

Response to Governor's Directive 13-08
Substitute House Bill 1525 – Birth Certificates
A report to the Governor

November 2013



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Executive Summary

This report is a response to the Directive of the Governor (13-08) issued to the Department of Health regarding implementation of SHB1525. The new law opens access to pre-adoption (original) birth certificates for all adoptees on July 1, 2014. It also allows birth parents to file contact preference forms and medical history information with the department.

Governor Jay Inslee directed the department to identify implementation options for notifying birth parents of the law change, so they can take action to maintain their privacy, if they choose. The directive requested that we identify:

- Options for the department to contact the birth parent(s), in an effort to protect confidentiality, when an adoptee has requested his or her original birth certificate and has indicated that they plan to contact their birth parent(s);
- Estimates regarding the potential fiscal impacts of the various implementation options;
- Suggestions for any statutory changes necessary to implement the options; and
- A discussion of potential legal and/or liability concerns.

We have identified five options for consideration:

- Release an original birth certificate only when a birth parent has filed a contact preference form consenting to the release of the certificate;
- Contact birth parents using address on the original birth certificate;
- A media campaign using paid advertising;
- Contact birth parents directly using department-hired staff; and
- Contact birth parents using confidential intermediaries.

The first option is a no-cost choice that would allow the release of an original birth certificate only when a birth parent has filed a contact preference form consenting to the release. The second option uses information on the original birth certificate to attempt to contact birth parents. The third option provides a lower cost option for consideration, but it doesn't result in contacting birth parents directly. Reaching out to birth parents with department staff or confidential intermediaries are the most direct approaches to locating birth parents, but they require changes in law and substantial funding.

Summary of Options	Legal Concerns	Statutory Changes	Cost (FY2015)
1. Release an original birth certificate only when a birth parent has filed a contact preference form consenting to the release	No	Yes	No new costs
2. Contact birth parents using address on original birth certificate	Yes	Yes	\$160,000
3. Media campaign	No	No	\$270,000
4. Contact birth parents using department staff	Yes	Yes	\$2.0 million
5. Contact birth parents using confidential intermediaries	Yes	Yes	\$2.8 million

Introduction

The Washington State Legislature passed SHB1525 in 2013 allowing all adult adoptees access to noncertified pre-adoption (original) birth certificates beginning July 1, 2014. Until then, only adults adopted after October 1, 1993 can get copies of their original birth certificates.

The bill also gives birth parents the option of completing a contact preference form indicating whether the department has permission to release the original birth certificate and if they would like to be contacted by the adoptee or through a confidential intermediary. A birth parent may choose to keep all information confidential. However, the original birth certificate will be released to the adoptee if no contact preference form is on file.

Birth parents may choose from among several options when filing a contact preference form:

- I would like to be contacted. I give the Department of Health consent to provide the adoptee with a noncertified copy of his or her original birth certificate.
- I would like to be contacted only through a confidential intermediary as described in RCW 26.33.343. I give the Department of Health consent to provide the adoptee with a noncertified copy of his or her original birth certificate.
- I prefer not to be contacted and have completed the birth parent updated medical history form. I give the Department of Health consent to provide the adoptee with a noncertified copy of his or her original birth certificate.
- I prefer not to be contacted and have completed the birth parent updated medical history form. I do not want a noncertified copy of the original birth certificate released to the adoptee.

Governor Inslee signed the bill into law on May 21 and it became effective on July 28. On May 21 the governor also issued a directive (13-08) to provide implementation options that would balance the interests of adoptees in accessing information about their adoptions with the interests of birth parents maintaining their privacy. The department was directed to develop an implementation plan that includes:

- Options for contacting the birth parent(s), in an effort to protect confidentiality, when an adoptee has requested their original birth certificate and has indicated that they plan to contact the birth parent(s);
- Estimates regarding the potential fiscal impacts of the various implementation options;
- Suggestions for any statutory changes necessary to implement the options; and
- A discussion of potential legal and/or liability concerns.

This report provides a detailed outline of options for consideration; background on adoptions and birth records in Washington, including our research, challenges and limitations with birth records; other states' laws and experience; and the work we've done so far to implement the new law.

Background

Chapter 26.33 RCW regulates adoptions in Washington. An adoption can occur in several ways: through the Children's Administration of the Department of Social and Health Services (DSHS), a private adoption agency licensed by DSHS, or an independent agent. A step parent may also adopt his or her spouse's child through a private process.

Department of Health's Role in the Adoption Process

Under chapter 70.58 RCW and RCW 43.70.150, the department is charged with the collection and permanent preservation of birth certificates for Washington-born children. We issue certified copies of these records along with local health agencies. Birth certificates have the legal facts of the birth, including the time and date it occurred and the child's name and place of birth. They also contain the name(s), date(s), and place(s) of birth of the parents.

A court issues an adoption decree that provides the child's new parent(s) and legal name resulting from the adoption when an adoption is finalized, as directed under chapter 26.33 RCW. The court also orders the department to amend the child's original birth certificate based on this information. The department then places the original birth certificate in a confidential, sealed file and creates a new birth certificate. Thereafter, the amended birth certificate serves as the legal record of the child's birth.

Before SHB1525 passed this year, only adults adopted after October 1, 1993, birth parents, and confidential intermediaries could access the original birth certificate of adopted children. An adult adoptee could access the certificate if a birth parent doesn't file an affidavit of non-disclosure. We have five affidavits of non-disclosure on file for adoptions that occurred after October 1, 1993. Since October 11, 2013, we have issued 22 original birth certificates to adoptees for adoptions filed after October 1, 1993.

In Washington, an adoptee over age 21, an adoptee under 21 with permission of the adoptive parent(s), a birth parent, or a member of the birth parents' family may petition the court to open adoption records and assign a confidential intermediary to search for the other person(s). The court will generally issue a court order allowing the department to give the confidential intermediary a copy of the original birth certificate.

Currently, most requests we receive for original birth certificates are from confidential intermediaries. We expect this will change in July 2014 as more adoptees turn 21 and decide they want their original birth certificates.

Challenges, Limitations and Research on Searching for Birth Parents

We've researched other states' laws, reviewed our own processes and records, and talked with people who have experienced opening access to original birth certificates in their states. There are many variations in state laws governing access to adoption records. There are also some common challenges with information in original birth records. These challenges and limitations can make it difficult to connect requests for original birth certificates to the records and to locate birth parents using the information in these records.

Challenges and Limitations

Many parents don't live in the same place they did when the adoptee was born. American Community Survey data from 2007-2011 show that only 18.7 percent of people in Washington moved into the house they're currently living in sometime between 1980 and 1989. The rate goes down for the years 1970 to 1979 and earlier¹. Population mobility is common even during the first year of a child's life. The department operates the Pregnancy Risk Assessment Monitoring System (PRAMS), a survey of new mothers whose infants are 3 to 6 months old. PRAMS surveys are mailed to new mothers at the residential address listed on their infants' birth certificates. On average, 12 percent of these surveys are returned as undeliverable, because the address listed on the birth certificate is incorrect or the mother no longer resides at that address. We expect this challenge to increase with the duration since the child's birth.

In addition to the general challenges of living in a mobile society, the historical stigma of adoption also creates challenges in searching for birth parents. Some birth parents may have given incorrect identifying information at the time of the birth in order to keep the birth a secret. Oregon experienced these challenges while attempting to match birth parents to adoptee records in order to place contact preference forms in sealed files.

Every search for an adoptee or birth parent is unique since circumstances and life events are different for every person. Stories about searches for adoptees and birth parents in the news and social media vary widely. One person's search could take a day, while another could search for decades. Even advocacy groups and professional confidential intermediaries are hesitant to estimate how long a search could take. Some adoption reunion agencies cite a high search success rate with a majority of located birth parents wanting contact with the adoptee.

There are also limitations based on changes in the collection of vital records in Washington over time. The address information required on birth certificates has evolved over the years. Birth certificates from 1907 to 1938 were often completed using the city and county with no street address. From 1939 to 1991, the address included the street number, but it didn't require a zip code. Through review of a sample of records, we found that some addresses are route and box numbers that no longer exist. Address information on birth certificates weren't complete until 1992 when entire addresses were required (number/street, city or town, county, and zip code).

¹ 2007-2011 American Community Survey 5-year Estimates - http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/11_5YR/DP04/0400000US53%7C0100000US

Population mobility, incomplete address information, and inaccurate birth parent identifying information all pose significant limitations to using the original birth certificate alone to locate birth parent(s) of adult adoptees.

Other States

In addition to Oregon, many states have opened or expanded access to original birth certificates over the last two decades. However, 25 still don't allow access without a court order. The rest allow access with a variety of requirements and restrictions.

There are five states that have laws that are very similar to SHB1525, including Alabama, Colorado, Illinois, Maine, and Oregon. Six states have laws that are similar to the requirements in the directive, including Georgia, North Dakota, Pennsylvania, Virginia, Minnesota, and Tennessee. The search for a birth parent begins with a request to open court and adoption agency records in almost all of those states. The responsibility for conducting the search generally lies with the agency that is similar to Washington's Department of Social and Health Services (DSHS) or the adoption agency.

Minnesota is the only state in which a search can begin with a request for an original birth certificate. The vital records office notifies Minnesota's Department of Human Services (DHS). DHS then conducts the search and reports to the vital records office.

In Tennessee, adoptees access all adoption records, including the original birth certificate, through the Department of Children's Services (DCS). DCS conducts searches for birth parents when an adoptee makes a request for his or her adoption records and no contact form is on file. The adoptee must pay fees of \$150 to access the records and another \$135 to complete a search, in addition to fees for copies. DCS also searches for immediate family members; the agency also has a voluntary advance notice registry.

When a court ruling in 1999 expanded access to adoption records in Tennessee, DCS had 13 staff members to keep up with the requests. Demand has since leveled out. Currently, only two staff members complete about 30 requests and 15 searches a month.

Current Work to Implement SHB1525

Since the law went into effect on July 28, we've developed implementation and communication plans, and completed several tasks:

- Developed and posted new Web pages and frequently asked questions about the law
- Created and posted the contact preference and medical history forms
- Established internal procedures, using Lean tools and concepts, for adding contact preference and medical history forms to sealed files
- Created an interested persons list using the DSHS Adoption Exchange directory and Web searches

- Established a dedicated e-mail box and sent e-mails to the interested persons list about the new law on July 31 and September 25
- Provided the public with an opportunity to send comments on the directive from July 31 to August 30
- Issued a statewide news release on September 26 and followed up with Facebook and Twitter messages on the same day and again on October 2

Our news release generated several news and print articles in papers and websites across the state and in several other states across the country. The news release generated many calls from birth parents and adoptees wanting more information about the changes.

We've received 27 contact preference forms from birth parents as of October 11. Twenty-four of the forms came in after the news release. Twenty birth parents didn't want to release the original birth certificate and didn't want contact. Seven birth parents asked to be contacted. One wanted to be reached through a confidential intermediary and provided contact information.

We also received about 20 comments on the directive. Most of the comments were from adoptees and adoption reunion organizations. More than half the comments opposed any restrictions on adoptee access to original birth certificates. Several expressed concern with the directive. A few of the comments provided suggestions for contacting birth parents, some of which are included in this report.

OPTIONS

We have identified five options for consideration in response to the directive. Each option is described below with the cost, cost assumptions, limitations (including legal and liability concerns), and required statutory changes.

The first and third options don't involve contacting birth parents directly. However, we believe it is important to provide lower cost alternatives for achieving the goal of balancing birth parent privacy interests with adoptee's interest in accessing original birth certificates. The second option involves using information on the original birth certificate to contact birth parents when an adoptee requests a copy of their original birth certificate. Yet, for the reasons previously described, we would expect a very low success rate in locating birth parents using the birth certificate information alone. For this reason, we've identified two other options for contacting birth parents that involve use of other search tools, databases, and information to find them.

The cost assumptions for all options are for fiscal year (FY) 2015. We assumed most of the work would start in FY2015, even though some of the work for the last two options could potentially cross over into FY2016. There will be ongoing costs for options 2, 4 and 5 that will decrease each year as requests decrease. We didn't include the work to process a request for an original birth certificate in our estimates. We're already required to do that work under the new law.

We also considered an option to mailing notification of the new law to all birth parents using the addresses on original birth certificates. This option is different from option 2 in that we would

attempt to contact all birth parents before adoptees are able to request original birth certificates. We would have to request every adoption sealed file from the Records Center and hand enter the address for the mailing. The exact number of adoption sealed files is unknown, but a conservative estimate is 100,000. Completing this work before the new adoption law takes effect in July 2014 would require us to hire lots of temporary staff and also create new, short-term workload at the Office of the Secretary of State. We estimate that the cost would be around \$3 million. We decided this was not a feasible option because the success rate of reaching a birth parent would be low, and we'd have to expend significant resources to contact a birth parent when the adoptee may never request a copy of the original birth certificate.

Option 1: Only Allow the Release of an Original Birth Certificate When a Birth Parent Has Filed a Contact Preference Form Consenting to Release

This option would require a change to the law to allow the release of an original birth certificate only when the birth parent(s) have filed a contact preference form indicating their consent. This option shifts the burden of searching for a birth parent back to a system that is already in place in chapter 26.33 RCW. RCW 26.33.343 allows an adoptee, birth parent, or certain family members of the birth parent to petition the court to appoint a confidential intermediary. The adoptee wouldn't be able to search for a birth parent until the age of 21, unless the adoptive parents give their permission. However, a birth parent would have the opportunity to decide whether to agree to the adoptee's access to their information if the search is successful (RCW 26.33.343).

Cost: **None**

Cost Assumptions: This option would affect the number of original birth certificates we ultimately release. However, it wouldn't have a fiscal impact because the work is supported with fees paid by the person requesting the original birth certificate.

Advantages: Fiscally neutral; requires no new funding or fee authority.

Limitations and Concerns: The supporters of SHB1525 would likely oppose this change.

Recommended Legislative Change: This option would require amending the law to prohibit the release of the original birth certificate if no contact preference form is on file that allows release of the record. That would leave the option for the adoptee to search for their birth parent(s) through a court appointed confidential intermediary.

Option 2: Contact Birth Parents using the Address on the Original Birth Certificate Only

If we have no contact preference form on file, we would send the birth parent(s) a notice in the mail, using the address on the original birth certificate. This would happen after an adoptee requests their original birth certificate indicating that they would like contact with the birth parent.

Cost: **\$160,000**

Cost Assumptions: Costs are for the first year and would decrease as requests decrease. We believe requests for original birth certificates will drop by half each of the following fiscal years and remain steady starting at year five. Our cost assumptions for this option are:

- 4,531² requests for original birth certificates would require a notice to a birth parent(s).
- It will take .8 FTE to run the program, including:
 - .25 FTE Health Services Consultant (HSC 1) to draft the notices, track the requests and responses, respond to customer calls and questions, and maintain records and other general office tasks.
 - .25 HSC4 and WMS2 to supervise, establish procedures and requirements, address policy issues and complete rulemaking.
 - .30 FTE of an information technology specialist (ITS) 5 to develop and maintain a confidential tracking database.
- Additional mailing costs of approximately \$40,000 to send restricted certified notices to birth parents about the law³.
- Costs for legal consultation from the Office of the Attorney General.

Advantages: Low-cost approach to contacting birth parents.

Limitations and Concerns: For the reasons discussed previously, we believe that using the original birth certificate alone to locate the birth parent(s) would yield a low success rate. In addition, adoptees who don't plan to contact their birth parent(s) may still choose to conduct a search on their own.

Recommended Legislative Changes: This option would require several legislative changes. We would request changes to prevent potential legal actions resulting from searches for birth parents. The department would need added legal authority to use the addresses on the original birth certificate for this purpose and include rule authority so we can establish rules for timelines and processes to complete requests for original birth certificates, and methods to contact birth parents and timelines for responses.

- 1) Add a requirement for the adoptee to indicate if they intend to contact the birth parent when requesting an original birth certificate.
- 2) Direct the department to withhold the original birth certificate, when no contact preference form is on file, while they attempt to contact the birth parent using the address listed on the original birth certificate.

²We estimated the number of requests for original birth certificates from Oregon's actual experience. We took the number of requests Oregon received in the first year and adjusted it by the ratio of births in Washington to births in Oregon. This yields about 7,220 requests in FY 2015. Of those, we assume one-third will indicate they do not intend to contact the birth parent. In addition, about six percent of those requests will already have a contact preference form on file, which is the same experience as Oregon. The total number of requests we estimate will require a search is 4,531.

³ We do not know how many records will have a valid address so we are assuming the same number of requests as in Option 4 will have enough information to attempt to mail out a notice, which is about 90 percent of requests or 4,062 letters.

- 3) Add immunity from liability provision for the department if one or both parties don't agree with the release or withholding of information or the outcome of the attempted contact.
- 4) Include authority for the department to adopt rules to implement the law.

Option 3 – Launch a Media Campaign using Paid Advertising

This option involves launching a short-term media campaign using paid advertising, such as television, radio, and newspaper advertisements.

Cost: **\$270,000**

Cost Assumptions: Costs for this option are difficult to estimate without establishing contracts, but we used the cost of the large-scale statewide whooping cough campaign the department conducted in 2012 and 2013 as a baseline. That media campaign cost about \$500,000. We assume that we would run a campaign for several months with as much coverage as we could purchase for \$250,000. In addition, there would be about \$20,000 in costs for .3 FTE to develop the media content and manage the contract(s).

Advantages: Lower-cost option for broad outreach to birth parents residing in Washington.

Limitations and Concerns: May not reach birth parents living outside the state.

Recommended Legislative Changes: None.

Option 4: Conduct Searches for Birth Parents using Department Staff

This option allows us to search for a birth parent when we receive a request from an adoptee indicating that they would like to contact their birth parent when we don't have a contact preference form on file. We would attempt to locate the birth parent(s) using information in our own records and court files to search private databases. We'd create consistent search models limited to five hours of actual search work. If we can't find a birth parent within that time, we'd give the adoptee a copy of their original birth certificate.

Cost: **\$2 million**

Cost Assumptions: Costs will decrease as requests decrease. We believe requests for original birth certificates will drop by half each of the following fiscal years and remain steady starting at year five. Our cost assumptions for this option are:

- 4,531 requests for original birth certificates would require a search for the birth parent(s).²

- A search will take a Health Services Consultant (HSC) 2 no more than five hours to complete⁴.
- It will take 16.8 FTE to run the program, including:
 - 13 HSC2 and one HSC1 to complete searches, track requests and birth parent responses, draft correspondence to birth parents, answer customer calls and e-mails, maintain records and other general office tasks.
 - Two HSC4 and 0.5 WMS2 to supervise, establish procedures and requirements, address policy issues and complete rulemaking.
 - 0.3 FTE of an information technology specialist (ITS) 5 to develop and maintain a confidential tracking database.
- Additional mailing costs of approximately \$40,000 to send restricted certified notices to located birth parents about the law⁵.
- Costs for legal consultation from the Office of the Attorney General.
- Court fees of \$35 per search.
- Subscription costs to private databases of \$12,000 per year.⁶

Advantages: This option provides an alternative for contacting birth parent(s) that would likely yield a significantly higher success rate than using the address on the birth certificate alone. By managing the searches centrally with department staff, there would be greater consistency in the process than option 5.

Limitations and Concerns: This option would require GF-S funding or an increase in fee authority to implement. The fee would be similar to the cost of a confidential intermediary, but it may serve as a deterrent to adoptees who would like to contact their birth parent. Adoptees could choose to attempt to locate a birth parent on their own. Each request would vary in the amount of time and effort it would take to complete a search. We would have to establish search limits and timelines in order to create fairness and consistency, which may decrease the success rate in locating birth parents. There may also be a risk to the department if either or both parties aren't satisfied with the outcome of the search.

Recommended Legislative Changes: This option would require several legislative changes. We would also want to request changes to prevent potential legal actions resulting from searches for birth parents. We would also need rule authority to establish rules for how and when we'll complete requests for original birth certificates and how we'll attempt to contact birth parents and timelines for responses.

In addition, we recommend establishing fee authority in order to recuperate costs without requiring GF-S or a GF-S subsidy. This is similar to the current system where costs for a court

⁴ Based on an informal survey of a few confidential intermediaries, other states, stakeholder feedback and information on websites. This also aligns with Tennessee's current staffing levels of one FTE completing 180 searches a year.

⁵ Assumes we would mail out about 4,062 letters via restricted certified mail.

⁶ LexisNexis and CLEAR have search programs for government agencies. Access depends on the agency's authority to retrieve and use confidential information. We assume we could access a program for around \$800 month. There are also public databases we can utilize, such as Ancestry.com and Intelius. Costs range from \$150 per year to \$20 per month.

appointed confidential intermediary are currently borne by the person requesting the search. The fee would be about \$450 if the cost was completely supported by the adoptee making the request.

Some changes to RCW 26.33 would be required or recommended:

- 1) Add authority for the department to access court and adoption agency records.
- 2) Add authority for the department to complete a search.
- 3) Add a requirement for the adoptee to indicate if they intend to contact the birth parent when requesting an original birth certificate.
- 4) Direct the department to withhold the original birth certificate while they attempt to contact the birth parent when no contact preference form is on file.
- 5) Add authority for the department to access confidential information to complete comprehensive searches.
- 6) Add immunity from liability provision for the department if one or both parties don't agree with the release of withholding of information or the outcome of a search.
- 7) Include authority for the department to adopt rules to implement the law.
- 8) Add fee authority.

Option 5 – Conduct Searches for Birth Parents using Confidential Intermediaries

This option assumes we contract with confidential intermediaries to search for the birth parent(s) when we receive a request from an adoptee indicating they would like to contact the birth parent and no contact preference form is on file. This is a similar approach to option 4, but it uses private professionals with expertise in conducting these searches instead of creating this capacity in the department. There would be a delay in fulfilling the request as we work with the confidential intermediary to complete the search and provide time for the birth parent to file a contact preference form⁷. If we can't locate a birth parent within that time, we'd provide the adoptee a copy of his or her original birth certificate.

Cost: \$2.8 million

Cost Assumptions: The cost assumptions for this option are similar to option 4. We assume the same number of requests and decrease in requests requiring a search over time. Our cost assumptions for this option are:

- 4,531 requests for original birth certificates would require a search for the birth parent(s).
- The cost for each search by a confidential intermediary would be \$400.⁸
- It will take 5.15 FTE to run the program, including:

⁷ The average time for a search based, on an informal survey of a few confidential intermediaries and other agencies, is about two to three months.

⁸ Fees seem to range from \$300-600 per search. Although we may be able to establish a contract at a lower rate, we cannot estimate what that rate would be. Confidential intermediaries must register with each county court where they are willing to receive court assigned searches. We may need to work with a confidential intermediary that is not under contract and may pay a higher fee for those searches.

- Three Health Services Consultant (HSC) 2 and .50 HSC1 to request searches by confidential intermediaries, draft correspondence, track requests and birth parent responses, answer customer calls and e-mails, maintain records, and other general office tasks.
 - One HSC4 and .25 WMS2 to supervise, establish procedures and requirements, establish contracts with confidential intermediaries, address policy issues, and complete rulemaking.
 - .30 FTE ITS5 to develop and maintain a confidential tracking database.
 - .10 FTE Secretary Senior to maintain billing and contracts for confidential intermediaries.
- Costs for legal consultation from the Office of the Attorney General.

Advantages: This option provides an alternative for contacting birth parent(s) likely to yield a significantly higher success rate than using the address on the birth certificate alone (option 2). This option also uses private professionals with expertise in conducting searches for birth parents who may be more efficient and successful than department staff (option 4).

Limitations and Concerns: This option would require GF-S funding or an increase in fee authority to implement. The fee would be similar to the cost of a confidential intermediary, but it may be a deterrent to adoptees who would like contact with their birth parent. Adoptees could choose to attempt to locate a birth parent on their own. Each request would vary in the amount of time and effort it would take to complete a search. We would need to establish search limits and timelines in order to create fairness and consistency, which may decrease the success rate in locating birth parents. There could be potential risk to the department if either or both parties aren't satisfied with the outcome of the search. In addition, some confidential intermediaries may be hesitant to contact a birth parent that may have requested no contact prior to the new law.

Recommended Legislative Changes: This option would require several legislative changes. We'd request changes to prevent potential legal actions resulting from searches for birth parents. We would also include rule authority to establish rules for how and when we will complete requests for original birth certificates, and how we will work with confidential intermediaries to contact birth parents and timelines for responses.

In addition, we recommend establishing fee authority in order to recuperate costs without requiring GF-S or a GF-S subsidy. This is similar to current practice where costs for a court appointed confidential intermediary are currently borne by the person requesting the search. The fee would be around \$600 if the burden of the cost were completely supported by the adoptee making the request.

Some changes to RCW 26.33 would be required or recommended:

Add authority for the department to work through confidential intermediaries, or to petition the court to appoint confidential intermediaries, to search for birth parents based on a request from the adoptee.

- 1) Add authority for us to release records directly to the confidential intermediary without a court order.
 - 2) Add a requirement for the adoptee to indicate if he or she intends to contact the birth parent when requesting an original birth certificate.
 - 3) Direct the department to withhold the original birth certificate while they attempt to contact the birth parent when no contact preference form is on file.
 - 4) Add an immunity from liability provision for the department if we incorrectly withhold or release information based on information provided by the confidential intermediary, or if one or both parties do not agree with the outcome of the search.
 - 5) Include authority for the department to adopt rules to implement the law.
 - 6) Add fee authority.
-

Appendix A

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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DIRECTIVE OF THE GOVERNOR 13-08

May 21, 2013

To: Washington State Department of Health

From: Jay Inslee, Governor

Subject: Implementation of Substitute House Bill 1525

In general, all records of court proceedings relating to adoptions are sealed and all files relating to adoptions are confidential and may not be disclosed, except by court order or through a confidential intermediary process.

The passage of Substitute House Bill (SHB) 1525 presents adult adoptees with the opportunity to access a noncertified copy of their original birth certificate, for adoptions finalized prior to October 1, 1993, provided that the birth parent has not filed an affidavit of nondisclosure or contact preference form stipulating the conditions of release. For adoptions finalized after October 1, 1993, current law dictates that the Department of Health must provide a noncertified copy of the original birth certificate, subject to the same limitations of an affidavit of nondisclosure.

With passage of SHB 1525, the Legislature stipulated that adoptees would be able to access original birth certificates beginning June 30, 2014. In allowing for delayed implementation, the Legislative provided time for the Department of Health to conceive methods of implementation that would balance the interests of adult adoptees, who seek access to their original birth certificates, with the interests of birth parents, who, at the time that adoptions were finalized, would reasonably expect their identifying information would remain confidential. Providing adequate notice of the change in state law and conducting public outreach are necessary tenets of implementation.

To further these goals, I am directing Department of Health to develop an implementation plan that will outline options for implementation of the bill, with specific regard to the interests of adult adoptees and birth parents. The plan shall include:

- Options for the Department of Health to contact the birth parent(s), in an effort to protect confidentiality, when an adoptee has requested his or her original birth certificate and has indicated that he or she plans to contact the birth parent(s);
- Estimates regarding the potential fiscal impacts of the various implementation options;
- Suggestions for any statutory changes necessary to implement the options; and
- A discussion of potential legal and/or liability concerns.

The implementation plan must be submitted to my office no later than November 30, 2013

Appendix B

SUBSTITUTE HOUSE BILL 1525

AS AMENDED BY THE SENATE

Passed Legislature - 2013 Regular Session

State of Washington

63rd Legislature

2013 Regular Session

By House Judiciary (originally sponsored by Representatives Orwall, Pedersen, Goodman, Hunt, Roberts, Upthegrove, Ryu, and Jinkins)

READ FIRST TIME 02/21/13.

AN ACT Relating to birth certificates and other birth-related information; and amending RCW 26.33.345.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1 RCW 26.33.345 and 1993 c 81 s 3 are each amended to read as follows:

(1) The department of social and health services, adoption agencies, and independent adoption facilitators shall release the name and location of the court where a relinquishment of parental rights or finalization of an adoption took place to an adult adoptee, a birth parent of an adult adoptee, an adoptive parent, a birth or adoptive grandparent of an adult adoptee, or an adult sibling of an adult adoptee, or the legal guardian of any of these.

(2) The department of health shall make available a noncertified copy of the original birth certificate of a child to the child's birth parents upon request.

(3)(a) For adoptions finalized after October 1, 1993, the department of health shall ~~((make available))~~ provide a noncertified copy of the original birth certificate to ~~((the adoptee after the adoptee's eighteenth birthday unless the birth parent has filed an affidavit of nondisclosure))~~ an adoptee eighteen years of age or older upon request, unless the birth parent has filed an affidavit of nondisclosure before the effective date of this section or a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the affidavit of nondisclosure, the contact preference form, or both have not expired.

(b) For adoptions finalized on or before October 1, 1993, the department of health may not provide a noncertified copy of the original birth certificate to the adoptee until after June 30, 2014. After June 30, 2014, the department of health shall provide a noncertified copy of the original birth certificate to an adoptee eighteen years of age or older upon request, unless the birth parent has filed a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the contact preference form has not expired.

(c) An affidavit of nondisclosure expires upon the death of the birth parent.

(4)(a) Regardless of whether a birth parent has filed an affidavit of nondisclosure or when the adoption was finalized, a birth parent may at any time complete a contact preference form stating his or her preference about personal contact with the adoptee, which, if available, must accompany an original birth certificate provided to an adoptee under subsection (3) of this section.

- (b) The contact preference form must include the following options:
- (i) I would like to be contacted. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;
- (ii) I would like to be contacted only through a confidential intermediary as described in RCW 26.33.343. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;
- (iii) I prefer not to be contacted and have completed the birth parent updated medical history form. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate; and
- (iv) I prefer not to be contacted and have completed the birth parent updated medical history form. I do not want a noncertified copy of the original birth certificate released to the adoptee.
- (c) If the birth parent indicates he or she prefers not to be contacted, personally identifying information on the contact preference form must be kept confidential and may not be released.
- (d) Nothing in this section precludes a birth parent from subsequently filing another contact preference form to rescind the previous contact preference form and state a different preference.
- (e) A contact preference form expires upon the death of the birth parent.
- (5) If a birth parent files a contact preference form, the birth parent must also file an updated medical history form with the department of health. Upon request of the adoptee, the department of health must provide the adoptee with the updated medical history form filed by the adoptee's birth parent.
- (6) Both a completed contact preference form and birth parent updated medical history form are confidential and must be placed in the adoptee's sealed file.
- (7) If a birth parent files a contact preference form within six months after the first time an adoptee requests a copy of his or her original birth certificate as provided in subsection (3) of this section, the department of health must forward the contact preference form and the birth parent updated medical history form to the address of the adoptee.
- (8) The department of health may charge a fee not to exceed twenty dollars for providing a noncertified copy of a birth certificate to an adoptee.
- (9) The department of health must create the contact preference form and an updated medical history form. The contact preference form must provide a method to ensure personally identifying information can be kept confidential. The updated medical history form may not require the birth parent to disclose any identifying information about the birth parent.
- (10) If the department of health does not provide an adoptee with a noncertified copy of the original birth certificate because a valid affidavit of nondisclosure or contact preference form has been filed, the adoptee may request, no more than once per year, that the department of health attempt to determine if the birth parent is deceased. Upon request of the adoptee, the department of health must make a reasonable effort to search public records that are accessible and already available to the department of health to determine if the birth parent is deceased. The department of health may charge the adoptee a reasonable fee to cover the cost of conducting a search.

--- END ---

Appendix C



Contact preference form for birth parents of adopted children

We need the following information to find and match this request with existing records. We may not be able to process your request if the information is missing or inaccurate. You must also complete a medical history along with this form.

Indicate your status: Birth Mother/Parent Birth Father/Parent

Name of Child at Birth _____ I did not name the child
First Full Middle Name Last Name

Child's Date of Birth _____ City or County _____ Child's Sex: Male Female
mm/dd/yyyy

Please complete your name as it appears on the child's original (pre-adoption) birth certificate. Include your birth name and any other names used either at the time of birth or relinquishment.

Mother/Parent Birth Name _____
First Full Middle Name Last Name at Birth

Father/Parent Birth Name _____
(if applies) First Full Middle Name Last Name

Contact information

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. I request that you place this contact preference form in the sealed adoption file. This contact preference form expires upon the death of the birth parent.

Signature of Birth Parent _____ Date _____

Current Legal Name: _____
First Full Middle Name Last Name

Address: _____

Phone: (____) _____ Email: _____

If you choose not to be contacted, the information above the dotted line will not be released to the adoptee. You may change your contact preference by submitting a new contact preference form at any time.

What is your preference regarding contact with the adoptee?

- I would like to be contacted. I give the department consent to provide the adoptee with a noncertified copy of his or her original birth certificate.
- I would like to be contacted only through a confidential intermediary as described in [RCW 26.33.343](#). I give the department consent to provide the adoptee with a noncertified copy of his or her original birth certificate.
- I prefer not to be contacted and have completed the birth parent updated medical history form. I give the department consent to provide the adoptee with a noncertified copy of his or her original birth certificate.
- I prefer not to be contacted and have completed the birth parent updated medical history form. I do not want a noncertified copy of the original birth certificate released to the adoptee.

Appendix D



Birth Parent Medical History

Indicate if information is unknown or not available.

For each of the medical conditions described below, please check the appropriate column indicating whether you or any blood relative, i.e. your mother, father, sister, brother, grandparent, aunt, uncle or any other children, have the condition listed. Complete the "Comments" section, as needed using a separate sheet of paper if additional space is required.

Person completing this form is: Birth Mother Birth Father

MEDICAL CONDITION	NO	YES (SELF)	YES (RELATIVE)	NOT KNOWN	COMMENTS (indicate which relative in relation to adoptee)
Skeletal/muscular					
1. Club foot					
2. Cleft lip or cleft palate					
3. Arthritis (Osteo or Rheumatoid)					
4. Scoliosis or other malformations					
5. Spina bifida					
Neuromuscular/autoimmune					
6. Muscular dystrophy					Part of body involved? Age at onset?
7. Multiple sclerosis					
8. Cerebral palsy					
9. Other paralysis or crippling disorder					
10. Seizures, convulsions or epilepsy					Age at onset? What treatment? Frequency?
11. Huntington's disease					
12. Lupus					
Visual/auditory					
13. Blindness, glaucoma or other visual problems					
14. Glaucoma					



Birth Parent Medical History

MEDICAL CONDITION	NO	YES (SELF)	YES (RELATIVE)	NOT KNOWN	COMMENTS (indicate which relative in relation to adoptee)
15. Other visual problems					
16. Deafness or other ear problems					
Internal organs/conditions					
17. Hepatitis					Specify type
18. Cirrhosis or other liver disease					
19. Kidney disease					Age at onset? Treatment?
20. Inflammatory bowel					
21. Other intestinal conditions					
22. Diabetes					Age at onset? Treatment?
23. Thyroid disorder (hyper/hypo)					
24. Other hormonal disorder					
25. Cancer					Location? Onset?
Heart/circulatory					
26. Congenital heart defect					
27. Heart attack					
28. Stroke					
29. Atherosclerosis					
30. Congestive heart failure					
31. High blood pressure					
32. Hemophilia					

Appendix D



Birth Parent Medical History

33. Other cardiovascular problems					
MEDICAL CONDITION	NO	YES (SELF)	YES (RELATIVE)	NOT KNOWN	COMMENTS (indicate which relative in relation to adoptee)
Respiratory					
34. Emphysema					
35. Asthma					
36. Allergies					
37. Cystic fibrosis					
38. Tuberculosis					
Other conditions					
39. Schizophrenia					
40. Depression or bipolar					Any diagnosis or cause? Hospitalized?
41. Other mental illness					
42. Eating disorder					
43. Learning disability					Age at onset? Cause? Special Education?
44. Alcoholism or drug addiction					
45. Any other conditions you or your relatives might have.					Age at onset? Treatment? Hospitalization?
INFORMATION ON THIS PREGNANCY					
Month prenatal care began for this pregnancy:					
Complications, if any:					



Birth Parent Medical History

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INFORMATION ON THIS PREGNANCY

Exposure during pregnancy (e.g. alcohol, prescription or recreational drugs, Diethylstilbestrol (DES)?

Specify:

Amount and frequency:

--

Did you use alcohol during pregnancy? Yes No

Amount and frequency:

--

Did you use tobacco during pregnancy? Yes No

Amount and frequency:

CHILD'S BIRTH HISTORY

Any Comments:

--

OTHER INFORMATION ON BIRTH PARENTS (OPTIONAL)
--

Give information only at the time of the child's birth. Do not include any identifying information.

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--

Name of child on original (pre adoption) birth certificate: _____

Child's date of birth: _____ Sex: Male Female

City or county of birth: _____

Today's Date: _____