



Legislative Questions Regarding Sex Designations and Birth Certificates

The Utah Department of Health - Office of Vital Records and Statistics was asked the following questions related to gender and sex designations on birth certificates.

1. Sex Designation - Purposes and means
 - a. What purposes are served by recording an individual's biological sex on a birth certificate? On a driver license? On other government documents?
 - b. Could any of those purposes be accomplished by other means? If so, how?
2. Gender Designation - purposes and means
 - a. What purposes are served by recording an individual's gender identification on government documents?
 - b. Could any of those purposes be accomplished by other means? If so, how?
3. What impact would removing the sex designation from birth certificates entirely have?
4. What impact would replacing the sex designation with a gender designation on birth certificates have?
5. What impact would adding a gender designation to birth certificates and keeping the sex designation on birth certificates have?

The Office of Vital Records and Statistics (OVRs) records both demographic and medical information for the birth of a child in Utah. Currently, OVRs collects sex but not gender (note that there is not a nationally accepted definition of "gender" and "sex" for vital records agencies so those terms would need to be defined in law). The options for the sex field are male, female, and unknown. Only a small portion (abstract) of the information collected for the birth record is printed on the birth certificate.

The uses for a certified copy of a birth certificate include but are not limited to:

- The Driver's License office for RealID
- The US Department of State for issuance of passports
- Employers to verify citizenship
- Schools and sports for registration

The responses in this document will address changes to what appears on the birth certificate and not the data collected for the birth record.

Scenarios 3, 4, and 5 above would require programming changes to the database applications and training for users, who include hospitals, midwives, and local health department staff. There would be costs associated with those changes that may need to be funded.

Question #1 - Sex Designation - Purposes and means.

1. What purposes are served by recording an individual's biological sex on a birth certificate? On a driver license? On other government documents?

Sex information on a birth certificate is used mainly for identification and identity resolution. Different entities may confirm the person is the same person listed on the birth certificate by matching information such as name, parent's names, gender, etc. (Note this response assumed sex may still be collected as part of the birth record, just not displayed on the birth certificate).

2. Could any of those purposes be accomplished by other means? If so, how?

Yes. This can be accomplished by using other information displayed on the birth certificate to verify identity.

Question #2 - Gender Designation - purposes and means

1. What purposes are served by recording an individual's gender identification on government documents?

Utah does not currently collect gender on any vital records; however, gender may also be used to verify identity where there is a discrepancy between gender and sex.

2. Could any of those purposes be accomplished by other means? If so, how?

Yes. This can be accomplished by using other information displayed on the birth certificate to verify identity.

Question #3 - What impact would removing the sex designation from birth certificates entirely have?

None of the scenarios would cause additional issues for the Office of Vital Records and Statistics (OVRs) because OVRs retains the sex of the individual determined at birth in the birth record and would just remove it from the birth certificate. However, this scenario may cause issues for the Utah Department of Public Safety Driver License Division due to the requirements for Real ID from Homeland Security. It is suggested that the Utah Department of Public Safety be consulted before decisions are made.

OVRs consulted with the United States State Department Passport Division. They stated they would not be affected. Its staff indicated that its new policy allows an individual to select a gender/sex marker and it does not have to match the one on their Primary ID, however legislative staff may want to confirm with that agency as well.

OVRS may not be aware of all agencies use of sex on birth certificates so there may be other impacts that OVRS is not aware of.

Question #4 - What impact would replacing the sex designation with a gender designation on birth certificates have?

One potential impact would be the need to establish the process for determining gender. The definition of the term “gender” has changed over time. The World Health Organization makes this statement about “gender”. “Gender refers to the characteristics of women, men, girls and boys that are socially constructed. This includes norms, behaviours and roles associated with being a woman, man, girl or boy, as well as relationships with each other. As a social construct, gender varies from society to society and can change over time.”¹ There are multiple potential categories of gender; some lists have up to 62 categories. There would need to be determinations of which categories to use, who determines gender and when and what the process would be for amendments.

Would birth attendants be expected to determine gender at birth aligning it with the biological sex of the infant that could then be changed by the parent or the individual as the person matures? This would need to be determined. As mentioned above, there are also many different genders. Some lists include as many as 62 different gender designations. Would Utah allow any of them to be listed on the birth certificate?

The process for making a change to gender on the birth certificate would also need to be specified. Currently, Utah Code § 26-2-11 requires that an individual obtain a court order to change the sex on their birth certificate. It would be important to specify in statute how an individual makes a change to either or both the sex or gender designation, and whether that change appears as an amendment on the face of the birth certificate.

OVRS may not be aware of all impacts of replacing the sex designation with a gender designation on birth certificates so additional feedback should be sought.

Question #5 - What impact would adding a gender designation to birth certificates and keeping the sex designation on birth certificates have?

As mentioned above, there are not nationally accepted definitions of gender and sex. As a result, these definitions would need to be established in statute. Based on experiences related to amendments, there will likely be members of the public who are opposed to showing both sex and gender.

¹ https://www.who.int/health-topics/gender#tab=tab_1

Other considerations:

1. Birth certificates are frequently utilized for multiple purposes that can often conflict. One purpose is the record of the circumstances of a person's birth and demographics at the time of birth. Another is as a current form of identification. Because circumstances and some demographics can change between birth and the current time there can be conflicting information. The Legislature may want to consider the different purposes and uses of birth certificates and birth records in their discussions regarding how to proceed.
2. It is unclear how this will affect Social Security card administration; feedback should be sought from that organization.
3. Sex is frequently used as a variable in matching records across systems for identity resolution. It is assumed that sex would still be retained in the birth record for these purposes, if that is not the intent then there would be additional impacts not listed above.
4. There would be costs associated with any changes that may need to be funded.