Adoption Records Reform: Impact on Adoptees

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ADOPTION RECORDS REFORM: IMPACT ON ADOPTEES

I. INTRODUCTION

"I feel cut off from the rest of humanity . . . I want to know who I am . . . I have no ancestry. Nothing." Sharing these sentiments, adult adoptees throughout the United States have mobilized an effective advocacy force for open adoption records. Nearly all states have statutes requiring courts to seal the child’s original birth certificate and all records of the adoption proceeding. Access can only be ob-

2. For example, the Adoptees’ Liberty Movement Association (ALMA), founded in 1971 by adoptee Florence Fisher, boasts a membership of 20,000. A primary goal of the organization is the repeal of sealed adoption records statutes. Also active is Yesterday's Children, an Illinois-based advocacy organization for adoption reform.
3. Sealed records have several connotations. Adoption agencies maintain records on birth parents and adoptive parents which are consolidated and sealed at the time of the adoption. Agency policies vary, but generally nonidentifying information from these files has been available to adoptees and their adoptive parents. The sealed court file, on the other hand, generally contains the child’s original birth certificate which has been removed from the vital statistics files and sealed separately. A. Sorosky, A. Baran & R. Pannor, The Adoption Triangle 19-20 (1978).
tained with a court order upon a showing of good cause. Seeking to liberalize the law, adopted persons have pursued legislative reform, attacked the constitutionality of state


7. One commentator described the traditional adoption process as follows:

Adoption is the process by which society provides children with substitute families when the natural parent-child relationship has failed. This statutorily created process terminates the legal relationship between natural parents and their child, relieving the former of all parental rights and duties, and creating a new relationship between the child and the adoptive parents. When a child is adopted, a new birth certificate containing the name of the adoptive parents is issued. The child's original birth certificate, and, in most states, the court records of adoption proceedings, the adoption order and the adoption agency files are sealed.


statutes and sought judicially expanded definitions of good cause.

However, adoptees' attempts at reform have come up against traditional notions of secrecy in the adoption process. Proponents of secrecy argue that assurances of confidentiality made to birth parents at the time of the adoption require deference to their need for privacy. Confidential records and new birth certificates are thought to give adoptive families the freedom to develop bonds without interfer-

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9. See, e.g., ALMA Soc'y v. Mellon, 601 F.2d 1225 (2d Cir.) (sealed adoption records statutes did not violate thirteenth and fourteenth amendments), cert. denied, 444 U.S. 995 (1979); In re Maples, 563 S.W.2d 760, 762 (Mo. 1978) (sealed records statutes did not violate adult adoptee's first amendment right to receive information); Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 372 A.2d 646 (1977) (sealed records statutes did not violate adult adoptee's right to privacy because only personal rights deemed fundamental are constitutionally protected).

10. See, e.g., Massey v. Parker, 369 So. 2d 1310 (La. 1979) (right to inherit from birth parents held to be good cause); In re Maples, 563 S.W.2d 760, 766 (Mo. 1978) (psychological need to know without proof of mental health problem not sufficient for good cause showing).


Confidentiality and the sealing of records . . . encourages and facilitates investigation into factors relevant to planning adoption by preventing the public disclosure of embarrassing personal facts about the parties involved . . . . [It] assure[s] that natural parents will not be able to locate the child and interfere in his relationship with his adoptive parents . . . . [It] also protects adopted children who are illegitimate from any possible stigma they might otherwise have to bear because of their birth . . . . [It] assures the natural mother . . . ."[who has given birth to an illegitimate child] that her indiscretion will not be divulged."

Id. at 133-34, 390 N.Y.S.2d at 781 (quoting People v. Doe, 138 N.Y.S.2d 307, 309 (1955)). See also A. Sorosky, A. Baran & R. Pannor, supra note 3, at 37-38.

12. Massey v. Parker, 369 So. 2d 1310, 1315 (La. 1979) (court held that privacy right of birth parent depends on whether agency made assurances of confidentiality). But see Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 317 n.7, 372 A.2d 646, 654 n.7 (1977) (court held that if agency notifies birth parent at time of adoption that his or her identity will be revealed if adoptee requests, notice constitutes consent to disclosure).

One author suggests the following characterization of the traditional adoption agency stance:

Adoption agencies have insisted that the birth mother's permanent anonymity and privacy were vital to her survival. She had sinned and suffered, paid dearly, and deserved to be left alone. No one had a right to barge into her life and ruin it; she had been promised freedom from fear, and the adoption agency could not violate this sacred oath.

A. Sorosky, A. Baran & R. Pannor, supra note 3, at 50.
The state has also perceived closed records as an essential ingredient promoting stability in adoptive families and integrity in the adoption system.\(^1^4\)

Wisconsin's recently enacted adoption reform statutes\(^1^5\) strive to balance the interests of all parties to adoption. The legislature responded to pressure from reform advocates by amending the statutes relating to preadoption court reports and postadoption disclosure of information. Three major revisions have occurred. First, in anticipation of the adoption proceedings, a comprehensive report must be filed with the court at the hearing to terminate parental rights.\(^1^7\) The report must contain the medical and genetic history of the birth parents and other relatives, the results of a recent medical examination of the parents, a description of the prenatal care and birth condition of the child and a statement of any other relevant medical or genetic history about the child.\(^1^8\) Second, the statute requires the Department of Health and Social Services (DHSS) to maintain a centralized confidential file of the medical and genetic information provided in

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13. See Comment, Confidentiality of Adoption Records: An Examination, 52 Tul. L. Rev. 817 (1978), in which the author asserts that the constitutionally recognized right of a parent to the care, custody and control of his or her child protects adoptive parents, therefore the state must show a compelling interest in order to interfere with the adoptive parents' fundamental right to rear their child. Id. at 832.

14. See Comment, The Arizona Adoption Records Statute: A Call for Reform, 1979 Ariz. St. L.J. 469, 473 (the state has an interest in protecting the adoption process because adoption provides homes for children who would otherwise be homeless); Note, Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent, 34 Rutgers L. Rev. 451, 471-73 (1982) (the state has several interests which are served by sealed records: promoting adoption as an institution by protecting privacy of birth parent; providing atmosphere conducive to full disclosure of information by birth parents; preventing needless disruption of adoptive family).


16. Several Wisconsin adoption advocacy groups were instrumental in lobbying for legislative reform. Among them are the Open Door Society, the Adoption Information Directory (AID), and the Adoptive Parents Association of Greater Milwaukee.

17. Wisconsin provides a bifurcated procedure for the termination of parental rights. Wis. Stat. §§ 48.424, .427 (1981-82). At the factfinding hearing the trier of fact must determine whether the grounds exist for termination under either section 48.41 or section 48.415. If grounds are found, the court must hear evidence related to dispositional alternatives. Id. § 48.424(4). One of the dispositional alternatives is an order permanently terminating parental rights. Id. § 48.427(4).

the court reports. Third, various avenues of access to this information are open to adult adoptees, adoptive parents, the guardian or custodian of an adopted child, the adult offspring of an adoptee or social workers providing adoption services. Nonidentifying information is generally available to these parties upon request. Identifying information may

   (2) (a) The department shall maintain all information obtained under s. 48.427 (6)(b) in a centralized birth record file.
   (b) Any birth parent whose rights to a child have been terminated in this state at any time, or who consented to the adoption of a child before February 1, 1982, may file with the department any relevant medical or genetic information about the child or the child's birth parents, and the department shall maintain the information in the centralized birth record file.

   (3) (a) The department shall release the medical information under sub. (2) to any of the following persons upon request:
   1. A child 18 years of age or older.
   2. An adoptive parent of an adopted child.
   3. The guardian or legal custodian of a child.
   4. The offspring of a child if the requester is 18 years of age or older.
   5. An agency or social worker assigned to provide services to the child or place the child for adoption.

   (4) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about a child whose birth parent's rights have been terminated in this state at any time, or whose birth parent consented to his or her adoption before February 1, 1982, or medical and genetic information about the birth parents of such a child, the person may request that the department conduct a search for the birth parents to obtain the information. The request shall be accompanied by a statement from a physician certifying either that the child has or may have acquired a genetically transferable disease or that the child's medical condition requires access to the information.
   (b) Upon receipt of a request under par. (a), the department shall undertake a diligent search for the child's parents. Upon request by the department, a county agency under s. 48.56 (1) or agency licensed under s. 48.60 shall cooperate in the search and shall make its records available to the department. The department may not require an agency to conduct the search, but may designate an agency to do so with the agency's consent.
   (c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.
   (d) The department or agency designated by the department under par. (b) shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed $100 for either birth
be released if there is a filed affidavit of consent from the birth parents or if a search by DHSS yields parental consent.22

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parent, it shall notify the requester. No fee in excess of $100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(e) The department or agency conducting the search shall, upon locating a birth parent, notify him or her of the request and of the need for medical and genetic information.

(f) The department shall release to the requester any medical or genetic information provided by a birth parent under this subsection without disclosing the birth parent's identity or location.

(g) If a birth parent is located but refuses to provide the information requested, the department shall notify the requester, without disclosing the birth parent's identity or location, and the requester may petition the circuit court to order the birth parent to disclose the information. The court shall grant the motion for good cause shown.

(7) (a) If the department or another agency that maintains records relating to the adoption of a child or the termination of parental rights receives a report from a physician stating that a birth parent or another child of the birth parent has acquired or may have a genetically transferable disease, the department or agency shall notify the child of the existence of the disease, if he or she is 18 years of age or over, or notify the child's guardian, custodian or adoptive parent if the child is under age 18.

(b) If the department or agency receives a report from a physician that a child has acquired or may have a genetically transferable disease, the department or agency shall notify the child's birth parent of the existence of the disease.

(c) Notice under par. (a) or (b) shall be sent to the most recent address on file with the agency or the department.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(9) The department shall adopt rules to implement this section.


48.433 Access to identifying information about parents. (1) In this section, "birth parent" has the meaning given under s. 48.432 (1)(a).

(2) Any birth parent whose rights have been terminated in this state at any time, or who has consented to the adoption of his or her child in this state before February 1, 1982, may file with the department an affidavit authorizing the department to provide the child with his or her original birth certificate and with any other available information about the birth parent's identity and location. An affidavit filed under this subsection may be revoked at any time by notifying the department in writing.

(3) Any person 21 years of age or over whose birth parent's rights have been terminated in this state or who has been adopted in this state with the
This comment will explore the sealed records controversy and examine Wisconsin’s approach to solving it. It will include an analysis of the arguments for open records advanced by adoptees and survey legislative and judicial responses to those arguments. Finally, it will describe the middle of the road solution embodied in chapter 359 of the Laws of 1981.

consent of his or her birth parent or parents before February 1, 1982, may request the department to provide the person with the following:

(a) The person’s original birth certificate.

(b) Any available information regarding the identity and location of his or her birth parents.

(4) Before acting on the request, the department shall require the requester to provide adequate identification.

(5) The department shall disclose the requested information in either of the following circumstances:

(a) The department has on file unrevoked affidavits filed under sub. (2) from both birth parents.

(b) One of the birth parents was unknown at the time of the proceeding for termination of parental rights or consent adoption and the known birth parent has filed an unrevoked affidavit under sub. (2).

(6) (a) If the department does not have on file an affidavit from each known birth parent, it shall, within 3 months after the date of the original request, undertake a diligent search for each birth parent who has not filed an affidavit. The search shall be completed within 6 months after the date of the request. If any information has been provided under sub. (5), the department is not required to conduct a search.

(b) Upon request by the department, a county department under s. 48.56 (1) or an agency licensed under s. 48.60 shall cooperate in the search and shall make its records available to the department. The department may not require an agency to conduct the search, but may designate an agency to do so with the agency’s consent.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department or agency designated by the department under par. (b) shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed $100 for either birth parent, it shall notify the requester. No fee in excess of $100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(7) (a) The department or agency conducting the search shall, upon locating a birth parent, make at least one verbal contact and notify him or her of the following:

1. The nature of the information requested.
2. The date of the request.
3. The fact that the birth parent has the right to file with the department the affidavit under sub. (2).
The dispute over confidential adoption records pits the interests of adult adoptees against the state and the adoptive and birth parents. The state has an interest in preserving the integrity of the adoption process. Birth parents and adopt-

(b) Within 3 working days after contacting a birth parent, the department shall send the birth parent a written copy of the information specified under par. (a) and a blank copy of the affidavit.

(c) If the birth parent files the affidavit, the department shall disclose the requested information if permitted under sub. (5).

(d) If the department or an agency has contacted a birth parent under this subsection, and the birth parent does not file the affidavit, the department may not disclose the requested information.

(e) If, after a search under this subsection, a known birth parent cannot be located, the department may disclose the requested information if the other birth parent has filed an unrevoked affidavit under sub. (2).

(f) The department or agency conducting a search under this subsection may not contact a birth parent again on behalf of the same requester until at least 12 months after the date of the previous contact. Further contacts with a birth parent under this subsection on behalf of the same requester may be made only if 5 years have elapsed since the date of the last contact.

(8) (a) If a birth parent is known to be dead and has not filed an unrevoked affidavit under sub. (2), the department shall so inform the requester. The department may not provide the requester with his or her original birth certificate or with the identity of that parent, but shall provide the requester with any available information it has on file regarding the identity and location of the other birth parent if both of the following conditions exist:

1. The other birth parent has filed an unrevoked affidavit under sub. (2).

2. One year has elapsed since the death of the deceased birth parent.

(b) If a birth parent is known to be dead, the department, in addition to the information provided under par. (a), shall provide the requester with any nonidentifying social history information about the deceased parent on file with the department.

(9) The requester may petition the circuit court to order the department to disclose any information that may not be disclosed under this section. The court shall grant the petition for good cause shown.

(10) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(11) The department shall adopt rules to implement this section.

23. See generally Levin, The Adoption Trilemma: The Adult Adoptee's Emerging Search for His Ancestral Identity, 8 U. BALT. L. REV. 496 (1979); Comment, supra note 14; Comment, supra note 7; Comment, Sealed Records in Adoptions: The Need for Legislative Reform, 21 CATH. L. W. 211 (1975); Comment, Breaking the Seal: Constitutional and Statutory Approaches to Adult Adoptee's Right to Identity, 75 NW. U. L.
tive parents assert a right to privacy which is compatible with integrity in the adoption process. But advocates for unfettered release of information cite injurious effects suffered by adoptees hampered in their search for identity. Those who favor continued restriction argue, however, that the negative effects of disclosure far outweigh the benefits.

A. Adoptee's Need to Know

Many observers contend that the desire for information is universal among adoptees. The possession of history, after all, is one of the defining features of human life. Yet an adopted person is cut off from his or her personal history by a judicial proceeding.

Emotional and psychological needs figure prominently in an adoptee's search. Adopted persons frequently have dif-
difficulty establishing a personal identity. Describing their feelings of isolation, they use terms like "emptiness," "false," "not being a whole or real person." Problems with identity formation are particularly acute during adolescence and at crisis points in adulthood. Thus, adoptees claim that sealed records deny them the means to develop a sense of self which is essential to a healthy and satisfying life.

A diminished sense of self is also related to "genealogical bewilderment." Adoptees do not share the pleasure that most family members feel who know about their ancestors.


31. See A. Sorosky, A. Baran & R. Pannor, supra note 3, at 97-98, in which the authors cite unique aspects of the adoptee's background which affect his or her personality development. They include poor prenatal care and delivery complications, prenatal maternal stress and early maternal deprivation. See generally F. Fisher, The Search for Anna Fisher (1973); J. Triseliotis, In Search of Origins: The Experience of Adopted People 2 (1973).

32. J. Triseliotis, supra note 31, at 82.

33. A. Sorosky, A. Baran & R. Pannor, supra note 3, at 105-19. Describing these conflicts as "identity locuna," the authors describe the adolescent adoptee's confusion:

In part, [an adolescent's] sense of identity is established through identification with the parents, especially the one of the same sex. In the case of the adopted adolescent the process is complicated because he/she has the knowledge that an essential part of himself/herself has been cut off and remains on the other side of the adoption barrier.

Id. at 110 (footnotes omitted).

34. Note, supra note 23, at 1202.


37. Id. See also, In re Maples, 563 S.W.2d 760, 766-67 (Mo. 1978) (Seiler, J., concurring), in which Judge Seiler states:

I note briefly the current fascination with the profound achievement of author Alex Haley in his recorded search for genealogical roots. These sensations of the consciousness of personal history are ample testimonials to the unique anxiety of Americans in discovering our origins; for we are, with rare exception, a nation of uprooted immigrants whose family crests are little more than the remnants of graffiti on the steerage deck walls of a generation of vessels.

All of us need to know our past, not only for a sense of lineage and heritage, but for a fundamental and crucial sense of our very selves: our identity is incomplete and our sense of self retarded without a real personal historical connection.

(footnote omitted.)
Beyond being denied the enjoyment of family history, some adoptees fear incestuous marriages. Others are preoccupied with fantasies about their "other" parents. They often have unanswered questions about why they were separated from birth parents and unrealistic ideas about who those parents are.

Medical crises often precipitate the need for information about biological relatives. Ranging from allergies to searches for transplant donors, medical needs can leave adoptees without sufficient information to get proper treatment. Short of a crisis, impending marriage and childbearing lead to concerns about genetic disease and hereditary traits. Other reasons for open records advanced by adoptees include inheritance rights, religion, and simply a longing to meet their birth parents.

Adopted persons also argue that sealed records are at odds with the purpose of adoption which is to promote the best interests of the adoptee. Although sealed records may benefit an adopted child by promoting stability in the adoptive family, the focus changes when the child reaches maturity. At that point, adoptees claim a right to privacy, which they argue is a fundamental right to know one's identity.

38. See, e.g., State v. Sharon H., 429 A.2d 1321 (Del. 1981) (half-brother and sister, both adoptees, who married were charged with violation of criminal statutes in Delaware).


40. See, e.g., In re George, 625 S.W.2d 151 (Mo. Ct. App. 1981) (adult adoptee petitioned court for identifying information about biological relatives in order to find a donor for a bone marrow transplant).

41. See, e.g., Chattman v. Bennett, 57 A.D.2d 618, __, 393 N.Y.S.2d 768, 768-69 (1977) (court directed medical records to be released to married adoptee thinking of starting her own family; she was concerned with the possibility of genetic or hereditary factors which might cause problems for her children).

42. See, e.g., Spillman v. Parker, 332 So. 2d 573, 576 (La. Ct. App. 1976) (court held that denying adoptee access to confidential records would have the effect of violating his or her right to inherit from biological parents, a right provided for in Louisiana law).

43. See, e.g., In re Gilbert, 563 S.W.2d 768 (Mo. 1978) (a member of the Mormon Church petitioned for access to sealed birth records on the grounds that his religion required tracing his ancestry).

44. See generally F. Fisher, supra note 31.

equal to the privacy right of the birth parent.\textsuperscript{46} Therefore, they deny that confidentiality remains in the best interests of an adult adoptee.\textsuperscript{47}

\textbf{B. Privacy of the Birth Parents}

In the past the majority of birth parents who relinquished their children for adoption did so because they were born out of wedlock.\textsuperscript{48} The parents placed the child for adoption because they determined that it was in the best interests of themselves and the child. Sealing their names reflected a legislative judgment that anonymity was necessary to encourage the use of adoption.\textsuperscript{49} Beyond assurances of confidentiality provided by statute,\textsuperscript{50} adoption agencies have also promised secrecy to birth parents.\textsuperscript{51} Secrecy provided the parent a clear path away from events surrounding the

\begin{itemize}
\item \textsuperscript{46} In re Roger B., 84 Ill. 2d 323, --, 418 N.E.2d 751, 753, cert. dismissed sub nom. Barth v. Finley, 454 U.S. 806 (1981); In re Spinks, 32 N.C. App. 422, 232 S.E.2d 479 (1977).
\item \textsuperscript{47} Levin, supra note 23, at 507; Comment, Sealed Records in Adoptions, supra note 23, at 217; Comment, The Adult Adoptee's Constitutional Right, supra note 23, at 1211.
\item \textsuperscript{48} A. Sorosky, A. Baran & R. Pannor, supra note 3, at 47. The authors state:

The National Center for Social Services estimated that in 1971, 60 per cent of all children adopted in the United States, about 101,000, were born out of wedlock. This statistic is misleading because it implies, without explanation, that 40 per cent of the children placed for adoption are legitimate. It is important to differentiate between the traditional nonrelative adoptive placement and the relative or step-parent adoption. Most of the 60 per cent represents nonrelative adoptions, while most of the 40 per cent represents relative or step-parent adoptions. More significant is the fact that despite the availability of legal abortions and the efforts to disseminate contraception information, there is still a slight increase in the number of illegitimate births among teen-agers in the United States and no evidence of any decline among members of any age group.

Id. (footnote omitted).
\item \textsuperscript{49} Comment, A Step Toward Resolving, supra note 23, at 352.
\item \textsuperscript{50} For a list of statutes providing confidentiality, see supra note 4.
\item \textsuperscript{51} Massey v. Parker, 369 So. 2d 1310, 1315 (La. 1979); Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 302, 311, 372 A.2d 646, 651 (1977). But see A. Sorosky, A. Baran & R. Pannor, supra note 3, at 53, in which the authors' study revealed that 82% of the birth parents contacted said they would be interested in a reunion with their child when the child reached adulthood. Some commentators contend that these studies diminish the argument that promises of confidentiality must be strictly observed. See, e.g., Levin, supra note 23, at 502; Comment, Sealed Records in Adoptions, supra note 23, at 226.
\end{itemize}
child's birth in order to build a new life. Moreover, the interests of the birth parents continue beyond the adoptee's childhood years. One court has stated, "[t]here must be finality for the natural parents and a new beginning; if there is a right of privacy not to be lightly infringed, it would seem to be theirs." The right of privacy assures that the parent-child relationship will be completely severed.

Attempts by adoptees or adoption agencies to break this seal of privacy could have traumatic consequences. Indiscriminate disclosure would reopen a painful episode in the birth parents' lives. Moreover, birth parents often establish a new family unit with the expectation of confidentiality concerning the adoption. Disclosure could cause a complete disruption of the parents' current private lives.

C. Stability of the Adoptive Family

Adoption proceedings make the adoptive parents the child's legal parents conferring on them all the rights and duties of parenthood they would have had if the child were

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52. In re Maples, 563 S.W.2d 760, 763 (Mo. 1978).
54. In re Maples, 563 S.W.2d 760, 763 (Mo. 1978).
55. Id.
56. Id. The court gave two hypotheticals to illustrate its point:
Assume an illegitimate birth followed by adoption and thereafter the natural mother marries and has children by that marriage. Should the adopted child be permitted, through state action, to present himself at the home of her new family and lay bare the tragic secrets of the past? We think not. Or consider the situation in which a married woman, whose husband is absent, (perhaps overseas in the Armed Services) and through an adulterous relationship bears a child whom she promptly places for adoption. Must not the law permit this sorry person privacy without fear of the natural child's appearance at her family home with its potentially disastrous effect?
57. Id.
58. However, some commentators have argued that traditional tort remedies offer sufficient protection to birth parents for invasion of their privacy. See, e.g., Note, supra note 23, at 1217. Such a remedy does not prevent the harm, but would compensate the birth parents. Id. at 1217 n.121.
59. One commentator suggests that birth parents may suffer three possible harms: emotional distress, disruption of interpersonal relationships, and public exposure and embarrassment. Note, supra note 23, at 1215.
their biological offspring. Sealed records laws were promulgated to shield this relationship. Many adoptive parents see themselves as the child's only "real" parents. They fear that liberalizing records laws may divert the child's affection and that they will lose the child to the birth parents. Some of them experience anxiety and rejection when the child begins to explore the past. They are also concerned that the child will be hurt by the facts revealed.

Sealed records also enhance family stability. The family serves society by providing consistency and stability during a child's formative years. Unnecessary intrusion brought about by changes in present policies may hamper this familial function. Confidential records, on the other hand, are

60. See, e.g., Wis. Stat. § 48.92 (1981-82), which provides in relevant part:

Effect of adoption. (1) After the order of adoption is entered the relation of parent and child and all rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted person and the adoptive parents.

(2) After the order of adoption is entered the relationship of parent and child between the adopted person and his birth parents, unless the birth parent is the spouse of the adoptive parent, shall be completely altered and all the rights, duties and other legal consequences of the relationship shall cease to exist.


62. See id. at 222-23, in which the author states:

Some adoptive parents prefer to ignore the fact that the child was not born to them and refuse to recognize that adopting a child is different from giving birth to a child. They look upon themselves as the child's "only parents." As far as they are concerned, the relationship between the natural parents and the child, a relationship viewed as a mere circumstance of biology, ceases to exist after the adoption.

Id. (footnote omitted).

63. A. Sorosky, A. Baran & R. Pannor, supra note 3, at 73-86. The authors assert that there is no evidence supporting these fears. Id. at 73.

64. See id. at 85. See also Levin, supra note 23, at 504.


67. See, e.g., In re Roger B., 84 Ill. 2d 323, 341 N.E.2d 751, 754, cert. dismissed sub nom., Barth v. Finley, 454 U.S. 806 (1981). Adoptees, however, have argued that the guarding of the familial bond in the adoptive family is no longer necessary once the adoptee has reached adulthood. Levin, supra note 23, at 507. This position is rejected by the courts. See, for example, ALMA Soc'y v. Mellon, 601 F.2d 1225, 1231 (2d Cir.), cert. denied, 444 U.S. 995 (1979), in which the court stated that "[t]he adoptee's attainment of majority is a definite event in the adoptee's life; but it occurs independent of either the legally terminated natural family relationship or the legally assumed adoptive one and does not affect termination or continuation of those rela-
thought to promote emotional attachments in the adoptive family.

D. State’s Interest in Adoption

Through its police and parens patriae power,68 the state protects the health and welfare of children who are not able to live with their birth parents.69 Adoption serves this purpose by providing a substitute family.70 Sealed records further state interests by creating an atmosphere for honesty in the preadoption investigation so that all relevant facts will be revealed which will enable the state to make the best placement for the child.71 Confidentiality also helps the adoptive family establish itself as a social unit thereby meeting the child’s needs.72 Finally, closed records are thought to erase the stigma of illegitimacy and thus protect the child from societal disapproval.73

The state also has an interest in protecting the birth parents’ privacy.74 This protection promotes adoption as a viable system.75 Abandonment of this legally sanctioned process for placement may lead to more complex social problems.76 Furthermore, state purposes are served by hon-
oring the promises of anonymity given to birth parents at the time of the adoption.\textsuperscript{77}

III. JUDICIAL ATTEMPTS TO GAIN ACCESS

Utilizing the courts, adoptees have made numerous attempts to circumvent confidential records laws.\textsuperscript{78} They have argued that state statutes violate their first amendment right to receive information,\textsuperscript{79} their fourteenth and ninth amendments right to privacy,\textsuperscript{80} their fourteenth amendment right to equal protection of the laws,\textsuperscript{81} their fourteenth amendment right to property and their thirteenth amendment protection against the badges of slavery.\textsuperscript{82} State and federal courts have uniformly upheld sealed records statutes against these constitutional challenges.\textsuperscript{83} Efforts to expand statutory definitions of good cause have been an alternate line of attack.\textsuperscript{84} In most cases, broadening the judicial definition of good cause to include an adoptee's psychological need to know his or her identity would be sufficient to enable an adoptee to

\textit{Id.} at 196-97.

\textsuperscript{77} Note, supra note 14, at 472-73.


\textsuperscript{79} \textit{In re} Maples, 563 S.W.2d 760, 761 (Mo. 1978).


\textsuperscript{82} \textit{Id.}

\textsuperscript{83} \textit{See infra} text accompanying notes 87-159.

\textsuperscript{84} \textit{See} Massey v. Parker, 362 So. 2d 1195 (La. Ct. App. 1978) (adoptee's right to inherit from blood relatives was sufficient cause for unsealing records), \textit{rev'd}, 369 So. 2d 1310 (La. 1979); \textit{In re} Anonymous, 92 Misc. 2d 224, 399 N.Y.S.2d 857 (Sup. Ct. 1977) (mental illness of adoptee good cause to open records); \textit{In re} Spinks, 32 N.C. App. 422, 232 S.E.2d 479 (1977) (eighteen year old adoptee alleged that a psychological need to know was sufficient cause to open records).
obtain the desired information. However, there has been no consistent statement from the courts on the definition of good cause.

A. Constitutional Challenges

1. The Right to Privacy

The Supreme Court has recognized a right to privacy in the penumbras of the first, third, fourth, fifth and ninth amendments of the Constitution. Moreover, the Court has repeatedly held that the due process clause of the fourteenth amendment prevents state intrusion into an individual’s life on matters relating to marriage, procreation, contraception, family relationships and childrearing. Although the Court’s privacy decisions are not easily classifiable, the

85. See supra notes 27-47 and accompanying text.
86. See infra notes 160-94 and accompanying text.
93. See Comment, supra note 7, at 728 n.49, in which the author comments on the petitioner’s claim to privacy in ALMA Soc’y v. Mellon, 601 F.2d 1225 (2d Cir.), cert. denied, 444 U.S. 995 (1979):

A court’s finding that a plaintiff has presented a valid privacy claim must, of course, conform to the Supreme Court’s decisions on privacy. However, the Supreme Court’s decisions are not easily classifiable; nor do they provide lower courts with clear guidance for the resolution of claims that an activity or interest is or should be protected. See McKenna v. Fargo, 451 F. Supp. 1355, 1379 (D.N.J. 1978).

Courts and scholars have tried to organize the Supreme Court’s decisions into a cohesive doctrine of privacy. The Supreme Court itself has divided its decisions into two categories: cases involving “the individual interest in avoiding disclosure of personal matters, and . . . [those involving] the interest in independence in making certain kinds of important decisions.” Whalen v. Roe, 429 U.S. 589, 599-600 (1977). Scholars have developed other categories. See, e.g., Gerety, Redefining Privacy, 12 HARV. C.R.-C.L. L. REV. 233 (1977) (classifying the decisions under the definitional words autonomy, identity and intimacy); Kurland, The Private I, U. OF CHI. MAGAZINE, 7, 8 (Autumn 1976) (establishing three facets of privacy: the right to be free from government intrusion and surveillance; the right not to have one’s private affairs made public by the government; and the right “to be free in action, thought, experience, and belief from government compulsion”); Comment, A Taxonomy of Privacy: Repose, Sanctuary, and Intimate Decision, 64 CALIF. L. REV. 1447 (1976) (categorizes the Supreme Court’s privacy decisions as involving repose (freedom
criterion expounded has been that only those personal rights deemed fundamental or "implicit in the concept of ordered liberty" are constitutionally protected. Adoptees have attempted to establish that they have a fundamental right to their birth records. If a fundamental right were involved, courts would apply strict scrutiny to records statutes. The strict scrutiny test would require states to show a compelling interest in order to withstand adoptees' constitutional challenges.

In 1979 the constitutional arguments surrounding sealed records cases were considered for the first time by a federal appellate court in _ALMA Society, Inc. v. Mellon_. ALMA Society members claimed, among other things, that learning the identity of their parents was a fundamental privacy right protected by the due process clause of the fourteenth amendment. Characterizing this as a right to personhood, the Court of Appeals for the Second Circuit summarized the adoptees' privacy claim as follows: "An adoptee is someone upon whom the state has, by sealing his records, imposed life-long familial amnesia . . . injuring the adoptee in regard to his personal identity when he was too young to consent to, or even know, what was happening."

The court responded to the adoptees' challenge by noting that their right to privacy, if a legitimate constitutional right, must be examined in the context of the right to family pri-
vacy in general. It emphasized two recent Supreme Court cases dealing with fourteenth amendment rights in family relationships. In Quilloin v. Wolcott a biological father sought to block the adoption of his illegitimate child by the mother's husband. The ALMA court was particularly impressed by language in Quilloin which stood for the principle that full recognition and protection must be granted to a family unit already in existence. Based on this language, the ALMA court concluded that adoptive parents have a constitutionally recognized privacy interest. The court also looked to Zablocki v. Redhail. That case involved a challenge to a statute which required parents paying child support to obtain permission of the court before marrying. The ALMA court found Zablocki instructive because it recognized that privacy decisions must weigh "the nature of the relationship and [recognize] that choices made by those other than the adopted child are involved."

Relying on these decisions, the ALMA court held that the New York statute which required good cause to open adoption files was not unconstitutional. It concluded that the legislature had taken into account the varying interests and relationships involved and had struck a permissible balance. The court stated that in striking a balance, the legislation does not "unconstitutionally infringe upon or arbitrarily remove appellant's rights of identity, privacy, or personhood."

Adoptees' privacy challenges have also been rejected by state courts. The cases reflect, however, varying approaches

103. Id. ("We note, of course, that we are dealing with the 'family' in general and with two families in particular — first, the natural parent(s) . . . and second, the adopting family which has presumably nurtured the child to the age of adulthood.").
105. Id. at 247.
106. ALMA Soc'y, 601 F.2d at 1232.
107. Id.
109. ALMA Soc'y, 601 F.2d at 1233.
110. Id.
111. Id.
112. Id. The ALMA court's reasoning was recently echoed in another federal court case, Schechter v. Boren, 535 F. Supp. 1 (W.D. Okla. 1980), in which the court, in a memorandum opinion, upheld an Oklahoma confidential adoption records statute.


115. Id. at __, 372 A.2d at 655.

116. Id. at __, 372 A.2d at 650.

117. Id. at __, 372 A.2d at 651.

118. Id. at __, 372 A.2d at 652.

119. 563 S.W.2d 760 (Mo. 1978).

120. Id. at 763.

121. Id.

122. Id.

123. Id. at 764.

eral courts which have held that an adoptee does not have a fundamental right to examine his or her adoption records.\(^{125}\) Even though it recognized the importance of Roger's interest in his identity,\(^{126}\) the court used the rational basis test because the interest was not fundamental.\(^{127}\) The court determined that the Illinois sealed records statute represented a reasonable legislative judgment that confidentiality promotes the integrity of the adoption process.\(^{128}\) Although the court weighed the countervailing interest of the adult adoptee, it balanced the adoptee's interest against the "relationship and choices made by all parties concerned."\(^{129}\)

2. Equal Protection

Most of the cases discussed in regard to privacy challenges also include claims that sealed records statutes deny adoptees equal protection of the laws.\(^{130}\) The equal protection argument was cogently addressed in the *ALMA* decision.\(^{131}\) The adult adoptees claimed that adopted status was a suspect classification and therefore the state must show a compelling interest to support the validity of sealed records laws.\(^{132}\) The adoptees in *ALMA* argued that they were enti-

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125. *Id.* at __, 418 N.E.2d at 753.
126. *Id.* at __, 418 N.E.2d at 755-56.
127. *Id.* at __, 418 N.E.2d at 754.
128. *Id.*
129. *Id.* at __, 418 N.E.2d at 756.
132. One commentator summarized the equal protection analysis as follows:

As courts and commentators have often pointed out, equal protection does not mean that "things different in fact [must] be treated in law as though they were the same." If a state's unequal treatment of a group is "reasonable," it generally will past muster under the equal protection clause. However, where unequal treatment threatens a particularly important or "fundamental" right, or injures a particularly vulnerable, or "suspect," class, the Supreme Court has held that the treatment is subject to the Court's strict scrutiny. To withstand such scrutiny, the inequality must be much more than reasonable—it must be necessary to the accomplishment of a compelling state objective.

The suspect classifications which trigger strict scrutiny are limited to those based on race, alienage, and national origin. However, the Supreme Court has also created an unofficial "middle tier" of protection scrutiny which is applicable to "quasi-suspect" classifications such as those based on sex or illegitimacy. To be held constitutional, quasi-suspect classifications "must serve important
tled to at least the same level of judicial scrutiny afforded illegitimates, a class designated as sensitive or as quasi-suspect.\textsuperscript{133} Courts have held that legislation dealing with quasi-suspect classifications must be subject to an intermediate level of judicial scrutiny.\textsuperscript{134} In the alternative, the adoptees urged the application of strict scrutiny on the theory that any group impressed with the incidents of slavery is also a suspect class under the equal protection clause.\textsuperscript{135}

The court dismissed the latter argument with little discussion indicating that the Supreme Court has been very reluctant to expand the list of traits subject to strict scrutiny under the thirteenth amendment.\textsuperscript{136} Addressing the first contention, the court found no logic in comparing adult adoptees who must show cause to view records with illegitimate persons who have unrestricted access to birth records.\textsuperscript{137} It described the problem as follows:

When a court decides that a classification is suspect or quasi-suspect, it has concluded that the State has employed a questionable trait to distinguish those whom the law should burden from those whom the law should not. Here, however, the distinguishing trait between adult adoptees and nonadopted illegitimates, the allegedly similarly situated classes, is not illegitimacy — indeed, both of these classes are largely comprised of illegitimates, according to appellants. The trait, rather, is adopted status.\textsuperscript{138}

The court concluded that the adoptees presented no convincing arguments that they were treated so differently as to warrant even quasi-suspect classification. Thus, the sealed records laws withstood the constitutional challenge.\textsuperscript{139} In dicta, the court stated further that even if adopted status was a quasi-suspect class, the statutes would survive intermediate governmental objectives and must be substantially related to achievement of those objectives.” An analysis of the Court’s criteria for suspect and quasi-suspect classes suggests that adoptees may qualify as a quasi-suspect class.

Comment, \textit{Adoptee’s Equal Protection Rights, supra} note 23, at 1332-33 (footnotes omitted).

\textsuperscript{133} \textit{ALMA Soc’y}, 601 F.2d at 1233.
\textsuperscript{134} \textit{Id}.
\textsuperscript{135} \textit{Id}. at 1233-34.
\textsuperscript{136} \textit{Id}. at 1234.
\textsuperscript{137} \textit{Id}.
\textsuperscript{138} \textit{Id} (emphasis in original).
\textsuperscript{139} \textit{Id}.
scrutiny because they are substantially related to an important state interest.\textsuperscript{140}

3. Right to Receive Information

Constitutional challenges have also arisen on first amendment grounds.\textsuperscript{141} The Missouri Supreme Court in \textit{In re Maples}\textsuperscript{142} addressed the usual first amendment argument. Maples had contended that denying her access to sealed records violated her right to receive information as delineated in three United States Supreme Court cases.\textsuperscript{143} Under the first amendment, the Court has held that a city may not restrict the dissemination of ideas by limiting the distribution of handbills,\textsuperscript{144} that a state may not prohibit the sale of obscene films to adults\textsuperscript{145} and that a state may not forbid the use of contraceptives by married persons.\textsuperscript{146} The rationale behind these decisions was the constitutional prohibition against restricting the free flow of ideas from one person to another.\textsuperscript{147} The \textit{Maples} court did not find the principle applicable to adoption records.\textsuperscript{148}

Instead, the court stated, "the information sought here is the product of the judicial process, gathered under the scheme of the adoption laws. Control of these records to promote this highly desirable system stands in contrast to the prevention of the transfer of handbills, films or medical advice from one person to another . . . ."\textsuperscript{149} The court held that the state, by protecting adoption records, exercised a valid state interest which did not infringe on Maples' first amendment rights.\textsuperscript{150}

4. Other Constitutional Arguments

Several adoptees have contended that closed records stat-
utes violate the thirteenth amendment.151 In ALMA Society, Inc. v. Mellon,152 adoptees proposed that New York’s sealed records statute imposed on them an incident of slavery which had been abolished by the thirteenth amendment.153 The ALMA court, acknowledging the novelty of the argument,154 rejected the claim because it did not conform to the Supreme Court’s interpretation of the thirteenth amendment. It pointed out that the Court has never held that the amendment, unaided by legislation, addresses the badges and incidents of slavery in addition to the actual condition of slavery.155

Another unique argument was presented in In re Roman.156 There an incarcerated man petitioned for release of his adoption records to aid in his rehabilitation.157 One claim he made was that the denial of access violated his eighth amendment right against cruel and unusual punishment.158 The court, however, summarily dismissed the constitutional challenges without addressing their merits.159

B. Expanding Good Cause

Because state and federal courts have repeatedly upheld sealed records statutes,160 adoptees have sought a broadened definition of good cause.161 Inconsistencies have resulted from the variety of approaches taken by the courts. Many courts have been willing to open records for medical rea-
sons or to protect inheritance rights. Yet age, psychological needs, the desire to learn one's ancestry and mere curiosity have not been found sufficient. However, courts have shown a tendency to relax restrictions when information can be released without identifying the birth parents or when consent is obtained from them by an intermediary.

Courts have clearly held that an adoptee's right to inherit from blood relatives constitutes good cause, but they have retreated from full disclosure of all the information in the adoption record. In Spillman v. Parker an adult adoptee requested permission to view his file to determine whether he had any inheritance rights. The Louisiana Court of Appeals found this to be a valid reason and allowed Spillman to inspect his records. Subsequently, however, the same court opted for a more tempered solution, and, in


163. Massey v. Parker, 369 So. 2d 1310 (La. 1979) (court opened records to extent that it examined them to determine whether adoptee had inheritance rights).


165. In re Maples, 563 S.W.2d 760, 762 (Mo. 1978) (plaintiff showed no compelling psychological need).


167. Mills v. Atlantic City Dep't of Vital Statistics, 148 N.J. Super. 339, 368, 372 A.2d 646, 655 (1977) ("An adoptee who is moved to a court proceeding such as the one here is impelled by a need to know which is far deeper than 'mere curiosity.' ").

168. In re Maples, 563 S.W.2d 760, 766 (Mo. 1978).


173. Id. at 574.

174. Id. at 576.
Massey v. Parker, a similar request was turned down. The court held that although inheritance rights were compelling reasons, the adoptee need not inspect the records because the court could do so and determine whether any inheritance rights existed.

Evaluating the adoptee's psychological and medical needs has been a more difficult task for courts. Although one federal circuit court suggested that psychological needs or medical emergencies would constitute good cause, these needs have been balanced against the interests of both the birth parents and the adoptive parents. For example, despite compelling medical needs, the Missouri Court of Appeals in In re George fashioned a remedy designed to protect the interests of all parties. The petitioner was a thirty-three year old adoptee suffering from chronic myelocytic leukemia who was seeking a bone marrow donor. After contacting the birth mother who refused to release her identity or the name of the father, the trial court denied the adoptee access to his record. The appellate court reviewed the medical evidence and determined that there was sufficient cause to remand the case for further proceedings. It directed the trial court to contact the father and to accept the birth mother's offer to submit to medical testing without disclosing her identity.

In In re Hayden a New York court concluded that an adoptee's allegations that she was a possible "DES baby" and was suffering psychological harm as a result did constitute good cause. On the other hand, good cause has not been found when a psychological need is not accompanied

175. 369 So. 2d 1310 (La. 1979).
176. Id. at 1315.
178. Id. at 1231.
180. Id. at 155.
181. Id. at 152.
182. Id. at 160.
183. Id.
185. Id. at 545.
186. Id.
by other symptoms of emotional or mental illness. For example, the petitioner in *Linda F.M. v. Department of Health* claimed that her inability to discover the identity of her birth parents impaired her psychologically, causing her marriage to break up and stifling her artistic talents. The court distilled the complaint to simply a desire to know her ancestry and held that this was not good cause within the statutory requirement.

Adulthood alone was rejected as sufficient cause in *In Re Roger B.* Roger portrayed himself as emotionally, physically and financially comfortable. Since he demonstrated no psychiatric or medical need, the Illinois Supreme Court denied him access to identifying information about his birth parents.

In summary, adoptees' arguments justifying disclosure under good cause have met with mixed responses from courts. Clearly courts are expressing a willingness to distinguish nonidentifying information and to allow access with a lesser showing of cause. However, before revealing the identity of birth parents, courts proceed cautiously. They look for compelling reasons or employ intermediaries to contact birth parents to obtain their consent.

### IV. LEGISLATIVE REFORM

Commentators have suggested that legislative reform offers the most profitable avenue for the changes urged by adoptees. Although sealed records statutes enacted in the
1930's and 1940's reflected then accepted views of the importance of secrecy, a different philosophy of adoption exists today. Legislative action may be able to implement this change in attitude most effectively. Statutory changes would also eliminate the inconsistencies present in judicial interpretations of constitutional issues and in judicially-defined good cause. Additionally, legislatures may be the more appropriate forum for articulating criteria for unsealing the records.

Three preliminary issues must be noted before surveying recent legislative activity. First, few adoption records statutes, open or closed, distinguish between information which identifies the birth parent and information which does not. Yet this distinction is important. Many adoptees could satisfy their needs by receiving records and reports which do not identify the birth parents. A close corollary to this issue is the adequacy of background information in the file. An adoptee's quest is not resolved if the records are incomplete. Moreover, the birth parents' medical histories are not static. Periodic updates would enhance the data's usefulness. A third preliminary issue is the status of adoption agency records. Although statutes are clear about confidential court reports, the release of agency records is often unrestricted. Agency policies have controlled access and most agencies have been liberal in releasing nonidentifying

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time period before the order of adoption is final, and the second addressing the time period after the order is final. Such provisions should allow attorneys of the parties involved, as well as private and state agencies, to inspect the records during the adoption process without securing a court order. Medical information concerning the biological parents and the adopted child should be gathered and placed in a separate report available to adoptive parents and to the adoptee upon request, but the report on the biological parents should not contain identifying inscriptions.

Id. See A. Sorosky, A. Baran & R. Pannor, supra note 3, at 33-35. 
195. See supra text accompanying notes 87-159. 
196. See supra text accompanying notes 160-94. 
197. Comment, Breaking the Seal, supra note 23, at 342. 
198. See, e.g., ALASKA STAT. § 25.23.150 (Supp. 1982); CAL. CIV. CODE § 227 (West 1982). 
199. Comment, supra note 7, at 745. 
Current legislative activity can be grouped into three categories. Most state legislatures still favor the status quo of sealed records despite the regular introduction of proposals for reform. Some states have made provisions for releasing nonidentifying information. Others have gone further, establishing procedures for updating information and revealing the identity of birth parents through court orders, review boards, intermediaries or registries.

South Carolina's statutory revisions are typical of new laws which provide for release of nonidentifying information on request. The statute provides that nonidentifying information includes the health of the birth parent, the health of the child, the child's general family history, and the length of time the child has been in placement. A number of states now provide that this information can be released to the adult adoptee, the adoptive parent, and the child's guardian if he or she is still a minor.

Following the recommendations made by the New Jersey Superior Court in Mills v. Atlantic City Department of Vital Statistics, some states have set up intermediaries to facilitate the exchange of information between adoptees and their birth parents. Connecticut and Minnesota, for example,
have established elaborate procedures to enable adult adoptees to obtain identifying information.\textsuperscript{217} Connecticut also provides for appeals to an adoption records review board\textsuperscript{218} if a trial court denies access. Basically, these statutes allow release of nonidentifying information on request and release of identifying information with the consent of the birth parents.\textsuperscript{219} Consent may be evidenced by an affidavit filed by the birth parent either at the time of adoption or after he or she has been contacted by an intermediary on behalf of the state or the court.\textsuperscript{220}

State registries are another type of statutory reform. A registry simply provides that adult adoptees, adoptive parents or birth parents list their names and addresses in a central file to be released if a request is made. Maine currently operates a state registry.\textsuperscript{221} The law allows a registrar to obtain any information from those registering or those requesting information necessary to accurately identify the parties.\textsuperscript{222} In addition, the state official may review both public and confidential files to aid in verifying identities.\textsuperscript{223}

V. WISCONSIN'S LEGISLATIVE RESPONSE

Wisconsin first closed its adoption records in 1929.\textsuperscript{224} The records were closed to all persons except parties and certain state officials. In 1951 the records were closed even to these persons and could be opened only "upon order of the court for good cause shown."\textsuperscript{225} Impetus for liberalizing these statutes came from support groups in Wisconsin composed of adoptees, adoptive parents, and birth parents.\textsuperscript{226} Their efforts coincide with a national movement for open records.\textsuperscript{227} The movement's vitality comes from a belief that adult adoptees are co-owners of their records and restricted

\begin{itemize}
  \item \textsuperscript{217} See id.
  \item \textsuperscript{219} See supra note 216.
  \item \textsuperscript{222} Id. § 2706-A(3).
  \item \textsuperscript{223} Id. § 2706-A(4).
  \item \textsuperscript{224} See Wis. Stat. § 322.06 (1929).
  \item \textsuperscript{225} Wis. Stat. § 322.06 (1951).
  \item \textsuperscript{226} See supra note 16.
  \item \textsuperscript{227} See supra note 2.
\end{itemize}
access denies them the right to an identity.\textsuperscript{228}

\textbf{A. Chapter 359}

Chapter 359 of the Laws of 1981,\textsuperscript{229} effective on May 7, 1982, enables adult adoptees to obtain medical and genetic information upon request and, in many circumstances, to secure other identifying information about their birth parents. The Wisconsin Legislature has selected a balanced approach to the sealed records controversy designed "to ensure sensitive treatment of adoptees, birth parents, adoptive parents, agencies, and all others who may be affected by the search for and disclosure of genetic and medical information about adoptees and birth parents and birth parent identity and location."\textsuperscript{230}

1. Medical and Genetic Information

In all adoptions completed after May 7, 1982, the Department of Health and Social Services (DHSS) is required to maintain a central file of the medical and genetic information contained in court reports submitted by agencies at the time of the termination of parental rights.\textsuperscript{231} The comprehensive medical report must include:

1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child's grandparents, aunts, uncles, brothers and sisters.

2. A report of any medical examination which either birth parent had within one year before the date of the petition.

3. A report describing the child's prenatal care and medical condition at birth.

4. The medical and genetic history of the child and any other relevant medical and genetic information.\textsuperscript{232}

\begin{footnotesize}
228. \textit{See supra} text accompanying notes 87-129.


232. \textit{Id. § 48.425(1)(am)}.\end{footnotesize}
This information can be released upon request to the following persons: the adoptee who is eighteen years or older; the adoptive parents; the guardian or legal custodian of the adoptee who is under eighteen years of age; the offspring of an adopted person if the offspring is eighteen years or older; or any agency or social worker providing adoption services.\textsuperscript{233} No proof of medical need is required, though, to obtain information on adoptions completed before May 7, 1982.\textsuperscript{234} However, in these earlier adoptions the information will generally not be available in DHSS files.

The statute provides that a requester may require DHSS to conduct a search for the birth parents to secure genetic or medical information not in the state's file.\textsuperscript{235} Each request, however, must be accompanied by a written statement from a physician certifying that the adoptee's medical condition requires access or that the adoptee has or may have acquired a genetically transferable disease.\textsuperscript{236} The DHSS search utilizes adoption agency records, vital records, telephone directories, motor vehicle records, marriage license files, Social Security files and similar public and private records to locate a birth parent.\textsuperscript{237} If located, the parent will be notified of the request for nonidentifying medical and genetic information.\textsuperscript{238} If the birth parent refuses to supply the requested information, the requester is notified and may petition the court for an order requiring disclosure.\textsuperscript{239}

2. Identifying Information

An adopted person over the age of twenty-one\textsuperscript{240} may request DHSS to release his or her original birth certificate and other information including the identity and location of

\textsuperscript{233} Id. § 48.432(3)(a).
\textsuperscript{234} Id. § 48.432(4)(a).
\textsuperscript{235} Id. § 48.432(4)(b).
\textsuperscript{236} Id. § 48.432(4)(a).
\textsuperscript{237} Telephone interview with DHSS staff of the Adoption Information Search Program (Mar. 10, 1983).
\textsuperscript{239} Id. § 48.432(6)(g).
\textsuperscript{240} In the drafting stage, discussions ensued regarding the appropriate age indicating a level of maturity to cope with identifying information regarding birth parents. The Committee selected 21 years for identifying information and 18 for nonidentifying information. Interview with DHSS staff, supra note 237.
the birth parent.241 There are several conditions under which DHSS may release all available information. First, the information will be released if both birth parents have filed an affidavit with DHSS consenting to the disclosure of identifying information.242 Second, if only one parent was known at the time of the adoption and that parent filed an affidavit of consent, the information is made available.243 Third, the requester will be allowed access if a birth parent files an affidavit pursuant to a successful DHSS search.244 Finally, DHSS will provide the information if the requester obtains a court order.245

If the birth parent is located as a result of the search, DHSS will make at least one verbal contact with the parent to notify him or her of the provisions of the law and the nature of the request.246 The verbal contact will be followed by a written notice including an affidavit form.247 If the signed affidavit is returned, DHSS will release the information.248 If not, the requester must petition the court.249 In order to respect the birth parent's privacy, DHSS may not recontact him or her for at least twelve months.250

B. Emerging Problems

Several questions about the legislation have already surfaced.251 First, the law does not clearly define nonidentify-

242. Id. § 48.433(5)(a).
243. Id. § 48.433(5)(b).
244. Id. § 48.433(7)(c).
245. Id. § 48.433(9).
246. Id. § 48.433(7)(a).
247. Id. § 48.433(7)(b).
248. Id. § 48.433(7)(c).
249. Id. § 48.433(9).
250. Id. § 48.433(7)(f). The statute provides that following the second contact after twelve months, "[f]urther contacts with a birth parent under this subsection on behalf of the same requester may be made only if 5 years have elapsed since the date of the last contact." Id.
251. Some of these problems have been addressed in Wis. A.B. 150 (1983) introduced by the Legislative Council on February 23, 1983. Analysis provided in the bill by the Legislative Reference Bureau indicates the following changes are proposed:
  1. It requires courts to provide adoptive parents with the child's medical and genetic record at the time of adoption.
  2. It requires the Department of Health and Social Services (DHSS) to provide adult adoptees and others whose parents' rights have been terminated,
ing information beyond medical and genetic data.\textsuperscript{252} Statutes of several other states illustrate the range of data possibly included in the term. Connecticut, for example, lists the following: age of birth parent at time of birth; heritage, which includes nationality, ethnic background, and race; number of years of school completed at the time of the birth; general physical appearance in terms of height, weight, color of hair, eyes, skin; talents, hobbies and special interests; existence of other children; reasons for placement; religion; occupation; health history of biological relatives; manner in which plans were made regarding adoptive placement; and the relationship between the birth parents.\textsuperscript{253} Other states simply refer to health information.\textsuperscript{254} Although agencies currently compile a comprehensive file, neither the law nor the administrative rules indicate whether this information can be obtained upon demand or whether the procedure for access to identifying information must be followed.

Secondly, many requesters are seeking information con-
cerning biological siblings.\textsuperscript{255} Release of information regarding brothers and sisters has not yet been addressed. But this information is particularly important to middle-aged adoptees because siblings represent their key link to the past.

Finally, the law does not delineate the adoption agency’s role in disclosing information. Agencies usually are the best resource for the information being sought.\textsuperscript{256} Agencies have the greatest familiarity with the parties and records involved.\textsuperscript{257} Also, they may be more efficient in compiling and disseminating information. They offer the further advantage of being a resource for counselling and education of the parties involved.\textsuperscript{258} In the past, agencies have had varying policies on disclosure. Some have released all available information upon request except the identity of the birth parents.\textsuperscript{259} DHSS, however, has interpreted chapter 359 to mean that the Adoption Information Search Program is the exclusive avenue for adoptees and others seeking access to birth records.\textsuperscript{260} This stance has eliminated an informal, inexpensive and often fruitful option for those searching for information. It also mandates the cumbersome process of transferring all agency records to DHSS where they may be more difficult and costly for the adoptee to retrieve.

\section*{VI. Conclusion}

Resolving the sealed versus open adoption records question requires close scrutiny of and sensitivity to the needs of all parties to adoption. Adult adoptees, no longer needing the protection of secrecy, seek information needed for their

\textsuperscript{255} Interview with DHSS staff, supra note 237.
\textsuperscript{256} Comment, \textit{A Step Toward Resolving}, supra note 23, at 377-78. See also Klibonoff, supra note 76, at 197-98.
\textsuperscript{257} Comment, \textit{A Step Toward Resolving}, supra note 23, at 377.
\textsuperscript{258} \textit{Id.} at 378.
\textsuperscript{259} \textit{The Child Welfare League of America, Standards for Adoption Service} (1976), recommends that agencies collect and disclose nonidentifying information. See also Comment, \textit{A Step Toward Resolving}, supra note 23, at 358, in which the author states that most agencies have sealed identifying information by policy decisions in the absence of statutory restrictions (citing M. Jones, \textit{The Sealed Adoption Record Controversy: Report of a Survey of Agency Policy, Practice and Opinion} 13-14 (1976)).
\textsuperscript{260} Telephone interview with Michael Becker, Director of Office on Children, Youth and Families, Department of Health and Social Services (Oct. 3, 1983).
physical and emotional well-being. Birth parents’ privacy, however, deserves respect and deference. They have made what is often a painful decision to relinquish their child to another family. The law protects that decision by erasing the relationship legally and socially. Committed adoptive parents have an interest in preserving the family unit they have nurtured and supported. Courts are not the most satisfactory forum for balancing these interests when adult adoptees request the unsealing of their birth records. Legislative changes have been pursued with varying results. Some states have consistently chosen to retain sealed records statutes. Others have provided for the release of health and other data not identifying the birth parent.

Wisconsin is among those states which have recognized the need for reform, but have not embraced the open records philosophy. Instead the legislature has chosen to compromise. Although it allows the release of nonidentifying information on request, the statute provides for an intermediary to search for birth parents to obtain consent for the release of their names. The new law, however, may have unnecessarily complicated the process for the adoptee. Adult adoptees and birth parents who want reunions may find bureaucratic barriers to their goal. Not only are there procedural hurdles to overcome, but limited DHSS staff hours may cause unduly long delays. Many searchers will still have to resort to national registries to locate one another.

Those adoptees who obtain access to their medical and genetic records may find very little information in the file. The new law depends on cooperation from social workers, court personnel, and trial court judges to ensure that comprehensive court reports are entered in a child’s record at the termination of parental rights hearing. This court report forms the basis for the useful data an adult adoptee may request. Yet not all Wisconsin counties are currently enforcing this provision in the law.261

Adoption agencies themselves appear to be the most reliable resource for adoptees and birth parents. It is at the agency level that the most comprehensive data is collected and compiled. Changing agency policies would mean that

261. Interview with Michael Becker, supra note 260.
information gathered at this point would be more detailed and more uniformly available. In addition to its advantage as an informal resource, agencies also offer the benefit of being available to assess whether the requester is well-motivated and capable of handling facts which might be revealed. Likewise, the agency is a resource for professional counselling services, and, if needed, as an intermediary between adoptees and birth parents.

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