

RESOLUTION 07-02-06

DIGEST

Birth Records: Access by Adult Adoptees

Amends Health and Safety Code section 102705 to eliminate the necessity of a court order for certain adult adoptees to obtain their birth records.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code section 102705 to eliminate the necessity of a court order for certain adult adoptees to obtain their birth records. This resolution should be approved in principle because the policies and purposes behind adoption secrecy laws no longer exist.

Initially, state laws providing for secrecy in the adoption process were designed to protect the privacy of the parties from outside inquiry. California became one of the first states to enact legislation to prevent the parties themselves from inspecting their own records and the original birth certificate. Secrecy in the adoption process was done for a variety of reasons, including to protect the birthmother from the stigma of having conceived a child, usually out of wedlock, that she did not choose to keep; to protect the adoptive parents from the stigma of being infertile; to protect the adoptee from the stigma of being illegitimate; and to protect the adoptive family from the threat of attempted reclamation of the adoptee by the birthparents. These reasons are now largely moot. In addition, whatever privacy interests of the birthparents and the adoptive parents remain intact, it is the interests of the adopted child that should be paramount: when that child reaches majority, and if that child so desires, he or she should be permitted to know the identity of his or her birthparents.

However, it is recommended that any distinction made between those born before or after 1973 be removed.

SECTION/COMMITTEE REPORT

FAMILY LAW EXECUTIVE COMMITTEE

DISAPPROVE

The Family Law Executive Committee does not agree with rationale put forth by proponent for creation of a separate class of adoptees/parents after 1973. More importantly, we feel such a drastic change in how access to such information, for the adopted child, is handled/allowed could have a very chilling effect on the willingness of parents to agree to give up their children for adoption because of the fear that, without the parents consent, the child could get access to information to

locate the parent eighteen (18) years later.

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Family Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommend that legislation be sponsored to amend Health and Safety Code Section 102705 as follows:

1 § 102705

2 All records and information specified in this article, other than the newly issued
3 birth certificate, shall be available without a court order to the adopted child if the adopted
4 child has reached the age of majority and was born after 1973, and only to the adopted child
5 if born before 1973, or to other persons, upon the order of the superior court of the county of
6 residence of the adopted child or the superior court of the county granting the order of
7 adoption.

8 No such order shall be granted by the superior court unless a verified petition
9 setting forth facts showing the necessity of the order has been presented to the court and
10 good and compelling cause is shown for the granting of the order. The clerk of the superior
11 court shall send a copy of the petition to the State Department of Social Services and the
12 department shall send a copy of all records and information it has concerning the adopted
13 person with the name and address of the natural parents removed to the court. The court
14 must review these records before making an order and the order should so state. If the
15 petition is by or on behalf of an adopted child who has attained majority, these facts shall be
16 given great weight, but the granting of any petition is solely within the sound discretion of
17 the court.

18 The name and address of the natural parents shall be given to the petitioner in a
19 court proceeding only if he or she can demonstrate that the name and address, or either of
20 them, are necessary to assist him or her in establishing a legal right.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Ventura County Bar Association

STATEMENT OF REASONS

Existing Law: The existing law requires a court order based on compelling cause for an adopted child to gain access to information about his or her natural parents. Outside of a medical necessity, it is often difficult for adult adopted children to gain access to information about their birth parents, despite great personal anguish. Existing law mandating sealed records was enacted

in the 1930's when abortion was illegal, and children born out of wedlock carried enormous stigma for the mother and the child.

This Resolution: Would modify existing law by requiring offices of vital records to release birth record information to adult adopted children without a court order so adopted children can find out the identity of their natural parents if they so choose.

The Problem: Despite the assertions of many who claim to speak for the "unborn," children do not ask to be born. The decision to carry a fetus to term is one made by the mother without input from the child. Since 1973, when the United States Supreme Court issued its decision in *Roe v. Wade* (1973) 410 U.S. 113, women have been able to choose whether to legally terminate a pregnancy or carry a fetus to term. This right is codified in California.

When the adoption laws were enacted providing for sealed records, abortion was illegal and a great deal of stigma was placed on unwed mothers and their children. This is no longer the case. It is only fair that the law consider the best interests of the child over the privacy interests of the mother in those cases where the woman chooses to carry her pregnancy to term.

IMPACT STATEMENT

This proposed resolution does not affect any other statute, rule, or law.

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COUNTERARGUMENTS

ORANGE COUNTY BAR ASSOCIATION

Under current law, a pregnant woman wishing to eschew parenthood entirely has three choices: (1) abortion, (2) closed adoption, and (3) abandonment. This resolution seeks to take away one of these options by ending truly "closed" adoptions. In so doing, the resolution works a sea change in adoption law unwarranted by any compelling interest.

The proponent's contrary assertion notwithstanding, closed adoptions are not a 1930's anachronism. Every year, a significant number of birth mothers and biological fathers who--for whatever personal reasons--do not wish to become parents are still willing to place infants with adoptive parents. They have done so with the legal assurance their identity will be kept private unless "good and compelling cause" necessitates disclosure. Although the stigma of single parenthood has lessened significantly, privacy remains a concern of paramount importance to many biological parents. Those who gave up children for adoption over the past 33 years in reliance on the privacy afforded by law would be

horrified to learn their reliance may have been misplaced.

Equally important, the resolution's unintended social effects are unknown. If privacy cannot be assured, some biological parents may forego adoption entirely. Would these parents instead choose to raise an unwanted child, causing the number of dependency cases to increase, or opt for abortion, causing the pool of children available for adoption by loving families to shrink?

The argument supporting the resolution hangs on the thinnest logical thread. After abortion became legal in 1973, the author argues, any woman choosing a live birth over abortion *ipso facto* surrendered her right of privacy in favor of her child, who "did not ask to be born." The author brands as presumptuous those who would speak for the unborn, but implicitly presumes many adopted children may prefer not to have been born. Such disdain for life is astonishing.

Further, declaring a woman's privacy rights forfeit upon giving birth to a live infant means a woman's right to choose is unfettered only if she chooses abortion. Such runs counter to the basic principle underlying *Roe v. Wade*, to wit, a woman's right to privacy may not be impinged by another's moral judgment. Many women consider abortion personally abhorrent. By eliminating her rights in the case of a live birth, the important decision such a woman must make is rendered a Hobson's choice.

No compelling interest supports the change. Under the current law, an adopted child may discover his or her birth parents upon a showing of "good and compelling cause." Certainly, if an adopted child's health issues require information about the biological parents, the court can issue an order unsealing the birth records. Biological parents who, in light of changed societal mores, no longer harbor privacy concerns may take advantage of registries that currently exist to facilitate reunification. For those biological parents who wish to remain anonymous, however, the current law should continue to provide protection.

SAN DIEGO COUNTY BAR ASSOCIATION

This resolution is incorrectly premised on the assumption that only the concerns of adopted children are relevant to a determination as to whether birth information should be released. Clearly, birth parents who place a child or children for adoption do so for a myriad of reasons. To alter existing requirements and allow adopted children unfettered access to their birth records without considering the interests of the birth parents could create a chilling affect on the decisions of birth parents to give up children for adoption when that is in the children's best interest. The discretion to grant or deny adopted children access to their birth records should be retained by the Superior Court so that the interests of both the adopted children and the birth parents can be weighed appropriately.