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FOR THE RECORDS II:

An Examination of the History and Impact Of Adult Adoptee Access to Original Birth Certificates

Policy & Practice Perspective

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Executive Summary

At a time when an array of complex adoption-related concerns are being discussed from Haiti to Moscow to Beijing, within the adoption community in our country, one seemingly simple question continues to receive the most consistent, intense attention: Should adopted adults, like all other Americans, be allowed to have their original birth certificates? Indeed, for over a generation, no other adoption issue has generated more debate or caused greater division.

Today, more efforts to restore adult adoptee access to original birth certificates (OBCs) are being mounted than ever before. In the three legislative sessions that have begun since the Evan B. Donaldson Adoption Institute's November 2007 publication of "For the Records: Restoring a Legal Right for Adult Adoptees" (of which this report is an update), OBC legislation has been introduced from coast to coast. In the 2009–2010 sessions alone, lawmakers in at least 11 states considered the issue – and in at least one, Illinois – they have enacted a statute in recent weeks significantly expanding OBC access, making theirs the seventh state to do so in the last decade. During the same period, Massachusetts has implemented a narrower OBC access law, while activists in several more states, including New Jersey and Rhode Island, have been organizing, fund-raising, and taking other steps intended to result in yet more legislation.

Though support is clearly growing for the "open records" movement, as it is often called, proponents are hardly declaring that victory is on the horizon. Most of their efforts have been unsuccessful, and many of the OBC laws that have been enacted are compromises that grant access to some adoptees but not to others; these compromises open an emotional divide among advocates on whether they are championing the majority or betraying those left behind.

A major reason such compromises are offered – and why more states have not enacted access legislation – appears to be that much of the debate has been muddied by misunderstandings about the history of the issue, misconceptions about the parties involved, and mistaken concerns about the consequences of changing the status quo. It is commonly argued during the legislative process in every state, for instance, that OBCs are sealed to protect the anonymity that birthmothers were promised, and that changing the rules now would undermine their lives and be harmful in other ways (such as increasing the number of abortions). An examination of the research and other evidence, however, shows that all those assertions are flawed or incorrect.

This paper examines the most current evidence related to restoring adult adoptee access to original birth certificates, updating the Adoption Institute's 2007 *For the Records* report.

A lengthy examination and analysis of the arguments on both sides of the debate leads to these primary findings:

- **Barring adopted adults from access to their original birth certificates wrongly denies them a right enjoyed by all others in our country, and is not in their best interests for personal and medical reasons.**
- **Alternative solutions to providing adopted adults access to their OBCs, such as mutual consent registries, are ineffective and do not adequately address the needs of adopted persons.**
- **The overwhelming majority of birthmothers do not want to remain anonymous to the children they relinquished for adoption and support (or do not oppose) those children's access to their OBCs.**

- **Providing adult adoptees with access to their original birth certificates does not threaten the integrity of adoptive families or the institution of adoption; indeed, the evidence suggests that the opposite is the case.**
- **In other countries and in U.S. states that have restored adopted adults' access to OBCs, or never sealed these records at all, there is no evidence of any of the significant negative consequences critics predict.**

Based on these findings, the Adoption Institute recommends significant changes in current adoption law and policy in order to restore adopted persons' rights to information about their origins and heritage – and to achieve equality for the members of all families, regardless of how they are formed.

Recommendations

- ***Every state should restore unrestricted access to original birth certificates for all adult adoptees, retroactively and prospectively.*** The experiences of many other countries, of U.S. states where birth certificates have never been sealed from adopted persons, and of those states that have restored access, all indicate that there are few if any problems when access is granted. There is no significant legal, experiential or factual rationale for denying adopted adults the right to access their OBCs – a right that is enjoyed by all non-adopted Americans. Allowing access with the provision for contact preference forms is a practical solution that affords birthparents a greater opportunity to express their wishes – and therefore greater “protection” than they currently have with sealed records.
- ***State laws that provide access to original birth certificates to a limited number of adult adoptees should be amended to enable them all to obtain these documents and thereby be treated equally.*** Allowing some adopted citizens access while denying it to others is inequitable on its face. The evidence in states that place restrictions on who may obtain OBCs is the same as it is in states that allow universal access; i.e., none of the predicted negative consequences occur. So there is no substantive reason to prevent an expansion of their laws to include all adopted persons once they reach the age of majority.
- ***No agency, attorney, social worker or other adoption professional should promise birthparents that their identities will remain concealed from their children.*** There is no constitutional, legally enforceable “right to privacy” for birthparents from the children they created. Some states that sealed OBCs in the past have opened them and more are likely to do so in the future. Moreover, courts may open records upon petition and, finally and most pointedly, it is becoming increasingly possible for birthparents (among others) to be found via the internet, through search professionals, and with other modern resources. As a consequence of all those factors, it is clear that anonymity cannot be assured with any certainty; promises of lifelong confidentiality are therefore contrary to best adoption practices.
- ***A national adoption registry should be implemented to enable all adopted persons and their birthparents, no matter where they reside, to participate.*** Registries should not ever be viewed as an alternative to access to OBCs, and the evidence is clear that state-specific mutual consent registries are generally ineffective. A well-publicized national registry, however, would allow adoptees, birthparents and other family members to find each other across state lines, thereby mitigating some current problems and playing an important role until all states restore the right of adopted adults to access their original birth certificates.
- ***Confidential intermediary services should be available throughout all states, even after original birth certificates access is restored.*** Many if not most adopted persons, birthparents and other involved parties prefer to search and make contacts themselves – but some want or need help. Confidential intermediaries can be valuable resources to provide

guidance and support for those who are unsure about making contact to obtain information or to arrange a reunion. Ideally, these services should be either subsidized by the state or made available at a very reasonable cost to participants.

Conclusion

Some opponents of restoring access to original birth certificates cast adult adoptees' desire for this basic information about themselves as a matter of curiosity, a simple interest that can be satisfied through other means, while others express seemingly substantive concerns about the implications of altering current law. Some proponents of unsealing OBCs focus on search, reunion and medical information as the key issues, while others say the bottom line need not include any of those issues because the debate is really about equal rights and social justice.

Wherever one stands, this much is clear: The laws on the books in most states do not benefit the vast majority of the affected parties, and therefore should be changed. Modern adoption practice, with its emphasis on openness, honesty and family connections should be the operating model. It is time to end the secrecy that has not only resulted in shame and stigma for nearly everyone concerned, but also has undermined the institution itself by sending a signal from the very start – at the time a birth certificate is issued – that adoption has something to hide.