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S.B. 340: Disclosure of Social and Medical History of the Biological Parents of an Adopted Child

Timothy N. O'Connell
University of Dayton

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S. B. 340: DISCLOSURE OF SOCIAL AND MEDICAL HISTORY OF THE BIOLOGICAL PARENTS OF AN ADOPTED CHILD.

I. INTRODUCTION

Under Ohio law, the probate court is required to appoint an agency or person to investigate the background of both the minor and the adoptive parent before a child can be adopted.¹ The purpose of this investigation is to ascertain whether the proposed adoption is in the best interest of the minor.² The investigation report is required to contain four types of information about the child: (1) the physical, mental, and developmental condition of the child; (2) the family background; (3) the reasons for the placement; and (4) the interested parties' attitudes toward the proposed adoption.³ The law specifies that all papers and records relating to the adoption are subject to inspection only upon the consent of the court.⁴

Until recently, the information collected under family background included only names and identifying data regarding the biological parents. This information did not provide information which was useful in the medical treatment of a child after adoption.⁵ Complete health histories and medical data were not available for adoptive parents for future reference. These limitations created obstacles for physicians treating adopted children because approximately three-fourths of the information a physician seeks in evaluating the health of a baby involves medical history.⁶

The genetic makeup, ethnic and racial origin, and psychosocial factors have a significant impact on the infant's health and development.⁷ There are approximately 2,500 genetic disorders, and all individuals possess three to eight potentially harmful genes which might be transmitted to their offspring.⁸ Some well known examples of single gene defects include phenylketonuria, cystic fibrosis, Tay-Sachs, hemophilia, sickle cell anemia, and thalassemia.⁹ Five percent of all in-

1. OHIO REV. CODE ANN. § 3107.12 (Page Supp. 1978).

2. *Id.*

3. *Id.*

4. *Id.* § 3107.17(B).

5. Interview with Ohio State Senator O'Shaughnessy, sponsor of Senate Bill 340 (November 16, 1978).

6. Testimony by Dr. Stella B. Kontras, M.D., Professor, Ohio State University, College of Medicine; on Senate Bill 340, February 22, 1978 (copy on file with the Ohio Legislative Service Commission Library).

7. Letter from Dr. Stella B. Kontras, M.D., to Senator O'Shaughnessy (February 22, 1978) (Senator O'Shaughnessy's file).

8. *Id.*

9. *Id.*

fants have some type of birth defect and thirty percent of these are inherited.¹⁰ Many common disorders, such as cleft lip and palate, open spine disorders, diabetes and heart disease may have a genetic base.¹¹ Physicians assert that family information can often be the clue leading to early detection and possible treatment of genetic disorders.¹² Medical histories of family members of the biological parents are often helpful in diagnosing and treating some of these disorders.

The events during pregnancy may also have a serious impact on the developing fetus. Twenty percent of birth defects may be related to drugs, alcohol ingestion, or poor prenatal care of the pregnant mother.¹³ When this information is not available, the examining physician, and later, the adoptive family may lack facts helpful in the care of the child.¹⁴ Thus, although family history, maternal history of pregnancy, and the history of labor and delivery are essential to a doctor, the law as it stood contained no provision for the acquisition of this information.

The Ohio Legislature responded to this problem by passing Senate Bill 340, which went into effect on August 29, 1978.¹⁵ The intent of the legislature was to encourage the taking of the social and medical histories of the biological parents so that, given the potentiality of birth defects or disease, early detection and proper treatment would be possible.¹⁶ Where biological parents decline to supply the requested information, no sanctions are imposed; where there is compliance, the information is released upon the consent of the probate court.

II. ANALYSIS

Senate Bill 340, the new amendment to the adoption law, requires the acquisition of additional information in two areas, both of which expand the family background reported under prior law. The first area is the social history, including information which describes and identifies the cultural and ethnic background of the natural parents and any other ancestors. The second area is medical history. The information sought in this area attempts to identify major congenital or familial diseases and malformations of the child's ancestors.¹⁷

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Testimony of Dr. Stella B. Kontras, M.D., *supra* note 6.

15. The Bill was passed on April 27, 1978, and approved by Governor Rhodes on May 30, 1978.

16. Interview with Senator O'Shaughnessy, *supra* note 5.

17. OHIO REV. CODE ANN. § 3107.12(D) (Page Supp. 1978). "The medical history shall, at a minimum, attempt to identify major diseases and malformations of the parent and any other ancestor that are or may be congenital or familial."

The methods used to obtain the histories which are required by the new amendment include personal interviews, use of available records, and medical examinations of the biological parents. The investigator may interview the biological parents or other persons who may have knowledge about the parents and their families.¹⁸ The natural parents have the right to refuse to submit to an interview to supply this information, and that refusal will not invalidate, delay, or otherwise affect the adoption.¹⁹ The investigator may use any available records, but consent of the natural parents to release the information to the agency investigator is required.²⁰ Finally, the investigator may request one or both of the biological parents to undergo a medical examination.²¹ This is simply a request. There are no sanctions which force compliance. Employment of these methods will increase the likelihood of actually obtaining health information and the reliability of that information.

To be of value to the adoptive parents, to physicians, and the adopted children, however, this information must be readily available. The new amendment permits inspection of these adoption histories by adopting parents, and by the adopted minors when they attain majority, upon request to and consent of the probate court.²² This provision, allowing for the inspection of social and medical histories, may be a source of difficulty with this amendment. Critics have suggested that the privacy of the biological parents is not adequately protected;²³ once the information has been gathered, the biological parents have no control over whether it is subsequently released or withheld.²⁴ Additionally, the availability of this information to the adopted child, upon reaching the age of majority, may make it easier for the adopted child to trace his natural parents.²⁵

Senator O'Shaughnessy, the bill's sponsor, argues that adequate safeguards are incorporated into the amendment because the identify-

18. *Id.* § 3107.12(D). "The social and medical histories may be obtained through interviews with the biological parents or other persons"

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* § 3107.17. "During the minority of the adopted person only the adoptive parents of the person may inspect the form and only upon request. When an adopted person reaches majority, only he may inspect the form."

23. Testimony of Ruth Sherlock, Executive Secretary of Social Concerns Department of the Ohio Catholic Conference, on Senate Bill 340 before the Ohio State Senate Judiciary Committee (January 10, 1978); letter from Ronald Herring, Director of Family and Children's Services for Lutheran Social Services of Central Ohio, to Senator O'Shaughnessy (March 25, 1977), (copy on file with the Ohio Legislative Service Commission Library).

24. Testimony by Ruth Sherlock, *supra* note 23.

25. Letter from Ronald Herring, *supra* note 23.

ing data is separated from the social and medical histories by the use of different forms. He interprets the law to provide that only the medical forms will be available to the adoptive parents and the adopted child.²⁶ The law prior to the amendment already required the taking of this identifying data, but it could be obtained only with the consent of the court.²⁷ According to Senator O'Shaughnessy, this new provision offers no greater opportunity to trace the natural parents than was already possible under existing law.²⁸

The language of the statute, however, does not clearly specify what information may be inspected. It requires that all papers and records pertaining to social or medical histories of the biological parents be filed in the permanent records kept by the court.²⁹ It limits inspection of the form: "[D]uring the minority of the adopted person only the adoptive parents of the person may *inspect the form* and only upon request [to the probate court]. When an adopted person reaches majority, only he may *inspect the form*."³⁰ The use of the word "form" can be interpreted as limiting that which may be released to medical and social histories only. The probate court then has the discretion to make "all or part of the information available."³¹ Because section 3107.17(D) refers only to forms pertaining to social or medical histories, this authorization to make all of the information available would be limited to information on the social and medical history forms.

The bill also contains a specific provision which states,

[T]he person who makes the investigation shall not include on the form the names of the biological parents or other ancestors, or other identifying data that would allow a person, except the court or the department, agency, or other person that made the investigation, to determine the identity of the biological parents or other ancestors.³²

Therefore, if only the form containing the social and medical histories is open to inspection and this form cannot contain any identifying data, the new law should not directly increase the ability to trace biological parents.

26. Interview with Senator O'Shaughnessy, *supra* note 5.

27. OHIO REV. CODE ANN. § 3107.05 (Page 1972). "The reports of the investigation required . . . shall be available for inspection only upon the personal direction of the probate judge."

28. Interview with Senator O'Shaughnessy, *supra* note 5.

29. OHIO REV. CODE ANN. § 3107.17(D) (Page Supp. 1978). "All forms that pertain to the social or medical histories of the biological parents of an adopted person and that were completed pursuant to division (D) of section 3107.12 of the Revised Code shall be filed only in the permanent record kept by the court."

30. *Id.* (emphasis added).

31. *Id.*

32. *Id.* § 3107.12(D).

This is not to say that the new provision eliminates the possibility of tracing biological parents. This possibility has always been present under Ohio law since the probate court has discretion with regard to the information gathered during the adoption proceedings.³³ One judge expressed concern about this problem when looking at the new legislation. He said "I am strongly convinced that adoption should, like birth and death, put an impenetrable barrier between the biological parent and the child."³⁴ Accordingly, he urged the use of stronger language to keep identifying data out of the records.³⁵ His suggestion, however, was not incorporated into the bill.

Without this language, the provisions of the amendment may slightly increase the chance of tracing natural parents. If the adopted child does obtain court's consent to inspect all records of the adoption proceedings, he would have a greater quantum of information about the natural parents by virtue of the social and medical histories provisions. This data might aid tracing.

On the other hand, the most important information to a person attempting to trace parents is the names and identifying data. This information was required to be included in adoption records under the old law and the release of this information by the probate court has always been contingent upon a showing of good cause.³⁶ This amendment has no impact on that situation. On balance the increased protection of the child's health should outweigh the slightly increased tracing potential. The amendment is concerned with the protection of public health, which is one of the traditional duties of state government. The bill should be viewed as a means of fulfilling this duty and not as an expression of legislative insensitivity for privacy in adoption proceedings.

Timothy N. O'Connell

Code Sections Affected: 3107.12 & 3107.17.

Effective Date: August 29, 1978.

Sponsor: O'Shaughnessy (S).

Committee: Judiciary (H & S).

33. OHIO REV. CODE ANN. § 3107.05 (Page 1972), (current version at § 3107.05 (Page Supp. 1978)).

34. Letter from U.S. District Judge Don J. Young, Northern District of Ohio, to Senator O'Shaughnessy (September 19, 1977) (Senator O'Shaughnessy's file).

35. *Id.*

36. OHIO REV. CODE ANN. § 3107.05 (Page Supp. 1978).

