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Verdict

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Secrets and Lies: A New Ohio Law Opens the Adoption Closet

Under a newly enacted law, adult adoptees in Ohio can now seek access to their original birth certificates. With this change, Ohio joins a small number of states that have made an about-face in thinking about the role of secrecy in adoption, and have joined the gradual shift towards greater openness.



Ohio Substitute Senate Bill 23: The Details

The **[new law \(http://www.legislature.state.oh.us/bills.cfm?ID=130 SB 23\)](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_23)**, enthusiastically signed by the state's governor, John Kasich, streamlines a scattered statute that had applied different rules about secrecy depending on when the adoption took place. Individuals adopted prior to 1964 could, upon reaching adulthood, obtain their adoption file from the state Department of Health for \$20. Individuals adopted between 1964 and September 18, 1996 could obtain their original records only upon a showing of good cause in court, a difficult standard to meet, or if the birth parents had signed a release. Those adopted after September 18, 1996 could obtain their original records for \$20, unless their birth parents asked that the records remain sealed. These three different rules reflect three eras in adoption law—ranging from openness, to forced or strongly encouraged secrecy, and then back again to at least a tentative form of openness.

The new bill, which will apply to an estimated 400,000 people who were adopted in Ohio during that middle period, institutes a rule of open records. It allows an adopted individual who is at least 18 years of age to request a copy of his or her, original birth records. A lineal descendant of an adoptee can also file such a request, as long as the adoptee is, or would be, 18 by the date of the request.

For the benefit of birth parents who do not want their identities revealed, the law's implementation is deferred for one year, during which time they have the opportunity to request that their names be redacted before the records are released upon any request. Those who opt out, however, must provide the state with detailed, updated medical histories, which can be shared with an adult adoptee who requests the file.

The bill also asks birth parents who have not requested redaction to complete a "contact preference form," in which they indicate whether they (1) would welcome contact directly from the adopted individual (or lineal descendant) who received the adoption records file; (2) would welcome contact through an intermediary; or (3) would prefer no contact, either direct or through an intermediary.

The bill was passed unanimously by the Ohio Senate and by a vote of 88-2 in the Ohio House. (Some in the pro-life movement were strongly opposed to the bill on the theory that greater openness will encourage unwed mothers to seek abortions, rather than place babies for adoption.) Such strong support is somewhat surprising, given the controversy that similar measures have generated in other states, and in debates about the retroactive opening of adoption records. A New Jersey bill that worked to similar effect was recently vetoed by **now-embattled** (<https://verdict.justia.com/2014/01/10/bridgewater-bridgetgate-unanswered-questions>) Governor Chris Christie, who felt his state was not quite ready to take this step.

The Role of Secrecy in Adoption

In a 1996 British film titled *Secrets and Lies*, award-winning actress Brenda Blethyn plays the role of Cynthia, a working-class woman whose somewhat pitiful life is upended by a phone call from a grown woman who is claiming to be the biological daughter whom she gave up for adoption many years earlier. The powerful story revolves around the secrets and lies of the past, and their sudden unraveling. A significant plot point is that the daughter is black, but the mother white. But the secrets and lies relate mostly to the fact of the adoption—and the out-of-wedlock birth that precipitated it—rather than the race of the biological father.

Adoption, as a formal matter, did not exist in the U.S. until the middle of the Nineteenth Century. Every state eventually passed a statute legalizing adoption, which made it possible to create parent-child relationships despite the lack of a biological tie. These early statutes did little more than make legal parent-child relationships between strangers possible. Later statutes were more complicated, and sought to regulate adoption in more respects—regarding the suitability of the parents, the disclosure of child's diseases or "defects," etc. Adoptions later become more professionalized, with greater involvement of agencies, child welfare authorities, and private brokers.

In the first several decades, adoptions were a matter of public record, and the parties often knew each other. They were from the same community or even related to each other. But by the middle of the Twentieth Century, adoptions became shrouded in secrecy. States first moved to conceal the details of an adoption, and, indeed, even the fact of an adoption, from the outside world. (Ohio was somewhat late to this game, moving to seal adoption records only in 1964.) The state could not prevent the adoptive or biological parents from revealing that the adoption had taken place, but it could make it possible for them to keep it a secret, under a veil of legitimacy, by sealing the court records and issuing a new (fake) birth certificate listing the adoptive parents as the natural parents. In the normal practice, a child was taken from one family and given to another, with no trace of the first family left behind. The greater use of intermediaries like brokers and churches made it unlikely that birth parents and adoptive parents would know each other's identity, and the law sealed the records even from the parties themselves.

This system was thought at the time to be good for everyone. The birth mother could hide an out-of-wedlock birth or unwanted pregnancy; the child could avoid the stigma of what was then called "illegitimacy"; and the adoptive parents could pass the child off as their own biological offspring (in most cases) and avoid embarrassing discussions about infertility, or pity from strangers. Very little was known, however, about the actual desires, 18-20 years after the fact, of either birth parents or adoptive parents. The logic of common social norms shaped this framework.

Modern Adoption: Secrecy Falls by the Wayside

By the end of the Twentieth Century, this system fell apart for a variety of reasons, but chief among them was the desire of adoptees to know their roots. An adoptee rights movement took hold in the 1970s, which sought to unseal adoption records retroactively. The members of the movement filed lawsuits claiming that it was a violation of the adopted child's constitutional rights to deny him or her information about their origins. These early lawsuits were, by and large, unsuccessful. Courts tended to believe in the merits of a system rooted in secrecy and were unwilling to upend the expectations of the adults who were involved in the adoption.

Despite losses in court, however, adoption ultimately shifted in ways that would upend the secrecy norms. Under pressure from adoptees' rights groups like Bastard Nation, and birth mothers' groups like Concerned United Birthparents, many states have taken steps toward disclosure. Many have created registries that would allow adopted children to find their birth parents with the mutual consent of child and birth parents. There are also private registries that help match up children and birth parents (again, with mutual consent), with the largest one being run by the Adoptees' Liberty Movement Association.

Disclosure by Law: The New Trend

The first law to require disclosure without consent of the birth parent was enacted in Oregon, through a voter referendum in 1998, which gave “any adopted person 21 years of age or older born in the state of Oregon” the right to request a copy of his or her original birth certificate, with the names and addresses of their birth parents, as well as other identifying information. The law was upheld against a challenge by a group of birth mothers who had different, but compelling, reasons to prevent disclosure. A small number of states filed suit, joining with Oregon in allowing disclosure once adoptees reach adulthood, or requiring birth parents to opt out of disclosure. It is this trend that Ohio joined with its new law.

While laws like Ohio’s new one provide a remedy for many individuals who were adopted during the period of secrecy and who feel aggrieved by the loss of a sense of identity, the more significant change is in new adoptions. The closed, anonymous adoption has been almost entirely replaced by the “open adoption.” That phrase can mean any number of things, but at core it describes an adoption in which the birth parents know, and often times select, the adoptive parents. There are no secrets. This has fast become the most common type of adoption. Although most adoptive parents prefer the 1950s-style adoption, birth mothers prefer openness, and they call the shots because of a veritable shortage of adoptable babies. Birth mothers interested in an adoptive placement have dozens, even hundreds, of families to choose from. And because they are no longer as likely to pretend the unwanted birth never happened, they often make openness, including sometimes post-adoption contact, a condition of the arrangement. This development, more than any effort to unseal old records, has caused the law and practice of adoption to change course.

Conclusion

The yearning to know one’s roots is a powerful force for many adopted individuals. (It is also a force felt by many children conceived with donor sperm, as I discuss [here](https://verdict.justia.com/2013/11/27/sperm-donors-large-small-screen) (<https://verdict.justia.com/2013/11/27/sperm-donors-large-small-screen>.) Ohio’s law is a logical step to alleviate the pain of hidden identity, with some built-in safeguards for birth parents. Certainly, at a minimum, every adult adoptee should have access to a complete medical history of his or her parents, given what we know now about the importance of heredity in so many diseases. But ideally the adoptees will gain more than that, too: the names of their birth parents, and the possibility of contact with them.

The Ohio law can also be helpful in states other than the five who already have similar disclosure rules. The Ohio law calls for the collection of data about how many birth parents opt out of having their names disclosed, or allow disclosure but request that they

not be contacted. We may learn that our assumptions about what typical birth and adoptive parents want with respect to disclosure and contact are not well founded. If so, that could push other states toward forced disclosure, a move that would be welcome by the adoptees' rights movement. And even if other states don't follow suit, the information age has made secrecy hard to guarantee.



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