

## BREAKING THE SEAL: OHIO'S REVISED ADOPTION LAW

In every adoption in which I was involved in the last year, it was evident that the mother was concerned about her child's ability to discover her identity at some later time. Each asked: "Will my child be able to find me if (he) wants to?" They were relieved when I answered, "Yes." *Attorney David A. Lieberth*<sup>1</sup>

Mr. Lieberth's comment reflects what is becoming a common concern not only of birth mothers, but of adoptees, and adoptive parents as well.<sup>2</sup> The need to know identifying<sup>3</sup> or non-identifying<sup>4</sup> information about birth parents has produced an increased amount of litigation,<sup>5</sup> and has also resulted in the formation of groups and associations established solely to aid adoptees in their quests to discover their birth parents.<sup>6</sup> The recent changes in the statutes governing adoption in Ohio are perhaps an outgrowth of increasing public awareness of the adoptee's psychological need to discover his heritage.<sup>7</sup> However, this need must be balanced against the right of privacy which the state has guaranteed to both the biological and adoptive parents in the adoption proceeding itself.<sup>8</sup> When a parent relinquishes a child for adoption, he severs his legal relationship

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<sup>1</sup>Mr. Lieberth is a partner in the law firm of Blakemore, Rosen, Meeker & Varian Co., L.P.A., Akron, Ohio, and has handled numerous private adoptions. Mr. Lieberth was interviewed on January 8, 1987.

<sup>2</sup>A. SOROSKY, A. BARAN, & R. PANNOR, *THE ADOPTION TRIANGLE: THE EFFECTS OF THE SEALED RECORD ON ADOPTEES, BIRTH PARENTS, AND ADOPTIVE PARENTS* (1978).

<sup>3</sup>Identifying information includes all the pertinent information about the birth parents contained in the records of the adoption proceeding. It includes the names and addresses of the birth parents at the time of adoption. See OHIO REV. CODE ANN. § 3107.39 (Anderson Supp. 1985); Note, *The Michigan Adoption Code's Response to the Sealed Record Controversy*, 62 U. DET. L. REV. 295 (1985).

<sup>4</sup>Identifying information may include the medical and social histories of the birth parents. *Id.*

<sup>5</sup>*In re* Application of George, 625 S.W.2d 151 (Mo. App. 1981) (leukemia victim in search of parent or sibling for bone marrow transplant denied access to adoption records); *Matter of Dixon*, 166 Mich. App. 763, 323 N.W.2d 549 (1982) (adult adoptee denied access to adoption records when mere "need to know" is not good cause to open records, and when biological parents have not consented to the release of records); *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 372 A.2d 646 (Ch. Div. 1977) (where adult adoptees desire access to birth records, burden shifts to state to show that good cause is not present) (discussed *infra* in text); *In re Anonymous*, 92 Misc.2d 224, 399 N.Y.S.2d 857 (1977) (evidence of adoptee's mental illness good cause to unseal adoption records). See generally Note, *supra* note 3.

<sup>6</sup>One local group is Northeast Ohio Lost and Found. See State, *ex rel. Wolff v. Donnelly*, 24 Ohio St. 3d 1, 492 N.E.2d 810 (1986).

<sup>7</sup>Klibanoff, *Genealogical Information in Adoption: The Adoptee's Quest and the Law*, 11 FAM. L.Q. 185 (1977). During adolescence, many adoptee's become increasingly curious about their genealogy as they struggle to find their identity. *Id.* at 193. See also L. STEIN & J. HOOPES, *IDENTITY FORMATION IN THE ADOPTED ADOLESCENT* (1985).

<sup>8</sup>Note, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent*, 34 RUTGERS L.J. 451 (1982). See *Mills*, 148 N.J. Super. at 306, 372 A.2d at 651 where the court stated:

In the present case the right to privacy asserted by plaintiffs is in direct conflict with the right to privacy of another party, the natural parent . . . [T]he natural parent surrenders a child for adoption with not merely an expectation of confidentiality but with actual statutory assurance that his or her identity as the child's parent will be shielded from public disclosure . . . This natural parent has a right to be let alone, that is not only expressly assured by . . . [statute] . . . but has also been recognized as a vital interest by the United States Supreme Court (citing *Stanley v. Georgia*, 394 U.S. 557 (1969)).

with the child forever.<sup>9</sup> The original birth certificate is sealed,<sup>10</sup> and a new one issued in the name of the adoptive parents.<sup>11</sup> All rights, duties, and obligations of the birth parents to the child are, in effect, transferred to the adoptive parents.<sup>12</sup> Therefore, a statutory scheme which permits access to identifying and non-identifying information contained in the adoption records must balance the competing needs and rights of all parties in the adoption triangle: the birth parents, the adoptee, and the adoptive parents.<sup>13</sup>

This Comment will review the revised statutory scheme of adoption law in Ohio which permits access to identifying and non-identifying information about birth parents, and will analyze the rights and interests affected by these changes. The analysis will also include an overview of recent studies which may have influenced these changes as public awareness of the sealed record controversy has grown.

### NON-IDENTIFYING INFORMATION

Ohio Revised Code Section 3107.12<sup>14</sup> requires the department of human services,<sup>15</sup> an agency,<sup>16</sup> or a court-appointed person<sup>17</sup> to investigate the adoptee's background, and prepare a complete social and medical history of the adoptee's biological parents.<sup>18</sup> The amended statute, effective March 1985,<sup>19</sup> enlarges the type of information which should be contained in the background report that is filed with the court.<sup>20</sup> Prior to the amendment, the statute required that the social and medical history identify only the ethnic and cultural background of the biological parents,<sup>21</sup> and any disease or malformation which might be inherited by the adoptee.<sup>22</sup> The amended statute, Ohio Revised Code Section 3107.12(D)(3)<sup>23</sup> requires the inclusion of the following information (to

<sup>9</sup>OHIO REV. CODE ANN. § 3107.15 (Anderson 1984); 14 O. JUR.3d *Family Law* § 236 (Supp. 1986).

<sup>10</sup>Sylvester, *The Revised Law of Adoption in Ohio*, 7 CAP. U.L. REV. 219, 243 (1977); OHIO REV. CODE ANN. § 3705.18(A) (Anderson Supp. 1985).

<sup>11</sup>*Id.*

<sup>12</sup>OHIO REV. CODE ANN. § 3107.15(A) (Anderson 1983).

<sup>13</sup>See Note, *Adoption: Sealed Adoption Record Laws — Constitutional Violation or a Need For Judicial Reform?*, 35 OKLA. L. REV. 575 (1982).

<sup>14</sup>OHIO REV. CODE ANN. § 3107.12 (Anderson Supp. 1985).

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>OHIO REV. CODE ANN. § 3107.12(D) (Anderson Supp. 1985). This requirement is waived if the minor is adopted by a stepparent or grandparent. OHIO REV. CODE ANN. § 3107.12(C)(3) (Anderson Supp. 1985); OHIO REV. CODE ANN. § 3107.12(D)(2) (Anderson Supp. 1985).

<sup>19</sup>OHIO REV. CODE ANN. § 3107.12 (Anderson Supp. 1985).

<sup>20</sup>OHIO REV. CODE ANN. § 3107.12(B) (Anderson Supp. 1985). The probate court has jurisdiction over all adoption proceedings. Sylvester, *supra* note 10, at 219.

<sup>21</sup>OHIO REV. CODE ANN. § 3107.12 (Anderson 1983).

<sup>22</sup>*Id.*

<sup>23</sup>OHIO REV. CODE ANN. § 3107.12(D)(3) (Anderson Supp. 1985).

the extent ascertainable by the investigator):<sup>24</sup>

- (3) The social history of the biological parents of a minor sought to be adopted shall describe and identify the ethnic, racial, religious, marital, physical characteristics, educational, cultural, talent and hobby, and work experience background of the biological parents of the minor. The medical history of the biological parents of a minor sought to be adopted shall identify major diseases, malformations, allergies, ear or eye defects, major conditions, and major health problems of the biological parents that are or may be congenital or familial. These histories may include other social and medical information relative to the minor's other ancestors.<sup>25</sup>

The extensive amount of background information which is now required to be included in the report filed with the court reflects the growing need for such information.<sup>26</sup> For example, information concerning the birth mother's consumption of alcohol during pregnancy may aid in the detection of learning disabilities in the child.<sup>27</sup> Information concerning a history of heart disease,<sup>28</sup> or whether the child is the product of an incestuous relationship<sup>29</sup> may also aid in the adoptive parents' ability to have any condition properly diagnosed and treated without wasting unnecessary time and expense.<sup>30</sup>

Another new aspect of Ohio Revised Code Section 3107.12<sup>31</sup> is the provision of the statute which allows the biological parent to correct and expand the information contained in the social and medical history prepared by the investigator.<sup>32</sup> Any correction or expansion may be added to the report either prior to or subsequent to the adoption.<sup>33</sup> Furthermore, in those cases where no social or medical history of the biological parent was prepared before the adoption, a biological parent may complete the histories on forms prescribed by the statute, and have them filed with the records of the adoption proceedings.<sup>34</sup>

Permitting the biological parents to correct or update the social and medical history could have a significant impact on adoptees and adoptive parents. For example, if a birth mother who gave up her daughter for adoption discovers years later that the DES<sup>35</sup> prescribed for her during pregnancy might

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<sup>24</sup>OHIO REV. CODE ANN. § 3107.12(C)(3) (Anderson Supp. 1985).

<sup>25</sup>*Id.*

<sup>26</sup>MELINA, RAISING ADOPTED CHILDREN: A MANUAL FOR ADOPTIVE PARENTS (1986).

<sup>27</sup>*Id.* at 110.

<sup>28</sup>*Id.*

<sup>29</sup>*Id.* at 110-111.

<sup>30</sup>*See id.* at 107.

<sup>31</sup>OHIO REV. CODE ANN. § 3107.12 (Anderson Supp. 1985).

<sup>32</sup>OHIO REV. CODE ANN. § 3107.12(D)(4) (Anderson Supp. 1985).

<sup>33</sup>*Id.*

<sup>34</sup>OHIO REV. CODE ANN. § 3107.12.1 (Anderson Supp. 1985).

<sup>35</sup>The medication DES was prescribed for women to prevent miscarriages during pregnancy. *See* MELINA,

cause vaginal cancer in her daughter, then the statute provides the means for communicating this important information.<sup>36</sup> Moreover, one study indicates that a majority of birth mothers demonstrate and articulate a lasting concern and love for the child they relinquished for adoption, and would willingly update the information they provided at the time of the adoption.<sup>37</sup>

One may conclude that if birth parents are informed that the statutes now provide a mechanism for communicating what may be vital non-identifying information to the court, then concerned birth parents may come forward with such information.<sup>38</sup> By providing the means for communicating this information, the state has protected the anonymity of all the parties while preserving the integrity of the adoption proceeding.<sup>39</sup>

### ACCESS TO NON-IDENTIFYING INFORMATION

Ohio Revised Code Section 3107.17(D)<sup>40</sup> governs access to the social and medical histories completed, pursuant to Ohio Revised Code Section 3107.12<sup>41</sup> and Section 3107.12.1<sup>42</sup> and filed with the records of the adoption. Under the amended statute,<sup>43</sup> the adoptive parents may inspect these histories at any time during the minority of the adoptee<sup>44</sup> if a request to inspect them is presented to the clerk of courts where the records are filed.<sup>45</sup> Upon reaching the age of majority, only the adoptee may inspect the histories.<sup>46</sup>

Prior to the amendment of the statute in 1985, access to the social and medical histories of the biological parents was restricted.<sup>47</sup> The information was clothed in the veil of secrecy which overshadowed the entire adoption pro-

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*supra* note 26 at 110. *See also* *Humphers v. First Interstate Bank*, 298 Or. 706, 696 P.2d 527 (1985) (doctor who reveals to adoptee that her mother took DES during pregnancy may be liable for breach of confidence to patient-mother).

<sup>36</sup>OHIO REV. CODE ANN. § 3107.12 (Anderson Supp. 1985); OHIO REV. CODE ANN. § 3107.12.1 (Anderson Supp. 1985).

<sup>37</sup>*See* Sorosky, *supra* note 2, at 51-53.

<sup>38</sup>*See id.* Mr. Lieberth, *supra* note 1, also mentioned that the profile of those who are surrendering their children today may be changing. He has encountered couples who already have children, and feel that another would burden the family economically. He has also encountered middleclass unmarried women who may already have another child, but who do not wish to have an abortion. If the profile of the stereotypical birth parent (the unwed teen-age mother) is changing to a better-educated, older parent who openly inquires about the availability of information to her child, then perhaps that parent would be more conscientious about updating medical and social history later.

<sup>39</sup>*See* Hanley, *A Reasonable Approach to the Adoptee's Sealed Records Dilemma*, 2 OHIO N.U.L. REV. 542 (1975).

<sup>40</sup>OHIO REV. CODE ANN. § 3107.17(D) (Anderson Supp. 1985).

<sup>41</sup>OHIO REV. CODE ANN. § 3107.12 (Anderson Supp. 1985).

<sup>42</sup>OHIO REV. CODE ANN. § 3107.12.1 (Anderson Supp. 1985).

<sup>43</sup>OHIO REV. CODE ANN. § 3107.17(D) (Anderson Supp. 1985).

<sup>44</sup>*Id.* *See also* OHIO REV. CODE ANN. § 3107.17(E) (Anderson Supp. 1985) which describes the method by which adoptive parents must request the forms, and which provides for notification of any update to this information.

<sup>45</sup>OHIO REV. CODE ANN. § 3107.17(D) (Anderson Supp. 1985).

<sup>46</sup>*Id.*

<sup>47</sup>*See* OHIO REV. CODE ANN. § 3107.17(D) (Anderson 1983); 14 O. JUR.3d *Family Law* § 234.

ceeding. Adoptive parents could inspect the histories only with permission of the court.<sup>48</sup> Adult adoptees could inspect only that part of the record which the court and agency made available.<sup>49</sup>

A recent case, *Burr v. Stark County Board of Commissioners*,<sup>50</sup> demonstrates how less restrictive access to non-identifying information about the biological parents may alter the lives of the adoptee and his adoptive parents. The facts of *Burr* revealed that the plaintiffs, Robert and Betty Burr, approached the county welfare department in 1964 about adopting a baby boy.<sup>51</sup> Since Betty Burr was partially disabled, the Burrs insisted that any infant which they would consider adopting must be healthy.<sup>52</sup> The Burrs were told by a caseworker that such a placement would take eighteen months.<sup>53</sup> However, a few days later, the caseworker notified the Burrs that a seventeen-month old boy was available, and arranged to bring the child to the Burr's home later that day.<sup>54</sup> The caseworker assured the Burrs that the boy was healthy, and reinforced this assurance by telling the Burrs that the boy's mother, an unwed teenager, was relinquishing the child so that she could move to another state where she had a job waiting for her.<sup>55</sup> The Burrs adopted the boy and named him Patrick.<sup>56</sup> During the next few years, Patrick developed a speech impediment, exhibited poor motor skills, and was diagnosed as being educable, mentally retarded (EMR).<sup>57</sup> As he approached adolescence, Patrick developed hallucinations, and was hospitalized on numerous occasions.<sup>58</sup> Doctors finally determined that Patrick had Huntington's Disease, which is a genetically inherited disease that attacks the central nervous system, and shortens the life expectancy of the victim.<sup>59</sup> In 1982, the court finally agreed to open the records concerning Patrick's background, and the background of his birth mother.<sup>60</sup> The records contained startling information. Patrick's mother was not an unwed teenager. She was actually a mental patient at Massillon State Hospital, where Patrick was born.<sup>61</sup> The father was unknown, but presumed to be another patient at the hospital.<sup>62</sup> Patrick's mother was psychotic, had a speech

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<sup>48</sup>OHIO REV. CODE ANN. § 3107.17(D) (Anderson 1983).

<sup>49</sup>*Id.*

<sup>50</sup>*Burr v. Stark County Bd. of Comm'rs*, 23 Ohio St. 3d 69, 491 N.E.2d 1101 (1986).

<sup>51</sup>*Id.* at 70, 491 N.E.2d at 1103.

<sup>52</sup>*Id.*

<sup>53</sup>*Id.*

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

<sup>56</sup>*Id.*

<sup>57</sup>*Id.*

<sup>58</sup>*Id.*

<sup>59</sup>*Id.*

<sup>60</sup>*Id.* at 71, 491 N.E.2d at 1103.

<sup>61</sup>*Id.* at 71, 491 N.E.2d at 1104.

<sup>62</sup>*Id.*

impediment, and low intellectual level.<sup>63</sup> The records also indicated that pre-adoption testing revealed that Patrick already had symptoms of underdevelopment.<sup>64</sup> The Burrs brought an action for "wrongful adoption" based on the fraudulent misrepresentations of the caseworker<sup>65</sup> and subsequently recovered the cost of Patrick's medical expenses.<sup>66</sup>

*Burr*<sup>67</sup> confirms that access to social and medical histories of the biological parents may prevent unnecessary delay in obtaining proper diagnosis in medical treatment, and may also prevent unnecessary expense. It is evident that if the Burrs had been able to review Patrick's history, particularly the non-identifying information contained in the social and medical history of Patrick's mother, the Burrs could have avoided the heartache and expense incurred in Patrick's treatment.<sup>68</sup> Less restrictive access to non-identifying information about the birth parents could have a significantly beneficial impact on the adoptive parents, and the adoptee.

#### IDENTIFYING INFORMATION

Under Ohio Revised Code Section 3107.12,<sup>69</sup> the background report filed with the court contains no information which might reveal the identity of the biological parents.<sup>70</sup> In fact, the entire adoption proceedings are closed, and the records of the proceedings are not available for inspection.<sup>71</sup> With the exception of the non-identifying information filed with the records of the adoption, no portion of the record may be inspected without the consent of the court.<sup>72</sup> Additionally, in all adoptions of children born in Ohio whose adoptions were decreed after January 1, 1964, the original birth certificate which identifies the birth parents of the adoptee is replaced with a new birth certificate in the name of the adoptive parents.<sup>73</sup> The original birth certificate is sealed in an envelope

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<sup>63</sup>*Id.*

<sup>64</sup>*Id.*

<sup>65</sup>*Id.*

<sup>66</sup>*Id.* Although Patrick's medical expenses totalled eighty thousand dollars, the Burrs' were awarded one hundred twenty-five thousand dollars.

<sup>67</sup>*Burr*, 23 Ohio St. 3d 69, 491 N.E.2d 1101 (1986).

<sup>68</sup>The Burrs testified that if Patrick's background had been truthfully represented to them, they would not have adopted him. *Id.* at 73, 491 N.E.2d at 1106.

*See Id.* at 78-79, 491 N.E.2d at 1109 for the court's statement regarding the risks involved when a couple adopts a child. *See also Family Law: "Wrongful Adoption,"* 29 ATLA L. REP. 201 (June 1986).

<sup>69</sup>OHIO REV. CODE ANN. § 3107.12 (Anderson Supp. 1985).

<sup>70</sup>*Id.*

<sup>71</sup>OHIO REV. CODE ANN. § 3107.17 (Anderson Supp. 1985).

<sup>72</sup>OHIO REV. CODE ANN. § 3107.17(B) (Anderson Supp. 1985). The statute does not provide any guidance concerning the strength of any argument which would persuade a court to consent to the opening of the records. One might imply from the statute's silence that Ohio follows a "good cause" standard. *See Note, supra* note 3, at 306-307.

<sup>73</sup>OHIO REV. CODE ANN. § 3705.18(A) (Anderson Supp. 1985).

with the certificate of adoption, and retained by the department of health.<sup>74</sup> If the adoptee was born in another state, then the certificate of adoption is forwarded to that state.<sup>75</sup>

#### ACCESS TO IDENTIFYING INFORMATION

Ohio Revised Code Section 3107.40,<sup>76</sup> enacted in March, 1985, permits each biological parent, and any biological sibling of the adoptee to authorize the release of identifying information to the adoptee.<sup>77</sup> The statute requires that the biological parent must:

- 1) complete a form supplied by the state when submitting the authorization for release;
- 2) furnish their complete name at the time of filing the release, and at the time of the filing of the adoption petition;
- 3) furnish the complete name of the adoptee as it appeared on the original birth certificate, and the date of birth; and
- 4) furnish a statement of authorization of the release of identifying information.<sup>78</sup>

The statement must be signed by the biological parent, contain their residential mailing address, and the date of filing.<sup>79</sup> The biological sibling must furnish the same information, and follow the same procedure.<sup>80</sup> The biological parents and sibling may include additional information which may be released to the adoptee.<sup>81</sup> However, neither a parent or sibling is authorized to release any information about another parent or sibling.<sup>82</sup>

Upon receipt of the authorization to release identifying information from a biological parent or sibling, the department of health will place the authorization for release in a special file for such releases.<sup>83</sup> The release shall remain in that file as long as the department of health does not receive a withdrawal of the release from the parent or sibling who submitted it.<sup>84</sup> The withdrawal must

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<sup>74</sup>*Id.* A copy of the new birth certificate is then forwarded to, and filed by the local registrar of vital statistics. The local registrar then destroys its copy of the original birth certificate. However, the probate court retains in its files the information necessary to identify the birth parents.

<sup>75</sup>*Id.*

<sup>76</sup>OHIO REV. CODE ANN. § 3107.40 (Anderson Supp. 1985). *Id.*

<sup>77</sup>*Id.* If permanent custody of a minor is surrendered to the court pursuant to R.C. § 5103.16, the probate court will prescribe the procedure for the release of identifying information. See OHIO REV. CODE ANN. § 5103.16 (Anderson Supp. 1985).

<sup>78</sup>OHIO REV. CODE ANN. § 3107.40 (Anderson Supp. 1985).

<sup>79</sup>*Id.*

<sup>80</sup>*Id.*

<sup>81</sup>*Id.*

<sup>82</sup>*Id.*

<sup>83</sup>OHIO REV. CODE ANN. § 3107.40(C) (Anderson Supp. 1985).

<sup>84</sup>OHIO REV. CODE ANN. § 3107.40(D) (Anderson Supp. 1985).

contain the same information furnished with the release.<sup>85</sup> If requested, the department of health will provide a copy of the withdrawal to the party requesting the withdrawal.<sup>86</sup>

When the adoptee reaches the age of twenty-one,<sup>87</sup> he may petition the probate court for release of the information which their biological parents or sibling have authorized.<sup>88</sup> Upon receipt of this petition, the probate judge will appoint an agency to obtain a copy of the adoptee's original birth certificate for the court.<sup>89</sup> The agency will also ascertain whether a release (or releases) have been filed with the department of health by one or both biological parents, or a biological sibling,<sup>90</sup> and whether either biological parent is deceased.<sup>91</sup>

Identifying information is released to the adoptee only if a release is on file with the department of health.<sup>92</sup> If the names of both parents appeared on the original birth certificate, and both parents are determined to be alive, then no identifying information is released to the adoptee unless both biological parents have authorized the release.<sup>93</sup> If only one birth parent has filed a release, then the adoptee's petition will not be granted until the subsequent filing of a release by the other parent, or until that parent's death.<sup>94</sup> If the name of only one parent appeared on the original birth certificate, and that parent has filed an authorization for release of identifying information, then the court will not release the information to the adoptee until a determination may be made regarding the other birth parent.<sup>95</sup> However, if it is determined that any known parent is deceased, then the court will release the information to the adoptee.<sup>96</sup> If neither parent has filed a release, then the adoptee's petition will remain pending until the birth parents file releases or die.<sup>97</sup> No information regarding a biological sibling is released unless the biological parents have an

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<sup>85</sup>*Id.*

<sup>86</sup>*Id.*

<sup>87</sup>OHIO REV. CODE ANN. § 3107.41(A) (Anderson Supp. 1985). An adoptee who is under twenty-one cannot gain access to identifying information without the consent of the court. *See supra*, note 75.

<sup>88</sup>*Id.* If the adoptee resides in Ohio, he may petition the probate court that entered the final adoption decree, or he may petition the probate court in the county where he resides. If the petitioning adoptee is not a resident of Ohio, he may petition the probate court in any county.

<sup>89</sup>OHIO REV. CODE ANN. § 3107.41(B)(2) (Anderson Supp. 1985). The court will issue an order to the department of health to release a copy of the original birth certificate to the appointed agency. OHIO REV. CODE ANN. § 3107.41(B)(1)(b) (Anderson Supp. 1985). *See* OHIO REV. CODE ANN. § 3107.41(B)(2)(a) (Anderson Supp. 1985) for agency procedures when the birth certificate is located in another jurisdiction within the state, or in another state.

<sup>90</sup>OHIO REV. CODE ANN. § 3107.41(B)(2)(b) (Anderson Supp. 1985).

<sup>91</sup>*Id.*

<sup>92</sup>OHIO REV. CODE ANN. § 3107.41(C) (Anderson Supp. 1985).

<sup>93</sup>OHIO REV. CODE ANN. § 3107.41(C)(3)(c)(iii) (Anderson Supp. 1985).

<sup>94</sup>*Id.*

<sup>95</sup>OHIO REV. CODE ANN. § 3107.41(C)(3) (Anderson Supp. 1985).

<sup>96</sup>*Id.*

<sup>97</sup>*Id.*

authorized release on file, or if the known biological parents are deceased.<sup>98</sup>

If it is determined that the petitioner's biological parent(s) have not authorized release of identifying information to the adoptee, then the petition will remain pending until it is withdrawn by the petitioning adoptee, or until a release, or releases, are filed.<sup>99</sup> If a biological parent files a release while the petition is pending, then the court must act upon the petition within thirty days.<sup>100</sup>

Ohio Revised Code Section 3107.41 became effective in March, 1985.<sup>101</sup> It permits the release of identifying information if the adoptee is twenty-one, and effective releases are filed by the birth parents or sibling.<sup>102</sup> If the adoptee was already twenty-one when the statute was enacted, then the adoptee might not have any means of determining the identity of his birth parents, since no release would have been filed at the time of his adoption. However, Ohio Revised Code Section 3705.18,<sup>103</sup> (also amended in March, 1985), states that the original birth certificate<sup>104</sup> of any adoptee whose adoption was finalized prior to January 1, 1964 will be made available to the adoptee, the adoptive parent, or any lineal descendent of the adoptee on request.<sup>105</sup>

#### BALANCING THE NEEDS, INTEREST, AND RIGHTS AFFECTED BY THE STATUTORY CHANGES

The controversy surrounding sealed adoption records has resulted from numerous challenges to sealed record statutes initiated by adoptees who believe they have a right to know the identity of their birth parents.<sup>106</sup> Recent studies indicate that many adoptees cannot attain a positive self-image or sense of identity without knowledge of their background and heritage.<sup>107</sup> Even though a majority of adoptees develop a close, loving relationship with their adoptive parents,<sup>108</sup> many adoptees question the circumstances of their birth, and their relinquishment for adoption by their biological parents.<sup>109</sup> They

<sup>98</sup> *Id.*

<sup>99</sup> OHIO REV. CODE ANN. § 3107.41(E) (Anderson Supp. 1985).

<sup>100</sup> *Id.*

<sup>101</sup> OHIO REV. CODE ANN. § 3107.41 (Anderson Supp. 1985).

<sup>102</sup> *Id.*

<sup>103</sup> OHIO REV. CODE ANN. § 3705.18 (Anderson Supp. 1985).

<sup>104</sup> OHIO REV. CODE ANN. § 3705.18(C) (Anderson Supp. 1985).

<sup>105</sup> *Id.* Any papers or documents pertaining to the adoption will be made available to the requesting party by the department of health. If the requesting party is the adoptee, then a written request for a copy of the documents must be signed, notarized, and accompanied by copies of two forms of identification. OHIO REV. CODE ANN. § 3705.18(E) (Anderson Supp. 1985).

<sup>106</sup> See cases cited *supra* note 5; *In re Roger B.*, 84 Ill.2d 323, 418 N.E.2d 751 (1981). See also Comment, *Severed Roots: The Sealed Adoption Records Controversy*, 103 N. ILL. U.L. REV. 103, 109-110 (1986).

<sup>107</sup> TRISELIOTIS, *IN SEARCH OF ORIGINS: THE EXPERIENCES OF ADOPTED PEOPLE*. (1973).

<sup>108</sup> Klibanoff, *supra* note 7, at 193.

<sup>109</sup> *Id.* See also RAYNOR, *THE ADOPTED CHILD COMES OF AGE*, (1980); TRISELIOTIS, *supra* note 107, at 151-153.

wonder if they look or act like their parents, or what traits they will pass on to their own children.<sup>110</sup> Psychologists believe that answers to these questions may provide the foundation for the adoptee to become a "whole" person, with a complete sense of identity.<sup>111</sup> In most cases, the need to know the identity of the birth parents is not a rejection of the adoptive parents.<sup>112</sup>

The adoptee's need to search for the birth parents may result from the inability of the adoptive parent to communicate with the adoptee about the adoptee's background and status.<sup>113</sup> Some adoptive parents cannot openly discuss the adoption, fearing that such discussion might weaken the warm, loving relationship they have secured with the adoptee.<sup>114</sup> Sensing this uneasiness, the adoptee refrains from asking sensitive questions which he longs to ask.<sup>115</sup> Studies reveal that adoptees who are free to inquire about their adoption, and whose adoptive parents do not avoid the subject, are less likely to embark on a search for their biological parents.<sup>116</sup>

Recent cases indicate that courts are responding to the psychological need of the adoptee to learn the identify of their birth parent.<sup>117</sup> For example, in *Mills v. Atlantic City Department of Vital Statistics*,<sup>118</sup> the plaintiff-adoptees challenged the constitutionality of New Jersey's sealed record statute. They argued that the statute violated their right to privacy, and their right to receive information.<sup>119</sup> Relying on *Griswold v. Connecticut*,<sup>120</sup> *Roe v. Wade*,<sup>121</sup> and *San Antonio v. Rodriquez*,<sup>122</sup> the Superior Court rejected their claim, stating:

while information regarding the heritage, background, and physical and psychological heredity of any person is essential to that person's identity and self image, nevertheless it is not so intimately personal as to fall within the zones of privacy implicitly protected in the penumbra of the Bill of Rights.<sup>123</sup>

<sup>110</sup>*Id.*

<sup>111</sup>For an excellent discussion of the problems adoptees experience, see TRISELIOTIS, *supra* note 107, at 79-91.

<sup>112</sup>Klibanoff, *supra* note 7, at 193-194.

<sup>113</sup>RAYNOR, *supra* note 109, at 104. See GILMAN, THE ADOPTION RESOURCE BOOK (1984), at 223-24 for suggestions for how to communicate with the adopted child.

<sup>114</sup>RAYNOR, *supra* note 109, at 104; Klibanoff, *supra* note 7, at 193.

<sup>115</sup>*Id.*

<sup>116</sup>TRISELIOTIS, *supra* note 107, at 157, 159; Klibanoff, *supra* note 7, at 193. Sorosky also has developed a chronological chart which indicates stages or events which intensify the adoptee's desire and interest in finding out about their background. See Sorosky, *supra* note 2, at 141-142.

<sup>117</sup>See cases cited *supra* note 5.

<sup>118</sup>148 N.J. Super. 302, 372 A.2d 646 (1977).

<sup>119</sup>*Id.* at 306, 372 A.2d at 650. For a good discussion of the constitutional issues asserted by adoptees, see generally Hanley, *supra* note 39, at 549-552.

<sup>120</sup>381 U.S. 479 (1965).

<sup>121</sup>410 U.S. 113 (1973).

<sup>122</sup>411 U.S. 1 (1973).

<sup>123</sup>*Mills*, 148 N.J. Super. at 305, 372 A.2d at 650.

Nor did the court find that the adoptees constituted a suspect class.<sup>124</sup>

Since the statute did not involve a fundamental right or a suspect class, the state needed only to demonstrate that the statute was rationally related to a permissible state objective to withstand the challenge.<sup>125</sup> Accepting the assertion that the goal of the statute was the protection of the privacy right of the birth parent,<sup>126</sup> the court found a rational relationship between the purpose of the statute and the state interest involved, and upheld the statute.<sup>127</sup> However, because the New Jersey legislature had enacted another statute which permitted a court to open adoption records if the adoptee demonstrated "good cause,"<sup>128</sup> the court held that when an adult adoptee desires access to his own birth records, the burden of proof should shift to the state to demonstrate that "good cause" was not present.<sup>129</sup>

The *Mills*<sup>130</sup> opinion clearly unravels and explains the issues which confronted the Ohio legislature when revising Ohio's adoption statutes. Since adoption is created by statute,<sup>131</sup> a state has a compelling interest in regulating all aspects of adoption, including access to birth records.<sup>132</sup> The competing rights and interests of the adoptee, the birth parents, and the adoptive parents require the state to carefully weigh the interests of all the parties in order to preserve the integrity of the adoption process.<sup>133</sup>

Throughout the history of adoption in Ohio,<sup>134</sup> both the birth parents and adoptive parents have relied on the state's recognition of their right to privacy. Sealed record statutes have guaranteed the anonymity of birth parents who may have wished to avoid the social stigma attached to an unwanted or premarital pregnancy.<sup>135</sup> The statutes have also guaranteed the anonymity of adoptive parents who have been protected from unwanted and unexpected intrusions from birth parents at some later time.<sup>136</sup> The revised statutes do not disturb the rights or interests of either the birth parents or the adoptive parents. The statute requires the consent of the biological parent before any

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<sup>124</sup>*Id.* at 308, 372 A.2d at 653.

<sup>125</sup>*Id.* at 306, 372 A.2d at 650, citing *Belle Terre v. Boraas*, 416 U.S. 1 (1974).

<sup>126</sup>*Id.* at 307, 372 A.2d at 651-52.

<sup>127</sup>*Id.* at 307, 372 A.2d at 651.

<sup>128</sup>*Id.*

<sup>129</sup>*Id.* at 310, 372 A.2d at 654. The burden needed for opening the records will not shift in cases where the petitioning adoptee has not reached the age of majority.

<sup>130</sup>148 N.J. Super. 302, 372 A.2d 646 (1977).

<sup>131</sup>Sylvester, *supra* note 10, at 219.

<sup>132</sup>See *Mills*, 148 N.J. Super. at 308, 372 A.2d at 653.

<sup>133</sup>*Id.* See also Note, *Recognizing the Needs of Adopted Persons: A Proposal to Amend the Illinois Adoption Act*, 6 LOY. U.L. REV. 49 (1975).

<sup>134</sup>See Sylvester, *supra* note 10 for an overview of adoption in Ohio.

<sup>135</sup>TRISELIOTIS, *supra* note 107, at 125-128.

<sup>136</sup>Sorosky, *supra* note 2, at 73-86.

identifying information is released to the adoptee.<sup>137</sup> The biological parent who wishes to remain anonymous may do so.<sup>138</sup> Their privacy right is protected. Furthermore, the revised statute permits access to the adoption records only by the adoptee.<sup>139</sup> There is no provision which allows a birth parent to locate the adoptee or the adoptive parent at any time. Therefore, the anonymity of the adoptive parents is protected.

The underlying policy which pervades family law is embraced in the phrase "best interests of the child."<sup>140</sup> By enacting adoption statutes, a state has determined that being adopted may be in the best interests of the child-adoptee, as well as the birth parents, and adoptive parents.<sup>141</sup> However, what may indeed be in the best interest of the child-adoptee may not be in their best interest when they mature.<sup>142</sup> Protecting the anonymity of the biological and adoptive parents may preserve the family unit created by the adoption and thereby preserve the integrity of the proceeding. However, such rigid protection may frustrate what may be in the best interest of the adult adoptee who has a psychological need to know the identity of his birth parents. By permitting the adoptee access to identifying and non-identifying information about their biological parents, the legislature has struck an appropriate balance between the rights, needs, and interests of the adoptee, the birth parents, and the adoptive parents.

### CONCLUSION

The revised law of adoption in Ohio effectively serves the interests of the adoptee, the birth parents, and the adoptive parents. The statutes address the need of the adoptee to find his biological parents, as well as the need of some birth parents to remain anonymous. However, the real impact of the statute which permits access to identifying information remains to be seen.

Perhaps the most important change in Ohio adoption law concerns the area of non-identifying information. By obtaining a heightened profile of the birth parents' social and medical background, and by permitting unrestricted access to this crucial information, the best interest of the adoptee may be better served. Additionally, by permitting the biological parent to update his social and medical history, the adoptee and their adoptive parents may be able to overcome psychological and medical problems since the knowledge gained may reduce the burden, expense, and heartache that accompany these problems.

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<sup>137</sup>See OHIO REV. CODE ANN. § 3107.40 (Anderson Supp. 1985).

<sup>138</sup>The birth parent does not have to consent to the release of identifying information.

<sup>139</sup>See OHIO REV. CODE ANN. § 3107.41 (Anderson Supp. 1985).

<sup>140</sup>See *Mills*, 148 N.J. Super. at 308, 372 A.2d at 653.

<sup>141</sup>*Id.*

<sup>142</sup>Comment, *supra* note 106, at 115.

Although the revised adoption statutes appear to open doors that were previously closed to the adoptee and adoptive parents, the doors will remain closed if the courts, agencies, and attorneys do not implement them. Moreover, the changes which permit access to the records must be communicated to all of those whose interests are involved at the commencement of the proceedings.

There is no way to determine how many adoptive parents in Ohio may have a genuine need to inspect the background information which is now available for their inspection, but who are not aware of the change in the adoption law. The changes affect their interests as well as the interest of the child they call their own. An effort should be made to communicate the changes in Ohio's adoption law to prospective adopting parents.

FRANCES Y. AKE

