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# **Review of Maine's Vital Records Laws**

**Final Report**

**Prepared by:**  
**Sally Sutton, Senior Policy Analyst**  
**Institute for Health Policy**  
**Muskie School of Public Policy**  
[ssutton@usm.maine.edu](mailto:ssutton@usm.maine.edu)

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# **Review of Maine's Vital Records Laws- Final Report – December 18, 2005**

Prepared by Sally Sutton, Senior Policy Analyst  
Institute for Health Policy, Muskie School of Public Service

## **Executive Summary**

On June 9, 2005 Governor Baldacci signed into law LD 1202 – A Resolve to Study the Accessibility of Birth Certificates and Other Vital Records (Public Law Chapter 107). This is a report of the study that was conducted, with findings and recommendations to be reported by January 4, 2006 to the Second Regular Session of the 22<sup>nd</sup> Legislature.

The study that was done looked at impacting factors such as the review process required by Maine statute for proposed exceptions to Maine's public records laws; recently passed federal legislation, REAL ID Act of 2005 and the Intelligence Reform and Terrorism Prevention Act of 2004 and their requirements and potential impact on the use of vital records; current practices at both the state and municipal level; Maine Attorney General opinions regarding access to vital records; issues of concern and best practices from around the country including: recommendations from the Office of Inspector General, Department of Health and Human Services and the National Association for Public Health Statistics and Information Systems (NAPHSIS), and the Model State Vital Statistics Act. Information was also gathered about adult adoptees' access to original birth certificates.

The study also included a process to obtain stakeholder input regarding issues of concern and potential recommendations, although stakeholders as a group were not asked for support of the recommendations.

The report to the Legislature includes recommendations, some of which may require rule changes or new legislation. Draft legislation is included following the recommendations. The recommendations are broken down in to two groups, those that are expected to have no fiscal impact and those that will require additional resources, enhanced technology or federal funding.

## **Recommendations**

Many of the recommendations are based on possible requirements of the new federal legislation, the Intelligence Reform and Terrorism Prevention Act of 2004 and the REAL ID Act of 2005, and come from the National Association for Public Health Statistics and Information Systems (NAPHSIS), which is working with the federal government on the specifics of the requirements. There is still much that is not known about what will ultimately be required by these laws, the degree to which states have any flexibility under the federal legislation, or the level of financial support that will be provided by the federal government to cover the cost of implementation.

The recommendations listed below are broken down into two categories, those that will not require additional funding or resources and those that will.

### **Recommendations That Will Have No Expected Fiscal Impact**

**1. Security of physical records** - The state will set advisory guidelines for municipalities regarding minimum standards for the security of vital records at the municipal level. These standards will include: physical plant, materials and personnel. Guidelines will take into consideration any other current requirements, such as from the State Archives, regarding the handling of municipal

records. Annually each jurisdiction issuing vital records will be asked to conduct and document a security inspection and report to the state. The report should acknowledge whether or not the municipality is able to meet the minimum requirements, provide a list of deficiencies, a plan to resolve those deficiencies and what support or assistance they may need from the state to meet the minimum standards. The state should review its own operations, including physical plant, materials, personnel and using numbered certificates; develop a plan to resolve those deficiencies and what support or assistance they may need to meet minimum standards. *This recommendation will not require new legislation or changes to rules.*

**2. Restriction on access to vital records** - It is recommended that Maine restrict access to vital records in line with the standards set by the 1992 Model State Vital Statistics Act and Regulations and recommendations from the National Association for Public Health Statistics and Information systems (NAPHSIS). In addition to meeting these standards, this change would also address the inconsistent and interpretations that appear to exist between the 1977 Brennan Attorney General Opinion, the 1989 Tierney Attorney General Opinion and current practices. Access to vital records would be restricted as follows: upon receipt of an application, a certified copy of a vital record would be issued to the registrant, his or her spouse, registered domestic partner, children, parents or guardians or their authorized representative. With approval from the state registrar, based on a substantial need or potential harm, others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of his or her personal or property right. Economic status or other extraordinary circumstances should not be a barrier to obtaining a vital record. This recommendation would now treat out-of-wedlock births the same as births to married couples. *This recommendation would require a change in legislation. See draft of legislation.*

**3. Proof of Identity to Obtain a Vital Record** - The general public should be required to provide identification to obtain copies of vital records, and the state should set standards for what constitutes valid proof. Any requirements for proof of identity should take into consideration the possibility that economic status or other factors may have an impact on the forms of identity available to an individual and those circumstances should not be a barrier to obtaining a vital record. Generally, a primary photo ID such as a driver's license or federal travel document issued by an appropriate issuing authority should be required. Other documentation should be required that establishes a preponderance of evidence of identity. A post office box may be used for receiving a mailed certificate, but a street address would need to be present. Biographical identifiers may also be required for the applicant to identify the record and confirm the applicant's knowledge of events. *This recommendation would require changes in rules.*

**4. Understand Implications of REAL ID** - Limiting access to vital records will help protect people from the rise in identity theft that puts many people's personal information at risk. However, at the same time that Maine may move to protect people by restricting access to vital records, the federal government, with REAL ID, is assuring that federal agencies will have greater access to an individual's information and has consequently created a new risk for future identity theft by allowing the compilation of information from various databases -- such as name, address, photo, birth certificate, social security number -- into a centralized national database. This giant network would also be accessible by thousands of government employees, dramatically increasing the risk that personal information could be stolen or inappropriately accessed or used. This includes, the potential for linking this database, through vital records for example, with public health information which could then hamper the ability of public health officials to obtain the information they need to fulfill their mission to protect the public's health. Additionally, many people are opposed to the concept of a national ID such as the REAL ID. Maine policymakers need to become more familiar with the requirements of REAL ID and ultimately the impact it will have on Maine people. *This recommendation could require future legislation.*

**5. Provide Protection for Victims of Domestic Abuse, Sexual Assault, or Other Crimes** - On occasion a court order has been used to mask information on a vital record or prevent access to a record if someone might be put at risk. Maine currently has programs that allow for restrictions on otherwise public records if access to those records would place someone at risk. These programs include the Address Confidentiality Program through the Secretary of State's Office (Enrollment 10/31/05 – 35 adults and 22 children) and the provision in Maine statute (Title 29-A § 255. Confidentiality for Public Safety – 21 restricted BMV records on 10/31/05) which allows the Secretary of State, in consultation with the Commissioner of Public Safety and the Attorney General to hold records relating to a person's motor vehicle registration and driver's license confidential for a specified period of time. It is recommended that Title 22 Chapter 701 §2706-5 be amended to clarify that the Address Confidentiality Program, Title 5, § 990- B, includes vital records at both the state and municipal level. *This recommendation would require a change in legislation. See draft legislation.*

*Included as an Attachment with this report is a letter from Doreen Fournier Merrill, Public Policy and Member Services Coordinator, Maine Coalition Against Sexual Assault.*

**6. Archiving Records** - The Genealogical Community and NAPHSIS suggest that 100 years after birth, informational copies of birth certificates can be issued to anyone. To apply this provision to Maine, it is recommended that the DHH-PH Office of Vital Records maintain control of birth certificates until they are 100 years old. At that time the records can be transferred to the State Archives where they will be considered public records. It is recommended that death records be moved to the Archives, and thus become public after 100 years from the date of death. If for storage reasons, records need to be moved sooner than that date, they should be maintained as "Record Center Status" and continue under the same limited access as if the records were still housed at the Office of Vital Records. It is recognized that there will be a transitional period in which records that are currently less than 100 years old that are now housed at the State Archives or have already been accessed through the Archives, will remain open. It is not recommended that any of these records at the State Archives be closed. This change is to provide direction to the Office of Vital Records on when it is appropriate to open records that have been closed and to transfer those records to the State Archives. *This recommendation would require a change in legislation. See draft legislation.*

Over the next several years, as Maine moves toward an electronic record system for vital records, the State must assure that there are adequate resources available for the upkeep and preservation of electronic records that are archived to ensure the ongoing maintenance and accessibility of those records.

**7. Research Standards** - Maine should review the standards proposed by NAPHSIS regarding research and bring its rules regarding research in line with those standards. *This recommendation could require a change in rules.*

**8. Adult Adoptee Access to Original Birth Certificates** - Legislation is being introduced in 2006 by the American Adoption Congress, sponsored by Rep. Davis of Falmouth, LR 2450 - An Act to Provide Access to Birth Records by Adopted Adults, which would allow adult adoptees access to their original birth certificates. The resolve that required this review of vital records included looking at the issue of the privacy rights of adoptees and this issue is addressed elsewhere in this report. Additionally, an analysis has been done regarding the impact of opening original birth certificates to adult adoptees on the Office of Vital Records. Experience in other states has shown that there will be no real impact on the Office of Vital records if such legislation is passed. Given that there is a separate piece of legislation introduced regarding access by adult adoptees, a position on that issue will not be included as part of this report. *No legislation, except that of Rep. Davis, or rule change is required, however, if legislation from this report*

*goes forward, it may be necessary to make sure that language is consistent between the two proposals.*

## **Recommendations that Require Resources/Technology/Federal Support**

The following recommendations are dependent on the state of technology, available resources at the state level, new federal requirements and available federal funding.

### **9. Provide technical support and resources necessary for Maine to conform its reports with the 2003 U. S. Standard Certificates of Birth and Death and Report of Fetal Death**

Electronic birth registration was implemented in Maine in September 1995 with the introduction of ADIOS (Automated Data Integration Operating System). Developed by JK, Inc., ADIOS-EBC is a Microsoft\* Windows™-based electronic birth certificate. Two years later, following a corporate merger, JK, Inc. and its associates, collectively known as Human Soft, filed for bankruptcy. The ADIOS software, although functional, is no longer supported and planning is currently underway to replace the existing system when resources become available. Because the ADIOS software is no longer supported, it is not possible to modify it to conform to the 2003 and subsequent U.S. Standard Birth Certificates.

In Maine the systems for registering deaths and fetal deaths are still paper-based. The forms can be modified to conform to the 2003 U.S. Standard Certificates for these events. The additional data elements contained on the 2003 U.S. Standard Certificates will increase data processing costs. Planning is currently underway that will pave the way for electronic death registration in Maine when resources become available.

**10. Match all Birth and Death Records** - Currently birth and death records are matched by hand at the state level but only for those people 45 years of age or younger due to lack of resources and inadequate staffing. If staffing allowed, all records should be matched.

**11. Implement Electronic Verification of Vital Events (EVVE)** – The EVVE system has been developed by NAPHSIS to provide authorized users at participating agencies throughout the country with a single interface to generate queries for verification of birth and death records. NAPHSIS recommends that after receipt of sufficient funding, states be required to convert paper vital records to a usable electronic format. Maine should move toward this system as technology issues are addressed and federal funding becomes available. Resources will also be necessary for the ongoing maintenance and accessibility of archived records.

**12. Establish Electronic Birth and Death Registration Systems** - With 498 municipal and state offices issuing vital records Maine should consider a useable electronic medium in every jurisdiction, such as some type of web based system that would allow every jurisdiction access to their own records. A web based system would address the issue of equipment that is outpaced or soon made obsolete by new technology. If a web based system is adopted, it needs to be a redundant system, the state must recognize the ongoing technology and security needs of moving to this type of system and the need for long term retention of records. It should be incorporated into the work that is being done by the Office of Information Technology. The state should work with municipalities on designing the system.

**13. Education and training** - (Based on research from the Office of the inspector General, DHHS, 2000) As the above recommendations are adopted or changes made in the administration of vital records at the state or municipal level, education and training regarding vital records should be built into the process and provided to municipals staffs, law enforcement other government agencies and the general public.

The public should be informed about the importance of safeguarding vital records, both for legitimate purposes and to protect themselves from identity theft and the need to protect these documents from unauthorized access or abuse.

Agencies who rely on birth certificates as a means of establishing identity must understand that birth certificates do not provide conclusive or reliable proof of identity, and the limitations of accepting a birth certificate as a proof of age, citizenship or identity. For example, genuine documents obtained with a counterfeit birth certificate can be used to obtain a genuine birth certificate. Complicating the issue is that while a birth certificate may not be a reliable form of identification, as state and federal program administrators assess the types of identification they will accept, any requirements for proof of identity should take into consideration the possibility that economic status or other factors may have an impact on the forms of identity available to an individual and that status or those other factors should not be a barrier to obtaining government services. If program administrators continue to include birth certificates as proofs of identity they will accept, they should also be trained regarding what steps they should take to detect fraudulent certificates and to secure valid ones. Federal and state agency staff report only limited training focused on the detection of fraudulent birth certificates.

Many altered or counterfeit birth certificates and genuine birth certificates held by imposters may go undetected. Birth certificate fraud is seldom prosecuted unless it can be linked to large dollar losses or other punishable crimes. It is reported that many prosecutors are reluctant, or refuse to take birth certificate fraud cases in which the only charge is attempting to obtain another individual's birth certificate, or counterfeiting or altering a birth certificate. A survey of state and federal personnel indicates the need of law enforcement officials to understand the impact of a stolen identity on an individual and to more aggressively pursue violations.

**14. Field Representative in Office of Vital Records** – In 1996 Maine's Vital Records Field Representative position was eliminated in response to ongoing budget deficits. The position was originally established to ensure the accurate and timely recording and transmittal of vital records from providers and to assist and train local officials, hospital personnel, funeral directors, and other certificate providers in their reporting duties. The field representative would, through periodic site visits, group meetings, newsletters, training sessions, and telephone contacts, establish and maintain close working relationships with local officials, facilities and practitioners of various types. These ongoing relationships enabled the Office of Vital Records to identify, monitor, correct, and prevent problems in the vital registration system, ensuring that complete and accurate records were available to the public when needed.

The loss of the field representative position resulted in a slow, but steady, decline in the quality of Maine's vital registration system. The number of site visits and training programs have been scaled back due to staff shortages and now occur only as time allows. This reduction in communication has resulted in an increase in the number of errors on records being filed; consequently, more corrections are being processed at the State level, increasing the cost to the State and inconveniencing the public.

The misuse of vital records to facilitate criminal activity such as fraud, identity theft, and terrorism is well documented. Detection and prevention require the establishment and maintenance of a close working relationship between the State Office of Vital Records, law enforcement, the municipalities, and the providers of vital records.

*It is recommended that the position of Vital Records Field Representative be re-established and fully funded.*

## Draft Legislation

### **An Act to Protect Maine People from Misuse of their Vital Records**

#### **Title 22, Chapter 701, General Provisions**

##### **§2706. Disclosure of vital records**

Custodians of certificates and records of birth, marriage and death may permit inspection of records, or issue certified copies of certificates or records, or any parts thereof, when satisfied that the applicant therefore has a direct and legitimate interest in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject to review by the Superior Court, except as specified under the limitations of this section.

~~1. **Child not born of marriage.** An official in this State may not permit inspection, or issue a certified copy of any certificate or record of birth disclosing that a child was not born of marriage. Such a record may be disclosed or a certified copy issued upon request of the child, the child's parent or the child's legal guardian or counsel or of petitioners for adoption or in response to court process. Such a record may be disclosed as necessary for the department to carry out its responsibilities as the State's child support enforcement agency.~~

2. **Statistical research.** The state registrar may permit the use of data contained in vital records for purposes of statistical research. Such data shall not be used in a manner which will identify any individual.

3. **National statistics.** The national agency responsible for compiling national vital statistics may be furnished such copies or data as it may require for national statistics. The State shall be reimbursed for cost of furnishing such copies or data, and such data shall not be used in a manner which will identify any individual, except as authorized by the state registrar.

4. **Unlawful disclosure of data.** It shall be unlawful for any employee of the State or of any municipality in the State to disclose data contained in such records, except as authorized in this section and except that a clerk of a municipality may cause to be printed in the annual town report the deaths reported within the year covered by the said report, by date of death, name, age and location by city or town where death occurred. All other details of death shall not be available to the general public.

5. **Person's own records disclosed.** Vital records of a person must be made available at any reasonable time upon that person's request ~~or~~ only to that person, his or her spouse, registered domestic partner, as defined under MRSA Title 22, Chapter 1701, §2701-2, children, parents or guardians or that person's duly designated attorney or agent or attorney for an agent designated by that person or by a court having jurisdiction over that person whether the request be made in person, by mail, telephone or otherwise, provided the state registrar is satisfied as to the identity of the requester, and if an attorney or agent, provided the state registrar is satisfied as to the attorney or agent's authority to act as such agent or attorney. If such agent or attorney has been appointed by a court of competent jurisdiction, or the attorney or agent's appearance for such person is entered therein, the state registrar shall upon request so ascertain by telephone call to the register, clerk or recorder of said court, and this must be deemed sufficient justification to compel compliance with the request for said record. Others may be authorized access to vital records when they demonstrate to the state registrar that the vital record is required because of a substantial need or risk of potential harm as it relates to the protection of his or her personal or property right. A person aggrieved by the decision of a municipal clerk or the Office of Data, Research and Vital Statistics to restrict or deny access to vital records shall have recourse to the Probate Court for the county in which the records are located to secure authorization to access such records. Economic status or extraordinary circumstances should not be a barrier to obtaining records. The state registrar shall, as soon as possible, designate persons in the Office of Data, Research and Vital Statistics ~~Health Data and~~

~~Program Management~~ who may act in the state registrar's absence, or in case of the state registrar's disqualification, to carry out the intent of this subsection.

**6. Address Confidentiality Program.** Access to vital records may be further restricted within the parties listed in paragraph 5 according to procedures provided under MRSA Title 5 §90-B Address Confidentiality Program.

**7. Public Records.** Upon 100 years from the date of birth, for birth certificates, and 100 years from the date of death for death certificates, these vital records will be transferred to the Maine State Archives and considered open to the public, with informational copies of birth or death certificates available to anyone. It is not the intention of this statute to further limit access to vital records that are less than 100 years from the date of birth or death that are housed at the Maine State Archives.

### Legislative Summary

1. Treats births born out of wedlock the same as those to a married couple.
2. Limits access to vital records to a person, his or her spouse, registered domestic partner, children, parents or guardians, that person's duly designated attorney or agent and others, who because of a substantial need or risk or personal harm, as demonstrated to the state registrar, may have a personal or property right.
3. Clarifies that access to vital records may be limited according to the Address Confidentiality Program provided in Maine statute.
4. At a specified time, transfers vital records to the Maine State Archives, where they become public records. Birth records will be transferred 100 years from the date of birth and death records will be transferred 100 years from the date of death.

## Introduction

**Legislative Mandate** - On June 9, 2005 Governor Baldacci signed into law LD 1202 - A Resolve to Study the Accessibility of Birth Certificates and Other Vital Records (Public Law Chapter 107). This legislation requires that:

- The Department of Health and Human Services, Office of Vital Records study the provisions of the freedom of access laws in the Maine Revised Statutes, Title 1, chapter 13, those laws related to access to vital records, such as birth, death and marriage certificates, especially in relation to Title 22, section 2706, which allows a state registrar or municipal clerk to restrict access to those vital records.
- The Office determine what criteria are used by state registrars and municipal clerks in providing access to vital records.
- The Office shall determine whether a more uniform process is needed to balance the requirements of the freedom of access laws against the prevention of identity theft and privacy rights of adoptees.
- If a better process is needed, the Office shall determine what that better process is and report by January 4, 2006 to the Second Regular Session of the 122<sup>nd</sup> Legislature with findings, recommendations and any necessary legislation.

**Impacting Factors** - Several factors impact the process. *First*, Maine statute already has in place a process by which any changes in Maine's Freedom of Information laws, specifically any exceptions that might be recommended, must be considered. Title 1, Chapter 13 §434 requires that:

Whenever a legislative measure containing a new public records exception is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception may not be enacted into law unless review and evaluation pursuant to subsection 2 have been completed.

Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed exception to be confidential;
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of

records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the proposed exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

*Second*, Maine statute, Title 22 Chapter 701 §2701 #4, also requires that: “The forms of certificates, records and other reports required by the laws governing the registration of vital statistics shall be designed with due consideration for national uniformity in vital statistics and record service.”

The National Center for Health Statistics, in its report *Specifications for Collecting and Editing the United States Standard Certificates of Birth and Death – 2003 Revision* states:

Since the inception of a national vital statistics system, the states and federal government have worked together cooperatively to promote standards and consistency among state vital statistics systems. The U. S. Standard Certificates of Birth and Death and Report of Fetal Death are the principal means of promoting uniformity in the data collected by the states. These documents are reviewed and revised approximately every 10 years through a process that includes broad input from data providers and users. In 1997, the National Center for Health Statistics (NCHS) appointed a panel of vital statistics data providers and users to evaluate the 1989 certificates. That panel completed its work in April 1999. One of its findings was that NCHS needed to develop and promulgate standards for vital statistics data collection and processing because the working group found that there was a decline in vital statistics birth data quality associated in part with electronic registration of vital events. Many of these quality issues also existed for paper records. It concluded that one way to improve data quality as well as to ensure uniformity in the national databases is to include, as part of the implementation package, detailed specifications for electronic as well as paper systems. This report can be found at: [http://www.cdc.gov/nchs/data/dvs/panelreport\\_acc.pdf](http://www.cdc.gov/nchs/data/dvs/panelreport_acc.pdf)

At the present time Maine’s forms are not consistent with these new standards because current software is outdated and not adequate to make these changes.

*Third*, as Maine public health officials contemplate recommending changes to Maine’s vital record laws and/or regulations, they also need to be cognizant of other groups or state entities that may be considering related issues that could impact decisions made regarding vital records or establish contradictory policy within the state in terms of how specific pieces of information are treated. At present a committee exists within the court system that is looking at electronic court records (Judicial Branch Task Force on Electronic Court Records Access TECRA).

*Fourth*, two pieces of federal legislation have recently passed that impact significantly on state laws regarding vital records. On December 17, 2004 President Bush signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. This new law will require federal regulations determining minimum standards for such things as proof and verification of identity as a condition of issuance of a birth certificate. to meet the requirements of this legislation states may need to make legislative changes, provides additional funding, make changes in their IT systems and add staff. Nationally it is estimated that start-up costs to implement the recommendation sin this legislation are \$835.8 million with ongoing costs estimated at \$60.6 million a year. (NAPHSIS, Economic Impact of Intelligence Reform

Recommendations, 11/30/05) In May 2005 president Bush signed into law the “REAL ID Act of 2005” which directly imposes a prescriptive federal driver’s license standard, which will have implications for state laws and regulations around the issuance of birth certificates. Many people remain opposed to the concept of a national ID such as REAL ID. As Maine policymakers become more familiar with REAL ID these concerns will need to be addressed as aspects of the federal legislation are implemented in Maine. Maine officials will need to gather more information about the specific requirements of this new legislation. The implications of these laws are discussed in greater detail in the discussion of the recommendations.

*Included as an attachment regarding this issue is: Coalition Letter to the House Urging Members to Reject Any Proposal That Would Lead to the Creation of a National Identification System (National ID) by means of State Issued Driver’s Licenses -9-20-04*

**Process** – The first step in the process was to identify interested stakeholders and inform them of the legislation and the interest of the Maine Center for Disease Control and Prevention regarding securing input from all stakeholders. Roughly fifty people/organizations were contacted by e-mail. If anyone expressed an interest in meeting in person at this stage, an appointment was scheduled. People were informed that depending on interest, there would be stakeholder meetings later on in the process to discuss any recommendations that might come forward. As was expected, there was not a lot of information generated by stakeholders at this stage primarily because there were no real recommendations to which people could respond. This step was primarily to put people on notice that a review was occurring in case there were any real concerns they wanted to raise.

The next step in the process was to gather information about vital records legislation in other states, best practices and professional and industry standards, federal legislation, and to do a search of the literature to determine what recommendations might be made regarding changes to Maine statute and regulations regarding vital records. This information was included in an interim report that was shared with Health and Human Services – Public Health (HHS-PH) officials and distributed to the list of stakeholders. The review by the HHS-PH helped to assure that all pertinent issues from their perspective were identified. By sharing the interim report with stakeholders they too then had the benefit of the research that was done that will shape the final recommendations and identify the issues that need to be addressed. As a starting point, stakeholders were asked to comment on the recommendations and identified issues put forward in the interim report. This was not an exhaustive list and other issues/recommendations have been identified as a result of feedback from stakeholders and further research. Comments could be provided in writing and at stakeholder meetings which were planned so that stakeholders could come together and discuss any concerns they might have regarding the recommendations. HHS-PH staff were asked to participate and discuss current practice in Maine, how the recommendations might differ from those practices, identify any constraints that might impede implementation, answer questions and discuss the desirability/feasibility of implementation in Maine. Although stakeholder input was very helpful in shaping many of the recommendations, stakeholders were not asked to come to agreement or consensus with the recommendations.

A final report was delivered to the HHS-PH in early December 2005. It included recommendations for legislation based on input from stakeholders, best practices and federal mandates. Throughout the process stakeholders were given opportunities to comment on and respond to any recommendations. Comments submitted in writing are included in the report.

## History

The history of vital statistics in Maine began in the early days of Massachusetts. In 1639, the Clerk of Writs of the Colony of Massachusetts was charged with keeping records of "the days of every marriage, birth and death of every person..." in addition to records of wills, judgments, and evidence. Maine was a part of Massachusetts until we became a State under the Act of Separation between Maine and Massachusetts in 1820. Upon separation, the Laws of Massachusetts were carried over verbatim as the Laws of Maine. By that time, keeping vital records had become the responsibility of municipal clerks.

The first attempt to establish a state-wide registry of vital statistics occurred in 1864 when the Legislature enacted a law requiring each city and town clerk to send an annual report to the Secretary of State listing all births, deaths, and marriages which occurred in each municipality during the previous year. There was little interest in the law either on the part of the Secretary of State or the municipal clerks. Few towns reported to the State. The Legislature repealed the law in 1886.

A new Vital Statistics Law was proposed to the 64th Legislature in 1888 and referred to the 65th, which passed it into law in 1890 to become effective on January 1, 1892. Under the 1890 Act, the Secretary of the State Board of Health became the State Registrar of Vital Statistics, and on January 1, 1892 an office was established for the purpose of maintaining a statewide vital statistics system. The new office took vigorous steps to implement the act and succeeded in establishing an effective registration system.

Between 1892 and 1955, the state-wide vital statistics file consisted of 3-1/2" X 8" card records which municipal clerks hand copied from the original certificates. Municipal clerks also copied the records into books, which they kept as their own permanent records. Often the original certificates were destroyed.

In 1956 the registration forms were changed to provide paper records suitable for filing as submitted, with a carbon copy for the State file. In 1957 the Legislature enacted a new law, which provided for the original certificates of births and deaths to be filed in the Central State office. This was part of a general revision of vital statistics laws, which incorporated much of the U.S. Model Vital Statistics Law into the Laws of Maine. Much of the law, which this act replaced, had not been changed since its original enactment in 1820.

During the decade of the 1990s, Maine's vital statistics system increasingly incorporated technological advances, both in the Central State office and in many municipal offices. The changes included computerized files for storing vital statistics data and producing certified copies of individual certificates, laser printed certified copies, photocopies of the original certificate instead of the often illegible carbon copies, preparation of certified copies by photocopying rather than typing an abstract, use of microcomputers (PCs) to prepare and print the original birth and death certificates, and electronic registration of births.

Electronic birth registration was instituted in Maine in 1995 with the purchase and implementation of ADIOS-EBC (Automated Data Integration Operating System-Electronic Birth Certificate). From September of 1995 forward, births occurring in the major birthing centers of Maine have been electronically registered with the state. At the same time the system produces paper copies of each birth record, which the birthing center sends to the municipal clerks for local registration and filing.

The vital statistics system has undergone many changes in its 300 plus year history in Maine.

While some cities and towns have very good old records from their earliest settlement, many did not start to keep records until they were forced into doing so by the new vital statistics law in 1892. Now, however, every municipality has a well-established vital statistics system and the State file of current records is about 99 percent complete

There are still challenges to be met, however. Two years after ADIOS was implemented in Maine, JK, Inc., the developers, merged with two other software companies under the name of Human Soft. Shortly thereafter Human Soft filed for bankruptcy. Although ADIOS-EBC is still functional, the software is unsupported and needs to be replaced. With each passing day the system is becoming more and more fragile and difficult to maintain.

Since August of 1995 the Office of Vital Records has lost three (one-third) of its staff positions as a result of downsizing. One position, that of Senior Nosologist, was replaced by automated cause of death coding software (SuperMicar) developed and distributed by the National Center for Health Statistics (NCHS). When the software is unable to associate a code with the literal cause of death entry, a Nosologist at NCHS reviews the decedent's information and assigns a code manually. The Office has not been able to adjust effectively to the loss of Field Agent and Vital Records Representative positions.

As ADIOS was being implemented, Maine's Vital Records Field Agent position was being eliminated in response to ongoing budget deficits. The loss of the field agent in 1996 resulted in a slow, but steady, decline in the quality of Maine's vital registration system. The number of site visits and training programs has been scaled back due to staff shortages and now occur only as time allows. This reduction in communication between the State office and municipal clerks, funeral directors, physicians and other providers of vital records has resulted in an increase in the number of errors on records being filed; consequently, more corrections are being processed at the State level, increasing the cost to the State and inconveniencing the public.

Space to house continually increasing numbers of vital records while still permitting easy access so that the public can be served, is an ongoing issue. Although birth records are now registered electronically with the State, all other vital records remain paper documents. Each year the Office of Vital Records receives, processes and files 30,000 death certificates, reports of fetal death, marriage and divorce records, reports of termination of pregnancy, court ordered adoptions, and domestic partnership applications. In addition to the primary documents 6,000 amendments to those records are also received and filed annually. The number of paper documents in the custody of the Office of Vital Records is quickly outgrowing the capacity to house them in the current space.

### **The Office of Vital Records – What Does it Do?**

- Collects and maintains records of births, deaths, fetal deaths, marriages, and divorces dating from 1892 to present, issuing certified copies on request. Records from 1923 to the present are physically housed at Vital Records. Records from 1892-1922 are housed at Maine State Archives. As of July 30, 2004, the Office of Vital Records is establishing and maintaining the Domestic Partner Registry.
- Provides other vital registration services: acknowledgements of paternity, corrections, supplemental cause of death, divorces, delayed registration of records, court determinations legal name changes on birth records, preparation of new birth certificates after adoption or legitimization, maintains the adoption reunion registry and maintains the domestic partner registry. Vital Records houses all sealed adoptions and legitimizations.

- Ensures that all statutes, rules and policies are compiled for transportation and disposition of human remains.
- Ensures that all marriages occurring in Maine are legal joinings.
- Ensures the statutes, rules and policies are complied with for acknowledgements of paternity in order to add a father's name to a birth record.
- Ensures the vital statistics information for the interstate exchange agreements are processed on births and deaths.
- Prepares newsletters for hospitals, courts, municipal clerks, and funeral directors.
- Prepares pamphlets to assist individuals through various processes approved by Vital Records i.e.- corrections, legal name changes, marriage packets, delayed filing of records and authorized pamphlets.
- There are between 30,000 and 50,000 requests for certified copies fulfilled each year by the Office of Vital Records, including amending copies

### **Vital Records at the Municipal Level**

With 498 local and state entities issuing birth certificates, Maine ranks 4<sup>th</sup> in the country following New Jersey with 566, Texas with 866 and New York with 1505 in terms of the numbering of entities issues vital records. (Birth Certificate Fraud, Office of the Inspector General, Department of Health and Human Services, September 2000)

The following guidelines taken from rules governing the release of information on vital records (10-146CMR 8, based on 22 MRSA §2706 provides information about how vital records are handled by municipal clerks:

#### **VITAL RECORDS IN MUNICIPAL CLERKS' OFFICES: GUIDELINES FOR PUBLIC ACCESS**

##### **Birth Records**

- Legitimate births: Copies (certified or uncertified) of the legal portion of the record must be provided to any member of the public on request.
- Out-of-Wedlock births: Copies may be provided only to the registrant, parent or guardian.
- Access to file or books of records: If all records of illegitimate births, the original birth records of adopted persons, and the confidential portions of records of legitimate births have been removed or covered from public view, then public access to files or books of birth records must be permitted.

##### **Death Records**

- Public information: Only the decedent's name, age, date of death and place of death may be released to the general public. All other information on the death record is confidential.
- Cause of death and other confidential information: All information except that specified above is confidential and may be released only to those with a direct and legitimate interest in the record. Municipal clerks may release cause of death information only to members of the decedent's immediate family or their descendants, the decedent's legal custodian or guardian, those needing this information for the determination or protection of a personal or property right, or their respective authorized representatives.
- Authorized representatives: These include; attorneys, physicians, funeral directors, or others such as genealogists authorized in writing by the immediate family or descendants.

## **Marriage Records**

- Copies: Copies (certified or uncertified) which exclude any statistical information, must be provided to any member of the public on request.
- Access to file or books of records: The statistical information section should be masked, deleted, or otherwise removed from public view, if practical. If not, the entire record must be made available for public inspection.

## **Records Prior to 1892**

All such records are public information and may be examined by anyone.

## **What's Happening Across the Country with Birth Certificates**

In September 2000 the Office of the Inspector General of the Department of Health and Human Services issued a report: *Birth Certificate Fraud*. They gathered information regarding vital records policies and procedures for vital records registries from around the country as well as input from state, local and federal agencies that utilize vital records. The findings of the report provides some basic background about the issuance and uses of birth certificates as well as the potential for fraud. The conclusions of the report are discussed under *Best Practices* below.

**Birth Certificate Fraud, Office of the Inspector General, Department of Health and Human Services <http://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf>**

## **FINDINGS**

### **Fundamental, Irreconcilable Conflicts Surround Birth Certificate Purposes and Uses**

A certified copy of a birth certificate is proof only that a birth occurred and was recorded. For that purpose, it may be desirable that the public be allowed easy access to them. However, the agencies and organizations that use birth certificates as proof of identification for employment purposes, to obtain benefits or other documents (e.g., driver's licenses, Social Security cards, and passports), and to assist them in determining eligibility for public assistance and other benefits, may have concerns with how easily certified copies of birth certificates can be obtained. These conflicting perspectives are at the very heart of the birth certificate controversy.

### **Birth Certificates Continue to be Used as "Breeder Documents" and are Easy to Obtain**

Virtually all Federal and State agencies agree that fraudulent birth certificates are used as "breeder documents" to obtain the genuine documents needed to create new identities, and that fraudulent birth certificates are easy to obtain. Factors which contribute to their use as "breeder documents" include the following:

- currently, *6,422 different entities issue birth certificates*. This large number of State, county, city, township, and other entities that issue birth certificates increases

opportunities for fraud, theft, bribery, and other methods of illegally obtaining birth certificates;

- *thirteen States allow "open" access* to birth records, which allows virtually anyone to purchase copies of any birth certificates on file; and

- *birth certificates can be purchased without identification* from some vital records offices and issuing entities.

### **Birth Certificate Fraud is Hard to Detect**

Many altered or counterfeit birth certificates and genuine birth certificates held by imposters may go undetected. The reasons why these fraudulent birth certificates are hard to detect include the following:

- *over 14,000 different versions of birth certificates are in circulation;*

- *nearly 4 million* United States births were registered in 1999;

- *security features* contained in the paper used to issue birth certificates, as well as formats and signatures, vary among State vital records offices and the many local entities issuing them;

- *technological advances* in the Internet, scanners, color printers, and copiers make it easier to obtain genuine birth certificates and create counterfeit ones;

- between 85 and 90 percent of the birth certificate fraud encountered by the Immigration and Naturalization Services and Passport Services staff is the result of *genuine birth certificates held by imposters* -- the most difficult fraud to detect; and

- Federal and State agency staff report receiving only limited training focused on the detection of fraudulent birth certificates.

### **State Practices Create Opportunities for Fraud**

It was the consensus of those we interviewed that a number of State practices create opportunities for fraud. Those practices include the following:

- *delayed, amended, and midwife birth registrations* that are based on affidavits of personal knowledge, include no documentary evidence, and are not often marked or overlaid accordingly;

- *delays in matching death and birth records* can make the identities of many deceased persons easy to assume between the time the person dies and the time the death and birth records are matched;

- questionable *physical security* situations that create opportunities for fraud; and

- *limited oversight* of local issuing entities by State vital records offices.

## **Birth Certificate Fraud is Seldom Prosecuted**

Virtually all of the Federal and State agency staff surveyed indicate birth certificate fraud is seldom prosecuted unless it can be linked to large dollar losses or other punishable crimes. Most staff also indicate that many prosecutors are reluctant, or refuse to take birth certificate fraud cases in which the only charge is attempting to obtain another individual's birth certificate, or counterfeiting or altering a birth certificate. At the same time, misconceptions exist surrounding the security and integrity of birth certificates.

## **Maine Attorney General Opinions**

Over the past four decades there have been several Attorney General opinions and memorandum regarding access to vital records.

In a November 21, 1977 letter to Speaker of the House John Martin, Attorney General Joseph Brennan's Opinion concluded that "except with regard to the records of illegitimate births, the mandate of Title 1 § 401, et seq. that the public have access to public records invalidates the discretionary nature of the municipal clerks' authority over vital records, and requires that public access to such records be permitted."

On April 22, 1982, Assistant Attorney General Judith Fletcher wrote a memo to James Eastman Smith, Assistant Attorney General, Section Chief regarding Public Access to the Vital Records Vault regarding the mixing of illegitimate records from 1892 to 1922: (This is not a problem for records from 1907 – 1921 because they are available in the Archives.) the public's right to access those records and the problem of having large numbers of people going through records in the vault. She advised that until all records are microfilmed and placed in the Archives, that it was probably necessary for the Department of Human Services to provide limited public access to the vault.

On January 19, 1989, Attorney General James Tierney wrote in an Opinion to Department of Human Services Commissioner Rollin Ives clarifying the November 21, 1977 Opinion. This memo concluded that "... the Legislature has clearly rendered information relating to illegitimate births and causes of death not available to the public."

Although Attorney General Tierney did not reach the meaning of "direct and legitimate need" (22 MRSA §2706) in his 1989 Opinion, an analysis of that opinion could lead to a more conservative approach regarding public access than the 1977 Brennan Opinion. Despite this potentially stricter interpretation from Tierney, in practice the Brennan interpretation has prevailed and, with the exception of cause of death and illegitimate births, vital records are primarily open to the public. Given this inconsistency, further statutory guidance and clarification may be appropriate.

## **Best Practices**

This section contains recommendations or summaries of reports with recommendations that have been completed as early as 1992, *The Model State Vital Statistics Act and Regulations* from the CDC/National Center for Health Statistics, and as recently as Spring 2005 with the NAPHSIS *White Paper on Recommendations for Improvements in Birth Certificates*, whose recommendations are consistent with the Intelligence Reform Act of December 2004 and the Real ID Act of May 2005. These two recent pieces of federal legislation mean that states will need to take action to address the issues raised and consider the recommendations in the NAPHSIS white paper.

## **Birth Certificate Fraud, Office of the Inspector General, Department of Health and Human Services**

The following is a summary of this report's conclusions:

**Birth certificates do not provide conclusive or reliable proof of identity** - Agencies who rely on birth certificates as a means of establishing identity must understand the limitations of accepting a birth certificate as a proof of age, citizenship or identity. For, example genuine documents obtained with a counterfeit birth certificate can be used to obtain genuine birth certificates.

**It would be impractical to redesign birth certificates to make them reliable identification documents in and of themselves** – Efforts to make birth certificates into a reliable identity document are complicated by the more than 14,000 different legitimate versions in existence, the more than 6,000 entities that issue birth certificates, and the ease in which birth certificates can legitimately be obtained and counterfeited. Also changes to the birth certificate itself will essentially take a lifetime to become effective.

**Some efforts to re-design birth certificates might even be undesirable** – The primary purpose for which birth certificates were created – to document and record births – is served well by the large number of entities that issue them and the technology which makes them readily and quickly available. Unfortunately, this contributes to fraud and the unreliability of birth certificates as identification documents.

**Since birth certificates can play an important role in establishing identity, their integrity should be improved** – When used in combination with other documents, birth certificates can add to the level of proof in establishing eligibility and identity. It is important that the process used to issue birth certificates be standardized and recent advances in technology utilized to ensure birth certificate integrity parallels that of other identification documents. It is also important to work to detect fraudulent documents and documents held by imposters.

**Federal and state program administrators should assess the proofs of identity they will accept** – If program administrators continue to include birth certificates in the proofs of identity they will accept, they should also reconsider what steps they will take to detect fraudulent certificates and to secure valid ones.

**The National Association for Public Health Statistics and Information Systems (NAPHSIS) – White Paper on Recommendations for Improvements in Birth Certificates – Revised May 19, 2005**  
<http://www.naphsis.org/>

The National Association for Public Health Statistics and Information Systems (NAPHSIS) is a national association of state vital records and public health statistics offices which is based in the Washington, DC area. The association was formed in 1933 to provide a forum for the study, discussion, and solution of problems related to these programs in the respective members' health departments.

The mission of the association is to provide national leadership in advocating, creating, and maintaining comprehensive high quality public health information systems that integrate vital records registration, public health statistics, and other health information. In collaboration with other

organizations, NAPHSIS develops standards and principles to effectively administer public health statistics and information systems.

The National Association for Public Health Statistics and Information Systems (NAPHSIS) issued a revised paper in May 2005 with recommendations for improvements in birth certificates. These recommendations are consistent with the Intelligence Reform Act of 2004 and the Real ID Act of May 2005 mentioned above. They have been summarized in this report with the full NAPHSIS white paper available through the NAPHSIS website provided above.

The Executive Summary of the white paper states that:

Vital Records are a person's first identity document and his or her last. A birth certificate breeds all others: Social Security cards, school records, driver's licenses, passports and employment records. In the United States, it means citizenship. A death certificate is the legal proof of death. It is used by the government to terminate benefits, settle estates and provide entitlements to families. Misused, it can trigger creation of false identity documents.

Protect the integrity of vital records and you will strengthen the security of every United States identity document. Fail to, and risk a system in the United States that can never be made safe.

### **NAPHSIS Recommendations**

(For those recommendations that may be of special concern to Maine, because of our open records laws or the number of sites that issue birth and death certificates, some background information from the report is included with the recommendation.)

#### **1. Standardize Security Paper and Printing for Birth Certificates**

- *Standardize the many variations of birth certificates issued to deter tampering, counterfeiting, photocopying, or imaging and provide user agencies the necessary tools to detect fraudulent use and prevent identity theft.*
- *Adopt minimum-security features for both paper and printing that must be included on the birth certificate form. NAPHSIS is developing recommendations that include features that must be imbedded within the paper (watermark, fibers), hidden features applied by the printer, standards for adherence of printed birth information at the issuance office, computer system security and minimum physical security practices by the paper manufacturer, printer and Vital Records offices.*
- *Fund an awareness campaign to educate the public and user agencies on the value of birth certificates and their potential misuse related to identity theft.*

#### **2. Match All Birth and Death Records**

- *Provide states with funding necessary to establish EBRs and EDRs and convert paper birth and death records and old legacy systems to useable electronic medium then empower NAPHSIS to work with states to develop a vital records system that electronically cross-matches all birth and death records in a comprehensive and timely manner. All electronic and paper birth records should be cross-matched to the corresponding death record and be marked "deceased".*
- *Develop a US Model Law for incorporation into state statutes and regulations, which addresses a requirement for birth/death matching.*

### **3. Implement Electronic Verification of Vital Events (EVVE)**

- *NAPHSIS believes that EVVE is the most effective method of reducing fraud. NAPHSIS strongly recommends that states receive funding necessary to establish EBRS and EDRS and convert paper birth records and old legacy systems to useable electronic medium. Upon this infrastructure, an EVVE “hub” would provide direct connection between federal and state agencies (SSA, passport, driver’s license) and the Vital Records office that is attesting to the legitimacy of the birth certificate that has been presented to them.*
- *Recommend that state and federal agencies relying on birth certificates be required to verify them via the EVVE hub.*
- *Recommend that after receipt of sufficient funding, states be required to convert paper vital records and incompatible legacy system to a usable electronic format.*

### **4. Establish Electronic Birth and Death Registration Systems**

- *NAPHSIS recommends funding for the development of EBRS and EDRS and conversion of paper birth records and old legacy systems to useable electronic medium in every jurisdiction*

### **5. Address Issue of Open vs. Restricted Record States**

A significant factor that allows relatively easy access to the primary identity document, the birth certificate, is the concern of states that are defined as “open” for issuance. This means that in 15 states, anyone can obtain information contained in a birth certificate if minimum information is provided. In some of the 15 states, the requester may also receive an official copy of the certificate. This is contrasted with the majority of jurisdictions that are defined as having “closed or restricted” issuance, which generally means that only specific family members and/or those with a legal right to the record can obtain the certificate. It is generally agreed that if all birth certificate records were restricted at both the state and local level, fraudulent access could be significantly curtailed. However, this has not been able to be accomplished by a number of states/jurisdictions.

- *NAPHSIS recommends that incentives be developed and/or directives given to move the open records states to restricted records.*

### **6. Strengthen Customer Identification Requirements**

When birth and death records are issued to persons not authorized to receive them it increases the likelihood that they will be used fraudulently. While state laws vary about who should be eligible to receive a certified copy of a birth or death certificate, most states comply with the 1992 U.S. Model Law which states that issuance is limited to the person named on the certificate, specific family members, their authorized representative and others who demonstrate that the certificate is needed for the protections of their personal or property rights. At present, most vital records offices do not have the resources or the needed technological solutions to verify the identity of purchasers, track “repeat customers”, or investigate suspicious activity. Often the records sought are 25, 50 or 60 years old, and are kept via paper or microfilm, and a complete electronic database does not exist.

Many states establish “relationship criteria” for purchasers. However, true identification of a purchaser is difficult, and a careful vetting requires significant time and highly trained staff. In the majority of states, most vital records are purchased by mail. Unlike obtaining a driver’s license, where

the driver is always present in the state, many people live far from the site where the records are kept and certified copies are issued, often in a different state or country. Such transactions make purchaser identification even more difficult, as copies of proxy identification documents are easy to fake, and comparisons of an individual with a picture are not possible. The true intent of the purchaser is virtually impossible to determine.

*NAPHSIS is developing recommendations that should include the following:*

- *Prescribe that a government identification card be presented by walk-in customers. Prescribe that mail-in customers send a copy of a government identification card.*
- *Prescribe that birth certificate be sent only to the residential address of the requester. Prescribe that birth certificate orders received through credit card vendors include third party validation measures.*
- *Establish electronic information linkages among state and federal governmental agencies. Establish incentives to extend linkages to non-government organizations i.e., schools, banks. Electronic links permit trusted partners (government or corporate) to verify birth information directly. This issue is addressed in Recommendation #8.*

## **7. Strengthen Local Issuance of Birth Certificates**

While some states operate with one central source that registers, manages, and issues certificates, most states allow for the business of vital records to be conducted at the local level. At present, there are more than 6,400 issuing entities (mostly counties/cities). The major risk of fraud is not with entities that issue from state controlled databases. It is with the counties/cities that register births and manage and issue copies of their own paper records.

- *NAPHSIS recommends that financial incentives be provided to states to convert birth certificate issuance functions to a central state-controlled database. Financial incentives would permit the creation of a central database. This database could, in turn, be used to implement recommendations #7 and #8. Note: This is a political issue. States, particularly those in the North East tend to have strong issues about local issuance.*

## **8. Strengthen Vital Records Security and Procedures**

Vital record offices have increasingly become targets of opportunity for those seeking to use vital records fraudulently, including for identity theft. Break-ins have become more common, thefts of records, safety paper and official seals have increased and sometimes employees have been corrupted. As government moves to make it more difficult to obtain a vital record, while simultaneously placing more reliance on them for identity purposes, the street value rises dramatically. Although vital records organizations have a very long history in protecting the confidentiality and security of medical and other vital information, additional security measures need to be taken.

*NAPHSIS recommends the following:*

- *Establish security standards on offices and buildings. State and local offices should be provided fiscal incentives to increase building security, and a target date set for compliance.*
- *Require internal operating system standards for paper and electronic systems with fiscal incentives since some of these systems may result in higher security but less efficiency.*
- *Appropriate national standards should be established for vital record employee background checks.*

- *Establish and fund an auditing function of operational security sufficient to review all registration and issuing offices at least every other year.*
- *Standardize and vigorously enforce penalties for fraud and misuse of vital records. Some state statutes prescribe vital records fraud as a felony while others prescribe it as a Class C misdemeanor.*

## **9. Prevent Fraudulent Birth Registration**

- *All vital records offices should establish a method of reconciling birth-related hospital records such as hospital discharge records or newborn metabolic or hearing screening records with birth registrations submitted by hospitals to their offices.*
- *All vital records offices should adopt U.S. Model statutes and regulations governing delayed birth registration procedures and evidence necessary to register out-of-institution births.*

### **NAPHSIS Position on:**

#### **Release of Individual-Level Vital Records Data to Researchers**

Vital statistics offices routinely receive requests from researchers seeking files of individual-level birth and death data. Sometimes these requests are for information that clearly identifies individuals, such as names, addresses and Social Security numbers. Researchers may request data files that do not contain these identifying items, but do contain enough detailed information about specific persons to identify and individual, and these records may still be identified as belonging to a specific person. The ability to link with other databases makes this even more of a threat. In jurisdictions where statutes allow limits on access, NAPHSIS recommends that the following questions be considered before responding to a request for individual level data files.

- Will the data be used for a legitimate public health purpose?
- Is the researcher requesting data for a specific research project and has he or she given assurances that the data will be used for the stated purpose only? We should know how our data will be used – knowing only that it will be part of a data repository is not enough.
- Has the Institutional Review Board of both your agency and the researcher's institution approved the study?
- Has the researcher provided documentation that the confidentiality of data will be protected when in his or her possession? Who will have access to the data? Has a description of safeguards to protect the data from unauthorized access been provided?
- Has the researcher provided documentation that data will not be re-released in either electronic files or paper copy, single-record listings?
- Are individual record data needed for the purposes of the study, or would aggregate data meet the researcher's needs?
- Does the researcher need the level of detail requested? For example, does the project really require mother's date of birth or would age suffice?
- If names, addresses and social security numbers are not included in the data files, has the researcher agreed that identification of individuals will not be attempted?
- If applicable, has the researcher provided assurances that the data will not be linked with other data sets? Such linkages could easily identify individuals by name.
- Has the researcher provided assurances that no data will be published or released in any form if a particular individual is identifiable? This should include aggregate data with small cell sizes if the identity of an individual could be deduced by the data.

- Are the data subject to HIPAA restriction? Although vital statistics are exempt from HIPAA restriction by statute, vital records linked with hospital or clinic data would be subject to HIPAA restrictions.
- Is the researcher willing to provide a report of findings at the completion of the study?
- Has the researcher given assurances that all data files will be returned to the vital statistics office or destroyed at the conclusion of the project?

NAPHSIS recommends that jurisdictions that do not currently have an explicit review process for providing access to individual-level data should consider developing one. The Massachusetts Department of Public Health (MDPH) is a good example of an agency with well-developed procedures for providing researchers access to data. Those procedures can be accessed at:

[http://www.mass.gov/dph/bhsre/resource\\_guide/datarequestprotcol.htm](http://www.mass.gov/dph/bhsre/resource_guide/datarequestprotcol.htm)

### **Model State Vital Statistics Act and Regulations**

From the Centers for Disease Control and Prevention/National Center for Health Statistics, 1992 Revision. February 1994, <http://www.cdc.gov/nchs/data/misc/mvsact92b.pdf>

The Preface from this report explains the history and purpose of this model legislation:

The U.S. vital registration and statistics system exemplifies cooperation between the Federal and State Government at its best. Even though the legal responsibility for the registration of vital events rests with the individual States, the States and the National Center for Health Statistics (the Federal partner) work together to build a uniform system that produces records to satisfy the legal requirements of individuals and their families and also to meet statistical and research needs at the local, State, and national levels. The cooperation includes the development and promotion of standard certificates and reporting forms, training and quality control programs, and model legislation. This is the fifth revision of the Model State Vital Statistics Act (the first was in 1907) and the second revision of the Model State Vital Statistics Regulations (the first was in 1977). The Model Act and Regulations provide detailed guidance to State registrars of vital statistics and State legislators who are considering revision of their own State vital statistics laws and regulations. The Model Act and Regulations serve to promote uniformity among States in definitions, registration practices, disclosure and issuance procedures, and in many other functions that comprise a State system of vital statistics. A major goal of this revision of the Model Act and Regulations is to ensure the vital statistics laws allow States to easily incorporate technological advances in records and information management. Special emphasis was given to the language within the revision in order that it can serve as a model for the next 10-15 years. The wording used will allow States to make use of emerging technology that will continue to impact the vital statistics system without having to change their law. In developing this revision, input was sought not only from State vital records and statistics offices but also from other persons and organizations, including Federal agencies, which have an interest in the registration system either as a source of legal records or a source of statistical data. The expert testimony and comments from these interested persons and organizations provided invaluable assistance in developing the revision and should help guarantee that the vital statistics system continues to serve the interests of its many users, especially the general public.

### **Other States' Legislation**

During the past several years there has been a great deal of activity in state legislatures to deal with the issue of identity theft, primarily in terms of defining the crime and adding or enhancing penalties.

Several states have also considered or have pending legislation that would limit who has access to vital records. These include: Kentucky, Pennsylvania and Washington. Earlier this year, South Dakota passed a bill that would let anyone get copies of original records, but not certified copies, which could be used for identity theft or fraudulent purposes. Additionally, county registers of deeds and state Health Department officials who are suspicious of someone could withhold copies of birth, death or marriage certificates for 3 days.

Legislation related to access to original birth certificates for adult adoptees is discussed below under Adoptees Access to Original Birth Certificates.

### **Adoptees Access to Original Birth Certificates**

There is a movement across the country pushing for open access to original birth certificates for adult adoptee. The American Adoption Congress (AAC) is a national organization at the forefront of this movement. Its mission statement is: "Through education and advocacy, the AAC promotes honesty, openness and respect for family connections in adoption, foster care and assisted reproduction. On its website the AAC reports that in the seven states where adoptees are able to apply for a copy of their original birth certificate (Alabama, Alaska, Delaware, Kansas, New Hampshire, Oregon and Tennessee), the process is working well and thousands of adopted adults have received their original birth information. [www.americanadoptioncongress.org](http://www.americanadoptioncongress.org)

Legislation is being introduced in 2006 by the American Adoption Congress, sponsored by Rep. Davis of Falmouth, LR 2450 - An Act to Provide Access to Birth Records by Adopted Adults, which would allow adult adoptees access to their original birth certificates. Since the resolve that required this review of vital records included looking at the issue of the privacy rights of adoptees, an analysis has been done regarding the opening of original birth certificates to adult adoptees. It also includes the impact on the Office of Vital Records.

Under the existing system, even though Maine is an open record state, no one, including the adoptees can get a copy of their original birth certificate without a court order. This existing system does provide for the privacy rights of adoptees. The legislation proposed by Rep. Davis would also provide for the privacy rights of adoptees as only adult adoptees and their legal representatives would be allowed to get their original birth certificates. As stated in testimony provided on SB959 in Massachusetts (See Pertman Attachment), historically birth records were closed to protect adopted children from the stigma and shame of illegitimacy, and biological mothers from the stigma and shame of unwed motherhood. The clear legislative and professional intent was to prevent access to those records by the public, not the parties to the adoption themselves.

With regards to the impact this legislation would have on the Office of Vital Records, it is expected that Maine's experience would be similar to that of New Hampshire, where there was negligible impact. New Hampshire recently passed SB335 which opened up original birth certificates to adult adoptees. There was no need for additional staff, or any fiscal note, and actually the legislation generated some revenues for the state.

Several other states have passed legislation which attempts to provide access for adoptees, yet still be sensitive to the rights of the mothers. In Tennessee legislation was passed in 1996 that provided access for adoptees, with the exception of those who were the product of rape or incest, while also allowing birth mothers to notify the state if they prefer not to be contacted.

In Delaware, legislation was passed that provided access to birth certificates unless the birth mother explicitly asks to remain anonymous.

Concerns exist regarding the legislation in these two states and that there may be better models for Maine to consider, as access to original birth certificates can still be prevented.

Legislation is pending or has been recently considered in a number of states. In Minnesota, the right of adult adoptees to receive their original birth certificate would be restored, although it would honor

a non-contact affidavit by birth parents that has been in place since 1977, if the birth parents can be located to confirm that there should be no change in the affidavit. It would also connect adult siblings who had been separated by adoption or foster care.

In New Jersey pending legislation would allow adopted adults, adult children of a deceased adopted adult, or the adoptive parents of a minor adoptee to receive the original birth certificate. Birth parents who relinquished before the bill becomes law may ask Vital Statistics to delete their name and address from the original birth certificate for a period of one year following the bill's passage. There is also a contact preference option.

In New York, pending legislation would allow for the filing of a contact preference form by birth parents.

Pending legislation in Texas provides for the release of the original birth certificate to adult adoptees. Original birth certificates would not be released if a birth parent files with the state registrar: a copy of the signed affidavit of relinquishment that promises anonymity, a contact preference form stating that the birth parent prefers not to be contacted, and an updated medical history.

Closer to Maine, pending legislation in Massachusetts, SB959, allows for the filing of a contact preference form by birth parents. And the most recent state to approve legislation, New Hampshire, passed SB335 which became law on May 11, 2004 and which went into affect starting January 2, 2005. This law allows adult adoptees 18 and older born in New Hampshire to get copies of their original birth certificates. Birth parents may express their preference for contact by the adoptee and file a contact preference form with the Registrar of Vital Statistics. New Hampshire, along with Oregon and Alabama, provide the best models for potential legislation in Maine.

*Included as attachments to this report are: draft legislation provided by the American Adoption Congress, 10/27/2005 testimony from Adam Pertman, Executive Director of the Evan B. Donaldson Adoption Institute on SB959 that was introduced in Massachusetts and a letter from Paul Schibbelhute, Co-Founder ACCESS 2006 and President of the American Adoption Congress.*

## **Review of Literature**

The annotated bibliography provided at the end of this report provides a good review of the current literature on vital records, identity theft, adult adoptees' access to original birth certificates, and the uses, limitations and accuracy of vital statistics.

## Attachments

October 28, 2005

Sally Sutton  
Institute for Health Policy  
University of Southern Maine  
Muskie School of Public Service  
P.O. Box 9300  
Portland, ME 04104

Dear Sally:

I want to thank you for the opportunity to provide written feedback and information regarding the vital records review as mandated by the Maine State Legislature. As you know, we are concerned with the safety and privacy of sexual assault survivors in Maine and appreciate the opportunity to assist you in assessing accessibility to Maine's vital records.

In considering the four vital records being reviewed -birth, death, marriage and divorce- we do not see a concern from the sexual assault survivor perspective with the marriage, divorce or death records. With that said, people can be creative in their violence so we may not foresee how someone could use these records to victimize someone.

Our primary concern is with obtaining birth records and particularly with regard to a married woman who is sexually assaulted by someone other than her husband. Women who are raped and learn they are pregnant as a result of the rape face many difficult decisions as they try to heal from their assault. There is also the potential for victim/survivors to be traumatized over and over again whether it is through navigating through the criminal justice system, dealing with the potential for sexually transmitted diseases or deciding whether or not to carry to term. Whatever their choices, as a community we must ensure that we take care to protect victim/survivors from a potentially inadequate policy.

We believe rape victims who have a child should be able to control the information surrounding the birth and are particularly concerned about the danger of allowing a rapist access to the birth record. At the October 17 meeting discussing the review of Maine's vital records, it was mentioned that one solution to this problem would be to require a woman who was raped to obtain a court order closing the birth record. Sexual assault is a highly underreported crime, and adding the burden of legal proof that a rape occurred could be too great for Maine's sexual assault survivors. One of the difficulties for survivors obtaining an Order for Protection is that judges in Maine issue the orders when people are in imminent danger. If a sexual assault survivor decides nine months into a pregnancy to try and get a protection order, the judge may not believe the survivor is in imminent danger. Additionally, if she does not know the rapist's name, how is she to obtain the court order?

There are two precedents in Maine that we believe justify the restriction of access to birth records. These include the Address Confidentiality Program through the Secretary of State's office and the restriction of access to out-of-wedlock birth records. The Address Confidentiality Program is open to victims of sexual assault, domestic violence or stalking. Participants self-identify to be in the program but must work with a certified Applicant Assistant who is a specially trained advocate most often working at Maine's sexual and domestic violence centers. Survivors are not required to have a court order such as an Order for Protection from Abuse or Harassment to participate. Given the precedence of self-identifying, we do not

believe it is unreasonable to allow a rape survivor the right to close the birth record. We believe it would be an extremely rare occurrence that someone would misuse this option. Additionally, because the applications are sent to the Secretary of State's office by certified Applicant Assistants, we feel that there is an inherent safeguard against insincere or otherwise false participation in the program.

The second precedence relates to closing out-of-wedlock birth records. In Maine, both parents must consent to putting their names on the birth certificates in out-of-wedlock cases. Having a child as a result of a rape is a very sensitive issue, maybe even more so than having a child out-of-wedlock. In the case of a married woman, Maine law requires that her husband be named on the birth certificate whether or not he is the biological father. If she was raped by someone other than her husband, fortunately the rapist's name is not placed on the birth certificate, but that record is now "open" so anyone can request a copy of the record. It is conceivable that a rapist could obtain a copy of the birth certificate and learn the whereabouts of the woman and her child if she chose to keep it. Allowing married women the right to not list the father in the cases of rape seems to be a reasonable alternative to current practice. Even if the rapist does not attempt to access the birth certificate, we believe the community should not have access to the information to protect the privacy of the survivor and her child. People in the general public who are aware that someone has been raped should not have the ability to discover whether or not a child resulted from that rape by accessing the birth certificate. We need to make sure these potential risk factors are removed to increase victim/survivors' safety and privacy.

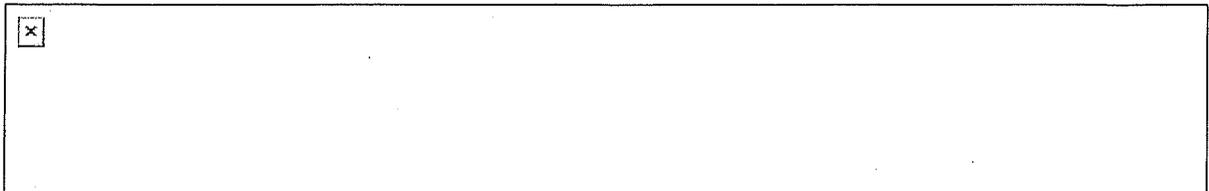
With regards to the adult adoptee wanting access to his or her original birth certificate, we want to protect against sexual assault survivors being re-traumatized by their child contacting them. While we have not had sufficient time to understand Maine law and practice regarding birth records and adoptions, we want to ensure that birth mothers have the right to choose whether or not they are contacted by adult adoptees and to have those choices honored. Though people respond differently, being raped, learning you are pregnant and subsequently putting your child up for adoption are all potentially traumatizing events for a sexual assault survivor. We want to give the power to seal those records (regardless of a court order) to the birth mother. Being tracked down by her child may not be in her best interest. Only she knows that for herself. At first glance, the proposal put forth by Access 2006 looks like it would meet our criteria especially the provision regarding contact preferences. The proposal as written allows the mother at the time of adoption to choose between never being contacted, being contacted through a trusted intermediary or to allow contact by the child. However, our overriding concern is that a mother should be able to choose if a child of rape enters her life or not.

Again, I want to thank you for the opportunity to express our concerns during this review of Maine's vital records. If you have any questions, please do not hesitate to call me at 626-0034 or by email at [dmerrill@mecasa.org](mailto:dmerrill@mecasa.org).

Sincerely,

Doreen Fournier Merrill, MSW

Doreen Fournier Merrill  
Public Policy and Member Services Coordinator  
Maine Coalition Against Sexual Assault  
83 Western Avenue Suite 2  
Augusta, ME 04330  
Phone: 207.626.0034  
Fax: 207.626.5503  
[www.mecasa.org](http://www.mecasa.org)



URL: <http://www.aclu.org/privacy/gen/15758leg20040920.html>

**Coalition Letter to the House Urging Members to Reject Any Proposal That Would Lead to the Creation of a National Identification System (National ID) by means of State Issued Driver's Licenses (9/20/2004)**

**Re: Recommendations in the 9/11 Commission Report That Could Lead to a National ID Card**

Dear Congressman:

We, representing a broad and diverse coalition of national organizations, urge the House to reject any suggestion, plan, or proposal which would lead to the creation of a national identification system (national ID) through the bureaucratic back door of state drivers' licenses.

The 9/11 Commission made numerous recommendations focusing on structural and organizational changes in government. Largely buried in the overall report was a recommendation regarding "terrorist travel" which could be interpreted to require standardization of drivers' licenses.

"Recommendation: Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists." Pg. 390

Coupled with the recommendation on page 387 which seems to suggest internal checkpoints, comprehensive screening systems, and setting common standards, Americans increasingly may find themselves in their everyday lives having to "present their papers" in order to conduct their business.

Although proposals for a national ID card have been debated since September 11, Congress and the Administration have wisely rejected them. Direct passage of a national ID card, however, is only one possible path to such a system. A national ID would more likely evolve bureaucratically through existing forms of ID, such as state drivers' licenses. Even the apolitical National Research Council has recognized that standardized driver's licenses would be a "nationwide identity system."

The creation of a national ID card or system is a misplaced, superficial "quick fix" to the terrorist threat. A national ID system would not effectively deter terrorists and, instead, would pose serious threats to the rights of freedom and equality of everyone in the United States.

We urge you to reject this proposal because:

**A national ID would not prevent terrorism.** An identity card is only as good as the information that establishes identity in the first place. Terrorists and criminals will continue to be able to obtain -- by legal and illegal means -- the documents needed to get a government ID, such as birth certificates and social security numbers. A national ID would create a false sense of security because it would enable individuals with an ID -- who may in fact be terrorists -- to avoid heightened security measures.

Identification documents do only that: identify the individual. They do not provide any evidence about the person's intentions. It would have done little good to know the names of Timothy McVeigh, the Unabomber, or the D.C.

snipers before they were arrested. Suicide bombers may have no history of terrorism. Because identity provides little evidence of intention, it is ineffective as a method of preventing terrorism.

Additionally, there is no indication that countries that already have national identification systems are any safer against terrorism than those without such systems.

**A national ID would depend on a massive bureaucracy that would limit our basic freedoms.** A national ID system would depend on both the issuance of an ID card and the integration of huge amounts of personal information included in state and federal government databases. One employee mistake, an underlying database error rate, or common fraud such as identity theft, now rampant in the U.S., could take away an individual's ability to move freely from place to place or even make them unemployable until the government fixed their "file." Anyone who has attempted to fix errors in their credit report can imagine the difficulty of causing an over-extended government agency such as the department of motor vehicles to correct a mistake that precludes a person from getting a valid ID.

**A national ID would be expensive and direct resources away from other more effective counter-terrorism measures.** The costs of a national ID system have been estimated at a minimum of \$4 billion, with one estimate of \$25 to \$30 billion to establish the program, and another \$3 billion to \$6 billion per year to run. Even more troubling, a national ID system mandated through state agencies would burden states who may have more effective ways to fight terrorism and strengthen ID systems. Neither the 9/11 Commission or any hearings on the recommendations have thoroughly studied the costs and ramifications of a national identification program.

**A national ID would both contribute to identity fraud and make it more difficult to remedy.** Americans have consistently rejected the idea of a national ID and limited the uses of data collected by the government. In the 1970s, both the Nixon and Carter Administrations rejected the use of social security numbers as a uniform identifier because of privacy concerns. A national ID would be "one stop shopping" for perpetrators of identity theft who usually use social security numbers and birth certificates for false IDs (not drivers' licenses). Even with a biometric identifier, such as a fingerprint, on each and every ID, there is no guarantee that individuals won't be identified - or misidentified - in error. The accuracy of biometric technology varies depending on the type and implementation. And, it would be even more difficult to remedy identity fraud when a thief has a National ID card with your name on it, but his biometric identifier.

**A national ID could require all Americans to carry an internal passport at all times, compromising our privacy, limiting our freedom, and exposing us to unfair discrimination based on national origin or religion.** Once government databases are integrated through a uniform ID, access to and uses of sensitive personal information would inevitably expand. Law enforcement, tax collectors, and other government agencies would want use of the data. Employers, landlords, insurers, credit agencies, mortgage brokers, direct mailers, private investigators, civil litigants, and a long list of other private parties would also begin using the ID and even the database, further eroding the privacy that Americans rightly expect in their personal lives. It would take us even further toward a surveillance society that would significantly diminish the freedom and privacy of law-abiding people in the United States. A national ID would foster new forms of discrimination and harassment. The ID could be used to stop, question, or challenge anyone perceived as looking or sounding "foreign" or individuals of a certain religious affiliation.

We urge you to reject national ID systems in any form. No steps should be taken to implement such a system or fund any proposals that would result in a national ID, including the study or development of standardized state drivers' licenses.

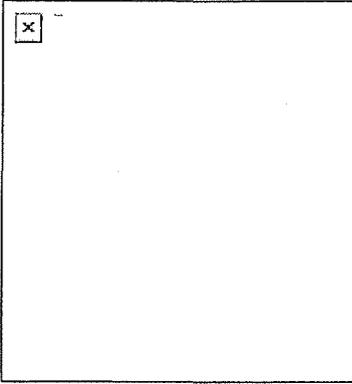
Sincerely,

American-Arab Anti-Discrimination Committee  
American Civil Liberties Union  
American Conservative Union  
American Library Association  
American Policy Center  
Americans for Tax Reform  
Arab American Institute  
Asian American Legal Defense and Education Fund

Association of American Physicians and Surgeons  
Center for the Defense of Free Enterprise  
Citizens Committee for the Right to Keep and Bear Arms  
Citizen's Council on Health Care  
Consumer Action  
Consumer Alert  
Eagle Forum  
Electronic Frontier Foundation  
Electronic Privacy Information Center  
Fairfax County Privacy Council  
Friends Committee on National Legislation (Quaker)  
Liberty Counsel  
Life Coalition International  
Multiracial Activist  
National Asian Pacific American Legal Consortium  
National Council of La Raza  
National Immigration Law Center  
National Vaccine Information Center  
Organization of Chinese Americans  
PrivacyActivism  
Privacy Rights Clearinghouse  
Privacy Times  
Second Amendment Foundation  
Sikh Mediawatch and Resource Task Force (SMART)  
World Privacy Forum

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Ms. Sally Sutton  
Senior Policy Analysis  
Institute for Health Policy  
Muskie School of Public Service  
P.O. Box 9300,  
509 Forest Ave.  
Suite 200  
Portland, ME 04104

**Re: ACCESS 2006 Participation and Stakeholder in LD 1202-Vital Records Study**

Dear Ms. Sutton,

I would like to take this opportunity to thank you for allowing me to participate as a stakeholder in the Vital Records study mandated by LD 1202 which was signed into law by Governor Baldacci. We appreciate the fact that we, ACCESS 2006, members were allowed to participate and to explain to other stakeholders how our proposed legislation would affect Maine's Vital Records.

My involvement in this study came as a result of our effort to inform Maine's Vital Records office of our legislative effort to allow adult adoptees born in Maine to obtain an unofficial copy of their original birth certificate (OBC). We proactively sought out Maine's Vital Records office to inform them of the potential change to the law that may affect their policies and procedures. Our discussions at the Maine Vital Records office have been with Lorraine Wilson Deputy State Registrar and Donald Lemieux Maine State Registrar. It is through this connection that you were notified of our legislative effort that would affect the Vital Records office and potentially the study in which you were heading.

As we learned from this study Maine is an open records state which allows any resident to obtain a Certified or Uncertified copy of anyone's birth certificate. Maine law however, prevents anyone including adoptees from accessing his or her original birth certificate from Vital Records without a court order. Legislation passed in 1953 sealed all adoption records in the probate courts and all original birth certificates of adoptees at the vital records office.

Even though Maine is an open records state ***the privacy rights of adoptees has been assured*** because their birth records have been sealed. Adoptees privacy rights are also assured because the birth certificate with his or her adoptive name on it is indistinguishable from any other birth certificate. Therefore anyone who requested a copy of an adoptees birth

certificate would not know that person was adopted by any marking on that document. ***The legislation proposed by ACCESS 2006 will continue to guarantee the privacy rights of adoptees.*** Our proposed legislation would allow only adult adoptees born in Maine or their legal representatives to get an uncertified copy of their original birth certificate.

The legislation proposed for Maine by ACCESS 2006 is based on successful legislation passed in Oregon, Alabama and most recently New Hampshire. The legislation we are proposing for Maine is the model for access to OBC legislation. It balances the rights of adoptees to be treated as equals to all other citizens of Maine, while allowing birth parents to choose whether or not they want to be contacted by their biological child.

The proposed Maine legislation is based on successful legislation (SB335) that became law in New Hampshire on January 1, 2005. Since then NH has issued over 760 original birth certificates to adult adoptees born in NH. So far only 11 of the tens of thousands of birth parents eligible to file a contact preference have done so. According to William Bolton Director of NH Vital Records and NH State Registrar, the impact of this new law to his office was as follows:

- Negligible impact to the service provided to Vital Records customers.
- Required no increase of personnel at NH Vital Records to handle the requests for adoptees birth records.
- No fiscal note was required to implement the new law into their policies or procedures
- The issuing of original birth certificates to adoptees has generated thousands of dollars for the state of NH.

The Vital Records study does confirm that the privacy rights of adoptees are assured. Legislation proposed by ACCESS 2006 will continue to guarantee the privacy rights of adoptees are protected. It will restore the human right for adult adoptees born in Maine to obtain an uncertified copy of their original birth certificate. This legislation will only allow for adoptees to get their original birth certificate and will not make these records available to the public.

Sincerely,

Paul Schibbelhute  
Co-founder ACCESS 2006  
President-American Adoption Congress  
15 Seminole Dr.  
Nashua, NH 03063  
(H) 603-880-7790 (w) 603-885-2181  
pschibbe@aol.com

Testimony on adoption bill SB959, respectfully submitted to the  
Joint Committee on Children and Families  
of the Massachusetts Legislature  
Evan B. Donaldson Adoption Institute, \*Adam Pertman, Executive Director \*October  
27, 2005

Good morning and thank you for providing me the opportunity to testify on the ABC legislation, permitting adult adoptees access to their original birth certificates. The issue you are examining today is far more important than most people perceive it to be, both in practical terms for the tens of millions of Americans that it stigmatizes - I refer here to both birth parents and adopted people - and symbolically, because we keep secrets about things we are ashamed of or embarrassed about. So, when we seal birth certificates, we send the clear signal that adoption is somehow a lesser way of forming a family, because it has something to hide from the very start.

Thank God, we are emerging from the period of our history in which people actually believed that was true, a period in which adoption was a shadowy secret, a period in which we denigrated nearly everyone touched by this wondrous institution, a period in which we even turned the words "you're adopted" into an insult. My children are not an insult, and neither are anyone else's, regardless of how they came into a family or why they left one. But some remnants of those dark days remain, and sealed birth certificates are one of those remnants.

It is also difficult to learn much about secrets. As a result, many myths, misconceptions and stereotypes have come to be widely accepted - even by some professionals in the adoption field. The Evan B. Donaldson Adoption Institute, which I am proud to head, has no formal ties with any interest group. It is an independent and nonpartisan research, policy and education organization that was created for just one reason: to provide accurate, research-based information for practitioners, policymakers, journalists and others so that we, as a society, can shape better laws, policies and practices to improve the lives of everyone touched by adoption, especially children.

I will try not to take up too much of your time. So I've boiled down the rest of my testimony into bullet points about research that applies specifically to the issue of sealed birth certificates. I will steer away from any disputed findings, and will stick to only those confirmed by hard data, widely accepted studies, or pervasive experience. I will submit footnotes and supporting materials for the record:

\* First, as you may already know, it is a historical fact that adoption-related records - in Massachusetts and across the United States - were closed to protect adopted children from the stigma and shame of illegitimacy, and biological mothers from the stigma and shame of unwed motherhood. The clear legislative and professional intent was to prevent access to those records by the public, not by the parties to an adoption themselves. Historically, the notion that birth certificates were sealed to ensure the anonymity of birth mothers is untrue, irrespective of whether providing anonymity is a good idea or not.

\* Second, it needs to be stressed that adopted people are not stalkers, ingrates or children in search of new mommies and daddies. They are simply adults who want the same information the rest of us receive as a birthright. In his book "Roots," Alex Haley wrote: "In all of us there is a hunger, marrow deep, to know our heritage, to know who we are and where we have come from. Without this enriching knowledge, there is a hollow yearning; no matter what our attainments in life, there is the most disquieting loneliness." Research, experience and instinct all affirm Haley's eloquent observation. And adopted people are not exempt from the laws of nature. They love their parents - that is, their adoptive parents - just as much and are just as loyal as if they had been born to them. But a growing majority wants to know about their genetic, medical and cultural roots.

Statistically, most do not form relationships with their biological kin or even make contact; for them, just having the most basic information about themselves is enough; it makes them feel they are treated equally, and it makes them feel whole. The fact is that access to their documents has become an issue that is separate from the question of "search" anyway. That is because, as a result of the Internet and other modern-day resources, many if not most adoptees who want to find their birth relatives can do so with or without their original birth certificates. One other detail relating to adoptees: They are wrong when they complain that they are the only Americans whose records are automatically sealed, and cannot be opened without court approval. In fact, the same process applies to people placed in the Federal Witness Protection Program.

\* Third, the notion that a lack of anonymity leads women to have abortions rather than place their children for adoption is pure fiction. It may sound correct intuitively but, in fact, just the opposite appears true in practice; the research indicates that women are at least as likely to carry their babies to term and place them into adoptive homes if they believe they will have ongoing knowledge about what happened to those children.

The evidence is in the growing number of states where adoption records have most recently been unsealed, and it extends much further and for much longer: In Kansas and Alaska, the only two states in which records have never been closed, there consistently have been fewer abortions and more adoptions than in states that border them or in the country as a whole.

\* Fourth, on the critically important question of the birth mothers' desires, the research is unambiguous: Every study I am aware of relating to whether they want anonymity clearly shows that the vast majority do not - and that applies to those who were verbally assured of anonymity as well as those who were verbally assured they would one day have contact with the children they bore; yes, many women were promised exactly the opposite of anonymity, but those promises are seldom publicly discussed.

\* Back to the numbers: Depending on the study, between 80 percent and 95 percent of birth mothers do indeed want some level of information or contact with the lives they created. That doesn't mean they want to give up their privacy, but there's a huge difference between privacy and secrecy. And it doesn't mean they necessarily want the information or contact right away - some only want it years later, when they've had enough time to deal with the personal and emotional consequences of their action or, increasingly often, when they discover they have genetic or medical information they want to share. It is also highly significant that only a small percentage have taken advantage of the opportunity to say "no" release of birth certificates in all the states that have unsealed them in recent years.

Even among those who genuinely thought they wanted anonymity at the time of placement, the majority eventually change their minds. Life is not a snapshot, after all, and few of us would want to live forever with the decisions we made at the age of 17, or even 25. Yet the core argument against unsealing birth records is predicated on the mistaken belief that birth mothers are of one mind - and it will never change. This is not only a fundamental misunderstanding of research and experience, on a human level it assumes a woman can carry a child within her and then part with that child and just "move on," as though she has given away an old record player. That view - essentially relegating women to the role of baby-making machines - pervaded adoption for generations. Thank God, it is changing radically and adoption practices are being reshaped in comprehensive, historic ways as a result. The bottom line is that birth certificates remain sealed in most of our country today because of lingering myths and mistaken stereotypes.

\* Finally, keeping birth certificates sealed contradicts the stated desires of almost everyone directly affected, and it flies in the face of majority opinion throughout the United States. That applies to birth mothers, who seldom choose not to be contacted in states where they can state a preference; it applies to adopted people who - once they are adults - favor access to their records by margins of about 4 to 1; it applies to a large and growing number of adoptive parents, a clear majority of whom have already told their children about their origins anyway; and, according to a national study, it applies to the American public as a whole. The study, which had a 3 percent margin of error, asked this question: "Should adopted children be granted full access to their adoption records when they become adults?" Eighty-four percent responded, "yes."

I respectfully ask the members of this Legislature to put aside the aberrational anecdotes, emotional appeals, and corrosive myths on which too much public policy relating to adoption has been based for far too long. Instead, please examine the research. I believe that, after you do, you will come to the same conclusion as that 84 percent. Again, thank you very much.

New York: 212-925-4089

Boston: 617-332-8944

[http://www.adoptioninstitute.org/pressrelease/20051027\\_testimony\\_mass.html](http://www.adoptioninstitute.org/pressrelease/20051027_testimony_mass.html)

Title: Adult Adoptee Access to their Original birth Certificates

Amend Title 22, §2765, subsection 2-A, paragraph C, as follows:

- C. When a new certificate of birth is established following adoption or legitimation, it must be substituted for the original certificate of birth. After that substitution, the original certificate of birth and the evidence of adoption are not subject to inspection except (1) upon order of the Probate Court or the Superior Court or (2) upon request of an adopted person born in Maine who is at least 18 years of age and has furnished appropriate identification to the State Registrar of Vital Statistics. The application for legitimation may be released to persons listed on the original birth certificate upon completion of written application to the State Registrar of Vital Statistics or the registrar's designee.
- i. Upon written application by an adopted person 18 years of age or older, born in the State of Maine, the state registrar shall issue a non-certified copy of the unaltered, original certificate of birth of the adopted person, with procedures, filing fees and waiting periods identical to those imposed upon non-adopted citizens of the State.
  - ii. The state registrar shall prescribe and, upon request, make available to each birth parent named on the original birth certificate a contact preference form on which the birth parent may state a preference regarding contact by an adoptee who is the birth child of the birth parent. Upon such request, the state registrar shall also provide the birth parent with an updated medical history form which shall be completed and returned, together with the completed contact preference form, by the birth parent to the state registrar.
  - iii. The contact preference form shall provide the birth parent with the following options from which the birth parent shall select one:
    - a. I would like to be contacted. I have completed a contact preference form and an updated medical history form and am filing them with the state registrar as set forth in this form.
    - b. I would prefer to be contacted only through an intermediary. I have completed a contact preference form and an updated medical history form and am filing them with the state registrar as set forth in this form.
    - c. I would prefer not to be contacted at this time. I have completed a contact preference form and an updated medical history form and am filing them with the registrar as set forth in this form.
  - iv. When the state registrar receives a completed contact preference form and a completed medical history form from a birth parent, the state registrar shall match the contact preference form and the updated medical history form with the adoptee's sealed birth certificate. The contact preference form and the updated medical history form shall then be attached to the adoptee's sealed certificate.
  - v. Only a person authorized by the state registrar to process an application made under paragraph C may possess a contact preference form and an updated medical history form.

Amend Title 22, §2765, subsection 5, as follows:

5. Copies of original certificate. When a new certificate of birth is established, the state registrar shall provide each municipal clerk who is required by law to have a copy of the certificate of birth on file with a copy of the new certificate of birth. In the case of a Maine certificate of birth established for a person born in a foreign country, a copy of the certificate shall be provided to and shall be maintained on file by the clerk of the municipality where the adoptive parents resided on the date of the adoption. All copies of the original certificate in the custody of any municipal clerk shall be sealed from inspection or surrendered to the state registrar as he shall direct **except as provided in subsection 2-A, paragraph C above.**

Amend Title 18-A: Probate Code, Article IX, Part 3, §9-310:

§9-310. Records confidential

Notwithstanding any other provision of law, all Probate Court records relating to any adoption decreed on or after August 8, 1953 are confidential. The Probate Court shall keep records of those adoptions segregated from all other court records. If a judge of probate court determines that examination of records pertinent to a particular adoption is proper, the judge may authorize that examination by specified persons, authorize the registrar of probate to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure. **Nothing in this section shall preclude the release of a copy of the original birth certificate of adopted persons as provided in Title 22, subsection 2-A, paragraph C.**

Above changes shall become effective six months after passed.

**Summary:** this bill permits adult adoptees to obtain a copy of their original, unaltered birth certificate. It also permits a birth parent to express his or her preference regarding contact with the adoptee by filing a contact preference form with the registrar of vital records.

## **Annotated Bibliography**

### **A Delay in Publication of the "Annual Summary of Vital Statistics" and the Need for New Vital Registration and Statistics Systems for the United States**

*Charles J Rothwell, Edward J Sondik, Bernard Guyer. Pediatrics* Evanston: Dec 2004. Vol. 114, Iss. 6, p. 1671-1672 (2 pp.)

Guyer discusses the reasons behind the delay in publication of the "Annual Summary of Vital Statistics" and the need for new vital registration and statistics systems for the US. Among other concerns, he mentions that the consensus of national requirements will serve as the foundation for the design, development, and implementation of Internet-based vital records and statistics systems for states.

### **Abortion records ruled exempt 'vital records'**

*Anonymous. News Media and the Law* Washington: Winter 1996. Vol. 20, Iss. 1, p. 26 (6 pp.)

The Arkansas Supreme Court has ruled that an anti-abortion group may not have access to reports and files of women in the state who undergo abortions. The Westark Christian Action Council of Fort Smith AR was denied access to abortion files.

### **Death Certificate Surveillance - New Hampshire**

*Kim K Fallon, D Boone. MMWR. Morbidity and Mortality Weekly Report: Syndromic Surveillance* Atlanta: Sep 24, 2004. Vol. 53, p. 236 (1 pp.)

New Hampshire is one of the only states in the US that uses Vital Records Vision 2000, a system in which death certificates are filed electronically with the Division of Vital Records within 24 hours of being signed by a physician. The average time between date of death until certificates are filed with the state is 2.37 days. This surveillance system is designed to detect clusters of deaths, deaths considered unusual, and deaths relevant to public health.

### **Epidemiology; Birth certificate data may not be entirely accurate**

*Women's Health Weekly* Atlanta: Nov 20, 2003. p. 52

"Vital statistics birth certificate data are an important source of information for researchers, policy makers, and state officials to evaluate the quality of care delivered to pregnant women. The purpose of this study was to assess the validity of data elements being reported by the hospitals on the birth certificate record when compared to the medical record.

### **Focus Intensifies On Curbing Identity Theft and Boosting Security**

*Card News: Vol. 17, Issue: 21 [Copyright 2002 PBI Media, LLC. All right* Potomac: Oct 16, 2002. p. 1-3

According to a new white paper released recently by Star Systems Inc., an EFS subsidiary, the US identification system, including such documents as drivers licenses, birth certificates and Social Security numbers, relies on a chaotic patchwork of standards that can be easily exploited by terrorists and others interested in stealing or creating a new identify. In discussing strategies for cracking down on identity theft and fraud, whether for financial or other purposes, the Star white paper calls on document issuing agencies to find better ways to verify the identity of applicants, make it harder to tamper with the documents and make it easier, perhaps with appropriate use of technology, to verify that the document was legitimately issued to the person presenting it.

### **Foiling I.D. Thieves**

*Garry Boulard, Pam Greenberg, Blake Harrison. State Legislatures* Denver: Oct/Nov 2004. Vol. 30, Iss. 9, p. 12-15 (4 pp.)

Boulard investigates the growing incidence of identity theft across United States, specifically Social Security and credit card fraud. The need to strictly implement current laws relating to the criminal enforcement of identity theft and preserve and protect vital records, including birth, marriage, and death certificates, is emphasized.

**Incomplete birth certificates: A risk marker for infant mortality**

*Jeffrey B Gould, Gilberto Chavez, Amy R Marks, Hao Liu. American Journal of Public Health* Washington: Jan 2002. Vol. 92, Iss. 1, p. 79-81 (3 pp.)

Gould et al assess the relationship between incomplete birth certificates and infant mortality. Of the birth certificates studied, 7.25% were incomplete. Underreporting was most common in the case of women at high risk for poor peri-natal outcomes and infants dying within the first day.

**LICENSES TO KILL For terrorists, getting fake ID is simple and cheap**

*Brian Grow in Atlanta. Business Week* New York: May 5, 2003. Iss. 3831, p. 71-72

One of the biggest holes in the war against terrorism is the easy availability of fake ID. On Mar. 12, the FBI busted a \$3 million counterfeiting ring in New York City with an inventory of more than 30,000 bogus documents. According to immigration experts and forensic document specialists, the US fake-ID trade is at least a \$1 billion annual business that produces as many as 10 million bogus passports, Social Security cards, birth certificates, and driver's licenses each year. Criminal networks increasingly run the document factories. Despite pledges to standardize ID formats, the government's crackdown has been set back by bureaucratic balkanization.

**Maternal smoking and birth defects: Validity of birth certificate data for effect estimation**

*M A Honein, L J Paulozzi, M L Watkins. Public Health Reports* Cary: Jul/Aug 2001. Vol. 116, Iss. 4, p. 327-335

Honein et al sought to assess the validity of birth certificate data for estimating the association between maternal smoking and birth defects. The findings suggest that birth certificate data may be useful for exploratory or corroborative studies estimating the association between birth defects and some risk factors recorded on birth certificates.

**No fathers' names: A risk factor for infant mortality in the State of Georgia, USA**

*Gaudino, James A Jr., Jenkins, Bill, Rochat, Roger W. Social Science & Medicine* Oxford: Jan 1999. Vol. 48, Iss. 2, p. 253-265 (13 pp.)

Many studies have explored maternal and infant factors as risks for infant mortality, but little attention is given to paternal factors. In Georgia, listing a father's name on the birth certificate is optional for married couples and possible after paternal acknowledgement for unmarried couples.

**Oregon's Ballot Measure 58: A grossly unfair and state-sanctioned betrayal of birth mothers\***

*I Franklin Hunsaker. Family Court Review* Thousand Oaks: Jan 2001. Vol. 39, Iss. 1, p. 75-84 (10 pp.)

The author tackles the issue of sealed adoption records within the context of Oregon Ballot Measure 58, passed by Oregon voters in November 1998. This legislation requires the Oregon state registrar to give previously sealed adoption records to any adopted person who has reached age 21.

*\* Information provided by the American Adoption Congress suggests that concerns that may have originally existed when Oregon first allowed access for adult adoptees, after several years of experience may no longer exist.*

**Patient Privacy; Compromise reached on public records in South Dakota**

*Science Letter* Atlanta: Feb 22, 2005. p. 1239

2005 FEB 22 - (NewsRx.com & NewsRx.net) -- A stalemate pitting the media and genealogists against the South Dakota Health Department was broken January 31, 2005, when the department agreed that copies of birth, death and marriage certificates should be available to the public.

**PROFILE: ADOPTEES LIVING IN OREGON MAY BE ABLE TO HAVE ACCESS TO THEIR BIRTH CERTIFICATES IF THE CURRENT LAW GETS CHANGED\***

**Morning Edition** Washington, D.C.: Aug 13, 1999. p. 1

**PROFILE: OREGON LAW ALLOWS COPIES OF BIRTH CERTIFICATES TO ADOPTEES AND SOME BIRTH MOTHERS PROTEST LOSS OF CONFIDENTIALITY\***

**All Things Considered** Washington, D.C.: Dec 30, 1999. p. 1

**PROFILE: OREGON RELEASES ADOPTION RECORDS AGAINST THE WISHES OF BIRTH MOTHERS \***

**Morning Edition** Washington, D.C.: May 31, 2000. p. 1

*\* Information provided by the American Adoption Congress suggests that concerns that may have originally existed when Oregon first allowed access for adult adoptees, after several years of experience may no longer exist.*

**PROFILE: TENNESSEE SUPREME COURT UPHOLDS OPEN ADOPTION RECORDS LAW**

**Morning Edition** Washington, D.C.: Sep 29, 1999. p. 1

**Reinventing vital statistics**

*Starr, Paul, Starr, Sandra. Public Health Reports* Hyattsville: Sep 1995. Vol. 110, Iss. 5, p. 534 (11 pp.)

Vital statistics offers a case study in the potential of new information technology and reengineering to achieve better public sector performance. It is estimated that at the end of 1994, 58% of all births in the US were being recorded on an electronic birth certificate and communicated to a public agency electronically.

**Releasing pre-adoption birth records: The impact of Oregon's experience on its vital records department \***

*Wanda D Barfield, Julia C Rhodes, Melvin A Kohn, Katrina Edberg, Kenneth C Schoendorf. Public Health Reports* Cary: Sep/Oct 2002. Vol. 117, Iss. 5, p. 472-478

Objective. In November 1998, Oregon voters passed Ballot Measure 58, which allowed Oregon adoptees 21 years of age access to their original birth records, which are sealed at adoption. The objective of this study was to evaluate the impact of the measure on the Oregon Health Division (since renamed Oregon Health Services) by assessing procedures used and resources needed after implementation of Measure 58. Methods. Vital records employees were interviewed about processing, storage, and archive retrieval procedures for pre-adoption birth records before, during, and after the implementation of Measure 58 and the effect on their usual workload. Personnel time, space, and fiscal resources used to process requests for pre-adoption records were also calculated. Results. The Oregon Health Division began to receive requests from adoptees immediately following the passage of Measure 58 in November 1998, but due to legal challenges, they could not be processed until May 31, 2000. From June 2, 2000, through October 20, 2000, 12 staff members and two supervisors issued more than 4,700 pre-adoption birth records while also processing their normal workload, which averages more than 135,400 vital record orders annually. Due to the need for retrieval from archives, requests for pre-adoption birth records were estimated to take 75 hours to process vs. 2-3 minutes for standard requests. Each batch of approximately 75 pre-adoption birth

records required approximately 12.5 person-hours from vital records staff and 3–4 person-hours from archive personnel; in addition, supervisors spent time responding to incomplete orders, informing the public and the media, and responding to concerns of adoptees, birth parents, and adoptive parents. Fewer than 1% of requests went unfilled. Conclusions. Implementation of Measure 58 utilized substantial resources of the Oregon Health Division. States contemplating similar legislation should consider increasing personnel and resources, preparing for intense public and media interest, and reorganizing the storage of adoptees' original birth records so they are easily retrieved.

*\* Given the number of possible requests in Maine if access to original birth records is allowed, it is anticipated that the impact in Maine will be quite different from Oregon, and more similar to New Hampshire where there was a negligible impact and money was actually raised for the state.*

### **Risk adjusting delivery rates: A comparison of hospital profiles based on medical record and birth certificate data**

*David L DiGiuseppe, David C Aron, Susan M C Payne, Richard J Snow, et al. Health Services Research* Chicago: Oct 2001. Vol. 36, Iss. 5, p. 959-977 (19 pp.)

The discrimination of risk-adjustment models for primary cesarean delivery derived from medical record data and birth certificate data are compared and if the 2 types of models yield similar hospital profiles of risk-adjusted cesarean delivery rates is determined. Three pairs of multivariate models of the risk of cesarean delivery were developed. Predicted rates of cesarean delivery were determined for each hospital. Discrimination of the full medical record and birth certificate models was higher than the discrimination of the more limited common and reliable variable models. Six hospitals were classified as statistical outliers. The correlation between adjusted hospital rates was substantial. Birth certificates can be used to develop cesarean delivery risk-adjustment models that have excellent discrimination. Using the full complement of birth certificate variables may lead to biased hospital comparisons. Limiting models to data elements with known reliability may yield rankings that are more similar to rankings based on medical record data.

### **South Dakota Bill May Restrict Access to Vital Records**

*Anonymous. Information Management Journal* Lemexa: Mar/Apr 2005. Vol. 39, Iss. 2, p. 10 (1 pp.)

### **Tennessee's adoption law and the limitations of the constitutional arguments regarding open records**

*Leslie J Kelley. Family Court Review* Thousand Oaks: Apr 2001. Vol. 39, Iss. 2, p. 223-239 (17 pp.)

In 1995, Tennessee enacted a statute allowing adult adoptees access of information contained in their adoption records. Since then, debate has arisen concerning the constitutional rights of both the adoptive parents and the adoptees.

### **Tennessee's adoption law: Balancing the interests of the adoption trend**

*Julie K Sandine, Frederick F Greenman. Family Court Review* Thousand Oaks: Jan 2001. Vol. 39, Iss. 1, p. 58-74 (17 pp.)

Tennessee has recently enacted legislation increasing access to adoption records, allowing adult adoptees to obtain their birth certificates and other information contained only in their adoption records. After that controversial statute became law, it was challenged in *Doe v. Sundquist*.

### **The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records**

*Elizabeth J. Samuels, Rutgers Law Review*, Winter 2001

This article provides a more accurate history of adult adoptees' access to birth records, and it uses that history to analyze what has been a complex relationship in this area of law between legal rules and social attitudes. The analysis traces how social attitudes and understandings have likely affected the

construction of rules, how rules in turn appear to have affected attitudes, and how, finally attitudes may have extended and perpetuated rules.

### **The Stranger Who Bore Me: Adoptee-Birth Mother Relations**

*Silverman, Phyllis R. Women & Health* Old Westbury:1997. Vol. 25, Iss. 3, p. 87-90 (4 pp.)

Karen March. Toronto: University of Toronto Press, 1995, 160 pages.

Adoption as it is commonly practiced emulates a prototype of the family into which children are born. Birth certificates are modified to show that the child to be adopted was born into this family and any identifying information about the birth parents is sealed by the court so that adoptees can not access this information. Until recently little attention was directed towards understanding how children not being born into a family, can make a difference for that family (Kirk, 1964). Anything that has gone awry in adoptive families has been attributed to either psychological problems in the child or in the parent-child interaction but not in the institution itself (Brodinsky, 1990; Silverman et al., 1994). Health professionals showed little understanding of why an adoptee might want to know about her or his birth parents and might even undertake a search to find them. Such a search was seen as a symptom of failure to bond in the adoptive family. Research and personal testimony on the part of members of the adoption triangle (birth parent, adoptee and the adoptive parents) have challenged this view. As a result of the grassroot effort of members of the triangle, health professionals are becoming aware of the importance of knowing their birth origins for adoptees' self-esteem and sense of identity (Miller-Havens, 1996; Nickman and Lewis, 1994).

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### **The surveillance of birth defects: The usefulness of the revised US Standard Birth Certificate**

*Watkins, Margaret L, Edmonds, Larry, McClearn, Anne, Mullins, Lynda, et al. American Journal of Public Health* Washington: May 1996. Vol. 86, Iss. 5, p. 731 (4 pp.)

Birth certificates underestimate birth defect rates and should be used cautiously for birth defect surveillance and epidemiological studies. The usefulness of the revised US Standard Birth Certificate is discussed.

### **The winds of change in adoption laws: Should adoptees have access to adoption records?**

*Brett S Silverman. Family Court Review* Thousand Oaks: Jan 2001. Vol. 39, Iss. 1, p. 85-103 (19 pp.)

The author focuses on the issues involving the unsealing of adoption records--allowing adoptees to discover who their birth parents are. He first examines the history of adoption and the development of adoption laws in the United States and then discusses currently enacted adoption statutes.

### **Tracking down mom**

*John Cloud. Time* New York: Feb 22, 1999. Vol. 153, Iss. 7, p. 64-65 (2 pp.)

Measure 58, recently approved by voters in Oregon, would allow adoptees the unfettered right to see their birth certificate when they turn 21. A group of birth mothers has sued the state, arguing that state statutes promised them confidentiality and that breaking those promises would be unconstitutional.

### **VALIDATION OF BIRTH CERTIFICATE DATA IN NEW YORK STATE**

*Patrick J Roohan, Raina E Josberger, Janice Acar, Poornima Dabir, et al. Journal of Community Health* New York: Oct 2003. Vol. 28, Iss. 5, p. 335-346

Vital statistics birth certificate data are an important source of information for researchers, policy makers, and state officials to evaluate the quality of care delivered to pregnant women. The purpose of this study was to assess the validity of data elements being reported by the hospitals on the birth certificate record when compared to the medical record. This study used a random sample of birth certificates from two upstate and two downstate counties, in New York State, comprising a total of 100 records per county. The

review assessed data elements from seven major categories: prenatal care, maternal medical risk factors, risk factors related to pregnancy, lifestyle risk factors, method of delivery, complications of labor and delivery, and infant information. Sensitivity, specificity, the positive predictive value and the negative predictive value assessed level of agreement between the birth certificate and the medical record. Overall, the birth certificate data reflected high specificity, because most conditions are rare. The sensitivity of the data was more varied, ranging from 0 to 100[percent], reflecting that if a rare condition was present it often was not documented on the birth certificate. Many of the data elements are reported accurately. However, caution should be used for data elements that are poorly reported. [PUBLICATION ABSTRACT]