

LEGAL FACT SHEET

Birth Certificates*

In order to obtain the birth certificate of a minor child, a person must have the authority to make the request, and the request must be filed with the government office where the birth certificate is on file.

Birth records are not "public records" in the strict sense. Birth records are not open to the public and therefore a person requesting a copy must have legal authority to do so.¹ In New York State, access to birth certificates is regulated by the State Department of Health.²

Section 35.2 of Part A (Vital Records) of the New York State Regulations³ provides that a birth certificate may be issued by court order, by request of the person if over 18, "by request of a parent or other lawful representative of the person to whom the record of birth relates," or by the Commissioner, and shall be issued for "any proper purpose," which excludes profit making or commercial activity or to "satisfy idle curiosity."⁴

Caregivers who are legal guardians and legal custodians are clearly "other lawful representative[s]." However, there is some uncertainty regarding who else may fit the statutory definition of "other lawful representative."

One example of "lawful authority" is someone who has statutory authority. In the Education Law's and the Public Health Law's definitions of a "person in parental relation to a child,"⁵ persons who are named in this statute should qualify as a "lawful representative." A caregiver may qualify as a "person in parental relationship" and thus as a "lawful representative" because the parents are dead, disabled, or missing or because the parents have designated the caregiver.

Changes to Birth Certificates

In addition to getting a copy of a birth certificate, requests may be made to change the information on a birth certificate. Reasons for such changes include the subsequent marriage of unwed parents;⁶ adjudication of parentage;⁷ adoption;⁸ entry of a judgment; order; or decree relating to a change of name;⁹ or consent of the

¹ Birth records must be registered within five days of any live birth in the state. Public Health Law §4130.2

² Except for New York City, which is regulated by New York City Administrative Code 17-166 et seq. New York City Charter §7100 et seq. Each city, incorporated village, and town in the state constitutes a separate primary registration district, except that the Commissioner may designate any county, except those comprising the City of New York as a primary registration district with the approval of the board of supervisors of each county. (Public Health Law §4120.1).

³ Provided by authority of Public Health Law §4100, and N.Y. Comp. Codes R. & Reg. tit. 10, §35.2 et seq.

⁴ For legal form pleadings for change of minor's name, see American Jurisprudence Pleading and Practice Forms Annotated, Database updated April 2008, §31. Petition or application – For change of minor's surname – To stepfather's surname – By minor's natural mother – Mother previously married to natural father. 18A Am. Jur. Pl. & Pr. Forms Name §31. In New York City, you may visit this website to obtain forms <http://www.nycourts.gov/courts/nyc/civil/namechanges.shtml>.

⁵ The term "person in parental relation to a child" shall mean and include his father or mother, by birth or adoption, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of a child if he has assumed the charge and care of the child because the parents or legally appointed guardian of the minor have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such child or are living outside the state or their whereabouts are unknown" (see Education law §3212 and Public Health Law §§2164(1)(c)). For designations, see General Obligation Law §§5-1551 et seq which authorizes parents to designate a person to make temporary educational (Education Law §§2, 3212) and medical decisions (Public Health Law §§2164 and 2504) for the child for a specified period of time not to exceed six months.

⁶ N.Y. Pub. Health Law §4138(1)(a).

⁷ N.Y. Pub. Health Law §4138(1)(b).

⁸ N.Y. Pub. Health Law §§4138(1)(c), 4138-a

⁹ N.Y. Pub. Health Law §4138(1)(d).

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putative father to the insertion of his name on the new certificate as the father of a child born out of wedlock.¹⁰ Provision is also made for the correction of a defective registration.¹¹

When changes are made, a copy of the old certificate is kept by the state office. Statutory provision is made for the making of a microfilm or other suitable copy of the original certificate of birth and all papers pertaining to the new certificate of birth, and the destruction of the original certificate and papers.¹²

On a birth certificate, no specific statement may be entered to the fact of a child born out of wedlock, the marital name or status of the mother or the name of the putative father (unless acknowledged by father and mother) or that a child was born in prison,¹³ in order to protect the child from unnecessary social stigma.¹⁴

Where to Access Birth Certificates

Each city, incorporated village, and town keeps its own birth certificate records. In New York City, birth certificates are controlled by the NYC Department of Health. New York City is the only place whose regulations supersede the New York State regulations.¹⁵

Appeals

Denials of access to birth certificates are subject only to administrative review and are not reviewable by a court.¹⁶ This means if your request is turned down by the local vital statistics office, the only recourse is to request a review by the local office.

Birth Certificates Must Be Accepted by Other States

According to the United States Constitution, state records (which would include birth certificates) issued in one state must be accepted in all the other states. This is known as “full faith and credit.”¹⁷ In other words, absent an overriding consideration, the birth certificate itself is entitled to full faith and credit everywhere in the United States.

The above information is not legal advice. It is not a substitute for consulting an attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Any opinions, legal opinions, findings, conclusions or recommendations expressed in this publication or on the NYS Kinship Navigator website or by any person or entity to whom you may be referred are those of the Kinship Navigator, Catholic Charities Family and Community Services and/or the person or entity you are referred to and do not necessarily represent the official views, opinions, legal opinions or policy of the State of New York and/or the New York State Office of Children and Family Services (OCFS). NYS Kinship Navigator is a Catholic Charities Family and Community Services program, funded by the New York State Office of Children and Family Services. Catholic Charities Family and Community Services is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein is published by the NYS Kinship Navigator.

¹⁰ N.Y. Pub. Health Law §4138(1)(e), 4135-b

¹¹ N.Y. Pub. Health Law §4176.

¹² N.Y. Pub. Health Law §4138(4).

¹³ N.Y. Comp. Codes R. & Regs. Tit. 10, §35.2(a).

¹⁴ N.Y. Pub. Health Law §4135(1).

¹⁵ New York City Administrative Code §17-166, 64 N.Y. Jur. 2d Health and Sanitation §136, see also *Anonymous v. Weiner*, 50 Misc.2d 380, 270 N.Y.S.2d 319 (1966). N.Y. Pub. Health Law §4138(2)(b).

¹⁶ *Alexander v. Whalen*, 56 A.D.2d 734, 392 N.Y.S.2d 749 (4th Dep’t 1977). A mother’s objection to the issuance of a new birth certificate, changing her daughter’s surname to that of her natural father, on the grounds that the change would be traumatic to the child, that the father could have sought a change in the past, and that the father was merely trying to aggravate the mother, were not the reasons for denying the issuance of the new certificate, where all statutory prerequisites for issuance of a new birth certificate were met. *Collins v. Collins*, 126 Misc. 2d 522, 483 N.Y.S.2d 151 (Sup 1984).

¹⁷ Article IV, §1, of the United States Constitution states: “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.” “The general rule is that a judgment rendered by a court of one state is entitled to recognition in the courts of another state to the same extent as it has by law or usage in the courts of the state where the judgment was rendered.” *State v. Pope*, 23 Kan.App.2d 69, 80, 927 P.2d 503 (1996), rev. denied 261 Kan. 1088 (1997).