



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

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(As Introduced)

Reps. Pelanda and Antonio, Blair, Terhar, Stinziano, Young, Foley, Pillich, Slesnick, Mallory, Phillips, Stebelton, R. Hagan, Hackett, Green, Becker, Gerberry, Driehaus, Hill, Maag, Kunze, Strahorn, Wachtmann, Sprague, Ashford, Lundy, Ruhl

BILL SUMMARY

- Outright repeals the laws that permit post-1963 adoptees who became available or potentially available for adoption prior to September 18, 1996 to file a petition in probate court to obtain information about the adoptee's biological family.
- Replaces those repealed laws with a procedure in which adopted persons described in the preceding dot point who are at least 18 years of age may submit a written request to the Ohio Department of Health (ODH) for ODH to provide the adopted person with a copy of the contents of the person's adoption file.
- Permits a lineal descendant, who is at least 18 years of age, of an adopted person to submit a written request to ODH for ODH to provide the lineal descendant with a copy of the contents of the adopted person's adoption file.
- Prescribes the requirements for a written request described in the preceding two dot points.
- Requires ODH to prescribe a contact preference form for biological parents, provides the requirements for and the contents of the form, and requires ODH, if it accepts a completed form, to place it in the adoption file of the adopted person to whom it pertains.
- Requires the contact preference form to include a component in which the biological parent indicates that the parent: (1) welcomes a person who receives a copy of the adoption file contents to contact the parent directly, (2) prefers that the person contact the parent through an intermediary, or (3) prefers that the person not contact the parent directly or through an intermediary.

- Requires ODH to attach a social and medical history form to each contact preference form it makes available to biological parents, to review each completed social and medical history form it receives and remove any identifying information or inaccurate information, and to file the form with the court that decreed the adoption.
- Expands current law to permit only the adoptive parents, during the minority of an adopted person, or only an adopted person upon reaching majority, to inspect the social and medical history forms described in the preceding dot point.
- Permits an adopted person to request ODH that it disclose to the person which court entered the interlocutory order or final decree of adoption if the adopted person seeks to inspect a social and medical history form of the biological parent or submit a request for notification of a correction or expansion of the social or medical history.
- Modifies existing law pertaining to the adoption file maintained by ODH to specifically prohibit ODH from opening an adoption file or making its contents available except, in addition to the exceptions under current law: (1) to determine the court involved in the adoption, (2) to make the file contents available to an adopted person or the person's lineal descendant in accordance with the bill, or (3) to file a contact preference form and remove any previously filed contact preference form.
- Relocates certain provisions pertaining to the birth record of adoptees currently contained in one section to six new sections.
- Changes section references and makes other changes in existing law to conform to the bill's provisions.

CONTENT AND OPERATION

Background

There are three systems for adoptees to obtain identifying information about their biological families.¹ The system that applies to an adoptee depends on whether: (1) the adoption was decreed prior to January 1, 1964, (2) the adoption was decreed on or after January 1, 1964, and the adoptee became available or potentially available for adoption prior to September 18, 1996, or (3) the adoptee became available or potentially available for adoption on or after September 18, 1996.

¹ Generally R.C. 3107.38 to 3107.53.

The birth record of a pre-1964 adoptee, which contains identifying information, is open and available to the adoptee from the Ohio Department of Health (ODH). A post-1963 adoptee who became available or potentially available for adoption prior to September 18, 1996, may obtain information about a biological parent or sibling from the adoption file maintained by ODH if the information is in the adoption file and certain circumstances exist. A post-1963 adoptee who became available or potentially available for adoption on or after September 18, 1996, may obtain information about a biological parent from ODH, unless ODH has on file an effective denial of release from the biological parent.

Regardless of when the adoption took place, adoptees can obtain nonidentifying information about their biological parents, including social and medical histories.

Information available to adoptees about their biological families

Existing law

Pre-1964 adoptees

Under current law, an adopted person whose birth occurred in Ohio and whose adoption was decreed prior to January 1, 1964, may do either or both of the following:²

(1) Submit a written request to ODH for the Department to provide the adopted person with a copy of the contents of the adopted person's adoption file maintained by ODH. The request must provide the adopted person's address, notarized signature, and be accompanied by two "items of identification" (includes a motor vehicle driver's or commercial driver's license, an identification card issued by the Registrar of Motor Vehicles or a deputy registrar, a marriage application, social security card, credit card, military identification card, or an employee identification card) of the adopted person. If the adopted person submits such a request, the fee of \$20 is paid, and ODH has an adoption file for the adopted person, ODH must mail to the adopted person, at the address provided in the request, a copy of the contents of the adopted person's adoption file.

(2) File a petition in the probate court pursuant to R.C. 3107.41 for the release of information from the adoption file maintained by ODH regarding the adopted person's name by birth and the identity of the adopted person's biological parent and biological sibling.

² R.C. 3107.38.

Post-1963 adoptees available or potentially available for adoption before 09-18-96

A post-1963 adoptee who became available or potentially available for adoption *prior to* September 18, 1996, may obtain information about his or her biological family in the adoption file maintained by ODH. A person was available or potentially available for adoption prior to September 18, 1996, if, prior to that date, either of the following occurred: (1) at least one of the person's biological parents executed consent to the person's adoption, or (2) a probate court entered a finding that the consent of at least one of the person's biological parents to the person's adoption was not needed. To obtain the information about the biological family, the adoptee must be 21 years of age or older and file a petition with a probate court requesting the release of information regarding the adoptee's name by birth and the identity of the adoptee's biological parents and siblings. If the adoptee resides in Ohio, the petition must be filed in the probate court of the county in which the person resides or in the probate court that entered the final decree of adoption. If the adoptee does not reside in Ohio, the petition must be filed in the probate court that entered the final decree of adoption or, if the person does not know which probate court entered that decree, in the probate court of any county. The adoptee must pay a fee set by the probate court; the court's fee cannot exceed \$50. On receipt of a request and payment of the fee, the probate court is required to appoint a public or private adoption agency to determine whether necessary conditions exist for the court to provide the adoptee the information sought.³

In general, for a probate court to order the release of identifying information about the adoptee's biological parents, the biological parents must either have died or filed with ODH, and not withdrawn, a "release" (see below). The probate court may not release information about a deceased parent if both parents are on the original birth record and the surviving parent has withdrawn a release or not filed a release. A biological sibling must have filed with ODH, and not withdrawn, a release for the court to release information about the sibling. The probate court may not release information about a biological sibling unless the parents on the original birth record are deceased or have filed, and not withdrawn, a release. A "release" is a form submitted by a biological parent or sibling to ODH that authorizes a probate court to order the release to the adoptee of information about the biological parent or sibling. In addition to receiving the identity of the biological parent or sibling, the adoptee also receives information the parent or sibling includes with the release. The biological parent is not allowed to include with the release information pertaining to the other parent or any of the

³ R.C. 2101.16(F) and current R.C. 3107.39(A), 3107.40, and 3107.41, not in the bill.



adoptee's siblings. The biological sibling is not allowed to include information pertaining to either biological parent or any other siblings.⁴

Current law also includes related confidentiality of records and immunity provisions and prohibitions against revealing information without authority or an order to do so.⁵

The bill

The bill modifies current law described above⁶ pertaining to pre-1964 adoptees, repeals current laws⁷ summarized above pertaining to post-1963 adoptees available or potentially available for adoption before September 18, 1996, and establishes a *single procedure* described in the following paragraph for an "adopted person" (a person who was adopted but is not an adopted person who, on or after September 18, 1996, became available or potentially available for adoption)⁸ to receive information about the person's biological family. Under the bill, a person was available or potentially available for adoption on or after September 18, 1996, if, on or after that date, either of the following occurred: (a) at least one of the person's birth parents executed consent to the person's adoption, or (b) a probate court entered a finding that the consent of at least one of the person's birth parents to the person's adoption was not needed.⁹ The bill does not modify the law pertaining to the procedure for an adoptee who became available or potentially available for adoption *on or after* September 18, 1996, to obtain information about the adoptee's biological family.

Adopted person's request to ODH for copy of contents of adoption file

The bill provides generally that an "adopted person" (see above definition in prior paragraph) or "lineal descendant of an adopted person" (a person who by reason of blood, marriage, or adoption is a lineal descendant of an adopted person) may submit a written request to ODH for the Department to provide the adopted person or lineal descendant of an adopted person with a copy of the contents of the adopted person's "adoption file" (file maintained by ODH as described below). The request must provide the requester's address and notarized signature and be accompanied by two

⁴ Current R.C. 3107.40 and 3107.41, not in the bill.

⁵ Current R.C. 3107.42, 3107.43, and 3107.44, not in the bill.

⁶ R.C. 3107.38.

⁷ Current R.C. 3107.39 to 3107.44, not in the bill.

⁸ R.C. 3107.38(A)(1).

⁹ R.C. 3107.38(A)(1) and 3107.45.



items of identification of the requester. If the requester is a lineal descendant of an adopted person, the request must also provide notarized documentation evidencing the requester's relationship to the adopted person. Not later than 90 days after receiving a request and the fee of \$20 is paid, ODH must mail to the requester, at the address provided in the request, a copy of the contents of the adopted person's adoption file if ODH has an adoption file for the adopted person. An adopted person or lineal descendant of an adopted person may not submit a request until the adopted person or lineal descendant is at least 18 years of age.¹⁰

Contact preference form

The bill requires ODH to prescribe a contact preference form for "biological parents" (a parent, by birth, of a person who is, or is to become, an adopted person).¹¹ The form must include all of the following:¹²

(1) A component in which a biological parent is to indicate one of the following regarding a person who receives, as described above, a copy of the contents of the adoption file of the parent's "offspring" (a child, by birth, of a person):¹³ (a) that the biological parent welcomes the person to contact the parent directly, (b) that the biological parent prefers that the person contact the parent through an intermediary who the parent specifies on the form, or (c) that the biological parent prefers that the person not contact the parent directly or through an intermediary.

(2) Provisions necessary for ODH to be able to identify the adoption file of the adopted person to whom the form pertains;

(3) The following notices:

(a) If a social and medical history for the biological parent was not previously prepared or such a history was prepared but should be corrected or expanded, that the biological parent is encouraged to do the following as appropriate: (i) complete a social and medical history form in accordance with R.C. 3107.091 (completing social and medical history forms subsequent to adoption) or R.C. 3107.40 in the bill described below, (ii) correct or expand the biological parent's social and medical history in accordance with R.C. 3107.09(D) described below.

¹⁰ R.C. 3107.38 and 3705.241; O.A.C. 3701-5-15.

¹¹ R.C. 3107.38(A)(3).

¹² R.C. 3107.39(A).

¹³ R.C. 3107.38(A)(7).

(b) That a biological parent's preference regarding contact as indicated on a completed contact preference form is advisory only and therefore unenforceable;

(c) That the biological parent may change the parent's indicated preference regarding contact by filing a new contact preference form with ODH.

(4) A space in which the biological parent indicates whether one or more of the following apply: (a) the biological parent knows that a social and medical history was prepared for the biological parent pursuant to R.C. 3107.09 (taking social and medical histories of biological parents), (b) the biological parent completed a social and medical history form in accordance with R.C. 3107.091 or 3107.40, and (c) the biological parent corrected or expanded the biological parent's social and medical history in accordance with R.C. 3107.09(D).

(5) A notice of both of the following:

(a) That an adopted person may do either or both of the following:

(i) Inspect, pursuant to R.C. 3107.17(D) described below, a social and medical history form of a biological parent of the adopted person maintained by the court that entered the interlocutory order or final decree of adoption regarding the adopted person;

(ii) Submit to that court, pursuant to R.C. 3107.17(E), a request for notification of a correction or expansion of a social and medical history of a biological parent of the adopted person.

(b) That an adopted person who does not know which court entered the interlocutory order or final decree of adoption regarding the adopted person may seek assistance from ODH in accordance with R.C. 3107.171 described below.

ODH must make a contact preference form available to a biological parent on request. ODH may accept a completed contact preference form from a biological parent only if the parent provides two items of identification of the parent. If ODH determines that it may accept a completed contact preference form, it must place the form in the adoption file of the adopted person to whom it pertains. If there is a previously completed contact preference form from the biological parent in the adopted person's adoption file, ODH must replace the parent's older form with the parent's new form. Subject to the provision described in this paragraph, a biological parent may file a

completed contact preference form with ODH to change the parent's indicated preference regarding contact as many times as the parent wishes.¹⁴

Social and medical history forms

Continuing law requires the Ohio Department of Job and Family Services (ODJFS) to prescribe and supply forms for the taking of social and medical histories of the biological parents of a minor available for adoption. An assessor must record the social and medical histories of the biological parents of a minor available for adoption, unless the minor is to be adopted by the minor's stepparent or grandparent. The assessor must not include on the forms identifying information about the biological parents or other ancestors of the minor. A social history describes and identifies the age; ethnic, racial, religious, marital, and physical characteristics; and educational, cultural, talent and hobby, and work experience background of the biological parents of the minor. A medical history identifies 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 biological parents and must include social and medical information relative to the minor's other ancestors.¹⁵

The bill requires ODH to attach a social and medical history form to each contact preference form it makes available to a biological parent. A biological parent for whom such a social and medical history form was not completed in accordance with continuing law above may complete the form. In completing the form, the biological parent may include information as described in the preceding paragraph but must not include "identifying information" (any of the following with regard to a person: first name, last name, maiden name, alias, social security number, address, telephone number, place of employment, number used to identify the person for the purpose of the statewide education management information system established pursuant to R.C. 3301.0714, and any other number federal or state law requires or permits to be used to identify the person).¹⁶ The biological parent must return the form to ODH after completing it to the extent that the biological parent chooses to provide information.¹⁷

ODH must review each social and medical history form it receives. After removing any identifying information and any information that ODH determines, to

¹⁴ R.C. 3107.39(B) and (C).

¹⁵ R.C. 3107.09(A), (B), and (C).

¹⁶ R.C. 3107.38(A)(4) by reference to R.C. 3107.01, not in the bill.

¹⁷ R.C. 3107.40.



the best of its ability, is inaccurate, ODH must file the form with the probate court that entered the interlocutory order or final decree of adoption. ODH must inspect the adopted person's adoption file if necessary to determine which probate court entered the interlocutory order or final decree of adoption. The probate court must cause the form to be filed in the records pertaining to the adoption case.

The bill requires ODH to provide a biological parent written notification if it removes any information the biological parent includes on a social and medical history form. On receipt of the notice, the biological parent may petition the probate court with which the form is filed to make a finding as to whether the removed information is permissible. On receipt of the petition, the probate court must issue its finding without holding a hearing. The probate court must cause any removed information it finds to be permissible to be included on the form.¹⁸

Access to a social and medical history form completed under the bill must be granted in accordance with R.C. 3107.17(D), which provides that the forms that were completed pursuant to R.C. 3107.40 (the bill) must be filed only in the permanent record kept by the court. During the minority of the adopted person, only the adoptive parents of the person may inspect the forms. When an adopted person reaches majority, only the adopted person may inspect the forms. Under the above circumstances, an adopted person or the adoptive parents are entitled to inspect the forms upon requesting the clerk of the court to produce them.¹⁹

A biological parent who completes a social and medical history form as described above may correct or expand information included on the form in accordance with the provisions described in "**Correction and expansion of social and medical history form**," below.

The above provisions do not preclude a biological parent from completing a social and medical history in accordance with R.C. 3107.091 (completing social and medical history forms subsequent to adoption) instead of this section, R.C. 3107.40.²⁰ The bill also provides that R.C. 3107.091 does not preclude a biological parent from completing a social and medical history in accordance with R.C. 3107.40 instead of R.C. 3107.091.²¹

¹⁸ R.C. 3107.40.

¹⁹ R.C. 3107.40 and 3107.17(D).

²⁰ R.C. 3107.40.

²¹ R.C. 3107.091(C).

Correction and expansion of social and medical history form

Continuing law permits a biological parent, or another person who provided information in the preparation of the social and medical histories of the biological parents of a minor, to cause the histories to be corrected or expanded to include different or additional types of information. The biological parent or other person may cause the histories to be corrected or expanded at any time prior or subsequent to the adoption of the minor, including any time after the minor becomes an adult. A biological parent may cause the histories to be corrected or expanded even if the biological parent did not provide any information to the assessor at the time the histories were prepared.²²

To cause the histories to be corrected or expanded, a biological parent or other person who provided information must provide the information to be included or specify the information to be corrected to whichever of the following is appropriate under the circumstances (language modified by the bill is italicized):²³

(1) Subject to paragraphs (2) *and* (3) below, to the assessor who prepared the histories if the biological parent or other person knows the assessor;

(2) *Subject to paragraph (3) below*, to the court involved in the adoption or, if that court is not known, to ODH, if the biological parent or person does not know the assessor or finds that the assessor has ceased to perform assessments;

(3) *To ODH, if the histories were originally completed by the biological parent pursuant to R.C. 3107.40 (the bill) or, regardless of whether the histories were originally completed pursuant to R.C. 3107.09, 3107.091, or 3107.40, the biological parent seeks to correct or expand the histories at the same time the biological parent completes a contact preference form pursuant to R.C. 3107.39 as described above.*

If ODH or a court receives information from a biological parent or other person pursuant to paragraph (2) above *or ODH receives information from a biological parent pursuant to paragraph (3) above*, it must determine whether the information is of a type that continuing law permits to be included in the histories.²⁴

²² R.C. 3107.09(D).

²³ R.C. 3107.09(D).

²⁴ R.C. 3107.09(D).

Conforming and technical changes

The bill makes conforming changes in existing laws that refer to R.C. 3107.38 and 3107.45 (modified by the bill) and R.C. 3107.39 to 3107.44 (repealed by the bill) and conforming changes to make appropriate references to new R.C. 3107.39 and 3107.40.²⁵

Adoptee's request to ODH to disclose court that entered adoption decree

The bill permits an adopted person to request ODH that it disclose to the adopted person which court entered the interlocutory order or final decree of adoption regarding the adopted person if the adopted person seeks to do either or both of the following:²⁶

(1) Inspect, pursuant to the provisions described above, a social and medical history form of a biological parent of the adopted person;

(2) Submit, pursuant to R.C. 3107.17(E), a request for notification of a correction or expansion of a social and medical history of a biological parent of the adopted person.

On receipt of such a request and if the adopted person is entitled to inspect the biological parent's social and medical history form and submit the request for notification of a correction or expansion of the biological parent's social and medical history, ODH must inspect the "adoption file" (file maintained by ODH under the bill as described below) to determine which court entered the interlocutory order or final decree of adoption. If it is able to determine from the adoption file that court, ODH must disclose the court to the adopted person.²⁷

Other changes

The bill requires ODJFS to provide copies of the form that has components specified in the law for a parent of a child who, if adopted, will become an adopted person as defined in R.C. 3107.38 (see above), to persons authorized to take acknowledgments.²⁸

²⁵ R.C. 149.43(A)(1)(f), 1347.08(F)(4), 2101.16(F), 2101.162(A)(1) and (B)(1), 2101.24(A)(1)(r), 3107.071(B), 3107.081(C) and (D), 3107.082(B), 3107.083(B)(1), 3107.17(B)(1), 3107.19(C), 3107.66(A)(1), 3705.241, 5103.151(D) and (E), and 5103.152(B).

²⁶ R.C. 3107.171(B).

²⁷ R.C. 3107.171(A) and (C).

²⁸ R.C. 3107.083(B)(3).

The bill adds a reference to ODH filing a social and medical history under R.C. 3107.40 in the law pertaining to a probate court's functions if it determines that the history does not comply with the requirements governing the history.²⁹

Adoption file not a public record; exceptions

Continuing law requires that within 30 days after an adoption decree for a child born in Ohio becomes final, a probate court must forward, among other specified items, copy of the certificate of adoption to ODH. On receipt of an adoption certificate issued on or after January 1, 1964, ODH must issue, unless otherwise requested by the child's adoptive parents, a new birth record using the child's adopted name and the names of and data concerning the adoptive parents. ODH must place the original birth record, adoption certificate, and other items forwarded by the court in an adoption file and seal the file. The index references to the original birth record are a public record. Under current law, the contents of the adoption file are not open to inspection and cannot be copied or be available for copying except under circumstances specified in the law.³⁰

The bill provides that the contents of the adoption file are not a public record and are available only in accordance with the bill's provisions described below.³¹

The bill prohibits ODH from opening an adoption file or making its contents available except as follows, in addition to the exceptions under current law that are unchanged by the bill:³²

(1) ODH must inspect the file to determine the court involved for the purpose of R.C. 3107.171 or 3107.40 as described above.

(2) ODH must make the file's contents available to an adopted person or lineal descendant of an adopted person in accordance with R.C. 3107.38 described above.

(3) ODH must open the file to file a contact preference form from a biological parent pursuant to R.C. 3107.39 described above and remove any previously filed contact preference form from the biological parent.

²⁹ R.C. 3107.141.

³⁰ R.C. 149.43, 3107.19, and 3705.12.

³¹ R.C. 3705.12.

³² R.C. 3705.126. The exceptions in current R.C. 3705.12 are relocated to new R.C. 3705.126.

Relocation of existing provisions on birth records of adoptees; conforming changes

The bill relocates to new sections, with technical changes, the existing provisions pertaining to: (1) foreign birth records,³³ (2) birth record of an adopted child born in Ohio and whose adoption was decreed by a court of another state,³⁴ (3) original birth record and birth record in the adopted name of any person born in Ohio and whose adoption was decreed prior to January 1, 1964,³⁵ (4) application for a new birth record in a person's adopted name of an adopted person born in Ohio, whose adoption was decreed prior to January 1, 1964, who did not have a new or reissued birth record in the person's adopted name, and whose adoption is in full force and effect,³⁶ and (5) a properly authenticated new birth record or foreign birth record and certified or exact copy of such record being prima facie evidence in all courts and places of the facts stated in the record.³⁷ The relocated provisions, in appropriate situations, include the expansion made by the bill to the current exceptions to the prohibition against ODH opening an adoption file or making its contents available discussed above. The relocated provisions also includes some minor and technical changes from the current versions.

The bill makes conforming changes in the Public Records Law, Personal Information Systems Law, Adoption Law, and other provisions of the Vital Statistics Law.³⁸

HISTORY

ACTION	DATE
Introduced	02-12-13

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³³ Current R.C. 3705.12(A)(4) to new R.C. 3705.122 and 3705.126.

³⁴ Current R.C. 3705.12(B) to new R.C. 3705.121 and 3705.126.

³⁵ Current R.C. 3705.12(C) to new R.C. 3705.123 and 3705.126.

³⁶ Current R.C. 3705.12(D) to new R.C. 3705.124 and 3705.126

³⁷ Current R.C. 3705.12(A)(5) to new R.C. 3705.125.

³⁸ R.C. 149.43(A)(1)(d), 1347.08(F)(1), 3107.18(C), 3107.38(A)(2), 3107.45(B), 3705.07(A), 3705.08(D)(2), 3705.23(A)(1), and 3705.29(D).

