

Current Policy on Sealing Adoption Records and the Need for Change

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Beginning in the early 1900s, almost every state in the United States enacted legislation to permanently seal an adoptee's original birth certificate and the records from the adoption proceeding. The process of sealing an adoptee's birth records originated to protect adoptees from social attitudes and stigmas towards illegitimacy. Throughout the early 1900s, the prevailing view was to keep records sealed until the adoptee became an adult when they could then receive their records and their birth parent's information. Only after World War II did states enact statutes that sealed the adoption records for all parties, and the only way to release these records was by court order. This type of sealed records statute is one that most states still retain today.

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In the 1970s, adoptees began challenging the sealed records process as they asserted their right to know their biological background, medical history, and related information. These challenges were brought in largely due to changes in society, specifically surrounding stigmas and views on race and religion, as transracial adoptions became popular.

In many instances, society started to view adoption as a blessing. Award-winning actress and singer Kristin Chenoweth has publicly stated how she feels about her adoption — "an adoption is a full circle blessing." In terms of her feelings regarding her birth mother, she said, "I knew my birth mother loved me so much that she wanted to give me a better life." Chenoweth's statements reflect a change in how society views adoption, specifically that the negative stigmas prevalent in the 1900s are no longer prevalent today.

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State legislatures began responding to adoptees' assertions of their "right to know" by enacting provisions allowing adoptees access to non-identifying information about their adoption. States that have passed this type of legislation require agencies to write complete adoptive profiles on the adoptee and their biological parents at the time of their adoption placement. Although this profile gives an adoptee some information, such as the demographics of their birth parents, states are still in control of how much information can be shared. Most only allow non-identifying information, usually consisting of descriptive details about an adoptee's birth relatives. This information includes the date and place of birth, age of the birth parents, general physical description, race, religion, and medical history of the birth parents at the time of birth.

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On the other hand, identifying information consists of names, addresses, employment, and additional information that may lead to identifying the birth parents. While non-identifying information can provide an adoptee with some sense of their background, many jurisdictions still limit the release of this information.

In attempting to limit the release of information, most adoption statutes provide for all records to be sealed unless specific circumstances are met, such as a compelling demonstration of good cause, the protection and/or promotion of the welfare and best interest of the child, or medical necessity. Other states have implemented a system of good cause, establishing a burden on the requesting party to demonstrate that there is a medical or psychiatric need for the sealed information and that the information is not attainable elsewhere.

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However, as adoptions have become more popular and the stigmas surrounding the non-traditional family have subsided, some states have implemented programs that, while limiting, do provide adoptees with some information. For example, states such as Arkansas and Iowa have created Mutual Consent Registries. These registries are one method used to arrange the consents that are required for the release of identifying information, wherein an individual directly involved in an adoption (either the birth parent or the adoptee) can indicate their willingness, or lack thereof, in having their identifying information disclosed.

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While states have certainly made progress in an adoptee's access to information in the 20th century, many of these systems are ineffective because they are not properly or commonly advertised, and there are no informational guidelines in place to demonstrate how they work. Additionally, states have made small but significant changes in recent years, and minimal information is publicized regarding the changes in place and how they impact adoptees.

Curious about what your state's laws are? Stay tuned for updates on New York and New Jersey's current laws, recent amendments, and recommended improvements.