

PAUL TITTL

STATE REPRESENTATIVE • 25TH ASSEMBLY DISTRICT

Assembly Committee on Family Law

Assembly Bill 579

January 7, 2019

First of all, thank you Chair Rodriguez and members of the committee for allowing me to testify before you today concerning Assembly Bill 579.

Have you ever thought about what it would be like not to know one person in the world who is related to you? This bill allows adopted children who have attained the age of 21 the right to obtain a copy of the Report of Adoption. That report enables them to learn the names of their birth parents.

Under current law birth parents must file forms granting the state permission to release their names to an adopted child. If birth parents decline permission or cannot be located, adopted children will not be able to learn the names.

After New Hampshire changed its adoption laws 1,760 adoptees requested birth certificates from December 2004 through December 2015, and only 13 birth parents filled out forms saying they did not want to be contacted by the child they gave up for adoption.

The prohibition on access to one's personal information raises significant civil rights concerns. More than 20 years ago the Tennessee Court addressed these concerns and upheld the right of adoptees to learn the identity of their birth parents (1996). The US Supreme Court refused to hear the case, thereby letting the Tennessee decision stand. In 2000, the US Supreme Court refused to hear an appeal of a similar Oregon law.

As chair of the Assembly Committee on Mental Health, I am especially concerned about the mental health struggles many adoptees face as they deal with not knowing very basic information about their birth. (see the attached quote from the Donaldson Adoption Institute)

The stigma associated with adoption has changed dramatically over the last fifty years, and a number of states have changed their laws so adult adoptees can learn the names of their birth parents. Most recently, the state of New York changed its law, and it is time for Wisconsin to do so as well.

Finally, others who testify today may request the bill be amended to provide adoptees access to an original, unredacted birth certificate or to provide access at age 18. I am open to amending the bill in both of those respects if doing so will help it progress through the legislative process.

Thank you for this opportunity to testify before you today. I would be happy to take any questions.

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1. Ohio Right to Life Supports Law Permitting Adult Adoptees to Access Their Original Birth Certificates (The Columbus Dispatch, Dec 20, 2013):

For decades, adoptees and their supporters have fought for access to their birth records.

Like-minded lawmakers have introduced numerous bills in the General Assembly over the years, but all were doomed by opposition from anti-abortion forces, including the influential Ohio Right to Life. Those groups feared it would promote abortion because fewer women would opt for adoption if their identities weren't kept private.

But yesterday, Mike Gonidakis, executive director of Ohio Right to Life and the father of two adopted children, was among those celebrating as Gov. John Kasich signed into law a bill giving an estimated 400,000 adult adoptees access to their original birth certificates.

"Times have changed so much," Gonidakis said. "Now there is the Internet and Google, and you can find out all sorts of things about people in 10 minutes."

2. Donaldson Adoption Institute Expresses Concern about Mental Health Problems Adult Adoptees May Face (FOR THE RECORDS II: An Examination of the History and Impact Of Adult Adoptee Access to Original Birth Certificates July, 2010)

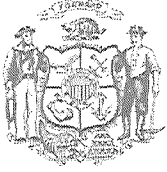
Lack of access can also lead to mental health problems. A Donaldson Adoption Institute report states, "Adopted individuals who feel a strong need for information but are unable after much effort to find satisfactory answers can feel profound powerlessness and experience emotional struggles that are detrimental to their mental health and life satisfaction." Some adopted individuals who are barred from accessing facts about their origins feel continuing shame and a sense of "being lesser."

3. Cuomo Signs NY Adoption Law Ending Decades of Secrecy (Syracuse.com, November 14, 2019)

New York Gov. Andrew Cuomo signed a landmark bill into law Thursday that will end 84 years of secrecy surrounding adoptions in the state.

For the first time since 1935 when the state sealed adoption records, adoptees will be able to obtain their original birth certificate when they turn 18 and find out the names of their birth parents.

Assembly member Pam Hunter, D-Syracuse, an adoptee who championed changing the law, gave an emotional speech on the Assembly floor before lawmakers passed the bill in June.



ANDRÉ JACQUE

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*Testimony before the Assembly Committee on Family Law
State Senator André Jacque
January 7, 2020*

Madam Chair Rodriguez and Committee Members,

Thank you for holding this hearing on Assembly Bill 579, relating to providing access by an adult adoptee to report of adoption. I am happy to join Rep. Tittl in bringing forward this legislation.

Assembly Bill 579 allows adopted children who have attained the age of 21 the right to obtain a copy of the Report of Adoption. That report enables them to learn the names of their birth parents.

Under current law they are able to get that information only if both birth parents have filed forms with the state granting permission. If one of the birth parents has died without granting permission, adopted children will never be able to learn the names.

The stigma associated with adoption has changed dramatically over the last fifty years, and a number of states have changed their laws and now allow adult adoptees to learn the names of their birth parents. It's time for Wisconsin to change as well.

After Rhode Island and New Hampshire changed their adoption laws, subsequent records showed that 95% of birth parents who had placed their children up for adoption later hoped their children would contact them.

Barring access to one's personal information raises significant civil rights concerns, and the US Supreme Court has ruled an adoptee's right to know overrides the right of a birth parent to remain anonymous.

Thank you for your consideration of Assembly Bill 579.



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Governor Tony Evers
Secretary Emilie Amundson
Secretary's Office

TO: Chair Rodriguez and Members of the Assembly Committee on Family Law

FROM: Emily Erickson, Director, Bureau of Permanence and Out-of-Home Care
Fredri Bove, Senior Policy Advisor

DATE: January 7, 2020

SUBJECT: 2019 Assembly Bill 579

Thank you for the opportunity to provide testimony on Assembly Bill (AB) 579. The Department of Children and Families (DCF) is testifying for information on the bill. The purpose of our testimony today is to bring to the attention of legislators the implications of the bill as drafted and of possible modifications to the bill.

The Department of Children and Families is committed to the goal that **all** Wisconsin children and youth are safe and loved members of thriving families and communities.

Wisconsin has embraced, as a long-standing principle, balancing the value of an adult adoptee in knowing his/her biological background for medical, social, cultural, and emotional reasons, with the right to privacy for a birth parent. This principle underlies Wisconsin's current Adoption Records Search Program which is established by statute (s. 48.432 and s. 48.433) and is administered by the Department of Children and Families.

Under the current Adoption Records Search Program, an adult adoptee at age 18 or older can request from DCF social history information, medical and genetic information about birth parents and family members, and the identity of a birth parent. DCF discloses the identity of the birth parent to the adult adoptee only if the birth parent consents or the birth parents are deceased. If the birth parent does not consent to disclosure of identity, DCF provides the adult adoptee medical, genetic, and social history information in a non-identifying manner (i.e., with the birth parent name(s) redacted).

AB 579 requires DHS to release upon request of the adult adoptee the Record of Adoption, which includes the disclosure of the identity of a birth mother who placed a child for adoption,

including the identity of birth mothers who have chosen and been assured confidentiality under current law. In effect, the bill rescinds the confidentiality protection that was extended to birth mothers at the time the mother placed her child for adoption. These birth mothers are likely to have progressed to different stages of their lives; exposing their past decision may be distressing and disruptive to them and their current relationships with family members, friends, faith community and/or professional colleagues. *For these reasons, the Department encourages the Committee to consider including in the bill provisions that respect and maintain the privacy rights of birth mothers under current law; for example, by exempting from the bill's provisions records involving birth mothers who have not consented to disclosure under current law.*

In addition, the bill creates a complicated process for adoptees to obtain adoption-related information by requiring the adoptee to request certain adoption-related information from the Department of Health Services and access other adoption information through the Department of Children and Families. In addition, the bill does not align the minimum age requirement or confidentiality provisions across the two departments, with the result DCF would need to continue to redact the names of birth parents who have not provided consent to DCF, even though these names had been disclosed to the adult adoptee by DHS, creating unnecessary workload for the Department and confusion for the client. *The Department encourages the Committee to consider modifying the bill to streamline the procedure by allowing the adult adoptee to access the information covered by the bill through a single state agency, the Department of Children and Families, at the age of 18 or older.*

The federal Indian Child Welfare Act (ICWA), which is also codified in state law as the Wisconsin Indian Child Welfare Act (WICWA), includes provisions to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families, including measures to ensure that tribal children placed in out-of-home care settings through the child welfare system and adopted are able to maintain connections to their tribal culture and community. *To comply with ICWA/WICWA requirements, the Department encourages the Committee to consider modifying the bill to clarify that requirements related to Indian children in s. 48.028(9) and 2016 Federal Regulation 25 C.F.R. §23.138 that require disclosure of tribal affiliation to an adult adoptee continue to hold.*

The Department recognizes the value to adult adoptees of knowing one's birth and adoption history for medical, social, cultural, and emotional reasons. The Department also recognizes the confidentiality protections that were extended to birth parents under current law at the time the child was placed for adoption. The Department is pleased to engage with the Committee and others in further discussions on possible modifications as proposed in this testimony to achieve the goal of developing statutory changes that balance the interests of all stakeholders, provide streamlined access to information for Wisconsin citizens, avoid unintended consequences, and support Wisconsin children and families to pursue fulfilling and healthy lives. We are pleased to respond to any questions.

HOW DOES THE LAW AFFECT ADOPTIVE PARENTS?

The DCF must attempt to notify the adoptive parents of a minor child when written information is received from a licensed physician verifying that a birth parent or biological sibling has developed a genetically transferable disease or condition.

Adoptive parents may request medical/genetic information and non-identifying social history information about their adopted child's birth parents.

OTHER PERSONS ELIGIBLE TO REQUEST MEDICAL/GENETIC INFORMATION

- The guardian or legal custodian of an adopted person or of an individual whose birth parents terminated parental rights.
- the offspring of an adopted person if he or she is at least 18.
- an agency or social worker assigned to provide services to the adopted person.
- The parent or guardian of a deceased adoptee's child.

Physicians can direct the program to pass on genetically transferable disease information about adopted persons, individuals, birth parents or siblings to adopted persons, individuals or birth parents.

ADULTS WHOSE BIRTH PARENTS TERMINATED PARENTAL RIGHTS

Adults who were not legally adopted as children but whose birth parents terminated parental rights in Wisconsin have the same services available under this program as adult adoptees.

SEARCH FEES

An hourly fee is charged for the release of medical, genetic and non-identifying social history information contained in existing closed adoption records. The maximum charge for preparing these materials is limited to \$150.

An hourly fee is also charged for a search for birth parents.

Some applicants may be eligible for a fee reduction. Additional information about Program fees can be found on the Adoption Records Search Program application form.

FOR MORE INFORMATION ON THIS PROGRAM OR TO REQUEST AN AFFIDAVIT OR APPLICATION PACKET, CONTACT:

Adoption Records Search Program
DCF/DSP
P.O. Box 8916
Madison, WI 53708-8916
(608) 422-6928

E-mail:

dcfadoptionsearch@wisconsin.gov

Website:

<https://dcf.wisconsin.gov/adoption/search>

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DCF-P-PFS0005A (R. 08/2018)

ADOPTION RECORDS SEARCH PROGRAM



A SPECIALIZED PROGRAM FOR:

ADULT ADOPTED PERSONS
ADULTS WHOSE BIRTH PARENTS
TERMINATED PARENTAL RIGHTS BUT WERE
NOT ADOPTED
ADOPTIVE PARENTS
BIRTH PARENTS

DIVISION OF SAFETY AND PERMANENCE

THE WISCONSIN ADOPTION RECORDS SEARCH LAW

Wisconsin's adoption record search law is set forth in sections 48.432 and 48.433, Wisconsin Statutes. It is administered by the Wisconsin Department of Children and Families (DCF).

The primary purpose of this law is to help persons who have been adopted or whose birth parents have terminated their parental rights, to obtain information about themselves and their birth relatives. This information may include:

- Non-identifying social history information.
- Medical and genetic information about birth parents and members of their families, including routine health information and any known hereditary or degenerative diseases.
- Most recent names and address of birth parents in DCF files.
- A copy of the impounded birth certificate (the birth certificate on file prior to the time of adoption).

The law specifies conditions and protections under which the search may be conducted. Birth parents have the option to file a notarized statement (affidavit) with DCF consenting to the release of their identities or to refuse to allow the release of their identities.

Adult adoptees may also file a consent allowing for their contact information to be released to a birth parent who requests it.

ADMINISTRATION OF THE LAW

The law requires DCF to assist eligible persons to obtain medical and genetic information from and, or locate their birth parents.

The law establishes procedures for adults whose birth parents have terminated parental rights and adopted persons to search for their birth parents.

The law also:

- Requires Circuit Courts to report medical and genetic information on both birth parents and relatives to DCF at the time parental rights are terminated in Wisconsin.
- Requires DCF to maintain a permanent centralized birth record file on all adoptions completed within the State.
- Allows adoptive parents to request medical and genetic and non-identifying social history information from existing records or to request updated medical or genetic information from their children's birth parents.

HOW DOES THE LAW AFFECT ADOPTED PERSONS?

A person who was adopted in Wisconsin who is now age 18 or older may request a search for his or her birth parents. A birth parent must file an affidavit of consent before any identifying information can be released.

If an affidavit is not already on file, a search for the birth parent will be conducted. The birth parent is then contacted and given the option of signing an affidavit to release identifying information – or refusing.

When paternity was legally established, both birth parents must file affidavits before the identity of either one of them may be released to the adopted person. If the adopted person was born in Wisconsin, a copy of his or her impounded birth certificate can be released once the birth parents have filed affidavits.

An adopted person can also request non-identifying information from his or her adoption file and updated medical and genetic information about his or her birth parents. If updated information is requested, a search for the birth parent will be conducted to obtain the information.

An adopted person may file a notarized affidavit with DCF consenting to the release of his/her identity to a birth parent upon request.

The DCF makes every effort to notify an adopted person or his or her adoptive parents (if not yet 18 years old), if we receive information that a birth parent or biological sibling has developed a genetically transferable disease or condition.

HOW DOES THE LAW AFFECT BIRTH PARENTS?

A birth parent may file a notarized affidavit with DCF consenting to the release of his/her identity and location and a copy of the impounded birth certificate to the adopted person.

A birth parent may revoke the affidavit (withdraw their consent) at any time by writing to the Adoption Records Search Program.

A birth parent may request the most recent name and address of the birth child they placed for adoption if the birth child has an affidavit of consent on file with DCF.

Birth parents are required to provide medical/genetic information to the court at the time parental rights are terminated. Updated medical/genetic information may be filed with DCF any time. Forms are available from Adoption Records Search Program for this purpose.

A birth parent may request the Program to notify an adoptee, if a genetically transferable disease or condition is present in the family. A statement from a licensed physician is required.

HOW DOES THE LAW AFFECT SIBLINGS?

The current adoption search law does NOT allow siblings to request searches for each other. Some medical information about siblings may be included in the non-identifying social history record.

Re: Supporting Original Birth Certificate access for Wisconsin Adoptees

Dear Committee on Family Law Members,

Thank you for your attention to this letter explaining how state laws might affect your adopted constituents.

I love my adoptive family very much and they love me.

I was hurt by closed records laws. In a closed adoption with my records sealed from me by the state, I believed that I was "less than" and did not deserve knowledge of myself, even to know who my biological parents were. They were a secret and my original identity, family history, and genetic ancestry were all hidden. I understood enough to know that secrets that are illegal to know and talk about must be really bad, so I must be really bad. I internalized these messages as I was growing up. Healthy self-esteem or a feeling of self worth is a tall order when one identifies as a shameful secret.

In my late forties, after obtaining my state records, I began to question the truth of those beliefs.

Truth is a positive way to implement adoption laws and practices. The secrecy and shame of decades past are out of date and damaging to individuals like me. Adopted adults deserve the right to full access to all their adoption records and original birth certificate without restrictions. I hope laws will be changed to support adoptees' rights to access their own records, just like people who enjoy non-adopted status have.

Sincerely,

Erika Ostern

To
Assembly Committee on Family Law

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RE: Assembly Bill 579 concerning access to adoption reports

Chairman and the members of the Committee

I am a professor at the University of Baltimore School of Law, where I teach courses in the areas of constitutional law, family law, and professional responsibility. Since the 1990s my research and writing have focused on adoption law, including the history of the law governing adoption records. (I provide citations and links.)

An understanding of that history is part of what has led legislators in many states to restore access to records that were denied at some point to adult adoptees. As I explain below, states closed records to protect adoptive families' privacy and to protect them from possible interference by birth parents. The states' laws have not guaranteed lifelong anonymity for birth parents. Birth mothers during the last century were not given a choice about or promised even confidentiality in the surrender papers they signed. Those who sought confidentiality sought to conceal their pregnancy from their families or communities rather than to conceal forever their identity from their child or foreclose for themselves any chance of learning how their child fared in life. This history is consistent with the fact that birth mothers have been among the most vocal supporters of adult adoptee access to records.

1. Why were records closed? When adoption records around the United States were closed to inspection by the parties to the adoption as well as the public, they were closed to protect adoptive families' privacy and to protect adoptive families from possible interference or harassment by birth parents, not to protect birth parents' privacy.

In the 1940s and 1950s, many states followed the recommendation of adoption and vital statistics experts to make adoption court records and original birth certificates generally available only by court order, but to keep original birth records available on demand to adult adoptees. This was the recommendation of the first Uniform Adoption Act, promulgated in 1953. Similarly, the position of the United States Children's Bureau was that adopted adults have a "right to know who he is and who his people were."

Despite the experts' recommendations, many states, including Wisconsin, did begin to close original birth records to adult adoptees as well as others. By 1960, 26 states had done so, although in a few of those states, court records remained available for some time after that date to adoptive parents or to adult adoptees, or both. In the states in which access to both court and birth records had become available only by court order, the reason given for closing records to the parties was the need to protect adoptive families from birth parents, not to protect the privacy of birth parents.

Of the states that in 1960 still recognized adult adoptees' right to original birth certificates on demand, four states closed the original birth records in the 1960s, six states closed them in the 1970s, and seven more did so only after 1979. The records were never closed and have always been available in Alaska and Kansas. Since 1990, when Alabama closed these records, some eighteen XXXXX states have made records available to all or most adoptees.

2. Has the law guaranteed lifelong anonymity for birth parents? As federal and state courts have found in cases challenging restored access, lifelong anonymity has not been guaranteed by federal or state constitutions or by the state laws sealing court and birth records. And confidentiality has not been promised in the agreements that birth mothers entered into when they surrendered their children for adoption. Adoption records have been accessible by court order without notice to birth parents. It has typically been up to the adoptive parents, not the birth parents, whether to change the child's name (and often even whether to have an amended birth certificate issued). In many adoptions, the adoptive parents have received copies of documents with identifying information about the birth mother.

When the first two states restored access that had been closed to adult adoptees -- Tennessee and Oregon -- their laws were unsuccessfully challenged in the courts. The Oregon courts held that under state and federal constitutions, the law neither unconstitutionally impaired the obligation of contract nor invaded a guaranteed privacy right. Oregon's typical adoption laws never "prevented all dissemination of information concerning the identities of birth mothers. At no time in Oregon's history have the adoption laws required the consent of, or even notice to, a birth mother on the opening of adoption records or sealed birth certificates." A birth mother does not have "a fundamental right to give birth to a child and then have someone else assume legal responsibility for that child Adoption necessarily involves a child that already has been born, and a birth is, and historically has been, essentially a public event."

Opponents of the Tennessee law argued unsuccessfully in federal court that the law violated constitutional rights of birth mothers to familial privacy, reproductive privacy, and the non-disclosure of private information. In subsequent state court litigation, the Tennessee Supreme Court upheld the statute, deciding under the state constitution that the law neither impaired birth mothers' vested rights nor violated their right to privacy. The court noted that early state law did not require sealing records, and that later law permitted disclosure upon "a judicial finding that disclosure was in the best interest of the adopted person and the public," with no requirement that birth parents be notified or have an opportunity to veto contact. The court found that "[t]here simply has never been an absolute guarantee or even a reasonable expectation by the birth parent" that records would never be opened.¹

3. What choices were given and what promises were made to birth mothers by adoption agencies and other adoption facilitators? Opponents of adult adoptee access to original birth certificates have never produced a copy of a document that promises a birth mother even confidentiality on the part of the agency or facilitator. This fact inspired me to investigate what the surrender agreements did provide. I collected documents from birth mothers who were given copies of the documents they signed; many birth mothers were not. I have analyzed 77 documents signed by birth mothers from the late 1930s to 1990, the date the last state passed a law denying access to adult adoptees. From decade to decade and from state to state, the provisions of these documents are the same.

¹ Language in this and the previous paragraph is taken from pages 432-434 of my 2001 article, which is cited at the end of this testimony.

The birth mother surrenders all of her parental rights and is relieved of all of her parental obligations. She does not retain or acquire any rights. A Wisconsin mother, for example, in a two-sentence form in 1988 “freely consent[ed] that an order be made . . . terminating all my parental rights to said child and appointing a guardian. I fully understand that upon such termination of my parental rights, said child may be adopted without any further hearing or notice to me.” While an adoption of the child is an aim or the aim of these surrenders, there is no promise that the child will be adopted. Many documents spell out the possible alternatives of foster care or institutionalization. The birth mother has no right to notice of any future proceeding and therefore never knows if the child is successfully adopted. If the child is not adopted, there is no amended birth certificate.

None of the documents promise the birth mother confidentiality or lifelong anonymity, the latter of which an agency of course could not guarantee. Responsible adoption services providers have known at least since the 1970s that adoption experts were increasingly supporting adult adoptee access to information and that legislative efforts were underway to restore access in those states in which it had been foreclosed.

Forty percent of the documents do, however, contain promises about future access to information or future contact. *It is the birth mother who promises that she will not seek information about the child or interfere with the adoptive family.*

4. Did birth mothers -- although they were not and could not be offered a choice of whether to remain forever unknown to their children -- desire confidentiality or anonymity? As a commission appointed by the governor of my state of Maryland found in 1980, the birthmother “had no choice about future contact with her relinquished child;” “[s]ecrecy was not offered her, it was *required* . . . as a condition of the adoption.” The evidence is that birth mothers who sought confidentiality were seeking to conceal their pregnancies from their parents, or from other members of their communities, rather than to conceal their identities forever from their children or to foreclose for themselves any chance of learning how their children fared in life.

This historical account is consistent with today’s realities. Openness is now the norm in domestic infant adoptions, and the common understanding is that birth parents are more open to placing their children for adoption *if* there will be a degree of openness in the adoption arrangement. With respect to birth parents’ current attitudes about adult adoptees’ access to original birth certificates, studies and surveys conducted since the 1980s show that overwhelmingly large majorities of birth parents, up to 95 percent and above, either do not oppose, or approve of, or actively support access and are open to contact with their children. Many birth parents as well as adult adoptees spend years, and considerable sums of money, searching for information about one another. DNA databases are increasingly helping adoptees find biological relatives. While many are successful in their searches, as countless stories in the media attest, many adult adoptees who search for information about their original identities remain unsuccessful and frustrated because they lack access to original birth records.

5. Has restoring adult adoptee access to records proved beneficial? States’ legal systems in which adult adoptees have access to original birth records are operating successfully, including those systems in which records have always been open and those systems in which formerly closed records have been opened to adult adoptees. In all of those states, adult adoptees are not arbitrarily separated into two groups -- adoptees who are able to find information about their origins without access to birth records and

adoptees who are not able to find information without that access. Adult adoptees have obtained fundamental information about themselves; and in cases in which adoptees and birth parents have wished to meet and become acquainted, access has led to countless fulfilling reunions.

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Related references:

Surrender and Subordination: Birth Mothers and Adoption Law Reform, 20 Michigan Journal of Law and Gender 33 (2013). (Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2233400.)

The Strange History of Adult Adoptee Access to Original Birth Records, 5 Adoption Quarterly 63 (2001). (Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1281475.)

The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records, 53 Rutgers L. Rev. 367-437 (2001). (Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=275730.)