Why New York Should Consider an Opt-Out Organ Donation System

Opt-out organ donation systems exist in many developed countries, including Spain, France, all nations of the United Kingdom, the Benelux countries, all five Nordic nations (Iceland, Denmark, Norway, Sweden, and Finland), and many countries in Central and Eastern Europe, including Austria, Hungary, and Poland.

The concept is simple: under an opt-in system, people are assumed not to want to donate their organs after death unless they register as donors. Under an opt-out system, people are presumed to consent to donation unless they choose not to. In countries with opt-out systems, opting out is usually as easy as—or easier than—opting in is in countries with opt-in systems.

We will discuss the benefits and drawbacks of an opt-out system, with the goal of persuading people to support it and considering how it could be implemented. We may be willing to hear concerns from people who firmly oppose opt-out, but this listserv is not intended to debate whether the concept is inherently right or wrong. There are other forums for that discussion.

On August 13, 2013, New York State Assemblywoman Sandy Galef wrote a letter encouraging more people to opt in to the organ donor program. (1) She wrote in support of Lauren's Law, which Governor Cuomo had recently signed. The law changed the wording on DMV application forms.

The new forms asked: "You must fill out the following section: Would you like to be added to the Donate Life Registry? Check box for 'yes' or 'skip this question.'" This simple change in wording encouraged people to save lives by becoming organ donors.

However, it did not go far enough.

The New York State Department of Health reports that 8,000 people are currently waiting for an organ transplant. Only a small number of registered donors meet the strict medical requirements for donation. (2)

According to Donate Life New York State, 289 New Yorkers died last year while waiting for an organ. (3)

The situation has improved. In 2024, Governor Hochul announced that, for the first time, more than 50 percent of eligible New Yorkers had registered as organ and tissue donors. “This is a very important milestone for New York and the thousands of New Yorkers who are waiting for a life-saving organ transplant,” the Governor said. (4)

Much work remains to ensure that every New Yorker in need can receive a life-changing transplant. Still, reaching the 50 percent mark is a major achievement, especially considering that the state’s registration rate was just 22 percent a decade earlier.

Despite this progress, New York ranked 26th among the states in the percentage of residents registered to donate organs, according to Visual Capitalist. (5) That is disappointing, particularly since more than 90 percent of Americans say they support organ donation, according to the U.S. Department of Health and Human Services. (6)

Given the need and the public’s support, the solution may be as simple as leaving a box unchecked.
Social psychologists Shai Davidai, Tom Gilovich, and Lee Ross found that some opt-out countries have organ donation consent rates of around 90 percent, while opt-in countries generally have rates below 15 percent. (7)

The difference they identified was that many countries with high consent rates use an opt-out system. In other words, people are presumed to consent to donation unless they check a box to decline. New York State asks people to opt in. In other words, it assumes that people do not want to donate unless they actively register. This approach may be related to the legal framework established by the U.S. Uniform Anatomical Gift Act. (8)

The opt-out approach may be effective because people often treat the default choice as the expected or normal one. They may be less likely to change that default. Under an opt-in system, the default is not to donate; under an opt-out system, the default is to donate.

(1) Letter: In Support of Lauren's Law - The Current
(2) https://www.health.ny.gov/professionals/patients/donation/
(3) https://donatelifenys.org/about/facts
(4) https://www.governor.ny.gov/news/governor-hochul-announces-majority-eligible-new-yorkers-have-registered-organ-donors
(5) https://www.voronoiapp.com/healthcare/The-US-States-Leading-in-Organ-Donations-6611
(6) https://www.organdonor.gov/learn/organ-donation-statistics
(7) https://static1.squarespace.com/static/5b2be46ef93fd4204eb907a0/t/5b365dc888251b45c4a2a9f5/1530289609152/Davidai%2C+Gilovich%2C+Ross.+PNAS.+2012.pdf
(8) https://www.organdonationalliance.org/insight/opt-in-vs-opt-out-donation-systems/