



**Department
of Health**

Adoptee Stakeholder Workgroup Report

April 30, 2018

Adoptee Workgroup Report

As directed by Governor Cuomo in Veto Message 252 to A.5036-B/S.4845-B of 2017, the New York State Department of Health (Department) convened a workgroup of diverse stakeholders to examine matters related to adoptee rights in New York. The goal of the workgroup was to study and offer recommendations to Governor Cuomo and the Legislature in matters of adoption in New York State. Stakeholders were invited to participate in the workgroup and to attend a meeting on Friday, March 2, 2018.

The following individuals participated in the workgroup meeting:

- Honorable David Weprin, Prime Legislative Sponsor of A.5036 of 2017, New York State Assembly
- Sumeet Sharma, Office of Assemblyman David Weprin
- Christian O'Connor, Office of Assemblyman David Weprin
- Leyla Kiosse, Vice-President, Women's Bar Association of the State of New York
- Samantha Howell, Executive Director of National Association of Social Workers
- Capt. Timothy Jaccard, President, AMT Children of Hope Foundation
- April Dinwoodie, Executive Director, Donaldson Adoption Institute
- Claudia Corrigan-D'Arcy, Director of Outreach and Advocacy, Adoptive and Foster Family Coalition of New York
- Timothy Monti-Wohlpart, NYS Representative, American Adoption Congress
- Denise Seidelman, Trustee, American Association of Adoption Attorneys
- Guy Warner, Former Registrar and Director of NYS Department of Health Vital Records
- Janet Fink, Deputy Counsel, NYS Unified Court System
- Gretchen Van Wie, Assistant Commissioner, Bureau of Vital Statistics, NYC Department of Health and Mental Hygiene
- John Stupp, Attorney, New York State Office of Children and Family Services
- Erin Hammond, Acting Deputy Director, Office of Governmental Affairs, NYS Department of Health
- Jane McLaughlin, Legislative Counsel, Office of Governmental Affairs, NYS Department of Health
- Jake LoCicero, State Registrar and Director of NYS Department of Health Vital Records
- Martha Mahoney, Law Student Intern, Office of Governmental Affairs, NYS Department of Health

Background:

The legislation serving as the impetus for the workgroup, A.5036-B/S.4845-B of 2017, was vetoed by Governor Cuomo based on concerns that the bill would have created a "cumbersome process...[which] may only add to an adoptee's hardship, including delays resulting from the lack of any identified funding source necessary for the Department to search for and identify birth parents." Stakeholder groups representing the rights of adopted individuals, such as the American Adoption Congress, the Unsealed Initiative, the New York Adoptee Rights Coalition, and the Donaldson Adoption Institute, opposed the bill as

counterproductive to advancing the rights of adopted individuals by imposing what they believe is a burdensome process for adoptees to access their original birth certificates.

Specifically, the bill would have amended Domestic Relations Law (DRL) § 114 to set forth the following procedure through which adoptees could access their original birth certificates:

- 1) An adoptee over the age of 18 would apply to the court in which the adoption was made or to the supreme court requesting an order releasing a certified copy of the original “long form” birth certificate. If no birth certificate exists, the adoptee may access the birth parent(s)’ identifying information.
- 2) The court would then contact the Department with the identifying information regarding the adoptee’s birth parent(s).
- 3) The Department would then have 120 days to make a “reasonable and good faith effort”, documented in writing, to find and notify the birth parent(s) that the adoptee has petitioned the court for the original birth certificate.
- 4) The Department must also determine whether the birth parent(s) have registered with the Adoption Information Registry before conducting the search and notifying the parent(s). If the parent(s) is/are in the Registry, or have already requested confidentiality, the Department notifies the court as such and no outreach is made. Pursuant to the legislation, a parent(s) could, at any point, submit a notarized confirmation requesting anonymity.
- 5) If the birth parent(s) consent, the court releases the original birth certificate or identifying information.
- 6) If the birth parent(s) wishes to remain confidential, the court submits a birth certificate with the parent(s)’ names redacted. In the event that one parent elects to remain confidential, his or her information is redacted.
- 7) If, after good faith efforts, the birth parent(s) cannot be located, the court must decide whether to release the information to the adoptee, considering any evidence that the birth parent(s) wished to remain anonymous.
- 8) Birth parents are provided a contact preference form, as well as a medical history release form. If received, they are provided (sealed) to the adoptee.

The bill would have also amended Public Health Law (PHL) § 4138-c to state that, for adoptions occurring after the effective date of the subdivision, adoptees over the age of 18 would have the right to receive a certified copy of their original birth certificates.

Versions of this bill have been active in the New York State Legislature since the mid-1990s, however, A.5036-B/S.4845-B of 2017 is the first of its kind to have passed both houses of the Legislature. Adoptee rights advocates opposed A.5036-B/S.4845-B and urged Governor Cuomo to veto the bill.

Existing Law:

Under DRL § 114, when an adoption occurs, the original birth certificate and order of adoption is filed with the court by the name of the adoptive parents and by the full original name

of the child. Adoption records, including the original birth certificate, are kept sealed. Certificates of adoption contain the new name of the child, the date of birth, place of birth, name of adoptive parents, and where the adoption was granted. No person, including the adoptive parents' attorney, can disclose a child's surname directly or indirectly to the adoptive parents, except upon an order of the court. Existing law does not afford access to any sealed adoption records without a judicial order.

Public Health Law § 4138-C governs the Adoption Information Registry (Registry), which has been in place since 1984. For adoptions that take place in New York, the Registry affords consenting adoptees, birth parents, and biological siblings over the age of 18 with the ability to obtain information about their birth families. As of January 2018, the Registry has facilitated 2,755 matches between adoptees and biological families. The law also established a medical sub-registry, which authorizes birth parents to share medical information, which may be accessed by the adoptees.

National Trends

- New York is one of 21 states where birth records for adopted individuals remains sealed. Arizona, California, Florida, Georgia, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wyoming all have similar statutes with the presumption that original birth certificates are to be sealed. The District of Columbia also has a law sealing birth records.
- Other states allow some individuals access to their adoption records, but restrict eligibility to certain individuals adopted within a specified date range, as well as other restrictions: Maryland, Michigan, Minnesota, Montana, Nebraska, Oklahoma, and Vermont.
- Two states, Connecticut and Massachusetts only limit access to birth records to those adopted during certain years enumerated in statute.
- Eleven states allow access with some limited restrictions: Arkansas, Delaware, Illinois, Indiana, Missouri, New Jersey, Ohio, Pennsylvania, Tennessee, Washington, and Wisconsin.
- Nine states allow adoptees to access their original birth certificates without restrictions: Alabama, Alaska, Colorado, Hawaii, Kansas, Maine, New Hampshire, Oregon, and Rhode Island.

Workgroup Discussion

The Department began the discussion by indicating that its role at the meeting was to facilitate the conversation and to listen to the stakeholders and advocates. The Department indicated that the goal of the workgroup meeting was to hear from the stakeholders and to compile their recommendations for Governor Cuomo and the Legislature.

Denise Seidelman, Esq., an adoption attorney representing the Academy of Adoption & Assisted Reproduction Attorneys (AAAA), stated that this legislation represents a conflict between the adoptees' right to access information and the birth parents' right to privacy. From

the perspective of the AAAA, the legal restrictions and barriers to the original birth certificate have inspired adoptees to take alternative measures to find out their identity and birth parents or relatives. For example, some adoptees are using commercial DNA testing kits, investigating on their own, or hiring private investigators to find their relatives.

Without a formal state policy and procedure for adoptees to access their birth information, Ms. Seidelman noted that some adoptees may opt to take more drastic action to find their birth parents, potentially upsetting the birth parents and causing emotional harm to the adoptee. Concerns about unsolicited contact have been addressed in some state laws through penalty provisions, such as in Tennessee, where adoptees have access to their original birth certificates, however, birth parents are notified of any requests for the birth information and are then asked whether they want to veto any contact. If the birth parent(s) veto the contact, the adoptee, contingent upon receipt of his/her original birth certificate, must sign an affidavit stating that they will not violate the birth parents veto to contact, and any violation of that affidavit results in civil and criminal penalties. Ms. Seidelman also noted that she has represented approximately 500 birth mothers over her career and can only think of one birth mother who expressed a desire not to meet the child she put up for adoption. The Academy of Adoption Attorneys recently passed a resolution in support of unrestricted access by adult adoptees to original birth certificates.

Leyla Kiosse, representing the Women's Bar Association of the State of New York (WBASNY), explained WBASNY's mission, which is to improve the status of women in society and in the legal profession and to help women, children, and families. Ms. Kiosse indicated that WBASNY opposed A.5036-B/S.4845-B primarily because the bill would have authorized the disclosure of a birth parent's identifying information without his or her consent. In addition, Ms. Kiosse expressed concerns that the bill set up an "opt-out," as opposed to an "opt-in" process for birth parents. In other words, WBASNY believes the presumption should continue to be that a birth parent would wish to maintain the confidentiality of their identifying information. WBASNY opposed the bill as a breach of the promise of confidentiality given to birth parents, which would occur if their information was released to adoptees as authorized by the bill, and expressed concern that the numerous procedures set forth in bill could lead to mistakenly releasing the identification of a birth parent without his or her consent. Ms. Kiosse questioned the need for the legislation, since the Adoption Information Registry already provides an avenue through which adoptees can access information from their birth parents and suggested that any such legislation be prospective in nature and authorize access to birth certificates for adoptions occurring after the effective date of the legislation.

Timothy Monti-Wohlpart, New York representative of the American Adoption Congress (AAC), and an adoptee himself, countered WBASNY's position and offered that, while AAC and WBASNY both opposed A.5036-B/S.4845-B, they did so for different reasons. Mr. Monti-Wohlpart indicated that, from the perspective of the AAC and adoptees, the bill would have created a "new right" to privacy for birth parents, which the bill would have prioritized over the rights of adoptees. He noted that, for adoptees, affording unrestricted access to their original birth certificates would restore adoptees' basic civil and human rights. Mr. Monti-Wohlpart stated that he did not believe the Adoption Information Registry was sufficient, characterizing it as "passive" with no guarantee that a birth parent would submit his or her information.

The AAC supports a “clean” adoption bill that affords unrestricted access to adoptees. With respect to legislation that imposes penalties on adoptees who contact birth parents who have indicated they do not wish to be contacted, Mr. Monti-Wohlpart noted that AAC would not support such a provision, as the vast majority of adoptees would respect a birth parent’s wishes, however, AAC would not oppose legislation that created “contact preference forms” for birth parents, provided they were not legally-binding (Claudia Corrigan D’arcy and April Dinwoodie, whose comments are described in greater detail below, shared this sentiment). Mr. Monti-Wohlpart pointed out that the law allows foster children to access their original birth certificate when they reach the age of 18 and questioned the discrepancies in the legal rights of adoptees versus those of foster children. He presented a petition containing 4,200 signatures advocating for the advancement of S.5169A/A.6821A, the “clean” adoption reform bill.

Echoing Mr. Monti-Wohlpart’s comments, Claudia Corrigan D’arcy, the Director of Outreach and Advocacy for the Adoptive and Foster Family Coalition of New York (AFFCNY), professed that when the New York State Legislature passed the laws sealing adoption records, the intent was to protect the child by hiding his or her illegitimacy, not to protect the privacy of the birth parent(s). From the perspective of AFFCNY, existing law already puts birth parent(s) on notice that there would be a possibility that information would be released to an adoptee through a court order. As such, Ms. Corrigan D’arcy believes the expectation of complete anonymity by a birth parent is unreasonable. Furthermore, she noted that their privacy is not protected today because adoptees are using the burgeoning DNA testing industry and social media outlets to locate their birth parents. She contended that if the state wishes to protect the privacy of birth parents in our current society, it is better to set up a system that affords adoptees access to a single document (the original birth certificate) with the information they are seeking, instead of driving them to take public, possibly intrusive actions to find their birth parents.

Ms. Corrigan D’arcy stated that studies show that birth parents often grieve upon giving a child up for adoption, and this grief is only alleviated when the birth parents are reunited with the adoptee, and are assured that the child they gave up is safe and has been provided for. She also believes that this is an issue that furthers the rights of women, generally. More specifically, she takes issue with the fact that the adoption industry and public sentiment tends to characterize birth mothers as selfless, brave individuals, yet our state policies surrounding access to birth records assume that the mother would not have the mental or emotional fortitude to be contacted by her child years later. It has been her experience that out of thousands of interactions with birth parents and adoptees, only one or two women stand out as being averse to contact from the children they gave up for adoption.

April Dinwoodie, Executive Director of the Donaldson Adoption Institute (DAI), and an adoptee herself, noted that adoption agencies often facilitate open adoptions and that our existing law runs counter to current practices. The DAI supports unrestricted access to original birth certificates by adoptees, stating that adopted individuals are the only class of people in the United States who are not permitted to obtain their original birth records as a routine matter. This raises significant human and civil rights concerns for adoptees. Throughout the discussion, Ms. Dinwoodie openly concurred with the points made by the other stakeholders representing the

rights of adoptees. Ms. Dinwoodie noted that while the Donaldson Adoption Institute is in the legal dissolution process, all studies and research completed by the Institute will be archived.

Captain Timothy Jaccard, representing AMT Children of Hope Baby Safe Haven Foundation, discussed the work his organization does to facilitate adoptions. A Safe Haven is a designated public place, such as a hospital, firehouse, EMS station or police precinct, where a baby can be safely left by a birth parent or guardian without fear of criminal prosecution. While not an adoption agency, the Safe Haven Foundation accepts newborns from a parent or guardian who wishes to relinquish custody, provides the mother and infant medical care if necessary, and assists with the adoption process. Many of these adoptions are completely anonymous. Capt. Jaccard explained that, when a birth mother calls the crisis center, she is not asked her name; instead, she is given the name "Jane Doe", which is the name listed on the child's birth certificate. While the Safe Haven program tries to obtain as much information, including medical, as possible from the birth mother, each "Jane Doe" has the right to withhold information. Capt. Jaccard expressed support for legislation allowing adoptees access to their original birth certificates. He stated that he did not believe the legislation would have any impacts on the Safe Haven Foundation's activities, because birth mothers are not required to divulge any personal information to the Safe Haven Foundation as a condition to giving a child up for adoption.

Samantha Howell, Executive Director of the New York State Association of Social Workers (NYSASW), indicated that NYSASW would need to look at specific legislation to formulate the Association's position, however, she believed that NYSASW would generally support legislation to provide adoptees with unrestricted access to original birth certificates. She stated that the only other population in our nation's history who could not freely access their birth records besides adoptees were slaves. Ms. Howell stated that the Association would vehemently oppose any legislative proposals, such as the law adopted in Tennessee, that included criminal sanctions against an adoptee for reaching out to his or her birth parents against their wishes. Ms. Howell noted that there are already laws on the books that penalize harassment and unwanted contact. Furthermore, she expressed concern that a law criminalizing contact between an adoptee and a birth parent infringed upon an adoptee's first amendment rights.

Assemblyman Weprin stated that he sponsored A.5036-B/S.4845-B because he believed the lack of access to original birth certificates was an issue of human rights for adoptees. He questioned why adult adoptees should be prevented from accessing their original birth certificates based on a decision that was no choice of their own. He believes everyone should have a right to access their original birth certificate, whether they are adopted or not. In 2014, the Assembly held a hearing on legislation to allow adoptees to access their original birth certificates. Assemblyman Weprin noted that no one participating in the hearing could produce a document that guaranteed anonymity to birth parents who placed their child up for adoption. In addition, Assemblyman Weprin stated that an adoptee may be unknowingly predisposed to certain medical condition and may want to reach out to their birth parents to better understand their family's medical history. The Assemblyman pointed out that the adoptee access issue brings to light a class dichotomy in which wealthier people have the financial means to spend significant amounts of money on DNA testing and private investigators to find their birth parents.

The Assemblyman sponsors three adoptee rights bills with varying degrees of access for adoptees. He chose to sponsor A.5036-B/S.4845-B, which the advocates consider too restrictive, because he believed the bill had the best chance of passage and was a step in the right direction for adoptee rights by providing adoptees with a process through which they could access their original birth certificates. He indicated that he would continue to push for another bill, A.9959/S.7631, that he sponsored along with Senator Lanza, which would allow unrestricted access to original birth certificates by adoptees over the age of 18. He urged the stakeholders present at the workgroup to coalesce and support that bill.

Public Comments

The Department set up a unique email address for individuals not participating in the workgroup who wished to comment on the issue and received approximately 170 emails from individuals expressing support for legislation that would afford open access to birth certificates by adoptees. Many adoptees shared their own stories of how they found their birth parents, and expressed frustration with the amount of time it took, or the amount of money they spent on reunification. Several adoptive parents reached out on behalf of their adopted children, expressing support for legislation that would allow their children access to their original birth certificates. Some commenters expressed that as adoptees, they feel they are treated like “second-class citizens,” and that unrestricted adoptee access to birth records is a human rights and civil rights issue. Several attorneys and professionals who work in the field of adoption echoed the sentiments of the stakeholders on the workgroup, stating that birthmothers were never legally guaranteed anonymity or confidentiality, and that society has drastically changed since the laws sealing birth records were adopted to protect birth parents and children from public scorn associated with illegitimacy. Some adoptees weighed in and said they were willing to take the risk of being rejected by their birth parents with the goal of achieving closure.

Conclusion

For adoptees, this issue is deeply personal and fraught with emotion. The consensus amongst advocacy groups representing adoptees is that New York State law should be amended to allow unrestricted access by adoptees to their original birth certificates. They do not support amendments that would be perceived as a barrier to access. Furthermore, professionals involved in the adoption process have noted that most birth parents express a willingness to share information and/or establish contact with the adoptees. The reception amongst the legal community is mixed, with some expressing concern about the expectation of privacy by the birth parents, and others questioning whether such a legal right exists, or even supporting unrestricted access to better protect the birth parents’ privacy. This is an important, yet complex, issue. Continued engagement with all stakeholders is critical in the context of legislation addressing the issue of access to original birth certificates by adoptees.