

EVAN B. DONALDSON ADOPTION INSTITUTE

# Safeguarding the Rights and Well-Being of Birthparents in the Adoption Process

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## Executive Summary

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Prepared by: The Evan B. Donaldson Adoption Institute

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525 Broadway • 6<sup>th</sup> floor  
New York • NY • 10012  
(212) 925-4089 • [www.adoptioninstitute.org](http://www.adoptioninstitute.org)



## Executive Summary

**E**ach year in the United States, approximately 14,000 women and a growing number of men make an agonizing parenting decision that they hope will provide their children with the best possible future: They place their babies for adoption. At the same time, policy-makers across this country each year propose and implement measures meant to improve adoption, often based on their perceptions of what these parents want and need. Historically and through the present day, however, adoption-related laws, policies and practices have been made without the benefit of solid research that might answer the most basic, underlying questions: What are the characteristics of mothers and fathers who relinquish their infants for adoption? Why do they choose this path? And how can their needs and rights best be served and protected?

Due largely to the secretive nature of adoption's past, the state of knowledge about infant adoptions in the 21<sup>st</sup> century is deficient, at best. There is no broad, concrete body of work on who these women and men typically are, what forces shape their decisions, or how adoption impacts the rest of their lives. We do not even know precisely how many babies are placed for adoption in this country annually. Indeed, though domestic infant adoption is what most people think of when they hear the word "adoption," it is the least common type in the U.S. today (after adoption from foster care, from abroad, and by step-parents), and it is the type we know the least about.

This study by the Evan B. Donaldson Adoption Institute represents the most thorough, intensive and sophisticated effort to date to understand contemporary infant adoption, particularly as it relates to the least-understood and most-stigmatized participants in the process – the women and men usually termed "birthparents." The findings and recommendations in this paper are based on a year-long examination and analysis of decades' worth of research and literature, relating to the topic, as well as interviews with adoption practitioners, including social workers and attorneys. Pursuant to its mission of improving adoption for everyone it encompasses, the Institute's primary objective was to learn as much as possible about these women and men in order to determine how laws, policies and professional practices affect them; what essential rights they should be afforded; and what reforms are needed to optimize their well-being.

### **Among the principal findings in this report are:**

- More adoptions take place each year than is commonly perceived or reported. The Institute estimates more than 135,000 annually, of which about 13,000 to 14,000 involve babies who are voluntarily relinquished domestically. Of non-stepparent adoptions each year, approximately 59 percent are from the child welfare system, 26 percent from abroad, and 15 percent of domestic infants.
- Overall, the parents placing their children for adoption in the 21<sup>st</sup> Century are very diverse and different from their counterparts in previous generations. They are no longer primarily teenagers; in fact, only about one-fourth are teens. The predominant profile is young women in their 20s who have graduated from high school, many of whom have other children.
- The vast majority of adoption agencies, as well as independent practitioners, offer open adoptions, in which identifying information is exchanged. Many of the adoptions they arrange also are mediated adoptions, in which ongoing information is exchanged through the agency.
- An overwhelming proportion of contemporary birthmothers have met the adoptive parents of their children – probably 90 percent or more – and almost all of the remaining birthmothers

helped to choose the new parents through profiles. Contrary to the stereotypes that have been created about them, almost no women choosing adoption today seek anonymity or express a desire for no ongoing information or contact.

- Available data and experience indicate a minority of infant adoptions involve fathers in the process. The strongest protection for their rights and for the legitimacy of the adoption process requires identification of biological fathers and notifying them of adoption proceedings. Many states have established putative father registries to involve these men, but they are often used as a means of cutting them out rather than including them.
- Principally because adoption is not well understood by the public generally, most women struggling to make decisions about unplanned pregnancies do not have accurate information with which to make an informed choice about whether this is a reasonable option for them.
- In some states, attorneys paid by and representing the prospective adoptive parents also may represent the women (and men when they are involved) considering placing their children. This practice of dual representation raises acute ethical and practical concerns.
- Research findings consistently show that women who feel pressured into placing their children suffer from poorer grief resolution and greater negative feelings. Most states do not have laws that maximize sound decision-making, however, such as required counseling, waiting periods of at least several days after childbirth before signing relinquishments, and adequate revocation periods during which birthparents can change their minds.
- Research on birthparents in the era of confidential (closed) adoptions suggests a significant proportion struggled – and sometimes continue to struggle – with chronic, unresolved grief. The primary factor bringing peace of mind is knowledge about their children’s well-being.
- Current research on birthmothers concludes that being able to choose the adoptive family and having ongoing contact and/or knowledge results in lower levels of grief and greater peace of mind with their adoption decisions.
- Women who have the highest grief levels are those who placed their children with the understanding that they would have ongoing information, but the arrangement was cut off. Such contact/information is the most important factor in facilitating birthparents’ adjustment, but only 13 states have laws to enforce post-adoption contact agreements in infant adoptions.

Perhaps the most remarkable finding in the Adoption Institute’s work on this paper was that there are no current studies that have examined a representative sample of women (or men) choosing to place their children for adoption today. The most recent research focused on adolescent respondents but, as noted above, that age group comprises only a minority of contemporary birthparents. Additional research therefore is vital in order to develop laws, policies and practices that genuinely address the rights, needs and desires of women and men who choose adoption for their children.

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## RAPID CHANGES IN ADOPTION PRACTICE

Adoptions today have changed radically from the clandestine and often-coercive arrangements that many young women experienced in earlier generations. For example, historically, birthmothers were primarily unwed teenage mothers who often had to drop out of school and leave home during their pregnancies. Today that profile is rare. The Adoption Institute’s analysis of available data indicates that only about one-fourth of women choosing adoption are below the age of 20. Most birthmothers

have completed high school, and many have other children. According to practitioners, the most common situations among women choosing adoption today include women in their early- to mid-20s who are just becoming independent from their parents, and single women with other children who believe they cannot manage parenting another child at this point.

The Institute also concludes that total secrecy has become rare in current infant adoption practice, and it is considered poor practice for everyone concerned by a growing majority of professionals. So-called closed (or confidential) adoption, in which there is no contact or exchange of information, is actually a relatively recent phenomenon that became prevalent in the U.S. by the 1950s. The body of research on birthmothers who relinquished children for adoption in the era of total secrecy chronicles a negative, long-term impact of this experience on many areas of their lives, including triggering chronic, severe grief reactions and contributing to ongoing complications in future parenting and marriage relationships.

*"I have never forgotten for one minute that I have a son 'out there.' It has always hurt worrying about him and not knowing if he's okay... I basically did not 'go on with my life' in some respects. Something in me simply stopped and never started again."*

Living with the uncertainty of what became of their children is identified by birthmothers in closed adoptions as the most difficult factor they cope with, and receiving information about their children is singled out in the research and literature examined for this paper as the most important thing that would help to bring them peace of mind. That reality flies in the face of contemporary stereotypes of birthmothers as women who crave anonymity and oppose contact by

the children they placed for adoption; rather, the desire to know about their offspring appears almost universal. For example, one study of birthmothers in Britain, who ranged in age from 22 to 81, found that all but nine of the 262 respondents (about 3 percent) wanted basic information about their children. The same small number said they wanted to preserve the secrecy of their identities.

Beginning in the 1970s, agencies began offering alternatives to absolute secrecy; there has been a progressive trend toward more openness in infant adoptions ever since, and the great majority of agencies now offer adoptions that are open to varying extents. Still, the proportion of adoptions today that are planned to be closed (confidential), mediated (information exchanged through agencies), or open (identities exchanged) is not known. We do know that almost all prospective birthmothers (approximately 90 percent) choose and meet the adoptive parents of their children, and even the majority of those who do not meet are able to choose the new parents from profiles. Furthermore, many pregnant women today seek open adoptions that include written agreements for ongoing contact with the adoptive families. Several studies reviewed in this report found those birthparents who have had contact with the adoptive family since placement have lower levels of grief, regret and worry, along with more peace with their decisions, than those who did not have this opportunity.

Some expectant parents make adoption plans with the desire and explicit assurance that they will receive information about or have ongoing contact with their children and their families – but subsequently have to cope with the impact of this contact being terminated. Currently, 20 states permit legally enforceable adoption contact agreements, but only 13 apply to infant adoptions. (Penalties for violation of such contracts include fines, but never return of the child). This is an area of law in which reforms are critically needed to support the long-term well-being and adjustment of birthparents. Many older birthparents whose adoptions were confidential, seek information about the children they placed for adoption. Reunions are hampered by laws that prohibit access to birth records by adoptees. The enactment of statutes restoring the right of adopted people, once they reach the age of majority, to gain access to their own birth records would also be in the best interests of the vast majority of birthparents who want to know that their children are alive and well. This is a vivid example of how misconceptions about birthparents can lead to misguided and even harmful practices; that is, state legislators frequently use birthmothers' supposed desire for privacy as a

rationale for keeping birth records sealed when, in reality, only a tiny minority wants to stay closeted and the vast majority want information about or contact with the children they relinquished.

***Recommendation 1: Establish legally enforceable post-adoption contact agreements in all states and permit adults who were adopted to regain access to their own records,***

## COMPLEXITY OF FORCES SHAPING INFANT ADOPTIONS TODAY

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The institution of infant adoption in the U.S. today has evolved rather haphazardly in response to sweeping cultural changes, including the widespread availability of birth control, the legalization of abortion and, most notably, the precipitous decline in the stigma against unwed motherhood. As a result primarily of those factors, the number of infants relinquished for adoption in this country has dropped radically. The rate of voluntary placements among never-married white women giving birth fell from 19.3 percent in 1973 to 1.7 percent in 1995; the rate has always been very low among women of color (Chandra, Abma, Maza, & Bachrach, 1999). This scarcity of infants available for adoption has fueled the creation of an array of methods to achieve adoptions – from traditional agencies, to independent attorneys, to match-making “facilitators,” to internet-abetted arrangements in which the prospective adoptive parents and birthparents essentially make most of the arrangements themselves. About half of all infant adoptions are carried out by independent practitioners, who facilitate birthparents’ placing their children directly with potential adoptive parents.

Analyses conducted for this report yielded an estimate of the number of domestic infant adoptions in the U.S. each year – 13,000 to 14,000 – and the annual number of total adoptions – at least 135,000. Domestic infant adoptions account for about 15 percent of non-stepparent adoptions, child welfare adoptions make up about 59 percent, and international adoptions about 26 percent.

The high costs associated with infant adoptions (typically \$20,000 to \$35,000 for all the services involved), the deep yearning of some prospective parents to adopt a baby, and the relatively low level of legal regulation of adoption make the process vulnerable to unscrupulous and unethical practices. Legal regulation is limited in a number of critical respects, particularly relating to adoption facilitators, Internet-based practices, and adoptions conducted principally by the parents (biological and adoptive) themselves. This lack of rules and oversight can threaten the interests of all parties, particularly birthparents. Because practitioners are paid by adoptive parents, who typically have higher social status and income, their needs and desires often supersede those of the other participants. Laws regulating adoptions vary greatly from state to state, and generally fall short of adequate protections of birthparent rights in the adoption process.

### *HOW ADOPTION LAWS AND PRACTICES SHAPE THE CRITICAL RIGHTS OF BIRTHPARENTS*

Based on an analysis of ethical practice guidelines, decades of experience, and studies on outcomes, and reforms advocated by many practitioners, researchers and birthparents, the Adoption Institute sets forth the following rights as being in the best interest of women and men considering adoption for their children (expectant or already born). A parent should have the right:

- To make the placement decision in a fully informed manner, devoid of pressure or coercion.
- To reconsider an adoption plan at any point prior to the legal finalizing of the relinquishment.
- To be informed from the start of any monetary expectations – such as repayment of financial assistance -- if she changes her mind about placement.
- To exercise all parental rights she/he wishes prior to placing a child for adoption.
- To be treated with dignity, respect, and honesty.
- To have independent legal counsel to protect her/his best interests in the process.

- To receive nondirective counseling to help her/him understand all of the options and resources available and the implications of the decision.
- To be legally assured that promises and agreements regarding ongoing information or contact made as a part of the process will be adhered to.

This report examines how state laws and the practice of adoption professionals shape the essential rights of birthparents. Whenever an adoption professional begins working with expectant parents, it is very important that clients be informed of all of their rights, both verbally and in writing.

***Recommendation 2: Require all adoption practitioners to provide a document of birthparents' rights and responsibilities, which should be signed by the clients and the professionals near the beginning of their work together.***

## LAWS THAT SUPPORT BIRTHPARENTS' INTERESTS IN ADOPTION PRACTICE

### *INFORMED CONSENT THROUGH COUNSELING*

Parents considering adoption should be able to make decisions that are fully informed and free from coercion. The concept of "informed consent" applies to a range of decisions in our society; indeed, it is considered best practice and is legally mandated in some realms, such as before receiving medical treatments or participating in research studies. But the concept of being fully informed before making a decision about relinquishing a child for adoption has not been fully implemented or legally mandated in most practice. Ideally, all expectant parents who are considering adoption would receive factual, unbiased information through nondirective counseling to help them explore all of their options, including adoption and parenting, and to enable them to understand the immediate and long-term implications of each. The reality is that many if not most do not receive such counseling. Only about half the states' adoption laws mention counseling; some mandate it and others simply assert that prospective birthparents should be advised of its availability.

***Recommendation 3: Require at least two counseling sessions with a qualified professional for all women who are placing children for adoption, during which they are fully informed about their options, including parenting and various types of adoption, as well as about the resources available to them.***

Another factor that compromises genuine parental consent is subtle and/or overt coercion, whether from parents, friends, religious or school communities, or the adoption professionals themselves. Adding the ingredient of financial profit to the equation increases the prospect of pressure from some adoption practitioners. Indeed, there are unscrupulous facilitators (and others) who have analyzed the factors that increase the likelihood of relinquishment and try to implement them; for instance, they sometimes persuade an expectant mother to relocate to another state – where she doesn't know anyone and has no support system – or to accept inflated reimbursement for living expenses to increase the chance that she will feel obliged to relinquish. Overt coercive tactics should be barred in law and practice; furthermore, ethical practitioners need to be alert to even unintended, subtle forms of pressure – so, for instance, they need to help an expectant mother understand explicitly that accepting financial aid or developing bonds with the potential adoptive parents does not obligate her to go through with the placement if she decides it isn't right for her or her child.

### *THE TIMING OF RELINQUISHMENT AND REVOCATION PERIODS*

If the best interests of birthparents are to be supported, along with those of their children, then sound laws and practices have to be developed relating to when a woman or man can sign a

relinquishment and whether the decision can be revoked. To permit a woman to make a reasoned judgment – which can be difficult in the days and weeks after childbirth – there should be a significant period of time before she can sign a legal relinquishment, and there should be a reasonable revocation period during which she can change her mind about placing simply because she wants to be a parent and without having to jump through legal hoops.

Every society, including our own, accepts that it is generally in the best interests of children to be raised by their biological parents unless they cannot or do not wish to do so. Placing a baby for adoption is an extremely significant, emotionally fraught decision that has consequences for the biological parents and their children for the rest of their lives. State laws should provide every reasonable protection to ensure that the decision is sound, reasoned and informed. That resonates as intuitively fair before the child is born, but it also should apply to the period afterward because that is when post-partum hormonal changes need time to abate; when the reality (and finality) of the choice often becomes most real; and when mothers and fathers need to be allowed to reflect on the “rightness” of their decision. Though some adoptive parents and practitioners might balk at the lengths of time involved, they ultimately serve everyone’s interests because the adoption is on firmer legal and ethical foundations and adoptive parents can feel more secure that the birthparents were sure of their decision and will not try to reclaim their child.

In many states, you can change your mind about buying a vacation timeshare or taking out a mortgage within a prescribed time period, but most states do not have a revocation period during which a mother can change her mind about relinquishing her child.

At least 28 states specify a waiting period after the birth of a child before legal relinquishments can be signed; only six states mandate a waiting period longer than three days. Ideally, state laws would require a minimum of four to seven days after childbirth before allowing a woman (or man) to sign a relinquishment. In most instances, that would allow time for the mother to leave the hospital and for her to make a reasoned judgment after the immediate physical impact of delivery has abated.

At least 17 states and the District of Columbia have adoption laws providing a specified number of days after the signing of a relinquishment (ranging from three to 30 days) during which parents can revoke their decisions without having to prove fraud or best interests of the child. A few additional states allow revocation before court action terminating parental rights. In many other countries, including the majority in Europe, consents for adoption do not become final for about six weeks; in approximately half of U.S. states, irrevocable consent can be established four days after birth or less. In reality, lengthening waiting and revocation periods requires other considerations – most notably the care of newborns during this period and the timing of placement with adoptive parents – be addressed. Policy-makers need to weigh the interests of all parties in deciding how long these periods should be.

***Recommendation 4: Modify state laws on the timing of relinquishment and revocation so that parents have several weeks after childbirth before an adoption decision becomes irrevocable. Ideally, this would include a minimum of one week after birth before a relinquishment can be signed and then a substantial revocation period.***

#### PROTECTING THE RIGHTS OF BIRTHFATHERS IN ADOPTION

Men who are legal fathers (also called presumed fathers) have more rights in the adoption process than do alleged (or putative) fathers. A man is automatically the legal father to his wife’s child, but unwed men need to take specific actions to protect their parental rights. They can best accomplish this before childbirth by providing financial and emotional support to the mother, visiting and communicating regularly with her, and registering in a state putative father registry if there is one.

States vary in the extent to which they seek to protect the rights of putative fathers in the adoption process. A fundamental foundation for doing so is identifying the father, locating him, and notifying him of his rights. Some states do not require mothers to identify their children's fathers, viewing this as a right of privacy for the women involved, while others require them to name the fathers and impose penalties for giving false information.

There are strong ethical, moral and practical reasons to involve men as fully as possible. Some of the highest-profile cases in which adoptions were overturned – and the children were returned to their birthparents – resulted from the fathers' legal rights being circumvented or violated. In other realms, society argues that men cannot be just sperm donors or “deadbeat dads,” but should assume responsibility for the lives they helped create. And, of course, medical and biological information from biological fathers is as important for the adoptive parents' rearing of their children as that provided by their mothers. So the first essential way to involve men in the adoptive process, to protect their rights, and thereby to also bolster the efficacy of the process itself, is to require that they be identified whenever possible and then be personally notified of the pending adoption.

Many states have established “putative father registries,” which men must sign if they believe they have fathered a child out of wedlock; only fathers who have registered are entitled to parental rights, including notification of adoption proceedings. Most Americans do not even know these registries exist, however, and they have other inherent problems – for instance, if a man registers in his own state but the adoption is taking place in another, the court will not know the father explicitly expressed his intentions. Lack of registration therefore should not be used as a means of excusing notification of a known father or excluding a putative father's participation. Overall, more aggressive protection of birthfather rights is needed, including requiring mothers to identify them, except in extraordinary circumstances, and working to notify all possible fathers of adoption proceedings.

***Recommendation 5: Require more aggressive protection of birthfathers' rights by mandating their identification by birthmothers whenever possible, and by personally notifying all possible fathers of adoption proceedings. In states where putative father registries exist, they should be widely advertised, and a failure to register should not be used as an automatic reason for not notifying or involving men. A national registry would help to alleviate some of this system's inherent problems.***

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## SUPPORTING THE LONG-TERM ADJUSTMENT OF BIRTHPARENTS

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### WHAT RESEARCH TELLS US

This report examines the body of research on the long-term social-psychological consequences of adoption for birthparents and the primary factors that are important for their positive adjustment. Most of the research was conducted on birthparents whose adoptions occurred during the era of total secrecy. The most current research has focused on adolescent mothers, a population that is not representative of the majority of women choosing adoption for their children today.

The body of literature and research on women who relinquished their children when adoption was a highly surreptitious, stigmatized process demonstrates the ongoing, negative impact of their experiences on important areas of many of their lives, particularly by causing chronic grief, difficulties in intimate relationships, and/or complications in parenting subsequent children. The research on long-term outcomes of birthmothers is rife with methodological problems – from use of clinical or self-selected samples, to conduct of retrospective surveys, to limited utilization of comparison groups or standardized measures, to failure to examine outcomes by cohort or adoption practices experienced.

In order to improve adoption practice and address the needs of birthparents in the process, it is critically important to conduct sound research that focuses on birthparents who participate in all types of infant adoptions today and to follow them over a period of years.

***Recommendation 6: Address the critical gap in knowledge about birthparents' needs and preferences through research on questions including:***

- ***What are the characteristics of women (and men when they are involved) who choose adoption for their children today and what are their perspectives in relation to the choices they make – i.e., abortion, parenting or adoption?***
- ***How do they decide on a specific type of adoption, if that is the road they choose, and what laws, practices and policies can best meet their needs and desires?***
- ***What is the emotional and psychological impact of adoption loss for birthparents, and what practices facilitate grief resolution and healthy long-term adjustment for them?***
- ***What practices are needed to support all of a child's parents in working out their relationships after placement, including open adoption arrangements?***

One important caveat needs to be made before discussing the challenges birthparents must address in dealing with the adoption of their children: In today's more-open, more-honest adoption climate, many women and men make successful post-adoption adjustments and feel pride and confidence about their choices. So, in addition to needing more competent and current research on birthparents' needs and adjustment issues, greater understanding is also required of those who adjust well to informed adoption decisions and of which processes helped them to achieve this comfort level.

#### *SUPPORTING LONG-TERM ADJUSTMENT OF BIRTHPARENTS*

Based on analyses of multiple studies, decades of literature and professional experience, and interviews with practitioners, the Adoption Institute identified key factors in promoting the positive, long-term adjustment of birthparents; these include:

- Lack of coercion by others in making the decision about adoption;
- Opportunities to express feelings of loss and receiving social support;
- Being empowered to choose the adoptive family;
- Having a level of contact with the adoptive family after placement; and
- Receiving ongoing information on the child's progress and well-being.

Mothers and fathers who plan adoption for their children come to this decision from different sets of life circumstances and with their own unique outlooks and coping abilities. While each individual's adjustment realities will vary, there are some common themes and challenges that characterize the birthparent experience. The Adoption Institute identified four critical areas of adjustment that typically must be mastered in order for birthparents to integrate what has occurred into their lives without undue negative long-term consequences:

- Resolving the grief that invariably accompanies such a profound loss;
- Making peace with the decision to place a child rather than to parent;
- Incorporating being a birthparent into one's identity without lowering self-esteem; and
- Overcoming adoption's impact on intimate relationships.

This report reviews the theoretical and research knowledge related to each of these areas of adjustment, as well as the factors that maximize the long-term, positive adjustment of birthparents.

Many of the answers to better serving birthparents center on the quality of the services they receive throughout the process – during pregnancy, around the time of relinquishment, and in the years

following the adoption. They need to receive thorough education and preparation on the social, legal, and psychological issues involved. If they choose open adoption arrangements, they should be helped to understand that with benefits come responsibilities, that is, to their children; they also need to know they may require assistance to surmount any obstacles that arise in achieving and continuing workable arrangements. And, most pointedly, they need to be prepared for their own emotional adjustment processes, and to be armed with both knowledge and resources that will enable them to heal from the losses they almost inevitably will experience.

Birthparents have reported difficulty in finding counselors who understand the nature of their losses and their grief. Mental health professionals generally receive little or no training related to adoption issues, and there is no body of literature or research on interventions to assist birthparents after adoption (Brodzinsky, 1990; Wiley & Baden, 2005). Addressing this void is a critical step in serving the needs of birthparents after adoption.

***Recommendation 7: Develop a broader array of post-adoption services to serve birthparents, including counseling or mediation services to facilitate open-adoption arrangements.***

## CONCLUSION

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Attention to the rights and needs of birthparents must be part of the foundation of adoption if it is to be a healthy, ethical institution that serves the interests of all the individuals involved, as well as of civil society generally. This should be a top priority for future development of adoption law, policy, practice and research. Current adoption-related statutes are too often based on outdated understandings, faulty stereotypes, and misinformation from the time that secrecy pervaded the adoption world. For infant adoptions to be sound and viable arrangements, two paramount needs of birthparents must be addressed: 1) the ability to make fully informed decisions, free of coercion, supported in law and practice, and 2) the wherewithal to know how their children are doing over the course of their lives.

This report illuminates the state of knowledge relating to birthparents and illustrates that current statutes and processes fall short of safeguarding their rights and well-being. The seven primary recommendations listed above are offered as a framework for future reforms. The full report includes additional suggestions to better meet the needs of birthparents in the domestic infant adoption process. The Adoption Institute plans subsequent research to deal with comparable issues relating to birthparents in the child welfare and international adoption systems.