

The Current Approach to Adoption Records and Further Need for Change

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New Jersey's Current Policy

New Jersey allows an adoptee access to only certain specific records and restricts who can view these records and what kinds of information may be redacted. In May 2014, the New Jersey State Legislature passed a law permitting individuals born and/or adopted in the State of New Jersey, who are at least 18 years of age, to be able to access their original birth certificate beginning in January 2017. In addition to the adoptee, a direct descendant or spouse of the adoptee, an adoptive parent or legal guardian, and/or an agency of the state or federal government may also access the original birth certificate.

As the law was passed in May 2014 but not effective until January 2017, birth parents were permitted to submit a request to redact their name or other identifying information before December 31, 2016.

Under this law, birth parents MAY submit a contact preference form to the State Registrar, which allows a birth parent to indicate whether or not they would like to, or prefer not to, be contacted by an adoptee. If a birth parent files a contact preference with the Registrar, they must simultaneously complete and submit a family history form. The form includes medical, cultural, and social history information regarding the birth parent. Any birth parent who requests no contact is asked for, but not required, to update their family history information every ten years until age 40 and every five years after that.

The Problem With New Jersey's Current Approach

So – what's the problem with this approach? First and foremost, a birth parent is not required to submit a contact preference form with the State Registrar, and if they choose not to, they have no requirement imposed upon them to complete and submit a family history form. This leaves all of the information and decision-making in the hands of the birth parent and may potentially deprive the adoptee of necessary and essential background information. Notably, a birth parent is not required to update their family history information. This means that if a birth parent submits a form and then in future years either learns of essential biographical or ancestral information or has a major change in health information, they have no duty to report this information.

Additionally, an adoptee is not permitted to obtain their birth certificate until reaching age 18. Should any health concerns arise before said age, the adoptee has no opportunity to obtain necessary biological information.

Although this legislative change demonstrates a shift in favor of unsealing at least some information, this approach still fails to provide an adoptee with information. It also fails to impose any duty on the birth parent to provide said information. A birth parent does not need to send said information to anyone directly. Still, a duty to file this information with the Registrar would at least allow an adoptee to access this information.

New York's Current Policy

On November 14, 2019, Governor Andrew M. Cuomo signed a new bill which was memorialized in Public Health Law 4138 and went into effect on January 15, 2020. This law provides unrestricted access to original birth certificates for all adult-adopted persons. It also allows access to copies of original birth certificates for direct line descendants or legal representatives.

The Problem With New York's Current Approach

While this law permits an adoptee access to their original birth certificate, there is no procedure in place or information provided regarding the use of contact registries or access to the background, biological, and medical information. In addition to the lack of awareness surrounding contact registries, this law creates no obligation on behalf of the birth parent to provide updated background information.

Other states have made similar amendments to their respective laws in recent years, but the general, larger issue of access to information remains. Without requirements that birth parents file a detailed background and history with their State Registrar and have a continuing obligation to amend and update same, adoptees will lack essential information for their own lives and future generations.