

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HM 791 Organ Harvesting Practices of the People's Republic of China

**SPONSOR(S):** Fischer and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SM 1108

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**FINAL HOUSE FLOOR ACTION:** N/A Y's      N/A N's      **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

HM 791 was adopted by the House on February 22, 2022, and subsequently adopted by the Senate on March 2, 2022.

Organ donation is the process of surgically removing an organ or tissue from a donor and transplanting it into a recipient. Transplanting in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury. Transplantable organs include the liver, kidneys, pancreas, heart, lung, and intestine. Forced organ harvesting is removing a person's organ, or part of an organ, without their consent, which can cause the death of the 'donor'.

Before 2005, the People's Republic of China (China) relied on organ procurement from executed prisoners. China publicly admitted to the use of organs from executed prisoners for transplants in 2005, with up to 95 percent of the organ transplants in China deriving from prisoner executions. In 2010, China began developing a voluntary organ donation and allocation infrastructure, and announced that hospital-based voluntary donations would be the sole source of organs beginning in 2015; however, no changes to laws or regulations accompanied such announcement. The use of prisoner organs remains legal in China. An independent tribunal documented that more organ transplants take place than the voluntary donations would support, and concluded that forced organ harvesting continues in China.

HM 791 urges the President and Congress to:

- Condemn China for the practice of forcibly removing human organs for transplants;
- Pass legislation and measures that prohibit collaboration between U.S. pharmaceutical and medical companies and any Chinese counterparts linked to forced organ harvesting; and
- Ban people who have participated in forced organ harvesting from entering the U.S. and provide for the prosecution of such people.

This memorial has no fiscal impact on state or local governments.

The memorial is not subject to the Governor's veto powers.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### Organ and Tissue Donation in the United States

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplanting in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury.<sup>1</sup> Transplantable organs include the liver, kidneys, pancreas, heart, lung, and intestine.<sup>2</sup> Transplantable tissue includes skin, used as a temporary dressing for burns, serious abrasions, and other exposed areas; bone is used in orthopedic surgery to facilitate healing of fractures or prevent amputation; heart valves are used to replace defective valves; tendons are used to repair torn ligaments on knees or other joints; veins are used in cardiac by-pass surgery; and corneas can restore sight.<sup>3</sup> A single organ donor can save up to eight lives and over 75 more can be improved through organ donation.<sup>4</sup>

Despite advances in medicine and technology, and increased awareness of organ donation and transplantation, more donors are needed to meet the demand for transplants.<sup>5</sup> As of January 2022, 120,000 children and adults are waiting for a life-saving organ transplant, including 5,000 Floridians.<sup>6</sup> In 2021, 41,354 organ transplants were performed in the United States, reflecting an increase of 5.9 percent from 2020.<sup>7</sup> Living donor transplants on the other hand significantly decreased in 2020 due to COVID-19.<sup>8</sup> While they increased in 2021, the numbers remain lower than in previous years. In 2021, a total of 6,541 living donor transplants were performed nationwide.<sup>9</sup>

Forced organ harvesting is removing a person's organ, or part of an organ, without their consent, which can cause the death of the 'donor.'<sup>10</sup> Under federal law, it is unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.<sup>11</sup> Additionally, Florida, s. 787.06, F.S., prohibits the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of persons for the removal of organs as human trafficking.<sup>12,13</sup>

#### Forced Organ Harvesting in China

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<sup>1</sup> Cleveland Clinic, *Organ Donation and Transplantation*, <https://my.clevelandclinic.org/health/articles/11750-organ-donation-and-transplantation#:~:text=Organ%20donation%20is%20the%20process%20of%20surgically%20removing,one%20of%20the%20great%20advances%20in%20modern%20medicine> (last visited March 8, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> Donate Life Florida, *Frequently Asked Questions*, <https://www.donateliflorida.org/categories/donation/> (last visited March 8, 2022).

<sup>4</sup> Health Resources and Services Administration, *What Can Be Donated*, <https://www.organdonor.gov/learn/what-can-be-donated> (last visited March 8, 2022). <https://optn.transplant.hrsa.gov/data/> (last visited Jan. 28, 2022).

<sup>5</sup> U.S. Department of Health and Human Services, Organ Procurement and Transplantation Network, <https://optn.transplant.hrsa.gov/news/all-time-records-again-set-in-2021-for-organ-transplants-organ-donation-from-deceased-donors/> (last visited March 8, 2022).

<sup>6</sup> *Supra*, note 3.

<sup>7</sup> *Supra*, note 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> The Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, *Judgment*, March 1, 2020, [https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal\\_JUDGMENT\\_1stMarch\\_2020.pdf](https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf) (last visited March 8, 2022).

<sup>11</sup> 42 U.S.C. s.274(e)

<sup>12</sup> S. 787.06(2)(d), F.S.

<sup>13</sup> In Florida's human trafficking law, the removal of organs is included in the definition of "services," among forced marriage, servitude, and other acts. S.787.06(2)(h), F.S.

Before 2005, the People's Republic of China's (China) organ transplant practices relied on forced organ harvesting and organ procurement from executed prisoners. The rate of voluntary donation of organs was low due to a lack of a cadaver organ donation system and overall donation system. Between 1977 and 2009, a total of 130 voluntary deceased organ donations were reported, however approximately 120,000 total organs were reported as transplanted in China during the same period. China publicly admitted to the use of organs from executed prisoners for transplants in 2005, with up to 95 percent of the organ transplants in China deriving from prisoner executions.<sup>14</sup>

Beginning in 2010, China began reforming its organ transplantation system by developing a voluntary organ donation and allocation infrastructure, and requiring all organ transplants to be allocated solely through the China Organ Transplant Response System (COTRS).<sup>15</sup> The organ procurement, transplant, and allocation data contained in COTRS is not publicly available.<sup>16</sup> China's practice of organ procurement shifted from prisons to hospital-based voluntary donors declared dead by physicians.<sup>17</sup> Chinese officials announced that hospital-based voluntary donations would be the sole source of organs beginning in 2015, however no changes to laws or regulations accompanied such announcement, meaning the use of prisoner organs remains legal.<sup>18</sup>

### *United Nations Concerns*

In June, 2021, a group of United Nations (U.N.) human rights experts raised concerns over China carrying out forced organ harvesting on detainees from ethnic, linguistic, or religious minorities, including Falun Gong practitioners, Uyghurs, Tibetans, Muslims, and Christians. Such detainees may be forcibly subjected to blood tests and organ examinations through ultrasounds and x-rays, without informed consent, the results of which are entered into COTRS. The U.N. reports detainees are held without explanation of or warrants for their arrest. The most common organs removed from prisoners are hearts, kidneys, livers, and corneas.<sup>19</sup>

The Chinese Government responded to the U.N. in September, 2021, stating that the allegations of organ harvesting came from "actors" who "repeatedly engage in slander and rumor-mongering on the issue of human rights in China."<sup>20</sup>

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<sup>14</sup> Kirk, Allison C., et al, BMC Med Ethics 16, Article number 85 (2015), "Historical development and current status of organ procurement from death-row prisoners in China," <https://bmcomedethics.biomedcentral.com/articles/10.1186/s12910-015-0074-0> (last visited March 8, 2022)

<sup>15</sup> Id.

<sup>16</sup> Robertson, Matthew P., et al, BMC Medical Ethics 20, Article number 79 (2019), "Analysis of official deceased organ donation data casts doubt on the credibility of China's organ transplant reform," <https://bmcomedethics.biomedcentral.com/articles/10.1186/s12910-019-0406-6> (last visited March 8, 2022).

<sup>17</sup> *Supra*, note 14

<sup>18</sup> Paul, Norbert W., et al, BMC Med Ethics 18, Article number 11 (2017), "Human rights violations in organ procurement practice in China," <https://bmcomedethics.biomedcentral.com/articles/10.1186/s12910-017-0169-x> (last visited March 8, 2022).

<sup>19</sup> United Nations Human Rights – Office of the High Commissioner, *China: UN human rights experts alarmed by 'organ harvesting' allegations*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27167&LangID=E> (last visited March 8, 2022).

<sup>20</sup> Permanent Mission of the People's republic of China, *Reply from China dated 9 August 2021 to the Office of the High Commissioner for Human rights*, published Oct. 9, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36489> (last visited March 8, 2022)

## *China Tribunal*

The China Tribunal (Tribunal) is an independent body established by the International Coalition to End Transplant Abuse in China<sup>21</sup> to look into forced organ harvesting from individuals and prisoners of conscience in China and to investigate what criminal offenses, if any, have been committed by state or state-approved organizations or individuals in China who may have been engaged in forced organ harvesting.<sup>22</sup> The Tribunal has seven members from various countries outside of China, including England, the U.S., Iran, and Malaysia. Members include multiple human rights attorneys, a medical school professor, a historian, and a businessman. The focus of the Tribunal was on forced harvesting that results in death, as no evidence exists of forced harvesting where the 'donor' survives.<sup>23</sup>

The Tribunal analyzed witness statements, publicly available information and admissions from the Chinese government, and telephone calls to Chinese hospitals and government officials.<sup>24</sup> The Tribunal reported that:<sup>25</sup>

- Wait times promised by Chinese doctors and hospitals for organs to be available were extraordinarily short;
- Minority populations, including Falun Gong and Uyghurs were tortured;
- The number of transplants performed were much greater than the number of eligible, voluntary donors; and
- A massive infrastructure development of facilities and medical personnel for organ transplant operations was underway before a voluntary donor system was planned.

The Tribunal concluded that there must have been another unidentified source of organs other than voluntary donors and that there is no evidence the practice of forced harvesting has stopped. The unidentified sources were likely prisoners of conscience, including Falun Gong practitioners, Tibetan Buddhists, House Church Christians, and the Uyghurs.<sup>26</sup>

### Legislative Memorials

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

### **Effect of the Memorial**

HM 791 urges the President and Congress to:

- Condemn China for the practice of forcibly removing human organs for transplants;
- Pass legislation and measures that prohibit collaboration between U.S. pharmaceutical and medical companies and any Chinese counterparts linked to forced organ harvesting; and
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<sup>21</sup> The International Coalition to End Transplant Abuse in China, established in 2014, is a non-profit, independent, non-partisan coalition composed of lawyers, academics, ethicists, medical professionals, researchers, and human rights activists dedicated to ending forced organ harvesting in China. Its Advisory Committee contains members from multiple countries outside of China, including Australia, Canada, the United States, New Zealand, and a former surgeon from China who is currently based in the United Kingdom.

<sup>22</sup> China Tribunal, *China Tribunal – Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China*, <https://chinatribunal.com/> (last visited March 8, 2022). A prisoner of conscience is any person who is physically restrained (by imprisonment or otherwise) from expressing an opinion which he or she honestly holds and which does not advocate or condone personal violence.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

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## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.