

**MINUTES OF THE
SENATE COMMITTEE ON GROWTH AND INFRASTRUCTURE**

**Eighty-first Session
March 8, 2021**

The Senate Committee on Growth and Infrastructure was called to order by Chair Dallas Harris at 3:30 p.m. on Monday, March 8, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dallas Harris, Chair
Senator Chris Brooks, Vice Chair
Senator Pat Spearman
Senator Scott Hammond
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Senator James Ohrenschall, Senatorial District No. 21

STAFF MEMBERS PRESENT:

Susan Scholley, Policy Analyst
Paula Peters, Committee Secretary

OTHERS PRESENT:

Ashley Biehl
Lynn Chapman, Independent American Party
Janine Hansen, Nevada Families for Freedom
Tonya Laney, Administrator Division of Field Services, Department of Motor Vehicles
Dan Musgrove, Nevada Donor Network

CHAIR HARRIS:

We will open the hearing on Senate Bill (S.B.) 134.

SENATE BILL 134: Revises provisions regarding anatomical gifts. (BDR 43-88)

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SENATOR JAMES OHRENSCHALL (SENATORIAL DISTRICT No. 21):

I will introduce S.B. 134, and my constituent Ashley Biehl will share her organ donor beneficiary experience with the Committee. I will walk through the bill and the proposed amendment ([Exhibit B](#)).

Last year Ms. Biehl contacted me, and we met so she could share her experience of life-changing events as the beneficiary of a heart transplant and discuss her idea for a legislative change to the process of registering organ donors at the Department of Motor Vehicles (DMV).

Countries around the world have opt-out systems. If Nevada adopts the change, we could be the first state in the U.S. to adopt it. The proposed amendment addresses issues presented to me after my bill was introduced.

ASHLEY BIEHL:

I will read from my submitted written testimony, ([Exhibit C](#)), in which I share my personal experience with receiving the gift of an organ donation and why I am in favor of S.B. 134.

CHAIR HARRIS:

Ms. Biehl, I am sure the children you serve at the Legal Aid Center of Southern Nevada are blessed by your presence.

SENATOR OHRENSCHALL:

Sections 1 through 4 of the bill will change our statutory language. The DMV application form for a new driver's license and identification card will offer one choice, the choice to opt out. If the person does not exercise that choice to opt out, consent to be an organ donor will be presumed. The same choice will be given at the time of renewal of a driver's license or identification card.

My conversations with different stakeholders led to the changes in the proposed amendment, [Exhibit B](#). The first change is that persons under the age of 18 will not be subject to the opt-out provision. Consistent with policy, they are provided the opportunity to opt in with the written permission of their parents or guardians.

The second and third changes require the DMV to provide signage and notification in their offices and website to ensure Nevadans are made aware of

the change to an opt-out approach in the organ donation program. Such policies and procedures shall include notification in languages other than English.

The fourth change requires the DMV to provide commonsense information to customers given the change from an opt-in to an opt-out system. The fifth change directs the DMV to work with organ donation groups, medical associations and other interested organizations to raise public awareness of the change in law to an opt-out approach and the benefits of organ donations.

I am committed to working with other stakeholders to address their concerns and make changes as needed.

I am not sure if anyone from the Nevada Osteopathic Medical Association will be joining us today. The Association submitted a letter in support of [S.B 134 \(Exhibit D\)](#).

SENATOR PICKARD:

I experienced a cardiac issue which resulted in a pacemaker implant, and I can appreciate Ms. Biehl's life-threatening experience.

I have questions regarding the intersection of government and the use of our bodies without our consent. My understanding of the opt-in language from years ago and the general consensus is that government cannot make choices for our bodies over our personal opinions. Yet the new bill and proposed amendment seem to violate that concept. How do you reconcile the two?

SENATOR OHRENSCHALL:

The language of the proposed amendment requires the DMV to provide robust notice that Nevada is an opt-out state. Making that statement in support of organ donation ensures no violence will be done in terms of anyone's rights to his or her body or organs. The decision will be there if one wants to participate in the organ donor program.

The language and the question asked will change, but I argue that the same autonomy that everyone exercises now will not change.

SENATOR PICKARD:

I am concerned about people who do not have contact with the DMV for driver's licenses or identification cards. They include elderly, disabled and

undocumented individuals. They will not receive notice from the DMV. If they receive notice and choose not to participate, the government is making the choice for them to opt in.

I am an advocate for organ donors yet struggling with the idea of government having the right to make that decision for one whom has no face-to-face or affirmative contact.

SENATOR OHRENSCHALL:

This is not how I interpret the language on page 4, section 3 of the bill or the proposed amendment. The new opt-out provision will be applicable to DMV customers seeking a new or renewal drivers' license or identification card. There will be no change for people who can still opt-in, in terms of their testamentary documents or any other communication provided for under *Nevada Revised Statutes* (NRS) 451.558.

It is not my intent that government will make the choice for DMV customers. I am open to both clarifying the language and any amendments.

CHAIR HARRIS:

Will the change allow someone who has a driver's license to automatically be presumed to have opted in to organ donation prior to the next renewal?

SENATOR OHRENSCHALL:

No, a decision will be made when a person applies for his or her first driver's license or identification card, or for a renewal of either of the two documents. At that time, the person will decide whether to participate or opt out of the opt-out program. No one will be designated an organ donor without having the opportunity to answer the question, "Do I want to participate or do I want to opt-out?"

The language in the formal amendment will provide clarification.

SENATOR BROOKS:

Thank you, Ms. Biehl, for sharing your experience with us. It is a powerful testimony and helps put things into context.

I have a question regarding the proposed amendment. The fifth change adds a provision to the bill directing the DMV to cooperate with organizations

interested in the development of an organ awareness campaign for the public but states it is not intended to require the DMV to expend agency funds. It is important to educate the public on the change in the law, but how do we do that?

SENATOR OHRENSCHALL:

We are cognizant and respectful of DMV's resources. We are optimistic the DMV will continue to work with organizations that support organ donation and that past campaigns supporting the organ donor program continue if it changes from opt-in to opt-out.

Many of us go to DMV locations and are aware of the signs and literature promoting organ donation. That will not change if Nevada adopts an opt-out system. There will be additional information provided to explain the change from an opt-in to opt-out system.

SENATOR BROOKS:

Will the DMV's organ donation program continue as it is with the only change being the change from opt-in to opt-out?

SENATOR OHRENSCHALL:

Yes, we want to highlight the change in law but encourage people to take time to think about the choice they have and discuss it with their loved ones before they visit the DMV in person or online.

Many people are busy and do not have the time to think about the decision to be an organ donor until they are at the DMV counter. They will answer the opt-in question no, with plans to discuss with their family later. However, they procrastinate and never do readdress their decision.

SENATOR HAMMOND:

I support organ donation, and it is indicated on my driver's license.

If you are asking that a robust program be implemented to educate people about a donor opt-out change, the assumption is that the program to educate people about the opt-in policy is not effective. If the outreach program is not effective, what will we do differently to increase the number of people who understand a new opt-out system? Under the opt-out system, if they take no action, they will have been deemed not to opt-out and will become registered organ donors.

Accordingly to Ms. Biehl, we have atrociously low rates of people opting in to be organ donors in the U.S. If we adopt the opt-out system and the number of donors increases, is it because our outreach was ineffective, people did not understand that, and by default they are now in a program they did not consciously choose?

To echo Senator Pickard, what obligation does the government have with DMV customers automatically being opted into the organ donor program without understanding the process and not wanting to be an organ donor?

Ms. Biehl mentioned other countries having opt-out systems and Spain having the highest donation rate in the world. I want to learn more about the impact of the change to opt-out on Spain's donation rate and if Nova Scotia's donation rate increased with the adoption of their opt-out system.

Senator Ohrenschall, my concern is that DMV customers will rush in to obtain or renew their driver's license or identification card and complete their business without realizing they are now registered organ donors. Will the bill include a provision that will provide them the opportunity, the next day or later, to rectify the situation and have their registration reversed? Will they be required to pay for a new driver's license or identification card since the cards issued indicate they are registered?

SENATOR OHRENSCHALL:

I am doubling back on Senator Pickard's question, I want to assure the Committee that the bill will only be applicable to DMV customers who obtain or renew driver's licenses or identification cards. It will not apply to any other provisions of registering to be an organ donor listed at NRS 451.598.

My intent with the amendment is to ensure notices are robust and no one will become a donor by default without consciously deciding to opt out or not. I am open to language clarifications.

Under statute, regulations, the bill and proposed amendment, nothing prevents a person from later changing his or her choice to the original organ donor decision.

I think a small fee will be required to issue a new driver's license or identification card if someone later wants to not be a registered organ donor. I will research if fees will be required and inform the Committee.

The intent is that everyone will make the same conscious decision that they make now; it is a change in the wording and the question asked. If Nevada is the first opt-out state in the union, it makes a strong statement of commitment for organ donation.

SENATOR HAMMOND:

You have a noble goal to increase registered organ donors. However, I am concerned about your using the term robust notification. People in general are inundated with notifications. I have been in education where we have sent notice after notice home with students.

I am concerned that with all the news, information provided by the DMV will be glazed over by the reader, who will unknowingly become registered as an organ donor. It is an important decision to make. I worry that there will be registered organ donors who never intended to be organ donors.

SENATOR OHRENSCHALL:

I understand your concerns, and that is certainly not the intent. I am open to language changes to ensure that if an opt-out system is adopted, any DMV customer who does not understand the decision will have time to think about it.

CHAIR HARRIS

Have you had discussions with the DMV on the driver's license and identification card application forms and changes that might be needed pursuant to the bill? We choose a box to opt-in. If we change to an opt-out system, will there be room to make the language of the change a larger font size or require it to be bold and in all caps—format that will stand out differently, similar to the way a lawyer presents an arbitration clause—or does the DMV plan to keep the same format?

SENATOR OHRENSCHALL:

My intent is that the font will be as large and bright as practical to highlight the change. In the past when we have proposed bills and tried to specify details in the statute, I have often been told by agencies that it is better to address

format details in the new regulations. I am open to discussion if font level should be included in the new statute or regulations.

New programming of computer systems required and is discussed in the fiscal note.

SENATOR SPEARMAN:

I have heard concerns similar to those Senator Pickard and Senator Hammond have expressed in terms of the government having control over one's body. Senator Ohrenschall, would you engage with people who do not want the government to have control of their bodies after death and question why it is acceptable for the government to have control over their reproductive organs when they are alive?

There has to be a pedagogical process that allows one to accept A but reject B. Are you willing to engage in conversation to explain the pedagogical process? It will be useful for the bill and other bills.

SENATOR OHRENSCHALL:

I am open to discussing my bill and any concerns anyone might have, but I emphasize that my intent is not that anyone take control over anyone's decisions about his or her body or organs. If the bill passes, my intent is the decision be as straightforward as it is now and people still have time to think about their choice.

If the bill passes, more people will have time to consider their decision and choose to not opt-out. Their choice to not opt-out will provide more organs and save more lives.

MS. BIEHL:

The intent of the bill is not for the government to have control of the body after death. The intent is to provide a program that provides the opportunity for people to more easily become organ donors. Everyone will still have the option to opt out of the program.

Becoming an organ donor does not impact anything that occurs with the body after death other than the removal of the organs. Organ donors are eligible for open-casket funerals and burials. The decisions will still be entirely in the hands

of deceased if they have an advanced directive, living will or family members. The body will still be within the control of the family.

LYNN CHAPMAN (Independent American Party):

We are in opposition to S.B. 134. My-sister-in-law was the 418th person to receive a heart transplant at the University of California, Los Angeles, 28 years ago. We were blessed to have her in our lives for another 13 years. My brother was killed in 2003. His driver's license indicated he wanted to be an organ donor. The donations of his body and tissues after death saved many lives.

My family has been involved in both sides of the issue, giving and receiving. The DMV has many links for information about body and tissue donations, forms to enroll and links to public service announcements.

Everyone is aware you can go to the DMV and obtain forms for organ donation. People understand opt-in, they work with opt-in all the time. You want to change to an opt-out system. People will find it confusing. Opting-out is the wrong way to go. Please vote no on S.B. 134.

JANINE HANSEN (Nevada Families for Freedom):

We oppose S.B. 134 on anatomical gifts, not because we oppose the choice of giving organs but because it takes away the basic right of affirmative consent. The bill changes our anatomical gifts bill from an opt-in to an opt-out system.

Nevada adopted the Uniform Anatomical Gift Act (UAGA) recommended by the National Conference of Commissioners on Uniform State Laws, which identifies areas that benefit by uniformity nationwide. *The Clinical Journal of the American Society of Nephrology* states in its paper on the UAGA:

United States culture is deeply steeped in individual rights, starting with the Constitution and mirrored through the many laws, regulations, and cultural norms that prioritize individual autonomy. A rights-based culture is well matched with the UAGA legal framework requiring an affirmative, voluntary decision to make a gift. Under this opt-in policy, the United States experienced over 27 % growth in deceased organ donors and transplants in the past 10 years. [It includes] 142 million registered donors as of January 2018, representing over 54 % of the adult population.

Some areas of the United States significantly exceed the donation rate in Spain.

Nevada's law on anatomical gifts should not be changed from opt-in to opt-out. Affirmative choice is working well under the UAGA. Please vote no on S.B. 134.

TONYA LANEY (Administrator, Division of Field Services, Department of Motor Vehicles):

The DMV is neutral on the bill. We saw an amendment that will change our fiscal note of no fiscal impact. We now think it may have minimal fiscal impact. Our team is actively reviewing the amendment, and we will be submitting a revised fiscal note.

We understand there will be a working group and request that the DMV be included so we can answer questions and add substance for S.B. 134.

DAN MUSGROVE (Nevada Donor Network):

The Nevada Donor Network rates No. 1 in the world with both numbers of organ donations and procured donor recipients per thousand. We are the organ procurement organization for 14 of 17 Nevada counties, and our staff obtains the authorizations for donations. We operate in accordance with the UAGA.

We work with families and loved ones for the amazing gift of life that organ donors provide. I cannot think of a better spokesperson for organ donation than Ms. Biehl. I applaud her and Senator Ohrenschall's efforts to pass the bill.

However, the Nevada Donor Network has serious concerns that an opt-out system is likely to have unintended negative consequences that will result in decreasing the availability of donated organs and tissues.

Ms. Biehl mentions the number of countries in Europe that have the opt-out approach. A recent study in the *Journal of the American Medical Association* demonstrates that the majority of those countries have experienced lower donation rates than jurisdictions within the U.S. The journal mentions Spain has the highest donation rate in Europe and thinks it is due to social and cultural factors, and hospital work rather than the legal structure of an opt-out policy.

There is a possibility that donation rates in the U.S., already among the highest in the world, may drop if opt-out is adopted. The European system allows for families to veto the donation or to have the final say. We need to be mindful that information on a driver's license, whether opt-in or opt-out, often does not reflect the wishes of any person at the time.

Someone who is nearing end of life may change his or her mind, but the trouble with an opt-out is that you now have created an absolute no list. We have never had a no list in the U.S. before. It will create a group of people who have made the conscious decision that they do not want to donate, which could potentially put us in violation of the UAGA. We and the previous testifier think the wording in section 3 will result in our policy being in contradiction with the UAGA.

Section 3, subsection 1, paragraph (a) of the bill replaces language with "not refusing to authorize." The UAGA is based on donations being an affirmative voluntary act that cannot be met on the basis of inaction. In other words, a failure to opt-out. This conflict will lead to legal challenges when it comes to anatomical gifts made under the opt-out system.

We speculate if legal scholars opine the possibility of a constitutional challenge to that presumed consent of the UAGA that Nevada adopted, the change is not in compliance with the UAGA. We will need to remove the opt-in change and place it in a different healthcare statute.

The new bill appears to be a great idea, but the reasons stated above are why no other state has adopted an opt-out system. They were concerned that it could reduce the number of organ donations in their states and confuse their residents who may enroll in the program without realizing it.

We appreciate the bill, its proposed amendments and our robust discussions with Senator Ohrenshall. Ms. Biehl's experience is incredible, and we are glad she received an organ donation. We understand her intention to increase organ donations, but we are concerned about the unintended consequences. We commit to working with the Senator and the Committee to determine what we can do to increase donor donations.

SENATOR OHRENSCHALL:

Thank you Ms. Biehl for sharing your organ donation experience with the Committee today. The bill could make a bold statement with Nevada becoming

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the first opt-out state in the Nation. The intent is not to replace anyone's conscious decision as to whether they want to participate in the DMV's organ donation program. I am open to clarifications and revising my proposed amendment.

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CHAIR HARRIS:

I will close the hearing on S.B. 134. We have no Committee bill draft request introductions today. Seeing no public comment we will adjourn at 4:21pm.

RESPECTFULLY SUBMITTED:

Paula Peters,
Committee Secretary

APPROVED BY:

Senator Dallas Harris, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 134	B	1	Senator James Ohrenschall	Proposed amendment
S.B. 134	C	1	Ashley Biehl	Written Testimony
S.B. 134	D	1	Nevada Osteopathic Medical Association	Letter of Support