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CRIMES AND OFFENSES

Buying or Selling of Human Body Parts: Include Fetal Tissue

CODE SECTION: O.C.G.A. § 16-12-160 (amended)
BILL NUMBER: HB 634
ACT NUMBER: 433
SUMMARY: The Act makes the buying or selling of a human fetus or any part of a human fetus a felony.
EFFECTIVE DATE: July 1, 1989

History

Each year 1.3 million pregnancies are voluntarily terminated.¹ Medical researchers are presently exploring the potential therapeutic uses of fetal tissue.² Advocates of the use of fetal tissue in human beings point to the abundant supply of aborted fetuses that could be used for transplantation.³ Highly emotional ethical issues are inherent, however, with fetal tissue transplants.⁴ Additionally, if fetal tissue is found to have numerous therapeutic uses, demand for fetal tissue could become greater than supply.⁵

In 1988, Congress amended a federal statute to prohibit the interstate buying or selling of human fetal organs.⁶ Because the federal statute

1. Fine, *The Ethics of Fetal Tissue Transplants*, HASTINGS CENTER REP., June/July 1988, at 6.

2. Human fetal tissue has been transplanted in patients with Parkinson's disease in Mexico and Sweden. Parkinson's disease is a neurological disorder that is presently incurable. In experiments in the United States, however, fetal tissue has restored normal neurological function in animals with Parkinson's disease. Fine, *supra* note 1, at 5. The use of fetal tissue is being researched as a possible treatment for other medical problems such as diabetes, blindness, and sickle-cell anemia. Fetal kidneys have been transplanted into renal failure patients in West Germany. Clark, Gosnell, & Hager, *Should Medicine Use the Unborn?*, NEWSWEEK, Sept. 14, 1987, at 62 [hereinafter *Use the Unborn*].

3. Fine, *supra* note 1.

4. Mahowald, Silver, & Ratcheson, *The Ethical Options In Transplanting Fetal Tissue*, HASTINGS CENTER REP., Feb. 1987, at 11. Ethicists recognize the moral obligations to the fetus, to the woman undergoing the abortion, to individuals needing fetal tissue transplants, and to society, which may benefit from such transplantations. *Id.*

5. Requests for the release of fetal tissue for research are not required by law but are included in some abortion consent forms. Fine, *supra* note 1, at 6.

6. 42 U.S.C.S. § 274e(c)(1) (Law. Co-op. 1989). The Code section provides for a fine of not more than \$50,000, or imprisonment for not more than five years, or both, for "knowingly acquir[ing], receiv[ing], or otherwise transfer[ring] any human organ for valuable consideration." Before 1988 the Code section defined "human organ" without expressly including fetal organs. National Organ Transplant Act, tit. 3, § 301(c)(1), 98 Stat. 2339, 2346-47 (1984) (current version at 42 U.S.C.S. § 274e(c)(1) (Law. Co-op. 1989)).

affected only interstate buying or selling of aborted fetuses, HB 634 was necessary to prohibit this type of activity within the state.⁷ Although similar legislation was introduced in previous sessions of the Georgia General Assembly, the bills were never reported favorably from committee.⁸

HB 634 was introduced primarily out of concern over the ethical issues that might arise if fetal tissue became marketable.⁹ If fetal tissue transplants became common and demand were greater than supply, profit making could be the next step.¹⁰ A woman might choose to conceive with the intent to abort so the fetal tissue could be sold.¹¹ The Act prohibits reaping a financial reward from an abortion.¹²

Because fetal tissue becomes available through abortion, fetal tissue transplants are necessarily associated with the debate over abortion.¹³ Initially, some legislators were concerned that HB 634 might amount to an anti-abortion bill.¹⁴ Once legislators realized the bill's intent was not to restrict abortion, however, the bill encountered no opposition in either house.¹⁵

HB 634

The Act amends section 16-12-160(a),¹⁶ which prohibits the buying or selling of a human body or its parts, by adding the prohibition of the buying or selling of a human fetus or its parts.¹⁷ O.C.G.A. § 16-12-160(a) formerly did not specify whether "human body" included human fetuses. The Act clearly makes it unlawful to buy or sell a human fetus.

As introduced, HB 634 defined "human body" to include "offspring of human beings from the moment of fertilization."¹⁸ The House Committee on the Judiciary amended the bill by deleting this language and inserting "human fetus" instead.¹⁹

7. Telephone interview with Representative Robert Steele, House District No. 97 (Mar. 23, 1989) [hereinafter Steele Interview].

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Use the Unborn, supra* note 2, at 63.

14. Steele Interview, *supra* note 7.

15. *Id.*

16. 1986 Ga. Laws 651.

17. O.C.G.A. § 16-12-160 (Supp. 1989).

18. HB 634, as introduced, 1989 Ga. Gen. Assem.

19. HB 634 (HCS), 1989 Ga. Gen. Assem. Representative Denmark Groover, Jr., House District No. 99, suggested the change because he questioned the motive of the bill and felt the deletion of "offspring of human beings from the moment of fertilization" and substitution of "human fetus" would avoid questions regarding legislative intent.

The Act authorizes the purchase or sale of blood, reimbursement of expenses incurred by donating a person's body, purchase of human tissue for health education, and payment of fees related to donating a human body for research.²⁰ The Act provides that a living person who donates a part of her body may be reimbursed for actual expenses.²¹ HB 634 left intact the status of a gift or donation of a human fetus;²² gifts or donations of human fetuses are still permissible.²³ Violation of the Act is a felony punishable by a fine up to \$5,000, or imprisonment for one to five years, or both.²⁴

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Georgia Legislature Votes To Prohibit The Sale of Fetal Tissue, LIFE ISSUES, Mar. 1989, at 4. As amended, the section provides that, except for the provisions of subsection (b), it is unlawful:

for any person, firm, or corporation to buy or sell, to offer to buy or sell, or to assist another in buying or selling or offering to buy or sell a human body or any part of a human body or buy or sell a human fetus or any part thereof.

O.C.G.A. 16-12-160(a)(1) (Supp. 1989).

20. O.C.G.A. § 16-12-160(b) (Supp. 1989).

21. O.C.G.A. § 16-12-160(b)(3) (Supp. 1989).

22. In the Georgia Anatomical Gift Act, "decedent" is defined to include a fetus so that a parent "may give all or any part of decedent's body" to donees specified under section 44-5-144. O.C.G.A. § 44-5-142 (Supp. 1989).

23. *Id.*

24. O.C.G.A. § 16-12-160(c) (Supp. 1989).