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Paternity

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Establishing Paternity Through Voluntary Acknowledgment

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In 1980 about 19 percent of all births involved unmarried parents, but by 2005 this number had risen to 36 percent.[1] In the interim norms surrounding family formation changed. Yet one truth remains: unless paternity is legally established, a child cannot obtain—what are available to marital children through their fathers—a number of rights, among them being the rights to

- obtain cash and medical child support from the father in the event the parents do not live together and the mother is the custodial parent;
- inherit through the father and other paternal relatives;
- qualify for health care coverage that might be available through the father's job or membership in a fraternal organization or union;
- access social security survivor or dependent benefits available if the father dies or becomes disabled;
- obtain military allotments, commissary privileges, and health care coverage if the father joins one of the armed services;
- have an ongoing relationship to the father, including regular contact through a visitation order or joint legal custody; and
- relate to the cluster of family members on the father's side including grandparents, aunts, uncles, and cousins whose kinship is also secured through paternity establishment.

Moreover, according to a growing body of evidence, fathers play a critical role in the development of healthy, independent, resilient children. By a variety of measures, children who do not have loving, supportive fathers do not do as well as children who have such parents.[2]

The parents also lose out if paternity is not established. This is particularly true for fathers. Unless paternity is determined, fathers have no right to custody or visita-

[1]Brady E. Hamilton et al., Preliminary Births for 2004 (2005), available at www.cdc.gov/nchs/products/pubs/pubd/hestats/prelim_births/prelim_births04.htm.

[2]See generally Why Fathers Count: The Importance of Fathers and Their Involvement with Children (Sean E. Brotherson and Joseph M. White eds., 2007).

tion with their children, to express their desires in adoption proceedings, or to assert their interests in child welfare proceedings.[3]

Mothers also lose out if paternity is not established. They lose both economic and emotional support in raising their children. They may also find it much harder to obtain help from paternal relatives who may be reluctant to become involved with an unacknowledged child for fear of offending the father.

One way to establish paternity is to file suit.[4] In such cases genetic tests are ordered, and paternity is adjudicated on the basis of the test results.[5] Because filing suit is costly, many poor couples cannot go this way. Many who would willingly establish paternity are not comfortable with courts and the formal legal process. Fortunately an alternative way to establish paternity is now available at little or no cost to most couples: the voluntary acknowledgment of paternity.

Federal law sets out the parameters for this program.[6] If the parents agree, they can sign an acknowledgment form; beforehand the parents must be told the legal consequences of signing the document.[7] Once the document is signed, either parent may rescind it within sixty days.[8] After sixty days, the signed acknowledgment may be challenged only in court on the basis of fraud, duress, or material mistake of fact.[9] Thus no judicial order of paternity is issued; the acknowledgment itself is the legal finding of paternity and is entitled to full faith and credit in other states.[10] Genetic tests may be offered to the parties before they sign the acknowledgment, but no federal requirement mandates offering them.[11]

Voluntary acknowledgment is now available in all hospitals and birthing facilities around the country and at birth-record agencies. At a state's option, other entities—Head Start programs; Women, Infants, and Children Program sites; health clinics; pediatrician's offices; and other places where children and their parents receive care or services—can offer voluntary acknowledgment.[12]

Both parents and child support enforcement agencies have been positive toward voluntary acknowledgment.[13] Very few

[3]For a detailed discussion of the impact on fathers who cannot establish paternity, see Jeffrey Parness, *Federalizing Birth Certificate Procedures*, 42 Brandeis Law Journal 105 (2003).

[4]In order to obtain federal funding for their child support programs, states must enact a series of specific statutes. See 42 U.S.C. § 654(20) (2000). Among the specified laws are ones that allow both parents to file a paternity suit until at least their child's 18th birthday. *Id.* §§ 666(a)(5)(A), (L). Because significant federal money is at stake, all states have chosen to adopt these laws.

[5]*Id.* § 666(a)(5)(B)(i)(I). State law must require genetic testing in contested paternity cases whenever a party requests it and supports that request with a sworn statement establishing a reasonable possibility of the requisite sexual contact between the parties. In cases handled by the state's child support agency, the state must pay for the tests. The state may recoup these costs from the father if paternity is established. *Id.* § 666(a)(5)(B)(ii).

[6]See *id.* §§ 654, 666.

[7]*Id.* § 666(a)(5)(C)(i).

[8]*Id.* § 666(a)(5)(D)(ii). The period is shortened if an administrative or legal proceeding (including a support proceeding) relating to the child is brought by one of the parents before the expiration of sixty days. In this case the denying parent must raise the issue in that proceeding. *Id.* § 666(a)(5)(D)(ii)(II).

[9]*Id.* § 666(a)(5)(D)(iii).

[10]*Id.* § 666(a)(5)(C)(iv).

[11]Federal law requires that the acknowledgment form meet certain requirements. *Id.* These requirements include current name, social security number, and date of birth of the mother and the father; current full name, date of birth, and birthplace of the child; a brief explanation of the legal significance of the document; a statement that either parent may rescind within sixty days; a clear statement that the parents understand the voluntariness of signing and the rights, responsibilities, and consequences of signing; and signature lines for the parents and witnesses and notaries. See Office of Child Support Enforcement, U.S. Department of Health and Human Services, Action Transmittal 98-02 (1998), available at www.acf.hhs.gov/programs/cse/pol/AT/1998/at-9802.htm.

[12]42 U.S.C. § 666(a)(5)(C)(3)(iii)(II).

[13]See Office of Inspector General, Department of Health and Human Services, Paternity Establishment: Use of Voluntary Paternity Acknowledgements 7 (2000), available at http://oig.hhs.gov/oei/reports/oei-06-98-00053.pdf.

challenges have been mounted against paternities obtained through voluntary acknowledgment.[14] If the parents do not remain together and child support is ordered, the father is, evidence indicates, much more likely to pay—and pay a higher amount—if paternity is established voluntarily.[15]

Indeed, the most serious problems have been that couples who want to go through voluntary acknowledgment cannot obtain the proper forms and guidance. Problems also arise around voluntary acknowledgment by minors and the availability of rescission when one or both parents have a change of heart. If an acknowledgment is successfully challenged, questions may also be raised about child support arrears or the possibility of the father obtaining reimbursement for support already paid. Here I explore these problems and recommend approaches to solving them.

Availing of Paternity Acknowledgment

The primary focus of voluntary acknowledgment is the hospital-based program. New parents are approached by the person responsible for birth records. If the parents clearly are not married, they are informed about voluntary acknowledgment and given an opportunity to sign the applicable forms.[16] Hospital staff is generally trained in the procedures and can refer parents to experts in the child support agency if questions arise. However, due to high staff turnover, frequent training is often required so that knowledgeable staff members are around.

Whether trained staff and relevant materials are available at other sites, such as birth-record offices, health clinics, and the like, offering acknowledgment services is not as clear. This is important since the integrity of voluntary acknowledgment relies on the signing parties being informed and honest.

In order to avoid errors some have suggested that genetic testing should be done before one is allowed to sign a voluntary acknowledgment.[17] This would ensure that the acknowledgment is consistent with the biological facts. However, this would be costly and raises concerns about privacy rights. Moreover, equal protection problems may come up if testing is only on nonmarital children.[18] If the public policy goal is paternity based purely on genetics, one might argue that marital children should be tested at birth as well.[19]

Recommendations. Legal aid staff members should

- review their state programs to be sure that good explanatory materials at appropriate literacy levels are available;
- examine their state's forms to be sure that all the federal requirements are being met;

[14]States are not required to keep statistics on the number of rescissions or revocations of acknowledgments. However, those who run the state programs report no more than a few cases each year. Some estimate that there are significant numbers of cases of "paternity fraud" in which the wrong man is named the father, but this complaint mainly seems to arise in cases where paternity has been established in a default-judgment litigation. See Ronald K. Henry, *The Innocent Third Party: Victims of Paternity Fraud*, 40 Family Law Quarterly 51, 59–71 (2006). I have found no more than a dozen reported cases in the past decade in which the issue has come up. There may, of course, be more unreported cases, but as a rough proxy the data suggest that there have been few real problems.

[15]See Patricia Brown et al., Voluntary Paternity Acknowledgement 43–57 (2005), available at www.irp.wisc.edu/publications/dps/pdfs/dp130205.pdf.

[16]In some states, if the mother is married but her husband is not the biological father of her child, a three-way acknowledgment is possible. If the husband agrees that he is not the biological father, he signs a paternity denial that accompanies the acknowledgment signed by the wife and the biological father. In these cases the husband also has the right to rescind his denial within the sixty-day period and the right to sue later for fraud, duress, or material mistake of fact. See, e.g., Mass. Gen. Laws ch. 209C, § 11 (2006).

[17]See Henry, *supra* note 14, at 76.

[18]There is a long line of Supreme Court cases discussing when distinguishing between marital and nonmarital children is permissible. Generally such distinctions are not permissible. See, e.g., *Caban v. Mohammed*, 441 U.S. 380 (1979).

[19]Courts have wrestled with the issue of whether paternity is purely a matter of genetics for some time. For a detailed discussion of this issue and the case law holdings, see my *Truth and Consequences: Part I: Disestablishing the Paternity of Non-Marital Children*, 37 Family Law Quarterly 35 (2003).

Table 1.—States with Laws on Minor Parents Establishing a Child's Paternity through Voluntary Acknowledgment

STATE	CITATION	DESCRIPTION
California	Cal. Fam. Code § 7577 (2006).	Minor parents are allowed to sign a voluntary acknowledgment. However, a minor signatory may rescind the acknowledgment at any time up to sixty days after the minor reaches 18 or becomes emancipated, whichever comes first. For that reason, the acknowledgment does not establish paternity until sixty days after both parents have reached 18 or become emancipated, whichever occurs first. Before that, the acknowledgment creates a rebuttable presumption of paternity and is admissible as evidence in a civil paternity action. It is not, however, admissible in a criminal action for statutory rape.
Connecticut	Conn. Gen. Stat. § 46b-172 (2006).	Minors may sign voluntary acknowledgments.
Delaware	Del. Code Ann. tit. 13, § 8-304(d) (2006).	Minors may sign voluntary acknowledgments.
Florida	Fla. Stat. § 742.107 (2006).	Minors may sign voluntary acknowledgments. These acknowledgments may be used as evidence in a criminal investigation of statutory rape involving a girl who was younger than 16 when she was impregnated and a father who is 21 or older.
Illinois	750 Ill. Comp. Stat. §§ 45/3.1, 45/5(b) (2006).	Minor parents may sign voluntary acknowledgments. However, a minor signatory may rescind the acknowledgment at any time up to six months after that parent reaches the age of majority or is emancipated. Parents are responsible for the support and maintenance of their children even if they are minors.
Kansas	Kan. Stat. Ann. § 38-1138(b)(1) (2006).	Minor parents may sign voluntary acknowledgments. However, a minor signatory has up to one year after the minor's 18th birthday to file a request with a court to vacate the acknowledgment. If the baby whose paternity was established by the acknowledgment is under 1 year of age, vacation is automatic. If the baby is over age 1, the court must first consider that child's best interest.
Kentucky	Ky. Rev. Stat. Ann. § 213.046(3) (2006).	Minor, unmarried parents may not be approached in the hospital about paternity establishment. Rather, paternity establishment must proceed under the state's contested case statute.
Massachusetts	Mass. Gen. Laws ch. 209C, § 11(a) (2006).	Minor parents may sign voluntary acknowledgments.
Minnesota	Minn. Stat. § 257.75(9) (2006).	Minor parents may sign voluntary acknowledgments. The acknowledgment creates a presumption of paternity.
Montana	Mont. Code Ann. § 40-6-105(2) (2006).	Minor parents may sign voluntary acknowledgments.
New Hampshire	N.H. Rev. Stat. Ann. § 5-C:24(VII) (2006).	Minor parents may sign voluntary acknowledgments, but a parent or legal guardian must also sign the form for it to be valid.
North Dakota	N.D. Cent. Code § 14-20-14(4) (2006).	Minor parents may sign voluntary acknowledgments.
Ohio	Ohio Rev. Code Ann. § 3111.23 (2006).	Minor parents may sign voluntary acknowledgments. Male minor parents may challenge the acknowledgment based on the same genetic test results as Ohio law allows other male parents to raise such a challenge.
Tennessee	Tenn. Code Ann. § 68-3-305(b)(2)(B) (2006).	Minor parents may sign voluntary acknowledgments, but a parent or legal guardian must also sign the form for it to be valid.
Texas	Tex. Fam. Code Ann. §§ 160.308(a), (b) (2006).	Minor parents may sign voluntary acknowledgments. If a signatory is a minor, the signatory may bring a direct challenge based on fraud, duress, or material mistake of fact as well as a collateral challenge to the acknowledgment, so long as it is done by earlier than four years of the minor's 18th birthday or the date of the minor's emancipation.
Utah	Utah Code Ann. § 78-45g-302(2) (2006).	Minor parents may sign voluntary acknowledgments, but a parent or legal guardian must also sign the form for it to be valid.
Virginia	Va. Code Ann. § 20-49.6 (2006).	A male between 14 and 18 may admit paternity under oath before the court. The court may then order him to pay child support, and the order is enforceable as if he were an adult.
Washington	Wash. Rev. Code § 26.26.315 (2006).	Minor parents may sign voluntary acknowledgments.
Wisconsin	Wis. Stat. § 767.805(1m) (2006).	Minor parents may not sign acknowledgments of paternity.
Wyoming	Wyo. Stat. Ann. §14-2-604(d) (2006).	Minor parents are allowed to sign a voluntary acknowledgment if a legal guardian cosigns the acknowledgment.

- inquire about ongoing training for staff at hospitals and other facilities offering voluntary acknowledgment; and
- recommend that hospitals and other facilities be monitored for quality control.

Minor Parents

Generally minors may not make legally binding decisions without the involvement of a parent or guardian. Should this principle also apply to voluntary paternity acknowledgments? Arguments can be made on both sides.[20] Some believe that even if they are children themselves, those who bring a baby into the world must take responsibility for their actions. The very first step in parenting is to acknowledge responsibilities. Others believe that there is too much possibility for error in allowing unguided young people to make such a serious decision. For example, knowing he is not the biological father, a young man who does not understand the significance of an acknowledgment might sign to help his pregnant girlfriend. When he later discovers just what the implications are, he may well regret his decision.

Thirty states and the District of Columbia have not addressed this issue (see Table 1).[21] In those states, practice quite likely varies widely. Some hospitals and birth-record agencies may allow minors to sign, some may refuse, and still others may allow a minor to sign with the consent of a parent or guardian. This may lead to situations where if at least one parent is a minor, the couple may not be able to establish the baby's parentage. It can also lead to situations where minors sign and then think they have validly established paternity when they have not because they cannot legally consent.

Of the twenty states that have addressed the issue, only two (Kentucky and Wisconsin) prohibit the use of voluntary acknowledgment in cases involving minors. The other eighteen states allow minors to sign. This is also the approach taken in Article 3 of the Uniform Parentage Act promulgated by the National Conference of Commissioners on Uniform State Laws.[22] Minors are specifically allowed to sign voluntary acknowledgments. However, worth noting is that, of the eighteen states that do allow minors to sign, four (New Hampshire, Tennessee, Utah, and Wyoming) require a parent or guardian to cosign (see Table 1).

No state has adopted an approach that allows minors to sign but requires genetic testing before signing. This might be a good approach because it allows the minors to act responsibly while ensuring that their actions are consistent with the facts. Alternatively, as discussed in more detail below, special provisions might be made for rescission of the acknowledgment once the minor reaches the age of majority.

In deciding what approach to take with respect to minors and paternity acknowledgments, state laws on statutory rape may be relevant. These laws make sexual intercourse with a person under a given age illegal even if the person consents. In some states, the only relevant issue is the age of the parties; other states look at disparities in age in determining whether statutory rape has taken place. Obviously some minor parents may be reluctant to use paternity acknowledgment or should be advised not to use it if they are of an age that would give rise to potential criminal liability. At least one state (California) recognizes this and makes paternity acknowledgments inadmissible in statutory rape proceedings. Another (Florida) takes the opposite approach and makes acknowledgments admissible as evidence in criminal proceedings (see Table 1).

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[20]For a more detailed discussion of these issues, see my No Minor Matter: Developing a Coherent Policy on Paternity Establishment for Children Born to Underage Parents (2004), available at www.clasp.org/publications/no_minor_brf.pdf.

[21]West Virginia also has a statutory provision requiring a parent or guardian to cosign when a minor is involved in a proceeding in which a married mother wants to establish the paternity of a man who is not her husband. This is a very limited number of cases and not parallel with the other statutes. West Virginia is listed in Table 1 but not included in the numeric calculation of states with special provisions for minors.

[22]Uniform Parentage Act §§ 301–314 (2002), available at www.law.upenn.edu/bll/ulc/upa/final2002.pdf.

Table 2.—State Statutory Provisions on Rescission of Voluntary Paternity Acknowledgments

STATE	CITATION	DESCRIPTION
Alabama	Ala. Code § 26-17-22 (2006).	No process specified.
Alaska	Alaska Stat. §§ 18.50.165, 25.20.050 (2006).	No process specified.
Arizona	Ariz. Rev. Stat. Ann. §§ 25-812(H), (I); 36-322(G) (2006).	The statute contemplates a rescission form, which must meet federal requirements and be filed with the Department of Economic Security. That department mails a copy to the other parent and the Department of Health Services.
Arkansas	Ark. Code Ann. § 9-10-115 (2006).	The Division of Vital Records of the Department of Health is to develop a rescission form. Any signatory may rescind the acknowledgment by filing that form with the division.
California	Cal. Fam. Code §§ 7575–7577 (2006).	*Acknowledgments Signed on or After January 1, 1997:* Rescission forms are to be developed by the Department of Child Support Services and made available at all child support and birth registry offices. Either parent may file a rescission form with the department within sixty days of the last signature being put on the form. The form must include a declaration that the other party was sent a copy of the rescission return receipt requested, and the return receipt must be attached. *Acknowledgments Signed on or Before December 31, 1996:* The acknowledgement creates a rebuttable presumption of paternity and may be challenged only based on genetic tests. The challenger must file a motion, supported by a sworn statement, stating the factual basis for requesting tests. The motion must be filed within three years of the date the last party signed the declaration.
Colorado	Colo. Rev. Stat. §§ 19-4-105–107, 25-2-112 (2006).	No process specified.
Connecticut	Conn. Gen. Stat. § 46b-172 (2006).	Rescission forms are to be developed by the Department of Public Health. Both acknowledgments and rescissions are filed in the department paternity registry. Either parent may rescind and must be told of the right to do so and where to file in the paternity acknowledgment document.
Delaware	Del. Code Ann. tit.13, §§ 8-307, 309 (2006).	A signatory may rescind an acknowledgment by commencing suit. Every signatory to the acknowledgment must be made a party. The suit is to be handled as in any proceeding to adjudicate parentage. If paternity is disestablished, the court must order the Office of Vital Records to amend the child's birth certificate accordingly.
District of Columbia	D.C. Code §§ 16-909.01–.03, 16-2342.01 (2006).	No process specified.
Florida	Fla. Stat. § 742.10 (2006).	No process specified.
Georgia	Ga. Code Ann.§ 19-7-46.1 (2006).	No process specified.
Hawaii	Haw. Rev. Stat. § 584-3.5(a) (2006).	No process specified.
Idaho	Idaho Code Ann. § 7-1106 (2006).	The Department of Human Services will develop rescission forms and the Board of Health will develop rules and procedures. Either party may file a notarized statement of rescission with the vital statistics unit. The rescission is effective on filing. The vital statistics unit not fies the other party or parties by certified mail.
Illinois	750 Ill. Comp. Stat. §§ 45/5, 6; 410 Ill. Comp. Stat. § 535/12 (2006).	The Illinois Department of Public Aid will develop rescission forms. They will be made available to institutions, county clerks, and state and local registrars' offices. Either parent may sign a witnessed rescission form and file it with the department. The rescission voids the acknowledgment and nullifies the presumption of paternity.
Indiana	Ind. Code § 16-37-2-2.1 (2006).	Either parent may file an action in court to request genetic testing. The court shall set aside the paternity acknowledgment upon a showing from the tests that the man is not the biological father.

(Continued on page 580)

Table 2.—State Statutory Provisions on Rescission of Voluntary Paternity Acknowledgments *(Continued from page 579)*

STATE	CITATION	DESCRIPTION
Iowa	Iowa Code § 252A.3A(12) (2006).	The Iowa Department of Public Health is to develop a standardized rescission form and an administrative process for rescission. The form must include the signature of a notary public attesting to the identity of the rescinding party. Either parent may rescind the acknowledgment by filing this form with the state registrar. Unless paternity has otherwise been established, upon receiving the form, the registrar is to remove the father's information from the birth certificate and send notice of the rescission to the nonrescinding parent at the last known address. If an acknowledgment has been rescinded, the registrar may not accept any subsequent acknowledgment of paternity signed by the same parties.
Kansas	Kan. Stat. Ann. § 38-1138 (2006).	A person wanting to rescind must file a request with the court. Unless the signatory is a minor, the request to rescind must be filed before the child is a year old. If the signatory is a minor, the deadline to file this request is one year from reaching the age of majority. If, at that point, the child is over age 1, the court must use a "best interests" test in deciding whether to grant the rescission.
Kentucky	Ky. Rev. Stat. Ann. § 213.046 (2006).	No process specified.
Louisiana	La. Civ. Code Ann. arts. 203, 206 (2006).	No process specified
Maine	Me. Rev. Stat. Ann. tit. 91-A, § 1616 (2006).	No process specified.
Maryland	Md. Code Ann., Fam. Law § 5-1028 (2006).	No process specified.
Massachusetts	Mass. Gen. Laws ch. 209C, § 11 (2006).	A person seeking to rescind must file an action in the probate and family court of the county in which the child and one of the parents reside. If the child does not reside with a parent, then the action is filed where the child resides. Notice must be given to the other parent, and if the child receives public assistance or uses Title IV-D services, then the court must notify the Title IV-D agency. The court must order genetic tests and proceed to adjudicate paternity as in a contested case. If the court disestablishes paternity, it must instruct the registrar of vital records to amend the birth record of the child.
Michigan	Mich. Comp. Laws § 722.1011 (2006).	No process specified.
Minnesota	Minn. Stat. § 257.75(4) (2006).	Either parent may revoke by filing a signed, notarized writing with the registrar of vital statistics. If a husband joins the acknowledgment (to deny his paternity and allow the biological father to assert his paternity), he may also revoke in the same way. The state registrar forwards a copy to the nonrevoking parent and (if applicable) the joined husband.
Mississippi	Miss. Code Ann. § 93-9-28 (2006).	No process specified.
Missouri	Mo. Rev. Stat. § 193.215 (2006).	Either party may rescind the acknowledgment by filing a written request with the Bureau of Vital Records. The bureau files the rescission and mails a copy to the Division of Child Support Enforcement. However, the birth record may not be changed unless the bureau receives a court or administrative order requiring the change.
Montana	Mont. Code Ann. § 40-6-105(e) (2006).	Any party may rescind by filing a notice with the Department of Public Health and Human Services. The notice of withdrawal must include an affidavit attesting that a copy of the notice was given to any parent who signed the acknowledgment form.
Nebraska	Neb. Rev. Stat. § 43-1409 (2006).	No process specified.
Nevada	Nev. Rev. Stat. §§ 126.053, 440.287 (2006).	No process specified. However, if a rescission is filed, the state registrar may not amend the birth certificate without a court order.
New Hampshire	N.H. Rev. Stat. Ann. §§ 5-C:28, 5-C:27 (2006).	A signatory may rescind by filing a written notice with the town clerk of the city or town where the birth occurred. On receiving the form, the town clerk removes the father's name from the child's birth record and inserts "not stated." The clerk must also give a copy of the rescission to the other signatories, the child's legal guardian, the Department of Health and Human Services, and the hospital (if the acknowledgment is signed in a hospital). *(Continued on page 581)*

Table 2.—State Statutory Provisions on Rescission of Voluntary Paternity Acknowledgments *(Continued from page 580)*

STATE	CITATION	DESCRIPTION
New Hampshire *(Continued)*		The rescission form must be notarized and contain information about the child; the information includes name, date of birth and place of birth, and the social security number (if known) of the child. The form must also contain similar information about the mother, her husband (if applicable), and the man who signed the acknowledgment. The form must be signed and dated. Upon receiving the form, the town clerk must also sign it and put the date on it.
New Jersey	N.J. Stat. Ann. § 26:8-30 (2006).	A signatory must bring a court action and allege fraud, duress, or material mistake of fact.
New Mexico	N.M. Stat. § 40-11-5(A)(5) (2006).	No process specified.
New York	N.Y. Fam. Ct. Act § 516-a; see also N.Y. Soc. Serv. Law § 111-k(2)(a) (2006).	Either signatory may file a court action to vacate the acknowledgment. Upon receiving the challenge, the court must order genetic tests and determine paternity as in any contested case. (Apparently the social services law allows the court to decline to order testing if the court finds in writing that testing is not in the child's best interest based on res judicata or equitable estoppel.) If the court determines that the man is not the father, it must vacate the acknowledgment of paternity and give a copy of its order to the birth records agency and the state's putative father registry. If the mother is receiving services from a Title IV-D agency, that agency must also receive a copy of the order.
North Carolina	N.C. Gen. Stat. §§ 110-132 et seq. (2006).	The challenger must ask the district court to order rescission. The court must include in the order specific findings that the challenge is timely and that all parties (including any Title IV-D agency where appropriate) have been served. If rescission is ordered and the man is found not to be the biological father, then the clerk of the court must send a copy of the order to the registrar of vital statistics. The registrar must then remove the man's name from the child's birth certificate. If the man seeks rescission and then defaults or fails to present the issue, the trial court must find the man to be the biological father as a matter of law.
North Dakota	N.D. Cent. Code § 14-20-19 (2006).	A signatory may rescind an acknowledgment by commencing suit. Every signatory to the acknowledgment must be made a party. The suit is to be handled as in any proceeding to adjudicate parentage. If paternity is disestablished, the court must order the Office of Vital Records to amend the child's birth certificate accordingly.
Ohio	Ohio Rev. Code Ann. § 2151.232 (2006).	Once an acknowledgment is filed, either parent may bring a support action in a court of competent jurisdiction. If such an action is brought within the rescission period, any party may raise nonpaternity. If a party does so, the court must treat the action as a contested paternity case. The court must notify the child support agency. Once the child support agency receives such notice, the acknowledgment is considered rescinded.
	Ohio Rev. Code Ann. §§ 3111.27, 38 (2006).	If support is not sought, then within sixty days of the latest signature on the acknowledgment a signatory may request an administrative hearing. The request must state that it is filed within the sixty-day period and give the name of the child support enforcement agency conducting genetic tests to determine whether there is a parent-child relationship. Timely filing must be verified. The hearing officer must determine whether there is a parent-child relationship. If the hearing officer concludes that there is not, then the hearing officer must notify the child support agency. On receiving the order, the child support agency must rescind the acknowledgment.
Oklahoma	Okla. Stat. tit. 10, § 7700-309 (2006).	The Department of Human Services is charged with developing a rescission form and making it available wherever paternity acknowledgment forms are available. The mother or acknowledging father may file the form with the state registrar of vital statistics.
Oregon	Or. Rev. Stat. § 109.070(2) (2006).	No process specified.
Pennsylvania	23 Pa. Cons. Stat. § 5103(g) (2006).	No process specified.

(Continued on page 582)

Table 2.—State Statutory Provisions on Rescission of Voluntary Paternity Acknowledgments *(Continued from page 581)*

STATE	CITATION	DESCRIPTION
Rhode Island	R.I. Gen. Laws § 15-8-3 (2006).	No process specified.
South Carolina	S.C. Code Ann. § 20-7-958 (2006).	No process specified.
South Dakota	S.D. Codified Laws § 25-8-59 (2006).	Either party may bring an action in circuit court.
Tennessee	Tenn. Code Ann. §§ 24-7-113(c)–(h) (2006).	The registrar of vital statistics is to develop a rescission form containing a sworn statement refuting the paternity of the named father. Any signatory may complete and submit the form to the Office of Vital Records of the Department of Health. The registrar may charge a filing fee, but the fee may be waived if the parent files an affidavit of indigence. The registrar then sends a copy of the rescission form to the other signatory. In any judicial or administrative hearing to which the signatory and the child are parties, the party seeking rescission may also file the form described above or ask for a declaration of rescission. If, at the hearing, there appears to be reasonable cause to believe that a signatory is or was unable to understand the effects of signing the acknowledgment, the presiding official must explain the effects, the right to rescind, and the right to request genetic tests. If a signatory requests rescission, the tribunal may order it and send a certified copy of its order to the registrar of vital statistics. The rescission—whether by form or by order of the tribunal—does not preclude the initiation of a paternity action by either signatory. Upon being notified about the rescission (whether on the form or by order of a tribunal), the registrar amends the birth certificate accordingly. The statute also provides for amending the birth certificate when a paternity acknowledgment is rescinded.
Texas	Tex. Fam. Code Ann. §§ 160.307–.309 (2006).	A signatory who wants to rescind may commence a legal proceeding within sixty days of the effective date of the acknowledgment. Each signatory to the acknowledgment and to any related denial must be made a party. The proceeding is conducted in the same manner as a contested paternity case. At the end of the proceeding, the court must (if appropriate) order the Bureau of Vital Statistics to amend the child's birth certificate.
Utah	Utah Code Ann. §§ 78-45g-302, 306 (2006).	A declaration of paternity is effective on the date it is filed and entered into a database established by the Office of Vital Records. A signatory may rescind the declaration by timely filing a voluntary rescission document with the office on a form prescribed by that office. The office then informs the other signatories at their last known addresses by regular mail.
Vermont	Vt. Stat. Ann. tit. 15, § 307(f) (2006).	Either parent may rescind in a writing filed with the Department of Health.
Virginia	Va. Code Ann. § 20-49.1(B)(2) (2006).	No process specified.
Washington	Wash. Rev. Code § 26.26.330 (2006).	A signatory may commence a court proceeding. All signatories must be joined as parties. The proceeding must be conducted as in any contested paternity case. If paternity is disestablished, the court must order the registrar of vital statistics to amend the child's birth record.
West Virginia	W. Va. Code § 16-5-10(5) (2006).	A parent who wants to rescind must file a verified complaint with the clerk of the circuit court in the county in which the child resides. The complaint must state the name of the child, the name of the other parent, the date of birth of the child, the date of the signing of the acknowledgment, and a statement that the parent wants to rescind. The complaint must be served on the other parent, and a hearing must be held within sixty days of service of process. If the complaint is timely filed, the court must order rescission. The circuit court clerk sends a copy of the order to the state registrar of vital statistics by certified mail so that the birth record may be corrected.
Wisconsin	Wis. Stat. §§ 69.15(3)(m)(a), (b); 767.805(2) (2006).	*For Acknowledgments Signed and Filed on or After April 1, 1998:* The state registrar of vital statistics will develop a rescission form. Either parent may file the form (along with a $20 fee) with the registrar. If the rescission is timely filed and the fee paid, the registrar must prepare a new birth certificate omitting the father's name.

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Table 2.—State Statutory Provisions on Rescission of Voluntary Paternity Acknowledgments *(Continued from page 582)*

STATE	CITATION	DESCRIPTION
Wyoming	Wyo. Stat. Ann. § 14-2-607 (2006).	A signatory may rescind an acknowledgment by commencing suit. Every signatory to the acknowledgment must be made a party. The suit is to be handled as in any proceeding to adjudicate parentage. If paternity is disestablished, the court must order the Office of Vital Records to amend the child's birth certificate accordingly.

Recommendations: At a minimum, states should enact laws

- specifying whether minors may or may not use voluntary acknowledgment;
- providing for genetic testing before the minors sign to make clear that the minors are acting appropriately; and
- addressing the issue of the use of acknowledgments in criminal proceedings.

Rescission

As noted above, the signatories to a voluntary acknowledgment of paternity must be given an opportunity to withdraw their consent. An opportunity to rescind must be offered during an initial sixty-day period unless an administrative or judicial proceeding, such as a support or custody proceeding, involving the parent and child is brought at an earlier time.[23] In that case, the rescission must be sought during or in conjunction with that proceeding.

Twenty states do not yet have a specific statutory process for rescinding paternity acknowledgments (see Table 2). This is a serious problem as it may mean that parents who want to rescind in those states have no practical way of doing so.

States providing a specific rescission process adopted either an administrative model or a judicial model. Eighteen states adopted the administrative approach. In these states the signatory wanting to rescind notifies a public agency, usually the birth-records office.[24] Some states have an actual rescission form, while in others a written request will do. Most make provision for notifying the other signatories, and some allow for amending the birth record.

The Iowa statute is representative of this approach.[25] The Iowa Department of Public Health was charged with developing a standardized rescission form. This is the only form that may be used; thus there is no confusion about the correct way to rescind. The form contains a notarized statement by the rescinding signatory that the man named in the acknowledgment is not, in fact, the child's biological father. Thus the ground for rescission is clearly stated. The form also contains a statement by a notary attesting to the identity of the rescinding party. The completed and notarized form is filed with the state registrar of vital statistics, who registers the rescission. The registrar then mails a written notice of the rescission to the other signatory at the last known address. This way the other party

[23]42 U.S.C. § 666(a)(5)(D)(ii). Because the federal statute does not specify how the sixty days are measured, this issue needs to be addressed in state law. Some states measure from the date of the last signature while others measure from the date the form is filed with the appropriate official. See Table 2 for details.

[24]Some states allow acknowledgments only by unmarried parents; in these states the signatories are the mother and the alleged father. Other states allow the use of acknowledgments by married couples when the child is not the child of the marriage. In that case the signatories are the mother, the biological father, and the husband (who is acknowledging his nonpaternity). In this article I use the term "signatory" to refer to a person who is allowed by state law to sign the acknowledgment and has done so. Depending on the state, this may or may not include a husband disavowing his paternity.

[25]Iowa Code § 252A.3A(12)(c) (2006).

is fully informed of the development. The registrar removes the father's name from the child's birth certificate. This avoids any later confusion about whether the child's paternity has been established. If an acknowledgment has been rescinded, the registrar may not accept any subsequent acknowledgment of paternity by the same parties. This helps limit parties' vacillation, which may create work for the registrar and confusion about the child's status.[26]

Unlike Iowa, many states that allow rescission of paternity acknowledgments using an administrative approach make no provision for notifying the other signatory or amending the birth certificate.[27] In fact, in some states the vital-records agency is specifically prohibited from amending the record.[28] As a result, the other parent may not know of the rescission, and the information on the child's birth certificate may indicate that paternity has been established when, in fact, it has not.

In addressing these problems, thirteen states adopted a specific judicial approach to rescission: a party desiring to rescind an acknowledgment must go to court (see Table 2). Papers are served on the other signatories and the child support agency if the child is receiving services from that agency so that everyone is notified of what is happening. In some states, the granting of a rescission is pro forma, and an order is sent to the birth records agency requiring it to amend the birth certificate to reflect the change in circumstances.[29] In other states genetic tests are ordered, and a contested paternity case is heard.[30] The issue is then fully resolved between the signatories. Either the acknowledging father is eliminated and the records changed accordingly, or he will be confirmed as the father and the child's paternity will never again be open to question.

Massachusetts has a model process in this regard.[31] A person seeking to rescind an acknowledgment in Massachusetts must file an action in the probate and family court of the county in which the child and one of the parents reside. If the child does not reside with a parent, then the action is filed where the child resides. Notice must be given to the other parent, and if the child receives public assistance or uses the services of the state child support enforcement program, then the court must notify the child support agency. The court must order genetic tests and proceed to adjudicate paternity as in a contested case. If the court disestablishes paternity, it must instruct the registrar of vital records to amend the birth record of the child.[32]

This is also the approach taken in Article 3 of the Uniform Parentage Act. Under Section 307, if either parent wishes to rescind a voluntary acknowledgment, a legal action must be brought within the earlier of sixty days from the effective date of the acknowledgment or the date of the first hearing that involves the parties and adjudicates issues, including child support, relating to the child.[33] Under Section 309(a), the other signatories must be made parties to the rescission action. Under Section 309(d), the proceeding must be conducted as in any proceeding to adjudicate paternity: the court will order genetic testing, and paternity will be determined on the basis of the test

[26]For an example of the havoc that occurs when the birth certificate is not amended upon rescission, see *State* ex rel. *West Virginia Department of Health and Human Services, Child Support Division v. Michael George K.*, 531 S.E.2d 669 (W. Va. 2000).

[27]See, e.g., Ark. Code Ann. § 9-10-115 (2006).

[28]See, e.g., Mo. Rev. Stat. § 193.215 (2006).

[29]See, e.g., W. Va. Code § 16-5-10 (2006).

[30]See, e.g., Tex. Fam. Code Ann. § 160.309 (2006). Ohio authorizes a procedure similar to this but uses an administrative hearing conducted by the child support agency rather than a judicial hearing. Ohio Rev. Code Ann. §§ 3111.27, 3111.38 (2006).

[31]Mass. Gen. Laws ch. 209C, § 11(a) (2006).

[32]*Id.*

[33]Uniform Parentage Act § 307.

results.[34] Thereafter the child's birth certificate will be amended if appropriate.[35]

State statutes need to lay out a clear, user-friendly administrative or judicial process for rescission in the sixty-day period. States that have not yet done so need to address this issue. States that have an inadequate process should review their statutes.

Recommendations: If the state chooses the administrative process, it should include these items:

- Standardized forms. The agency responsible for developing the voluntary acknowledgment form should be charged with developing rescission forms and making them available in all facilities that offer voluntary acknowledgment services as well as in all birth-record offices.
- Notice to the other signatories. Once a rescission form is filed, all the other signatories need to be notified. If the child is receiving services from the state child support program, that agency also needs notification so that action can be taken to establish the child's paternity.
- Procedures for amending the child's birth record. If an acknowledgment has been rescinded but the birth record continues to reflect the signatory's paternity, confusion will ensue. To minimize confusion and keep the state's birth records accurate, the record should be changed as soon as the rescission is filed.
- Follow-up. The nonrescinding parties should be informed what child support services are available and how to access them. In that way, a nonrescinding signatory who believes that the named man is the child's father knows where to go to begin a paternity suit and thereby access the genetic testing that will resolve the issue.

If the state chooses the judicial approach, the Uniform Parentage Act is an excellent model.[36] The virtue of this approach is that it automatically provides for notice to all signatories, requires genetic testing to resolve the issue, and provides a means for amending the birth certificate. It also emphasizes the seriousness of voluntary acknowledgment. It tells the parties that they should not lightly sign a voluntary acknowledgment since the only way to undo it is by court action. The judicial is also more economical than the administrative process. In the administrative approach, rescission is followed by a paternity suit; in the judicial approach, the rescission and paternity suit are combined into one.

The one negative to the judicial approach is that it is less user-friendly than the administrative approach. Parties who traditionally avoid courts, those who do not have access to lawyers to represent them, and those without the means to pay the fees and costs associated with the court process are at a disadvantage in the judicial system. If states adopt this approach, they should consider

- developing *pro se* packets for signatories to use (these packets would contain simple forms and instructions; they would also give information about how to seek genetic tests at state expense so that inability to obtain tests is not a barrier to obtaining the truth);
- allowing the clerks of court to assist parents in the proper procedures (training should be conducted so that clerks can give signatories wanting to challenge the acknowledgment the procedural information they need); and

[34]See also *id.* §§ 307, 502(a), 505. Under Section 505, a man is rebuttably presumed to be the father of a child if the genetic test results reach a 99 percent probability of paternity and a combined paternity index of at least 100 to 1. The presumption can be rebutted only by additional genetic testing that either excludes the man as the father or identifies another man as a possible father. In the unlikely case that the test results establish a lower probability of paternity but do not exclude the man as the father of the child, the court evaluates the test results and the other available evidence in assessing the likelihood of paternity. See *id.* § 631(3).

[35]*Id.* § 309(e).

[36] Uniform Parentage Act §§ 301–314.

Table 3.—State Statutory Provisions on Challenges to Voluntary Paternity Acknowledgments on the Basis of Fraud, Duress, or Material Mistake of Fact

STATE	CITATION	DESCRIPTION
Alabama	Ala. Code § 26-17-22 (2006).	No process specified.
Alaska	Alaska Stat. §§ 18.50.165, 25.20.050 (2006).	No process specified.
Arizona	Ariz. Rev. Stat. Ann. §§ 25-812(E) (2006).	A mother, father, or the child may file a Civil Rule 60(b) motion. The court must order genetic testing. If the results show by clear and convincing evidence that the named father is not the biological father, paternity is terminated and ongoing support obligations end.
Arkansas	Ark. Code Ann. § 9-10-115 (2006).	If fraud, duress, or material mistake of fact is shown, and the acknowledgment was signed without the benefit of genetic testing and the man has been ordered to pay support, then he is entitled to one genetic test at any time during the period he is required to pay support. If the test excludes the man as the biological father and the court so finds, then the acknowledgment must be set aside and the man relieved of all future support obligations as of the date of the finding. The court must also issue to the Division of Vital Records an order requiring that the man's name be deleted from the child's birth certificate. If the test establishes paternity, then the court must enter an order adjudicating paternity and setting support.
California	Cal. Fam. Code §§ 7575(b), (c) (2006).	*Acknowledgments Signed After January 1, 1997:* If an order for custody, visitation, or support has been entered, a challenge may be brought by filing a motion for genetic testing within the timeframe and for the reasons set forth in Section 473 of the California Code of Civil Procedure. The time for filing the motion runs from the date of the original order. If the acknowledgment and accompanying order are set aside, the court must order genetic testing. Based on the genetic test results, paternity is either confirmed or denied and the court enters an order accordingly.
	Cal. Fam. Code § 7576 (2006).	Within two years of the date of the child's birth, a challenge may also be brought by a local child support agency, the mother, or the man who signed the acknowledgment. This is done by filing a motion for genetic testing. The motion must state under oath the factual basis on which the issue of paternity is being raised. If the motion is granted, the court must order genetic tests. Based on those tests, the court can determine if the paternity acknowledgment should be set aside in the best interests of the child. In making such a determination, the court is to look at eight factors. If the court denies the set-aside, it must state on the record the factual basis for doing so. *Acknowledgments Signed on or Before December 31, 1996:* The acknowledgment creates a rebuttable presumption of paternity and may be challenged only based on genetic tests. The person who wants to challenge the acknowledgment must file a motion, supported by a sworn statement, stating the factual basis for requesting tests. The motion must be filed within three years of the date the last party signed the declaration.
Colorado	Colo. Rev. Stat. §§ 19-4-105–107; 25-2-112 (2006).	To determine the nonexistence of the father-child relationship presumed under a voluntary acknowledgment, any interested party may bring an action within five years of the date of the child's birth.
Connecticut	Conn. Gen. Stat. § 46b-172 (2006).	A challenge may be brought for fraud, duress, or material mistake of fact. However, paternity acknowledgments filed with the court between March 1, 1981, and July 1, 1997, are res judicata unless the person seeking review asked for a hearing within three years of the judgment. Acknowledgments signed before March 1, 1981, may be challenged only in the initial proceeding for support.
Delaware	Del. Code Ann. tit. 13, § 8-307 (2006).	A signatory may commence a proceeding to challenge an acknowledgment within two years of the date the acknowledgment is filed with the Office of Vital Statistics. All signatories must be made parties to the proceeding. The proceeding is conducted as if it were a proceeding to adjudicate parentage. If paternity is disestablished, the court must order the Office of Vital Statistics to amend the child's birth certificate.

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Table 3.—State Statutory Provisions on Challenges to Voluntary Paternity Acknowledgments on the Basis of Fraud, Duress, or Material Mistake of Fact

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STATE	CITATION	DESCRIPTION
District of Columbia	D.C. Code §§ 16-909.01–.03; 16-2342.01 (2006).	No process specified.
Florida	Fla. Stat. § 742.10 (2006).	Challenge must be filed in court. No other details provided.
Georgia	Ga. Code Ann. § 19-7-46.1 (2006).	No process specified.
Hawaii	Haw. Rev. Stat. § 584-3.5(a) (2006).	No process specified.
Idaho	Idaho Code Ann. § 7-1106 (2006).	Challenge must be filed in court. No other details given.
Illinois	750 Ill. Comp. Stat. §§ 45/5, 6; 410 Ill. Comp. Stat. § 535/12 (2006).	Challenge must be filed in court, and the rules of civil procedure apply. If an action is not filed, a signatory may nonetheless raise nonpaternity as a defense in a paternity or support action
Indiana	Ind. Code § 16-37-2-2.1 (2006).	There must be a court action challenging the acknowledgment. If genetic tests are ordered and they show nonpaternity, the court must set aside the acknowledgment.
Iowa	Iowa Code § 600B.41A (2006).	The parents or the child or their legal representative may file an action to disestablish paternity at any time before the child reaches the age of majority. The petition must state plainly why the petitioner believes that the established father is not the biological father. The petition must be served on the other parent and on any Title IV-D agency providing enforcement services to the parent. A guardian must be appointed for the child. Genetic tests must be conducted. The petitioner must show fraud, duress, or material mis take of fact. The court may dismiss the petition if it finds that (1) the established father wants to preserve his paternity and continue the parent-child relationship; (2) dismissing the petition is in the best interests of the child; and (3) the biological father is a party to the action and does not object to the termination of his rights. In this case, the court must enter an order establishing a parent-child relationship between the nonbiological father and the child. For an established father who—on or before May 21, 1997—sought a finding of nonpaternity but whose motion was denied notwithstanding that genetic tests showed he was not the biological father, a provision allows him to petition the court to terminate his parental rights and relieve him of any and all future support obligations. Upon notice to the other parent, the court must grant the petition.
Kansas	Kan. Stat. Ann. § 38-1138 (2006).	A person who wants to revoke an acknowledgment must file with the court before the child is a year old.
Kentucky	Ky. Rev. Stat. Ann. § 406.025 (2006).	No process specified.
Louisiana	La. Rev. Stat. Ann. § 40:46 (2006).	At any time a signatory may petition the court to void the acknowledgment based on fraud, duress, material mistake of fact, or the signatory not being the biological parent of the child.
Maine	Me. Rev. Stat. Ann. tit. 91-A, § 1616 (2006).	No process specified.
Maryland	Md. Code Ann., Fam. Law § 5-1028 (2006).	No process specified.
Massachusetts	Mass. Gen. Laws ch. 209C, § 11 (2006).	Either parent may bring an action within one year to challenge the acknowledgment based on fraud, duress, or material mistake of fact.
Michigan	Mich. Comp. Laws § 722.1011 (2006).	At any time, either in an existing action or in a new action, a signatory, the child, or the prosecuting attorney may file a claim for revocation of an acknowledgment of parentage. The claim must be supported by a claimant-signed affidavit setting forth facts establishing mistake of fact; newly discovered evidence that could not have been found through due diligence; fraud; misrepresentation or misconduct; or duress. If the court finds the affidavit sufficient, the court may order genetic tests or take other appropriate action. The claimant has the burden of showing by clear and convincing evidence that the man is not the father and that, considering the equities of the situation, revocation is proper. If an order is issued, it must be sent to the state birth records registrar who must vacate the acknowledgment and amend the birth certificate.

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Table 3.—State Statutory Provisions on Challenges to Voluntary Paternity Acknowledgments on the Basis of Fraud, Duress, or Material Mistake of Fact

(Continued from page 587)

STATE	CITATION	DESCRIPTION
Minnesota	Minn. Stat. § 257.75 (2006).	A signatory, the child, or the state may bring an action to vacate the recognition. If a parent seeks revocation, it must be filed within one year of signing or within six months of obtaining genetic test results that indicate that the man who acknowledged paternity is not the biological father. A child must bring the action within the later of six months from obtaining genetic test results indicating that the man who signed is not the biological father or one year from reaching the age of majority. Fraud, duress, or material mistake of fact must be alleged. If the court finds that a prima facie case has been made, the court must order genetic tests. The party seeking revocation must pay for such tests and if that party fails to do so, the court must dismiss the action with prejudice. If the results establish that the man who signed is not the child's biological father, the court must vacate the acknowledgment.
Mississippi	Miss. Code Ann. § 93-9-28 (2006).	No process specified.
Missouri	Mo. Rev. Stat. § 454.485.1 (2006).	No specific process. However, an administrative hearing officer may not enter a finding of nonpaternity where paternity has been acknowledged unless a court has voided the acknowledgment.
Montana	Mont. Code Ann. § 40-6-105(e) (2006).	No process specified.
Nebraska	Neb. Rev. Stat. § 43-1409 (2006).	No process specified.
Nevada	Nev. Rev. Stat. §§ 126.053, 440.287 (2006).	No process specified.
New Hampshire	N.H. Rev. Stat. Ann. § 5-C:28 (2006).	A motion must be filed in a court of competent jurisdiction.
New Jersey	N.J. Stat. Ann. § 26:8-30 (2006).	No process specified. No statutory provision.
New Mexico	N.M. Stat. § 24-14-13; 40-11-5(A)(5) (2006).	No process specified.
New York	N.Y. Fam. Ct. Act § 516-a; see also N.Y. Soc. Serv. Law § 111-k(2)(a) (2006).	A signatory may challenge the acknowledgment in court action based on fraud, duress, or material mistake of fact. Upon receiving the challenge, the court must order genetic tests and determine paternity as in any contested case. (Apparently the social services law allows the court to decline to order testing if the court finds in writing that testing is not in the child's best interest based on res judicata or equitable estoppel.) If the court determines that the man is not the father, it must vacate the acknowledgment of paternity and give a copy of its order to the birth-records agency and the state's putative father registry. If the mother is receiving services from a Title IV-D agency, that agency must also receive a copy of the order.
North Carolina	N.C. Gen. Stat. § 110-132 (2006).	The acknowledgment may be challenged in court based on fraud, duress, mistake, or excusable neglect.
North Dakota	N.D. Cent Code § 14-20-10 (2006).	A signatory may petition the district court to vacate—based on fraud, duress, or material mistake of fact—the acknowledgment within one year after the acknowledgment is filed with the Department of Health. All signatories must be made parties to the proceeding, which is conducted as if it were a proceeding to adjudicate parentage. If paternity is disestablished, the court must order the department to amend the child's birth certificate.
Ohio	Ohio Rev. Code Ann. § 311.28 (2006).	A man who is presumed to be the father and did not sign the acknowledgment, a signatory, or a guardian of the child may bring a legal action to rescind no later than one year after the acknowledgment becomes final.
Oklahoma	Okla. Stat tit. 10, §§ 70(B), (C) (2006).	A signatory may go to court and seek to overturn— based on fraud, duress, or material mistake of fact—the acknowledgment. Upon notice from the Department of Human Services, the Office of Vital Records removes the father's name from the birth certificate.
Oregon	Or. Rev. Stat. § 109.070(2) (2006).	Within one year of filing the acknowledgment, either party may

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Table 3.—State Statutory Provisions on Challenges to Voluntary Paternity Acknowledgments on the Basis of Fraud, Duress, or Material Mistake of Fact

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STATE	CITATION	DESCRIPTION
		challenge it. Thereafter a challenge may be available only on the basis of fraud, duress, or material mistake of fact. If the challenge is filed within one year, either parent or any Title IV-D agency involved in the case may move for genetic tests. If the tests exclude the man, then either party or the Title IV-D agency may apply for an order of nonpaternity. If the order is granted, the applicant must send a certified copy of the order to the state registrar of the Center for Health Statistics and to the Department of Justice as the state disbursement unit. Upon receiving a judgment of nonpaternity, the state registrar must correct any of the registrar's records indicating that the male party is the parent of the child.
Pennsylvania	23 Pa. Cons. Stat. § 5103(g) (2006).	No process specified.
Rhode Island	R.I. Gen. Laws § 15-8-3 (2006).	No process specified.
South Carolina	S.C. Code Ann. § 20-7-958 (2006).	No process specified.
South Dakota	S.D. Codified Laws § 25-8-59 (2006).	In circuit court either party may bring an action based on fraud, duress, or material mistake of fact. The action must be commenced within three years after creation of the presumption (date of signing).
Tennessee	Tenn. Code Ann. §§ 24-7-113(c)–(h); 68-3-2-3(H) (2006).	For intrinsic or extrinsic fraud, duress, or material mistake of fact, the acknowledgment may be challenged in court within five years of the date of execution of the acknowledgment. (The five-year limitation may be waived if there was fraud in the procurement of the acknowledgment by the mother and where the relief does not affect the interests of the child, the state, or the child support agency.) The court must first find that there has been such fraud, duress, or mistake; only then may genetic tests be ordered. If the test results refute paternity, the court must rescind the acknowledgment and dismiss any support action. Thereafter no further action may be initiated against the excluded person. The of the court sends a certified copy of the rescission order to the clerk registrar of vital records; the registrar amends the birth record accordingly. If the test results show a probability of paternity of 95 percent or higher, a trial is held. If they show a probability of paternity of 99 percent or higher, paternity is conclusively presumed and a paternity order is entered. If paternity is disestablished, then the court orders an amendment to the birth records.
Texas	Tex. Fam. Code §§ 160.308, .309 (2006).	After the rescission period but before the fourth anniversary of the date of filing with the Bureau of Vital Statistics, any signatory may commence an action to challenge the acknowledgment based on fraud, duress, or material mistake of fact. After four years, any collateral attack on the acknowledgment is also precluded. A "material mistake of fact" is defined to include genetic evidence that does not rebuttably identify the man named as the biological father of the child. In either proceeding, each signatory to the acknowledgment and any related denial must be made a party. The proceeding is conducted in the same manner as a contested paternity case. At the end of the proceeding, the court must (if appropriate) order the Bureau of Vital Statistics to amend the child's birth certificate.
Utah	Utah Code Ann. §§ 78-45g-307, 308 (2006).	After the period for rescission has passed, a signatory may bring at any time an action challenging the acknowledgment on the basis of fraud or duress. A signatory may also bring an action based on material mistake of fact, but this action must be brought within four years after the acknowledgment was filed with the Office of Vital Records. (If the declaration was filed before May 1, 2005, a challenge based on material mistake of fact may be filed until April 30, 2009.) Material mistake of fact is defined to include genetic test results showing that the declaring father is not the biological father and test results that identify another man as the biological father.

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Table 3.—State Statutory Provisions on Challenges to Voluntary Paternity Acknowledgments on the Basis of Fraud, Duress, or Material Mistake of Fact

(Continued from page 589)

STATE	CITATION	DESCRIPTION
Utah *(Continued)*		All signatories must be made parties to the proceeding. The proceeding is conducted as if it were a proceeding to adjudicate parentage. If paternity is disestablished, the court must order the Office of Vital Records to amend the child's birth certificate.
Vermont	Vt. Stat. Ann. tit. 15, § 307(f) (2006).	A challenge may be filed under Civil Rule 60 of the Vermont Rules of Civil Procedure.
Virginia	Va. Code Ann. § 20-49.10 (2006).	An individual may move to set aside a legal judgment of paternity (presumably including an acknowledgment which has the legal effect of a judgment under Section 20-49.1 of the Annotated Code of Virginia) if a genetic test establishes that the individual named as the father is not the biological father. In such a suit, the court must appoint a guardian *ad litem* to represent the interests of the child. If paternity is disestablished, the court must order the completion of a new birth record for the child.
Washington	Wash. Rev. Code § 26.26.335 (2006).	Within two years of the filing of the acknowledgment with the state registrar of vital statistics, a signatory may commence a court proceeding on the basis of fraud, duress, or material mistake of fact. All signatories must be joined as parties. The proceeding must be conducted as in any contested paternity case. If paternity is disestablished, the court must order the registrar to amend the child's birth record.
West Virginia	W. Va. Code § 16-5-10(5) (2006).	A parent who wants to rescind must file a verified complaint with the clerk of the circuit court in the county in which the child resides. The complaint must state the name of the child, the name of the other parent, the date of birth of the child, the date of the signing of the acknowledgment, and a statement that the parent wants to rescind. The complaint must also specifically allege fraud, duress, or material mistake of fact. In order to grant rescission, the court must find by clear and convincing evidence that the acknowledgment was entered into under circumstances of fraud, duress, or material mistake of fact. If the acknowledgment is rescinded, the clerk of the court sends a certified copy of the order to the registrar of vital statistics so that the birth record can be amended.
Wisconsin	Wis. Stat. § 767.805(5) (2006).	*For Acknowledgments Signed and Filed on or After April 1, 1998:* Either parent may seek to revoke the acknowledgment by motion or petition stating facts that show fraud, duress, or material mistake of fact. If the court determines that the father is not the biological father, the court or the child support agency (in a Title IV-D case) must notify the registrar to remove the man's name from the birth certificate. No paternity action may thereafter be brought against the man with respect to the child.
Wyoming	Wyo. Stat. Ann. §§ 14-2-608, 609 (2006).	Either party may petition the district court to vacate the acknowledgment based on fraud, duress, or material mistake of fact within two years after the acknowledgment is filed with the Office of Vital Records. All signatories must be made parties to the proceeding, which is conducted as if it were a proceeding to adjudicate parentage. If paternity is disestablished, the court must order the Office of Vital Records to amend the child's birth certificate.

- requesting local legal aid programs to represent signatories who are not using the services of the state child support program (if the state does not do this, legal aid programs might also consider developing *pro se* materials or representing parents seeking rescissions).

As mentioned above, some states do allow minors to enter voluntary acknowledgments. This is a controversial subject since minors are not generally allowed to enter into binding contracts on their own. In recognition of the special protections often afforded minors, a number of states allow minors to sign but give them extra time to rescind (see Table 2). In Illinois, for example, a minor signatory may rescind an acknowledgment at any time up to six months after reaching the age of majority or becoming emancipated.[37] States that decide to allow minors to sign might consider extending the rescission period in a similar manner.

Challenges Based on Fraud, Duress, or Material Mistake of Fact

Once sixty days have passed, a paternity acknowledgment may be challenged only in a judicial proceeding and only on the basis of fraud, duress, or material mistake of fact.[38] Again, a number of states provide no specific statutory guidance for such challenges.[39] However, most have at least some statutory guidance, and the guidance is similar from state to state (see Table 3). The major differences involve time limits, definitions of "mistake of fact," and the order in which a case must be proven.

Most states do not put a time limit on the commencement of a challenge to a paternity acknowledgment based on fraud, duress, or material mistake of fact. However, there are some notable exceptions, and the trend in recent years has been to impose some limits. Some states require that the action be commenced within a certain number of years from the date of the child's birth.[40] Others require the action be commenced within a certain time from the date the acknowledgment is executed or filed.[41] Others measure time from the date the father discovers (or should have discovered) that he is not the child's biological parent.[42] Still others specifically refer to Civil Rule 60 of the Federal Rules of Civil Procedure or the state equivalent; depending on the section invoked, this requires action within a specific time frame or a "reasonable time."[43]

Time frames protect the parties. While they may be most beneficial in providing stability to mothers and children, they also can serve to protect fathers. This is particularly true when an acknowledged father is actively involved in a child's life and wants to continue his parental role and an outsider challenges his paternity. This was the case in Oklahoma where a man alleging that he was the biological father challenged an acknowledgment six years after it had been filed.[44] The Oklahoma Supreme Court found the action to

[37]See 750 Ill. Comp. Stat. §§ 45/3.1, 45/5(b) (2006).

[38] Uniform Parentage Act § 309.

[39]In some of these states the routine practice is to file a motion to set aside the judgment under the state's version of Civil Rule 60(b) discussed in more detail below. See, e.g., *State Department of Revenue, Child Support Enforcement Division v. Button,* 7 P.3d 74 (Alaska 2000); *Rousseve v. Jones*, 704 So. 2d 229 (La. 1997).

[40]See, e.g., Cal. Fam. Code § 7577 (2006) (two years); Colo. Rev. Stat. § 19-4-105 (2006) (five years); Kan. Stat. Ann. § 38-1138 (2006) (one year).

[41]See, e.g., N.D. Cent. Code §14-20-10 (2006) (within one year of filing the acknowledgment with the Department of Health); Tenn. Code Ann. § 24-7-113(e)(2) (2006) (within five years of the date of execution of the acknowledgment); Tex. Fam. Code Ann. § 160.308(a) (2006) (within four years of filing the acknowledgment with the Bureau of Vital Statistics); Wash. Rev. Code § 26.26.335 (2006) (within two years of filing the acknowledgment with the registrar of vital statistics).

[42]See, e.g., Minn. Stat. § 257.75 (2006) (within one year of filing the acknowledgment or six months of discovering, through genetic tests, that the man named is not the biological father).

[43]See, e.g., Vt. Stat. Ann. tit. 15, § 307(f) (2006).

[44]*Hill v. Blevins,* 109 P.3d 332 (Okla. 2005).

be barred by the state's two-year limitation period.[45] Here the acknowledged father wanted to remain the child's father, and that he remains so was clearly in the child's best interest.

Another emerging issue is the definition of "mistake of fact." If genetic tests are administered after the rescission period, and those tests establish that the acknowledged father is not the biological father, may a signatory claim that a mistake of fact was made? Traditionally a mistake of fact may be pleaded only if the mistake was not caused by neglect of a legal duty on the part of the person making the mistake.[46] If we apply this standard to the acknowledgment situation, neither party should be allowed to make a "mistake of fact" claim if genetic tests were offered and the parties declined to take them before signing. However, at least one state provides in its statute a "mistake of fact" definition that would allow this claim to be made.[47] Courts may also allow such claims to be pursued.[48]

A few state statutes directly address order of proof. In some states the challenger must first prove by clear and convincing evidence that fraud or material mistake of fact has occurred. Only when this has been established will the court order genetic testing and allow the test results to be used at trial.[49] In other states the challenger may bring genetic test results to the court or obtain them through court order and use those results to establish fraud or mistake of fact as well as nonpaternity.[50] This difference in approaches can be determinative of whether the challenger is allowed to proceed. For example, suppose a man, knowing he was not the biological father, signed a paternity acknowledgment. The mother was perfectly honest with him, but he wanted to assume the role of father to the child. Later he and the mother ended their relationship, and he was ordered to pay child support. He did not want this responsibility and sought to challenge his paternity. In a state that required him to prove fraud or material mistake of fact before introducing genetic evidence, he would be precluded from disestablishing paternity; there was no fraud and he knew the facts. In a state that allowed him to present genetic tests and argue mistake from those tests, he would be able to proceed with his disestablishment action.

The Uniform Parentage Act provides a model statute in this area. If no signatory acts within the sixty-day rescission period, a later challenge to the acknowledgment based on fraud, duress, or material mistake of fact must be commenced within two years after the acknowledgment was filed with the birth record agency.[51] Thereafter the proceeding is barred.[52] If a possible biological father who was not a party to the acknowledgment wants to challenge the acknowledgment, he must act within two years.[53] In either case the suit will be treated as a contested paternity action.[54] Genetic testing will be ordered, and the results will be used to determine whether the acknowledgment

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[45]*Id.*; see also *Custody of Child of Williams v. Carlson,* 701 N.W.2d 274 (Minn. Ct. App. 2005).

[46]Black's Law Dictionary 693 (6th ed. 1991).

[47]See, e.g., Utah Code Ann. §§ 78-45g-307, 308 (2006).

[48]See, e.g., *Department of Human Services v. Chisum,* 85 P.3d 860 (Okla. Civ. App. 2004).

[49]See, e.g., Tenn. Code Ann. §24-7-113(e)(2) (2006). See also Mich. Comp. Laws § 722.1011.11(2) (2006) (requiring an affidavit containing sufficient facts to establish fraud, misrepresentation, misconduct, duress, or newly discovered evidence that could not be obtained by due diligence to accompany the petition); W. Va. Code § 16-5-12(i)(4) (2006) (the complaint must contain allegations of fraud, duress, or mistake and the court must find this to be proven before it may rescind the acknowledgment).

[50]See, e.g., Md. Code Ann. Fam. Law § 5-1038(A)(2)(I)(2) (2006).

[51]Uniform Parentage Act § 308.

[52]*Id.* § 609(a).

[53]*Id.* § 609(b). His time runs from the effective date of the acknowledgment. *Id.*

[54]*Id.* § 309(d).

should stand.[55] Thereafter the court will issue an order, and the birth record will be corrected if necessary.[56]

The virtue of this approach is that it gives one who has been induced to sign the acknowledgment by fraud, duress, or material mistake of fact as defined by other state law an opportunity to challenge paternity. Equally important, one must act quickly (within two years) to disestablish his paternity before a strong relationship with the child is created and before the child loses the opportunity to establish correct parentage.

Recommendations: In defining their approaches, states should

- adopt a time limit on challenging paternity acknowledgments (this limit should apply to the signatories as well as nonsignatories, i.e., potential biological fathers);
- require the establishment of fraud, duress, or material mistake of fact before ordering genetic tests or allowing them to be introduced if a party has already obtained them (this is the only way to be consistent with federal requirements and enables the court to determine whether there has been error or misconduct on the part of one of the signatories);[57] and
- specifically authorize the consideration of the "best interests of the child" in determining whether to order or allow the introduction of genetic test results (as detailed below, courts are struggling with the "best interests" concept and could use legislative guidance in this area). In the child's best interest in some cases would be to know who the biological father is. In other cases—particularly when the child has a long-standing relationship with the acknowledging father and when a mother or potential biological father is the one attempting to disestablish the paternity of a man who has been and wishes to remain known as the child's father—the child's best interest weighs in the opposite direction. Courts should be able to weigh the context in reaching a disestablishment decision of a child whose parentage has already been adjudicated.[58]

The Status of Child Support After Rescission or Judgment

Once the decision to disestablish paternity is made, there is little disagreement in either courts or state legislatures that the current and future support obligations of the disestablished father should be terminated. While this may create fiscal harm to the child, the general sense is that fairness to the disestablished father outweighs this harm.

There is less consensus about forgiveness of arrears accrued under the child support order. Most courts are uncomfortable with the notion of forgiving arrears; they find that this undermines respect for judgments, encourages dilatory conduct, and violates federal law.[59] However, some courts and state legislatures are moving in a different direction. Again, out of a sense of fairness to the disestablished father, they are allowing or even requiring arrears forgiveness (see Table 4).

Another issue that can arise is the custodial parent's liability for support already paid. If the custodial parent received public assistance, the state may have retained

[55]*Id.* §§ 502, 505.

[56]*Id.* §§ 636(a), 309(e).

[57]A few states appear to allow challenges based on genetic tests without proof of fraud, duress, or material mistake of fact. See, e.g., La. Civ. Code Ann. art. 206 (2006); Md. Code Ann. Fam. Law § 5-1038 (2006). These statutes contradict federal law. However, the federal government apparently has not issued guidance to this effect.

[58]See, e.g., *Texas Department of Protective and Regulatory Services v. Sherry*, 46 S.W.3d 857 (Tex. 2001) (a man was not allowed to bring an action to establish his paternity of a child whose paternity had already been adjudicated and who was receiving social security survivors' benefits because the adjudicated father was deceased).

[59]States receiving federal funds for their child support programs are required to have laws that prohibit the retroactive modification of arrears. See 42 U.S.C. § 666(a)(9)(C). If arrears accumulated under a valid order, to wipe them out would constitute a retroactive modification and thus run afoul of the federal requirement.

the money. Should it reimburse the paying parent? There are certainly equity issues on the side of the disestablished father. At the same time the ramifications for the state treasury and the mother are severe. Moreover, the facts in the cases vary widely. While there are some cases of deliberate fraud by the mother, most cases involve unintentional mistakes, such as default judgments where the man did not appear and request genetic testing when he should have, or situations in which a man acknowledged paternity or held the child out as his own when he knew this not to be the case. Allowing reimbursement in these situations either punishes innocent parties or rewards men for inappropriate behavior. Neither of these results is good public policy.[60]

On the one hand, if the state collects and retains support pursuant to a public assistance assignment, it may want to reimburse the father as Connecticut does.[61] On the other hand, this is inconsistent with the idea that the underlying order was valid until changed, and this seems to be where most court and legislatures have come down in the context of arrears. For the same reasons as well as for the sake of consistency, states may want to enact legislation that bars reimbursement for support paid. To protect children these statutes should bar claims against the custodial parent as well as claims against the state.[62]

■ ■ ■

Voluntary paternity acknowledgment can confer great benefits to parents and their children. However, to ensure fairness and accuracy, advocates need to monitor their state programs to be sure that services are available to those who want them, that good explanatory procedures are available to those who use the system, and that mistakes can be corrected swiftly so that harm is not done to the very people the system is meant to serve.

Author's Note

I wrote this article while I was a senior staff attorney at the Center for Law and Social Policy, where I specialized in family law as it affects low-income families.

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[60]For a more detailed discussion of this issue, see my *Truth and Consequences Part III: Who Pays When Paternity Is Disestablished?*, 37 Family Law Quarterly 69 (2003).

[61]See Conn. Gen. Stat. § 46b-172(d) (2006). Note that whether the federal government would participate in the cost of this reimbursement is not clear. Federal law requires the state to split collections for public assistance families into a "state share" and a "federal share" based on the state's Medicaid match rate. Thus 50 percent to 80 percent of the support may have been sent to the federal government to reimburse it for its share of the public assistance payments. In fairness, if the state reimburses the disestablished father, the federal government should help by giving back its share of the collections. However, there is no federal guidance on this issue at the present.

[62]See, e.g., Ala. Code § 26-17A-2 (2006).

Table 4.—State Statutes on Child Support After Paternity Is Disestablished

STATE	CITATION	DESCRIPTION
Alabama	Ala. Code § 26-17A-2 (2006).	In any decree setting aside an order of paternity, there shall be no claim for damages against the court that entered the original order or any claim for reimbursement or recoupment or money damages for support paid against the mother, the state, or any employee or agent of the state.
Arizona	Ariz. Rev. Stat. § 25-812(E) (2006).	An order vacating a determination of paternity operates prospectively. Unless otherwise ordered by the court, it does not alter the obligation to pay support arrears or any other amount previously ordered by the court.
California	Cal. Fam. Code § 7575 (2006).	If the person executing a paternity acknowledgment is ultimately found not to be the father, arrears which accumulated under the order remain due and owing.
Connecticut	Conn. Gen. Stat. § 46b-172(d) (2006).	When a court rescinds or sets aside a paternity acknowledgment and the child is or has been supported by the state, the Department of Social Services must refund any money paid by the petitioner to the state during the period when the child received state aid.
Iowa	Iowa Code § 600B.41A (2006).	If paternity is disestablished, the father is relieved of any and all future support obligations from the date of the order. Unpaid support due prior to the date of the order is satisfied.
Minnesota	Minn. Stat. § 257.75(4) (2006).	If paternity is disestablished, the father is relieved of all future support obligations. Arrears that accrue after the motion to disestablish is filed but before the order is entered are erased.
Oklahoma	Okla. Stat. tit. 10, § 70(C) (2006).	If the man is determined that not to be the father, then any pending enforcement proceedings must cease and he must be released from any child support obligations.
Oregon	Or. Rev. Stat. § 109.070(4)(c) (2006).	Child support payments made before the entry of the judgment of nonpaternity may not be returned to the payer.
Tennessee	Tenn. Code Ann. § 24-7-113(f) (2006).	If an acknowledgment is rescinded or successfully challenged, the state and its officers, employees, contractors, and any child support agency are not liable to compensate any person for repayment of support paid or for other costs.
Utah	Utah Code Ann. § 78-45g-308(6) (2006).	If a declaration is rescinded or successfully challenged, the declaring father may not recover child support that he paid before the order or rescission.
Virginia	Va. Code Ann. § 20-49.10 (2006).	The court may also set aside the obligation to pay child support if an acknowledgment is set aside. Support may not be retroactively modified, but it may be abrogated for the period between the date the notice of petition was served upon the nonfiling party and the date the order of nonpaternity was entered.

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