DOC lacks the practical knowledge, health care expertise, necessary relationships and resources to implement the provisions contained in HB 2228 in a manner that is consistent with complex state and federal laws and regulations.

Finally, we ask that you consider the negative effect that HB 2228 could have on organ donation overall. The number of potential organs recovered from executed prisoners would be small, but the probable stigma attached to organ donation from its association with inmate execution could be far-reaching and lead to decreases in donation rates. The possible stigma and decrease in organs would be especially harmful to people of color, including African Americans, who are overrepresented on both the transplant waiting list and within the criminal justice system (including death row) and underrepresented as potential donors. The appearance that diverse individuals could be receiving capital punishment to provide organs for the rest of society would frustrate attempts to register much needed donors from these diverse groups.

Midwest Transplant Network and Mid-America Transplant are committed to excellence and integrity in our lifesaving mission, and we are committed to increasing authorization for donation. However, HB 2228 is rife with practical, ethical and public relations challenges which negate the marginal anticipated benefits of the Bill.

We strongly urge you not to pass HB 2228 out of the House Corrections and Public Institutions Committee and we extend an open invitation to you and your staff to discuss alternative methods for increasing organ donation in Missouri.

Sincerely,



Diane Brockmeier, President/CEO  
Mid-America Transplant



Jan Finn, President/CEO  
Midwest Transplant Network