

Adoption Circle of Hawai'i
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To: Representative Della Au Belatti, Chair,
Representative Richard P. Creagan, Vice Chair
House Health Committee

From: Tom Moore, President of Adoption Circle of Hawai'i

Re: H.B. 2082, Relating to Adoption Records

The Adoption Circle of Hawai'i (ACH) supports the intent of H.B. 2082 in trying to reform the adoption process in order to create more openness. We are in support of the "contact preference" form that will permit the birth parent or adoptee to inform the others of their desire for contact.

However, we urge this committee to make even further **changes** to this bill by removing the existing intermediary process that would rectify the unequal treatment of two similarly-situated groups of adopted individuals -- those who were adopted prior to December 31, 1990 and those who were adopted after that time. We would also urge the removal of the affidavit for confidentiality. These two changes would also simplify the access process and reduce the cost not only for the parties to the adoption but also for Family Court.

Adoption Circle of Hawai'i is an organization that provides information, advocacy and support to members of the triad (adopted persons, birth parents and adoptive parents) and educates the community about the adoption experience.

Over 25 years ago in 1990, the Hawai'i Legislature passed a law that created two sets of procedures for adoption triad members to request their records depending on the year of the adoption. Those whose adoptions were finalized after Dec. 31, 1990 could get access to their records upon request to the Family Court at 18 years of age. However, triad members whose adoptions were finalized prior to 1991 who request access to their adoption records may need to endure an intermediary search that can start at \$300 per name in order to give notice to the other party if the Court's letter is undeliverable. Both groups, pre-1991 and 1991 onward, could be denied their records if a birth parent or adoptee filed an affidavit of confidentiality, regardless if the requesting party paid for the searches. The older pre-1991 group procedure is not only more costly and burdensome; it is more complex and takes longer for both Family Court staff and for the applicant to get through. We want to rectify the unequal treatment of similarly-situated individuals by removing the intermediary process from the law.

Given that even the current adoption law doesn't promise confidentiality to the parties of the adoption because records can be opened by the court for good cause, we would urge that the affidavit of confidentiality be removed so that adopted persons as adults can access this vital information about themselves, including their heritage, family medical history, and sense of identity (who they are and where they come from).

In addition, higher court rulings upheld laws to allow access to birth certificates for adult adoptees in two states (Oregon and Tennessee) in response to challenges. These courts determined that no enforceable promises exist regarding birth mothers' anonymity from their own children and that neither state laws nor relinquishment documents offered a guarantee to birthparents of anonymity from their children.

We support HB 2082's addition of a contact preference form that allows the birth parent and the adopted person to express their preference for contact.

To sum up, to support this bill fully, we urge the Committee to:

1. Remove the necessity of notice to the birth parent in order for the adopted adult to receive their adoption record.
2. Remove the intermediary system, and the necessity of a potentially costly search.
3. Remove the affidavit of confidentiality that blocks release of records to the adopted person.

Once adoptees are adults and have legal standing and no children are involved that need protection, the state should not shelter any adults from the consequences of their decisions or actions or block them from the joy and healing that could possibly result if the parties have contact, or even from just having this fundamental birth information.

A recent news item in another state about a reunion of an 82-year-old adoptee with her 96-year-old birthmother after a 50-year search makes one wonder,

What purpose was achieved from keeping these two people and their families apart for all these years when they wanted to be together? and

How do you even begin to assess the damage of lost time in their lives? What is the state's role in keeping secrets between adults and maintaining separation between families once all parties are adults?

The link to the story and a powerful short newscast video is

<http://www.pressherald.com/2016/02/05/woman-82-tracks-down-and-meets-96-year-old-birth-mother/>

Please amend this law.

Mahalo for your consideration of our testimony.

Tom Moore
President of Adoption Circle of Hawai'i

February 11, 2016

MEMORANDUM

TO: The Honorable , Chair Della Au Belatti
Committee on Health

FROM: Harry Akamine

SUBJECT: **H.B. 2082 RELATING TO ADOPTION RECORDS**

Hearing: Friday, February 12, 2016; 8:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of H.B. 2082 is to allow access to adoption records by parties to the proceedings under certain circumstances.

POSITION: I am writing in support of the intent of this bill. However, this bill needs to be further amended to remove the following “barriers” that impede an adult adoptee from learning about their birth families:

- The sending of the initial notice to the birth parent’s last known address on record;
- The intermediary process; and
- The affidavit of confidentiality.

I believe that adult adoptees should be able to access their birth family’s information without having to traverse a process designed to “protect” children. At the time they become adults, they are no longer in need of this “protection”.

As an adoptive parent of two, I have experienced first hand what happens when a child given up for adoption struggles to deal with their feelings of abandonment, rejection and not knowing anything about their birth parents and family. These feelings will last a

lifetime and will never disappear. Further, it is truly frustrating to not have any family medical history; the lack of this history severely hinders the medical provider's ability to provide proper medical care.

S.B. 2153 (attached) removes the aforementioned "barriers" and allows adult adoptees to access this critical information unimpeded. Therefore, I ask that this bill be amended to conform to S.B. 2153.

Thank you for the opportunity to comment on this bill.

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

S.B. NO. 2153

A BILL FOR AN ACT

RELATING TO ADOPTION RECORDS.

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

SECTION 1. To protect adopted children from the stigma of illegitimacy, states began sealing adoption records in the middle of the 20th century. Although adoptees were generally allowed to access their own adoption records, states later began limiting adoptees' access to adoption records due to the prevailing idea that adopted children were better off if they were unaware of their adoption. However, current research has illustrated that the secrecy surrounding an adoption has significant negative psychological consequences on an adoptee.

Furthermore, cultural changes have largely diminished the stigma surrounding adoption and recent genetics research has highlighted the importance of genetic history to an individual's medical care.

Although the legislature eased restrictions for some adoptees to access adoption records in 1990, Hawaii's adoption records law continues to condition access to records on birthparent approval, which is a major hurdle for adoptees to overcome. Additionally, it is common for adoptees to pay a search agent approximately \$600 to locate birthparents who have moved since the adoption proceedings.

The legislature finds that countries with open access laws and other states that have restored open access to adoption records have not experienced significant negative consequences that critics predicted would befall birthparents that sought to retain anonymity. Furthermore,

the substantial interest that an adoptee has in learning the adoptee's familial history outweighs any vague discomfort that could befall a birthparent.

The purpose of this Act is to provide adoptees of a certain age unfettered access to the adoptees' adoption records.

SECTION 2. Section 578-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except:

(1) Upon order of the family court upon a showing of good cause;

(2) ~~[For adoptions which occurred prior to January 1, 1991, after]~~ After the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or the adoptive parents ~~[in accordance with the following:~~

~~(A) Within sixty calendar days after receipt of a request for inspection, the family court, by certified mail with return receipt requested, shall mail to the last known address of each natural parent a notice of the request for inspection of adoption records, a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents submitted in support of the request. The notice shall inform the natural parent that unless an affidavit signed by the natural parent requesting confidentiality is received by the family court within sixty calendar days of the date of receipt of the~~

~~notice, the natural parent will be deemed to have waived any rights of confidentiality and the records shall be subject to inspection by the adopted individual or the adoptive parent who submitted the request. The notice shall also inform the natural parent that an affidavit requesting confidentiality for a period of ten years may be filed. A blank affidavit to be completed and signed by the natural parent shall be mailed with the notice;~~

~~(B) If the family court has received a return receipt for the notice but an affidavit requesting confidentiality is not received by the family court within sixty calendar days of the date of receipt of the notice, the family court shall allow inspection under this section;~~

~~(C) If the notice is returned as undeliverable to a natural parent, the family court shall designate an agent or agency to conduct a good faith and diligent search to locate the natural parent and to provide the notice and all other documents required under subparagraph (A). The search shall extend over a period not to exceed one hundred eighty calendar days. Contacts with natural parents by a designated agent or agency under this section shall be personal, whenever possible, and confidential. The family court shall provide the designated agent or agency with a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents submitted in support of the request, and the designated agent or agency shall present the copies to the natural parent when contacted. The family court and the designated agent or agency shall ensure that no person other than a natural parent or the agent or agency through~~

- ~~which a natural parent obtained assistance for the adoption is informed of the adoptive individual's existence and the relationship to the natural parent;~~
- (D) ~~If a natural parent cannot be located after the search conducted under subparagraph (C), the family court shall allow inspection under this section;~~
- (E) ~~If an affidavit requesting confidentiality is received by the family court within sixty calendar days of the date of receipt of the notice provided under subparagraph (A) or (C), the family court shall not allow inspection during the effective period of the affidavit;~~
- (F) ~~If a ten-year affidavit is filed under subparagraph (E), the natural parent may refile affidavits every ten years thereafter to maintain confidentiality, or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits subsequent to the initial affidavit may be filed within ninety calendar days before the last effective day of the initial affidavit. If there is no effective affidavit on file with the family court at the time a request for inspection is received by the court, the court shall allow inspection under this paragraph;~~
- (G) ~~An affidavit requesting confidentiality shall be effective until the last day of the period for which the affidavit was filed, until the natural parent revokes the affidavit, or until the natural parent is deceased, whichever occurs sooner; and~~
- (H) ~~Where two natural parents are involved and confidentiality is waived under this paragraph by only one natural parent, the inspection of the records shall not include any~~

~~identifying information concerning the other natural parent;~~

(3) For adoptions occurring after December 31, 1990, in accordance with the following:

- ~~(A) Each natural parent shall be informed of the procedures required under this paragraph if the natural parent desires to maintain confidentiality after the adopted individual attains the age of eighteen;~~
- ~~(B) Within ninety calendar days before the adopted individual attains the age of eighteen a natural parent may file an affidavit with the family court to request confidentiality and the natural parent may refile affidavits every ten years thereafter to maintain confidentiality or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits after the initial affidavit may be filed within ninety calendar days before the last effective day of the initial affidavit;~~
- ~~(C) If a natural parent declines or fails to file an affidavit under subparagraph (B), the family court shall allow inspection of the record by the adopted individual or the adoptive parents at any time after the adopted individual has attained the age of eighteen; and~~
- ~~(D) Where two natural parents are involved and confidentiality is waived under this paragraph by only one natural parent, the inspection of the records shall not include any identifying information concerning the other natural parent;~~

(4) For all adoptions, regardless of date of occurrence, after the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by a natural parent; provided that the adopted individual shall have the same rights and obligations applicable to natural parents

~~under paragraphs (2) and (3), including rights of notice and opportunity to file affidavits requesting confidentiality.~~

~~(5) For all adoptions, regardless of date of occurrence, after];~~

~~(3) After the adopted individual attains the age of eighteen and upon submission [of an affidavit by a natural parent consenting to the inspection of records by the adoptee or an affidavit submitted by an adoptee consenting to the inspection of records] to the family court of a written request for inspection by the natural parents; [provided that where only one natural parent files an affidavit for consent, the inspection of records shall not include any identifying information concerning the other natural parent;~~

~~(6)] (4) Upon request by the adopted individual or the adoptive parents for information contained in the records concerning ethnic background and necessary medical information[, notwithstanding any affidavit requesting confidentiality]; or~~

~~[(7)] (5) Upon request by a natural parent for a copy of the original birth certificate.~~

As used in this subsection, "natural parent" means a biological mother or father, or a legal parent who is not also the biological parent."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Adoption Records; Open Access

Description:

Allows adopted individuals who have attained eighteen years of age unfettered access to the adopted individual's sealed adoption records.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 11, 2016 12:18 AM
To: HLTtestimony
Cc: dkk@hawaiiantel.net
Subject: Submitted testimony for HB2082 on Feb 12, 2016 08:30AM

HB2082

Submitted on: 2/11/2016

Testimony for HLT on Feb 12, 2016 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Kimball	Individual	Support	No

Comments: Aloha, I am Deborah Kimball, adoptee, and affiliated with Adoption Circle of Hawai'i since 1992 but not speaking for it today. in the 1980s I reunited with my birth family and also led Adoptee Support Groups for the Kaua'i YWCA. I support with reservations HB2082--I am happy with the changes it makes but request that it go further to modernize the law. 1. End the different paths to access records according to date of adoption. It's a double standard. 2. Delete the intermediary process and the confidentiality. When adoptees and other parties of the triad are adults we deserve treatment and respect as adults trustworthy of care, discretion, appropriate confidentiality, and tact. 3. Ensure that adoptive parents upon adoption have access to the birth families' medical histories of their adopted children. I was very sickly every year til 12, and my history would have been at least a stress reliever and at best a life-saver. Adopted at 2-1/4 years, I also had my own medical history. Of course, ethnic and cultural histories would also enrich adoptees' lives. I appreciate your consideration of these modernizing steps. I was one of the earliest babies falling under the new secrecy system, and I assure you that it gave me and so many others much suffering that has been carried into adulthood. Mahalo!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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To: Representative Della Au Belatti, Chair,
Representative Richard P. Creagan, Vice Chair
House Health Committee

From: Linda Wong; Private Citizen
3071 Pualei Circle
Honolulu, Hawai'i 96815

Re: H.B. 2082, Relating to Adoption Records

Aloha Chair Bellati, and House Health Committee,

I support H.B. 2082 and also urge these changes :

1. Remove the necessity of notice to the birth parent in order for the adopted adult to receive their adoption record.
2. Remove the intermediary system, and the necessity of a potentially costly search.
3. Remove the affidavit of confidentiality that blocks release of records to the adopted person.

I am a 66-year-old adoptee who feels something like an amputee being stuck with these out of date adoption laws. I have been looking with fervor for my birth family, some semblance of who I am (where I'm from, anything...), and/or my medical history since 1988 with no success!

I was born in NY, which has somewhat 'closed' adoption laws like Hawai'i nei, the land of Aloha! Surely we must 'catch-up' and get some Aloha in this great state. With all due respect, I definitely have a right to my medical information and certainly all my information without all these intermediaries. No one should be able to sign away my birthrights.

Who is being protecting? Surely not the adoptee? The Birthmother and her family? I think not. Certainly not after the adoptee has become of age. Maybe the Churches that lobby the legislature on their Church's moral rights. Exactly that, THEIR moral rights. Not that of the PUBLIC.

Those Churches shouldn't be able to squash the adoptee's rights.

Mahalo mai for your patience and understanding.

Sincerely,
Linda Wong

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 10, 2016 10:55 PM
To: HLTtestimony
Cc: dmakamine@gmail.com
Subject: Submitted testimony for HB2082 on Feb 12, 2016 08:30AM

HB2082

Submitted on: 2/10/2016

Testimony for HLT on Feb 12, 2016 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Doreen Akamine	Individual	Support	No

Comments: As both an adoptive parent and a practicing RN of >30 years, I instinctively want to prevent any harm to either my children or to any of my patients. However, this protective nature is often challenged when my children or patients who were adopted, do not have any information about their family medical history. At times, this lack of information can be life threatening. This bill will help provide the first step for an adoptee to access information about themselves. I support HB 2082 with reservations and that it be amended to conform to SB 2153.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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DATE: February 12, 2016

TO : Representative Della Au Bellati, Chair,
Representative Richard P. Creagan, Vice Chair
House Health Committee

FR : George & Maile Takane
Adoptive Parents

RE : H.B. 2082
Relating to Adoption Records

We, as adoptive parents, support the intent of HB 2082 to reform our current adoption bill but would like to see a few things removed from it. We believe that the intermediary process is a burdensome one placed on just one group of adopted people that were adopted prior to December 1990. We do not advocate for discrimination of one group simply based upon the date of their adoption.

We also urge the committee to remove the affidavit of confidentiality as this also places a burden on all adoptees who are just seeking information critical about themselves such as medical family history. Such an affidavit would consign this group of adopted adults to being unable to share information with their doctors as well as subject any future generations from information that could save their lives. We do not believe the state should be used to shield adults from their behaviors and consequences of their actions.

On a personal note, it wasn't until our daughter was full grown and we were attending a support group, the Adoption Circle of Hawaii, that she revealed her struggles with being adopted. Never really knowing why she was given up has been a source of great pain and adversity. What we learned is that we and all the love we had for her could not replace the loss of her birthparents, her medical history, her genealogy and we could not answer any questions regarding this. The only thing we could do is support her in whatever way possible to reunite her with them so that she could finally get her answers and be able to heal.

As both an adoptive parent and a lawyer who was once Chief Clerk of the House of Representatives, I find the so-called compelling state interest in withholding information from the adult parties through sealed records is not only archaic but has been detrimental and a great disservice to those seeking their birth origin, especially where information on one's health and ethnic origin are essential but not readily available under current laws. I should know because when my daughter was still a baby, she had a condition that the doctors could not diagnose. It would have incredibly helpful and less stressful as parents to be able to pick up the phone and call her birth family to ask those critical medical and genetic questions. We never did find out what it was she had and were just lucky that it ending up not being life-

threatening. So as adoptive parents, it is just as important for us to know and have contact with the birth family.

We urge this committee to please change the bill in the following ways:

- 1. Please remove the initial notice sent to the last known address that the birth parent put on record.**
- 2. Please remove the intermediary process so that the two similarly situated groups of adult adoptees are treated the same way in the eyes of the law.**
- 3. To remove the ability of birth parents to block the adult adoptee's access to their own adoption records.**

We thank the committee for taking the time and effort to read our testimony.

Aloha,

George and Maile Takane

DATE: February 12, 2016; 8:30am

TO : Representative Della Au Bellati, Chair,
Representative Richard P. Creagan, Vice Chair
House Health Committee

FR : Jan Takane
Adoptee

RE : H.B. 2082
Relating to Adoption Records

I support the intent of HB 2082 to reform our current adoption bill but would like to see a few things changed. I would urge the committee to **remove the intermediary process** that is costly and would deter adoptees like myself from going through a search. Hundreds of dollars is not something that many can afford even if this fee is negotiable. I would also urge the committee to **remove the affidavit of confidentiality**. I think birth parents must face the choices that they made and the consequences be them unintentional that I as an adopted person have had to deal with my entire life. I may not have had any rights then but as an adult of legal standing now, I believe that my rights to information critical about myself should not be kept from me by any government for any reason once I have become an adult in the eyes of the law.

I have had many health issues from the time that I was an infant. My adoptive parents would have been very happy to be able to be able to access such information then as it would have perhaps answered many questions that doctors then posed. And when I currently have health issues as an adult, the prospect becomes even scarier not to have essential information such as whether there is breast cancer in my family or any other diseases link to genetic inheritance.

Beyond such issues is the pain and suffering of not knowing why I was given away. Human being aren't deter by not having the truth about themselves. They end up creating stories that seem to fit what has happened to them. Many times these stories are not one of happiness but one of devastation and despair. Mine is one in which there must have been something wrong with me, something about me that was unloveable. Life from that kind of story isn't very happy. A lifetime of trying to prove I was worthy of being adopted into a wonderful family. Waiting for the other shoe to drop when they might abandon me too. Can you imagine how much life would have been different if only I had the

truth ? And this is the reason why I advocate for open adoptions where adoptees like me never had to make up stories, never have to believe that the fault lies within themselves.

So I urge this Health Committee to recognize that part of the reason for asking for changes to this bill is not only coming from being able to access medical and genetics history but also to improve mental health and well-being simply by having access to our truths.

Please revise this bill to include the following changes:

1. Remove the notification to the last known address of the birth parent that is in the records.
2. Remove the need for the intermediary process for those adopted before December 31, 1990. It is unequal treatment and thus discrimination against this group that comes with added costs should they choose to go through the state via a search.
3. Remove the affidavit of confidentiality which only gives power to the adult who chose to relinquish that child to remain hidden. It's one thing to remain a secret in public but they should not be able to remain hidden from the children they gave birth to because they hold vital health and medical information that may be critical to the adoptee's well-being.

Thank you for your time and attention in hearing my testimony.

Mahalo, Jan Takane

Testifier: **Lawrence F. Newman**
1009 Kapiolani Blvd., Unit 2402
Honolulu, HI 96814

Committee: **COMMITTEE ON HEALTH**
Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair
Rep. Mark J. Hashem
Rep. Marcus R. Oshiro
Rep. Jo Jordan
Rep. Beth Fukumoto Chang
Rep. Bertrand Kobayashi
Rep. Andria P.L. Tupola
Rep. Dee Morikawa

Hearing Date & Time: **Friday, February 12, 2016 at 8:30 am**

Measure number: **HB 2082: RELATING TO ADOPTION RECORDS.**
Amends requirements relating to adoption records and the secrecy of proceedings and records. Allows access to adoption records by parties to the proceedings under certain circumstances.

Dear Members of the Committee on Health,

My name is Larry Newman and as an adopted person, I emphatically support adoption reform that provides unfettered access to one's own adoption records. While Rep. Chris Lee's intentions are honorable by introducing HB 2082, I humbly recommend that the Committee consider amending the bill to align with SB 2153, which provides unfettered access to an adopted person's adoption records.

With regard to health, knowing your family history is an essential tool in maintaining your health. While medications and therapies advance, the medical profession continues to promote *prevention* as the single most important guidepost to staying healthy. While access to this lifesaving information for most is a simple conversation or just by being part of the family's day-to-day activities, adoptees are essentially barred access to their medical history by being denied access to their adoption records. It is key to our history.

National leaders have stated:



“Tracing the illnesses suffered by your parents, grandparents and other blood relatives can help your doctor take action to keep you **and your family** healthy. The bottom line is that knowing your family history can save your life.
- Dr. Carmona, US Surgeon General, Family History Initiative, Thanksgiving 2004



“Most [DNA] tests are pretty much predicated on whether or not there is a family history. Family history is critical for taking advantage of the new genomic medicine which is bubbling up all around us.”

- *Dr. Francis Collins, Director, National Human Genome Research Institute*

Clearly the medical community knows the value of family history in striving for good health, but so do you and your families; *and so does mine.*

On a bright and chilly Saturday morning in November of 2005, I met my birth father’s surviving brother and seven sisters after contacting them two weeks earlier. They lost their brother to a tragic car accident in 1968, but were elated to learn of my existence, which had been a family secret. Soon after hugs and kisses at the front door, they brought me to the kitchen table. And one of the first gifts they gave to me was an extended family tree with every family illness notated by each name.

Guided by their example, I urge the Committee to consider amending HB 2082 to better conform to SB 2153 and release it from Committee to bring access to adoption records one step closer to becoming law.

Thank you,

L. Newman

Martha W. Hulbert
Honolulu, Hawaii
tidemeadows@gmail.com

IN SUPPORT OF HB-2082, WITH REVISION
RELATING TO ADOPTION RECORDS

TO: House Committee On Health
Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair
and respected members

I am in support of HB-2082 with the following revision and for the following reasons:

1. Removal of the initial notice sent to birth parent's last known address on record.
2. Removal of the intermediary process
3. Removal of the affidavit of confidentiality

THERE EXISTS NO ABSOLUTE RIGHT OF CONFIDENTIALITY FOR BIRTH PARENTS WITH RESPECT TO STATE ADOPTION RECORDS.

State relinquishment forms contain no promise of birth parent confidentiality. Verbal promises of confidentiality made to birth mothers with respect to state adoption records are not valid, since state law allows records to be opened upon petition to the court and subsequent granting of the petition.

However, promises of confidentiality made to birth mothers with respect to adoption agency or attorney records are valid, as protected by client privilege. Though these records are subject to court subpoena.

Oregon and Tennessee Supreme Courts have both found that birth parents hold no absolute right to privacy with respect to adoption records.

As a birth mother, I was never verbally, or otherwise, promised confidentiality.

2. CLOSED ADOPTION LAWS ARE FOUNDED IN DISTORTION OF TRUTH

The Uniform Adoption Act, 1994, states, that an 'altered' certificate be created stating the child's new name and parentage "as if the child were born of the adoptive parents. The former [birth] relationship is treated as if it had never happened".

In mid-20th century, when closed, private adoption laws were originally conceived, no studies were undertaken to determine how the secrecy of sealed records and falsity of the altered birth certificate would impact the life experience of adopted persons, adoptive parents, birth parents and their respective families.

3. IMPACT OF SECRECY AND LIES ON THE BIRTH MOTHER EXPERIENCE

To claim protection of birth parent privacy as a reason to retain sealed records is to abuse, a second time, women already once exploited in the loss of their children to closed adoption.

I was told never to expect to see my child again. I had asked and was denied my leaving with him a note of good-by, a photo or knitted blanket. I asked and was denied my placing him in his adoptive mother's arms, with my blessing and love. I was told that to do these things would frighten his new parents, especially his mother, and that certainly I could understand this. I could not, until years later when I learned that such remembrances were perceived to undermine the state requirement that children placed for adoption be fully abandoned.

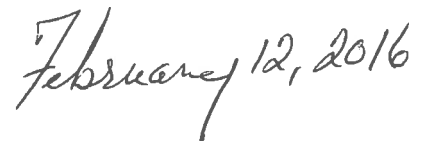
In hundreds of conversations with birth parents, I have heard how secrecy and lies hurt, how they perpetuate shame and how shame perpetuates silence. I have listened to how silence perpetuates a stalled grieving process that can concretize damaged self worth, too often spiraling into depression.

The national trend is toward truth and openness. I had the privilege of advocating for access to original birth certificates in the State of Maine, and without required consent of birth or adoptive parents. I believe there are eleven states that now allow such access. That success resulted in my being recognized by the U. S. Congress as an Angel In Adoption, along with six others of my fellow activists for truth in adoption.

Sincerely,



Martha W. Hulbert



NEIL F. HULBERT
Attorney at Law
1800 ASB Tower
1001 Bishop Street
Honolulu, HI 96813
(808) 222-1312

DATE: February 12, 2016

TO : Representative Della Au Bellati, Chair,
Representative Richard Creagan, Vice Chair
House Committee on Health

RE : HB 2082 Relating to Adoption Records

I support the intent of this bill, but only if the intermediary system and birth parent prior approval requirement are eliminated. SB 2153 as amended is more consistent with constitutional principles and respects the rights of adoptees.

The red herring usually introduced in debates over this issue is birth parent privacy. Generally suppressed in the debate is an adoptee's right to obtain complete information about his or her own adoption and birth heritage. The restriction placed on adoptees is a denial of equal protection since all other citizens have a right to see state records that pertain to them.

Adoption is not a constitutional right, it is statutory. There is no constitutional right to give birth to a child and have someone else assume the legal obligation to raise that child.

A review of adoption statutes proves that birth parent privacy was never a goal or motivating factor. Records were not sealed until 1945, and have always been available to the parties and their lawyers and could be opened by court order to any "proper" person, without the consent of or even notice to the birth parents. L 1945, c.40 pt. of §2. Service of notice of adoption proceedings has always been permitted by publication, obviously a public event. *See, e.g.* RL 1935 §4524 and HRS §578-7. Any "promise" of perpetual confidentiality made by any private or state agency or lawyer was made without authority and was a misrepresentation of the law. A birth has always been essentially a public event with notices of births frequently published in newspapers. Adoption is an inherently non-private event and requires, at a minimum, willing birth parents, willing adoptive parents and the oversight and approval of the state. *Doe v. State of Oregon*, 164 Or. App. 543, 993 P.2d 822 (1999).

Current law places an undue burden on adoptees in obtaining access to their adoption records and denies them the right to life, liberty and the pursuit of happiness guaranteed under Art. I, Sec. 2 and equal protection of the law and the enjoyment of civil rights guaranteed under Art. I, Sec. 5 of the Hawai'i Constitution. I cannot think of a more basic human and civil right than the right to know one's birth heritage.

Erin Iwalani Castillo
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To: Representative Della Au Belatti, Chair,
Representative Richard P. Creagan, Vice Chair
House Health Committee

From: Erin Iwalani Castillo LCSW, DCSW Licensed Clinical Social Worker, mother, adoptee

Re: H.B. 2082, Relating to Adoption Records

Aloha. I am an adoptee that was adopted through Queen Liliuokalani Children's Center. When the law changed in 1991, I was assisted by an intermediary and met my birth family. I had my adoptive parents full support during the process.

The reunion was positive and the information received was priceless.

I received medical information from my family. It is so important to have family medical history. This information has been invaluable to me and my children.

I am assisting my nephew in locating his birth grandparents. He has two beautiful children. Maternal grandparent medical history would be so important for him and his children to have.

Openness in adoption just makes good sense. Secrets and lies just make us sick.

Give adoptees and their families their birthright, their information.

In closing, I urge the committee to:

1. Remove the necessity of notice to the birth parent in order for the adopted adult to receive their adoption record.
2. Remove the intermediary system, and the necessity of a potentially costly search.
3. Remove the affidavit of confidentiality that blocks release of records to the adopted person.

Once adoptees are adults and have legal standing and no children are involved that need protection, the state should not shelter any adults from the consequences of their decisions or actions or block them from the joy and healing that could possibly result if the parties have contact, or even from just having this fundamental birth information.

Recently, this story was sent to me by a colleague. In another state, there was a reunion of an 82-year-old adoptee with her 96-year-old birthmother after a 50-year search! I wonder, why were they kept apart from each other? How can you make up for lost time (you can't!)

Here is the link to the story and a powerful short newscast video
<http://www.pressherald.com/2016/02/05/woman-82-tracks-down-and-meets-96-year-old-birth-mother/>

Please amend this law.

Mahalo for your consideration of my testimony.

Erin Iwalani Castillo LCSW DCSW
Licensed Clinical Social Worker, mother, adoptee

HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 11, 2016 9:08 PM
To: HLTtestimony
Cc: katalina2008@gmail.com
Subject: Submitted testimony for HB2082 on Feb 12, 2016 08:30AM

HB2082

Submitted on: 2/11/2016

Testimony for HLT on Feb 12, 2016 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Kat McGlone	Individual	Support	Yes

Comments: Support with amendments. I tried to upload a file of testimony and submit, but I get a screen that page not found. I will try to submit my testimony directly to the Health Committee. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Date: 2-11-16 for House Health Committee Hearing 2-12-16

Re : HB 2082 Relating to Adoption Records

Aloha Chair Belatti, Vice Chair Creagan and Health Committee Members:

This testimony is in support for HB 2082 with some modifications. I support the intent of this bill to reform the current adoption law and create more openness within adoption by adding a contact preference form. I urge the committee to amend this bill to match SB2153 that removes the intermediary system and the veto power of the birth parent to stop release of an adopted adults records.

I have both personal and professional knowledge about adoption. I am an adoptee who also has a PhD in social welfare from University of Hawai'i and has studied child welfare issues, especially adoption and foster care.

There are numerous reasons to support modernizing the adoption law. . . reasons such as

- early historical intent of adoption laws,
- the current position of credible organizations who support access to birth information for adult adoptees,
- our local Hawaiian cultural roots of 'ohana and hānai,
- legal facts that this law now affects autonomous adults (the adopted children who are no longer children),
- different societal norms than when these laws were passed.

In the mid-20th century, saving children from “unsavory” beginnings of “illegitimacy” was to create a new family by adoption and to legally wipe out their origins to spare them from a birth certificate marked ILLEGITIMATE. But today our society no longer stigmatizes children born to unmarried mothers. These births are quite common – nationally in 2013, 40.6% of births to women 15 – 44 were to unmarried women.¹

All involved in the adoption were supposed to not look back. While most of us adoptees were raised well or well enough in our adoptive homes, evidence shows that you can't 100% disconnect from your biological, genetic and familial origins. In addition, adoption has a lifelong impact; it's not a single event.

Growing up as an adopted child in the closed adoption system, I had no information about my family, my ethnicity or my medical history. Whenever I went to a doctor, the answer to questions about medical history was simply “adopted.” These days it is acknowledged that genetics and family history play an important role in health.

Hawaiian cultural traditions of 'ohana, and hānai feature openness and inclusion. For my dissertation, I interviewed adult Hawaiians about their experience of being hānai. The Hawaiians I talked to were not raised by their birth parents, yet as children, they all knew their birth mothers and had contact with their siblings. Some said they were very close to these relatives and some

were not. The persons raised hānai remained connected to their family and their genealogy and did not have issues about identity. In contrast, adoptees in closed adoptions can be impacted by identity issues that can affect their well-being, and they often spend time and resources trying to find out basic information about themselves. Hawaiians and other traditional communities have known all along what modern open adoption practice knows today. While children can be well-cared for in one family, they can still remain connected to their other family.

The intent of the original legislation in the U.S. to seal adoption records and the writings of the leading child welfare organization at the time, the U.S. Government's Children's Bureau, clearly show that the records were preserved so adult adopted persons could come back and retrieve the information when they were adults.² Today, this same organization, the U.S. Children's Bureau has a guide to searching for birth relatives.³

Many mainstream organizations endorse access to records for adult adoptees, such as the Child Welfare League of America,⁴ the American Academy of Pediatrics,⁵ and North American Council on Adoptable Children.⁶ People affected by these laws – adopted persons, birth parents, and adoptive parents, as well as social workers who helped create adoptions have written extensively and spoken on the need to reform adoption law and end the secrecy.^{7,8} Much evidence exists to support adults access to their records.^{8,9}

Unfortunately, the Hawai'i law treats adult adopted persons as perpetual children who can view their records only if their birth parents do not deny them access to this information. The birth parent's wishes supersede the adopted adult's need for the information. The state was rightly involved to protect children during an adoption. However, when children grow up, what is the reason for the State to block this information from autonomous adults when all other adults can freely access their birth information?

The institutionalized secrecy of adoption through sealed records may reflect the embarrassment and shame of unwanted pregnancy, unpreparedness to parent, and relinquishing one's own child no matter how little choice the birth parent felt they had during a time when society stigmatized sex and childbirth outside of marriage. Keeping secrets doesn't mean the birth parent can forget all about it. For example, my birth father disclosed to me when I first met him that not telling anyone about me "ate him up inside." It happened to be the day the Berlin Wall came down, an apt metaphor for my first meeting my father.

We request that the committee change the law in two ways:

1. Remove the intermediary system
 - a. To stop the unequal treatment of adoptees based on the year of their adoption.
 - b. Have one system to request and receive records for all parties of the adoption rather than two sets of procedures based on year of adoption.
 - c. Older adoptees will no longer have to pay higher amounts of money for a search.
 - d. Simplifying the law will streamline the process for Family Court.
2. Remove the affidavit of confidentiality option and notice to the other party. This option could override the adult adopted person's interest in knowing their own identity and birth information, heritage, and potential access to family medical information.

- a. Removing this option will then respectfully treat the adopted adult as an adult rather than a perpetual child in the law who needs protection.
- b. What is the state's interest in keeping secrets from adult family members?
- c. Higher court decisions in Oregon and Tennessee upheld access to birth information legislation and found that birth parents did not have a guarantee of anonymity from their own children.^{2, 8, 9, 10}

Times have changed. Being born to an unmarried mother is commonplace. Single mothers raise children. Genealogy and genetics are known to be important. It's time to modernize the law. I have also attached an image from a recent news story of an 82-year-old adoptee who after a 50 year search, found her 96-year-old birth mother. Allow adult adoptees to gain the information that is necessary for their health, genealogy, family history, and self-knowledge. These are a few of the reasons I support the reforms described above to the adoption law. I thank you for the opportunity to testify.

Respectfully,

Kat McGlone, PhD



References related to HB 2082

- ¹ CDC National Center for Health Statistics. Downloaded 2-11-16 from <http://www.cdc.gov/nchs/fastats/unmarried-childbearing.htm>
- ² Samuels, Elizabeth. (2001). The idea of adoption: An inquiry into the history of adult adoptee access to birth records. *Rutgers Law Review* 53, 367-437. Downloaded 2-27-11 from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=275730
- ³ Child Welfare Information Gateway, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2011). *Searching for Birth Relatives. Factsheet for Families*. Downloaded 1-31-2016 https://www.childwelfare.gov/pubPDFs/f_search.pdf Washington DC: Author.
- ⁴ Child Welfare League of America (2000). *Standards of Excellence for Adoption Services*. Washington, DC: Author.
- ⁵ American Academy of Pediatrics. (2014). National Adoption Center: Open Records. (Endorsement.) *Pediatrics* 133, 6. adopt.org/our-policies#Open and www.pediatrics.org/cgi/doi/10.1542/peds.2014-0901 Downloaded 2-1-16
- ⁶ North American Council on Adoptable Children. (2005). *Access to Records* position statement. Downloaded 2-21-11 from <http://www.nacac.org/policy/positions.html#Records>
- ⁷ Sorosky, Arthur, Baran, Annette, & Pannor, Reuben. (1989, 1978). *The Adoption Triangle: Sealed or opened records: How they affect adoptees, birth parents, and adoptive parents*. San Antonio, TX: Corona.
- ⁸ Evan B. Donaldson Adoption Institute (2010). *For the records II: An examination of the history and impact of adult adoptee access to original birth certificates*. Policy & Practice Perspective. New York: Author. http://adoptioninstitute.org/old/publications/7_14_2010_ForTheRecordsII.pdf Downloaded 2-1-16.
- ⁹ Evan B. Donaldson Adoption Institute (2007). *For the records: Restoring a legal right for adult adoptees*. New York: Author. Downloaded 2-1-16 from http://adoptioninstitute.org/old/publications/2007_11_For_Records.pdf
- ¹⁰ Samuels, Elizabeth J. (2013). Surrender and Subordination: Birth Mothers and Adoption Law Reform. *20 Michigan Journal of Gender and Law* 33. Downloaded 2-1-16 from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2233400
- ¹¹ Florida woman, 82, tracks down and meets 96-year-old birth mother. (2016, Feb.5). *Portland Press Herald* Downloaded on 2-11-16 from <http://www.pressherald.com/2016/02/05/woman-82-tracks-down-and-meets-96-year-old-birth-mother/>