

MEMORANDUM

Overview of Draft Bill

This bill recognizes that current Vermont law restricting the release of an adult adopted person's original birth record is overly complex, discriminatory for adult adopted people, and does not reflect best practices and reality, where a person's own identity, genetics, and genealogy should not be secret. What this bill does:

- Creates a direct route for adult adopted people, at age 18, to apply for and obtain a copy of their own original birth certificate on file with the Vermont Department of Health, the state agency that holds the certificate. This aligns with laws in nearly every state in the New York and New England region.
- Provides birthparents the option to file a contact preference form that informs an adult adopted person of the birth parent's wishes concerning contact, whether that preference is for contact directly, contact through an intermediary, or for no contact.
- Eliminates the Vermont Adoption Registry's involvement in a vital records issue by repealing a provision that requires the registry to issue "permission slips" to adult adopted people in order for an adopted person to apply for the original birth certificate, which is held by the Department of Health.
- Aligns Vermont law so that issues involving a vital record are handled through the Vermont Department of Health and under the auspice of the state's vital records law, while issues involving adoption and post-adoption services, if needed, remain governed by adoption law and handled through child-placing agencies, the court system, or the Vermont Department of Children and Families.

Explanation of Sections

Section 1. This section creates the procedures the state Department of Health will follow in issuing a copy of an adult adopted person's original birth certificate. It has three primary provisions:

1. Creates a simple process for the adult adopted person who is at least 18 years of age, as well as descendants of an adopted person if the adopted person is deceased, to apply for and obtain his or her own original birth certificate from the Department of Health. The procedures and fees for obtaining the original birth certificate will be the same as required for non-adopted people seeking their own birth record.
2. Creates a birthparent contact preference form, modeled after numerous states—including New Hampshire and Maine—that allows a birthparent to file a contact preference form to express a preference for contact directly, through an intermediary, or for no contact. The contact preference form will be available for filing to any person who is listed as a parent on an adopted person's original birth certificate. A parent's contact preference may be updated at any time to change the preference, and the Department of Health is authorized to require payment of a reasonable fee for filing a contact preference form, though it is blank to determine what may be appropriate.
3. Requires the Department of Children and Families, through the Vermont Adoption Registry, to make reasonable efforts to inform people impacted by the change in the law. The language is nearly identical to current law requiring the Vermont Adoption Registry to make such efforts when there is a statutory change. See, [15A V.S.A. § 6-111](#). Public awareness efforts will allow birthparents to file contact preference forms prior to the effective date of the bill.

Section 2. This section, in one simple provision, clarifies that the Vermont Department of Health is authorized to release an adopted person's original birth certificate under the state's vital records law, specifically under [18 V.S.A. § 5078](#) (see Section 1 above). The provision essentially affirms that birth records should be regulated by the state's vital records law while adoption records are regulated through the state's adoption law.

Section 3. This section is similar in focus to section 2. It confirms that an adopted person's vital record may be released under Vermont vital records law (see Section 1) but that court and adoption agency records will remain confidential.

Section 4. This section is necessary to repeal the current Vermont Adoption Registry control over an adult adopted person's own original birth record. It eliminates the current practice of the registry issuing a "permission slip" to an adult adopted person, who can use the permission slip to apply for the original birth certificate from the Department of Health. Again, it aligns Vermont law so that vital records are controlled by the state's vital records law and adoption records are controlled by adoption law.

Effective Date. An effective date has not been suggested but in most states with similar laws the adopted person can apply for the original birth certificate one year after enactment. Typically, the effective date for informing the public of a change in the law, as well as the requirement for the Department of Health to create and make available a contact preference form for parents, is upon enactment, with parents able to file contact preference forms at least six months prior to the date adopted people may apply for their original birth certificates.

Sec. 1. 18 V.S.A. § 5078 is amended to read:

§ 5078. Adoption; new and amended birth certificate

(a) When the State Registrar receives a report of adoption, a report of an amended adoption, or a report that an adoption has been set aside as provided in 15A V.S.A. § 3-801, or a record of adoption prepared and filed in accordance with the laws of another state or foreign country, he or she shall proceed as prescribed in 15A V.S.A. § 3-802.

(b) If prior to July 1, 2019 a new birth certificate was issued following an adoption that contains a notation that it was issued by authority of this chapter, contains the filing dates of the original and the new birth certificate, or otherwise contains information that facially distinguishes it from an original, the adoptive parent or the adoptee if 14 years of age or older may apply to the State Registrar to issue a replacement birth certificate that does not contain distinguishing information. The State Registrar shall issue the replacement and notify any town clerk with custody of the version that contains distinguishing information, who shall substitute the latter with the replacement birth certificate. The town clerk shall send the version that contains distinguishing information to the State Registrar, who shall keep it confidential.

(c) An adopted person who is 18 years or more old and was born in this State, or a deceased adopted person's direct descendant who is 18 years or more old, shall upon written request receive a certified copy of the adopted person's original birth certificate and any evidence of the adoption previously filed with the State Registrar or town clerk. The copy of the original birth certificate shall clearly indicate that it may not be used for identification purposes. If a contact preference form is attached to the original birth certificate as provided by this title, the State Registrar shall provide a copy of the contact preference form along with the copy of the adopted person's original birth certificate.

(d) A person who was listed as a parent on an adopted person's original birth certificate may at any time request from the State Registrar a contact preference form that, if filed by the parent, shall accompany an original birth certificate issued pursuant to this title.

The contact preference form shall provide the following information to be completed at the option of the parent:

- (1) I would like to be contacted.
- (2) I would prefer to be contacted only through an intermediary.
- (3) I prefer not to be contacted at this time. If I decide later that I would like to be contacted, I will submit an updated contact preference form to the State Registrar.

The contact preference form is a confidential communication and it shall be sealed upon receipt from a parent. The sealed information shall be matched with the adopted person's sealed original record of birth, and the contact preference form shall accompany the original birth certificate requested and released to the adopted person or the adopted person's descendant pursuant as provided in this title.

(e) All procedures, fees, and waiting periods applicable to non-adopted persons born in this State who seek copies of records of birth shall apply to the request for an adopted person's original birth certificate. The State Registrar may charge a reasonable fee, not to exceed \$____, to a parent who files a contact preference form.

(f) The Department of Children and Families, through the Vermont Adoption Registry, and with the cooperation of the other departments of State government, shall make reasonable efforts to notify members of the public who may be affected by changes in this title governing the release of an adopted person's original birth certificate as well as the option of a parent to file a contact preference form, including:

- (1) informing the general public by submitting press releases to the news media in Vermont and other states;
- (2) informing adoptee, birthparent, and genealogy groups in Vermont and other states;
- (3) including information in motor vehicle registration and license renewals;
- (4) including information in appropriate locations on the Internet; and
- (5) contacting the adoption coordinators in each state and determining what agencies or groups in that state should be notified.

Sec. 2. 15A V.S.A. § 3-802 is amended to read:

§ 3-802. Issuance of new, amended birth certificate

(a) Except as otherwise provided in subsection (d) of this section, upon receipt of a report of adoption prepared pursuant to subsection 3-801(a) of this title, a report of adoption prepared in accordance with the law of another state or country, a certified copy of a decree of adoption together with information necessary to identify the adoptee's original birth certificate and to issue a new certificate, or a report of an amended adoption prepared pursuant to subsection 3-801(b) of this title, the State Registrar shall either:

(1) for an adoptee born in this State, update the Statewide Registration System in accordance with the decree and furnish a certified copy of a new birth certificate to the adoptive parent and to an adoptee who is 14 years of age or older;

(2) for an adoptee born in another state, forward a certified copy of the report of adoption to the appropriate office of the state of birth;

(3) for an adoptee adopted in this State who was born outside the United States and was not a citizen of the United States at the time of birth, create and register in the Statewide Registration System a "certificate of live birth for a foreign born child" upon request and in the form specified in 18 V.S.A. § 5078a and furnish a certified copy of the certificate to the adoptive parent and to an adoptee who is 14 years of age or older;

(4) for an adoptee born outside the United States who was a citizen of the United States at the time of birth, notify the adoptive parent of the procedure for obtaining a revised birth certificate through the U.S. Department of State; or

(5) in the case of an amended decree of adoption, either update the Statewide Registration System in accordance with the decree and follow the procedure in subdivision (a)(1) or (3) of this section or follow the procedure in subdivision (2) or (4) of this section.

(b) Unless otherwise specified by the court, a new birth certificate or certificate of live birth for a foreign born child issued pursuant

to subdivision (a) (1) or (3) or an amended certificate issued pursuant to subdivision (a) (5) of this section shall:

- (1) be signed by the State Registrar;
- (2) include the date, time, and place of birth of the adoptee;
- (3) substitute the name of the adoptive parent for the name of the person listed as the adoptee's parent on the original birth certificate;
- (4) [Repealed.]
- (5) contain any other information prescribed by the State Registrar.

(c) In the case of birth certificates registered prior to July 1, 2019 that are to be replaced or amended pursuant to subdivision (a) (1) or (5) of this section, the State Registrar shall notify the town clerk or clerks with custody of the certificate, who shall substitute the new or amended birth certificate for the original birth certificate. ~~Except as provided by this title or by 18 V.S.A. § 5078, the original certificate and all copies of the certificate in the files shall be sealed and shall not be subject to inspection or copying until 99 years after the adoptee's date of birth, except as provided by this title.~~

(d) If the court, the adoptive parent, or an adoptee who is 14 years of age or older requests that a new or amended birth certificate not be issued, the State Registrar shall not issue a new or amended certificate for an adoptee pursuant to subsection (a) of this section. Nonetheless, for an adoptee born in another state, the State Registrar shall forward a certified copy of the report of adoption or of an amended decree of adoption to the appropriate office in the adoptee's state of birth.

(e) Upon receipt of a report that an adoption has been set aside, the State Registrar shall:

- (1) for a person born in this State for whom a new birth certificate was issued, update the Statewide Registration System to reflect the original birth certificate data and, in the case of an original birth certificate registered prior to July 1, 2019, notify the town clerk or clerks with custody of the certificate, who shall seal any new or amended birth certificate issued pursuant to subsection (a) of this section, restore the original, update indexes as directed by the State

Registrar, and not allow inspection or copying of the sealed certificate except upon court order or as otherwise provided in this title;

(2) for a person born in another state, forward the report to the appropriate office in the state of birth;

(3) for an adoptee born outside the United States who was not a citizen of the United States at the time of birth for whom a certificate of live birth for a foreign born child was issued, update the Statewide Registration System to reflect that the adoption was set aside; or

(4) for a former adoptee born outside the United States who was a citizen of the United States at the time of birth, notify the person who is granted legal custody of a former adoptee after an adoption is set aside of the procedure for obtaining an original birth certificate through the U.S. Department of State.

(f) Upon request by a person who was listed as a parent on an adoptee's original birth certificate and who furnishes appropriate proof of the person's identity, the State Registrar shall give the person a noncertified copy of the original birth certificate.

Sec. 3. 15A V.S.A. § 6-102 is amended to read:

§ 6-102. Records confidential

(a) All records on file with the court or in the possession of an agency, the Department of Health, the registry, or other provider of professional services in connection with an adoption are confidential and may not be inspected except as provided in this title **or by 18 V.S.A. § 5078.**

(b) During a proceeding for adoption, records are not open to inspection except as directed by the court.

(c) Within 30 days after a decree of adoption becomes final, the clerk of the Superior Court shall send to the registry a copy of any document signed pursuant to section 2-105 of this title.

(d) All records on file with the court or agency shall be retained permanently and kept confidential for 99 years after the date of the adoptee's birth. Confidential records and indices are not open to inspection or copying by any person except as provided in this title.

(e) The records of an agency that ceases operation in this State shall be transferred to the Department for retention under the provisions of this title.

Sec. 4. 15A V.S.A. § 6-107 is amended to read:

~~§ 6-107. Release of original birth certificate.~~

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~~(a) A copy of the adoptee's original birth certificate may be released to the adoptee upon the request of an adoptee who has attained the age of 18 and who has access to identifying information under this article.~~

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~~(b) When 99 years have elapsed after the date of birth of an adoptee whose original birth certificate is sealed under this title, the Department of Health shall unseal the original certificate and file it with any new or amended certificate that has been issued. The unsealed certificate becomes a public record in accordance with any statute or regulation applicable to the retention and disclosure of birth certificates.~~ [Repealed]