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Access to Adoption Records

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Summary

State laws regarding confidentiality of adoption records vary and there are no federal regulations governing access to such records. States determine who is eligible to adopt, and who is eligible to be adopted. States also control the consequences of adoption, including availability of any records. This report summarizes the various approaches states use to allow access to adoption records.

When considering whether to allow access to adoption records, courts and legislatures attempt to balance the interests of all the parties involved: the adoptee, the birth parents and adoptive parents, as well as the public interest in preserving the institution of adoption. Thus, individual states have different statutes regarding the rights of adopted adults,¹ birth parents and adoptive parents to gain access to identifying² and non-identifying information about the adoptee or birth relatives.

Non-identifying information is generally restricted to descriptive details about the adult adoptee and his or her birth relatives. This information can include: an adoptee's date and place of birth; the birth parents' ages, race and ethnicities; a general description of the birth parents' physical appearances; birth parents' medical histories; or educational levels of the birth parents and their occupations, interests, and skills.

States usually allow access to adoption files based on one's role (adoptee, birth or adoptive parent) in the adoption process. For example, adult adoptees can access non-identifying information in all states except the District of Columbia,³ Louisiana⁴ and New

¹ This report focuses on adult adoptees. The age of majority varies among the states. Moreover, some states allow minors to petition for access to their records with their adopted parents' consent.

² Identifying information is data which may lead to positively identifying an adoptee, or birth parent. Such data may include names, addresses and dates contained in court records or submitted to the State Department of Vital Statistics.

³ D.C. CODE ANN. § 16.311.

⁴ LA. CIV. CODE ANN. art. 1186 - 1189, 1270.

Jersey.⁵ Adoptive parents can receive non-identifying information about birth parents after placement in all states except Colorado,⁶ Connecticut,⁷ the District of Columbia,⁸ Idaho,⁹ Kentucky,¹⁰ Louisiana,¹¹ Maryland,¹² New Jersey,¹³ New York,¹⁴ and Virginia.¹⁵ Birth parents can access non-identifying information in Alabama,¹⁶ Arizona,¹⁷ Arkansas,¹⁸ California,¹⁹ Colorado,²⁰ Connecticut,²¹ Delaware,²² Maryland,²³ Michigan,²⁴ Minnesota,²⁵

⁵ N.J. STAT. ANN. §§ 9:3-51, 52. Adoptive parents or adult adoptees can only receive non-identifying information with a court order.

⁶ COLO. REV. STAT. §§ 19-5-106, 19-5-207, 19-5-304, and § 25-2-113.5. Only adult adoptees and birth parents can receive non-identifying information after placement.

⁷ CONN. GEN. STAT. §§ 45a-744 to 754. Only adult adoptees or birth parents can receive non-identifying information.

⁸ D.C. CODE ANN. § 16.311.

⁹ IDAHO CODE §§ 16-511, 39-259A. Adult adoptees can receive non-identifying medical information only.

¹⁰ Ky. Rev. Stat. Ann. §§ 199.525, 199.570 - 199.572.

¹¹ LA. CIVIL CODE ANN. art. 1186 to 1189 and art. 1270. Adoptive parents can receive non-identifying information at placement.

¹² MD. CODE ANN., FAM. LAW § 5-329. Only adult adoptees or birth parents can receive non-identifying information.

¹³ N.J. STAT. ANN. §§ 9:3-51, 52. Prospective adoptive parents can receive non-identifying information. Adoptive parents and adult adoptees can receive non-identifying information with a court order.

¹⁴ N. Y. PUB. HEALTH LAW Code § 4138-c and 4138-d; DOM. REL. LAW § 114.

¹⁵ VA Code Ann. §§ 63-1-11-235, 236. Adult adoptees can receive non-identifying information.

¹⁶ ALA. CODE § 26-10A-31.

¹⁷ ARIZ REV. STAT. ANN. § 8-134.

¹⁸ ARK. CODE ANN. §§ 9-9-501 thru 9-9-507.

¹⁹ CAL. FAM. CODE §§ 9200-9206.

²⁰ COLO. REV. STAT. §§ 19-5-106, 19-5-207, 19-5-304, and § 25-2-113.5.

²¹ CONN. GEN. STAT. §§ 45a-744 to 754.

²² DEL. CODE ANN. tit. 13, § 906.

²³ MD. CODE ANN., FAM. LAW § 5-329.

²⁴ MICH. COMP. LAWS ANN. §§ 710.67 and 710.68.

²⁵ MINN. STAT. ANN. §§ 259.27, 259.29, 259.89.

Montana,²⁶ New Mexico,²⁷ North Dakota,²⁸ Oregon,²⁹ Rhode Island,³⁰ South Carolina,³¹ Tennessee,³² Utah,³³ Vermont,³⁴ Washington,³⁵ and West Virginia.³⁶

States provide for varying degrees of openness in their adoption records. Some states allow adult adoptees access to their original birth certificates upon request, without a judicial or administrative hearing.³⁷ Other states provide that, for adoptions finalized after the date of a statutory change, an adult adoptee may obtain a copy of his or her original birth certificate, unless a birth parent has filed a denial of consent or a request for nondisclosure.³⁸ These states may also require that birth parents have the opportunity to file a nondisclosure form. In Vermont, for example, the state will disclose information about the biological parents, unless they have filed a “request for nondisclosure.”³⁹

²⁶ MONT. CODE ANN. §§ 42-6-103 through 109.

²⁷ N.M. STAT. ANN. §§ 32A-5-40 and 41.

²⁸ N.D. CENT. CODE § 14-15-16.

²⁹ OR. REV. STAT. §§ 109.425 to .109.500. In 1998, Oregon voters approved “Measure 58,” a ballot initiative which changed Oregon law to allow adults adopted in Oregon to obtain their original birth certificates.

³⁰ R.I. GEN. LAWS §§ 15-7.2-1 to 15-7.2-15.

³¹ S.C. CODE ANN. § 20-7-.....

³² TENN. CODE ANN. §§ 36-1-125 to 36-1-141.

³³ UTAH CODE ANN. §§ 78-30-17 and 78-30-18.

³⁴ VT. STAT. ANN. §§ 6-102 through 6-112.

³⁵ WASH. REV. CODE §§ 26-33-330 through 26-33-347.

³⁶ W. VA. CODE §§ 48-4A-1 through 48-4A-8.

³⁷ Adults adopted in Kansas or Alaska have full access to their original birth certificates. ALASKA STAT. § 18.50.500; KAN. STAT. ANN. § 59-2122. In 1995, Tennessee passed the “contact veto”. This law gave adoptees access to their adoption records and birth certificates but restricted contact with the biological parent if a contact waiver was signed. TENN. CODE ANN. §§ 36-1-127. In Alabama, “any person 19 years of age or older born in Alabama may upon written request receive a copy of that birth certificate and any evidence of the adoption, legitimation, or paternity determination held with the original record.” ALA. CODE § 22-9A-12. However, this document cannot be used for legal purposes.

³⁸ See MINN. STAT. ANN. § 259.89(b); WASH. REV. CODE §§ 26-33-345.

³⁹ VT. STAT. ANN., tit. 15A, § 6-105(b)(2). This procedure applies only to adoptions finalized after July 1, 1986; for adoptions finalized prior to that date, there must be an affirmative indication from the biological parent that he or she consents to disclosure. See *id.* at § 6-105(b)(1)(2). The Washington procedure is similar. For adoptions after October 1, 1993, the state will release the information to an adoptee over the age of eighteen, unless there is a disclosure veto. See WASH. REV. CODE § 26.33.345. In Minnesota, an adoptee who is at least nineteen can request his or her original birth certificate. See MINN. STAT. ANN. § 259.89(subd.1). The state must then attempt to notify the biological parents of the request and may charge the adoptee for this service. See *id.* at (subd. 2). The notification must be through a personal contact in which the parent is given information about the adoptee’s request and about the parent’s right to consent or to veto disclosure. See *id.* If the state is unable to contact the

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Registries allow adopted adults, birth parents,⁴⁰ and sometimes birth siblings and adoptive parents to consent or not to consent to have their identifying information released. Registry procedures vary greatly from state to state. In some states the registry is centralized by the state, and in others it operates across the state through the agencies or courts that handled the adoption. Some states will not release information if the adopted adult has not received the permission of the adoptive parents. In many states, information from the registry must be requested in writing, accompanied by proof of identification. States utilize two types of registries: passive and active.

Passive registries, also known as mutual consent or volunteer registries, require both parties to register their consent for release of information before a match can be made.⁴¹ Once a match occurs, both parties are notified. These systems depend on both parties registering, a match being found, and the follow-up notification by a registry administrator. Many times parties are not aware of the registry or that they are able to consent to the release of their identifying information.⁴²

Active registries do not require that both parties register consent. Once one party registers, a designated individual (often an agency or court representative) is assigned to contact those persons being sought and determine their wishes for the release of information.⁴³ These registries can take on different forms such as: (1) search and consent; (2) confidential intermediaries; and (3) affidavit systems.

Search and consent procedures allow access to identifying information solely if consent is received from both parties. Generally, these laws mandate that the state has an affirmative duty to search for the birth parent and request consent to release the identifying information upon an adoptee's request. The adoptee pays a fee to cover search costs, and the time of the search is limited. If the birth parent refuses consent, the

³⁹ (...continued)

biological parents, and if there is no disclosure veto, for adoptions finalized after August 1, 1977, the identifying information is released. For adoptions finalized earlier, the adoptee must petition the court for the information. See *id.* at (subd. 3).

⁴⁰ In some states, both biological parents must have filed consents before the release of identifying information occurs. See, e.g., N. Y. PUB. HEALTH LAW Code § 4138-d. In other states, only one parent need consent. See, e.g., MASS. ANN. LAWS ch. 210, § 50.

⁴¹ The Uniform Adoption Act authorizes a state mutual consent registry. See Unif. Adoption Act, §§ 6-104 to 6-107, 9 U.L.A. 83-86 (Supp. 1999).

⁴² States with passive registries: Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Nevada, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, West Virginia, and Wisconsin. See generally, Naomi Cahn, "Adoption, Identity, and the Constitution," 2 U. PA. J. CONST. L. 150 (December 1999)(discussing the ineffectiveness of registries due to lack of publication).

⁴³ States with active registries include Connecticut, Indiana, Kentucky, Minnesota, Nebraska, New Jersey, and Oregon.

adoptee's only recourse is to challenge the refusal in court.⁴⁴ Nonetheless, some states reserve the right to not release the identifying information, even with parental consent.⁴⁵

Confidential intermediaries are state employees or volunteers sanctioned by the courts with access to sealed adoption files for the purpose of conducting a search. The confidential intermediaries are usually hired by the inquiring party to conduct searches for an adopted adult or birth parent, make contact with each party, and obtain each person's consent or denial for the release of information. Depending on the particular laws of the state, contact may be attempted once, after a specified time period, or the file may close permanently if the party being sought is not found.⁴⁶

In an affidavit system, parties can give prior written permission affirming their consent to the release of identifying information by placing an affidavit detailing that permission in the adoption file. This written permission may sometimes be referred to as a consent waiver, or authorization form. The affidavit system is many times used along with the search and consent system.

A veto is a document filed by one party to the adoption in which one registers his or her refusal to be contacted or for release of one's identifying information. In an access veto or nondisclosure request system, an adopted adult may receive identifying information about another party if no veto is on file.⁴⁷ Tennessee utilizes a "contact veto," permitting a party seeking information access to identifying information, including an original birth certificate, but prohibiting contact between the parties.⁴⁸ Similar measures were approved in Oregon, Ohio and Delaware. Ohio's statute requires birth parents to sign disclosure statements when they consent to adoption indicating whether they consent to the release of identifying information.⁴⁹

Most states with sealed adoption records allow an adoptee to petition the court to receive identifying information upon a showing of "good cause." The definition of good

⁴⁴ Bobbi W. Y. Lum, *Privacy v. Secrecy: The Adoption Records Movement and its Impact on Hawaii*, 15 U. HAW. L. REV. 483, 507 (1993)(discussing the State's affirmative duty to seek out parties to the adoption and request consent).

⁴⁵ See, e.g., Conn. Gen. Stat. § 45a-751.

⁴⁶ States with confidential intermediaries include Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, Michigan, Minnesota, Montana, New Mexico, North Dakota, Oklahoma, Oregon, Virginia, Washington, Wisconsin, and Wyoming.

⁴⁷ States with access veto or affidavit systems include Alabama, California, Delaware, Hawaii, Indiana, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Ohio, Oklahoma, Vermont, Washington, and Wisconsin.

⁴⁸ TENN. CODE ANN. §§ 36-1-125 to 36-1-141. Sealed records are open to adoptees aged 21 or older, or to their adoptive parents or biological relatives with the adoptees' written consent. This information includes all "adoption records, sealed records, sealed adoption records, post-adoption records, or any other records or papers for a person relating to the adoption of a person." However, this information will not be released without the biological parents' written consent if records indicate that the adoptee was conceived of rape or incest. Persons not wanting contact may file a "consent veto" stating that they do not wish to be contacted.

⁴⁹ OHIO REV. CODE ANN. § 3107.01.

cause varies depending on the state. Variations may include: (1) good cause as demonstrated by clear and convincing evidence; (2) good cause shown in exceptional cases such as a showing that the release of information is in the best interest of the child or for public health or medical reasons,⁵⁰ or a showing of compelling reasons.⁵¹

In many states, new adoption laws are only proactive - that is, the law only affects adoptions finalized after the date of the passage of the new law. This leads to the existence in many states of hybrid rules, where the laws surrounding access are different depending on the date of finalization. Some of these variations include:

Hawaii utilizes a “notice and consent” provision for adoptions before 1991, where parties being sought are sent notice through certified mail. If the party fails to respond, confidentiality is assumed waived, and identifying information is released. For post-1991 adoptions, an access veto system is in place.⁵²

Montana – Adoptees born between 1967 and 1997 must go to court to obtain their records. Those born after October 1997 have access to their original birth certificates unless a birth parent has filed a nondisclosure request.⁵³

Nebraska - an access veto system applies for adoptees placed after 1988. For adoptions prior to that date, there is an active registry. A birth parent registry, to which affidavits may be submitted, also exists.⁵⁴

Ohio - Pre-1964 adoptees have full access, an affidavit system is in place for adoptions between 1964 and 1996, and access veto system applies to post-1996 adoptions.⁵⁵

Tennessee enacted a statute in 1995 granting access to all records to those adopted before 1951, and providing a contact veto system for other adults starting in 1996.⁵⁶

⁵⁰ Illinois allows adoptive parents to ask the court to appoint a confidential intermediary to locate birth parents to request information necessary for the adoptee’s medical treatment.

⁵¹ See e.g. ALA. CODE § 26-10A-31. Allows parties with a “compelling need” for medical information to petition the court for permission to make contact to obtain the requisite medical information.

⁵² HAW. REV. STAT. ANN. §§ 578-14 to 15.

⁵³ MONT. CODE ANN. §§ 42-6-103 through 109.

⁵⁴ NEB. REV. STAT. § 43-113 and §§ 43-146.01 to 43-146.16.

⁵⁵ OHIO REV. CODE ANN. §§ 3107.17, .38 through .46.

⁵⁶ TENN. CODE ANN. §§ 36-1-125 to 36-1-141. This statute was the subject of an immediate court challenge. The Tennessee Supreme Court found that disclosure of adoption records did not retrospectively impair the birth parents’ reasonable expectations and did not violate their constitutional privacy rights. *Doe v. Sundquist*, 2 S.W. 3d 919 (Tenn. 1999).

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