

Section 1:

**Some Basic Things to Know
Before You Get Started**



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Summary

This section gives you:

- basic background information that will help you understand what the documents described in this kit are, and why you need them
- definitions of some legal terms you will see or hear during the process of getting these documents

Content

In this section, you will learn:

- what birth records are
- what adoption records are
- what “sealed” birth records are
- what a certified copy of your original birth certificate is
- why you are allowed to get your birth records “unsealed”
- why you need to start collecting as much information as possible about your Native American heritage

What are birth records?

Birth records are all the court files about:

- your birth
- your adoption process, and
- your final adoption

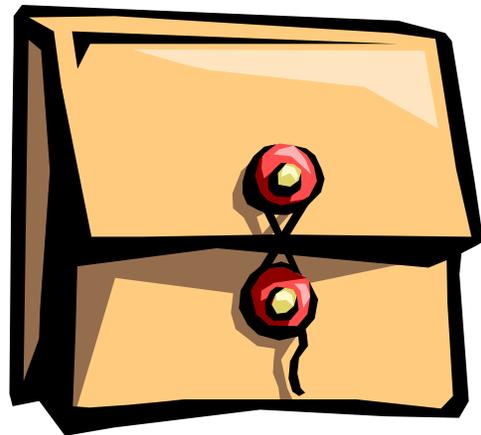
Your birth records include:

- your original birth certificate **and**
- your adoption records.

What are adoption records?

Adoption records are the court files containing the papers that people involved in your adoption filed with the court when you were adopted. Adoption records include:

- proof that you were adopted, and
- explain the circumstances under which your adoption took place



What are “sealed” birth records?

Birth records are “**sealed**” (closed) in adoptions to keep the information in them private. The process of getting your original birth records is known as:

- “**opening sealed birth records**” or
- “**unsealing birth records.**”

TIP: Since your birth records include your adoption records, when you unseal your birth records, you also unseal your adoption records.

TIP: You may hear the term “adoption records” used instead of “birth records.” For instance, you might hear someone talk about “unsealing adoption records.” Remember, they are probably talking about birth records. People mix these words up all the time -- will you?!

Who gets to see the birth records once they are unsealed?

- A judge may be allowed to see the birth records in order to see if there is evidence that you are Native American.
- You don’t get to see the birth records unless and until the court orders it.



What is my original birth certificate?

- An “**original**” birth certificate names your birth parents and the place where you were born.
- An “**adoptive**” or “**amended**” birth certificate names your adoptive parents and the place where you were born.
- It is called “adoptive” or “amended” instead of “original” because it lists your adoptive parents (not your birth parents).
- If you have not unsealed your birth records, you may have a copy of your birth certificate, but that is your adoptive birth certificate. It may even say **CERTIFIED AMENDED BIRTH CERTIFICATE** on it.

What is a certified copy?

A “**certified copy**” is one that is issued directly by a government or agency. It is printed on official government paper and has an official government seal.

If I was adopted, how can I get a certified copy of my original birth certificate?

If you were adopted in California when you were a “**minor**” (a person under the age of 18), three laws let you open your birth records and get your original birth certificate after you turn 18. These laws are:

- The Indian Child Welfare Act (ICWA) and
- California Family Code § 9209(a) and
- California Health & Safety Code § 102705

You need to know about these laws because they give you the legal right to ask the court to unseal your birth records.



What is ICWA?

- ICWA is the Indian Child Welfare Act. It is a federal law passed in 1978.
- There is a section in ICWA that gives adults over 18 years old the right to gain access to their original birth certificates so they can enroll in their tribe.

TIP: For more detailed information on ICWA, see the CILS Community Legal Education Self-Help Guide, “What is the Indian Child Welfare Act?”

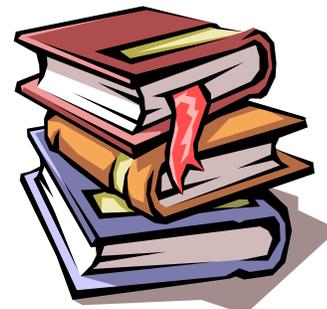
What is California Family Code § 9209(a)?

- It is a section in the Family laws of California that copied, almost word-for-word, the ICWA language with regards to giving adults over 18 years old the right to gain access to their original birth certificates.

What is California Health & Safety Code § 102705?

This is a state law that lets a court unseal your birth records if you can show that there is information in the records that you have a legal right to.

TIP: California Health & Safety Code § 102705 also lets a court unseal your adoption records if you can show that you have a medical problem that is “**genetic**” (inherited from your ancestors). Non-Indians can also ask for their adoption records to be unsealed for medical reasons.



How do I get my birth records opened?

- You have to file a “**petition**” (a request to the court) to unseal birth records. This means you ask a judge to look at the original birth records and make a decision.
- You can file a petition without an attorney.

TIP: A person who was adopted is called an “**adoptee**.” The adoptee who files the petition is called the “**petitioner**.”

Why do I have to go to court to have my birth records opened?

Because the state court is the only agency that can:

- order the birth records to be opened for any reason **and**
- order that you get your original birth certificate



How does the court decide whether my birth records should be opened?

The judge decides whether there is enough convincing evidence that you are Native American to unseal your birth records and get your original birth certificate. The judge will also see whether you need the information, so you will need to convince the judge that you cannot enroll in your tribe and get tribal benefits without it. It is important that you collect as much information as possible about your Native American heritage before you submit your request to the court. You should start collecting as much evidence as you can find.

What kinds of evidence do I need?

Examples of evidence include:

- any information that you have about your birth parents' Native American heritage
- sworn statements (also called “**declarations**”) from your birth parents, other relatives, or other people who know that you are Native American
- photographs showing your Native American relatives (parents, grandparents, aunts, uncles, etc.)
- BIA tribal information
- letters from your birth parents, social workers, and/or adoption agency that provide information about your Native American heritage

TIP: We talk about these examples in detail in Section 3, starting on Page 33. You should read through that entire section of this guide carefully so you know what types of evidence to collect and how to collect it.

If you don't have a lot of evidence, don't be discouraged. Just be sure to collect everything you can find!

