

MEMORANDUM

February 27, 2006

CONFIDENTIAL

TO: Sen. Karen Spilka
Jill VandenBosch
Mary Anne Padien
FROM: Erica Knievel
RE: S.959: Access to Birth Certificates

Summary of State Legislation on Adoptees' Access to Birth Certificates

- **Overview of Options That States Currently Employ¹**
 - **44 states** restrict adoptees' access to their original birth certificates.
 - **20 states and the District of Columbia** allow adoptees to gain access to their adoption records by court order only, subject to a showing of good cause or a test to determine whether disclosure would be in the best interests of the child.
 - It is important to remember that states define good cause differently, to the extent that they define it at all.
 - Good cause is judicially applied on a case-by-case basis, so different judges might implicitly apply different burdens.
 - **19 states** allow adult adoptees access to their birth records with birth parents' permission.
 - Most of these employ passive registry systems that often require the birth parent to already be registered before the adoptee can learn the parent's identity.
 - Some states take the additional step of requiring the court or a relevant state agency to contact the birth parent upon the adoptee's petition to determine whether the birth parent will permit the records to be unsealed.
 - If the birth parent refuses to allow the records to be opened, the adoptee is left to petition the court under the good cause standards.
 - **5 states** allow adoptees access to their records unless a birth parent objects.
 - Some systems allow birth parents to object by registering a nondisclosure affidavit with the relevant agency.
 - In other systems, the birth parent may object once the agency has contacted her pursuant to statute, by requesting that the identifying information not be revealed to the adoptee.
 - **6 states** allow adult adoptees unfettered access (and **4 of the 6** provide for a contact veto, allowing the birth parent to indicate that she does not want the adoptee to contact her).

¹ See Caroline B. Fleming, Note, The Open-Records Debate: Balancing the Interests of Birth Parents and Adult Adoptees, 11 Wm. & Mary J. Women & L. 461, 470 n.68 (2005).

- **Analysis of States with an Informational Intermediary/Active Registry²**
 - **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.
 - Approximately 20 states, with varying conditions for access, utilize intermediary systems.
 - **Active Registry:** One party registers with a public or private agency and a third party contacts the person being sought for her consent to be contacted or have information released.
 - Approximately 10 states, with varying conditions for access, utilize active registries.

² See Bastard Nation, Adoption Disclosure Laws in All 50 States, www.bastards.org/activism/access.htm (last visited Feb. 27, 2006).

Senator Spilka Materials from 2007-8 Legislative Session

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