Access to Adoption Records in Maryland

DEPARTMENT OF LEGISLATIVE SERVICES 2013

Access to Adoption Records in Maryland

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

October 2013

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

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October 24, 2013

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Honorable Members of the Maryland General Assembly

Ladies and Gentlemen:

The attached report, titled *Access to Adoption Records in Maryland*, was prepared by the Department of Legislative Services, Office of Policy Analysis, in response to continuing legislative interest in further opening adoption records in Maryland.

The report was written by Jennifer K. Botts and Lauren C. Nestor and edited by Douglas R. Nestor.

I trust that this information will be of assistance to you.

Sincerely,

Warren G. Deschenaux
Director

WGD/DRN/mjp

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Introduction

In 1947, legislation was enacted in Maryland providing for sealing of adoption records. In 1998, the General Assembly passed legislation that prospectively opened birth and related adoption records to adopted individuals and biological parents for adoptions finalized on or after January 1, 2000. However, biological parents and adopted individuals were given the right to file a disclosure veto to prohibit disclosure of identifying information concerning the individual who filed the veto. While birth and adoption records for adoptions finalized before 2000 remained sealed, the General Assembly established a confidential intermediary program within the Department of Human Resources to assist biological parents and adopted individuals in searching for and contacting one another.

Evidenced by recent legislative proposals, there remains interest in providing to adopted individuals and biological parents access to birth certificates and related adoption records for adoptions finalized before 2000. Proponents assert that sealed birth certificates are an anachronism and that adopted individuals have a right to knowledge of their true identity and heritage. On the other hand, opponents argue that biological parents who relinquished children for adoption were explicitly or implicitly promised anonymity and that changing the law would breach the confidentiality that may have been instrumental in their adoption decisions.

This paper will examine the history of state adoption laws and policies affecting access to adoption records, the current Maryland law, the current laws of other states, and various legal and policy arguments for and against retroactively opening adoption records in Maryland.

Evolution of Adoption Laws and Policies Affecting Access to Adoption Records

Sealing of Adoption Records

In a 2010 report[1], the Evan B. Donaldson Adoption Institute examined the history of access to adoption records and noted that for most of our nation's history, adopted individuals were authorized to access their birth certificates upon reaching the age of majority, and that only in the middle of the 20th century did the practice of sealing these records become commonplace. Minnesota was the first state to enact a statute relating to the confidentiality of birth and adoption information in 1917. At that time, the statute's purpose was designed to prevent the public from learning that the child had been born outside of marriage, and individuals who were deemed to

[1] *See, For the Records II: An Examination of the History and Impact of Adult Adoptee Access to Original Birth Certificates*, by the Evan B. Donaldson Adoption Institute (2010).

have a legitimate interest (*i.e.*, adult adoptees, adoptive parents, and biological parents) were still allowed access. Other states followed suit, and in 1938, the United States Children's Bureau recommended that birth records be available only to adoptive parents, adult adoptees, and state agencies with jurisdiction over adoption. Along with sealing the original birth certificates, the practice evolved of issuing, upon adoption, a new birth certificate with the name of the adoptive parents. By 1948, nearly all states were issuing amended birth certificates. Although additional reasons for sealing the records began to emerge, such as protecting adoptive parents from the intrusion of the biological parents, the records were still not generally sealed from adult adoptees.

By 1960, a major shift in law and policy was beginning. As of that year, 20 states still permitted adult adoptees unrestricted access to their original birth certificates; by 1990, 18 of those states had sealed original birth certificates from adult adoptees.[2] Although there is not a conclusive answer as to what precipitated this shift, social workers during this time period seemed to embrace the view that all parties to an adoption benefited from absolute separation. Prevailing philosophy at the time held that adoptive parents could bond more completely with a child whose parentage was unknown to them and biological mothers could properly grieve the loss of the relinquished child as permanent. It was also believed that the adopted child would be shielded from the confusion of having more than one set of parents. Also prevalent during this time was the practice of attempting to "match" babies with adoptive parents on the basis of similar physical characteristics. Because research on this issue in social work and psychology was rare at the time, the shift to seal birth records was not based on empirically based studies, but instead was based on a prevailing belief about how families best functioned.

Trend Toward Open Adoptions

The trend in adoption policy and practice within the past few decades has been toward greater openness and less secrecy. For example, today many adoptions are "open," in which the identities of the parties are known and adoptive parents may interact with the child's biological parents. Open adoptions may also include contact between an adopted child and biological parents. Other adoptions are semi-open or mediated adoptions in which contact is made indirectly through a mediator or through other arrangements that protect the identities of the biological and adoptive families (*e.g.*, a post office box or email address). A 2007 national study of adoptive families in the United States found that, in one-third of all adoptive families, the adoptive parent or the adopted child had some contact with the biological family after adoption.[3] Post adoption contact was most frequent in private domestic adoption (68%) compared with

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[2] *Id.*

[3] Vandivere, S., Malm, K., & Radel, L. (2009). *Adoption USA: A Chartbook Based on the 2007 National Survey of Adoptive Parents.* Washington, D.C.: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

adoption from foster care (39%) and international adoption.[4] A more recent study among U.S. adoption agencies reported that 95% of their domestic infant adoptions are open.[5]

The Child Welfare Information Gateway cites several factors that have contributed to the increasing openness of adoption. First, there is a growing awareness of some of the negative effects of secrecy and the benefits of openness for many adopted children, biological parents, and adoptive parents. Biological mothers have become more likely in recent years to request openness and to condition the adoption on the ability to receive and share information. As a result, states have gradually begun to amend their adoption laws and to add programs and services to reflect the large numbers of adult adoptees and biological parents who return to adoption agencies seeking information about one another. For example, as of June 2012, approximately 31 states (including Maryland) had some form of a mutual consent registry (a mechanism for individuals who are involved in an adoption to indicate their willingness to disclose identifying information).[6]

The Internet and social media have also played a role in the trend toward openness.[7] Although there is no data on the number of adopted individuals who have used the Internet to seek out their biological parents (or vice versa), there is anecdotal evidence to support the trend. For example, a nonscientific poll of foster youth found that nearly 75% of foster youth had searched for a biological family member on the Internet.[8] More than 60% of the youth indicated that it would have been helpful if someone had mentored them about connecting with the biological parents.[9] Because adopted children may try to conduct their searches secretly, they may be denied the support and protection they need, particularly if the contact includes a negative situation such as a rejection by the biological parent. Although these resources may afford adopted children and biological families the ability to connect inexpensively and without the need for an intermediary, there is concern that the connections are being made without the benefit of preparation and adequate support systems.

Proponents of open adoptions argue that such adoptions allow adopted children to have answers about their backgrounds and personal histories. Depending on the extent of the contact, adopted children may be able to increase the number of supportive adults in their lives, minimize feelings of abandonment by developing a better understanding of the reasons for the adoption, and preserve connections to their cultural and ethnic heritage. Open adoptions can allow biological parents to gain control over the decisionmaking related to the child's placement and have continuing peace of mind by being provided with information about the child's welfare

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[4] *Id*.

[5] Siegel, D. & Smith, S.L. (2012). *Openness in Adoption. From Secrecy and Stigma to Knowledge and Connections.* New York, NY: Evan B. Donaldson Adoption Institute.

[6] *Access to Adoption Records*, by the Child Welfare Information Gateway (2013).

[7] *See, e.g., Untangling the Web; the Internet's Transformative Impact on Adoption*, by the Evan B. Donaldson Adoption Institute (2012).

[8] *Working with Birth and Adoptive Families to Support Open Adoption*, by the Child Welfare Information Gateway (2013).

[9] *Id*.

throughout the years. Open adoptions often allow the adoptive parents to gain access to biological family members who can answer questions and improve their understanding of the child's history.

However, it is also acknowledged that openness is not always appropriate, such as when a parent has mental or behavioral issues and is unable to maintain a healthy relationship or respect appropriate boundaries. Openness may not be in a child's best interest if the child has been victimized by abuse or neglect. Biological mothers may have immediate needs for privacy or confidentiality and adoptive parents may have concerns over interacting with biological families or may want to exercise control over the information the child receives.

Maryland Law

Background

Paralleling the nationwide trend, in 1947, Maryland required by statute that adoption records be sealed and made inaccessible except by court order.[10] Predating the enactment of the statute, the Governor appointed in 1945 a Commission to Study Revision of the Adoption Laws of the State of Maryland, which drafted the proposed statute.[11] The statute provided:

> "Records and papers in adoption proceedings, from and after the filing of the petition shall be sealed and opened to inspection only upon an order of the Court; provided, that in any proceeding in which there has been an entry of a final decree before June 1st, 1947, and in which the records have not already been sealed, the records and papers shall be sealed on motion of one of the parties to the proceeding."[12]

The accompanying statement of legislative policy specified that one of the purposes of the statute was "the protection…of the adopting parents, by…protecting them from subsequent disturbance of their relationships with the child by the natural parents."[13] Although the legislative history is sparse, the decision to seal the records was apparently taken by the General Assembly for the following additional reasons: (1) to remove from the child the stigma of "illegitimacy" by issuing a new birth certificate which made it appear that the child had, in fact, been born to the adoptive parents; (2) to provide all parties with a new beginning and to conceal all record of this event on behalf of (usually) unwed mothers; (3) to create within the adoptive home a situation as similar as possible to that which would have been obtained had the adopted child been born into that family (in accord with the thinking at the time, which attempted to

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[10] *See, Report of the Governor's Commission to Study the Adoption Laws* (January, 1980).
[11] Chapter 599 of 1947.
[12] *Id.*
[13] *Id.*

"match" children as closely as possible to the adoptive parents); and (5) to prevent unauthorized public access to the records.[14]

Although adoption records were sealed, adopted individuals and biological parents were permitted access to medical and non-identifying information contained in agency adoption records and court records pertaining to the adoption. Additionally, adopted individuals, biological parents, and siblings of adopted individuals could register with the Mutual Consent Voluntary Adoption Registry in the Social Services Administration. If a match was made between individuals who had mutually registered, the administration facilitated the exchange of identifying information between those individuals.

As adoption practices and attitudes had shifted toward a more open approach over the course of the next thirty years, proponents of opening adoption records began to press the General Assembly for change. Senate Joint Resolution 42 of 1979 created the Governor's Commission to Study the Adoption Laws "in response to the controversy in previous sessions which had surrounded the introduction of legislation to open sealed adoption records to adult adoptees."[15] In its report, the commission concluded that "the thirty-two year experiment in sealing adoption records in this State has outlived its usefulness." The commission stated that "[w]e reject the idea that the integrity of the adoption process is dependent on promises of perpetual secrecy which have the effect of concealing the biological background of adopted people, including medical, genetic, and social histories which may be essential to their physical and emotional development. We conclude that adult adoptees are as entitled to this information about themselves as are people who are not adopted."[16]

The commission recommended legislation that applied to adoptions occurring prior to January 1, 1981, as well as those occurring on or after that date. With respect to adoptions occurring prior to January 1, 1981, the commission unanimously recommended that an adoptee at least 21 years old have the right to petition the court for the names and addresses of his or her biological parents. The court would be required to serve notice of the request to the biological parents and provide an opportunity to the biological parents to come forward and to present evidence as to why disclosure of their identities would cause them serious physical or psychological injury. If the biological parents failed to come forward or were unable to sustain the burden, the court was required to order the records opened. For adoptions occurring on or after January 1, 1981, the commission recommended that the records be available as a matter of course to an adoptee upon reaching the age of 21 and that all parties be so informed at the time of the adoption.[17] A minority of the commission issued a separate report indicating that, even for adoptions occurring on or after January 1, 1981, disclosure should be prohibited if the biological parents are able to persuade a court that they would suffer serious physical or psychological

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[14] Report of the Governor's Commission to Study the Adoption Laws (1980).
[15] *See, Id.* at page 3.
[16] *Id*. at pages 22-23.
[17] *Id.* at pages 23 and 28.

injury if the records were opened.[18] The legislation proposed by the majority was introduced as House Bill 1915 of 1980, but received an unfavorable report.

Chapter 679 of 1998

Prompted by advocates for open adoption records who testified that often court and agency records contained incomplete or no medical information and that the Mutual Consent Voluntary Registry had resulted in only approximately twenty matches during the previous ten years, the General Assembly passed Chapter 679 of 1998. Chapter 679 established within the Social Services Administration of the Department of Human Resources a confidential intermediary program of search, contact, and reunion services and provided for broader access to adoption and birth records for adoptions finalized on or after January 1, 2000.

Chapter 679 did not repeal either existing provision of law relating to access to medical records or the Mutual Consent Voluntary Registry. The legislation attempted to balance the interest of adopted individuals in knowing more about their pasts and the interest of biological parents in maintaining their privacy. Specifically, the confidential intermediary system protected the privacy interests of biological parents who arguably were given a guarantee by the State that their identities would remain confidential in the adoption process, while the unsealing of birth of adoption records for adoptions finalized on or after January 1, 2000, recognized the current trend toward openness concerning adoptions.

A detailed discussion of Chapter 679 is set forth below.

Confidential Intermediary Program

Under Chapter 679, an adopted individual at least 21 years old or a biological parent of an adopted individual at least 21 years old may apply to the Director of the Social Services Administration of the Department of Human Resources to receive search, contact, and reunion services. "Search, contact, and reunion services" means services: (1) to locate adopted individuals and biological parents of adopted individuals, (2) to assess the mutual desire for communication or disclosure of information between adopted individuals and biological parents of adopted individuals; and (3) to provide or provide referral to, counseling for adopted individuals and biological parents of adopted individuals. The statute prohibits a parent whose parental rights have been involuntarily terminated from receiving search, contact, and reunion services.

The administration is required to maintain a list of confidential intermediaries who meet specified qualifications and provide the list to an individual who applies for search, contact, and reunion services. The individual seeking search, contact, and reunion services is required to execute a written agreement with a confidential intermediary, and the confidential intermediary

[18] *Id.* at page 28.

is authorized to charge a reasonable fee for the services. The law authorizes the confidential intermediary to access birth and adoption records under seal within the Department of Health and Mental Hygiene and public records.

The confidential intermediary must file a report with the Director of the Department of Human Resources that states the results of the search effort within 90 days after executing a search, contact, and reunion services agreement. The law provides for the following four scenarios:

(1) If the individual contacted by the intermediary consents to the disclosure of any information, the confidential intermediary must obtain written consent specifying the nature of the information to be disclosed. The confidential intermediary is authorized to disclose only the information specified in the consent to the applicant for search, contact, and reunion services.

(2) If the individual contacted by the intermediary does not consent to the disclosure of any information, the confidential intermediary is prohibited from releasing any information concerning the individual contacted.

(3) If the individual sought has not been located, the confidential intermediary must continue to attempt to locate the individual for the time period specified in the search, contact, and reunion services agreement.

(4) If the individual sought is deceased, the confidential intermediary may not disclose the identity of the deceased to the applicant for search, contact, and reunion services.

Broader Access to Records – Adoptions on or after January 1, 2000

For adoptions finalized on or after January 1, 2000, Chapter 679 authorizes an adopted individual at least 21 years old or a biological parent of an adopted individual at least 21 years old to apply to the Secretary of Health and Mental Hygiene to receive a copy of birth and adoption records under seal, unless a disclosure veto has been filed with the Secretary. A "disclosure veto" prohibits the disclosure of any information concerning the individual who filed the veto. A disclosure veto may be canceled or refiled at any time.

Additionally, the law provides that the consent of a biological parent to either an adoption or guardianship of a child is not valid unless the consent contains an express notice of the search rights of adopted individuals and biological parents and the right to file a disclosure veto.

The Department of Health and Mental Hygiene (department) reports that since January 1, 2000, it has received 196 disclosure vetoes from biological parents of adoptees. However, the department reports that as of January 2013, it has not received any requests for birth and adoption records from adoptees who are at least age 21 nor have any adoptees who are at least that age filed disclosure vetoes. Further, no biological parents of adoptees who are at

least age 21 have applied for, or received, birth or adoption records under the provisions of Chapter 679. The department noted that the provisions of Chapter 679 are most likely applicable in cases of infant adoptions where the identities of the biological parents and the adoptee are unknown to each other. Because infants adopted on or after January 1, 2000, are currently younger than 21, they are not yet eligible to file disclosure vetoes or access birth and adoption records.[19]

Subsequent Enactments

Since enactment of Chapter 679 of 1998, provisions relating to adoption records, particularly provisions expanding the adoption search, contact, and reunion services program, have been amended by the General Assembly on three occasions.

During the 2004 session, the General Assembly passed House Bill 232, which expanded the adoption search, contact, and reunion services program to include services to siblings of adopted individuals. The bill was vetoed by the Governor. The Governor's veto message indicated that the reason for the veto was that the bill was not prospective only to adoptions occurring on or after the bill's effective date. The Governor stated that he had reservations about the possibility of breaching the confidentiality related to a past adoption that the current law provided to biological parents and adopted children. The Governor noted particular concern about the trauma to individuals without knowledge that they are adopted being informed by the State of the fact of the adoption. Additionally, the Governor's message noted that the current Mutual Consent Voluntary Registry provides a remedy for adopted individuals and siblings who wish to locate one another. However, during the 2004 Special Session, the General Assembly overrode the Governor's veto.[20]

Chapter 312 of 2006 addressed the situation in which an individual attempted to be contacted by a confidential intermediary on behalf of a biological parent or adopted individual is deceased. Under the legislation, if the individual sought by the confidential intermediary is deceased, the confidential intermediary is authorized to contact a relative of the biological parent or member of the adoptive family, respectively.

Finally, Chapter 326 of 2011 expanded the search, contact, and reunion services program to include services to contact certain adopted siblings of a minor in out-of-home placement to develop a placement resource for the minor.

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[19] Letter from Joshua M. Sharfstein, M.D., Secretary, Department of Health and Mental Hygiene to the Honorable Joseph F. Vallario, Jr., Chairman, House Judiciary Committee (January 7, 2013).

[20] Chapter 7, 2004 Special Session.

Legislative Proposals in Maryland and Policy Considerations

In the previous three legislative sessions, controversial proposals have been introduced, but have ultimately failed, to further open adoption records by authorizing individuals adopted prior to 2000 to have unqualified access to birth and adoption records.[21] The most frequent arguments made in favor of and against such measures and policy considerations are summarized below.

For Open Records

Those advocating for access to birth and adoption records claim that adult adoptees have a fundamental right to know core facts about themselves and that denying adoptees access to identifying information may prevent the individuals from fully developing a positive identity due to their lack of ability to answer basic questions about their origins. Proponents argue that sealing birth records and barring adult adoptees from accessing facts about their origins emphasizes their differences from others and perpetuates shame or a sense of being inferior.

Additionally, advocates particularly stress the need for adoptees to have access to family medical information in order for them to develop more complete medical histories and know of potential genetic risks. Although adoptees may have information regarding family medical history that was known at the time of the adoption, they may be unaware of conditions that were subsequently discovered by their biological relatives. The Evan B. Donaldson Institute notes that both the U.S. Surgeon General and the Centers for Disease Control have launched initiatives in recent years focusing on the importance of family medical history in the prevention, diagnosis, and treatment of genetically based diseases as well as chronic diseases including cancer, heart disease, and diabetes.[22] Some insurance companies pay for genetic testing or early screenings only when there is a known family medical history that indicates an elevated risk for the condition; accordingly, adopted individuals without access to such information may have to pay out of pocket for tests or forego them altogether.

Finally, proponents claim that other alternatives, including mutual consent registries and confidential intermediaries are costly and ineffective. They also argue that requiring adoptees to petition the court for access to records is too arbitrary, as judges are allowed to determine what constitutes "good cause" or a "compelling" reason for access without clear guidance.

Against Open Records

The most common argument for keeping adoption records closed for adoptions finalized prior to 2000 is that biological parents were either explicitly or implicitly promised that their identities would never be disclosed and that altering the law retrospectively breaches this

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[21] HB 1014 of 2011, HB 719 of 2012, and HB 22 of 2013.

[22] The United States Surgeon General established the Family History Initiative in 2009. The Center for Disease Control, Office of Public Health Genomics established the Family History Public Health Initiative in 2002.

confidentiality, which may have been instrumental in their adoption decisions. The Evan B. Donaldson Institute notes that with the prevalence of pregnancy and child rearing outside of marriage today, it is difficult to comprehend the stigma that was faced in the past by single pregnant women. Many, particularly those in middle-class families, hid their pregnancies in order to remain accepted within the community and may have kept secret the pregnancy and subsequent adoption with the expectation that the information would not be disclosed. There are concerns that adopted individuals may invade the privacy of their biological parents by initiating or continuing unwanted contact. Additionally, in light of the secrecy that pervaded many of these adoptions, there exists the possibility that the putative father may have been misidentified on the official records.[23]

Similar concerns are raised by advocates who represent abused and neglected children in foster care who have been adopted. They assert that the adoptee who was the victim of abuse or neglect should have the right to choose to protect their privacy from the perpetrator of that abuse or neglect.[24]

Finally, opponents argue that the current law strikes the proper balance and provides protections for all parties because it is based on the mutual consent for release of information.[25] For adoptions finalized prior to 2000, the law provides for trained confidential intermediaries with experience in search and reunion issues to support the parties in the emotionally complex reunion experience and to seek mutual consent for direct contact. For adoptions finalized on or after January 1, 2000, the law presumes that adoption records are open, but notice is provided to biological parents and adoptees of the right to file or withdraw a disclosure veto to protect their privacy if they so desire. Opponents also note that Maryland has been, in fact, a model for other states in this area.[26]

Other States

Access to Birth and Adoption Records

The only states that grant adult adoptees unrestricted access to original birth certificates are Alabama, Alaska, Kansas, Maine, New Hampshire, and Oregon.[27] Alaska and Kansas are the only states that never barred access to original birth certificates. While the aforementioned

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[23] *See, e.g.,* The Report of the Governor's Commission to Study the Adoption Laws (1980) at page 8.

[24] Testimony of the Legal Aid Bureau, Inc. in opposition to House Bill 22 of 2013.

[25] Testimony of Catholic Charities, Center for Family Services, Adoption Services in opposition to House Bill 22 of 2013.

[26] Testimony of the National Association of Social Workers, Maryland Chapter, in Opposition to HB 22 of 2013.

[27] *See For the Records II: An Examination of the History and Impact of Adult Adoptee Access to Original Birth Certificates*, by the Evan B. Donaldson Adoption Institute, page 13. Since the time of the report, Rhode Island law has been amended to authorize unrestricted access to birth and adoption records by adult adoptees.

states do not restrict access, biological parents are authorized to file "contact preference" forms that allow biological parents to signify their desire or lack thereof to be contacted, although there are no penalties if the wishes are ignored. Although access is permitted in Tennessee, birth certificates and adoption records that were created on or after March 16, 1951, are subject to a contact veto, the violation of which is a misdemeanor.

In approximately half of the states and the District of Columbia, a court order, generally contingent on a finding of good cause or other similar language is required for adoptees to access original birth certificates.[28] For example, in Connecticut, an adult adoptee must obtain a court order stating that allowing access would not be detrimental to the public interest or to the welfare of the adoptee or the biological or adoptive parents. While some courts have accepted the psychological need of an adoptee as good cause, others have restricted good cause to mean "necessary to save the life or prevent irreparable physical or mental harm to an adopted person or the person's offspring."[29]

The remaining states, including Delaware, Illinois, Maryland, Michigan, Minnesota, Montana, Nebraska, Ohio, Oklahoma, Pennsylvania, Virginia, and Washington, allow the adopted individual access (1) unless a biological parent has filed an affidavit denying release of the records (*i.e.*, a disclosure veto); (2) if the biological parent has filed a consent to release the information; or (3) if eligibility to receive the identifying information has been established with a State adoption registry.[30] The ability to access records in many of these states, including Maryland, further depends on the date of adoption. For example, in Washington, a copy of the birth certificate is available to adult adoptees only if the biological parent has not filed a disclosure veto and the adoption was finalized after October 1, 1993. Original birth certificates are available without the necessity of a court order to adult adoptees in Oklahoma if (1) there are no biological siblings younger than 18 who are currently in an adoptive family and whose whereabouts are known; (2) the biological parents have not filed affidavits of disclosure; and (3) the adoption was finalized after November 1, 1997.

Statutes in nearly all the states permit the release of identifying information when the person whose information is sought has consented to the release.[31] In addition to allowing biological parents and adoptees access to the information, approximately two-thirds of the states, including Maryland, also allow biological siblings of the adoptee to seek and release identifying information upon mutual consent.[32] As mentioned previously, a mutual consent registry is a common method used by states to arrange for the release of identifying information by mutual consent. Although procedures vary significantly from state to state, most require the consent of at least one biological parent and an adopted person who is at least 18 or 21 (or the consent of the adoptive parents if the adopted person is a minor) in order to release identifying information.

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[28] *Access to Adoption Records*, by Child Welfare Information Gateway (2012).

[29] *For the Records II: An Examination of the History and Impact of Adult Adoptee Access to Original Birth Certificates*, by the Evan B. Donaldson Adoption Institute, page 13.

[30] *Access to Adoption Records*, by Child Welfare Information Gateway (2012).

[31] *Id.*

[32] *Id.*

While most states require affidavits consenting to the release, a few states will release information from the registry unless a request for nondisclosure has been filed. In other states, including South Carolina and Texas, individuals are required to undergo counseling before the information may be released. States have also established confidential intermediary systems, much like the one in Maryland, in which a confidential intermediary is certified to have access to adoption records in order to conduct a search for adoptees or biological family members and attempt to obtain their consent for contact.

Nonidentifying Information

Although states differ widely on access to original birth certificates, there is legal and social consensus on the benefits of sharing "nonidentifying information." All states have statutory provisions allowing access to nonidentifying information by an adoptive parent or a guardian of an adopted individual who is still a minor.[33] Over half of the states allow biological parents access to nonidentifying information, which is usually the health and social history of the child.[34]

In order to facilitate access, states have varying requirements regarding what information must be collected about adopted individuals and their biological relatives. In most states, including Maryland, this information is compiled by the child placement agency, the state child welfare agency, or another designated person or agency that arranged the adoption. In some states, the court may designate a specially trained investigator to complete the report on the biological family.

The information generally includes medical and mental health history. Other information may include family and social background, placement history, school records, the child's religious and ethnic background, and notice of any history of abuse or neglect. Records in Alabama, Pennsylvania, and the District of Columbia must disclose any known assets or property owned by the child. While the required information is most often limited to that of the biological parents, in 16 states, the same types of information must be collected and disclosed about extended family members if possible.[35] Additionally, some states require information on physical appearance, talents, hobbies, field of occupation, and any known drugs taken by the biological mother during pregnancy.[36]

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[33] *Access to Adoption Records*, by the Child Welfare Information Gateway (2012).

[34] *Id.*

[35] *Collection of Family Information About Adopted Persons and Their Birth Families*, by the Child Welfare Information Gateway (2012).

[36] *Id.*

Constitutional Challenges

Since the 1970s, adopted individuals have challenged the sealing of birth and adoption records and have attempted to assert a constitutional right to their birth information.[37] Likewise, biological parents have claimed a constitutional right to privacy. Both claims have been unsuccessful in the courts.

In *ALMA v. Mellon*, 601 F.2d. 1225 (1979), the United States Court of Appeals for the Second Circuit examined whether adoptees were constitutionally entitled upon reaching adulthood to obtain their sealed adoption records, without the statutory requirement of a showing of good cause. Adoptees argued that learning the identity of their biological families was a fundamental right under the due process clause of the 14th Amendment to the U.S. Constitution. The court rejected this claim, stating that the New York statute at issue did not constitutionally infringe upon or arbitrarily remove the adoptees' rights of identity, privacy, or personhood. The court recognized that the State must take into account the relationships and choices that were made by those other than the adoptee and that the statute, in providing for the release of information on a showing of good cause, properly considered these relationships. The court also rejected a challenge on equal protection grounds.

The right of adult adoptee access to birth records in Oregon was restored following a voter referendum. Following the referendum, after a well publicized opposition to the measure, the state's Court of Appeals rejected a claimed right to privacy asserted by the biological parents. The court held that although adoption was generally an option that was available to women, it was not a fundamental right. Because there was no fundamental right to adoption, there can be no correlative fundamental right for a biological mother to have her child adopted under circumstances that guarantee that her identity will remain confidential.[38] Similarly, Tennessee's statute providing access to adoption records was upheld after a series of challenges in state and federal courts, where biological parent assertions of privacy were rejected.[39]

Conclusion

Adoption philosophies have changed significantly since the time when the paramount concerns centered on protecting children from the stigma of illegitimacy. A shift in perspective toward openness in adoption in general has spurred states, including Maryland, to ease restrictions on access to adoption records but simultaneously to balance the potentially competing interests of biological parents. However, advocates for greater access to birth and adoption records are likely to continue to urge the General Assembly to retroactively open records for adoptions finalized prior to 2000.

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[37] *For the Records II: An Examination of the History and Impact of Adult Adoptee Access to Original Birth Certificates*, by the Evan B. Donaldson Adoption Institute (2010).

[38] *See*, Does v. State of Oregon, 993 P.2d 822 (Or. 1999).

[39] *See*, Doe v. Sundquist, 106 F. 3d 702 (1997) and Doe v. Sundquist, 2 S.W. 3d 919 (Tenn. 1999).