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**To:** House Human Services Committee  
**From:** Christopher Dodson, Executive Director  
**Subject:** House Bill 1139 - Requirements for Birth Records  
**Date:** January 9, 2023

The North Dakota Catholic Conference supports House Bill 1139. The bill will codify into law that a birth record must include the child's sex and that the report of sex is based on the biological presentation of sex at birth.

Discussions about sex designation and birth certificates have arisen around the country. A few days before this bill was introduced, I was researching the issue, and, to my surprise, discovered that the North Dakota Century Code does not require birth records/certificates to record the child's sex.

The administrative rules concerning birth registration are set out in Article 33-04 of the Administrative Code. They also do not require designating recording the child's sex. Section 33-04-12-02 of the Administrative Code sets forth the requirements and process for obtaining an amended birth record following a sex conversion operation. (A copy of the rule is attached to this testimony.) Still, there is nothing in the law requiring the recording of sex in the first place.

Most of the time, birth records are filed with the state electronically. The Department of Health and Human Services has created a worksheet for the entry of the information for the birth record. That worksheet includes, but does not require, reporting the child's sex. The options given on the worksheet are "male," "female," and "not yet determined." (A copy of the worksheet is attached.)

Birth records are not personal documents. They are official state documents legally recording a particular event. This information is not only important for legal purposes, but it also provides essential public health data. At a minimum, the records should include medically accurate sex designations.

While we support the bill, we suggest amendments to better accomplish its intent. The proposed amendments are attached. The amendments change the structure of the bill to:

- (1) Define "birth record";
- (2) Define "sex" for purposes of birth records; and
- (3) Require recording the child's sex in a birth record.

The definition of "sex" used here is used in other legislation around the country and makes clear that, for these purposes, sex is based on biological factors present at birth. If those biological indicators are ambiguous, the sex could be designated as "not yet determined."

Please give a **Do Pass** recommendation to House Bill 1139.

**CHAPTER 33-04-12**  
**CORRECTION AND AMENDMENT OF VITAL RECORDS**

Section

33-04-12-01	Amendment of Minor Errors on Birth Records During the First Year
33-04-12-02	Amendments as a Result of Gender Identity Change
33-04-12-03	All Other Amendments
33-04-12-04	Who May Apply
33-04-12-05	Amendment of Registrant's Given Names on Birth Record Within the First Year
33-04-12-06	Addition of Given Names
33-04-12-07	Medical Items
33-04-12-08	Amendment of the Same Item More Than Once
33-04-12-09	Methods of Amending Records

**33-04-12-01. Amendment of minor errors on birth records during the first year.**

Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions on birth records may be made by the state registrar within the first year after the date of birth either by the state registrar's own observation or query or upon request of a person with a direct and tangible interest in the record as defined in section 33-04-13-01. When such additions or minor amendments are made by the state registrar, a notation as to the source of the information together with the date the change was made and the initials of the authorized agent making the change shall be made on the record in such a way as not to become a part of any record issued. The record is not to be marked as "amended".

**History:** Amended effective January 1, 2008.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-25(2)

**33-04-12-02. Amendments as a result of gender identity change.**

1. **Evidence and documents required.** The birth record of a person born in this state who has undergone a sex conversion operation may be amended as follows:
  - a. Upon written request of the person who has undergone the operation;
  - b. An affidavit by a physician that the physician has performed an operation on the person, and that by reason of the operation, the sex designation of such person's birth record should be changed; and
  - c. An order of a court of competent jurisdiction decreeing a legal change in name.
2. **New record.** Pursuant to such amendment, a new record of birth will be created by the state registrar showing original data as transcribed from the original record excepting those items that have been amended. The new record will be clearly marked in the upper margin with the word "amended" and a description of the amended items may be added to the certified copy for clarification.
3. **Sealing of original record.** The original record shall be then placed in a special file and shall not be open to inspection except by order of a court of competent jurisdiction or by the state registrar for purpose of carrying out the provisions of North Dakota Century Code chapter 23-02.1 and properly administering the vital records registration program.

**History:** Amended effective January 1, 2008.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-04



10. Type of Place of Birth?

<Apply Hospital Label Here>

- Clinic/ Doctor's Office
- Freestanding Birthing Center
- Hospital
- Other \_\_\_\_\_  
(Named place – describe e.g. McDonalds)
- Home Birth  
Planned to Deliver at Home?  
 Yes  
 No
- Unknown

11. Plurality? (Include all live births and fetal losses resulting from this pregnancy) \_\_\_\_\_ (1,2,3,4,5,6,7 etc.)

12. If not a single birth, birth order? (Include all live births and fetal losses resulting from this pregnancy) \_\_\_\_\_  
(1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, etc)

13. If not single birth, specify number of infants born alive? \_\_\_\_\_

14. Is infant living at the time of this report?  Yes  No  Infant Transferred, status unknown

15. Is infant being breastfed at time of discharge?  Yes  No  Unknown

16. Was infant transferred within 24 hours of delivery?  Yes  No

If yes, name of facility infant transferred to? \_\_\_\_\_

17. Apgar Score? 5 minute score \_\_\_\_\_ (If 5 minute score is less than 6 enter score at 10 minutes \_\_\_\_\_)

18. Was the delivery with forceps attempted but unsuccessful?  Yes  No

19. Was delivery with vacuum extraction attempted but unsuccessful?  Yes  No

20. Fetal presentation at birth (Check one)

- Cephalic
- Breech
- Other

21. What was the final route and method of delivery? (Check one)

- Vaginal/Spontaneous
- Vaginal/Forceps
- Vaginal/Vacuum
- Hysterectomy/Hysterotomy
- Cesarean  
 If Cesarean, was a trial of labor attempted?  Yes  No

22. Abnormal conditions of the newborn (Check all that apply)

- Assisted Ventilation required immediately following delivery
- Assisted ventilation required for more than six hours
- NICU Admission
- Newborn given surfactant replacement therapy
- Antibiotics received by the newborn for suspected neonatal sepsis
- Seizure or serious neurologic dysfunction
- Significant birth injury
- Fetal Alcohol Syndrome
- None of the abnormal conditions listed

23. Congenital anomalies of newborn

- Anencephaly
- Meningocele/ Spina bifida
- Microcephaly
- Cyanotic congenital heart disease
- Acyanotic congenital heart disease
- Congenital diaphragmatic hernia
- Omphalocele
- Gastroschisis
- Limb reduction defect
- Cleft lip with or without a cleft palate
- Cleft palate alone
- Down Syndrome  
 Karotype confirmed  
 Karotype pending
- Suspected chromosomal disorder  
 Karotype confirmed  
 Karotype pending
- Hypospadias
- None of above

24. Was child given any immunizations?

< Apply hospital label here >

- Yes
- No
- Not Given – Parent Refused
- Not Given – Medical Risk

If yes, please complete vaccine information below:

Vaccination	Date	Lot #
<input type="checkbox"/> Hepatitis B	_____	_____
<input type="checkbox"/> Hepatitis B Immune Globulin	_____	_____

Vaccine for Children (VFC) Status:

- |                                       |                                       |  |
|---------------------------------------|---------------------------------------|--|
| <input type="checkbox"/> Not Eligible | <input type="checkbox"/> Medicaid     | <input type="checkbox"/> Native American or Alaskan Native |
| <input type="checkbox"/> No Insurance | <input type="checkbox"/> Underinsured | <input type="checkbox"/> Other State Eligible              |

25. Hearing screening test results.

Date of Screening? \_\_\_\_/\_\_\_\_/\_\_\_\_  
MM DD YYYY

Testing Technology  OAE  AABR  Unknown

Left Ear  Passed  Referred  
Right Ear  Passed  Referred

Not Screened: (specify reason)

- |  |  |
|--|--|
| <input type="checkbox"/> Refused by Parent                     | <input type="checkbox"/> Child in NICU, not ready to be screened |
| <input type="checkbox"/> Missed                                | <input type="checkbox"/> Child died                              |
| <input type="checkbox"/> Child Transferred to another facility | <input type="checkbox"/> Equipment failure/not working           |

26. Newborn screening test results. (Obtained from the North Dakota Newborn Screening Program Form)

Form IA number: \_\_\_\_\_ (Example: IA0123456)

(If sticker is available, place it here over this area)

Not Screened: (specify reason)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> Refused by Parent                     | <input type="checkbox"/> Child died   |
| <input type="checkbox"/> Child Transferred to another facility | <input type="checkbox"/> Other: _____ |

27. Critical Congenital Heart Disease Screening results:

Date of Pulse Oximetry (CCHD) Screening? \_\_\_\_/\_\_\_\_/\_\_\_\_  
MM DD YYYY

Results from CCHD Screening (after birth): – **Passed, Failed or Not Screened** - **Specify why not screened**

- |                                 |  |
|---------------------------------|--|
| <input type="checkbox"/> Passed | <input type="checkbox"/> Not Screened: (specify reason)                                    |
| <input type="checkbox"/> Failed | <input type="checkbox"/> Screening refused by parent                                       |
|                                 | <input type="checkbox"/> Infant transferred to another facility before screening completed |
|                                 | <input type="checkbox"/> Infant on supplement oxygen when worksheet completed              |
|                                 | <input type="checkbox"/> Equipment failure/Not working                                     |
|                                 | <input type="checkbox"/> Infant Died   |
|                                 | <input type="checkbox"/> Other: _____  |

**Mother Prenatal**

1. Mother's medical record number: \_\_\_\_\_
2. Number of Prenatal visits \_\_\_\_\_ (If no prenatal care was provided, enter all 9's for both dates and 0 for number of visits)  
First Visit: \_\_\_\_/\_\_\_\_/\_\_\_\_  
                  MM  DD  YYYY
3. Was the mother transferred to this facility for maternal medical or fetal indications for delivery?  Yes  No  
    a. If yes, enter the name of the facility mother transferred from \_\_\_\_\_
4. What is the Mother's height? \_\_\_\_\_ Feet \_\_\_\_\_ Inches
5. Mother's Weights (Pounds): Pre-pregnancy weight? \_\_\_\_\_ Weight at delivery? \_\_\_\_\_
6. Number of previous live births now living (For single births, do not include this child. For multiple deliveries, include the children born during this event) \_\_\_\_\_ Number
7. Number of previous live births now dead (For single births, do not include this child. For multiple deliveries, include the children born during this event) \_\_\_\_\_ Number
8. Date of last live birth? \_\_\_\_/\_\_\_\_/\_\_\_\_  
                                  MM      YYYY
9. Total number of other pregnancy outcomes (Include fetal losses of any gestational age – spontaneous losses, induced losses, and/or ectopic pregnancies. If this was a multiple delivery, include all fetal losses delivered during this pregnancy):  
    \_\_\_\_\_ Number
10. Date of last other pregnancy outcome (Date when last pregnancy ended, which did not result in a live birth):  
    \_\_\_\_/\_\_\_\_/\_\_\_\_  
    MM      YYYY
11. Date the last normal menses began? \_\_\_\_/\_\_\_\_/\_\_\_\_ (Enter 9's for unknown portions of the date)

**Mother Labor and Delivery**

1. Medical Risk Factors for this Pregnancy (Check all the apply)
  - Diabetes
    - Type I
    - Type II
    - Gestational
  - Hypertension
    - Pre-pregnancy
    - Gestational
    - Eclampsia
  - Previous pre-term births
  - Pregnancy resulted from infertility treatment (Check all that apply)
    - Fertility-enhancing drugs, artificial insemination or intrauterine insemination
    - Assisted reproductive technology
  - Mother had a previous cesarean delivery  
If Yes, how many \_\_\_\_\_
  - Exposure to illegal drugs
    - Methamphetamines
    - Marijuana
    - Cocaine
    - Other
  - Exposure to alcohol
  - None of these risk factors

2. Infections present and/or treated during this pregnancy (Check all that apply)
- Gonorrhea
  - Syphilis
  - Chlamydia
  - Hepatitis B
  - Hepatitis C
  - Group B Strep
  - Rubella
  - HIV/AIDS
  - Cytomegalovirus
  - Parvo Virus
  - Toxoplasmosis
  - COVID-19
  - Other
  - None of these infections
3. Obstetric procedures performed during the pregnancy? (Check all that apply)
- Cervical Cerclage
  - Tocolysis
  - External cephalic version
    - Successful
    - Failed
  - None of the Above
4. Onset of Labor (Check all that apply)
- Premature Rupture of the membranes
  - Precipitous Labor
  - Prolonged Labor
  - None of the Above.
5. Characteristics of labor and delivery (Check all that apply)
- |   |  |
|---|--|
| <ul style="list-style-type: none"><li><input type="checkbox"/> Induction of labor</li><li><input type="checkbox"/> Augmentation of labor</li><li><input type="checkbox"/> Non-vertex presentation</li><li><input type="checkbox"/> Steroids (glucocorticoids) for fetal lung maturation received by the mother prior to delivery</li><li><input type="checkbox"/> Antibiotics received by the mother during labor</li></ul> | <ul style="list-style-type: none"><li><input type="checkbox"/> Clinical chorioamnionitis diagnosed during labor maternal temperature <math>\geq 38</math> C (100.4 F)</li><li><input type="checkbox"/> Epidural or spinal anesthesia during labor</li><li><input type="checkbox"/> None of these characteristics</li></ul> |
|---|--|
6. Maternal Morbidity - Complications of the mother experienced during labor and delivery (Check all that apply)
- |  |  |
|--|--|
| <ul style="list-style-type: none"><li><input type="checkbox"/> Maternal transfusion</li><li><input type="checkbox"/> Third or fourth degree perineal laceration</li><li><input type="checkbox"/> Ruptured uterus</li><li><input type="checkbox"/> Unplanned hysterectomy</li></ul> | <ul style="list-style-type: none"><li><input type="checkbox"/> Admission to the intensive care unit</li><li><input type="checkbox"/> Unplanned operating procedure following delivery</li><li><input type="checkbox"/> None of these complications</li></ul> |
|--|--|

Completed by \_\_\_\_\_

PROPOSED AMENDMENTS TO HOUSE BILL 1139

Page 1, line 11, replace "which includes the biological sex" with " ."

Page 1, line 11, remove lines 12 and 13

Page 3, after line 7 insert:

"20. "Sex" means the biological state of being female or male, based on the individual's nonambiguous sex organs, chromosomes, and endogenous hormone profiles at birth."

Page 3, line 8, replace "20." with "21."

Page 3, line 11, replace "21." with "22."

Page 3, line 11, replace "22." with "23."

Page 5, after line 2, insert:

"7. A birth record must include the child's sex, which must be either male or female. If the sex cannot be determined based on the child's nonambiguous sex organs, chromosomes, and endogenous hormone profiles at birth, the designation may be entered as not yet determined."

Renumber accordingly