

**MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Eighty-second Session
March 16, 2023**

The Senate Committee on Health and Human Services was called to order by Chair Fabian Doñate at 3:32 p.m. on Thursday, March 16, 2023, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Fabian Doñate, Chair
Senator Rochelle T. Nguyen, Vice Chair
Senator Roberta Lange
Senator Robin L. Titus
Senator Jeff Stone

STAFF MEMBERS PRESENT:

Destini Cooper, Policy Analyst
Mary Ashley, Committee Secretary

OTHERS PRESENT:

Saha Salahi, Intern to Senator Cannizzaro
Dan Musgrove, Nevada Donor Network
Jackie Warn, Chief Quality Officer, Nevada Donor Network
Tyre Grey
Cadence Matijevich, Washoe County
Courtney Kaplan
Joanna Jacob, Clark County
Andres Moses, Eighth Judicial District Court
Jessica Ferrato, Second Judicial District Court

CHAIR DOÑATE:

We will open today's hearing with Senate Bill (S.B.) 109.

SENATE BILL 109: Revises provisions governing anatomical gifts. (BDR 40-453)

SENATOR ROCHELLE T. NGUYEN (Senatorial District No. 3):

I have the honor today to present S.B. 109. Joining me is Saha Salahi who is a Senate Legislative intern from the University of Nevada, Las Vegas. In addition, Dan Musgrove is here on behalf of the Nevada Donor Network (NDN). Mr. Musgrove will walk us through the bill and the proposed conceptual amendment.

SAHA SALAHI (Intern to Senator Cannizzaro):

In 2022, the United States reached 1 million organ transplants, more than any other country. Together the organ-donation and transplant communities have made lifesaving history. With over 104,000 patients nationwide on the waiting list for a lifesaving transplant, we are working to reach the next 1 million even sooner. Critically ill patients needing an organ transplant must face the financial, physical and emotional burdens of waiting for a lifesaving transplant. Over 600 Nevadans on the waiting list will most likely need to travel to a neighboring state to get the care they need.

Despite the continuing efforts of public education, misconceptions and inaccuracies about organ donations persist. In fact, the opponents of S.B. 109 may help spread some of those myths. While specific beliefs differ, all major religions in the U.S. support or encourage donations as a person's final act of love and charity in the world. Senator Nguyen will explain how Nevada will join other states providing protections to coroners, medical examiners and the courts.

SENATOR NGUYEN:

If you are sick or injured and admitted to a hospital, the No. 1 priority of any hospital is to save your life. I know we have Committee members who know this priority well. Organ donations can only be considered after death has been declared by a physician. Senate Bill 109 simply does what several other states including Arizona, California, Florida and Michigan have already done. These states give coroners, medical examiners and the courts the ability to decide to save a life through donation. If there is no one to speak on behalf of the deceased, and we have no indication what their last wishes might have been, we would hope that this final act of love and charity could be codified and enhanced by S.B. 109.

Mr. Musgrove will walk us through the bill and the proposed amendment. It is important to look at what the existing statute already authorizes and allows. Senate Bill 109 will clarify the law. Section 5, subsection 1, paragraphs (a) through (j), allow other people to make these anatomical gifts upon the decedent's death. The current law includes the spouse, adult children, parents, siblings, adult grandchildren and grandparents of the decedent. It also allows "an adult who exhibited special care and concern for the decedent" and "persons who were acting as the guardians of the person of the decedent at the time of death."

Paragraph (j) needs clarification because it states, "Any other person having the authority to dispose of the decedent's body." This is ambiguous or vague language and does not have the added protections we are seeking in S.B. 109. The bill will require those individuals under paragraph (j) to go to court or obtain a guardianship appointment for an added layer of protection. Under the existing law, one could do this, but S.B. 109 gives added protection.

DAN MUSGROVE (Nevada Donor Network):

I will be walking you through S.B. 109 and Jackie Warn will join me virtually from the Grant Sawyer State Office Building. Ms. Warn is an employee of the NDN and she has prepared some remarks on her organization.

JACKIE WARN (Chief Quality Officer, Nevada Donor Network):

As noted earlier, S.B. 109 will provide additional protection to existing law, specifically for chapter 451 of the *Nevada Revised Statutes* (NRS). Chapter 451 includes a section on the Uniform Anatomical Gift Act authorizing certain individuals to donate these lifesaving gifts. We are 1 of 56 federally certified organ-procurement organizations by the Centers for Medicare & Medicaid Services (CMS). We were founded in 1987 and our core purpose is to save and heal lives for the more than 3 million people in our State. We have thousands of potential transplant recipients. The primary function of an organ-procurement organization is to coordinate, recover and allocate lifesaving organs and healing tissues for transplantation and to do research on behalf of Nevada's heroic donors.

Pursuant to NRS 451.566, "an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research or education may be made by any member" of stated classes of persons. This bill further supports decision-making for transplantation donations when there is no known person

able to make this decision and there is no evidence the decedent has communicated a desire not to donate an anatomical gift. In these circumstances, this bill proposes to allow a coroner or medical examiner to provide such authorization. Should the decedent not fall under the jurisdiction of either, the case would likely then be elevated to the court system for a decision to be made. Senate Bill 109 will make more organs available for recipients, shorten the waiting list for transplants and save more lives.

MR. MUSGROVE:

It is important to consider what S.B. 109 will do. It is the absolute last resort before we determine if a viable organ will be used for transplantation. It can avoid not using a viable organ, because, after due diligence, we did not find someone able to make that decision. Senate Bill 109 will strengthen existing language and allow an organ donation for transplantation only. This bill does not apply to a donation used for research, therapy or education.

The NDN will need to perform due diligence to find the next of kin or someone who speaks on the decedent's behalf. We will also need to find out if the decedent has expressed a wish to be or not to be a donor. If we cannot find an agent of the decedent, we will ask the coroner or medical examiner to determine whether we have performed sufficient due diligence and if it is appropriate to go ahead with a transplantation. If the decedent was not considered brain dead, we would go to the court for this determination.

I have been working with stakeholders including Clark and Washoe Counties, coroners, medical examiners, other counties and the district courts. The district courts have submitted a proposed friendly amendment ([Exhibit C](#)). We are in support of this amendment. The amendment will clarify that the district court makes this decision. I am working with the courts on the language and want to give similar language to the medical examiner as well.

Prior to petitioning the coroner, the medical examiner or the court, we want to specify that we have made sure no person in the prior class outlined in section 5 is reasonably available and does not object to making the anatomical gift. In addition, no evidence exists of the decedent communicating a desire to prevent part of his or her body becoming an anatomical gift. This desire would include, without limitation, a refusal that has not been revoked. Our intent is to place sufficient safeguards to ensure we can have a viable donor.

Research in Clark County revealed only 13 times in the last 10 years, when a decedent did not have someone speak for them. Potentially, this bill would have given us 13 or more organs to save lives. This factor alone makes it worth considering S.B. 109.

We are working on a proposed amendment. It will give the coroner and the medical examiner some civil or criminal liability protection for making this very narrow decision. We have talked to the Nevada Justice Association, and they have no issues with it because it is a specific exemption of liability.

SENATOR STONE:

I am an organ donor myself as well as most of my family. I understand the merits of the program you are bringing to us today. However, there can be instances when someone has an injury or ailment on the street and is transported to the hospital. In this instance, let us suppose this person is clinically dead. The person could be brought back to life by CPR as they are going to the hospital. There is a distinction between clinical death and biological death. You mentioned under a biological death, if there is nobody on the list in section 5, then it would go to the court. The court would make the decision to harvest the organs. Is this correct? How do you handle a clinical death? What would be an example of a clinical death where somebody could have their organs taken from them?

MR. MUSGROVE:

There is a uniform declaration of brain death in the statute. When it has been declared by a physician and others, then the coroner can release the body. When a patient is not declared in a state of brain death, that patient will be on life support and can have an event like heart failure. This is an example of when we must do our due diligence. We will search the FBI database and the hospital will assist us in looking for the next of kin. After the search, we will go to the court and submit the evidence that the patient does not have someone who can make this decision. The court will have to make the decision. This is not a declaration of death but an allowance for the transplantation of organs.

SENATOR STONE:

This is a developing situation. A person arrives at the hospital and is declared brain dead. You only have a certain amount of time before the other organs will begin to deteriorate and not be functional anymore. Do you see a problem as far as time constraints in finding the next of kin or anybody listed in section 5?

Because of time constraints, what happens if they cannot be found? Are the organs harvested?

What happens if the next of kin shows up after the organs have been harvested? The first trauma is dealing with a family death. The second trauma is discovering the patient's organs were harvested. When someone is grief stricken, it can be frightening and alarming. How do you manage the time constraints to make sure due diligence is exercised appropriately?

MS. WARN:

To elaborate on the due diligence, we work with the hospitals. The patient is under the care of the hospital and decisions are being made by a healthcare proxy when they have no one to make decisions. We work with different divisions at the hospital and within NDN. Depending on the severity or the condition of the individual, the timeframe is 24 hours to 48 hours. We perform a thorough search and are doing our best to locate someone who can speak for the patient. Most of the time we do find someone. As Mr. Musgrove shared, in the past 10 years, we had 13 cases that had this issue. Although it is a small number, the significance of it can be impactful when we are working towards saving lives and making sure everyone has an advocate to speak for them.

MR. MUSGROVE:

If the coroner, the medical examiner or the court does not feel we have done our due diligence, then they can step in to make that decision. The organs will not be transplanted. Having someone else involved will help us to make the best decision possible.

SENATOR STONE:

I would like to go back to the difference between clinical death and biological death. Biological death has a 100 percent chance the patient is not coming back. Does a clinical death have extra steps to make sure the patient has died? Is there a second physician or even a third physician to verify that their heart or lungs are not going to recover? We have heard of miracles. People have gone to the morgue with clinical death and have woken up in the morgue. It is very rare, but it has happened. We need to be certain when we define somebody as being dead, or not coming back, that their organs can or cannot be harvested. Are there any extra protections for the definition of clinical death versus biological death?

MS. WARN:

The individual has a clinical care team in the hospital taking care of them. We rely on their medical expertise. A neurologist performs multiple tests to ensure there are no signs of brain stem reflex. If there were any chance, a physician or a neurologist would not be signing off on a death declaration.

CHAIR DOÑATE:

In the bill, it references NRS 451.007 subsection 1, paragraph (b), regarding the legal and medical purposes to determine if a person is dead. The law states, "if the person has sustained irreversible cessation of" and then it mentions all functions of the person's entire brain, including his or her brain stem. The law continues to detail the qualifications and the quality standards to make that determination.

SENATOR TITUS:

Thank you NDN for all the work you have done. I have taken care of multiple patients who had organ transplants. I have called the donor network. I have pronounced patients dead and have done my due diligence to let you know there are potential organs to harvest. My questions are not intended to discredit what you do. I know there are not enough organs out there and that you save lives.

As a physician, I want to thank you. I have had end-of-life conversations with patients. I passed a bill to designate April 16 as Healthcare Decisions Day. This day is important to have a discussion and to fill out your Physician Orders for Life-Sustaining Treatment, commonly known as the POLST. It is critical for people to express their opinions on what they want done. In that same conversation, I have had many patients be adamant about donations of organs. I have it on my driver's license, you can take any part of me that you want. My mother also was a donor, but my father was adamant he did not want anything taken off.

Patients have differing opinions. My concern is about the 13 people that you could not find the next of kin. They had no identification. Are we focusing on a certain population who will not have identification? Specifically, groups who are mentally ill, homeless or perhaps are illegal aliens. If these groups get into an accident, they may not have identification. If the patient is from Mexico, their family may be unaware they are here. I am concerned about certain groups of citizens having a strong opinion on what they want done after they die. How do

you protect that group? I would be curious to know more about the 13 individuals you could not find the next of kin. Where did they fall in our population? Does this unfairly focus on that population?

MS. WARN:

I do not want to dwell on the 13, but 5 of those individuals did not have a home. For the remaining eight individuals, we were unable to locate a next of kin.

There are circumstances when we can find a next of kin but cannot contact them. We will expand our search based on NRS 451.566, subsection 1, paragraphs (a) through (j). We do our due diligence looking for a spouse, a parent or a child. There are provisions in there to expand the search to someone the patient was living with, assuming the patient is not homeless. We want to have a conversation to discover if the patient ever expressed an opinion on donating or not donating. By going through this process, and doing our due diligence, we are making our best efforts. We are trying to find out if someone is aware of the decedent's intentions.

MR. MUSGROVE:

I have been working in the children's and adults' mental health arena for a long time. Even if a person is truly homeless, they usually have something that gives them identification. It could be their access to Medicaid. Sometimes, we can come up with a name or perhaps a homeless shelter is able to find friends or family. Just as your father made his wishes known to you, we would perform due diligence to at least try to find someone.

We understand Senator Stone's concern about a family member arriving after the organs have been transplanted. We think there are enough protections in this bill to make it worth saving a life. These are people who are going to die, and we would love to give the gift of life to someone. We are asking the Legislature to consider this as that ultimate last resort opportunity to save additional lives.

SENATOR TITUS:

I appreciate what you are trying to do. Worldwide, there are a lack of organs. We now have the science for transplantation and an incredible black market for organ donations. I am concerned that allowing a coroner to have a judge sign

off on transplantation is the next step on who can donate. We need to avoid a possible abuse of this bill and find other options.

Can we improve communication to people on the importance of donations? If we educate people on donations, we may be able to make the black market go away. I worry we are expanding out of desperation as opposed to educating on the options to give organs. This is more of a statement than a question.

SENATOR NGUYEN:

Senate Bill 109 gives more protections for donations. The existing statute states under NRS 451.566, subsection 1, paragraph (j) "any other person having the authority to dispose of the decedent's body." This bill gives more oversight to the existing statute. You have concerns about a slippery slope, but I would argue this bill does not expand the existing law. In fact, it restricts it and has an added level of protection. If an organization like NDN comes and takes the necessary steps, there is some oversight to determine whether to harvest the organs. The current law does not provide for the oversight. I would argue S.B. 109 does not expand, but protects those same individuals. It further restricts and gives more oversight to this process.

MR. MUSGROVE:

The 56 organ-procurement organizations, certified by CMS, are required to follow federal guidelines and restrictions. In addition, we work in a hospital setting and do not have access to or deal with a black-market organ. It is my hope no one will use this legislation to operate in this space.

SENATOR STONE:

The United States Department of Health and Human Services approves these organ-procurement centers. I know they have very rigorous standards to ensure the organs are appropriately acquired, transported and given to donors. You mentioned there are several states that already have this in statute. Are you aware of any legal issues in those states?

SENATOR NGUYEN:

The states I mentioned were Arizona, California, Florida and Michigan. This is a diverse group of states politically and regionally with their populations. This is important to note. I had asked Ms. Warn to reach out to other programs operating similarly to what we are proposing.

MS. WARN:

We reached out to a variety of states. The organ-procurement organizations have not encountered any known problems.

TYRE GREY:

I support S.B. 109. I am an organ-transplant recipient and know every life can be saved. Every donation can save up to eight lives and can have an impact on about 75 other lives. When we look at the small number, there are possibly 80 people who would have been helped if this legislation had been in place. I appreciate your consideration of this bill.

CADENCE MATIJEVICH (Washoe County):

We are in support of S.B. 109 and its intent. This is a qualified support because we have yet to review the proposed amendments referred to at today's hearing. We are in full support of the intent behind this bill and look forward to seeing the final language.

COURTNEY KAPLAN:

Four years ago, my son Michael was killed in a motorcycle accident a week before his graduation. I died with him that day and my life has changed forever. However, I am a proud mother of an organ donor. The word gift has been bounced around today. When it comes to a gift of life, I would love to share with you what it looks like.

Two years after my son passed away, I received a letter from one of Michael's organ recipients who received his liver. The note included a thank you for the gift of life. It continued with the recipient informing me he can watch his children grow, participate in their lives, and go to their plays. He disclosed he is a 61-year-old male who watched his only son get married and welcomed his first grandchild. That is what the gift of life looks like. What greater pride is there than to be a part of such a selfless gift of life?

For a mother, there is no greater gift. Every day I miss my son. However, I have been gifted with this extended family as our dear recipient just said. The first thing I did after our Honor Walk was to write a letter and welcome all of his organ recipients to our family. They carry a piece of my son. They live because my son said yes to organ, tissue and eye donation.

I understand this bill is for those who do not exactly fall under the same case I had. As a donor mom, there is no greater pride than knowing your loved one has helped contribute to not only a family, but a community. We all go home to somebody, and this is a community or a family. There is no greater pride than to be a part of this movement. I support S.B. 109.

JOANNA JACOB (Clark County):

We are neutral on S.B. 109. Clark County has been working with NDN and Mr. Musgrove on the proposed amendment. Our coroner has worked with NDN on these types of cases. On behalf of our coroner, I want to put on the record that brain death is death by law. This is in compliance with NRS 451.007, subsection 1. We have been asked to come to the hospital and fingerprint people who are without identification. This is an effort to determine the person's identification. Clark County intends to do their own due diligence and ensure we did all we can do. We work in collaboration with NDN and the hospital to identify the next of kin. This is a very closely tracked process. We are willing to be part of this conversation going forward and will continue to work on the amendments. We appreciate the work done so far by Mr. Musgrove and NDN. They have included some protections for the coroner that are also being considered for the courts.

ANDRES MOSES (Eighth Judicial District Court):

We are neutral on S.B. 109. I want to thank the sponsor of the bill and Mr. Musgrove for working with the courts and addressing our concerns about the bill. The first concern is the clarification that the district court does have jurisdiction over these petitions. The second concern is ensuring the petitioners perform their due diligence prior to bringing in a petition.

JESSICA FERRATO (Second Judicial District Court):

We echo the comments of the Eighth Judicial Court. Thank you, NDN and Senator Nguyen for allowing us to propose an amendment clarifying the jurisdiction and the order of operation.

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CHAIR DOÑATE:

We have two documents in support of S.B. 109 ([Exhibit D](#) and [Exhibit E](#)). I will close the hearing on this bill. Hearing no public testimony, we are adjourned at 4:13 p.m.

RESPECTFULLY SUBMITTED:

Mary Ashley,
Committee Secretary

APPROVED BY:

Senator Fabian Doñate, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 109	C	4	Dan Musgrove/ Nevada Donor Network	Friendly Amendment from the district courts
S.B. 109	D	12	Chair Fabian Doñate	Dr. Kalpana K. Reddy letter of support
S.B. 109	E	12	Chair Fabian Doñate	Dr. James Jimmerson letter of support