
ADOPTEE RIGHTS LAW CENTER PLLC

FLORIDA: WHAT'S AT STAKE

A BRIEF HISTORY OF ADOPTEE ACCESS TO ORIGINAL BIRTH CERTIFICATES IN FLORIDA
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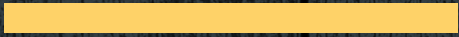
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FLORIDA



WHAT'S AT STAKE IN FLORIDA (AND IN MANY OTHER STATES)

The right of adoptees to access their own original birth certificates is at stake when legislators propose new but potentially damaging OBC access legislation.

To understand how damaging [compromised legislation](#) would be to Florida adoptees, it helps to understand one thing: for decades most Florida adoptees have had an unrestricted legal right to access their own original birth certificates. Not only did Florida courts affirm that right in 1976, but the history and context of Florida law is clear: the vast majority of adult adoptees have had unrestricted access to their original birth certificates for more than 92 years.

Florida first issued new and amended birth certificates for adoptions in 1939, sealing the original birth certificates. But

for the next 38 years, the state explicitly recognized an adoptee's right to obtain the original birth certificate upon request. While Florida in 1947 sealed its *court records* in adoptions, adult adoptees continued to have access to their original birth certificates through the department of health. No law has retroactively changed that right.

It is critical for advocates and legislators to understand Florida's legislative and legal history before embarking on an effort that may ultimately compromise a right that has been unrestricted for years. Compromising on OBC access legislation today will mean stripping most adult adoptees in Florida of access rights they have legally retained for generations.



WHY DO WE EVEN SEAL ORIGINAL BIRTH CERTIFICATES?

After an adoption, sealing an original birth certificate (OBC) and issuing a new amended birth certificate does two things: suppresses the truth and promotes a fiction. Each one depends on the other.

Sealing the original birth certificate after an adoption suppresses the truth by hiding the facts of a child's birth, specifically a child's full identity. When the state issues a new birth certificate, it substitutes the adoptive parents for the birth parents and pretends "as if" the adoptee was born to the adopting parents. A new birth certificate promotes this fiction. Suppressing the truth by making the original birth certificate secret supports that fiction.

Sealing birth certificates and making them unavailable even to an adult adoptee was never about birth parent confidentiality. Rather, it was intended to strengthen the relationship between the adoptee and adoptive parents by eliminating potential interference from birth parents. By eliminating any reference to adoption, it was also intended to reduce the "stigma" that was once associated with being adopted. As that stigma has lessened and as adoptees obviously become adults, the purpose of making an OBC unavailable to an adult adoptee is no longer warranted. Accordingly, keeping an OBC inaccessible to an adult adoptee makes little sense. It also discriminates against an entire class of individuals.

AN ORIGINAL BIRTH CERTIFICATE IS ABOUT TRUTH. NOTHING MORE. NOTHING LESS.



STATE OF FLORIDA
OFFICE of VITAL STATISTICS
 CERTIFIED COPY

CERTIFICATE OF LIVE BIRTH BIRTH NO. **109-**

STATE BOARD OF HEALTH **FLORIDA** **REGISTRAR'S NO.**
BUREAU OF VITAL STATISTICS

1. PLACE OF BIRTH a. COUNTY Dade		2. USUAL RESIDENCE OF MOTHER (Where does mother live?) a. STATE Florida b. COUNTY Dade	
b. CITY, TOWN, OR LOCATION Miami CODE NO. 23-10		c. CITY, TOWN, OR LOCATION Miami	
c. NAME OF HOSPITAL (If not in hospital, give street address) 15		d. STREET ADDRESS 2021 N.W. 31 Street	
d. IS PLACE OF BIRTH INSIDE CITY LIMITS? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		e. IS RESIDENCE INSIDE CITY LIMITS? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
f. IS RESIDENCE ON A FARM? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
3. NAME (Type or print) First Middle Last			
4. SEX Female 5a. THIS BIRTH SINGLE <input checked="" type="checkbox"/> TWIN <input type="checkbox"/> TRIPLET <input type="checkbox"/>			
5b. IF TWIN OR TRIPLET, WAS CHILD BORN 1ST <input type="checkbox"/> 2D <input type="checkbox"/> 3D <input type="checkbox"/>			
6. DATE OF BIRTH Month Day Year			
7. NAME First Middle Last			
8. COLOR OR RACE White			
9. AGE (At time of this birth)		10. BIRTHPLACE (State or foreign country)	
11a. USUAL OCCUPATION		11b. KIND OF BUSINESS OR INDUSTRY	
12. MAIDEN NAME			
14. AGE (At time of th			
17. INFORMANT			
I hereby certify that this child was born alive on the date stated above.		18	
19. DATE RECD. BY LOCAL		18	

[Signature] **JAN 28 1990** (Registrar)

VOID IF ALTERED OR ERASED

THE ORIGINAL BIRTH CERTIFICATE

Nearly everyone has a birth certificate. But most adoptees have two: the original (OBC), and a second one that alters the truth.

“ AN ORIGINAL BIRTH CERTIFICATE IS A GOVERNMENT RECORD OF YOUR OWN BIRTH, INDEPENDENT OF ADOPTION. ”

A BIRTH RECORD IS NOT AN ADOPTION RECORD: IT'S CRITICAL TO UNDERSTAND THE DIFFERENCE

An original birth certificate is a government record of your own birth, independent of adoption. The government seals it only after an adoption, and unseals it if an adoption fails. When a child is relinquished for adoption, there are no promises that he or she will be adopted. Accordingly, for the original birth record of an adoptee, birth parent anonymity is legally impossible to guarantee.

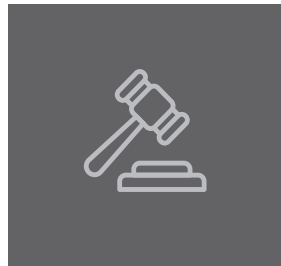
Court and agency adoption records are different, as they include information about the specific circumstances and legal issues involved in an adoption. Understanding the difference between a government record of birth (a birth certificate) and the records generated by an adoption (adoption records) is critical in understanding the scope of an adoptee's right to his or her own basic information and identity.

FLORIDA // ORIGINAL BIRTH CERTIFICATES AND ADOPTION RECORDS



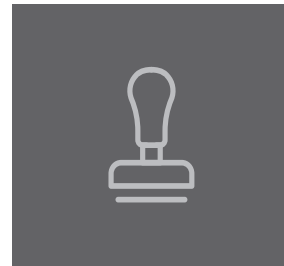
ORIGINAL BIRTH CERTIFICATES

- Until 1939, state officials do not have legal authority to issue a new birth certificate to replace an original
- Beginning in 1939, Florida seals the original birth certificate after an adoption and issues a new amended certificate in its place.
- From 1939 to at least 1977, however, adoptees may receive their original birth certificates upon request.
- Courts in 1976 upheld and enforced an adoptee's right to obtain the original birth certificate upon request



ADOPTION COURT RECORDS

- Court records in adoptions were public records from as early as 1885.
- Florida law in 1947 made court records confidential. The law did not apply to original birth certificates.
- Only in 1977 did the legislature begin to require a court order for adoptees to obtain original birth certificates.
- The 1977 law was not retroactive.



ADOPTION AGENCY RECORDS

- Florida adoption law in 1947 made records held by child-placing agencies confidential.
- Child-placing agencies are typically private organizations whose records are controlled by the organization's own policies as well as by state law and regulations.
- Adoption agencies have no control over government records

Courts and adoption agencies rarely possess an adoptee's original birth certificate. It is on file with the state department of health.

FLORIDA OBC ACCESS: KEY DATES

1885 //

FLORIDA'S FIRST ADOPTION
LAW ENACTED

1939 //

OBCS SEALED BUT AVAILABLE
UPON ADOPTEE REQUEST



First Adoption Law

Attorney General Opinions: No a -!- Generator: Adobe Illustrator 21.1.0,

OBCS sealed for the first time but are available upon the adoptee's request.

Florida amends its adoption law.

Florida amends its

1885

First Adoption Law

Florida enacts its first law governing adoptions in 1885. It requires a petition and a judge's approval. Court records are a matter of public record.

1924-1938

Amended Birth Certificates

Two opinions from Florida's attorney general make one thing clear: the state does not have the authority issue new birth certificates in cases of legitimacy or adoption. Only one birth certificate is available: the original.

1939

Unrestricted Access

Florida law for the first time authorizes the issuance of a new birth certificate in cases of adoption and legitimacy. Though the original is sealed, adoptees have the right to obtain the original birth certificate upon request. Law is in effect until repealed in 1987.

1943

New Adoption Law

Florida modifies its adoption law for the first time since 1885. The new law does not make any records confidential and does not alter how original birth certificates are handled or made available to adoptees.

1976 //

COURT UPHOLDS RIGHT
TO OBC ON REQUEST 

1977 //

LAW CHANGED FOR
ADOPTIONS AFTER 6/30/77

1949 1974 1975 1976 1977 2017

adoption law to seal court records and files but not OBCs

Law requires court orders for OBCs

1947

Court Adoption Records

Florida amends its adoption law to make court records and files confidential. Adoption agency records are also deemed confidential. Original birth certificates remain available to the adoptee upon request.

1976

Right to OBC Upheld

Betty Mullarkey, an adult adoptee, successfully sues the state after it refuses to provide her with her original birth certificate. The court of appeals upholds Mullarkey's right to receive her OBC.

1977

OBCs Sealed to Adoptees

The Florida legislature enacts provisions that require, for the first time, a court order for adoptees to access their original birth certificates. The law is effective June 30, 1977, and is not retroactive.

2016-2017

Legislative Proposals

Bills are introduced in the Florida legislature to make the original birth certificate available upon request, as it has already been for adoptees whose adoptions were finalized prior to June 30, 1977.

OBC ACCESS TIMELINE //

FLORIDA: 1885 TO 1938

1885

**FLORIDA'S FIRST
ADOPTION LAW //**

The Florida legislature enacts the state's first adoption law. The law does not seal records or make records confidential. An order for adoption is instead "made a matter of record in . . . circuit court."

[Fla. Stat. Ann. §§ 1536-1541 \(Revised 1892\)](#)

-

1924

**ATTORNEY GENERAL:
STATE CAN CORRECT BUT
NOT ISSUE NEW ORIGINAL
BIRTH CERTIFICATES //**

Florida attorney general Buford Rivers determines that the state board of health does not have the authority to create new birth certificates in cases where parents legitimize a birth through marriage. Instead, the original birth certificate may be "corrected" or amended. The original cannot be destroyed.

[Op. Att'y Gen. Fla., December 20, 1924](#)

-

1938

**ATTORNEY GENERAL:
STATE DOES NOT HAVE
LEGAL AUTHORITY TO ISSUE
NEW OBCS FOR ADOPTIONS //**

The state board of health asks the attorney general if the board has "any authority to issue a new certificate in the case of legal adoption of a child." Citing Buford Rivers's earlier opinion from 1924, the Florida attorney general responds that:

*this question must . . . be answered
in the negative, for the reason that
[Florida] statutes do not purport
to authorize such a procedure.*

In a separate but related question, the attorney general also advises that the state board of health does not have the authority to issue a new birth certificate to replace the OBC in cases where a child has been legitimized. Accordingly, by 1938, Florida law does not allow the board of health to issue a new and amended birth certificate in cases of adoption or legitimacy. The original and only birth certificate remains available to anyone adopted prior to 1939.

[Op. Att'y Gen. Fla., November 6, 1938](#)

OBC ACCESS TIMELINE //

FLORIDA: 1939 TO 1943

1939

OBCS: SEALED BUT
AVAILABLE TO ADOPTEES //

-

The Florida legislature enacts a law authorizing the issuance of new birth certificates in cases of adoption and legitimized births. Upon issuance of a new birth certificate, the original is sealed.

Section 2 of the new law, however, reserves the right to access the original birth certificate “at the instance and request of the person whose birth is the subject of the said certificate of birth.”

Section 2. That when a new certificate of birth is made, the State Registrar shall substitute the new certificate of birth for that on file in the State Bureau of Vital Statistics of the State Board of Health, and shall place the original certificate of birth and all papers pertaining thereto under seal, not to be broken or opened except by decree, judgment or order of a court of competent jurisdiction; or at the instance and request of the person whose birth is the subject of the said certificate of birth; provided, however, that before any such person shall be entitled to have the seal broken and the record opened without order of court, he or she shall first identify himself or herself to the satisfaction of the State Registrar.

While the 1939 law seals original birth certificates for the first time in Florida history, the law nevertheless reserves to adoptees a right of unrestricted access to their original records. This remains the law for the next 38 years, from 1939 until 1977.

[Chapter 19063, Laws of Florida \(1939\)](#)

1943

FLORIDA'S NEW
ADOPTION LAW //

-

Florida amends its adoption law for the first time since 1885. The new law does not make any records or files confidential. Original birth certificates continue to be available to adoptees upon request.

[Chapter 21759, Laws of Florida \(1943\)](#)

OBC ACCESS TIMELINE //

FLORIDA: 1947 TO 1975

1947

**COURT ADOPTION RECORDS
ARE CONFIDENTIAL //**

-

Amendments to the adoption law include a provision that makes court records confidential for the first time in Florida history. The new law is limited only to court “records, papers, and files,” though confidentiality of records is also required of the child welfare board and for child-placing agencies. The law does not change the procedure followed for access to an original birth certificate. The 1939 law that provides unrestricted access to an original birth certificate is unchanged.

[Fla. Stat. §§ 72.01-72.39 \(Suppl. 1947\)](#)

1949

**VITAL RECORDS LAW
MODIFIED //**

-

The Florida legislature modifies provisions of its vital records law. In provisions dealing with access to original birth certificates, the law for the first time ensures that access to a sealed original birth certificate in cases of illegitimacy or unknown parentage must be provided to “the registrant, if of legal age . . .” The legislature also makes minor amendments to the provisions dealing with issuance of new amended birth certificates in cases of adoption, but specifically leaves in place existing provisions that ensure adoptees have unrestricted rights to access their own original birth certificates.

[Chapter 25372, Laws of Florida \(1949\)](#)

1974

**ATTORNEY GENERAL:
REGISTRANT ON AN OBC
IS THE PERSON WHOSE
BIRTH IS REGISTERED //**

-

In the context of sealed original birth records involving legitimacy, the Florida attorney general makes clear that original birth certificates remain available upon request to the “registrant,” whom the attorney general clarifies is the “person whose birth is registered or filed with the Central Bureau of Vital Statistics.” The attorney general’s opinion confirms again that sealed original birth certificates remain available upon request to the registrant, if of legal age.

[Op. Att’y Gen. Fla. 74-70 \(1974\)](#)

1975

**VITAL RECORDS LAW
MODIFIED //**

-

The legislature modifies a number of vital records provisions dealing with adoptions and original birth certificates. The law that recognizes an adoptee’s right to obtain his or her original birth certificate remains unchanged.

[Chapter 75-166, Laws of Florida](#)

OBC ACCESS TIMELINE //

FLORIDA: 1976 TO 1977

1976

COURT OF APPEALS:
ADOPTEE ENTITLED TO
OBC UPON REQUEST //

Betty Mullarkey, an adult adoptee, requests her original birth certificate from the Florida Department of Health, pursuant to the OBC access law that has been in place and unchanged since 1939. The department refuses to release her OBC, alleging that birth parents have an interest in maintaining their confidentiality. Mullarkey sues, and the circuit court orders release of the original birth certificate. The department appeals the circuit court opinion. The court of appeals upholds the trial court's decision and rejects the department's position on the matter, stating:

the legislature . . . has explicitly required the Department to furnish the original birth certificate and all papers pertaining thereto 'at the instance and request of the person whose birth is the subject of the said certificate of birth.'

The court of appeals orders release of the original birth certificate to Mullarkey. Adoptees like her, whose adoptions were finalized prior to 1977, continue to have unrestricted access to their original birth certificates.

[State Dept. of H. & R. Services v. Mullarkey](#)
[340 So.2d 123 \(Fla. Dist. Ct. App. 1976\)](#)

1977

ADOPTION LAW
MODIFIED //

A new provision for the first time requires a court order for an adoptee to obtain an original birth certificate. The law, however, does not actually repeal* prior language from the 1939 vital records law, which entitles the adoptee to obtain the record upon request. Rather, the new law makes the request for the OBC subject to review by the court in adoption proceedings. The law is effective June 30, 1977. It is not retroactive.

[Chapter 77-147, Laws of Florida](#) • [Chapter 77-446, Laws of Florida](#)

*The 1939 OBC access law was not repealed until 1987.



ADOPTEE RIGHTS LAW CENTER PLLC

ADVOCATING EXCLUSIVELY FOR ADULT ADOPTEEES

The Adoptee Rights Law Center assists with legal challenges that adult adoptees face in obtaining original birth certificates, identifying information, or U.S. citizenship. The center also works to develop broader legal strategies to change the current discriminatory framework that denies adoptees their basic and fundamental truths.

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