

**Senate Human Services Committee**  
**March 14th, 2023 HB 1474**  
**Testimony in Opposition**

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Dear Chair Lee and the members of the Senate Human Services Committee,

My name is Faye Seidler and I'm writing to you as the only community outcome and data expert for LGBTQ+ populations in North Dakota. Here is why I make that claim:

I advocated for and recommended design on the transgender data in the [Youth Risk Behavior Survey](#). I submitted a proposal to include Sexual orientation and Gender Identity (SOGI) within the [Behavioral Risk Factor Surveillance System](#). I also have five years of clinical work directly with this patient population. Beyond that, I've consulted with dozens of organizations working across healthcare, social work, and education for best practices in regard to our local data in my work as a suicide prevention advocate. While many organizations collect SOGI data, I'm the only person within our state that I know who actively utilizes it or understands it from a large-scale community health perspective.

I urge a **"Do Not Pass"** on HB 1474.

1. Bill is not required and it conflicts with standard data collecting both locally and federally
2. The substandard data collection purposed would hinder our state's ability to accurately understand and response to community health needs
3. Definitions are inconsistent with legal sex and will cause both logistical errors and create opportunities for discrimination

**Considerations for the Data**

Representative SuAnn Olson, introduces this bill with hopes to add clarity to the century code and protect data collection. She uses the language that biological data needs to be consistent for accuracy, with an example that prostate cancer shouldn't exist in women. So, I believe it would be fair to suggest the intent of this bill is to remove trans women from being considered as women from a data perspective.

Representative Olson is mistaken on how modern data works. We are able to separate data from cisgender (not-trans) and transgender populations. The prostate cancer rates in cisgender women approaches zero. The entire reason we have transgender as an important demographic data point is that their experiences are not going to be consistent with cisgender individuals. Conversely, trans women have vastly different demographic and biological outcomes than cisgender men.

Transitioning hormonally does bring trans individuals inline with risk factors we typically associate with the sex they identify as, such as with Comprehensive Metabolic Panels variation. It is likely trans women are at a much higher risk of breast cancer than cisgender men. Hormones change people physiologically and the health and risk factors of a population are vastly more complex than reducing people and their experiences down to DNA or what organs they have present at time of birth. Rep. Olson's recommendations would hinder or at least complicate our ability to collect robust community health data. There are still problems with HB 1474, even if it continues to allow gender (in addition to sex) on surveys.

### **Importance of Language within Surveys**

Surveys need to be designed in such a way that the individuals understand what a question is asking and the data accurately captures community demographics. A big problem in surveys is many trans individuals will not identify as trans in intake documentation or survey data.

The proposed changes of HB 1474 to our century code would confuse participants, restrict us to less sophisticated data collection, hinder community health initiatives, and put us in conflict with a number of state and federal data collection initiatives.

[An example, this happened](#) with the HIV/AIDS crisis, where trans women for classification purposes were treated as "men who have sex with men." They were treated as biological men from a data perspective. All efforts to combat HIV/AIDS then targeted gay men specifically and left out trans women, resulting in a higher than average HIV/AIDS outbreak in trans populations compared to gay cisgender (non-trans) populations that continue to persist. I would invite individuals to look at our current [HIV/HCP intake sheet](#).

"Sex assigned at birth" is a clear, direct, and understood way to ask questions related to physiology at birth. It is the gold standard for collecting this information and within data collection serves the important indicator that sex is assigned rather than ordained. Human biology has a number of traits related to sex that are mutable and acknowledging this is important for data, especially within healthcare where individuals have different organ inventories, don't know their chromosome status, or have medically transitioned.

Survey data needs to be extremely careful, consistent, and precise. Single words or how questions are asked can change the outcome of data. What words are intended to mean also do this. This is why great care is put into being consistent across each state, to create the best data pool we can to understand health needs.

In contrast, the following definition of sex is an invention of only the 2023 North Dakota Legislative Session:

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

This definition and intent conforms to no research standard for data collection and presents a number of conflicts and challenges to our institutions.

### **Considerations for Legal Sex**

First, the Century Code is not a biological textbook, it is a legal framework. While certain sections may benefit from the invented definition above, this bill is changing the meaning of “sex” as it should be understood throughout the entire code and could have many unforeseen ramifications.

And this definition is inconsistent with how we define legal sex (for now). When we run insurance in a hospital, a patient’s legal sex is used, regardless of their biological traits. In fact, we cannot run insurance as anything other than their legal sex. If we do, the claim gets denied.

HB 1474 does impact this process, because most state agencies data collection comes from forms filled out by clients or patients, typically intake forms. Some of these forms require legal sex, because there are different considerations, protections, and awards given to individuals based on or in regard to legal sex. There are certain opportunities only given to women, such as Women’s Way, where a patient may be legally female, but a form requires they put male.

I believe this would constitute discrimination across many different sectors for transgender people as the definition proposed is in conflict with how we determine legal sex. For consideration on legal sex determination:

1. Legal sex can be established by birth certificate, which is determined by external examination of genitals at time at birth. Chromosomes are not measured, nor is any sort of testing recommended due to the possibility of miscarriage. We do tests in women over thirty-five as a recommendation, but for very specific conditions due to a heightened risk factor of genetic anomaly and not typically for purposes of sex verification. We don’t strictly measure sex organs, chromosomes, or endogenous hormone profiles on a birth certificate. Birth certificates currently can be amended with surgery, possibly after 2023 too.
2. Legal sex can also be established by state ID, [here is the form](#) patients fill out to do so at our DMV.
3. Legal sex can be established by passport, [here is how one does that](#) with the federal government.
4. Legal sex can be determined by different mechanisms for people living in other states, but working in ours.

The definition of sex proposed by HB 1474 would be inconsistent with every mechanism of legal sex that exists in our state and nation. I would offer a final note that the committee that passed HB 1474 during discussion had no idea how this would conflict with federal data nor did they look into it to my knowledge.

Rep. Olson had a desire to increase clarity and I believe this bill will do the complete opposite. It is for all of these reasons that I ask you to vote "Do Not Pass"

Thank you for your time, consideration, and service to our state!

Best,  
Faye