

May 13, 2019

The Honorable Michael Carpenter
The Honorable Debbie Bailey
Joint Committee on the Judiciary
Maine State House
Augusta ME 04330

**RE: Public Hearing on LD1688, May 13, 2019
Written Testimony of Gregory D. Luce/Adoptee Rights Law Center PLLC**

Dear Chairpersons Carpenter and Bailey as well as Members of the Joint Committee:

My name is Gregory D. Luce. I am an attorney and the founder of Adoptee Rights Law Center PLLC, a Minnesota-based national resource on adoptee rights and advocacy. I represent adult adoptees in various contexts, including issues involving legal identity, US citizenship, and equality for adoptees in the application of state vital records law. I also track and work on adoptee rights legislation throughout the United States.

I join with numerous adopted individuals and their allies to oppose LD1688. It is a flawed bill that attempts to mandate an approach that the vast majority of adopted people do not want and do not need. As such, the bill misrepresents adoptee interests and does not have widespread support within the adoptee community. As I discuss in more detail below, the bill is flawed for a number of reasons:

- The bill's focus on the "sealing" of pre-adoption birth records misapprehends the issue today, particularly with how vital records data are used and produced for current adoptions;
- It creates unintended consequences for adopted people, who must use a new and unique identity document applicable only to adopted people born in Maine. It will be insufficient for many purposes, will lead to unnecessary and potentially invasive or irrelevant questions, and may not ultimately be accepted by agencies in other states and by the federal government;

- There are better and more acceptable optional solutions, one of which I have attached as a draft bill and that I shared earlier with the bill's proponents and other advocates.

History of Sealed Pre-Adoption Birth Records, Maine and Nationally

Proponents of the bill are correct about one thing: many adult adoptees do not like the form of an amended birth certificate because it creates a perception that the adoptee was “as if born to” his or her adoptive parents. This issue relates primarily to older birth records that are copies of a prior original paper record. That prior birth record is altered by replacing the names of the birthparent(s) with the names of the adoptive parent(s) and listing other available birth information at the time, such as the number of children born to the adoptive mother. Ultimately, amended copies of the older records give the document the appearance of an actual birth to the adoptive parents listed. More significantly, however, this issue has been compounded primarily by how various states continue to discriminatorily treat adult adoptees in a different context: that is, the original birth certificate, with the facts of birth, often remains sealed and made unavailable to the adoptee, even when the adoptee becomes an adult.

While laws in the 1940s and 1950s sealed adoptees’ birth records in many states across the country, the purpose of these laws was never intended to restrict the adoptees’ access to their own personal birth records *as an adult*. Rather, the purpose of such laws have always been two-fold:

To assure when necessary that adopting parents and birthparents remained unknown to each other, so that the relationship between the adoptive parents and the adoptee can proceed without hindrance; and

To assure that children born “out-of-wedlock” would not be stigmatized by that status. To a lesser extent, the sealing of records prevented adoptive parents and adoptees from being blackmailed through the use of public knowledge of a child’s adoption or illegitimacy.

The purpose was never to prevent an adoptee from securing a right given to all other people: to know their full identity and to explore factual information about their heritage, particularly as an adult.

Indeed, in 1949, officials from the U.S. Children’s Bureau and the National Office of Vital Statistics developed specific guidelines for states to follow to assure responsible

treatment of confidential birth records. The resulting publication was unequivocal about an adopted person's original birth record:

The right to inspect or to secure a certified copy of the original birth certificate of an adopted child should be restricted to the registrant, if of legal age; or upon court order.¹

Fortunately, while Maine began in 1953 to seal and make original birth records unavailable to the adult adoptee, legislation in 2007 restored the right of adult adoptees to obtain that record. Today, a person born in Maine and later adopted has an unrestricted right to request and obtain his or her own original birth certificate. Maine is among only eight other states to restore this right, though Kansas and Alaska have never restricted release of the OBC to adult adoptees.

Modern “Sealing” of Birth Records

While I understand the central concern of proponents is to eliminate the “sealing” of pre-adoption birth records for adoptions occurring after October 1, 2019, the practical application of record sealing today is much different than it was decades ago. When the sealing of original birth records began in the 1930s it typically required placing a paper record in an envelope and using wax to seal the envelope and prevent its opening without detection, which could lead to unlawful distribution of the enclosed confidential information. Thus, the wax seal could be broken only by court order or, in some states, upon request of the registrant if of legal age (e.g., Kansas and Alaska, which today still seals the original birth record after an adoption but has always made the record available to the adoptee beginning at age 18).

More recently, stored electronic data of births has replaced stored copies of paper records. Electronic data, however, continues to be “sealed,” not by the now outdated practice of using wax but by selecting or not selecting the electronic data that is printed on security paper, a critical component of certifying the record. Thus, stored or keyed electronic birth and vital records data allows administrators to categorize the range of “products” that are available for certification, one of which is an amended certificate after an adoption. By selecting the certifiable items to print on an amended certificate, the relevant information is made available to the registrant---while other data (e.g.,

¹ *The Confidential Nature of Birth Records: Including the Special Registration Problems of Children Born Out of Wedlock, Children of Unknown Parentage, Legitimated Children, and Adopted Children.* Washington, D.C: Children's Bureau and National Office of Vital Statistics, Federal Security Agency, 1949

birthparent names and any birth name of the child) remain confidential and unavailable except to the adult registrant or others legally entitled to it later. Thus, “paper records” of more recent births are not sealed today—the data are. Data are “unsealed” and printed when there is a legal reason to do so. Thus, for birth records of persons born in Maine today, certified documents are no longer reproductions of a prior paper record. They are data printed on security paper and certified as true and accurate information on file with the Office of Data, Research and Vital Statistics.²

This is important to understand, as the complaint of “sealing” records and “altering” them is no longer specifically true, as it was when the paper record was, in fact, altered and reproduced. Rather, when an adoption occurs today and the adoptive parents request a new certificate, certain selected data associated with the birth are printed on a new certificate along with the legal identities of the adoptive parents. Information is not altered. Additional data associated with the birth—such as birthparent names—remain available and can be printed on a different document if warranted by existing law.

Impact of LD1688 on Adoptees

LD1688 has little support within the adoptee community, and proponents of the bill have not researched nor provided evidence that adopted persons, adoptive parents, or birthparents seek the approach offered by the bill. Based on my work with adopted people, whether through representation of individuals or work within national civil rights advocacy, it is near unanimous among adoptees that the approach offered by LD1688 is unacceptable, for a number of reasons.

Significantly, the proposed solution of a mandated “integrated” certificate, which contains the names of all parents as well as a reference to the adoption order, will effectively compel adoptees to disclose their own adopted status more publicly, thereby inviting unwanted and unnecessary inquiries from strangers, government officials, extended family, and others. While I may discuss my own adoption publicly as part of my advocacy, I have always retained the option to do so.

Many adoptees, however, have no desire to discuss their adoptions, whether it is irrelevant to much of their everyday life or because it is a difficult or sensitive issue for a wide variety of reasons, ranging from the mundane (“I don’t really think about adoption that much and have no need to.”) to the serious or personal (being asked questions, for

² A certified copy is defined in Maine to mean “the document created from paper or *electronic format*, issued by a municipal clerk or the Department containing all or a part of the exact data contained on the original vital record.” 10-146 C.M.R. ch. 4, § 1(B)(8) (2018)(emphasis supplied).

example, about what happened to your birthmother, whether you were in foster care, whether the government terminated parental rights for some reason, or simply why a mother “gave you up”). Adoptees have a right to autonomy and to control their own self-identification, including what they share about the complexities of personal and family information associated with adoption. They should not be compelled through the use of a state-issued “integrated” certificate to submit that information more publicly and to make themselves the subject of questions about their adoption, legal parentage, or any other various circumstances that occurred at the time of or after their births.

Better Solutions than LD1688

LD1688 mandates a solution that adoptees do not want. Other options, however, remain available and are more flexible to accommodate multiple interests. One of those options, of course, is to create a specific “product” from vital records data that may be requested and produced as one of several options. That is, if an adoptee wished to obtain an “integrated” certificate the adoptee could request such a certificate and Maine’s vital records division could produce it. If the adoptee at age 18 simply wished to have a copy of his or her own original birth certificate without adoption information contained on it, that also remains an option, as it has been since 2008.³ Indeed, one solution that applies equally to all individuals, whether adopted or not, is to provide a “comprehensive” birth certificate. This would be a certificate available at the option and request of the registrant (or any other persons legally entitled to it under Maine law). It would contain the facts of birth as well as information that lists amendments to the certificate, such as legitimization or adoption. As such, it would be available when necessary for the registrant, such as establishing qualification for citizenship in another country through the registrant’s birthparent(s).

These, of course, would be options, as is the attached draft bill that I earlier shared with the bill’s proponents and other advocates.. Unlike the unworkable mandate of LD1688, all of these options recognize the autonomy of the adoptee and provide a more flexible approach that would likely also satisfy multiple interests.

³ Adult adoptees can also request that the amended certificate indicate the data fields that have been changed from the original. See 22 M.R.S. 2764 (2-A (A)).

I appreciate your time and attention on this matter, and I urge you to vote against LD1688. It is a flawed bill that mandates a solution that the vast majority of adopted people do not want and do not need.

Best regards,

ADOPTEE RIGHTS LAW CENTER PLLC

A handwritten signature in black ink, appearing to be 'Gregory D. Luce', written in a cursive style.

Gregory D. Luce

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