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FOR THE RECORDS:
Restoring a Legal Right for Adult Adoptees

Executive Summary

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Executive Summary

“In all of us there is a hunger, marrow deep, to know our heritage, to know who we are and where we have come from. Without this enriching knowledge, there is a hollow yearning; no matter what our attainments in life, there is the most disquieting loneliness.”

-- Alex Haley (Roots)

BACKGROUND AND SUMMARY OF KEY ISSUES

Few questions are more heatedly debated in the world of adoption today than whether adult adopted persons should have routine access to their original birth certificates and other documents from their agency and court adoption files. In most states, they are legally prohibited from obtaining such information, except by petitioning a court for its permission. In only two states, Kansas and Alaska, have adopted persons – upon reaching the age of majority – always had access to their original birth certificates. In the rest of the country, at various times over the past 70 years, statutes have sealed these records and prohibited access to the information.

Since 1996, six states – Alabama, Delaware, Maine, New Hampshire, Oregon and Tennessee – have re-established adult adopted persons’ direct access to their birth and/or adoption records. Principally, these new laws have provided individuals with access to their original birth certificates, which usually contain identifying information about their birthparents; fewer states to date have permitted access to information in the adoption agencies’ and courts’ records, which generally contain more detailed information about the birthparents and the circumstances of the individual’s birth and adoption. These states’ experiences, as well as those of states that have considered changes in their relevant laws but have not amended them to date, provide insights that previously were not available to inform policy discussions on this issue. The arguments of proponents and opponents of “opening” adoption records provide the basis for a synthesis of the key elements. In addition, states’ experiences as they have implemented new access laws provide the foundation for a fuller examination of the impact of allowing adult adopted persons to obtain their birth certificates (and, sometimes, their adoption records). As a consequence, the policy debate can now advance from speculation about the appropriateness, wisdom and impact of such legal changes to a more-informed consideration of their personal, practical and social effects on real people’s real lives.

This policy paper is the result of the broadest, most extensive examination to date of the various issues related to state laws governing adult adopted persons’ access to their original birth certificates and/or adoption records. The information and recommendations in this paper are drawn from a review and analysis of past and current state laws; legislative history in states across the country; decades of experience on relevant issues; and the body of research relating to sealed and open records on the affected parties.

PRINCIPAL FINDINGS

This analysis highlights the key role that legal and social impact arguments have played in support of and opposition to statutory changes that provide adult adopted persons with access to their birth and/or adoption records. This debate and the experiences of various states reveal the following:

- Adopted persons are the only individuals in the United States who, as a class, are not permitted to routinely obtain their original birth certificates. This prohibition on access to one's personal information raises significant civil rights concerns, particularly given the growing understanding of the need to know one's history, heritage, medical and genealogical data.
- Denying adult adopted persons access to information related to their births and adoptions has potentially serious, negative consequences with regard to their physical and mental health. As recognized by the U.S. Surgeon General's office in its Family History Initiative, biological family medical history is vital to prevention, early diagnosis and treatment, particularly with regard to diseases and conditions for which individuals may be genetically predisposed, such as heart disease, cancer, and certain mental health conditions.
- As states have amended their laws to provide adult adopted persons with access to their birth and/or adoption information, there has been no evidence of the sorts of negative consequences predicted by opponents of changing these laws, including intrusive behavior such as stalking by adopted persons who receive their personal information.
- Similarly, there has been no evidence that the lives of birthmothers have been damaged as a result of the release of information to the children (now adults) whom they relinquished for adoption. In debates leading to these legal changes, opponents had uniformly stated that birthmothers object to the release of birth information and to being contacted by their children. In the states that have amended their laws, however, few birthmothers have expressed the desire to keep records sealed or the wish *not* to be contacted; indeed, in the vast majority of cases, the converse appears to be true.
- Another assertion by critics of changing these laws – that abortion rates rise as a result of such access – is not supported by the experiences of states that have re-opened records (or have never closed them); in fact, the data indicate that reopening records may reduce abortion rates and may increase adoption rates.
- For many adopted persons, the desire to obtain their records is entirely separate from any desire to search for their birthmothers or other relatives; they simply believe – as a human and civil right – that they are entitled to the same basic information about themselves that people raised in their birth families receive as a matter of course. Indeed, many who do get their birth certificates or other documents never search, while others successfully search (a growing phenomenon because of the internet) without any of their documents. Moreover, adopted adults who choose to search invariably make clear that their decisions are not a rejection of their adoptive parents but a desire to learn more about themselves and, in growing numbers, adoptive parents support and assist their adult children's searches.
- Research shows that knowledge of what happened to the children they relinquished for adoption plays a powerful role in the resolution of birthmothers' grief, thereby suggesting that providing access to birth and/or adoption information can have other positive consequences.
- There has been scant evidence that birthmothers were explicitly promised anonymity from the children they relinquished for adoption. Relinquishment documents provided to courts that have heard challenges to states' new "open records" laws do not contain any such promises. To the extent that adoption professionals might have verbally made such statements, courts have found that they were contrary to state law and cannot be considered legally binding.
- In addition to the states that have reopened birth and/or adoption records to all adult adopted persons, a growing number of states have restored access more narrowly – typically to (1) individuals who were adopted prior to the state's law sealing this information and/or to (2)

individuals adopted after the effective date of the statute providing access. These statutes have created a “sandwich” situation in which individuals caught in between – adopted a day too early or too late – are precluded from obtaining their documents. These situations raise significant civil rights and fairness issues by denying access to personal information to a selectively defined group of adults.

RECOMMENDATIONS

Much has been learned from the states that have reopened their records, as well as from those that have considered changes in relevant laws. Based on historical, social science and practice research, along with an analysis of the experiences of those states, the following recommendations are made to advance the development and implementation of sound public policy:

1. Amend every state’s laws to restore unrestricted access for adult adopted persons to their original birth certificates.

States’ experiences in providing this information make clear that there are minimal, if any, negative repercussions from taking this important policy step. Outcomes appear to have been overwhelmingly positive for adult adopted persons and birthparents alike; the predicted adverse outcomes, particularly for birthmothers, have not come to fruition.

To support states in amending their laws, it is recommended that:

□ **Involved organizations, including the Adoption Institute, should monitor state legislative activity on an ongoing basis.** States that are considering the introduction of legislation to provide adult adopted persons with access to their birth and adoption information, or that have introduced such legislation, should be routinely identified and activity within them should be tracked. The intent is to gather information about the scope and nature of legislative proposals in order to assess how best to further them.

□ **Advocates, legislators and affected parties from across the U.S. should convene to identify strategies that can support policy changes.** Individuals who have been actively engaged in efforts to change state laws on this issue should be brought together to contribute their collective wisdom and experience. To date, efforts to change pertinent laws have focused solely on individual states rather than on broader, more strategic efforts. A valuable next step would be to assemble knowledgeable individuals from around the U.S. to discuss what they have learned and to jointly develop resources and tools that identify:

- key tactical and strategic components to legislative advocacy on the issue of birth/adoption records access
- major players in any state’s strategy to educate policy-makers, both within and outside of that state
- critical messages in a legislative advocacy strategy to amend state laws regarding the access issue
- successful tactics and strategies in educating legislators and influencing the legislative process
- effective responses to inaccurate assertions, speculations or data that are not borne out by research or experience

2. Within three years of enactment, revisit state laws that create a “sandwich” situation in which some adult adopted persons are denied access to their birth/adoption information.

The experiences of states that have opened birth/adoption information to some but not all adopted persons should be examined to learn how implementation has affected birthparents, adopted persons and adoptive families. If there are minimal or no adverse consequences, as might be assumed based on the experiences of states that have fully reopened records to all adopted persons, these laws should be revisited and those who had been excluded should be provided unrestricted access to their information.

3. Conduct research to expand the understanding of the experiences of adopted persons, birthparents and adoptive parents in relation to the issue of access to records.

The following types of research activities should be implemented:

□ **Develop and utilize mechanisms to collect and analyze data on the outcomes for adopted persons and birthparents following changes in state law.** Some states have developed mechanisms to track outcome data following statutory changes regulating adult adopted persons' access to their birth and adoption records, but not all states have done so. Specifically, states should be assisted in developing processes to collect data on the:

- number of adult adopted persons who request birth and adoption information that is made available by statute
- number of birthparents who, when authorized to do so, object to the release of information and/or contact
- documented incidents of harassment or other inappropriate behavior by adult adopted persons or birthparents
- adoption rates for the affected state before and after law changes, along with analysis of trends over time
- abortion rates for the affected state before and after law changes, along with analysis of trends over time

□ **Conduct qualitative research about the experiences of adult adopted persons and birthparents in states that reopen birth and/or adoption records.** In addition to data on outcomes and trends, much more needs to be learned about the experiences of the people most directly affected after access laws are amended. Qualitative studies involving interviews with adult adopted persons, birthparents and other family members are vital to the understanding of the impact of legal changes.

□ **Conduct more rigorous research on the perspectives of birthparents regarding adult adopted persons' access to their information.** The current body of research on birthparents' perspectives is extremely limited: there are few studies, the existing ones are dated, and each has methodological limitations that affect generalization. Well-designed studies, involving quantitative and qualitative methods, are needed to provide a strong knowledge base on birthparents' perspectives regarding access and contact. Qualitative research with birthmothers, in particular, is needed to develop a clearer understanding of the extent to which they may have concerns about the reopening of records.

4. Build on the experiences of states that have restored access to original birth certificates to expand adopted adults' access to information in their adoption agency and court records.

Much is being learned from states' experiences following the restoration of adopted adults' access to their original birth certificates and from the experiences of the more limited number of states that have provided their access to information in adoption agency and court records. This knowledge base can provide a basis for policy changes that would provide adopted adults with full access to

their personal histories. These experiences should be documented and utilized in ongoing policy development on these issues.

5. Develop education programs to provide accurate data and counter mythology and misinformation.

The debates on legislative proposals to change state laws on access to their birth and adoptive records have taken place not only in state legislatures, but also in the “court of public opinion.” It is essential that information be developed to educate the public, the media and policy-makers about the key issues; create a more-accurate knowledge base; and counter the erroneous information and assumptions that can undermine a well-informed debate.

6. Focus attention at the national level on state law and policy approaches on the issue of access to birth and adoption records.

Although state law regulates access to birth and adoption records, ongoing attention to the relevant issues at the national level is essential – by including this subject on national organizations’ policy agendas, offering presentations at national conferences, and providing information in national organizations’ publications. Leadership in positioning this issue nationally is essential to ensuring that state policy decisions are supported by the most up-to-date, relevant, and accurate information.

CONCLUSION

Providing adopted persons with the same rights as their counterparts who are raised in their biological families is a matter of legal equality, ethical practice and, on a human level, basic fairness. Furthermore, it is an essential step toward placing adoptive families, families of origin, everyone connected to them – and, indeed, adoption itself – on a level playing field within society, without the stigma, shame and inequitable treatment they have experienced in the past.

One of these rights – access to birth certificates and other documents – has been heatedly debated for decades, including intense speculation about the repercussions of permitting adopted persons to obtain their information once they reach the age of majority. Today, the question no longer needs to be discussed in theory, because the knowledge base has grown substantially as a result of research, policy debates, and individual states’ experiences in implementing new statutory approaches that restore access.

By synthesizing and analyzing the expanding body of knowledge, this policy paper by the Evan B. Donaldson Adoption Institute provides the necessary foundation for advancing sound public policy that recognizes the right of adopted persons to know their personal histories. There is no evident benefit to waiting any longer for statutory reform; the recommendations in this paper provide a blueprint for the critically needed next steps.

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