

ACCESS TO ADOPTION RECORDS - LAWS OF OTHER STATES

INTRODUCTION

Generally, adoption is a creature of state law. The law pertaining to access to adoption records varies from state to state. An individual's ability to access adoption records may depend on a variety of factors, including the relation of the individual, such as adoptee, adoptive parent, birth parent, or birth sibling; the type of information being sought, such as identifying information or nonidentifying information; the date of the adoption proceeding; and the age of the person seeking the information.

NORTH DAKOTA LAW

Birth Certificate

North Dakota Century Code Section 23-02.1-18 provides that the state registrar shall establish a new birth certificate for an adoptee born in the state unless directed otherwise by the court decreeing the adoption, the adoptive parents, or the adoptee. This section provides that if a new birth certificate is established, the new birth certificate must be substituted for the original birth certificate and thereafter the original birth certificate and the evidence of adoption, paternity, or legitimation are not subject to inspection except upon order of a court or as provided by rules and regulations. There does not appear to be any administrative rule addressing this issue.

Nonidentifying Information

North Dakota Century Code Section 14-15-16(5) provides that nonidentifying information, if known, concerning undisclosed genetic parents must be provided to adoptive parents at the time of adoptive placement or upon the adoptive parents' request and must be provided to an adult adoptee upon written request. Additionally, adoptive parents, the guardian of an adopted minor child, and an adopted adult may request a certified copy of an adoption decree if the decree does not disclose the identity of the genetic parents or the name of the adoptee before the adoption proceedings.

North Dakota Century Code Section 14-15-16(10) provides that a genetic parent may request the Department of Human Services to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency, and Section 14-15-16(8) provides that an adult adopted individual may request the Department of Human Services to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.

Identifying Information

North Dakota Century Code Section 14-15-16(8) and (9) provide that an adult adoptee may request the Department of Human Services initiate the disclosure of information identifying the adoptee's genetic parents and adult genetic siblings. Additionally, Section 14-15-16(11) provides that an adult genetic sibling of an adult adoptee may request the Department of Human Services initiate disclosure of information identifying that individual. Section 14-15-16(15) provides that an adoptee, a genetic parent, or a genetic sibling, with respect to whom a disclosure of identifying information has been requested, may authorize or refuse to authorize disclosure. Finally, an adoptee, a genetic parent, or a genetic sibling, or a guardian of any of these individuals may petition the district court for an order directing the disclosure of identifying information.

LAWS OF OTHER STATES

A variety of organizations track state laws relating to access to adoption information. Typically, these organizations track who has access to nonidentifying adoption information, who has access to identifying adoption information, and the mechanism for accessing this adoption information.

The Evan B. Donaldson Adoption Institute, <http://www.adoptioninstitute.org>, reports that the following six states allow adoptees access to original birth certificates without a court order: Alaska, Delaware, Kansas, Montana, Ohio, and Tennessee, and the following four states require a court order to access adoption records, regardless of the consent of the parties: Washington, D.C., New Jersey, North Carolina, and Virginia.

The adoptee rights organization Bastard Nation, <http://www.bastards.org>, tracks state adoption disclosure laws, specifically focusing on who may access nonidentifying adoption information, the search mechanism for seeking adoption information, and whether and to whom adoption records are accessible. As of August 7, 2000, Bastard Nation reports the following information <http://www.bastards.org/activism/access.htm>:

Adoption Disclosure Laws in all 50 States

State	Non-Identifying Information	Search Mechanisms	Records Access
Alabama	AD, AP	Passive Registry BP, Intermediary System AD	Unconditional access at majority, AD**
Alaska	Defined in law AD, AP	Passive Registry BP	Original Birth Certificate at age 18, AD
Arizona	AD, AP, BP	Intermediary System AD, AP, AD	By court order only
Arkansas	Defined in law AD, AP, BP	Passive Registry, AD, BS, BP w/ counseling, Intermediary System AD, BP	By court order only
California	AD, AP, BP	Waiver System, AD, AP, BS, BP**	Determined by county procedure or by court order, depending on record
Colorado	AD, AP (not required to be released to latter)	Intermediary System AD, BP, BS; Passive Registry BP, AD; Disclosure Veto	Post 1999 placements, records released to adult AD unless BP Disclosure Veto is filed. Everyone else by court order only
Connecticut	Defined in law AD, AP, BP	Intermediary System, AD, AP, BP	By court order only
Delaware	AD, AP, BP	Active Registry AD, AP, BP	Original Birth Certificate at age 21, AD, unless BP Disclosure Veto
Washington D.C.	No provisions	No provisions	By court order only
Florida	AD, AP	Passive Registry, AD, AP, BP; Intermediary System, AD, BP**	By court order only
Georgia	Defined in law AD, AP	Active Registry AD, BS; Passive Registry, BP**	By court order only
Hawaii	AD, AP, BP	Pre '91 Active Registry AD, Post '91 Disclosure Veto**	By court order only**
Idaho	No provisions	Passive Registry, AD, BP, BS	By court order only
Illinois	AD, AP	Passive Registry, AD, BS, BP**	By court order only
Indiana	AD, AP, BP	Intermediary System AD, BP Passive Registry AD, BP**	By court order only except pre-1940 records not sealed
Iowa	AD, AP	Passive Registry, AD, BP	By court order only
Kansas	AD, AP	Active Registry BP	All adoption records open to AD at age 18
Kentucky	AD, AP	Intermediary Program AD; Passive Registry, BP, BS**	AD access to records w/ consent of BPs
Louisiana	AP (AD, pre-'81) post '81 w/petition	Passive Registry, AD, BP w/ mandatory counseling	By court order only
Maine	AD, AP	Passive Registry, AD, AP, BP	By court order only
Maryland	AD, AP, BP	Passive Registry, AD, BP Intermediary System	By court order only**
Massachusetts	Defined in law AD, AP, BP	Waiver System AD, BP	By court order only
Michigan	Defined in law AD, AP, BP, BS	Waiver System maintained in Central Registry, AP, AD, BP, BS, Intermediary System BP, AD, BS, AP	By court order only

State	Non-Identifying Information	Search Mechanisms	Records Access
Minnesota	AD, AP, BP	Active Registry and Waiver System AD, BP	Post 1982 placements, records released to adult AD unless BP Disclosure Veto is filed
Mississippi	AD, AP	Intermediary System, AD, BP Registry (post-'94)	By court order only
Missouri	AD, AP	Active Registry, AD, BP; requires consent of APs for adoptions finalized before 1986	By court order only
Montana	AD, AP	Passive Registry AD, BP; Intermediary System AD, BP	Pre-1967 placements, Original Birth Certificate released to adult AD upon request. 1967-1997 AD requires court order, post-1997 placements records release to adult AD unless BP Disclosure Veto
Nebraska	AD, AP	Waiver System and Active Registry AD, AP, BP	Original Birth Certificate to AD over 25 w/ BP consent although AP can veto access even w/ BP consent**
Nevada	AP	Passive Registry AD, BP	By court order only
New Hampshire	AD, AP	Waiver System and Intermediary Program through the agencies AD, BP	By court order only
New Jersey	AP	No Provisions	By court order only
New Mexico	Defined in law AD, AP, BP	Intermediary System AD, BP, BS	By court order only
New York	AD, AP	Passive Registry AD, BP	By court order only
North Carolina	AD, AP, BP	No Provisions.	By court order only
North Dakota	AD, AP	Waiver System and Active Registry AD, BP, BS	By court order only
Ohio	No Provisions	Passive Registry AD BP BS	By court order only**
Oklahoma	AD, AP, BP	Passive Registry (unfunded) AD, BP; New Intermediary System	By court order only
Oregon	AD, AP, BP	Intermediary System AD, AP, BP	Original birth certificate at age 21, AD**
Pennsylvania	AD, AP	Intermediary System AD, Passive Registry BP, Medical Registry	AD Access to original birth certificate w/ waiver from BP
Rhode Island	AD, AP, BP	Passive Registry AD, BP	By court order only
South Carolina	AD, AP, BP	Passive Registry, AD, BP	By court order only
South Dakota	AD, AP	Passive Registry, AD, BP	By court order only
Tennessee	AD, AP	Active Registry AD, BP**	All records available to adult adoptee upon request. Disclosure Veto for adoptees that are products of rape/incest only. Contact veto
Texas	AD, AP	Passive Registry AD, BP	By court order only
Utah	AD, AP, BP	Passive Registry AD, BP	By court order only
Vermont	AD, AP, BP	Waiver System maintained in Central Registry AD, BP	Pre-'86 Access for AD w/ Consent of BP, and Post-'86 Access unless a BP Disclosure Veto is on file
Virginia	AD, AP	Intermediary System AD, BP	By court order only**

State	Non-Identifying Information	Search Mechanisms	Records Access
Washington	Defined in law. AD, AP, BP (not required to be released to latter)	Intermediary System AD, BP	By court order only**
West Virginia	AD, AP	Passive Registry AD, BP	By court order only
Wisconsin	AD, AP	Active Registry AD, Passive Registry BP	AD Access to Original Birth Certificate with consent of BP
Wyoming	AD, AP	Intermediary System and Registry AD, BP	By court order only

Notes on Specific States

****Alabama:** On May 15th, Alabama, the last state in the U.S. to deny adoptees access to their own records in 1991, became the first to open them unconditionally by legislative action. All adults in Alabama who have sealed original birth certificates will be able to request these in writing and begin receiving them on August 1, 2000. In addition to the sealed birth certificate, any evidence of the adoption contained within the same file will be released as well.

****California:** Birth siblings may also file waivers to be matched with the adoptee, but, in most jurisdictions, the birth parent must consent to release of identifying information if the sibling lived with the birth parent until he or she reached 18. Individual counties are given considerable freedom to interpret state adoption laws, with the effect that a number of counties release virtually all court controlled adoption records on demand of the adoptive parent and/or of the adult adoptee, with written permission of the adoptive parents. Other records practices have been recorded as well.

****Florida:** The intermediary system in Florida is not a traditional intermediary system as the law merely grants authority for agencies to contact the other party for a searching individual and notify the other party of the availability of the state mutual consent registry.

****Georgia:** An investigative team of television reporters discovered that over 1,500 people were registered with the Georgia Adoption Reunion Registry and waiting for matched to be made even though the department technically no longer existed as funding had ceased. In order to continue their work, GARR had become an active registry and had started charging for searches but had never notified the previous registrants whose files were sitting untouched. Thanks to the report, the state promised to contact all the individuals on the waiting list and inform them of the change. Release of Non-ID requires registration with GARR.

****Hawaii:** Pre-1991, if there is a waiver of confidentiality on file adoptees may obtain their records. If there is no waiver, the adoptee may request an intermediary to obtain a waiver from the birthparent. The intermediary has 120 days to complete a search. If the birthparent is not found, records are released to the adoptee. Post-1991 adoptees, if no disclosure veto is on file, the records are released at age 18. Same provisions for birthparents seeking identifying information and records about the adoptee. Birthparents may also obtain original birth certificates of their children.

****Illinois:** A pilot Intermediary project exists in some areas of IL where adoptees and birth parents can request written non-id and communication with relatives through Midwest Adoption Center in Des Plaines. Legislation passed in 1999 expands current state registry and expands criminal penalties for "unauthorized" disclosure of information.

****Indiana:** Beginning late 1994 a notice in vehicle registration renewals informed state residents about the registry.

****Kentucky:** Adoptees 18 years of age or older may register with the Cabinet for Human Resources their desire to have contact with "pre-adoptive siblings." If the siblings register, and are eighteen years of age or older, identifying information will be released. For sibling registry information, contact: Cabinet for Human Resources, Department for Social Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621. Telephone: (502) 564-2136.

****Maryland:** The State of Maryland reports: "Most adoption files before June 1, 1947 are open and available to any one. Please contact the circuit court that granted the adoption and request the file or case number. The circuit court will determine if they can provide a copy or refer you to us. Please note, however, that some adoption files before June 1, 1947 were sealed at the

request of the persons involved. You must contact the circuit court that granted the adoption and request the procedure for obtaining a copy of the record. There is no state-wide index to adoption records so the Archives is unable to determine the circuit court for you." Maryland legislature passed an intermediary system into law in 1998.

****Minnesota:** For adoptions finalized after August of 1977, if the Department is unable to locate and notify a birth parent listed on the original birth certificate and if neither birth parent has filed a denial of consent, identifying information may be disclosed to the adoptee without a court order.

****Nebraska:** The law reads that any adoptee over the age of 25 is entitled to their original birth certificate unless a birthparent has filed a disclosure veto. In practice, adoptees in Nebraska are not having any luck accessing their records unless an explicit waiver exists. The law also makes no provisions for adoptive parent veto that we see, although in practice that is occurring.

****Ohio:** Individuals adopted prior to 1964 may obtain their original birth certificates upon request, UNLESS sometime after 1964, someone requested the "reissuance" of a birth certificate in the adopted name, in which case, the original birth certificate was sealed. For adoptions occurring after 1964, access to the original birth certificate is available by court order only.

****Oregon:** Measure 58, a ballot initiative which opens original birth certificates to Oregon adoptees age 21 years or older, passed on November 3rd, 1998 by a vote of the people. Finally took effect after a fruitless court challenge on June 2, 2000.

****Tennessee:** Legislation passed in 1996 that would open all adoption records to adult with a disclosure veto provision for adoptees who were the product of rape or incest. Also contains a contact veto. The legislation was under a court stay pending the outcome of a lawsuit brought by the American Center for Law and Justice. This case was decided by the Tennessee Supreme Court in favor of the defendant in 1999, and records are now open in Tennessee, subject to the disclosure and contact veto provisions above.

****Virginia:** In parental placement adoptions, where the consent to the adoption was executed on or after July 1, 1994, the entire adoption record shall be open to the adoptive parents, the adoptee who is eighteen years of age or older, and a birth parent who executed a written consent to the adoption.

Abbreviations & Definitions

AD: Adoptee

AP: Adoptive Parent

BP: Birth Parent

BS: Birth Sibling

**Special exceptions apply, see footnotes

Non-Identifying Information:

Information about the other party usually limited to ages, physical descriptions, talents and hobbies and basic medical data. State laws vary as to the release and definition of non-identifying information. Cost as well as the amount of information received will depend on the agency or court that releases it.

Non-Identifying Information Defined in Law:

Some states define non-identifying information in their statutes, so that the release of non-identifying information is uniform to everyone who requests it.

Passive Registry:

At least two parties are required to register with a public or private agency in order for a match to be made. Some registries require as many as five signatures. (Both adoptive parents, both birth-parents, and the adoptee).

Active Registry:

One party registers with a public or private agency and a third party contacts the person being sought for their consent to be contacted or have information released.

Waiver of Confidentiality:

A document filed by one party allowing for disclosure of records or identifying information to the other party. Not always honored by the state or agency.

Intermediary System:

Intermediaries are individuals approved by the court to have an adoption file released to them upon petition by an adoptee or birthparent. The intermediary then searches for the other party to obtain consent for identifying information to be released. Similar to an active registry.

Disclosure Veto:

A document filed by one party to register a refusal to the release of any identifying information.

Contact Veto:

A document filed by one party to register a refusal to be contacted by the searching party. Sometimes extends to all lineal relatives and descendants.

Open Adoption:

An agreement between the adoptive parents and the birthparents, usually verbal, but sometimes in writing that allows the birthparents to have some level of involvement in the adoptees childhood. Records remain sealed in open adoption agreements, unless the adoption occurred in a state that allows the adoptive parent the option of keeping the records unsealed. Should the adoptive parents choose to terminate the open adoption agreement at any time, the birthparent usually has no legal recourse. Currently, no state has passed legislation that outlaws or enforces open adoption agreements.