STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

June 23, 2011

SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NOS. 799 and 1399

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill Nos. 799 and 1399, which reforms access to birth records, with my recommendations for reconsideration. The issues addressed in this bill have been passionately debated for more than thirty years. After closely studying the bill, and listening to the many sound and sincere ideas for reform, I agree with the sponsors that it is time for a new approach to adoption records in New Jersey that eliminates the burdensome requirement of obtaining a court order to access basic familial information.

Unquestionably, the decision of any biological parent to seek adoptive parents for a child is an enormously complicated choice. The emotional struggle preceding any adoption decision is unlike any other step facing a parent, with ramifications for the mother, father, and child that will endure throughout their lives. And for many birth parents, the protections of anonymity are a significant consideration when choosing adoption.

Yet I also strongly empathize with the adopted child, and adoptive parents, who may long to know the identity of the birth parents. Under our State's current laws, the process of searching for birth parents requires a costly and cumbersome journey through the court system, with no uniform and objective standards for accessing birth records, or even medical information. As the robust public debate accompanying this bill has demonstrated, the current system is not in the best interests of New Jersey's adopted children, and places an often insurmountable barrier between adopted children and their birth parents.

I commend the sponsors of this bill for their leadership on this critical issue, and their work in bringing forth needed changes. And while I share the sponsors' goals of timely and significant reform, I believe that additional safeguards are needed to best balance the needs of adoptees seeking the identity of their biological parents with the expectations of birth parents who may wish for their identities to remain private.

As passed, Senate Committee Substitute for Senate Bill Nos. 799 and 1399 would allow an adult adoptee, an adult direct descendant of an adoptee, or the adoptive parent of a minor, to request an uncertified, long-form copy of the original birth certificate from the State Registrar. For one year following enactment of accompanying regulations, the bill would allow birth parents to submit a request for nondisclosure of their personal information. Parents requesting nondisclosure must provide medical, social, and cultural information to the State to be maintained permanently. Failure to provide this information within sixty days would result in a nullification of the birth parent's request for nondisclosure, and allow for access to all of their identifying information.

For adoptions after the effective date of the bill, birth parents would be permitted to submit a preference for future contact with the child: direct, no contact, or contact only through an intermediary. Birth parents preferring no contact must provide the State with updated family history information every ten years until the parent reaches the age of forty, and every five years thereafter.

In addition, the bill removes the right of an adoptive parent to petition a court to have the child's birthplace changed to the adopting parent's residence. Finally, the bill

requires the Department of Health and Senior Services to perform media outreach throughout the country to ensure public awareness as to the bill's provisions.

I agree with the laudable goals of these changes, but believe that the administrative structure used to implement this transparency must be carefully constructed to avoid any unwanted breaches of privacy, and the potential chilling effect on adoptions. The recommendations outlined below will achieve those goals, while respecting and protecting the interests of adoptees, birth parents and adoptive parents.

Specifically, I recommend the bill be amended to allow an adoptee to obtain an original birth certificate without involvement from the courts. Consistent with that approach, an adoptee could enlist the services of a confidential intermediary at an approved adoption agency to conduct a diligent search for his birth parents, and obtain their consent for additional contact. If a birth parent chooses not to consent to a release of the child's original birth certificate, the birth parent may alternatively provide the confidential intermediary with family medical history information. Importantly, in cases where an approved intermediary is unable to locate a birth parent following twelve months of diligent investigation, the State may release the original birth certificate to the adoptee if desired.

In addition, I recommend that for future adoptions, birth parents be required to submit an information statement patterned off the standards contained in Senate Committee Substitute for Senate Bill Nos. 799 and 1399. This statement will memorialize a birth parent's preferences for future communication with the adopted child: complete information sharing, sharing via an intermediary, or sharing only non-identifying medical

information. I believe these narrow recommendations, which preserve the spirit and goals of the original bill, strike an appropriate balance. Once the Legislature concurs, these new standards will ease the restrictions on adoptees' access to critical information, while protecting the potential privacy expectations of birth parents.

Again, I thank the sponsors for their courageous leadership on this important landmark proposal that will transform the adoption law in this State. I look forward to swift passage of these recommendations, which will be promptly signed into law.

Accordingly, I herewith return Senate Committee Substitute for Senate Bill Nos. 799 and 1399 and recommend that it be amended as follows:

Page 3, Section 1, Line 39:	After "be broken except by" delete ":"
Page 3, Section 1, Line 40:	Delete "(1)"
Page 3, Section 1, Line 40:	After "court of competent jurisdiction" delete ";"
Page 3, Section 1, Line 40:	After "or" insert "in accordance with the provisions of P.L.____, c.___ (C.___) (pending before the Legislature as this bill)."
Page 3, Section 1, Lines 41-47:	Delete in their entirety
Page 4, Section 1, Line 1:	Delete in its entirety
Page 4, Section 1, Line 2:	After "Thereafter whenever a" delete "certification or certified copy of a"
Page 4, Section 1, Line 5:	After "competent jurisdiction" insert ", or the provisions of P.L. ____, c.____ (C.) (pending before the Legislature as this bill),"
Page 4, Section 1, Line 6:	After "original certificate of birth" delete ", or" and insert "."
Page 4, Section 1, Lines 7-10:	Delete in their entirety

Page 4, Section 2, Lines 13-48:	Delete in their entirety
Page 5, Section 2, Lines 1-23:	Delete in their entirety
Page 5, Line 24:	Insert new section 2 to read as follows:

"2. (New section) a. As used in this act:

"Adoption facilitator" means, with respect to a particular adopted person, the adoption agency that facilitated the adoption or an attorney that represented a party in the adoption, or, in the case of a private adoption, the approved agency assigned by the court to conduct the home study that preceded the adoption;

"Authorized requester" means an adopted person 18 years of age or older, a direct descendant 18 years of age or older of a deceased adopted person, or the adoptive parent or guardian of a minor adopted person;

"Confidential intermediary" means a person, employed by an approved adoption agency, who conducts a diligent search to locate a birth parent on behalf of an authorized requester, or facilitates communication between an authorized requester and a birth parent;

"Diligent search" means a review of records and other relevant materials for the purpose of obtaining information regarding the identity and whereabouts of a birth parent;

"Direct descendant" means a natural or adopted child of the adopted person;

"Family medical history information" means information about the medical, cultural, and

social history of an adopted person's birth family that is provided to an adoption facilitator or confidential intermediary by a birth parent, including the medical and social characteristics of birth family members and family health histories."

Page 5, Section 3, Lines 25-42: Delete in their entirety

Page 5, Line 43: Insert new section 3 to read as follows:

"3. (New section) a. In the case of a person adopted prior to the effective date of this section, the State Registrar shall provide an authorized requester with the uncertified, long-form copy of the original certificate of birth when the authorized requester submits a written, notarized request accompanied by written, notarized consent from a birth parent or birth parents to release the certificate of birth to the authorized requestor on a form prescribed by the Department of Health and Senior Services and any applicable fee. The State Registrar shall redact the name of any birth parent who has not submitted a consent form prior to releasing the certificate of birth to the authorized requestor. The State Registrar shall retain consent forms in the adopted person's original certificate of birth file.

b. If an authorized requester cannot locate either or both birth parents of a person adopted prior to the effective date of this section, the authorized requester may obtain from the State Registrar a list of approved adoption agencies that

provide diligent searches for birth parents by a confidential intermediary. The Department of Children and Families shall maintain a list of approved adoption agencies that it shall update, as appropriate, and make available to the Department of Health and Senior Services for use in accordance with the provisions of this act. A confidential intermediary shall maintain the results of a search and the related information in confidence and shall not share the information with the authorized requester or any other person except in accordance with the provisions of this section.

c. In the case of an authorized requestor who uses a confidential intermediary to conduct a diligent search for the birth parents of a person adopted prior to the effective date of this section:

(1) If, as a result of the search, a birth parent consents to the release of an uncertified, long-form copy of the original certificate of birth of the adopted person to the authorized requester, the confidential intermediary shall obtain a written, notarized consent to release on a form prescribed by the Department of Health and Senior Services. The State Registrar shall provide an uncertified, long-form copy of the original certificate of birth of the adopted person to the authorized requester in accordance with the provisions of subsection a. of this section.

(2) If, as a result of the search, a birth parent is located but does not consent to the release of the uncertified, long-form copy of the original certificate of birth of the adopted person to the authorized requester, the confidential intermediary shall request that the birth parent submit family medical history information to the State Registrar on a form prescribed by the Department of Health and Senior Services, and to update that form, as appropriate. The State Registrar shall retain the initial and any updated forms in the adopted person's original certificate of birth file. Upon receipt of an initial family medical history information form, the State Registrar shall provide a copy of the initial form to the authorized requester with all identifying information redacted upon payment of any applicable fee. Updated family medical history information forms shall be provided upon a subsequent written, notarized request to the State Registrar by an authorized requester and upon payment of any applicable fee. The confidential intermediary shall advise the birth parent that if the birth parent wishes to consent to the release of the uncertified, long-form copy of the original certificate of birth to the authorized requester in the future, the birth parent may complete and submit a consent form to the State Registrar.

(3) If the confidential intermediary is unable to locate the birth parents within 12 months after the commencement of the diligent search,

the confidential intermediary shall so advise the State Registrar, on a form prescribed by the Department of Health and Senior Services. The State Registrar shall retain the form in the adopted person's original certificate of birth file and provide an uncertified, long-form copy of the original certificate of birth of the adopted person to the authorized requester upon payment of any applicable fee.

(4) If the search reveals that the birth parents are deceased, the confidential intermediary shall so advise the State Registrar, on a form prescribed by the Department of Health and Senior Services. The State Registrar shall retain the form in the adopted person's original certificate of birth file and provide an uncertified, long-form copy of the original certificate of birth of the adopted person to the authorized requester upon payment of any applicable fee.

(5) If the search reveals that a birth parent is unable to complete a consent form because the birth parent is an incapacitated individual as defined in N.J.S. 3B:1-2, the confidential intermediary shall attempt to obtain consent from the legal guardian of the birth parent. Upon receipt of a written, notarized consent from the legal guardian of the birth parent, the State Registrar shall retain the form in the adopted person's original certificate of birth file and provide the uncertified, long-form copy of the original certificate of birth of the adopted person to

the authorized requester upon payment of any applicable fee. If the confidential intermediary is unable to obtain such consent, the uncertified, long-form copy of the original certificate of birth shall not be provided to the authorized requestor.

(6) If the search reveals that:
(a) one birth parent consents and one birth parent, or the legal guardian of a birth parent who is an incapacitated individual, does not consent to the release of the uncertified, long-form copy of the original certificate of birth of the adopted person to the authorized requester, the State Registrar shall redact the name of the birth parent who does not consent to the release from the uncertified, long-form copy of the original certificate of birth and provide the redacted copy to the authorized requester upon payment of any applicable fee;

(b) one birth parent is deceased and the surviving birth parent does not consent to the release of the uncertified, long-form copy of the original certificate of birth of the adopted person to the authorized requester, the State Registrar shall redact the name of the surviving birth parent from the uncertified, long-form copy of the original certificate of birth and provide the redacted copy to the authorized requester upon payment of any applicable fee; or

(c) one birth parent cannot be located within 12 months after commencement of the

diligent search, the State Registrar shall provide the uncertified, long-form copy of the original certificate of birth of the adopted person, including information concerning the birth parent who cannot be located, to the authorized requester upon payment of any applicable fee. The State Registrar shall provide information related to the other birth parent based on the results of the search in accordance with the provisions of this section.

d. The State Registrar shall include information about counseling resources, for the purpose of making contact with the birth parent, with the uncertified, long-form copy of the original certificate of birth provided pursuant to this subsection."

Page 5, Section 4, Lines 44-48: Delete in their entirety

Page 6, Section 4, Lines 1-48: Delete in their entirety

Page 7, Section 4, Lines 1-5: Delete in their entirety

Page 7, Line 6: Insert new section 4 to read as follows:

"4. (New section) a. In the case of a person adopted on or after the effective date of this section, the birth parent shall submit to the adoption facilitator a birth parent information statement, on a form prescribed by the Department of Children and Families. The adoption facilitator shall inform both birth parents of the procedures for submitting a birth parent information statement, in accordance with procedures established by the Department of Children and Families.

The birth parent information statement

shall be provided to the authorized requester, upon submission of a written, notarized request for an uncertified, long-form copy of the original certificate of birth to the State Registrar pursuant to Section 5 of P.L. ___, c.___ (C.___) (pending before the Legislature as this bill) and upon payment of any applicable fee. The birth parent may submit a revised or updated birth parent information statement to the adoption facilitator, which revised statement shall be maintained in accordance with subsections d. and e. of this section.

b. A birth parent information statement submitted by a birth parent shall specify the following options, from which the birth parent shall select one:

(1) "Complete information sharing" means a birth parent consents to the release of an uncertified, long-form copy of the original certificate of birth of the adopted person, including the birth parent's name, last known address, and telephone number, if available, and the unredacted family medical history information;

(2) "Intermediary information sharing only" means a birth parent does not consent to the release of an uncertified, long-form copy of the original certificate of birth of the adopted person but agrees to communication with the authorized requester through a confidential intermediary, or another third party designated by the birth parent on the birth parent

information statement; or

(3) "Medical information sharing only" means a birth parent does not consent to the release of an uncertified, long-form copy of the original certificate of birth of the adopted person or to communication with the authorized requester through a confidential intermediary, in which case communication with the authorized requester will be limited to the sharing of non-identifying family medical history information through a confidential intermediary, or another third party designated by the birth parent on the birth parent information statement.

c. If a birth parent does not submit a birth parent information statement, the birth parent shall be deemed to have selected the "medical information sharing only" option.

d. The adoption facilitator shall transmit the completed birth parent information statement and any revised statement to the State Registrar, who shall retain the statement in the adopted person's original certificate of birth file.

e. A copy of the completed birth parent information statement and any revised statement also shall be retained in the adopted person's confidential case records maintained by the adoption facilitator."

Page 7, Section 5, Lines 7-37: Delete in their entirety

Page 7, Line 38: Insert new section 5 to read as follows:

"5. (New section) a. In the case of a person

adopted on or after the effective date of this section, an authorized requester may submit to the State Registrar a written, notarized request for an uncertified, long-form copy of the original certificate of birth of the adopted person.

b. Upon receipt of the request, the State Registrar shall review the adopted person's original certificate of birth file to ascertain which option the birth parent selected, in accordance with subsection b. of section 4 of P.L. , c. (C.)(pending before the Legislature as this bill).

(1) If the birth parent information statement specifies "complete information sharing," the State Registrar, upon payment of any applicable fee, shall provide an uncertified, long-form copy of the original certificate of birth of the adopted person to the authorized requester and unredacted family medical history information submitted by the birth parent.

The State Registrar shall include with the uncertified, long-form copy of the original certificate of birth information about counseling resources and the use of a confidential intermediary, for the purpose of making contact with the birth parent.

(2) If the birth parent information statement specifies "intermediary information sharing only," the State Registrar shall inform the authorized requester of the birth parent's wish to communicate with the authorized requester through a confidential intermediary, or another

third party designated by the birth parent on the birth parent information statement.

(3) If the birth parent information statement specifies "medical information sharing only," the State Registrar shall inform the authorized requester of the birth parent's wish for communication limited to the sharing of non-identifying family medical history information with the authorized requester through a confidential intermediary, or another third party designated by the birth parent on the birth parent information statement.

(4) If both birth parents have not submitted birth parent information statements pursuant to section 4 of P.L.___,c.___(C.___) (pending before the Legislature as this bill) specifying "complete information sharing," the State Registrar shall: redact the name and other identifying information of the birth parent who has not specified "complete information sharing" from the uncertified, long-form copy of the original certificate of birth; and, upon payment of any applicable fee, provide the redacted copy to the authorized requester and share other information based on the statements in accordance with this section.

c. If the birth parent submits a revised statement to the adoption facilitator, the adoption facilitator shall retain a copy of the revised statement in the adopted person's file and shall forward the revised statement to the State Registrar, who shall share information with the authorized requester based on the

revised statement in accordance with the provisions of this section."

Page 7, Section 6, Lines 39-48: Delete in their entirety

Page 8, Section 6, Lines 1-5: Delete in their entirety

Page 8, Line 6: Insert new section 6 to read as follows:

"6. (New section) a. Nothing in this act shall affect searches conducted pursuant to regulations adopted by the Department of Children and Families with respect to adoptions facilitated by the Department of Children and Families.

b. Nothing in this act shall alter the requirement for an approved adoption agency to provide a prospective parent with non-identifying information relevant to the child's development, including the child's developmental and medical history, and the birth parents' complete medical histories, as provided in section 1 of P.L.1979, c.292 (C.9:3-41.1)."

Page 8, Section 7, Lines 7-19: Delete in their entirety

Page 8, Line 20: Insert new section 7 to read as follows:

"7. (New section) In the event that the adopted person was under the custody of the Division of Youth and Family Services in the Department of Children and Families at the time of the person's adoption, the director of the division shall provide, upon request by an authorized requester, a statement providing summaries of the medical and social characteristics of birth family members, family health histories, the facts and circumstances related to adoptive placement, and summaries of case record material.

The director shall not release case records in response to such a request."

Page 8, Section 8, Lines 21-43: Delete in their entirety

Page 8, Line 44: Insert new section 8 to read as follows:

"8. (New section) a. An authorized requester may request the adoption facilitator that placed the child for adoption or conducted an investigation pursuant to section 12 of P.L.1977, c.367 (C.9:3-48) to provide any available non-identifying family medical history information concerning the adopted person contained in that person's adoption file.

b. Upon receipt of a request pursuant to subsection a. of this section, the adoption facilitator shall provide the authorized requester with a detailed summary of any available non-identifying family medical history information concerning the adopted person contained in that person's adoption file.

c. If an authorized requester is unable to obtain information under subsection a. of this section because the adoption facilitator is unknown, to accommodate the request for non-identifying family medical history information concerning the adopted person, the authorized requester may petition the court that granted the adoption to identify the agency or intermediary, if possible."

Page 8, Section 9, Lines 45-48: Delete in their entirety

Page 9, Section 9, Lines 1-8: Delete in their entirety

Page 9, Line 9: Insert new section 9 to read as follows:

"9. (New section) a. Notwithstanding the requirements of P.L.____,c.___ (C.___) (pending before the Legislature as this bill) to the contrary, in the case of a child who was surrendered pursuant to the "New Jersey Safe Haven Infant Protection Act," P.L.2000, c.58 (C.30:4C-15.5 et seq.) and upon receipt of notification from the Division of Youth and Family Services in the Department of Children and Families pursuant to subsection b. of this section, the State Registrar shall not provide any of the birth parent's identifying information recorded on the child's birth certificate, upon receipt of a written, notarized request for an uncertified, long-form copy of the adopted person's original certificate of birth pursuant to R.S.26:8-40.1 and P.L.____,c.___ (C.___) (pending before the Legislature as this bill).

b. The Division of Youth and Family Services in the Department of Children and Families shall notify the State Registrar when a child is surrendered pursuant to P.L.2000, c.58 (C.30:4C-15.5 et seq.) to enable the State Registrar to identify the certificate of birth of the child who was so surrendered and deem that the uncertified, long-form copy of the original certificate of birth shall not be provided to the authorized requester.

c. Nothing in this act shall be construed to require the Division of Youth and Family Services in the Department of Children and Families to provide any identifying

	information about the birth parents of a child who was surrendered pursuant to the provisions of P.L.2000, c.58 (C.30:4C-15.5 et seq.)."
Page 9, Section 10, Lines 10-29:	Delete in their entirety
Page 9, Line 30:	Insert new section 10 to read as follows: "10. (New section) The fee that an approved adoption agency may charge for conducting a diligent search shall be in accordance with a graduated fee schedule, established by regulation of the Department of Health and Senior Services."
Page 9, Section 11, Line 31:	After "11. (New section)" insert "a."
Page 9, Section 11, Line 33:	After "Families," delete "shall" and insert "may"
Page 9, Section 11, Line 35:	After "seq.)," delete "which shall:" and insert "to carry out the provisions of this act."
Page 9, Section 11, Lines 36-37:	Delete in their entirety
Page 9, Section 11, Line 38:	After "b." delete "establish required information and procedures for the family" and insert "The Commissioner of Children and Families, in consultation with the Commissioner of Health and Senior Services, may adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of this act."
Page 9, Section 11, Lines 39-41:	Delete in their entirety
Page 9, Section 12, Line 45:	After "Health and Senior Services" insert "and the Commissioner of Children and Families"
Page 9, Section 12, Line 45:	Delete "shall" and insert "may"
Page 9, Section 12, Line 47:	Delete "commissioner deems" and insert "commissioners deem"

Page 10, Section 12, Line 2:	Delete "commissioner" and insert "commissioners"
Page 10, Section 13, Line 5:	After "except that sections 1," insert "2,"
Page 10, Section 13, Line 6:	Delete "6" and insert "10"
Page 10, Section 13, Line 6:	After "shall take effect" delete ", and section 10 shall expire," and insert "on the first day of the seventh month after enactment."
Page 10, Section 13, Lines 7-11:	Delete in their entirety

Respectfully,

/s/ Chris Christie

[seal]

Governor

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor