CLASP

CENTER FOR LAW AND SOCIAL POLICY

TRUTH AND CONSEQUENCES: PART I.
Disestablishing the Paternity of Non-Marital Children

By Paula Roberts

About one-third of all children born in the United States each year are born to unmarried parents.[1] In order to have a legally recognized relationship with their fathers, these children must have their paternity established. Historically, the only way to do this was for the mother (or the state if she was indigent) to file a paternity suit. More recently, federal law has established a framework that provides two options[2]:

- Either parent may bring a paternity suit to establish the relationship.[3] If either parent requests, the court will order genetic tests.[4] On the basis of the test results, paternity will either be established or refuted.[5] If paternity is established, the court will enter an appropriate order, including an amendment to the child's birth certificate to reflect the name of the father.[6] Child support will generally also be ordered.

---

[1] For a description and analysis of the trend in non-marital births see E. Terry-Humen, J. Manlove, & K. Moore, *Births Outside Marriage: Perceptions vs. Reality*, CHILD TRENDS RESEARCH BRIEF, available at www.childtrends.org.

[2] The federal provisions described below are not mandatory. However, in order to receive federal funds for their state child support enforcement programs and their welfare programs, states must adopt these laws. 42 USCA §§654(20) and 602(a)(2) (West Supp. 2002). Consequently, every state now has a series of state laws on paternity that mirror these federal requirements.

[3] Under the federal law described in footnote 2 above, states must allow suits to be brought at any time before the child's 18th birthday. 42 USCA §666(a)(5)(A)(West Supp.2002). They must also allow fathers as well as mothers a reasonable opportunity to initiate a paternity action. Id. §666(a)(5)(L).

[4] Under the federal laws described in footnote 2 above, 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. Id. §666(a)(5)(B)(i)(I). In cases handled by the state child support agency, the state must pay for the tests. It may recoup these costs from the father if paternity is established. Id. §666(a)(5)(B)(ii).

[5] That same federal law requires states to establish a threshold presumption of paternity based on the results of genetic testing. The presumption may be rebuttable or conclusive. Id. §666(a)(5)(G). The majority of states have chosen a probability of paternity of 97 percent or higher and the majority makes the presumption rebuttable. George Maha, *Analysis of Genetic Test Results for Courtroom Use*, § 15-A, in DISPUTED PATERNITY PROCEEDINGS ch. 15 (Nina Vitek, ed. 1997).

[6] 42 USCA §666(a)(5)(D)(i)(II). See, also id. §666(a)(5)(M).

- Together, the parents can voluntarily acknowledge paternity.[7] Before signing this acknowledgment, the parents must be advised of the legal consequences of signing this document.[8] Once the document is signed, either parent may rescind it within 60 days.[9] After 60 days, the signed acknowledgment can be challenged only in court and only on the basis of fraud, duress, or material mistake of fact.[10] Thus, no paternity order is issued; the acknowledgment itself is the legal finding of paternity and is entitled to full faith and credit in other states.[11] It is not accompanied by a support order unless one of the parties seeks such an order in a separate proceeding.[12]

In many states, there is also a third way to establish paternity: by conduct. States that adopted the 1973 version of the Uniform Parentage Act (UPA 1973) have authority to presume that a man who receives a child into his home and openly holds out the child as his natural child is the child's father.[13] If this presumption goes unchallenged, then the man is the child's father.

There is no federal requirement that genetic tests be conducted before paternity is established. In a contested case, it is likely that such tests will be done, but, if no party asks for them, they are not necessary.[14] That is up to state law. In addition, if one party refuses to be tested, paternity will be established on the basis of other evidence and/or by default. In a voluntary acknowledgment situation, tests might be offered to the parties before they sign the acknowledgment, but there is no federal requirement that this be done.[15] A man could sign a voluntary paternity acknowledgment knowing he was not the child's biological parent, but nonetheless wanting to assume the responsibilities of

---

[7] Here again, in order to receive federal child support funds, states must have certain laws including one in which parents can voluntarily establish paternity through a simple acknowledgment process. Typically, this service is made available at hospitals (for new-born babies) and at the birth record agency (for older children). See 42 USCA §666(a)(5)(C)(West Supp. 2002).

[8] Id. §666(a)(5)(C)(i)(I).

[9] Id. §666(a)(5)(D)(ii). The period is shortened if an administrative or legal proceeding relating to the child (including a support proceeding) is brought by one of the parents before the expiration of 60 days. In this case, the parent must raise the issue in that proceeding. Id. §666(a)(5)(D)(ii)(II).

[10] Id. §666(a)(5)(D)(iii).

[11] Id. §666(a)(5)(C)(iv).

[12] Support orders are usually entered by a court, but many states also offer administrative processes for order establishment. In either case, the decision-maker will use the state's numeric child support guidelines to determine the correct amount. Such guidelines are required pursuant to 42 USCA §667 (West 1991). The parties might also enter a voluntary agreement about support, but this agreement is not usually enforceable and must be reduced to a judgment to make it so.

[13] This provision is found in subsection 4(4) of the 1973 Act. This act was adopted *in toto* in 19 states and many others adopted large portions of it. See, Jack Sampson, Uniform Parentage ACT (2000) with Prefatory Notes and Comments, 35 *Family Law Quarterly* 86, 92 (2001).

[14] See, e.g., *Ferguson v. Department of Revenue*, 977 P.2d 95 AK. (1999).

[15] Federal law does require that the acknowledgment form meet certain requirements. Id. §666(a)(5)(C)(iv). Action Transmittal 98-02 (January 23, 1998) sets forth those requirements. They 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 can rescind within 60 days; a clear statement that the parents understand that signing is voluntary and what the rights, responsibilities, and consequences of signing are; and signature lines for the parents and witnesses/notaries.

parenthood. A man might also sign, mistakenly believing himself to be the biological father of the child in question. Similarly, a man whose paternity arises out of the UPA presumption based on conduct may not have sought genetic tests before assuming the role of father.

Problems arise when someone later wants to challenge a child's paternity. While the "someone" is most often the man whose paternity has been established, the issue also arises when the mother wishes to curtail the father's presence in the child's life or when a man who is (or believes he is) the child's biological father comes forward, wishing to establish his paternity. Sometimes the contestant already has genetic test results supporting his/her position, while, at other times, the person seeks such tests to confirm or deny a suspicion that someone other than the acknowledged, adjudicated or presumed father is the child's biological father.

Until recently, such contests were relatively rare because genetic tests were invasive and required participation of parties who might be reluctant to be tested. Moreover, the results were not always conclusive and tests were quite expensive. A parent who wished to raise a challenge might be deterred by the cost, the difficulty of obtaining such tests, and the limited likelihood of success. In the last five years, however, much has changed. Testing can now be done by simple cheek swab (rather than drawing blood), only the man and child need be tested (eliminating the need for the mother's cooperation), and test results are highly dispositive.[16] Moreover, testing kits are now available on the Internet,[17] eliminating the need for any medical or court intervention. As a result, more paternity disestablishment actions are being brought (see Appendix A), and there is an organized movement to enact legislation making disestablishment based on genetic tests easier to pursue.[18]

This has created a dilemma for states, courts, parents, and children. At what point should the truth about genetic parentage outweigh the consequences of leaving a child fatherless? Is a child better off knowing his/her genetic heritage or maintaining a relationship with his/her father and his family that provides both emotional and financial support? Should it matter who brings the action or should the rules be the same for men trying to disestablish paternity, women seeking to oust a father from the child's life, and third parties trying to assert their paternity of a child who already has a legal father?

There is scant federal guidance on any of these issues. This has left the problem largely in the hands of state legislatures and courts. In some states, there are detailed procedures for challenging paternity acknowledgments; in other states, there is little or no

[16] Today, the typical genetic test can yield a 99 percent probability that a given man is the child's father.
[17] A January 8, 2003 web search revealed 64 sites that made mention of paternity testing kits. Dozens of these sites advertised home testing kits free or at low cost. See, e.g., www.genetree.com, which offers to ship free kits (payment is made if you send the samples back for testing) and www.prophase-genetics.com, which offers kits and results for $160.
[18] A January 8, 2003 web search identified 1,910 sites discussing "paternity fraud." These include U.S. Citizens Against Paternity Fraud, www.paternityfraud.com, Let's End Paternity and Child Support Fraud, www.angelfire.com, and many others dealing with state legislative efforts in this area on behalf of men who believe they have been defrauded.

statutory guidance in this area. Some states have statutory and case law to guide the process of paternity disestablishment when paternity has been adjudicated or presumed, while others offer little guidance. This monograph reviews the recent statutory and case law in this area and offers recommendations for bringing greater fairness and clarity to the process.[19]

When Paternity Has Been Established by Voluntary Acknowledgment

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 60-day period[20] unless an administrative or judicial proceeding involving the parent and child (e.g., a support or custody proceeding) is brought at an earlier time. In that case, the *rescission* must be sought during or in conjunction with that proceeding. Thereafter, a *challenge* may be brought but only on the basis of fraud, duress, or material mistake of fact.

Rescinding a Paternity Acknowledgment

1. Statutory Approaches

As detailed in Appendix B, about one- third of the states do not yet have a specific statutory process for rescinding paternity acknowledgments.[21] This is a serious problem as it may mean that parents wishing to rescind in those states have no practical way of doing so.[22]

The other states have addressed the issue by statute using one of two different models: an *administrative* approach or a *judicial* approach. Seventeen states have adopted the *administrative* approach.[23] In these states, the signatory[24] who wishes to rescind

[19] This is the first monograph in a planned series. The next monograph will deal with paternity disestablishment when the parents are or have been married. The third monograph will address the issue of responsibility for child support when paternity has been disestablished.

[20] The federal statute does not specify how the 60 days are measured, so this issue needs to be addressed in state law.

[21] These states are Alabama, Alaska, the District of Columbia, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Maine, Mississippi, Nebraska, Nevada, Oregon, New Mexico, Pennsylvania, Rhode Island, South Carolina, Utah, and Virginia. Each of these states has legislation incorporating the basic federal provisions for rescission and challenge. However, there is no detail in their paternity or vital record statutes describing how the process operates. Some of these states might have processes established through regulation rather than statute.

[22] Without a statutory alternative, signatories could try to bring suit. As discussed below in the section on litigation, most states have a rule of civil procedure analogous to Federal Rule 60. This rule allows parties to petition for relief from a judgment in certain circumstances. The difficulty is that, during the 60-day rescission period, the acknowledgment is not yet the equivalent of a judgment, so it is not clear that Rule 60 proceedings would be available. However, a litigant might try this approach. In addition, statutes in Colorado, Louisiana, Maryland, Michigan, and Virginia allow a court challenge to paternity at any time. In those states, a signatory wishing to rescind could use those statutes to bring suit.

[23] These states are Arizona, Arkansas, California, Connecticut, Idaho, Illinois, Iowa, Minnesota, Missouri, Montana, New Hampshire, North Dakota, Oklahoma, Tennessee, Vermont, Wisconsin, and Wyoming.

notifies the birth records agency. In some states, there is a specific rescission form,[25] while in others a written request will do.[26] Most make provision for notifying the other signatories,[27] and some allow for amending the birth record.[28]

Iowa has a model process for *administrative* rescission. The Iowa Department of Public Health was charged with developing a standardized rescission form.[29] This is the only form that may be used to rescind an acknowledgment, 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.[30] 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.[31] This helps assure that someone who is not a signatory but wishes (for whatever reason) to rescind the acknowledgment will not be able to do so. The completed and notarized form is filed with the state registrar of vital statistics who registers the rescission.[32] The registrar then mails a written notice of the rescission to the other signatory at his/her last known address.[33] That way the other party is fully informed of this development. Finally, the registrar removes the father's name from the child's birth certificate.[34] This avoids any later confusion about whether the child's paternity has been established. In addition, if an acknowledgment has been rescinded, the registrar may not accept any subsequent acknowledgment of paternity by the same parties.[35] This helps limit parties' ability to yo-yo back and forth, creating work for the registrar and confusion about the child's status.[36]

---

[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 non-paternity). In this article, the term "signatory" will be used to describe a person allowed by state law to sign the acknowledgment and who has done so. Depending on the state, this may or may not include a husband disavowing his paternity.

[25] See, e.g., CAL. FAMILY CODE §7575(a)(West 2002); CONN. GEN. STAT. §46b-172(a)(3)(2002); IDAHO CODE §7-1106(4)(2002).

[26] See, e.g., MINN. STAT. § 257.75(2) (2002); MO. REV. STAT. § 210.823; N.H. REV. STAT. ANN. § 126: 6-a(II)-e(2002).

[27] In some states, the Registrar of Vital Statistics (or the equivalent state or local office) sends the notice. See, e.g., TENN. CODE ANN. § 24 -7-113(c)(2) and WY. STAT. ANN. § 14-2-102(d)(2002). In other states, the rescinding party notifies the other signatories. See, e.g., CAL. FAMILY CODE § 7575(a)(2002) (The rescission must contain a declaration that the other signatory was mailed a copy of the rescission by registered mail, return receipt requested and a copy of the return receipt must be attached); DEL. CODE ANN. Tit. 13 §804(c)(1)(ii)(2002). (The rescission must be accompanied by an affidavit that a copy has been sent to the other signatory at the address shown on the acknowledgment.)

[28] See, e.g., TENN. CODE. ANN. §§ 24-7-113(h)(2)(2002).

[29] IOWA CODE ANN. §252A.3A(12)(c)(2002).

[30] Id. § 252A.3A(12)(a).

[31] Id. §252A.3A (12)(c).

[32] Id. §252A.3A(12)(a).

[33] Id. §252A.3A (12)(b).

[34] Id.

[35] Id. §252A.3A (12)(d).

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

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.[37] In fact, in some states, the Vital Records agency is specifically prohibited from amending the record.[38] 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 been.

Addressing these problems, 11 states have adopted a specific *judicial* approach to rescission. In these states, a party desiring to rescind an acknowledgment must go to court.[39] 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.[40] In some states, the granting of a rescission is pro forma and an order is sent to the birth record agency requiring it to amend the birth certificate to reflect the change in circumstances.[41] In other states, genetic tests will be ordered and a full-blown contested paternity case will be heard.[42] The issue is then fully resolved between the signatories. Either the acknowledging father will be 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.[43] 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 resides. 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 state child support enforcement program services, 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.[44]

This is also the approach taken in the new Uniform Parentage Act. This model act was developed by the National Conference of Commissioners on Uniform State Laws. It is known as UPA (2000). Article 3 incorporates all of the requirements of federal law related to giving parents the opportunity to establish paternity through voluntary acknowledgment. Section 301 allows unmarried parents to use this method and Section 303 allows married couples to use it when a child born to the wife is not the husband's

---

[37] See, e.g., ARK. CODE ANN. § 9-10-115 (2002).
[38] See, e.g., MO. REV. STAT.§ 193.215 (2002).
[39] These states are Indiana, Kansas, Massachusetts, New Jersey, New York, North Carolina, South Dakota, Texas, Washington, and West Virginia. Delaware has both a judicial and an administrative process. In addition, as noted in footnote 22, Colorado, Louisiana, Maryland, Michigan, and Virginia allow court challenges at any time—presumably including the rescission period. Those states might also be characterized as having a judicial approach.
[40] See, e.g., MASS. GEN. LAWS ch. 209C, §11(a)(2002).
[41] See, e.g., WEST VA. CODE ANN. § 16-5-12(i)(C)(2002).
[42] See, e.g., TEX. FAMILY CODE ANN. §160.309(d)(2002). 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 §3112.7(2002).
[43] MASS. GEN. LAWS ch. 209C,§ 11(a)(2002)
[44] Id.

biological child. In this case, the mother and biological father sign a voluntary acknowledgment and the husband signs an accompanying denial of paternity.

Under Section 307, if, either the mother or the father (or the denying husband) wishes to rescind a voluntary acknowledgment, he or she must bring a legal action within the earlier of either 60 days from the effective date of the acknowledgment or the date of the first hearing involving the parties that adjudicates an issue relating to the child (including child support). Under Section 309(a), the other signatories must be made parties to the rescission action. Under Section 309(d), the proceeding must be conducted like any proceeding to adjudicate paternity: the court will order genetic testing[45], and paternity will be determined based on the test results.[46] Thereafter, the child's birth certificate will be amended (if appropriate).[47]

2. Recommendations

In this area, an ounce of prevention may well be worth a pound of cure. If the signatories were required to undergo *genetic testing before signing a voluntary acknowledgment*, there would be no need for a rescission process. The acknowledgment would be consistent with the biological truth and the consequences of later disruption of the acknowledgment would be avoided.[48] Based on the growing agitation about "paternity fraud" and the articulated need to protect affected men, this might be a wise approach.[49]

Alternatively, the state statutes need to lay out a clear, user-friendly administrative process for rescission in the 60-day period. Those states that have not yet done so, need to address this issue. Those states that have an inadequate process should review their statutes. In this regard, the administrative process should include:

- **Standardized forms**. The agency responsible for developing the voluntary acknowledgment form should be charged with developing a rescission form and making it available in all facilities that offer voluntary acknowledgment services as well as in all birth record offices.

[45] See Section 502(a) of UPA (2000).
[46] Id. Section 505.Under this section, 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 which 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, then the court will evaluate the test results and the other available evidence in assessing the likelihood of paternity. Id. Section 631(3).
[47] Id. Section 309(e).
[48] For an interesting example of the havoc that occurs when the birth certificate is not amended upon rescission see *State ex.rel West Va. Dept. Of Health and Human Services, Child Support Div. V. Michael George*, 531 S.E. 2d 669 (W.Va. 2000).
[49] A recent newspaper search of major daily papers found 17 articles about the growing movement to combat so-called "paternity fraud." See, e.g., Martin Kasindorf, *Men wage battle on "paternity fraud." They say they should not have to pay support for kids who DNA tests prove aren't theirs*, USA Today, Dec. 3, 2002.

- **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 to be notified 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. The record should be changed as soon as the rescission is filed so that this confusion is minimized and the state's birth records are accurate.
- **Follow-up**. The non-rescinding parties should be informed that child support services are available and how to access those services. In that way, a non-rescinding 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.

Another excellent option is to adopt the judicial approach embodied in the UPA (2000). 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 the voluntary acknowledgment process. It tells the parties they should not lightly sign a voluntary acknowledgment since the only way to undo it is by court action. It is also more economical than the administrative process. In the administrative approach, rescission is followed by a paternity suit; in the judicial approach, the two processes 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 this 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 provide information about how to obtain 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 provided so that clerks can provide signatories wishing to challenge the acknowledgment with the procedural information they need.
- **Requesting local legal services programs to represent signatories who are not using the services of the state child support program**. If the state does not do this, legal services programs might also consider developing *pro se* materials and/or representing parents seeking rescissions.

Challenging a Paternity Acknowledgment

1. Statutory Approaches

Once 60 days have passed, a paternity acknowledgment can only be challenged in a *judicial* proceeding and only on the basis of fraud, duress, or material mistake of fact. Again, a number of states provide no specific statutory guidance for such challenges.[50] However, the majority have at least some statutory guidance, and the guidance is similar from state to state. (See Appendix C for details.) The major differences involve time limits, and the order in which a case must be proven.[51]

The majority of 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. Some states require that the action be commenced within a certain number of years from the date of the child's birth.[52] Others require the action be commenced within a certain time from the date the acknowledgment is executed or filed.[53] Others measure time from the date the father discovers (or should have discovered) that he is not the child's biological parent.[54] Still others specifically reference Rule 60 of the Rules of Civil procedure (or the state equivalent), which, depending on the section invoked, requires action within a specific time frame or a "reasonable time."[55]

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.[56] In other states, the challenger can bring genetic test results to the court (or obtain them through court order) and use those results to establish fraud/mistake of fact as well as non-paternity.[57] This difference in approaches can be determinative of whether the challenger is allowed to proceed. For example, suppose a man signed a paternity acknowledgment knowing he was not the biological father. The mother was perfectly honest with him, but he wanted to assume the role of

---

[50] In some of these states, it appears that routine practice is to file a motion to set aside the judgment under the state's version of Rule 60 (b) discussed in more detail below. See, e.g., *State Dept. of Revenue, CSED v. Button*, P2d. (Alaska 2000); *Rousseve v. Jones*, 704 So. 2d 229 (La. 1997).

[51] For the most part, state statutes do not define of "fraud, duress, and material mistake of fact." These issues are left to the court.

[52] See, e.g., IOWA CODE ANN. § 600B.41A(3)(a)(2002)(The action must be filed prior to the date the child reaches the age of majority).

[53] See, e.g., N.D. CENT. CODE§14-19-10.2(with some exceptions, within 1 year of execution);TENN. CODE ANN. §24-7-113(e)(2)(2002)(within 5 years of execution); TEX. FAMILY CODE § 160.308(a)(2002)(within 4 years of filing); WASH. REV. CODE § 26.26.335(2002)(within 2 years of filing).

[54] See, e.g., MINN. STAT. ANN. § 257.75(4)(2002)(within one year of filing the acknowledgment or 6 months of discovering, through genetic tests, that the man is not the biological father).

[55] See, e.g., VT. STAT.ANN. § 307(f)(2002).

[56] See, e.g., TENN. CODE ANN. §24-7-113 (e)(2)(2002). See, also MICH. COMP. LAWS § 722.1011.11(2) (2002)(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)(2002)(the complaint must contain allegations of fraud, duress or mistake and the court must find this to be proven before it can rescind the acknowledgment).

[57] See, e.g., MD. CODE ANN. FAMILY LAW ARTICLE §5-1038(A)(2)(I)(2)(2002).

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 UPA (2000) provides a model statute in this area. If no *signatory* acts within the 60-day window, then, to contest the acknowledgment, he or she must file a legal challenge and prove fraud, duress, or material mistake of fact. The action must be commenced within two years after the acknowledgment was filed with the birth record agency.[58] Thereafter, the proceeding is barred.[59] If a *possible biological father* (who was not a party to the acknowledgment) wishes to challenge the acknowledgment, he too may do so, but he must also act within two years.[60] In either case, the suit will be treated as a contested paternity action.[61] Genetic testing will be ordered[62] and the results will be used to determine whether the acknowledgment should stand.[63] Thereafter, the court will issue an order[64] and the birth record will be corrected (if necessary).[65]

The virtue of this approach is that it provides a person 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. Equally important, the person must act quickly (within two years) to disestablish his paternity before a strong relationship with the child has been established and before the child has lost the opportunity to establish his/her correct parentage.

2. Recommendations

As noted above, there is some virtue in requiring genetic tests before allowing a person to sign a voluntary acknowledgment. Alternatively, the *voluntary acknowledgment form could be clearly drafted* to indicate that it is unwise to sign without undergoing genetic tests and that doing so waives any future right to challenge the acknowledgment based on genetic tests. If the acknowledgment clearly states this, it could be used to prevent future challenges based only on genetic test results. Otherwise, as noted above, tests results can be used to circumvent the requirement that there be fraud, duress or material mistake of fact in the post-60-day period.[66]

---

[58] UPA (2000), Section 308.
[59] Id. Section 609(a).
[60] Id. Section 609(b). His time runs from the effective date of the acknowledgment. Id.
[61] Id. Under Section 309(d).
[62] Id. Section 502.
[63] Id. Section 505.
[64] Id. Section 636(a).
[65] Id. Section 309(e).
[66] See the discussion in *Re Paternity of Cheryl*, 746 N.E. 2d 488 (Mass. 2001)(the court recommends that the child support agency require genetic testing in cases brought pursuant to the TANF cooperation requirement) for an example of a judicial interpretation of the signatory father's rights. In denying the

In addition, states should:

- **Adopt a time limit on challenging paternity acknowledgments**. This limit should apply to the signatories as well as non-signatories (i.e., potential biological fathers).

- **Require 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[67] and gives the court the ability to determine whether there has been error or misconduct on the part of one of the signatories.

- **Specifically authorize consideration of the "best interests of the child" in making the determination of whether to order and/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 some cases, it would be in the child's best interest to know who his/her biological father is. In others—particularly when the child has a long-standing relationship with the acknowledging father and when it is a mother or potential biological father 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.

When Paternity Has Been Established by Prior Adjudication or Presumption

As noted above, there are cases in which paternity has been adjudicated without the benefit of genetic tests (particularly in default cases) and where paternity is based on the UPA 1973 presumption of paternity because the man has taken the child into his household and held the child out as his own. In these cases, it is possible that genetic tests would show that the adjudicated/presumed father is not the child's biological parent. The man might wish to disestablish paternity in these circumstances. Moreover, the mother might change her mind and wish to oust the father from the child's life. Finally, the biological father might wish to challenge paternity that has been established by adjudication, presumption, or acknowledgment and assert his paternity.

Paternity disestablishment in this context does not implicate federal rules. While, as noted above, there are federal strictures on disestablishment when paternity has been

---

man's attempt to rescind, the court took pains to note that he had been offered genetic tests and had declined to take them.

[67] 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. CIVIL CODE ARTICLE 206(2002); MD. CODE ANN.FAMILY LAW §5-1038 (2002). These statutes are contradictory to federal law. However, it does not appear that the federal government has issued guidance to this effect.

established by voluntary acknowledgment, there are no federal rules governing disestablishment in the context of adjudicated or presumed fathers. Some states provide legislative guidance to courts faced with these situations. Others leave it to the courts to apply equitable principles and rules.

Statutory Approaches

A number have states have recently enacted statutes that allow *men* who have been declared fathers by administrative or judicial order to disestablish their paternity based on genetic test results. For example, Alabama has enacted a statute that allows men who have been declared fathers in paternity litigation to petition to reopen the litigation at any time based on scientific evidence refuting parentage. If such a petition is filed, the court must accept the evidence or order DNA testing. If a person refuses to be tested, that fact is disclosed at trial. Based on this evidence, paternity can be set aside.[68] It should be emphasized that only adjudicated fathers may use this statute. Mothers, biological fathers, and fathers by virtue of a voluntary acknowledgment of paternity are not included in those able to challenge paternity under this statute.

By contrast, Virginia allows "an individual" to petition for relief from any final judgment of paternity if genetic testing excludes the individual named as the father. Either a mother or a father could use this statute, although it was written with challenges by fathers in mind. This statute is also available whether the establishment was obtained through acknowledgment or by administrative or judicial order. The court must appoint a guardian ad litem for the child. If the court sets aside the previous finding, it must order appropriate changes in the child's birth certificate and may set aside an existing child support obligation.[69]

Texas and Washington have adopted UPA (2000), which contains a comprehensive scheme governing challenges by mothers, presumed or adjudicated fathers, and possible biological fathers.

- Section 607 addresses cases where the child has a *presumed* father. In that case, the presumed father, the mother, or a man alleging himself to be the biological father can bring an action within the first two years of the child's life. Thereafter, the action is barred.[70]

- Section 637 addresses cases where a child has an *adjudicated* father. That determination is binding on the mother and adjudicated father and may be challenged under the state's law on appeal or vacation of judgments. Section 609(b) governs the rights of those (except the child) who were not parties to

[68] ALA. CODE §26-17A-1(2002). Georgia has a similar statute under which the only person who can seek to disestablish paternity is a man who has been ordered to pay child support. GA. CODE ANN. §19-7-54 (2002). Arkansas allows a man who was adjudicated to be the father without genetic tests, to seek to disestablish paternity by requesting genetic tests one time during the period in which he owes support. ARK. CODE ANN. §9-10-115 (2002).
[69] VA. CODE ANN. §20-49.10.
[70] UPA (2000) does provide one exception, but it is applicable only to marital children.

the litigation. Such individuals—including men who allege their parentage of the child—must act within two years of the effective date of the adjudication. Thereafter, they are barred from suing.

If the challenging party acts within the appropriate time frame, a paternity hearing will be conducted and genetic tests will be ordered. Based on the test results, the presumed or adjudicated father might be ousted and a new man adjudicated to be the child's father.[71] If that happens, the child's name might be changed[72] and his/her birth certificate will be changed.[73]

One other statutory approach is also worth noting. Arkansas allows challenges to paternity based on genetic test results for five years. If a challenge is not brought within that time, it is barred. However, Arkansas also has a statute that mandates relief from future support obligations based on genetic test results. In construing these statutes, the Arkansas Supreme Court has concluded that, after five years, paternity may not be disestablished, but the prospective support order may be reduced to "zero." The man remains the child's legal father, but is relieved of financial responsibility.[74]

Use of Equitable Doctrines

In conjunction with or in lieu of a state statute, courts may also use the equitable doctrines of *res judicata* and *collateral estoppel* to determine whether a particular disestablishment action should proceed.[75]

Finality of judgments is an important legal principle. Once a decision is rendered, and the appeal process is over, the parties should be able to rely on the outcome of their litigation as binding. This idea is embodied in the concept of *res judicata:* a final judgment is binding on the *parties* in any later proceeding involving the same *cause of action*. *Res judicata* applies if the first judgment 1) was issued by a court of competent jurisdiction; 2) was a final judgment on the merits; and 3) involved the same parties. If the first judgment meets these criteria, then a court can dismiss a suit to disestablish paternity on *res judicata* grounds.[76]

A related, but slightly different concept—collateral estoppel—may also apply. Collateral estoppel precludes re-litigation of *an issue* decided in a prior judgment if the three factors listed above apply and there was a full and fair opportunity to litigate the issue. Thus, if the issue of paternity was resolved in the first case, then it may not be re-litigated between the parties in a subsequent case.[77]

---

[71] Section 631(1) of UPA (2000).
[72] Id. Section 636 (e).
[73] Id. Section 636(f).
[74] *Littles v. Fleming*, 970 S.W. 2d 259 (Ark. 1999).
[75] In some states these doctrines are used in cases where the parents are not married: however, some states have limited the application of equitable doctrines to marital situations. See, e.g., *Van v. Zahorik*, 597 N.E. 2d 15 (Mich. 1999).
[76] See, e.g., *Florida Dept. of Revenue ex rel. Sparks v. Edden*, 761 So. 2d 436 (Fla. Dist. Ct. App. 2000.
[77] See, *Day v. Heller*, 639 N.W. 2d 158 (Neb. App. 2002).

As can be seen in Appendix A, courts have used these doctrines both offensively and defensively. Depending on the facts, courts may find that it is equitable to allow disestablishment.[78] They may also use these doctrines to prevent fathers from disestablishing paternity,[79] to prevent mothers from disestablishing the paternity of a man who wants to remain the child's legal father[80], and to prevent third parties from disestablishing the paternity of a child whose parentage has already been adjudicated.[81]

Rule 60(B) Motions

States usually have rules allowing courts to amend or set aside civil judgments in appropriate circumstances. Most of these rules are based on Federal Rule of Civil Procedure 60(B) and will be referred to as "Rule 60(B) Motions" herein. The Ohio statute is typical:

> On motion, and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: 1) mistake, inadvertence, surprise or excusable neglect; 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); 3) fraud (whether heretofore denominated as intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; 4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it has been based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or 5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation.

Any one of the five subdivisions could be used to argue for disestablishment of paternity under the right set of facts. For example, in *Re Paternity of* Cheryl[82], a baby was born in 1993. The mother was receiving public assistance and was required to cooperate in establishing paternity and pursuing support.[83] She named the father, and the state child support agency contacted him. He was offered pre-paid genetic tests, but instead, he

---

[78] See, e.g., *Florida Dept. of Revenue ex rel. R.A.E. v. M.L.S*., 756 So. 2d 125 (Fla. App. 2 Dist. 2000)(man acted within a reasonable time of discovering he was not the biological father and none of his prior actions made him the child's legal father).

[79] See, e.g., *Florida Dept. of Revenue ex rel. Sparks v. Edden*, 761 So. 2d 436 (Fla. App. Dist. 2000)(man had his doubts from the beginning and failed to take action).

[80] See, *In re Nicholas H.*, 46 P.2d 932 (CA. 2002)(man, with mother's acquiescence, became the child's presumed father; mother not allowed to challenge).

[81] See, e.g. *Texas Department of Protective and Regulatory Services v. Sherry*, 46 S.W. 3d 857 (Texas 2001)(man not allowed to bring to establish his paternity of a child whose paternity had already been adjudicated and who was receiving Social Security Survivors benefits because adjudicated father was deceased).

[82] 746 N.E. 2d 488(Mass. 2001).

[83] See 42 USCA §§608(a)(3) and 654(29)(West Supp.2001).

signed a voluntary paternity acknowledgment. Based on the acknowledgment, a paternity judgment was entered and a support order issued. He paid support and formed a close relationship with the child. In 1999, the child support agency sought an increase in support, and he countered with a Rule 60(B) motion requesting genetic testing and to have the paternity order set aside. This motion was denied. The father then had the child tested (during visitation and without the mother's consent) and the results established that he was not the biological father. Armed with the test results, he filed a second Rule 60(B) motion. This time, the court ordered tests and granted relief.

On appeal, the Supreme Judicial Court of Massachusetts noted that to prevail under any one of the first three sections of Rule 60(B), the father would have had to move for relief within one year of the judgment. Since he had not done so, he could not use any one of these three provisions. However, had he filed in a timely fashion, he might have been successful.[84] The Court then discussed whether Rules 60(B)(5)[85] or 60 (B)(6)[86] might be applicable since they are not limited by a specific time frame, but only require that the motion be filed within a "reasonable time." To prevail under these provisions, the father would have had to act with reasonable speed after discovering that he might not be the child's father.[87] On the facts of the case, the court determined that this father had not done so.[88] At least three and one-half years elapsed between the time the father had reason to suspect he might not be the biological father and the time he acted. During this time he had continued his relationship with the child, had enjoyed her love and companionship and she had come to "know and rely on him as her father." Under these circumstances, his motion was not timely.[89]

Constitutional Claims

In some cases, parents have asserted constitutional claims in seeking to disestablish paternity. For example, in *Petition of Bruce*[90] a mother sought to disestablish the paternity of her former co-habitant. He had a long-term relationship with the child, had paid support, and he had held the child out as his own. The mother wished to end the

[84] See, e.g. *Rousseve v. Jones*, 704 So.2d 229 (La. 1997)(man allowed to move to vacate voluntary paternity acknowledgment based on fraud; case sent back to trial court to determine whether he had done so within one year of discovering the fraud).
[85] In the Massachusetts statute, this is the section that allows a judgment to be set aside if it is no longer equitable that the judgment has prospective application.
[86] In the Massachusetts statute, this is the section that allows a judgment to be set aside for any other reason justifying relief from the operation of the judgment.
[87] The Court mentions, but does not dwell on mother's argument that the more specific provisions of subsections (1) through (3) govern and thereby preclude the court from considering whether subsections (5) and (6) are applicable.
[88] The first motion was filed 5 ½ years after the paternity judgment was entered and the second was filed 6 years after that date. The record suggests that the father may have known at the time he acknowledged the child that he was not the child's biological father. The record is clear that he had strong grounds for suspicion about his paternity when the child was two years old. That he waited so long after having this knowledge weighed against the father.
[89] In a strikingly similar case, Alaska allowed relief under Rule 60 (b)(5). See, *Ferguson v. Dept. of Revenue*, 977 P.2d 95 (Alaska 1999).
[90] 522 N.W.2d 67 (Iowa 1994).

relationship and prohibited contact between the father and the child. The father then sued for visitation and she countered with genetic tests showing he was not the biological father and therefore was not legally entitled to visitation. The trial court applied the principles of equitable estoppel and precluded her from asserting non-paternity. The Iowa Supreme Court overruled. In doing so, it accepted the mother's argument that she had a constitutionally protected liberty interest in raising her biological child as she sought fit, citing the United States Supreme Court decision in *Smith v. Organization of Foster Families for Equality and Reform.*[91] This included her right to keep a non-biological father from having a relationship with the child.

Price v. Howard[92] is another case in which paternity was established by a man holding out the child as his own. In this case, the mother had left the child in the father's care. Several years later the mother attempted to reclaim the child, and the father sued for custody. The mother countered that he was not the child's biological father, and genetic tests established that this was the case. The court believed that it was in the child's best interest to remain with the father, but felt is lacked authority to place her there over the objection of the biological parent (the mother). The Court of Appeals affirmed but the North Carolina Supreme Court reversed.

In doing so, the Supreme Court discussed the tension between the due process rights of the natural parent as interpreted in U.S. Supreme Court cases such as *Robertson v. Lehr,*[93] and *Quillion v. Walcott,*[94]and the best interests of the child. Normally, the due process interests of the parent prevail. However, "[a] natural parent's constitutionally protected paramount interest in the companionship, care, custody and control of his or her child is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interests of the child. …Therefore, the parent may no longer enjoy a paramount status if his or her conduct is inconsistent with the presumption or if he or she fails to shoulder the responsibilities that are attendant to rearing a child." Thus, if the mother's conduct was inappropriate, then due process is not offended by applying the "best interests of the child" standard. Here, it was not clear if the mother had abandoned the child or led the father to believe she was giving him permanent custody. Therefore, the case was sent back for fact finding.

The Best Interests of the Child

The concept of "the best interests of the child" has also been used to argue both for and against paternity disestablishment. However, in this area, there is great divergence among the states. Typically, the question arises in deciding about the role of genetic tests. In some states, courts have found that the child's best interests are irrelevant. If genetic tests show the acknowledged, presumed, or adjudicated father is not the biological parent of the child the issue is resolved even if there is serious and demonstrable harm to the

[91] 431 U. S. 816 (1977).
[92] 484 S.E. 2d 528 (N. Car. 1997).
[93] 463 US 248 (1983).
[94] 434 US 246 (1978).

child.[95] Courts have also suggested that if a child was born outside marriage, she is already illegitimate and therefore losing a father does not change her legal status or affect her best interests.[96] In addition, disestablishing the paternity of one man may give the mother and the state incentive to pursue the true biological father.

At the other end of the spectrum, some state courts look to the child's best interest *before* even considering whether testing should occur.[97] Still others order testing and consider the results but also consider the best interests of the child *after* the results are in.[98]

The "best interests" standard has also been used in deciding whether a Rule 60 (b)(5) or (b)(6) motion has been timely filed. Such a motion must be filed within a "reasonable time." In assessing the reasonableness of the gap between knowledge that he may not be the genetic parent and a father's taking action on that knowledge, the child's best interest can come into play. As one court put it, "…as a consequence of the gather's long delay before he challenged the paternity judgment, [the child's] interest now outweigh any interest of his."[99]

Conclusion

The paternity of non-marital children can be established through both voluntary acknowledgment and court order. Reversing paternity can be accomplished in a variety of ways. There are myriad examples of state statutes and court decisions that have been used to affirm or deny the right to disestablish paternity. However, many states still lack a coherent framework for disestablishment, especially when it comes to paternity established through voluntary acknowledgment. This issue needs to be addressed.

Moreover, court decisions rely on a number of different legal theories and yield no consistent jurisprudence. In many ways, decisions seem to be fact-based, with courts using whatever legal theory achieves rough justice. While this is not necessarily a bad state of affairs, it does anger those men with genetic tests that disprove biological paternity. Paraphrasing the famous quote from the O.J. Simpson trial, they assert, "If the genes don't fit, you must acquit." In their opinion, if genetic tests disprove biological paternity, then they must be declared non-fathers and relieved from their child support obligations. To them, the "truth" is all that matters.

However, once this principle is adopted, the "truth" can also enable mothers seeking to oust men with long-standing, close relationships to their children from the children's lives. If the "truth" is that the man is not a biological parent, then the mother should be

[95] See, e.g., *Langston v. Riffe,* 754 A. 2d 389 (Md. 2000)(interpreting state statute to preclude consideration of the child's best interests). See, also *Faucheux v. Faucheux*, 772 So. 237 (La. App. 2000).
[96] *Florida Dept. of Revenue ex. Rel. R.A.E. v. M.L.S.* 756 So. 2d 125 (Fla. App. 2000).
[97] *Davis v. LeBrec*, 549 S.E.2d 76 (Ga. 2001).
[98] See, *In re Matter of Paternity of T.S.*, 917 P. 2d 183 (Wy. 1996).
[99] *Re Paternity of Cheryl, supra.*

able to oust him at any time.[100] Likewise, the "truth" could be used by a man who has had no relationship to the child, but who decides to come forward and assert his paternity against a father and mother who have raised the child together.[101] The consequences could be devastating for both children and men who wish to maintain relationships with their children regardless of the biological "truth."

More thought needs to be given to a proper balance of the equities. This monograph has made a series of suggestions for dealing with the problem when paternity has been established by voluntary acknowledgment. The next monograph in this series will look at the issue of disestablishment in the context of marital children. It will articulate a set of principles that can be used when addressing disestablishment of paternity of both marital and non-marital children in the context of litigation. In the meantime, legislatures may want to carefully consider their options in this area. The wrong choice could have terrible consequences for both parents and children.

[100] For facts demonstrating that this is not an unlikely scenario and could lead to terrible consequences for the child, see, *Price, supra; In re Nicholas H.,* 46 P. 3d 932 (Ca. 2002).
[101] See, e.g., *Texas Dept. Protective & Regulatory Services v. Sherry*, 46 S.W. 2d 857 (Texas 2001).

APPENDIX A:
Recent Litigation Seeking to Disestablish Paternity

State	Major Cases	Challenge Allowed	Grounds
Alaska	Ferguson v. Dept. of Revenue, 977 P.2d 95 (1999) State, Dept. of Revenue, CSED v. Button, P.2d. (2000)	Yes Yes	Rule 60(B)(5) Statute
Arizona	Stephenson v. Nastro, 967 P.2d 616 (1998)	Sent back to trial court	Statute and Rule 60(C)
Arkansas	Littles v. Fleming, 970 S.W.2d 259 (1998)	Yes	Statute
California	In re Nicholas H., 46 P.3d 932 (2002)	No	Statute
Colorado	In re J.A.V., 47 P.3d 327 (Col. 2002)	No	Rule 60(B) and Best interests
Florida	Fla. Dept. of Revenue ex rel. R.A.E. v. M.L.S., 756 So.2d 125 (Fla. App. 20002) Fla. Dept. of Revenue ex rel Sparks v. Edden, 761 So.2d 436 (Fla. Dist. Ct. App. 2000)	Yes No	Equity & Rule 60(B) Res Judicata & Estoppel
Georgia	Davis v. LeBrec, 549 S.E.2d 76 (2001)	Sent back to trial court	Best Interests
Illinois	Donath v. Buckley, 744 N.E. 2d 385 (Ill. App. 2001)	No	Equity
Indiana	Nickels v. York, 725 N.E.2d 997 (Ind. App. 2000)	No	Equity
Iowa	Bruce v. Sarver, 522 N.W.2d 67 (1994)	Yes	No estoppel
Louisiana	Rousseve v. Jones, 704 So.2d 229 (1997) Faucheux v. Faucheux, 772 So. 237 (La. App. 5 Cir. 2000)	Yes Yes	Rule 60 Statute
Maryland	Langston v. Riffe, 754 A.2d 389 (2000) Walter v. Gunter, 788 A.2d 609 (2002)	Yes	Statute
Massachusetts	In re Paternity of Cheryl, 746 N.E.2d 488 (2001)	No	Rule 60
Michigan	Van v. Zahorik, 597 N.W.2d 15 (1999)		
New Jersey	F.B. v. A.L.G., 821 Ad 1157 (2003)	No	Equity & Finality of Judgments

State	Major Cases	Challenge Allowed	Grounds
North Carolina	Price v. Howard, 484 S.E. 2d 528 (1997)	Back to trial court	Due Process
Ohio	Cuyahoga Support Enforcement Agency v. Guthrie, 705 N.E.2d 318 (1999)	Yes	Statute
Pennsylvania	McConnell v. Berkheimer, 781 A.2d 206 (Pa. Super. 2001)	No	Estoppel & Statute
Tennessee	White v. Armstrong, (2001 Tenn. App. Lexis 101)	Yes	Rule 60(B)(4)
Texas	Texas Dept. Protective &Regulatory Services v. Sherry, 46 S.W.3d 857 (2001)	No	Statute
West Virginia	State ex rel West Va. Department of Health and Human Resources, Child Support Div. V. Michael George K., 531 S.E.2d 669 (2000)	Yes	Equity
Wyoming	D.M.M. v. D.F.H, 954 P. 2d 976 (1998)	No	Due process & Rule 60(B)

APPENDIX B:
Summary of Selected State Paternity Disestablishment Cases for Non-Marital Children 1994-2002

Paternity Established by Acknowledgment

ALASKA

State, Dept. of Revenue, CSED v. Button, P.2d (2000)—Vickie Hansen was born in 1986. Richard Button acknowledged paternity and his name appears on her birth certificate. Initially, he had a relationship with the child and voluntarily paid support. However, by 1991, he came to believe that the child was not his. The mother applied for public assistance, and provided conflicting information about Vickie's father. Eventually, she named someone else as the father. Nonetheless, in 1995, when the child support agency learned that Button was named as the father on Vickie's birth certificate, it served him with a Notice of Finding of Financial Responsibility (NFFR) for ongoing support and over $40,000 in public assistance arrears. Button timely appealed and filed a complaint to disestablish his paternity. Genetic tests established that he was not Vickie's father. The Superior Court disestablished his paternity and relieved him of the obligation for future support. It also relieved him of the obligation to pay arrears. CSED appealed the portion of the decision finding that Button had no obligation to pay arrears.

The Supreme Court affirmed the Superior Court. It noted that, while "an acknowledgment of paternity presumptively establishes a parent-child relationship regardless of biological parenthood" this is not the same as a judgment of paternity. An un-appealed judgment might estop a father from later denying paternity, but here there was no judgment. Moreover, Button was not on notice that his acknowledgment would lead the state to seek current support and arrears. The NFFR was the first indication that support would be sought based on the acknowledgment, and Button timely acted once he received that notice.

The court went on to note that for the state to make a successful paternity by estoppel claim, it would have to have proof of reasonable reliance and economic prejudice. Neither can be shown on the facts here. Since there never was a final support order, it was appropriate for the lower court to relieve Button of his obligation to pay both current support and arrears.

ARIZONA

Stephenson v. Nastro, 967 P.2d 616 (1998)—A daughter was born to an unmarried woman in 1992. Myron Stephenson was named as her father, and signed the child's birth certificate. Stephenson and his wife then took custody of the child as the mother was incarcerated. In 1996, Myron, his wife, and the mother entered into a Stipulation re Child Custody under which Myron and his wife obtained legal custody with visitation for the mother. This Stipulation says that the paternity of the child has not been established by a

court of law.[102] Shortly thereafter, a voluntary paternity acknowledgment, signed by Myron and the mother was executed but not filed. Two years later, the mother filed a petition essentially trying to disestablish Myron's paternity. She alleged that the Voluntary Acknowledgment was a forgery and sought genetic tests. Her motion was granted and the father brought a special appeal.

The Arizona Supreme Court determined that, under the statutes, when a parent raises the paternity issue, it is not necessary to hold a "best interests of the child" hearing before ordering genetic tests. "Best interests" are to be considered only after testing in determining custody and visitation issues. However, the court found that the statutes also establish that a voluntary acknowledgment of paternity is valid and binding until proven otherwise. After 60 days, it can be attacked only for "fraud, duress, or material mistake of fact" and the challenger has the burden of proof. Here, there should have been a Rule 60(C) hearing to determine whether these statutory requirements had been met. Only if the mother provides clear and convincing evidence that fraud, duress or material mistake of fact has occurred can she too request genetic tests. If she does not meet this burden, tests are inappropriate.

LOUISIANA

Rousseve v. Jones, 704 So. 2d 229 (1997)—In 1995, man voluntarily acknowledged paternity of his girlfriend's child. He also agreed to pay child support. A year later, he filed to have this set aside based on a statute that allowed a "husband or legal father" to disestablish paternity based on the mother's fraud, misrepresentation or deception if he did so within 10 years. There was a question of whether the statute applied to non-marital situations. The Supreme Court granted certiorari to determine the applicability of the statute.

The Court held that the statute only applied to situations where the mother had been married to the presumed father. In cases where there was no marriage, and the man had signed a voluntary acknowledgment, this statute did not apply. Instead, the non-marital father must use a different part of the law (the equivalent of a Rule 60(B) motion), and attack the judgment based on fraud. However, to use this statute he must file within a year of discovering the fraud. Since it was not clear on the record that he had done so, the case was sent back to the trial court for further proceedings.

Faucheux v. Faucheux, 772 So. 237 (La. App. 5 Cir. 2000)—The mother had a non-marital child. She married a man who was not the child's biological father. He (knowing he was not the biological parent) signed a paternity acknowledgment establishing himself as the child's father. Then he filed an action under Rule 60(B) to disestablish paternity based on fraud/duress. The trial court dismissed the action.

The Appellate Court reversed. That court found that, based on Louisiana statute, the man had an absolute right to void the acknowledgment if he is not the biological

[102] The Court found that this Stipulation had been superceded by the subsequent acknowledgment and was thus not germane.

father. If a biological relationship does not exist, the paternity acknowledgment is null and void.

MASSACHUSETTS

In re Paternity of Cheryl, 746 N.E.2d 488(2001)—In August 1993, the mother gave birth to Cheryl. The mother was receiving Aid to Families with Dependent Children and was obligated to pursue paternity/support as a condition of eligibility. She named the father and the child support agency contacted him. In December 1993, the parents signed a voluntary acknowledgment of paternity. The father was offered pre-paid genetic testing, but tests were never done. He was also fully aware that the acknowledgment would have the effect of a judgment and would obligate him to support the child. On the basis of the acknowledgment, a paternity judgment was entered and support ordered. For five years, the father paid support and behaved as the child's father; the child was accepted as part of his extended family. In 1999, the child support agency sought an increase in support. The father then filed a motion to set aside the paternity judgment and requested genetic testing. The pleadings suggest either that he knew from the outset that he was not the biological father or that he obtained information when the child was about two years old that he was not her biological father. The trial court denied his request for genetic testing and denied his request for a reduction in support. The father then took the child (during visitation and without the mother's consent) for testing and the tests established that he was not the biological father. The father then filed a second motion to vacate the paternity judgment and for reimbursement of all the support paid to date. The trial court then ordered genetic testing and granted relief under Rule 60(B)(5).

The case then went to the Supreme Judicial Court. That court noted that, to prevail under Rules 60(B)(1)-(3), a challenge must be filed within one year of the entry of the judgment. These sections were clearly inapplicable. To prevail under Rules 60(b)(5) or (6) , the request must be filed within a "reasonable time." The Supreme Judicial Court noted that the father brought his actions 5 ½ and six years, respectively, after the paternity judgment was entered. In the meantime, he and the child had established a strong relationship. Under these circumstances, the Court found that the father had waited too long. In making this determination, the Court used the "best interests of the child" standard and held that "as a consequence of the father's long delay before he challenged the paternity judgment, Cheryl's interest now outweigh any interest of his."

The Court noted that the result might be different if the man had not been offered genetic tests before signing the acknowledgment. In fact, in a footnote, the Court advised the IVD agency that it should require the parties to submit to genetic tests before entering an acknowledgement of paternity in cases brought pursuant to the public assistance cooperation requirement. The Court also noted that the result might have been different if the father had acted more quickly.

NEW JERSEY

F.B. v. **A.L.G., 821 A. 2d 1157 (NJ** 2003)—in early 1990, FB and ALG began dating. Six months later she gave birth to a full-term child. (There was a dispute as to whether he knew or didn't know that the child was not his biological child.) In 1994, the mother applied for public assistance and was required to establish paternity and pursue support. She identified ALG as the father and a legal action was commenced. He waived his right to genetic testing and voluntarily acknowledged paternity. A court order of paternity and support was then entered. In 1996, a second child was born. ALG acknowledged paternity and was listed as the father on the birth certificate. He had a close relationship with both children. In 1998, the relationship ended and ALG moved to vacate the paternity judgment finding him to be the father of the oldest child. He sought genetic testing. The trial court found after eight years of acting as the child's father, ALG was estopped from disestablishing paternity. The Appellate Division reversed.

The New Jersey Supreme Court reinstated the trial court's decision. It found that the trial court had properly denied ALG's application to reopen the paternity and support judgment entered years earlier in a proceeding in which ALG had fully participated and in which he had affirmatively acknowledged responsibility for the child. Noting that ALG had waived his right to genetic testing in the original action and had asserted that he was the child's biological father, it found that he could not disavow that position when the only thing that had changed was his relationship with the child's mother. The Court also noted that the state's public policy strongly favored the finality of judgments.

PENNSYLVANIA

McConnell v. Berkheimer, 781 A. 2d 206 (Pa. Super. 2001)—A baby was born to cohabiting parents in 1999. The man knew he was not the child's biological father. Nonetheless, he went to the hospital, participated in the birth, signed a paternity acknowledgment, and named the child after himself. He had a paternal relationship with the child, which continued after the parents split up. In 2000, the mother began receiving TANF and was required to pursue child support. The father agreed to pay support and arrears. The support order was denominated as a "final order" and no one appealed. The father did not pay and a contempt hearing was held. The father did not raise non-paternity as a defense, and he was held in contempt. A month later, he filed a petition for genetic testing and severed his relationship with the child. The trial court ordered the tests and the mother appealed.

The Appellate Court found the father was estopped by his conduct from challenging paternity. The issue of paternity was necessarily decided in the first support action. The father neither contested paternity at that time nor appealed. Once the time for appeal is over, the father is estopped from denying paternity even if genetic tests show he is not the biological father.

The court also found that Pennsylvania's paternity acknowledgment statute made the acknowledgment binding. The only way it could be challenged at this point is by clear

and convincing evidence of fraud on the part of the mother. This was not shown: in fact, the record indicates she had been honest with father.

WEST VIRGINIA

State ex rel. West Va. Department of Health and Human Resources, Child Support Div. V Michael George K., 531 S.E.2d 669 (2000)—A baby was born in 1994 to a married mother. Her husband (Michael K.) filed for divorce a month before the birth, and the divorce decree stated that there were no children born of the marriage. Unbeknownst to Michael K., the mother and Mr. C established paternity by acknowledgment shortly after the baby's birth. The child support agency subsequently filed a support action and at that point C requested genetic tests. The tests excluded C as the father and the support action was voluntarily dismissed. The child support agency then filed a paternity action against Michael K. The court ordered genetic tests and it turned out that Michael K. was the genetic father. The court adjudicated Michael K. to be the father and ordered him to pay support. The court also ordered that Michael K. be listed as the father on the child's birth certificate. When the birth record agency got the order, it advised Michael K's lawyer that another man was listed as the father on the birth certificate. Michael K then moved the court to vacate its order, and the court did so. The child support agency appealed.

The Supreme Court reversed the trial court. Acknowledging that it had historically been reluctant to overturn paternity acknowledgments, and that genetic tests are not a "trump card" that establishes paternity in all cases, it held that "the ultimate decision should involve the consideration and weighing of all applicable preferences, presumptions, and equitable principles including, as a paramount factor, the best interests of the child.

In this case, Mr. C had acted swiftly in contesting the acknowledgment and clearly had grounds for doing so. Thus, he was not equitably estopped from contesting paternity. While the mother may have concealed the facts from Michael K, her conduct cannot be attributed to the innocent child. Moreover, while the divorce decree may be res judicata between the parties, it does not bind the child.

State ex. rel. Department of Human Services v. Cline, 475 S.E. 2d 79 (1996)—A child was born in 1995, and the parents executed a paternity acknowledgment. The mother sought support, an order was entered, and paternity established based on the acknowledgment. The father later moved to set aside the acknowledgment based on fraud/duress. A hearing master recommended that the motion be denied but the Circuit Court ordered tests.

The Supreme Court upheld the voluntary acknowledgment process and said the acknowledgment can only be challenged for fraud/duress/material mistake of fact. Since none of these elements was shown here, the tests should not have been ordered.

State ex. Rel. Allen v. Sommerville, 459 S.E. 2d 363 (1995)—A couple lived together for eight years and during that time a son was born. When the child was two years old, the child support agency filed a suit to establish paternity and obtain support. In response, the father filed an acknowledgment of paternity and the mother acknowledged him as the father. Several years later, the mother died and the father filed an action to obtain custody of the child. He joined the maternal grandparents so that their right of visitation could be adjudicated at the same time. They raised a question about the father's paternity and the court ordered genetic tests. The father appealed.

The Supreme Court ruled that the lower court had exceeded its discretion. The voluntary acknowledgment had established the child's paternity and, by statute, it can only be challenged by a timely motion alleging fraud, duress, or material mistake of fact. Since this had not happened, the acknowledgment is valid and tests should not have been ordered.

Paternity Established by Adjudication

ALASKA

Ferguson v. Dept. of Revenue, **977 P.2d 95 (1999**)—Paul Gold was born in February 1986. In 1991**,** after a paternity proceeding was filed by the child support agency, Ray Ferguson signed an Acknowledgment of Paternity and a paternity judgment was then entered. The judgment established current support and arrears back to the date of the child's birth. Six years later, privately conducted genetic tests excluded Ferguson as the biological father. Ferguson then sought relief from the Superior Court under Alaska Rule 60(B)(5). The child support agency did not oppose prospective relief, but opposed relieving Ferguson of his obligation to pay accrued arrears. The court vacated the judgment and ordered the child support agency to cease collecting support. However, the court refused to extinguish arrears that had accrued under the judgment. The Alaska Supreme Court affirmed and required that arrears accrued before the disestablishment of paternity be paid.

The Court held that Rule 60(B)(5) allowed relief from a judgment when "it is no longer equitable that the judgment should have prospective application." By its terms, then, the rule allows prospective but not retroactive relief. Prohibiting the collection of accrued arrears would be granting retroactive relief, and is therefore not covered by the rule. The Court notes that this position also obviates the need to decide whether wiping out arrears would violate the Bradley Amendment. The Court also rejected an "unjust enrichment" theory as a basis for precluding the collection of arrears. To prevail under Rule 60(B)(1)-(3) a challenge must be filed within one year of the entry of judgment. To prevail under Rule 60 (B)(5) or (b)(6), the request must be filed within a "reasonable time." The Supreme Judicial Court noted that the father brought his actions 5 ½ and 6 years after the paternity judgment was entered. In the meantime, he and the child had established a strong relationship. Under these circumstances, the Court found that the father had waited too long.

ARKANSAS

Littles v. Fleming, 970 S.W.2d 259 (1998)—Mother filed paternity suit in 1982 alleging Littles was the father of her daughter. The court ordered genetic tests and required Littles to pay for the tests. He did not pay, so the tests were not done. The court then entered a judgment of paternity and ordered Littles to pay $50 per month in child support. Littles did not appeal. In 1994, Littles moved for paternity tests, alleging he had been unable to pay for them in 1982. The court ordered the tests and they established that he was not the biological father. The court then set aside the paternity judgment. The Arkansas Supreme Court overruled because, under the law at that time, the lower court had no statutory authority to order the tests. (The five year period allowed for challenges based on genetic tests had passed.)

Littles then moved for a modification of his support order to "0" under Ark. Code §9-10-115(d). This statute mandates prospective relief from future support obligations for those found by DNA tests not to be biological parents. The Supreme Court found he was entitled to such relief. It reasoned that, while Littles was still the legal father of the child (under the Court's first decision), he was entitled under the statute to a modification of the order. Since the statute covered only future support, however, he was not entitled to relief from arrears.

CONNECTICUT

Harvey v. Wilcox, N.E.2d (Ct. App 2001)—In 1997, a Maine district court entered a default judgment against Wilcox finding him to be the father and ordering child support. In 1999, the plaintiff registered the order in Connecticut (pursuant to UIFSA) and sought enforcement. Wilcox challenged enforcement and sought to collaterally attack the Maine judgment and deny paternity. The motion was denied because Connecticut lacked jurisdiction over the paternity matter under UIFSA; all it could do was enforce the order. However, enforcement was stayed so that Wilcox could have an opportunity to go to Maine and reopen the judgment. Rather than going to Maine, Wilcox appealed.

The Superior Court ruled that the order below was an interlocutory order and thus could not be appealed. Wilcox had to go to Maine to raise his paternity claim.

FLORIDA

Florida Dept. of Revenue ex rel. R.A.E. v. M.L.S., 756 So. 2d 125 (Fla. App. 2 Dist. 2000)—A child was born in 1986 and man entered his name on the child's birth certificate as the father. Shortly thereafter, the child support agency brought a paternity action. In 1987, a trial court entered an order of support without a finding of paternity. Father paid for 10 years and had regular contact with the child. The state then filed a motion to increase the support, and the father countered with a motion to set aside the support order. The father produced genetic tests, which he had obtained privately and without the mother's permission, which showed he was not the child's biological father.

The appellate court said that res judicata did not apply since the original order did not address the issue of paternity. His signature on the birth certificate did not bind him since, at the time he signed, his signature had no legal significance. Therefore, he was entitled to move under Rule 60 (B)(5) since he did so within a reasonable time of learning that he was not the child's biological father. On the facts, the court found it was no longer equitable for the order to have prospective application.

The appellate court also discussed its decision in light of the best interests of the child. The court noted that, since the child was illegitimate, its holding did not affect her legal status. It further noted that the man had ended his relationship with the child on learning he was not the biological father. Finally, the court noted that its decision gave incentive to the child support agency and the mother to find the biological father and establish a relationship between him and the child.

There was a dissent in this case, which argues that the man should have been estopped from denying his paternity. The court certified its decision to the Florida Supreme Court for consideration.

Florida Dept. of Revenue ex rel. Sparks v. Edden, 761 So. 2d 436 (Fla. App. Dist. 2000)—Mother gave birth to a set of twins. A paternity action was filed in 1986 and, at the hearing, the man named as the father indicated he had doubts about whether he was the biological father. However, he did nothing to pursue this and did not request genetic testing. An order was entered ordering him to pay support. In 1997, he filed a Rule 60(B) motion to set aside the judgment for fraud (extrinsic).

The appellate court held that he was barred by res judicata and estoppel from raising the issue because the record indicates that he knew there might be a problem, had the opportunity to raise the issue in 1986, and failed to do so.

GEORGIA

Davis v. LaBrec, 549 S.E. 2d 76 (2001)—The child was born in 1975. LaBrec was present at the birth and his name appears as father on the child's birth certificate. In 1996, he obtained a court order (supported by the mother) to legitimize the child. The mother attempted suicide and the father sought permanent custody. In that action, the mother opposed him saying he was not the child's biological father, but later agreed to his having custody. Another man (Davis) then filed a paternity action seeking to disestablish LaBrec's paternity and establish his own. The trial court granted Davis's petition and the appellate court reversed.

The Supreme Court said that granting Davis's petition to establish his paternity would break up an existing family (LaBrec and the child). It would also disrupt an ongoing parent/child relationship. Applying the best interests of the child standard, Davis's petition should have been denied.

ILLINOIS

Donath v. Buckley, 744 N.E.2d 385 (Ill. App. 2001)—In 1996, a man filed a petition to establish his paternity by consent of a child born to his girlfriend, the child's mother. (It is not clear whether he knew the child was not his. The mother says he knew, he says he did not.) The petition was granted and paternity was established. A little less than 3 years later, against the father's desires, the mother filed a Petition to Declare the Non-Existence of the Parent/Child relationship. A DNA test was conducted and the test established that the man was not the biological father of the child.

Despite these results, the trial court found that the mother was precluded from brining the action because Illinois law requires that a disestablishment action be brought within 2 years of petitioner's knowledge of relevant facts. Since mother knew from the outset that man was not the biological father, and the child was over age three when the mother filed her action, the statute of limitations barred her action. The appellate court upheld this decision noting that unless the father seeks to deny his paternity, the mother is legally bound by the judicial declaration she and the man signed by consent.

The mother had attempted to challenge the law as gender biased. However, the court found that this was not a problem. If she had acted within two years, she could have used the law. Her problem was not her gender, but the fact that she knew that the man was not the father and failed to act in a timely fashion.

INDIANA

Nickels v. York, 725 N.E.2d997 (Ind. App. 2000)—A baby was born in 1980. In 1982, the mother filed a paternity action against the father who was in the military. He did not appear and the trial court (contrary to the Soldiers and Sailors Relief Act) did not appoint counsel for him. A hearing was held, paternity was adjudicated and support ordered. The father paid support for two years and then stopped paying. No payments were made for over thirteen years and the mother petitioned for contempt. Father then moved to set aside the judgment and sought paternity testing. This motion was denied. The trial court ordered payment of the nearly $20,000 in arrears although it did not hold the father in contempt. He appealed.

The appellate court upheld the trial court. It found that, while there may not have been personal jurisdiction, the father was estopped from making the argument because he had submitted to the jurisdiction of the court by paying support for two years. The court found the violation of the Soldiers and Sailors Relief Act also irrelevant. To raise this issue, the father would have had to do so within 90 days of leaving the service and he had failed to do this. Even if he had, he would have had to show prejudice and that he had a meritorious defense, and he had not made that showing.

As to the failure of the trial court to order genetic testing, the court found that this was discretionary and under the circumstances, the trial court had not abused its discretion.

IOWA

Petition of Bruce, 522 N.W. 2d 67 (1994)—A child was born in 1982. The child's parents lived together and the father held the child out as his own. Genetic tests, conducted in 1984, indicated that the father might not be the biological father. However, the father continued to hold the child out as his. After the parents split, the father paid support and had regular contact with the child. In 1990, the mother stopped allowing contact, and the father sued for visitation. The mother countered that he was not the biological father and produced genetic tests showing he was not. The trial court estopped the mother from asserting non-paternity and the mother appealed.

The Supreme Court reversed. It held that the mother was not equitably estopped from asserting non-paternity on the facts of this case. The father had no due process right to a relationship with the child in the face of mother's liberty interest (as a biological parent) from raising the child as she wished.

MARYLAND

Langston v. Riffe, 754 A. 2d 389 (2000)—This case involved three separate law suits, which were consolidated for appeal. In each suit, a man had been adjudicated to be the father of a child born outside marriage. In each case, the adjudication had been by consent and without the benefit of genetic tests. In one case, later genetic tests established that the man could not be the child's biological father; in the other two cases, tests were sought because the men now believed they were not the biological fathers of the children and wanted tests done. A prior case (**Tandra S. v. Tyrone W., 648 A. 2d 439 (1994)**) had held that men in this situation were not entitled to reopen the issue of paternity. The legislature then enacted Md. Family Code § 5-1038(b), which allows paternity judgments to be reopened on the basis of genetic tests. Trial and intermediate appellate courts had come to differing conclusions as to whether the new statute could be applied to judgments entered before the effective date of the new statute.

In a 4-3 decision, the Supreme Court allowed retroactive application of the statute. It held that, under the new statute, any man who had had a paternity judgment entered against him without genetic tests may initiate proceedings to set aside the order. In those proceedings, the man may request genetic tests and the court must order them. If the tests exclude the man, the paternity order must be vacated. In this process, trial courts cannot consider the best interests of the child.

Walter v. Gunter, 788 A.2d 609 (2002)—In 1993, Walter consented to a judgment of paternity. He was ordered to pay $43 a week in support, but rarely made payments. The record reflects that he knew that there was doubt about his paternity, but he did nothing. In 2000, he filed a motion to modify his support obligation and requested genetic tests. At that point, he was more than $12,000 in arrears. Genetic tests were conducted and he was excluded as the child's father. The court vacated the paternity judgment and terminated his current support obligation. However, it held him liable for arrears owed for the period

before he filed the motion for genetic tests. The case went to the Supreme Court on expedited review.

Despite seemingly different language in *Langston*, the Supreme Court held, in another 4-3 decision, that a man cannot be legally obligated to pay arrears that resulted from a now-vacated paternity judgment. There is no discretion in this matter: paternity and support orders are inherently dependent and vacatur of the paternity determination makes the support order invalid.

OHIO

Cuyahoga Support Enforcement Agency v. Guthrie, 705 N.E.2d 318 (1999)—Jason was born in 1990. The family received public assistance so the mother was required to cooperate in establishing his paternity. She named Denver Guthrie as the child's father. In 1994, an action was brought, and, in 1995, a default paternity judgment was entered, and support was established. Eight months later, Guthrie requested a hearing and genetic tests. The hearing was held and tests ordered. They showed that he was not the biological father of Jason. Therefore, in February 1997, the trial court, under RC 3111.09(D) vacated the judgment. The Court of Appeals affirmed, but based its decision on Rule 60(B)(4). Because this created a conflict in the appellate courts, the Supreme Court heard the case.

The Supreme Court found that Guthrie was not entitled to relief under Rule 60(B). To hold otherwise would be to reward his dilatory conduct and undermine the finality of judgments. Since he was given the opportunity to obtain genetic tests before the hearing and trial and failed to do so, his voluntary, deliberate choice not to seek testing precludes his raising the issue under 60(B). However, under its jurisdiction to modify or revoke judgments relating to the well-being of children under RC 3111.16, the trial court did have the power to grant relief from the initial finding of paternity. Relief from support payments, however, is prospective only. Guthrie cannot avoid arrears that accrued due to "his own inexcusable conduct."

TENNESSEE

White v. Armstrong, No. M1999-00713-COA-R3-CV (Feb. 16, 2001)—White and Armstrong cohabited for several years. During this time, two sons were born. In late 1992, White told Armstrong that he was not the father of the youngest child and the couple separated. Armstrong then filed a petition to legitimize the oldest child and waived paternity tests. In 1994, a paternity order was entered and back support and future support were ordered. For the next three years, Armstrong paid regularly and had contact with his son. The family received public assistance so the state child support agency collected the support. Armstrong then began to question whether he was the child's biological father. He sought paternity tests but a court refused to order them. He then had them done on his own and they showed that he was not the biological father. Armstrong then petitioned to be relieved of his support obligation. The juvenile court denied his motion, but the appellate court remanded the case and required that he be given

prospective relief. The juvenile court did so. Armstrong then filed a motion for overpaid support. He sought reimbursement from the state for all of the support paid since 1994. The juvenile court denied his motion and he appealed.

The Court of Appeals found that juvenile courts do not have jurisdiction to award money judgments against the state. Moreover, even if they had jurisdiction, sovereign immunity would preclude such a judgment since the state has not consented to being subject to claims such as the one presented here. In fact, Tenn. Code Ann §36-5-101(n)(2)(Supp. 2000) specifically says that the state may not be sued "to compensate any person for repayment of child support paid…as a result of....the rescission of any orders of legitimation, paternity or support." However, in note 9, the court observes that sovereign immunity is not a defense in civil rights claims under 42 USC §1983. Armstrong might be able to raise such a claim, but not in juvenile court because that court lacks §1983 jurisdiction.

TEXAS

Texas Dept. Protective & Regulatory Services v. Sherry, 46 S.W. 3d 857 (2001)—Mother (Welsh) gave birth to CSC in 1992. At the time, she was living with Cannon who filed an acknowledgment of paternity. Since Welsh was receiving Aid to Families with Dependent Children (AFDC), the Texas child support agency secured a paternity and support order. Cannon paid until he died in 1995, and the child now receives Social Security benefits on his account. In 1995, Sherry joined the household and lived with Welsh and CSC. Welsh died of a drug overdose, and Sherry sought to establish his paternity of CSC. The trial court dismissed the suit, the Court of Appeals reversed, and the state petitioned the Supreme Court for review.

The Texas Supreme Court found the suit barred under Family Code § 160.007(a)(1) because CSC's paternity had already been adjudicated. The Court refused to consider his claims of a constitutional right to establish his paternity because he had not raised them below.

WYOMING

D.M.M. v. D.F.H., 954 P.2d 976 (1998)—In a 1993 paternity action, the father defaulted. A judgment was entered establishing paternity and ordering support. The father did not appeal and he paid support for three years. In 1996, he filed a Rule 60 (B)(4) motion to have his paternity and support set aside. His motion was denied and he appealed.

The Supreme Court upheld the denial. It found that the fact that the father was not heard in the original suit was entirely his own fault and thus there was no due process violation. There was no equitable reason to grant him relief.

Paternity Established by Presumption

CALIFORNIA

In re Nicholas H., 46 P.3d 932 (2002)—Mother gave birth to Nicholas while cohabiting with Thomas. Thomas knew he was not the child's biological father, but was named as the father on the birth certificate. He assumed the role of father and took the child into his home. The mother had a drug problem and was often absent from the child's life. Thomas ended up with the child and eventually there was a custody dispute.

Under California law, a man who openly holds a child out as his own is the presumed father. This is a rebuttable presumption and can be overcome "in an appropriate action by clear and convincing evidence." The Supreme Court had to determine whether Thomas's admission that he was not the biological father rebutted the presumption arising from the fact that he had taken the child into his home. The Court took pains to note that there was no other father waiting in the wings. It also noted that the child "has a strong emotional bond with Thomas and that Thomas is the only father [the child] has ever known." If the Court declared Thomas was not the father, the child would be left fatherless and homeless. Because of this, the court found that this was not an "appropriate case" in which to rebut the presumption based on Thomas's holding out the child as his own. The Court also noted that, under California law, if two presumptions conflict, the presumption that, on the facts, is founded on the weightier considerations of policy and logic controls. In this case, finding Thomas to be the father is both logical and the best public policy.

MICHIGAN

Van v. Zahorik, 597 N.E. 15 (1999)—This is not a disestablishment case. Here unmarried parents lived together and two children were born during this time. Van believed the children were his and they believed he was their father. The couple split and the mother refused to let him see the kids. He filed a paternity action and she filed a motion for summary disposition because he was not the children's biological father. Genetic tests confirmed that he was not biologically related to the children. He then argued that he was their "equitable parent" and that in any case the mother should be estopped from denying his paternity.

The Supreme Court held that the "equitable parent" doctrine applied only to marital children and that equitable estoppel was likewise confined to marital situations.

NORTH CAROLINA

Price v. Howard, 484 S.E.2d 528 (1997)—In 1986, Robin gave birth to Dominique. She was living with Stacy and she told him he was the baby's father. The couple lived together for three years and then separated. Dominique remained with her father until 1992, when Robin attempted to have her school records transferred to another jurisdiction. Stacy then filed for custody and Robin countered that he was not her biological father. The trial court ordered genetic tests, which showed that Stacy was not Dominique's biological father. In its final order, the trial court found that it was in the

child's best interests to remain with Stacy. However, it felt that it did not have the authority to enter such an order since Stacy was not the child's natural parent. The Court of Appeals affirmed but the Supreme Court reversed.

The Supreme Court's opinion discusses the tension between the due process rights of the natural parent as interpreted in U.S. Supreme Court cases such as *Robertson v. Lehr,* 463 US 248 (1983) and *Quillion v. Walcott*, 434 US 246 (1978) and the best interests of the child. Normally, the due process interests of the parent prevail. However, "[a] natural parent's constitutionally protected paramount interest in the companionship, care, custody and control of his or her child is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interests of the child.…Therefore, the parent may no longer enjoy a paramount status if his or her conduct is inconsistent with the presumption or if he or she fails to shoulder the responsibilities that are attendant to rearing a child." Thus, if the mother's conduct was inappropriate, then due process is not offended by applying the "best interests of the child" standard. Here, it was not clear if the mother had abandoned the child or led the father to believe she was giving him permanent custody. Therefore, the case was sent back for fact finding.

WYOMING

In the matter of Paternity of T.S., 917 P.2d 183 (1996)—A child was born in 1990 to an unmarried mother. Man A took the child into his home and held child out as his own. His name was also on the child's birth certificate. In 1994, he tried to establish his paternity. In that proceeding, Man B appeared, claiming that he was the father. Genetic tests established that B was indeed the father. Nevertheless, the district court established paternity in Man A. Man B appeals.

The Supreme Court found there was a genuine issue of fact as to whether A had held the child out as his own and sent the case back to the trial court. In doing so, it specifically rejected the use of "best interest of the child" as a factor in making a paternity determination. It cited JJ v AFM, 781 P.2d 528 (1989). Best interests may be a factor in determining paternity of a child born during a marriage, but it is not a factor in the non-marital context. However, the court did note that once paternity was determined, best interests could be taken into account as to custody and visitation.

State Statutory Provisions Re Rescission of Voluntary Paternity Acknowledgment

Alabama ALA.CODE §26-17-22	No process specified.
Alaska ALASKA STAT.§18.50.050	No process specified.
Arizona ARIZ. REV. STAT. ANN. §§ 25-812(H) AND (I) & §36-322(G) ARIZ. REV. STAT. ANN. §§ 25-812(E)	*Within 60 days*—Contemplates a rescission form, which must meet federal requirements and be filed with the Department of Health Services. The Department will then mail a copy to the other parent and the Department of Economic Security. *After60 days*—A party must file a Rule 60(B) motion. Genetic testing required and, based on test results, paternity is terminated and future support obligations end.
Arkansas ARK.CODE ANN.§9-10-115	*Within 60* days—The Division of Vital Records (DVR) of the Department of Health is to develop a rescission form. Any signatory may rescind the acknowledgment by filing that form with the DVR. *After 60 days*—A person may challenge based on fraud duress or material mistake of fact. If this 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 shall also issue an order to the DVR 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. FAMILY CODE §§ 7575-7577	<u>Acknowledgments signed on or after January 1, 1997</u>: *Within 60 days*—Rescission forms are to be developed by the Department of Child Support Services (DCSS) and made available at all child support and birth registry offices. Either parent may file a rescission form with DCSS within 60 days of the last signature being put on the form. However, if the signing parent is a minor, the rescission period runs from the day he/she reaches age 18 or is emancipated. 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. *After 60 days*—Challenges may be brought within the timeframe and for the reasons set forth in California Code of Civil Procedure Section 473. The time is to run from the date of any original order for custody, visitation or support based on the voluntary acknowledgement. If the order is set aside, the court must order genetic tests. Based on those tests, paternity should be established or disestablished. If the tests are inconclusive, then the rules governing a contested case apply. In addition, within two years of the birth of the child, a parent or the IVD agency may move for genetic tests. If those tests establish that the man is not the father of the child, the court may set aside the voluntary acknowledgment. <u>Acknowledgments signed on or before December 31, 1996:</u> The acknowledgement creates a rebuttable presumption of paternity and may only be challenged based on genetic tests. The person wishing 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 3 years of the date the last party signed the declaration.

Colorado COL. REV. STAT. ANN. §§ 19-4-105 to 19-4-107 and 25-2-112	No process specified. However, *at any time*, an interested party can bring an action to determine the non-existence of the father-child relationship presumed under a voluntary acknowledgment.
Connecticut CONN. GEN. STAT. ANN. §46b-172	*Within 60* days—Rescission forms are to be developed by the Department of Public Health (DPH). Both acknowledgments and rescissions are filed in DPH's paternity registry. Either parent may rescind and must be told of the right to do so/where to file in the paternity acknowledgment document. *After 60* days—Challenge may be brought for fraud, duress, and 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 3 years of the judgment. Acknowledgments signed before March 1, 1981 can be challenged only in the initial proceeding for support. If paternity is disestablished, and the child received public assistance, the state will refund support paid during the public assistance period.
Delaware DEL. CODE ANN. TIT. 13 §804	*Within 60 days*—Either parent may raise the issue in a legal proceeding regarding the child to which he/she is a party if the action is filed in Family Court within 60 days of the date the acknowledgment was signed by the parties. In the alternative, either party may file rescission with the Office of Vital Statistics. The rescission must be accompanied by an affidavit saying that the party sent a copy of the rescission to the other parent at the address shown on the acknowledgment. Minor parents may rescind within 60 days of turning 18. *After 60 days*—Either parent may petition the Family Court to set aside the acknowledgment based on fraud, duress or material mistake of fact. If a court determines that another man is the father, it will declare the acknowledgment void.
District of Columbia D.C.CODE ANN. §§ 16-909.01-16-909.03 AND 16-2342.01	No process specified.
Florida FLA. STAT. ANN. §742.10	No process specified.
Georgia GA.CODE ANN. §19-7-46.1	No process specified.
Hawaii HAW. REV. STAT. ANN. §584-3.5 (a)	No process specified.
Idaho IDAHO CODE §7-1106	*Within 60* days—The Dept. 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 will notify the other party or parties by certified mail. *After 60 days*—No process specified.
Illinois ILL.COMP.STAT§§ 45-5&6 and 535-12	*Within 60 days*—The Illinois Department of Public Aid (DPA) 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

	DPA. The rescission voids the acknowledgment and nullifies the presumption of paternity. A minor has six months from reaching majority or becoming emancipated to rescind. *After 60 days*—Motion based on fraud, duress or material mistake of fact.
Indiana IND. CODE ANN. § 16-37-2-2.1	*Within 60 days*—Either parent can 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. *After 60 days*—There must be a court action challenging the acknowledgment based on fraud, duress or material mistake of fact. If tests are ordered and they show non-paternity, the court must set aside the acknowledgment. A woman who knowingly or intentionally falsely names a man as the father is guilty of a Class A misdemeanor.
Iowa IOWA CODE ANN. §§252A.3a & 600B.41A	*Within 60 days*—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 receipt of the form, the registrar is to remove the father's information from the birth certificate and send notice of the rescission to the non-rescinding parent at his/her last known address. If an acknowledgment has been rescinded, the registrar may not accept any subsequent acknowledgment of paternity signed by the same parties. *After 60 days*—The parents, the child, or their legal representative can file an action to disestablish paternity at any time before the child reaches the age of majority. The petition must make a plain statement of why the petitioner believes that the established father is not the biological father. The petition must be served on the other parent and on the IVD agency if they are 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 mistake of fact. If the tests disprove paternity, the court must enter an order relieving the father of all prospective support obligations and relieving him of the obligation to pay any accrued arrears. However, the court mat dismiss the petition if it finds that 1) the established father wants to preserve his paternity and continue the parent-child relationship; 2) it 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 non-biological father and the child. Note: There is also a provision for any man who was previously denied a motion to disestablish despite the fact that genetic tests showed he was not the biological father 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	*Within 60* days—The person wishing to rescind must file a request with the court. *After 60* days—The person wishing to rescind must file with the court and will have to show that the acknowledgment was based on fraud, duress or an important mistake of fact. In both cases, unless the signatory was a minor, the request to rescind must be filed before the child is one year old. If the signatory is a minor, he/she has until one year from reaching the age of majority to file a request. If, at that point, the child is over age one, then the court must use a "best interests" test in deciding whether to grant the rescission.

Kentucky KY. REV. STAT. ANN. §213.046	No process specified.
Louisiana LA. CIVIL CODE ARTICLES 203 and 206	No process specified. However, a*t any time,* a signatory can petition the court to void the acknowledgment based on fraud, duress, material mistake of fact or that the person is not the biological parent of the child.

Maine ME. REV. STAT. ANN. TIT.19-A-§1616	No process specified.
Maryland MD. CODE ANN. FAMILY LAW § 5-1038	No process specified. However, *at any time*, the acknowledgment can be set aside if genetic tests exclude the signatory as the father.
Massachusetts MASS. GEN. LAWS ANN. Ch. 209C, §11	*Within 60* days—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 resides. 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 IVD services, then the court must notify the IVD 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. *After 60* days—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 ANN. §§772.1011 & 772.1012	No process specified. However, a*t any time* either in an existing action or in a new action, the mother, the man, the child, or the prosecuting attorney may file a claim for revocation of an acknowledgment of parentage. The claim must be supported by an affidavit signed by the claimant setting forth fact 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 is sufficient, it 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 registrar who must vacate the acknowledgment and amend the birth certificate.
Minnesota MINN.STAT. ANN. §257.75	*Within 60 days*—Either parent may revoke by filing a signed, notarized writing with the registrar of vital statistics. If a husband has joined 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 will then forward a copy to the non-revoking parent and (if applicable) the joined husband. *After 60 days*—Mother, father, husband who joined the acknowledgment, child, or the state may bring an action to vacate the recognition. If a parent seeks revocation, he/she must file within one year of signing or within 6 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 6 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, it 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 and terminate the father's responsibility for ongoing child support.
Mississippi MISS.CODE ANN. §93-9-28	No process specified.

Missouri MO.REV. STAT. §§193.215 & 210.823 MO.REV. STAT. § 454.485.1	*Within 60 days*—Either party may rescind the acknowledgment by filing a written request with the Bureau of Vital Records. The Bureau will file the rescission and mail a copy to the Division of Child Support Enforcement. However, the birth record cannot be changed unless the Bureau receives a court or administrative order requiring the change. *After 60 days*—No specific process. However, an administrative hearing officer cannot enter a finding of non-paternity where paternity has been acknowledged unless a court has voided the acknowledgment.
Montana MONT. CODE ANN. §40-6-105(e)	*Within 60 days*—Any party (including husband denying paternity so that biological father can establish paternity) 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 provided to any parent who signed the acknowledgment form. *After 60 days*—No process specified.
Nebraska NEB. REV. STAT.§43-1409	No process specified.
Nevada NEV. STAT. ANN. §§ 126.053 & 440.287	No process specified. However, if a rescission is filed, the state registrar cannot amend the birth certificate without a court order.
New Hampshire N.H. REV. STAT. ANN. §126:6-a(II)	*Within 60 days*—A signatory can rescind by filing a written notice with the town clerk. A copy must als o be sent to the child support agency. *After 60 days*—No process specified except that the challenge must be heard by a court. Only a court order can change the birth certificate.
New Jersey N.J. STAT. ANN. § 26:8-30	*Within 60 days*—Have to bring a court action and allege fraud, duress, or material mistake of fact. *After 60 days*—Challenge not allowed.
New Mexico N.M. STAT. ANN. § 40-11-5(A)(5)	No process specified.
New York N.Y.FAMILY COURT ACT §516-a. See also N.Y. SOCIAL SERVICES LAW §111-k(2)(a)	*Within 60 days*—Either signatory can file a court action to vacate the acknowledgment. *After 60* days—Either parent can challenge the acknowledgment in court action based on fraud, duress or material mistake of fact. In either case, upon receiving the challenge, the court must order genetic tests and determine paternity as in any contested case. (It appears that the Social Services Law allows the court to decline to order testing if it makes a written finding that it 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 provide a copy of its order to the birth record agency and the state's putative father registry. If the mother is receiving services from the IVD agency, that agency must also receive a copy of the order.
North Carolina N.C. GEN. STAT. §110-132	*Within 60 days*—The challenger must ask the district court to order rescission. The court must include in the order specific findings that the challenge was timely and that all parties (including the IVD 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 man seeks rescission and then defaults or fails to present the issue, the trial court must find the man to be the father as a mater of law. *After 60* days—The acknowledgment can be challenged in court based on fraud, duress, mistake or excusable neglect.
North Dakota N.D. CENT. CODE § 14-19-10	*Within 60 days*—Either parent can file a notarized statement with the state Department of Health. *After 60* days—Either party can petition the district court to vacate the acknowledgment based on fraud, duress or material mistake of fact. The petition must be filed within one year of execution of the acknowledgment unless the action is filed by a child or upon a showing that enforcement would be manifestly unjust and unconscionable to all parties; that the party claiming relief was prevented by fraud or fraudulent concealment from discovering the claim; and that the claim was commenced within one year of the claimant's discovery of the fraud or one year of the time the fraud could have been discovered with due diligence *At any time*—The Department of Health can void the acknowledgment if it receives two or more acknowledgments of paternity concerning the same child. In this case, the Department must promptly notify the mother, each acknowledged father and the child support agency (upon request). A district court can void an acknowledgment entered into by a married woman without her husband's signature.
Ohio OHIO REV.CODE ANN.§ 3111.27 OHIO REV. CODE § 2151.232 OHIO REV. CODE §3119.962	*Within 60 days*—If no support proceeding has been commenced, a signatory wishing to rescind must request that the child support agency hold an administrative hearing to determine the parent-child relationship and notify the birth records agency that a request has been made. The notice must provide the name of the child and the name of the child support agency conducting genetic tests. The birth record agency will verify this with the child support office and note in its records that the acknowledgment is subject to a rescission proceeding. It will also direct the child support agency to send a copy of any order entered in the hearing. Based on the order, the birth record will be corrected (if appropriate). If a support action is filed, either signatory may raise the paternity issue and the court will proceed as with a contested paternity case. *After 60 days*—At any time, an acknowledgment may be rescinded based on genetic test results. The contestant must file a motion for relief no later than 6 months from receiving genetic test results showing a zero probability that the man is the biological father of the child. Relief will not be granted if it is shown that, before acknowledging the child, the man knew he was not the biological father. If relief is granted, the birth record will be corrected.

Oklahoma OK. STAT. ANN. TITLE 10§ 70(B)	*Within 60* days—The Department of Human Services (DHS) 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. *After 60* days—Either party may go to court and seek to overturn the acknowledgment based on fraud, duress or material mistake of fact. If it is determined that the man is not the father, then, the court shall dismiss any pending support enforcement proceedings and release him from any child support obligations. Upon notice from DHS, Vital records will remove the father's name from the birth certificate.
Oregon OR. STAT. ANN. §109.070(2)	*Within 60* days—No process specified. *After 60* days—Within one year of filing the acknowledgment, either party may 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 the IVD agency (if they are involved in the case) may move for genetic tests.. If the tests exclude the man, then either party or the IVD agency may apply for an order of non-paternity. If the order is granted, the Director of the Department of DHS shall correct any records birth records.
Pennsylvania 23 PA.CONS. STAT. §5103(g)	No process specified.
Rhode Island R.I. GEN. LAWS §40-6-21.1	No process specified.
South Carolina S.C. CODE ANN. §20-7-958	No process specified.
South Dakota S.D. CODIFIED LAWS § 25-8-59	*Within 60 days*—Either party may bring an action in circuit court. *After 60 days*—Either party may bring an action in circuit court based on fraud, duress of 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)	*Within 60 days*—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 can be waived if the parent files an affidavit of indigence. The Registrar will then send 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. In addition, 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 receipt of the rescission (whether on the form or by order of a tribunal), the Registrar will make the appropriate amendments to the birth certificate.
TENN.CODE ANN. §68-3-203(H)	*After 60 days*—The acknowledgment may be challenged in court within 5 years of the date of execution of the acknowledgment for intrinsic or extrinsic fraud, duress, or material mistake of fact. (The 5 year limitation may be waived if there was fraud in the procurement of the acknowledgment by the mother and where the relief will 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/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 clerk of the court will send a certified copy of the rescission order to the Registrar of Vital records, which will make the appropriate changes in the birth record. If the test results show a probability of paternity of 95% or higher, a trial will be held. If they show a probability of paternity of 99% or higher, paternity is conclusively presumed and a paternity order will be entered. Whichever process is used, the state, its officers, employees, contractors or any child support agency are not liable to compensate any person for repayment of support paid or for any other costs. Provides for amending the birth certificate when a paternity acknowledgment is rescinded.
Texas TEX. FAM. CODE §§16307 TO 16309	*Within 60 days*—An acknowledgment of paternity (and an accompanying denial by the child's presumed father) may be signed before or after the birth of the child. It becomes effective on the date of the child's birth (if signed pre-birth) or on the date of filing with the Bureau of Vital Statistics (if signed after birth). Any signatory wishing to rescind may commence a legal proceeding within 60 days of the effective date of the acknowledgment. *After 60 days*—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 is also precluded. A "material mistake of fact" is defined to include genetic evidence that does not 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 will be 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.§ 78-45e-4	*Within 60 days*—No process specified. *After 60 days*—No process specified except that, in determining whether to rescind the acknowledgment, the court has the power to order and use genetic tests as it has in any contested paternity proceeding. If the declaration is rescinded, the father may not recover any child support paid before the entry of the order of rescission.
Vermont 15 VT. STAT. ANN. §307(f)	*Within 60 days*—Either parent may rescind in a writing filed with the Department of Health. *After 60 days*—A challenge may be filed under Rule 60 of the Vermont Rules of Civil Procedure. This Rule allows requests for relief from a judgment based on mistake, newly discovered evidence, or fraud if the action is filed within one year of entry of the judgment. It allows other forms of equitable relief without a time limit.
Virginia VA. CODE ANN.§20-49.1(a)(2)	No process specified. However, a*t any time* an individual may file a petition for relief and the court may set aside the acknowledgment if genetic tests exclude the named man as the father. The challenger must pay for the tests and the court must appoint a guardian ad litem for the child. If the acknowledgment is set aside, the court will order the birth certificate to be changed and may order other appropriate relief, including setting aside the obligation to pay child support from the date the action was filed.
Washington WASH. REV. CODE.ANN. §§26.26.330-26.26.341	*Within 60 days*—A signatory may commence a court proceeding. *After 60* days—A signatory may commence a court proceeding within two years of the filing of the acknowledgment with the state Registrar of Vital Statistics. On the basis of fraud, duress or material mistake of fact. In either case, all signatories must be joined as parties. The proceeding must be conducted like 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. ANN.§ 16-5-12(i)(4)	*Within 60 days*—A parent wishing 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 wishes to rescind. The complaint must be served on the other parent and a hearing must be held within 60 days of service of process. If the complaint was timely filed, the court must order rescission. The circuit court clerk will send a copy of the order to the state Registrar of Vital Statistics by certified mail so that the birth record may be corrected. *After 60 days*—A parent wishing to rescind must file a verified complaint as described above. However, this complaint must also contain specific allegations of fraud, duress or material mistake of fact. In order to grant rescission, the court can only set aside the acknowledgment if there is 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 will send a certified copy of the order

	to the Registrar of Vital Statistics so the birth record can be amended.
Wisconsin WIS.STAT.ANN. §69.15(3)(m) WIS.STAT.ANN. § 767. 62(5)	<u>For acknowledgments signed and filed after April 1, 1998:</u> *Within 60 days*—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 a signatory was under age 18 when the acknowledgment was filed, and no legal proceeding involving the male parent and child has occurred, the minor has until 60 days from the date of reaching age 18 to rescind using this process. If the rescission is timely filed and the fee paid, the Registrar must prepare a new birth certificate omitting the father's name. *After 60 days*—Either part may seek rescission by motion or petition stating facts that show fraud, duress, or material mistake of fact. If the court determines that the man is not the biological father, the court must vacate any existing support order. The court or the child support agency (in a IVD 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 WY. STAT. ANN.§14-2-102(d) WY. STAT. ANN. § 14-2-102(e)	*Within 60* days—Either party may withdraw the acknowledgment by affidavit filed with the state Office of Vital records. Within 10 days, the office of Vital records must provide notice of the withdrawal to the non-withdrawing party at the address supplied on the child's birth certificate. *After 60* days—No withdrawal unless there is proof of fraud, duress or material mistake of fact.