

# ACCESS TO ADOPTION RECORDS IN MARYLAND



DEPARTMENT OF LEGISLATIVE SERVICES 2021

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# **Access to Adoption Records in Maryland**

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**Department of Legislative Services  
Office of Policy Analysis  
Annapolis, Maryland**

**December 2021**

## **Contributing Staff**

### ***Writers***

Jennifer K. Botts  
Lauren C. Nestor

### ***Reviewer***

Amy A. Devadas

### ***Other Staff Who Contributed to This Report***

Michael S. Raup

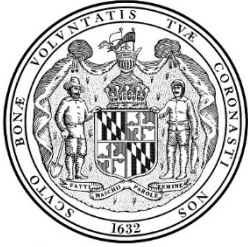
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OFFICE OF POLICY ANALYSIS  
MARYLAND GENERAL ASSEMBLY

**Victoria L. Gruber**  
Executive Director

**Ryan Bishop**  
Director

December 2021

The Honorable Bill Ferguson, President of the Senate  
The Honorable Adrienne A. Jones, Speaker of the House of Delegates  
Members of the Maryland General Assembly

Ladies and Gentlemen:

The attached report, titled *Access to Adoption Records in Maryland*, was prepared by the Department of Legislative Services, Office of Policy Analysis, in response to continuing legislative interest in further opening adoption records in Maryland. The report was written by Jennifer K. Botts and Lauren C. Nestor and reviewed by Amy A. Devadas.

We trust that this information will be of assistance to you in your future deliberations on this issue.

Sincerely,

A handwritten signature in blue ink that reads "Victoria L. Gruber".

Victoria L. Gruber  
Executive Director  
victoria.gruber@mlis.state.md.us

A handwritten signature in blue ink that reads "Ryan Bishop".

Ryan Bishop  
Director  
ryan.bishop@mlis.state.md.us

VLG:RB/JKB:LCN/msr

Legislative Services Building • 90 State Circle • Annapolis, Maryland 21401-1991  
410-946-5500 • FAX 410-946-5508 • TDD 410-946-5501  
301-970-5500 • FAX 301-970-5508 • TDD 301-970-5401  
Other areas in Maryland 1-800-492-7122



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# Access to Adoption Records in Maryland

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## Introduction

In 1947, legislation was enacted in Maryland providing for the sealing of adoption records. In 1998, the General Assembly passed legislation that prospectively opened birth and related adoption records to adopted individuals and biological parents for adoptions finalized on or after January 1, 2000. However, biological parents and adopted individuals were given the right to file a disclosure veto to prohibit disclosure of identifying information concerning the individual who filed the veto. While birth and adoption records for adoptions finalized before 2000 remained sealed, the General Assembly established a confidential intermediary program within the Department of Human Services (DHS) to assist biological parents and adopted individuals in searching for and contacting one another.

As evidenced by recent legislative proposals, there remains interest in granting adopted individuals and biological parents unrestricted access to birth certificates and related adoption records. Proponents assert that sealed birth certificates are an anachronism and adopted individuals have a right to knowledge of their true identity and heritage. Opponents argue that biological parents who relinquished children for adoption were explicitly or implicitly promised anonymity and that changing the law would breach the confidentiality that may have been instrumental in their adoption decisions.

This paper will examine the history of state adoption laws and policies affecting access to adoption records, the current Maryland law, the current laws of other states, and various arguments and policy considerations for and against the further opening of adoption records in Maryland.

## Evolution of Adoption Laws and Policies Affecting Access to Adoption Records

### Sealing of Adoption Records

In a 2010 report<sup>1</sup>, the Evan B. Donaldson Adoption Institute examined the history of access to adoption records and noted that for most of our nation's history, adopted individuals were authorized to access their birth certificates upon reaching the age of majority, and it was not until the mid-1900s that the practice of sealing these records became commonplace.

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<sup>1</sup> See *For the Records II: An Examination of the History and Impact of Adult Adoptee Access to Original Birth Certificates*, Evan B. Donaldson Adoption Institute (2010).



Minnesota was the first state to enact a statute relating to the confidentiality of birth and adoption information in 1917. At that time, the statute's purpose was to prevent the public from learning that the child had been born outside of marriage, and individuals who were deemed to have a legitimate interest (*i.e.*, adult adoptees, adoptive parents, and biological parents) were still allowed access to the records. Other states followed suit, and in 1938, the U.S. Children's Bureau recommended that birth records be available only to adoptive parents, adult adoptees, and state agencies with jurisdiction over adoption. Along with sealing the original birth certificates, the practice evolved of issuing, upon adoption, a new birth certificate with the names of the adoptive parents. By 1948, nearly all states were issuing amended birth certificates. Although additional reasons for sealing the records began to emerge, such as protecting adoptive parents from the intrusion of the biological parents, the records were still not generally sealed from adult adoptees.

By 1960, a major shift in law and policy was beginning. As of that year, 20 states still permitted adult adoptees unrestricted access to their original birth certificates; by 1990, 18 of those states had sealed original birth certificates from adult adoptees.<sup>2</sup> Although there is not a conclusive answer as to what precipitated this shift, social workers during this time period seemed to embrace the view that all parties to an adoption benefited from absolute separation. Prevailing philosophy at the time held that adoptive parents could bond more completely with a child whose parentage was unknown to them and biological mothers could properly grieve the loss of the relinquished child as permanent. It was also believed that the adopted child would be shielded from the confusion of having more than one set of parents. Also prevalent during this time was the practice of attempting to "match" babies with adoptive parents on the basis of similar physical characteristics. Because research on this issue in social work and psychology was rare at the time, the shift to seal birth records was not based on empirically based studies but instead was based on a prevailing belief about how families best functioned.

## Movement Toward Openness Regarding Adoptions

Within the past few decades, adoption policy and practice has moved toward greater openness. For example, today many adoptions are fully open, where the identities of the parties are known, and adoptive parents and the adopted child interact with the child's biological parents via methods that can range from letters and emails to visits. Other adoptions may still fall into the spectrum of open adoptions but are those in which ongoing contact is made indirectly through a mediator or through other arrangements that protect the identities of the biological and adoptive families (*e.g.*, a post office box or email address). A 2007 national study of adoptive families in the United States found that in one-third of all adoptive families, the adoptive parent or the adopted child had some contact with the biological family after adoption.<sup>3</sup> Post adoption contact was most frequent in private domestic adoption (68%) compared with adoption from foster care (39%) and

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<sup>2</sup> *Id.* at 11.

<sup>3</sup> Vandivere, S., Malm, K., & Radcliff, L. (2009). *Adoption USA: A Chartbook Based on the 2007 National Survey of Adoptive Parents*. Washington, D.C.: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

international adoption (6%).<sup>4</sup> A more recent study among U.S. adoption agencies reported that 95% of their domestic infant adoptions are open.<sup>5</sup>

According to the Child Welfare Information Gateway (CWIG), a component of the U.S. Department of Health and Human Services, one of the many factors that has contributed to the increasing openness of adoption is a broader recognition of the rights of birth parents to make choices for their biological children.<sup>6</sup> Biological parents who participate in selecting the adoptive family often have a multitude of choices and may request openness and condition the adoption on the ability to receive and share information. As discussed below, the movement toward adoptions that include ongoing contact with birth families also aligns with a greater understanding of the many benefits of such adoptions for children in a variety of circumstances. For example, many children, particularly older stepchildren and children adopted from foster care, may have existing attachments to birth relatives that are beneficial to continue in some capacity.

CWIG also examined the greater awareness of some of the negative effects of secrecy regarding adoptions and the benefits of openness for many adopted children, biological parents, and adoptive parents.<sup>7</sup> For example, maintaining contact with their birth families may allow adopted children and youth to (1) relate to birth family members on a more authentic level by seeing them as “real people” instead of idealizing or disdaining them; (2) preserve connections to their cultural and ethnic heritage; (3) minimize feelings of abandonment by developing a better understanding of the reasons for the adoption; (4) increase the number of supportive adults in their lives; and (5) gain access to critical genetic and medical information.<sup>8</sup> Open adoptions can allow biological parents to cope with the loss associated with relinquishing their child and can give biological parents continuing peace of mind by providing them with information about the child’s welfare throughout the years. Open adoptions often allow the adoptive parents to gain access to biological family members who can answer questions and improve their understanding of the child’s history.

Although CWIG states that it is in the best interests of children, youth, and families that all adoptions maintain some degree of openness, it also cautions that there is not one type of arrangement that is best for every family. For example, if the circumstances include prior abuse or other safety concerns or a birth parent is unable to respect appropriate boundaries or maintain a healthy relationship due to a mental or substance use disorder, ongoing contact that is more limited in nature or done indirectly through a mediator may be in the child’s best interests.

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<sup>4</sup> *Id.*

<sup>5</sup> Siegel, D. & Smith, S.L. (2012). *Openness in Adoption. From Secrecy and Stigma to Knowledge and Connections*. New York, NY: Evan B. Donaldson Adoption Institute.

<sup>6</sup> *Postadoption Contact Agreements Between Birth and Adoptive Families*, Child Welfare Information Gateway, U.S. Department of Health and Human Services (2019).

<sup>7</sup> *Helping Your Adopted Children Maintain Important Relationships With Family*, Child Welfare Information Gateway, U.S. Department of Health and Human Services (2019).

<sup>8</sup> *Id.* at 2.

The Internet, social media, and modern DNA technology have also played a role in the movement toward openness, as they have made it increasingly difficult to maintain closed adoptions. A nonscientific poll of foster youth found that nearly 75% of foster youth had searched for a biological family member on the Internet.<sup>9</sup> However, more than 60% of the youth indicated that it would have been helpful if someone had mentored them about connecting with the biological parents.<sup>10</sup> Although these resources may afford adopted children and biological families the ability to connect inexpensively and without the need for an intermediary, there is concern that the connections are being made without the benefit of preparation and adequate support systems.

## Maryland Law

### Background

Paralleling the nationwide trend in the mid-1900s, in 1947, Maryland required by statute that adoption records be sealed and made inaccessible except by court order.<sup>11</sup> The Commission to Study Revision of the Adoption Laws of the State of Maryland, which was appointed by the Governor in 1945, drafted the proposed 1947 statute. The statute provided:

Records and papers in adoption proceedings, from and after the filing of the petition shall be sealed and opened to inspection only upon an order of the Court; provided, that in any proceeding in which there has been an entry of a final decree before June 1st, 1947, and in which the records have not already been sealed, the records and papers shall be sealed on motion of one of the parties to the proceeding. In either case said seals shall not be broken, and said papers shall not be inspected by any person, including the parties to the proceeding, except upon order of the Court.

The accompanying statement of legislative policy specified that one of the purposes of the statute was “the protection...of the adopting parents, by...protecting them from subsequent disturbance of their relationships with the child by the natural parents.” Although the legislative history is sparse, the decision to seal the records was apparently taken by the General Assembly for the following additional reasons: (1) to remove from the child the stigma of “illegitimacy” by issuing a new birth certificate that made it appear that the child had, in fact, been born to the adoptive parents; (2) to provide all parties with a new beginning and to conceal all record of this event on behalf of (usually) unwed mothers; (3) to create within the adoptive home a situation as similar as possible to that which would have been obtained had the adopted child been born into that family (in accord with the thinking at the time, which attempted to “match” children as closely

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<sup>9</sup> *Working with Birth and Adoptive Families to Support Open Adoption*, Child Welfare Information Gateway, U.S. Department of Health and Human Services (2013).

<sup>10</sup> *Id.*

<sup>11</sup> Chapter 599 of 1947.

as possible to the adoptive parents); (4) to protect the adoptive family from unwarranted interference from a birth parent; and (5) to prevent unauthorized public access to the records.<sup>12</sup>

Although adoption records were sealed, other statutes permitted adopted individuals and biological parents to access medical and nonidentifying information contained in agency adoption records and court records pertaining to the adoption. Additionally, adopted individuals, biological parents, and siblings of adopted individuals could register with the Mutual Consent Voluntary Adoption Registry in the Social Services Administration of DHS. If a match was made between individuals who had mutually registered, the administration facilitated the exchange of identifying information between those individuals.

As adoption practices and attitudes shifted toward a more open approach over the course of the next 30 years, proponents of opening adoption records began to press the General Assembly for change. Senate Joint Resolution 42 of 1979 created the Governor's Commission to Study the Adoption Laws "in response to the controversy in previous sessions which had surrounded the introduction of legislation to open sealed adoption records to adult adoptees." In its report, the commission concluded that "the thirty-two year experiment in sealing adoption records in this State has outlived its usefulness."<sup>13</sup> The commission stated that "[w]e reject the idea that the integrity of the adoption process is dependent on promises of perpetual secrecy which have the effect of concealing the biological background of adopted people, including medical, genetic, and social histories which may be essential to their physical and emotional development. We conclude that adult adoptees are as entitled to this information about themselves as are people who are not adopted."<sup>14</sup>

In its report, the commission recommended legislation that applied to adoptions occurring prior to January 1, 1981, as well as those occurring on or after that date. With respect to adoptions occurring prior to January 1, 1981, the commission unanimously recommended that an adoptee at least 21 years old have the right to petition the court for the names and addresses of his or her biological parents. The court would be required to serve notice of the request to the biological parents and provide an opportunity to the biological parents to come forward and to present evidence as to why disclosure of their identities would cause them serious physical or psychological injury. If the biological parents failed to come forward or were unable to sustain the burden, the court was required to order the records opened. For adoptions occurring on or after January 1, 1981, the commission recommended that the records be available as a matter of course to an adoptee upon reaching the age of 21 and that all parties be so informed at the time of the adoption. A minority of the commission issued a separate report indicating that, even for adoptions occurring on or after January 1, 1981, disclosure should be prohibited if the biological parents are able to persuade a court that they would suffer serious physical or psychological injury if the records were opened. The legislation proposed by the majority was introduced as House Bill 1915 of 1980 but received an unfavorable report.

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<sup>12</sup> Report of the Governor's Commission to Study the Adoption Laws (1980).

<sup>13</sup> *Id.* at 22.

<sup>14</sup> *Id.* at 22-23.

## **Chapter 679 of 1998**

Prompted by advocates for open adoption records who testified that court and agency records frequently contained incomplete or no medical information and that the Mutual Consent Voluntary Registry had resulted in only approximately 20 matches during the previous 10 years, the General Assembly passed Chapter 679 of 1998. Chapter 679 established a confidential intermediary program of search, contact, and reunion services within the Social Services Administration of DHS and authorized broader access to adoption and birth records for adoptions finalized on or after January 1, 2000.

Chapter 679, which is described in greater detail below, did not repeal existing provisions of law relating to access to medical records and the Mutual Consent Voluntary Registry. The legislation attempted to balance the interest of adopted individuals in knowing more about their pasts and the potential interest of biological parents in maintaining their privacy.<sup>15</sup> Specifically, the confidential intermediary system and provisions regarding disclosure vetoes were intended to protect the privacy interests of individuals who did not want their information shared, while the unsealing of records for adoptions finalized on or after January 1, 2000, recognized the movement toward openness concerning adoptions.

### **Confidential Intermediary Program**

Under Chapter 679, an adopted individual at least 21 years old or a biological parent of an adopted individual at least 21 years old may apply to the Director of the Social Services Administration of DHS to receive search, contact, and reunion services. “Search, contact, and reunion services” means services (1) to locate adopted individuals and biological parents of adopted individuals; (2) to assess the mutual desire for communication or disclosure of information between adopted individuals and biological parents of adopted individuals; and (3) to provide or provide referral to, counseling for adopted individuals and biological parents of adopted individuals. The statute prohibits a parent whose parental rights have been involuntarily terminated from receiving search, contact, and reunion services.

The administration is required to maintain a list of confidential intermediaries who meet specified qualifications and provide the list to an individual who applies for search, contact, and reunion services. The individual seeking search, contact, and reunion services is required to execute a written agreement with a confidential intermediary, and the confidential intermediary is authorized to charge a reasonable fee for the services. The law authorizes the confidential intermediary to access birth and adoption records under seal within the Maryland Department of Health and public records.

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<sup>15</sup> Despite the generalization that biological parents want to maintain their privacy, numerous birth parents submitted testimony indicating their desire to know more about the children they relinquished for adoption. Furthermore, the legislature also received testimony regarding the privacy interests of adult adoptees who did not want to have their information shared with their birth families.

The confidential intermediary must file a report with the Director of DHS that states the results of the search effort within 90 days after executing a search, contact, and reunion services agreement. The law provides for the following four scenarios:

- (1) If the individual contacted by the intermediary consents to the disclosure of any information, the confidential intermediary must obtain written consent specifying the nature of the information to be disclosed. The confidential intermediary is authorized to disclose only the information specified in the consent to the applicant for search, contact, and reunion services.
- (2) If the individual contacted by the intermediary does not consent to the disclosure of any information, the confidential intermediary is prohibited from releasing any information concerning the individual contacted.
- (3) If the individual sought has not been located, the confidential intermediary must continue to attempt to locate the individual for the time period specified in the search, contact, and reunion services agreement.
- (4) If the individual sought is deceased, the confidential intermediary may not disclose the identity of the deceased to the applicant for search, contact, and reunion services.

#### **Broader Access to Records – Adoptions on or After January 1, 2000**

For adoptions finalized on or after January 1, 2000, Chapter 679 authorizes an adopted individual at least 21 years old or a biological parent of an adopted individual at least 21 years old to apply to the Secretary of Health to receive a copy of birth and adoption records under seal, unless a disclosure veto has been filed. A “disclosure veto” prohibits the disclosure of any information concerning the individual who filed the veto. A disclosure veto may be canceled or refiled at any time.

Additionally, the law provides that the consent of a biological parent to either an adoption or guardianship of a child is not valid unless the consent contains an express notice of the search rights of adopted individuals and biological parents and the right to file a disclosure veto.

#### **Enactments Following Chapter 679 of 1998**

Since enactment of Chapter 679, the General Assembly has passed legislation relating to adoption records, particularly provisions expanding the adoption search, contact, and reunion services program, on four occasions.

House Bill 232 of 2004 expanded the adoption search, contact, and reunion services program to include services to siblings of adopted individuals. The bill was vetoed by Governor Robert L. Ehrlich, Jr. The Governor’s veto message indicated that the reason for the veto was that the bill was not prospective only to adoptions occurring on or after the bill’s effective date. The

Governor stated that he had reservations about the possibility of breaching the confidentiality related to a past adoption that the current law provided to biological parents and adopted children. The Governor noted particular concern about the trauma to individuals who are unaware that they were adopted being informed by the State of their adoption. Additionally, the Governor's message noted that the current Mutual Consent Voluntary Registry provides a remedy for adopted individuals and siblings who wish to locate one another. During the 2004 special session, the General Assembly overrode the Governor's veto, and House Bill 232 was enacted as Chapter 7 of the 2004 special session.

Chapter 312 of 2006 authorizes alternative contacts when a confidential intermediary discovers that an individual the intermediary is attempting to contact on behalf of a biological parent or adopted individual is deceased. Under the legislation, if the individual sought by the confidential intermediary is deceased, the confidential intermediary is authorized to contact a relative of the biological parent or member of the adoptive family, respectively.

Chapter 326 of 2011 expanded the search, contact, and reunion services program to include services to contact certain adopted siblings of a minor in out-of-home placement (such as foster care) to develop a placement resource for the minor.

Finally, Chapter 86 of 2014 further expanded the definition of search, contact, and reunion services to include contacting specified relatives of a minor in out-of-home placement to develop a placement resource or facilitate a family connection with the relatives if the minor was adopted through a local department of social services and the local department has determined that reunification with the minor's adoptive parents is not in the minor's best interests.

## **Legislative Proposals in Maryland to Further Expand Access to Birth and Adoption Records**

Over the past decade, there have been several unsuccessful legislative attempts to further open adoption records. For example, House Bill 719 of 2012 and House Bill 22 of 2013 would have authorized adoptees and biological parents to access birth and adoption records, regardless of when the adoption occurred. Prospectively, the bills would have repealed the right of an adoptee or biological parent to file a disclosure veto; however, disclosure vetoes filed prior to the effective date of the legislation would have remained in effect. The most recent iterations, including Senate Bill 743/House Bill 1039 of 2020 and Senate Bill 331/House Bill 999 of 2021, would similarly have authorized unqualified access to birth and adoption records, regardless of when the adoption occurred, and repealed the right to file a disclosure veto. However, adoptees and birth parents would instead have been authorized to file a "contact preference form," (*i.e.*, a form that states an individual's wishes regarding contact that is only advisory in nature and does not legally bar the disclosure of birth and adoption records). Under the proposals, disclosure vetoes filed prior to the effective date of the legislation would have been replaced with a contact preference form that indicated a desire not to be contacted.

## **Arguments and Policy Considerations Regarding Expanded Access to Birth and Adoption Records**

Those individuals advocating for greater access to birth and adoption records claim that adult adoptees have a fundamental right to know core facts about themselves and that denying adoptees access to identifying information may prevent the individuals from fully developing a positive identity due to their lack of ability to answer basic questions about their origins. Proponents argue that sealing birth records and barring adult adoptees from accessing facts about their origins emphasizes their differences from others and perpetuates shame or a sense of being inferior. Even adoptees who have successfully located their birth parents through modern DNA technology, the Internet, or social media assert that the right to obtain their original birth and adoption records is a matter of dignity and equality.

Additionally, advocates particularly stress the need for adoptees to have access to updated family medical information in order for them to develop more complete medical histories and know of potential genetic risks. Although adoptees may have information regarding family medical history that was known at the time of the adoption, they may be unaware of conditions that were subsequently discovered by their biological relatives. Knowledge of family history may aid in the prevention, diagnosis, and treatment of genetically based diseases as well as chronic diseases including cancer, heart disease, and diabetes. Some insurance companies pay for genetic testing or early screenings only when there is a known family medical history that indicates an elevated risk for the condition; accordingly, adopted individuals without access to such information may have to pay out-of-pocket for tests or forego them altogether. Proponents claim that other alternatives, including mutual consent registries and confidential intermediaries, are costly and ineffective. They also argue that requiring adoptees to petition the court for access to records is too arbitrary, as judges are allowed to determine what constitutes “good cause” or a “compelling” reason for access without clear guidance. Even with the State’s shift toward more openness in records for adoptions finalized on or after January 1, 2000, provisions regarding disclosure vetoes still allow a third-party (the birth parent) to bar access to fundamental information to which adoptees believe they are entitled.

The most common arguments raised for keeping adoption records closed for adoptions finalized prior to 2000 (and continuing to allow the option for a disclosure veto for adoptions finalized during and after 2000) have been that biological parents were either explicitly or implicitly promised that their identities would never be disclosed and that altering the law retrospectively breaches this confidentiality, which may have been instrumental in their adoption decisions. Many women may have kept secret the pregnancy and subsequent adoption, some with the expectation that the information would not be disclosed. Concerns have been raised that adopted individuals may invade the privacy of their biological parents by initiating or continuing unwanted contact, particularly in the context of a pregnancy resulting from a sexual assault of the biological mother. Advocates who represent abused and neglected children in foster care who were subsequently adopted have raised similar concerns, asserting that the adoptee who was the victim of abuse or neglect should have the right to choose to protect their privacy from the perpetrator of



that abuse or neglect. Others have claimed that eliminating the option for a disclosure veto will discourage women from choosing adoption when weighing the options for an unintended pregnancy.

Finally, opponents have argued that the current law strikes the proper balance and provides protections for all parties because it is based on the mutual consent for release of information. For adoptions finalized prior to 2000, the law provides for trained confidential intermediaries with experience in search and reunion issues to support the parties in the emotionally complex reunion experience and to seek mutual consent for direct contact. For adoptions finalized on or after January 1, 2000, the law presumes that adoption records are open, but notice is provided to biological parents and adoptees of the right to file or withdraw a disclosure veto to protect their privacy if they so desire. When the Governor's Commission to Study the Adoption Laws (1979-1980) justified its own recommendations to differentiate between access to records in future adoptions and for those that occurred in a prior period (during which records were sealed), it stated that "[i]t is reasonable to suppose that the assumptions and expectations of parties to adoption during the time records were sealed would be different than those which would obtain if perpetual secrecy was not expected."<sup>16</sup>

Advocates for open records, however, generally dispute the claims that any privacy guarantees were provided to birth mothers, arguing instead that any promises of confidentiality were intended to protect adoptive parents from intrusion by birth mothers. In discussing the issue of confidentiality and privacy in its 1980 report, the Governor's Commission to Study the Adoption Laws also emphasized that secrecy was not *offered* to birth mothers but instead was *required* by the agency as a condition of the adoption. Advocates for open records also claim that even if privacy had been guaranteed to a birth mother, such privacy was intended only to prohibit any sort of public release of the records and not to prohibit eventual access by an adopted individual. Further, proponents of open records contend that in light of the advances in technology any expectation of privacy is no longer reasonable despite any assurances that may have been made to birth mothers. The commission's 1980 report even noted that many agencies were [already] advising birth mothers that perpetual anonymity could no longer be guaranteed.

## Other States

### Access to Birth and Adoption Records

Based on information compiled by CWIG, among the states that grant adult adoptees unrestricted access to original birth certificates are Alabama, Alaska, Kansas, Maine, New Jersey, New York, and Oregon.<sup>17</sup> In general, biological parents in the states that do not restrict access are authorized to file "contact preference" forms that allow biological parents to signify their desire or

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<sup>16</sup> Report of the Governor's Commission to Study the Adoption Laws (1980), at 17.

<sup>17</sup> *Access to Adoption Records*, Child Welfare Information Gateway, U.S. Department of Health and Human Services (2020).

lack thereof to be contacted, although there is no penalty if the wishes are ignored. In approximately one-third of the states and the District of Columbia, a court order is required for adoptees to access original birth certificates.<sup>18</sup> Generally, the remaining states, including Delaware, Illinois, Maryland, Michigan, Minnesota, Oklahoma, Virginia, and Washington, allow the adopted individual access under the following situations: (1) a biological parent has not filed an affidavit denying release of the records (*i.e.*, a disclosure veto) or otherwise requested the redaction of a birth parent's name from the record; (2) the biological parent has filed a consent to release identifying information; or (3) a state adoption registry has established that the adopted individual is eligible to receive the identifying information.<sup>19</sup>

However, the ability to access records in many states, including Maryland, further depends on the date of adoption. For example, birth certificates are available without the necessity of a court order to adult adoptees in Oklahoma if (1) there are no biological siblings younger than 18 who are currently in an adoptive family and whose whereabouts are known; (2) the biological parents have not filed affidavits of nondisclosure; and (3) the adoption was finalized after November 1, 1997.<sup>20</sup> In Montana, birth certificates are available (1) on written request of a person adopted before October 1, 1985, or 30 years ago, whichever date is later; (2) on court order for a person adopted on or after October 1, 1985, and before October 1, 1997; and (3) for a person adopted on or after October 1, 1997, on the written request of an adoptee who is at least age 18 (unless the birth parent has requested in writing that the original birth certificate not be automatically released) or by court order.<sup>21</sup>

CWIG also notes that statutes in nearly all the states permit the release of identifying information when the person whose information is sought has consented to the release.<sup>22</sup> Identifying information may include current or past names of the person, addresses, employment, or other similar records or information.

In addition to allowing biological parents and adoptees access to the information, approximately three-fourths of the states, including Maryland, also allow biological siblings of the adoptee to seek and release identifying information upon mutual consent.<sup>23</sup>

A mutual consent registry is a common method used by states to arrange for the release of identifying information by mutual consent. As of December 2019, approximately 30 states (including Maryland) had some form of a mutual consent registry.<sup>24</sup> Although procedures vary significantly from state to state, most states require the consent of at least one biological parent and an adopted person who is at least 18 or 21 (or the consent of the adoptive parents if the adopted

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 10 Okla. Stat. § 7505-6.6.

<sup>21</sup> § 42-6-109, MCA.

<sup>22</sup> Child Welfare Information Gateway, *supra* note 17 at 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 4.

person is a minor) in order to release identifying information from a registry.<sup>25</sup> While most states require affidavits consenting to the release of information from a registry, a few states will release identifying information unless a request for nondisclosure has been filed. Many states have also established confidential intermediary systems, much like the one in Maryland, in which a confidential intermediary is certified to have access to adoption records in order to conduct a search for adoptees or biological family members and attempt to obtain their consent for contact.

Some states impose specific limitations on the release of identifying information. For example, South Carolina and Texas require individuals to undergo counseling before identifying information may be released.<sup>26</sup> The release of identifying information in Connecticut is prohibited if the appropriate agency or department determines that the requested information would be “seriously disruptive to or endanger the physical or emotional health” of the person whose identity is being requested.<sup>27</sup>

### Nonidentifying Information

Although states differ widely on access to original birth certificates and identifying information, there is legal and social consensus on the benefits of sharing “nonidentifying information.” CWIG notes that all states have statutory provisions allowing access to nonidentifying information by an adoptive parent or a guardian of an adopted individual who is still a minor.<sup>28</sup> Approximately 26 states grant biological parents access to nonidentifying information, which is usually the health and social history of the child; 15 states provide such access to adult birth siblings.<sup>29</sup>

In order to facilitate access, states have varying requirements regarding what information must be collected about adopted individuals and their biological relatives. In most states, including Maryland, this information is compiled by the child placement agency, the state child welfare agency, or another designated person or agency that arranged the adoption.<sup>30</sup> In some states, the court may designate a specially trained investigator to complete the report on the biological family.<sup>31</sup>

The information generally includes medical, genetic, and mental health history, family and social background, the placement history, and notice of any history of abuse or neglect.<sup>32</sup> Other information may include any school records of the child and the child’s religious and ethnic

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 3.

<sup>27</sup> Connecticut Gen. Stat. § 45a-751.

<sup>28</sup> Child Welfare Information Gateway, *supra* note 17 at 2.

<sup>29</sup> *Id.*

<sup>30</sup> *Providing Adoptive Parents with Information About Adoptees and Their Birth Families*, Child Welfare Information Gateway, U.S. Department of Health and Human Services (2020).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

background.<sup>33</sup> Records in Alabama, Mississippi, Pennsylvania, and the District of Columbia must disclose any known assets or property owned by the child.<sup>34</sup> While the required information is most often limited to that of the biological parents, in 17 states, the same types of information must be collected and disclosed about extended family members if possible.<sup>35</sup> Additionally, some states require information on physical appearance, talents, hobbies, field of occupation, and any known drugs taken by the biological mother during pregnancy.<sup>36</sup>

## **Conclusion**

Adoption philosophies have changed significantly since the time when the paramount concerns centered on protecting children from the stigma of illegitimacy. A shift in perspective toward openness in adoption has spurred states, including Maryland, to ease restrictions on access to birth and adoption records while simultaneously attempting to balance the potentially competing interests of some biological parents. However, advocates for greater access to birth and adoption records are likely to continue to ask the General Assembly to provide unrestricted access to records, regardless of the date of the adoption and without any ability for a birth parent to prohibit disclosure.

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*