

Adoption by Law

By Scott Andrew Bartley

The Code of Hammurabi

The practice of adoption dates back to ancient Greece and Rome when citizens would adopt a person to be their legal heir. Men and women, single or married, could adopt. The purpose of adoption was to carry on succession, an occupation, or a family name. The first surviving written law regarding adoption is found in the [Code of Hammurabi](#) in the eighteenth century B.C. Paragraphs 185 through 193 of the Code defined the parameters of such matter in which the natural parents consented and released any claim to the person. The person received the full and legal rights of a natural child from his adoptive parents. If the adoptive parents subsequently had a child of their own, the adopted person could be returned to his or her birth parents but would still stand to inherit a portion of the adoptive parents' estate. The exception to this law was that parental consent was not required for the adoption of vestals, hierodules (temple slaves), certain palace officials, and slaves. Generally, the adopted person was an adult. Alexander the Great (356-323 B.C.) and Marcus Aurelius (121-180) are two notable adopted children, and Moses was adopted by the Pharaoh's daughter.¹

The Justinian Law of *The Institutes*

The Roman Emperor Justinian developed a new set of laws that were published as *The Institutes* in 529 A.D. Divided into four books, *The Institutes* became the model for adoption in modern Europe. The eleventh section of the *Book of Persons*, within *The Institutes*, referenced adoption, saying that adoptees that had not yet reached puberty could only be adopted if it was in their best interest. The Justinian law placed new restrictions on who could adopt and how. Men who were castrated could not adopt. Women now needed dispensation of the Emperor and the adoptive parents had to be 18 years older than the adoptee. Adoptive siblings were treated as natural born and could not intermarry. The adoption was finalized in the court as a matter of law.²

English Adoption Origins

The English did not follow the Code or Justinian law regarding adoption, and the Common Law of England did not address the issue. The British passed their first adoption law in 1926. Prior to that, English adoptions were handled privately with no record of the event. Poor Law guardians sometimes used "Memorandum of Adoption" that may survive in some local archives.³ Religious societies did not begin establishing orphanages until the nineteenth and early twentieth centuries.⁴

American Adoption Origins

Adoption is defined in American law as the legal process pursuant to state statute in which a child's legal rights and duties toward his natural parents are terminated and similar rights and duties toward his adoptive parents are substituted. The procedure is entirely statutory and has no historical basis in Common Law.⁵ More simply put, adoption was the taking and treating of a stranger as one's own child.⁶ Vermont adopted the Common Law of England on November 9, 1796.⁷

The American colonies handled adoption informally as was done in England. The first law was passed by Massachusetts in 1851, and Vermont followed closely behind, enacting its first adoption law in 1853. The legal beginnings of adoption in Vermont started a half-century earlier.⁸

Early Adoption Laws in Vermont

The taking in of a child was a private matter in early Vermont. People sought out the law only when a child was reaching adulthood and would need a legal "blessing" to change the child's name and become the adoptive parents' legal heir. The first documented case was that of William Fisher of Orwell.⁹

When Abraham Wilson of Bennington deserted his young wife in 1788, the childless William and Betsy Fisher privately agreed to raise one and one-half year old Abraham Wilson. Fisher's petition to the General Assembly was accepted in 1804. This special act granted a legal name change to Abraham Wilson, making him Abraham Fisher, the

heir at law to William Fisher "unless Cut off by Will." This was the first official adoption recorded in Vermont.¹⁰

The state passed three special acts in 1815 concerning the changing of names and granting of inheritance rights. None of the three acts covered the issues of custody or any obligations of the new parents.¹¹

In 1822 the legislature created procedures allowing fathers to adopt their own children born out of wedlock without legislative action, as had been previously required. The legislation only allowed for the right of inheritance and not for the changing of the child's name. The child consented to this arrangement by declaring these intentions, having the declaration attested by three witnesses, and recording it with the judge of probate in the district where the father resided. The child had the right to decline such arrangement within one year after reaching his or her full age by going before the same court to renounce it. This action would end the adoption.¹²

From 1828 to 1849, no inheritance rights were granted. This process was restored to the probate courts in 1841 and included changing the child's name. The time limit that a child could revoke this arrangement upon adulthood kept changing until 1862.¹³

Changes in the Law

"An act to provide for the adoption of persons and changes of name" was passed by the legislature in 1853.¹⁴ This law gave prospective adoptive parents another avenue for adoption beyond the special acts of legislation currently in use. The procedure was handled by the probate court. The law allowed for the adoption of a person, child, or adult, by any single person, married couple, or married man who was of full age and of sound mind. A married woman could not adopt without her husband, but single women were allowed to adopt at any time. The procedures of the new law were essentially the same as those created in 1822, except the action was handled in the probate district where the child resided, rather than in the district of the father's residence. The consent of the child was required, regardless of the age, and the adoptive parents were required to publish an announcement of the adoption in a local newspaper for three consecutive weeks. Judges were required to report all adoptions and name changes to the Secretary of State on an annual basis. The statistics contained in these reports were published with the legislative acts. There were only two adoptions recorded from 1853 to 1862 under this law.¹⁵

Private vs. Public Adoptions

Meanwhile, the private adoption system continued to operate. The number of private adoptions completed by special acts of the legislature grew dramatically in the beginning of the Civil War. After sixty such adoptions took place between 1860 to 1863, the legislature decided it was an issue they needed to address.¹⁶

The next adoption law passed in 1863. It was a reinstatement of the 1853 law with two additional provisions. The adopting person or persons had the full power to decide whether or not to change the name of the child. The most crucial element of this law required that all adoptions must only be made under the guidelines of the new law, thus eliminating the special acts that were becoming common. If the child was an orphan, the probate court appointed a person to act as a guardian.¹⁷

The Sealing of Adoption Records

At this point, adoption was a public matter and the cases were published in the newspapers of the day. The issue of accessibility to the records was not addressed, though these records were maintained by the probate courts. In the 1920s, social workers began to advocate sealing all adoption records and placing them in the hands of agencies. The mores of the 1930s raised concerns about the exposure of potentially embarrassing revelations, such as the pregnant unwed mother, the adoptee viewed as a "sin of the father," the infertile couple, or the victim of incest or rape. Judges started to seal records on a case-by-case basis. In the late 1930s, New York sealed all adoption records, and other states followed suit in the 1940s and 1950s. Vermont closed its adoption records in 1946.⁶ Officials felt it gave the adoptive parents a feeling of stability and permanence and encouraged mothers of unwanted children to choose adoption over abortion.¹⁹

As mentioned above, the probate courts originated the adoption process starting in 1853. Family courts were

established in 1990. They, too, can handle adoption cases for those persons already in their court for other matters. The majority of adoption cases are still handled by the probate courts.²⁰

Vermont Adoption Records: Where They Are and Who Can See Them

[The Adoption Act \(Title 15A\)](#) is the main governance over adoption matters in the state since 1997. It states that all records are confidential and may not be inspected except as specified in the act. These records are retained permanently and are sealed from inspection for 99 years after the date of birth of the adoptee.²¹ The [Vermont Adoption Registry](#) (103 South Main Street, Waterbury, Vt., 05671-2401) was created in 1996. The Registry is part of the Vermont Department of Social and Rehabilitation Services. It keeps a master index of all adoptions in Vermont from 1940 to the present. This index contains the adoptee's name before and after adoption; names and addresses of the birth and adoptive parents; the court and date that the consent or relinquishment was filed; the court and date that the petition was filed; any agency involved in the adoption; and the nature and date of the disposition of the petition.

The Registry is where disclosure of non-identifying information is processed and referrals are given to support groups and search organizations. This limited information can be released to the adoptive parents; the legal custodian or guardian of the adoptee; an adoptee who has reached 18 years of age; an emancipated adoptee; direct descendants of a deceased adoptee who has reached 18 years of age or their parent or guardian; and the adoptee's former parents, grandparents, or siblings (half or whole). Medical and genetic issues may allow the Registry to release the information as well. Identifying information may also be given to an adoptee who has reached 18 years of age, emancipated adoptees, their adult direct descendants, or the parents or guardians of the same, as directed in detail under the law. The former parents can also prevent the disclosure of their information under this act.

The clerk of the court can issue a certificate of adoption to the adoptee or the adoptive parents. It includes the date and place of the adoption, the date of birth of the adoptee, and the name of each adoptive parent. The original birth certificates can be released to the adoptee upon request once the adoptee has reached 18 years of age as outlined in the detail section of the law mentioned above.

Private adoption agencies in Vermont (in 2002):

Adoption Centre Inc.
278 Pearl Street
Burlington, VT 05401-8558
802-862-5855

Adoption Resource Services, Inc.
1904 North Avenue
Burlington, VT 05401
802-863-5368

[Casey Family Services](#)
7 Palmer Court
White River Jct., VT 05001-3323
802-649-1400

[Casey Family Services](#)
60 South Main St.
Waterbury, VT 05676
802-244-1400

[Friends in Adoption](#)
44 South Street
P.O. Box 1228
Middletown Springs, VT 05757

802-235-2373

[The Lund Family Center](#)

P.O. Box 4009

Burlington, VT 05406-4009

802-864-7467

[Vermont Catholic Charities](#)

351 North Avenue

Burlington, VT 05401-2921

802-658-6110 ext. 312

Vermont Catholic Charities

24½ Center St.

Rutland, VT 05701

802-773-3379

[Vermont Children's Aid Society](#)

P.O. Box 127

Winooski, VT 05404-0127

802-655-0006

[Vermont Children's Aid Society](#)

32 Pleasant St,

Woodstock, VT 05091-1122

802-457-3084

[Wide Horizons For Children, Inc.](#)

P.O. Box 53

Monkton, VT 05469

802-453-2581

Organizations helping individuals search for family members separated by adoption:

Adoption Alliance of Vermont

Box 168

Bridport, VT 05734

802-985-2464

B & C Search Assistance of Vermont

P.O. Box 1451

St. Albans, VT 054478

802-527-7507 or 524-9825

Beacon of Vermont

P.O. Box 83

Bridport, VT 05734

802-527-7507 or 758-2389

[International Soundex Reunion Registry](#)

P.O. Box 2312

Carson City, NV 89702-2312

1. "We Three Kings - Part 1" which discusses the Ancient/Biblical times as found on the web. Other famous adopted people can be found at this website. "We Three Kings - Part 2" which discusses the Middle Ages as found on the web.
2. England was the dominant "Poor Law" system of middle class adoption, has its bug in Ireland as well.
3. Charles Warren on adoption and its history. (Genealogy Magazine, 230-70) Dec.
4. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
5. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
6. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
7. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
8. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
9. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
10. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
11. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
12. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
13. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
14. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
15. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
16. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
17. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
18. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
19. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).
20. "The History of Adoption in the United States" by Howard Chandler Christy, Jr. (New York: Dover Publications, 1976).

19. Kila Meiser and Marcie Velen, "The History of Adoption," "A Brief History of Sealed Adoption Records,"
20. Vermont Probate Court, *Disclosure of Adoption Information* (Pamphlet Form No. 195, April 1992), p.
21. Vt. Stat. Ann. tit. 15A (1997).