

2023 HOUSE HUMAN SERVICES

HB 1139

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1139
1/9/2023

Relating to required elements of birth records.

Chairman Weisz called the meeting to order at 3:58pm.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Assigned sex and gender at birth
- Importance of birth records
- Personal gender identification
- Indication of sex on a birth certificate
- Instances where sex is undetermined at birth

Rep. Satrom introduced HB 1139 and proposed an amendment (23.0079.01001) to bill (#12927).

Christopher Dodson, Executive Director for the North Dakota Catholic Conference, offered testimony in support of bill (#12616).

Jacob Thompson, policy analyst for North Dakota Family Alliance Legislative Action, offered testimony in support of bill (#12622).

Chairman Weisz called Darren Mitchkey, department of human services, for questions from the committee regarding HB 1139 and the proposed amendment.

Additional written testimony:

Melissa Messerly, retired pediatrician from Minot, provided testimony in support of HB 1139 (#12568).

Chairman Weisz adjourned the meeting at 4:18pm.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1139
1/10/2023

Relating to required elements of birth records.

Chairman Weisz called the meeting to order at 10:26 AM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich present. Rep. Fegley not present.

Discussion Topics:

- Committee work
- Amendment

Rep. Rohr moved to add an amendment (23.0079.01001)(Testimony #12927) to HB 1139.

Seconded by Vice Chairman Ruby.

Motion carries by voice vote.

Rep. Rohr moved a do pass on HB 1139 as amended.

Seconded by Rep. Anderson.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Clayton Fegley	AB
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	Y
Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

Motion carries 11-2-1.

House Human Services Committee

HB 1139

1/10/2023

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Carried by Rep. Prichard.

Chairman Weisz adjourned the meeting at 10:33 AM.

Phillip Jacobs, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1139

Page 1, line 11, remove "which includes the biological sex"

Page 1, remove line 12

Page 1, line 13, remove "symbol representing a nonbinary designation"

Page 3, line 8, after "20." insert "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.

21."

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

Page 3, line 13, replace "22." with "23."

Page 5, after line 2, insert:

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

Renumber accordingly

1/1
1/10/23

REPORT OF STANDING COMMITTEE

HB 1139: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1139 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "which includes the biological sex"

Page 1, remove line 12

Page 1, line 13, remove "symbol representing a nonbinary designation"

Page 3, line 8, after "20." insert "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.

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

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Page 5, after line 2, insert:

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

Renumber accordingly

2023 SENATE HUMAN SERVICES

HB 1139

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1139
3/7/2023

Relating to required elements of birth records.

10:20 AM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston, Hogan** are present.

Discussion Topics:

- Male, female, nondetermined
- Legally recorded
- Public data

10:21 AM **Representative Satrom, District 12**, introduced HB 1139 and testified in favor verbally.

10:26 AM **Jacob Thomsen, Policy Analyst ND Family Alliance Legislative Action**, testified in favor. #22509

10:33 AM **Christopher Dodson, Executive Director ND Catholic Conference**, testified in favor. #22452

10:37 AM **Christina Sambor, ND Human Rights Coalition**, testified in opposition verbally.

10:57 AM **Caedmon Mearx, Outreach Coordinator Dakota OutRight**, testified in opposition verbally.

11:05 AM **Darin Meschke, Director of Division of Vital Records, State Register**, testified in neutral verbally.

Additional written testimony:

Luis Casas, Pediatric Endocrinologist, Sanford Health in opposition #22072

Amanda Dahl, Pediatric Endocrinologist in opposition #22254.

Faye Seidler, LGBTQ+ Care Coordinator, Canopy Medical Clinic in opposition #22480

11:13 AM **Madam Chair Lee** adjourned the hearing.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1139
3/22/2023

Relating to required elements of birth records.

4:33 PM **Madam Chair Lee** called the meeting to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston, Hogan** were present.

Discussion Topics:

- Male, female, nondetermined
- Not yet determined
- Vital records department
- National birth certificate guidelines
- Amendments

Madam Chair Lee reviewed bill and called for discussion.

Committee discussed.

5:03 PM **Madam Chair Lee** adjourned the meeting.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1139
3/28/2023

Relating to required elements of birth records.

3:04 PM **Madam Chair Lee** called the meeting to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston, Hogan** were present.

Discussion Topics:

- Male, female, non-determined
- Chromosomes
- Sex change
- Sex identity

3:06 PM **Darin Meschke, Director, Division Vital Records**, provided information verbally.

Senator Clemens moved **DO PASS**.
Senator Weston seconded the motion.

3:29 PM **Christina Sanborn, Attorney**, provided information verbally.

Roll call vote.

Senators	Vote
Senator Judy Lee	N
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	N
Senator Kristin Roers	N
Senator Kent Weston	Y

Motion failed 3-3-0.

Senator Cleary moved without committee recommendation.
Senator K. Roers seconded the motion.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passed 6-0-0.

Senate Human Services Committee
HB 1139
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Senator Clemens will carry HB 1139.

3:41PM **Madam Chair Lee** adjourned the meeting.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1139, as engrossed: Human Services Committee (Sen. Lee, Chairman) recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1139 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1139

TESTIMONY IN SUPPORT OF HB1139 --Regarding Birth Certificates

My name is Dr. Melissa Messerly. I am a retired pediatrician who practiced in Minot for over 25 years. I have personally examined thousands of newborn babies and tens of thousands of children over my career in Pediatric Medicine. The sex of the newborn is unmistakably obvious by the appearance and characteristics of the external genitalia. The gold standard of the chromosomal makeup of the child confirms the obvious physical findings in 99% of cases. It is crucial that standards of documentation and care be directed to the vast percentage of clinically normal children.

I am IN SUPPORT of this bill and recommend a DO PASS.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

103 South Third Street
Suite 10
Bismarck ND 58501
701-223-2519
ndcatholic.org
ndcatholic@ndcatholic.org

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) _____
(1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 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
 - Meningomyelocele/ Spina bifida
 - Microcephaly
 - Cyanotic congenital heart disease
 - Acyanotic congenital heart disease
 - Congenital diaphragmatic hernia
 - Omphalacele
 - 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:

- Not Eligible
- Medicaid
- Native American or Alaskan Native
- No Insurance
- Underinsured
- 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)

- Refused by Parent
- Missed
- Child Transferred to another facility
- Child in NICU, not ready to be screened
- Child died
- 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)

- Refused by Parent
- Child Transferred to another facility
- Child died
- 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

- Passed
- Failed
- Not Screened: (specify reason)
 - Screening refused by parent
 - Infant transferred to another facility before screening completed
 - Infant on supplement oxygen when worksheet completed
 - Equipment failure/Not working
 - Infant Died
 - 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"><input type="checkbox"/> Induction of labor<input type="checkbox"/> Augmentation of labor<input type="checkbox"/> Non-vertex presentation<input type="checkbox"/> Steroids (glucocorticoids) for fetal lung maturation received by the mother prior to delivery<input type="checkbox"/> Antibiotics received by the mother during labor | <ul style="list-style-type: none"><input type="checkbox"/> Clinical chorioamnionitis diagnosed during labor maternal temperature ≥ 38 C (100.4 F)<input type="checkbox"/> Epidural or spinal anesthesia during labor<input type="checkbox"/> None of these characteristics |
|---|--|
6. Maternal Morbidity - Complications of the mother experienced during labor and delivery (Check all that apply)
- | | |
|--|--|
| <ul style="list-style-type: none"><input type="checkbox"/> Maternal transfusion<input type="checkbox"/> Third or fourth degree perineal laceration<input type="checkbox"/> Ruptured uterus<input type="checkbox"/> Unplanned hysterectomy | <ul style="list-style-type: none"><input type="checkbox"/> Admission to the intensive care unit<input type="checkbox"/> Unplanned operating procedure following delivery<input type="checkbox"/> None of these complications |
|--|--|

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



Testimony Supporting House Bill 1139

Jacob Thomsen, Policy Analyst
 North Dakota Family Alliance Legislative Action
 January 9, 2023

Good morning Chairman Weisz and honorable members of the House Human Services Committee. My name is Jacob Thomsen and I am a Policy Analyst with North Dakota Family Alliance Legislative Action. I am testifying on behalf of our organization in support of House Bill 1139 and respectfully request that you render a "DO PASS" on this bill, with the amendments proposed by the sponsor.

A birth certificate is inarguably one of, if not the foundational document a citizen must have, for a multitude of reasons. As the American Bar Association describes it, "A birth certificate is a document issued by a government that records the birth of a child for vital statistics, tax, military, and census purposes. The birth certificate is among the first legal documents an individual might acquire. They are so common that we might even overlook their significance. In the United States, birth certificates serve as proof of an individual's age, citizenship status, and identity. They are necessary to obtain a social security number, apply for a passport, enroll in schools, get a driver's license, gain employment, or apply for other benefits." Aside from the importance to the individual, birth certificates are used by government entities for tax and census purposes, understanding population changes and their components such as childbirth trends, and guiding decisionmakers on policy issues.

There is ample evidence that birth certificates or their equivalent have been in existence for millennia, and given their importance, one would assume that they would in large part be somewhat insulated from the popular societal notions of our day. Unfortunately, that would be wrong.

A fundamental truth that must be recognized is that biological sex ("sex") and gender are very different things. Common sense, the medical community, and even our friends at Planned Parenthood recognize that biological sex and gender are different.

It's common for people to confuse sex, gender, and gender identity. But they're actually all different things.

Commented [MJ1]: https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/birth-certificates/

1515 Burnt Boat Dr., Suite C-148, Bismarck, ND 58503
 mark@Ndfamilyalliance.org
 701-355-6425
 www.ndfamilyalliance.org

Sex is a label — male or female — that you’re assigned by a doctor at birth based on the genitals you’re born with and the chromosomes you have. It goes on your birth certificate. [bolded for emphasis]

Gender is much more complex: It’s a social and legal status, and set of expectations from society, about behaviors, characteristics, and thoughts.

– Planned Parenthood, Sex and Gender Identity website page

That said, it is now possible in a number of states to request a “non-binary birth certificate”.

As the views of Americans on gender shift, so do the laws across the country —albeit, gradually. In more than 10 states, it is now possible to request a non-binary birth certificate or amend an existing one.

The term non-binary includes any person who does not identify with a gender that falls within the traditional male/female or man/woman category. – www.usbirthcertificates.com

Do you see the problem? Birth certificates are being used to indicate gender, not sex, even though sex is based upon undeniable scientific fact, but gender is based upon a social construct.

House Bill 1139 simply seeks to ensure that sex is indicated on a birth certificate, and in the process, also defines what we mean by sex for statutory purposes (i.e., not gender). We realize that every person has defining biological characteristics that identify them as male or female and we want to ensure there is an official foundational document indicating this. If the person wants to later in life identify as their biological birth sex, a different gender, non-binary, or whatever it may be, that is their choice and limited only by never-ending and imaginative societal trends.

North Dakotans are not relativists. We know the difference between hard work and laziness, common sense and foolishness, right and wrong. Let’s not tumble down the rabbit hole on something as fundamental as a document that states a scientific fact. Playing games is fine, but playing with the truth is simply foolish.

For these reasons, North Dakota Family Alliance Legislative Action respectfully asks that you please vote House Bill 1139 out of committee with a “DO PASS” recommendation, with the amendments proposed by the sponsor. Let’s preserve rational, common sense thinking when it concerns scientific truths.

1515 Burnt Boat Dr., Suite C-148, Bismarck, ND 58503
mark@Ndfamilyalliance.org
701-355-6425
www.ndfamilyalliance.org

Commented [MJ2]: <https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity>

Commented [MJ3]: <https://www.usbirthcertificates.com/articles/gender-neutral-birth-certificates-states>

Thank you for the opportunity to testify and I am now happy to stand for any questions.

1515 Burnt Boat Dr., Suite C-148, Bismarck, ND 58503
mark@ndfamilyalliance.org
701-355-6425
www.ndfamilyalliance.org

23.0079.01001
Title.

Prepared by the Legislative Council staff for
Representative Satrom
January 9, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1139

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Page 1, remove line 12

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Renumber accordingly

March 5, 2023

Regarding: HB 1139

My testimony is in opposition to House Bill 1139. I ask that you give this bill a **DO NOT PASS**.

As a pediatric endocrinologist who specializes in the care of infants and children born with Disorders of Sex Development (DSD), I would like to point out some concerns and errors with HB 1139.

- 1) You define “sex” as the biological state of being female or male, based on the individual’s non-ambiguous sex organs, chromosomes and endogenous hormone profiles at birth. While this definition could easily apply to most births, infants are often born with chromosome studies that are different than their external genitalia. I care for infants and children born in North Dakota that have 46XX chromosome (female) but have typical male external genitalia. I also care for children and infants with 46XY chromosomes (male) but have typical female genitalia. “Sex” is more complicated than external genitalia or chromosomes and the decision to raise these infants as either male, female or neither is often a complex decision that is made by parents in consultation with the infant’s medical specialist and should not be dictated by this house bill.
- 2) The bill as it is written states that a birth record must include the designation of the sex of the child which must be either male or female. An entry of “not yet determined” may not be entered unless the sex cannot be determined based on the child’s **non-ambiguous** sex organs, chromosomes and endogenous hormone profiles at birth. If an infant is born with non-ambiguous sex organs, then that means that the genitalia appear normal (non-ambiguous or typical). If a child is born with genitalia that has both or neither masculine and feminine features and therefore cannot be defined as either male or female, then that is considered ambiguous. It does not make sense to enter “not yet determined” for an infant born with non-ambiguous (normal or typical genitalia). The designation of “not yet determined” should be reserved for infants born with ambiguous genitalia.

Luis Casas, MD
Pediatric Endocrinologist

Regarding House Bill 1139

This letter is in opposition to house bill 1139. I ask that you DO NOT PASS this bill.

I am one of two Pediatric Endocrinologists in the state of North Dakota. I was born and raised in North Dakota and returned to practice as a Pediatric Endocrinologist. In my practice I see children with disorders of sexual development (DSD) and see patients from every corner of the state of ND.

Children born with genitals that do not appear typically “male” or “female” or they have an appearance discordant with chromosomal sex are classified as having disorder of sexual development. DSD’s with a genital appearance that are sufficiently atypical occurs in approximately 1 in 1000-4500 live births.

Sex is usually categorized as female or male based on chromosomes (XX and XY). **The reason why I am in opposition to this bill is because not every child born has “typical” genitalia where the external genitalia matches their sex chromosomes – XX for girl with vagina and XY for boy with a penis and scrotum.** There are more combinations to the sex chromosomes than only XX and XY. This includes X (classic Turner syndrome), X/XY (mosaic Turner syndrome), XXY (Klinefelter syndrome), XYY (Jacob syndrome) or patient’s born with ambiguous genitalia where their genitalia does not match their chromosomes because of an adrenal genetic condition.

Families with a child born with DSD have increased stress right after birth because of the ambiguity in their newborn. By requiring sex be added to a birth certificate would only cause unnecessary harm to the child and family while they are working with their healthcare provider to evaluate the etiology. There is no benefit for the individual to have this added to their birth certificate and is only adding harm/risk. Because of this, HB1139 is an example of government overreach.

Thank you for taking the time to read and consider my written testimony. I trust that the legislature will do what is best for the state and that includes opposing HB 1139.

Thank you for your time and consideration.

Dr. Amanda Dahl

Pediatric Endocrinologist



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

103 South Third Street
Suite 10
Bismarck ND 58501
701-223-2519
ndcatholic.org
ndcatholic@ndcatholic.org

To: Senate Human Services Committee
From: Christopher Dodson, Executive Director
Subject: House Bill 1139 - Requirements for Birth Records
Date: March 7, 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.

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.

The Department of Health and Human Services does, however, use an electronic reporting system according to the 2003 Birth Certificate Standard of the National Center of Health Statistics. That system requires reporting biological sex according to the three options presented in SB 1139 — male, female, not yet determined. Accordingly, the Department previously testified that HB 1139 would merely codify existing practice.

Nor would it change the existing practice regarding children with disorders of sexual development (DSD). If the sex cannot be determined at birth due to one of these disorders, the Department's current reporting system requires an entry of "not yet determined." HB 1139 adds no requirements that are not already required by the Department through its reporting system.

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.

Discussions about sex and gender designations on birth certificates and when they can be changed have arisen around the country and in this assembly. This is not one of those bills. This bill merely establishes the basic requirement that birth certificates include the child's biological sex when it can be 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

Dear Chair Lee and honorable members of the Senate Human Services Committee. I'm writing to urge that you vote "**Do Not Pass**" on this bill.

I would like to [summarize Darin Meschke](#), State Registrar and Director of Vital Records for the Department of Health and Human Services, who provided comment during the House Human Service Committee bill hearing.

1. The Vital Records Department is required to indicate sex on birth certificate as part of the 2003 Birth Certificate Guidelines as determined by National Center for Health Statistics (NCHS)
2. This law would not change current process as sex is already required to be entered

I have spoken to Director Meschke on several occasions over the years and can assure the Senate Human Service Committee that the Department of Vital Records is steadfast in following the guidelines set forth by the NCHS.

Everything the bill sponsors hope this bill does, we already do and we do for a very specific reason as determined by and to stay consistent with national guidelines. The only thing this bill would do is put the current practice needlessly into law. What this means is that if there was a change to NCHS policy, we as North Dakota could not follow it unless we pass another bill.

As it stands this bill serves no identifiable benefit and only sets us up to become non-compliant to NCHS standards if they ever change. The sponsors have also added in a definition of sex that is not consistent with the determinations made by doctors and would likely cause issues within hospitals. (I invite you to look through the testimony submitted by our pediatric endocrinologists on this matter.)

I believe that support in favor of this bill has misunderstood what this bill seeks to change within our century code. The conversations they want to have are found in HB [1297](#). We call it "sex assigned at birth" as we all agree on this designation and the usefulness of it. While intersex would be an important sex classification to add, the notion that non-binary would be used as an assignment of "sex at birth" is completely unfounded.

I support NCHS as the leading voice in vital data collection and essential for consistent records not just in North Dakota, but for our entire country. It is for these reasons I urge "Do Not Pass."

Thank you for your time and service to our state!
Faye Seidler



NORTH DAKOTA

Family Alliance LEGISLATIVE ACTION

Testimony Supporting House Bill 1139

Jacob Thomsen, Policy Analyst
North Dakota Family Alliance Legislative Action
March 7, 2023

Good morning Madam Chair Lee and honorable members of the Senate Human Services Committee. My name is Jacob Thomsen and I am representing North Dakota Family Alliance Legislative Action. I am testifying on behalf of our organization in support of House Bill 1139 and respectfully request that you render a “DO PASS” on this bill.

A birth certificate is inarguably one of, if not *the* foundational document a citizen must have, for a multitude of reasons. As the American Bar Association describes it, “A birth certificate is a document issued by a government that records the birth of a child for vital statistics, tax, military, and census purposes. The birth certificate is among the first legal documents an individual might acquire. They are so common that we might even overlook their significance. In the United States, birth certificates serve as proof of an individual’s age, citizenship status, and identity. They are necessary to obtain a social security number, apply for a passport, enroll in schools, get a driver’s license, gain employment, or apply for other benefits.” Aside from the importance to the individual, birth certificates are used by government entities for tax and census purposes, understanding population changes and their components such as childbirth trends, and guiding decisionmakers on policy issues.

There is ample evidence that birth certificates or their equivalent have been in existence for millennia, and given their importance, one would assume that they would in large part be somewhat insulated from the popular societal notions of our day. Unfortunately, that would be wrong.

A fundamental truth that must be recognized is that biological sex and gender are very different things. Common sense, the medical community, and even our friends at Planned Parenthood recognize that biological sex and gender are different.

It’s common for people to confuse sex, gender, and gender identity. But they’re actually all different things.

Sex is a label — male or female — that you're assigned by a doctor at birth based on the genitals you're born with and the chromosomes you have. It goes on your birth certificate.

Gender is much more complex: It's a social and legal status, and set of expectations from society, about behaviors, characteristics, and thoughts.

– Planned Parenthood, Sex and Gender Identity website page

That said, it is now possible in a number of states to request a “non-binary birth certificate”.

As the views of Americans on gender shift, so do the laws across the country —albeit, gradually. In more than 10 states, it is now possible to request a non-binary birth certificate or amend an existing one.

The term non-binary includes any person who does not identify with a gender that falls within the traditional male/female or man/woman category. – www.usbirthcertificates.com

Do you see the problem? Birth certificates are being used to indicate gender, not sex, even though sex is based upon undeniable scientific fact, but gender is based upon a social construct.

House Bill 1139 simply seeks to ensure that sex is indicated on a birth certificate, and in the process, also defines what we mean by sex for statutory purposes (i.e., not gender). We realize that every person has defining biological characteristics that identify them as male or female and we want to ensure there is an official foundational document indicating this. If the person wants to later in life identify as their biological birth sex, a different gender, non-binary, or whatever it may be, that is their choice, and this bill does not address this choice

North Dakotans are not relativists. We know the difference between hard work and laziness, common sense and foolishness, right and wrong. Let's not tumble down the rabbit hole on something as fundamental as a document that states a scientific fact.

For these reasons, North Dakota Family Alliance Legislative Action respectfully asks that you please vote House Bill 1139 out of committee with a “DO PASS” recommendation, with the amendments proposed by the sponsor. Let's preserve rational, common sense thinking when it concerns scientific truths.

Thank you for the opportunity to testify and I am now happy to stand for any questions.

- https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/birth-certificates/
- <https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity>
- <https://www.usbirthcertificates.com/articles/gender-neutral-birth-certificates-states>