Paternity Uncertainty: A Look at Rescissions and the Role of Doubt in Parents’ Paternity Decisions

August 2015

The University of Texas at Austin
Lyndon B. Johnson School of Public Affairs
Paternity Uncertainty

A Look at Rescissions and the Role of Doubt in Parents’ Paternity Decisions
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PURPOSE AND INTRODUCTION

Approximately two out of five children in Texas are born to unmarried parents. Because children of unmarried parents have no legally recognized father until paternity is established, parents are encouraged to sign an Acknowledgment of Paternity (AOP) form in the hospital at the time of a child’s birth. In Texas, about three-quarters of unmarried parents establish paternity this way. Although signing the AOP is a routine administrative process, it can be a deeply symbolic act, affirming the connection between father and child. It also has significant, long-lasting implications. Research shows that fathers who voluntarily sign the AOP in the hospital are more likely to be involved and supportive, both of which are associated with a host of positive child outcomes.1

Moreover, paternity establishment formalizes the legal rights and responsibilities of fatherhood. For example, a father who establishes paternity in the hospital gains the right to include his name on the child’s birth certificate—a tangible and immediate benefit to his decision to sign the AOP. Through the legal father, the child may also become eligible for a wide range of paternal benefits, including health insurance, life insurance, social security, veteran’s benefits, and inheritance. The AOP furthermore guarantees that the child can access paternal genetic history and determine any risk for inherited health defects. The establishment of paternity is also a necessary precondition for formal child support and the establishment of legal visitation orders. Finally, as one of five federal performance measures, the rate of paternity establishment for nonmarital births has become a critical metric for states seeking federal incentive funds.

Given the lasting consequences of paternity establishment for children and their families, it is critical that this legal determination accurately reflect the biological relationship between father and child. Accordingly, the Texas Family Code not only outlines procedures for administering the AOP, but also provides means through which parents can rescind the AOP. In 2011, the state legislature enacted reforms that simplified paternity rescission procedures, making it easier for couples who had signed an AOP to retract that acknowledgment. Prior to these changes, anyone wishing to rescind paternity establishment was required to commence a proceeding in court. By contrast, parents who sign an AOP today retain the legal right—within a limited timeframe—to rescind that acknowledgment through an administrative process similar to the AOP procedure.

This report is divided into two parts. The first examines paternity rescission in Texas in light of the 2011 reforms. The second takes a closer look at unmarried parents in Texas who harbor doubts about the child’s paternity but sign an AOP nevertheless, thereby setting themselves up for a potential rescission in the future. Taken as a whole, this report investigates the topic of paternity establishment under imperfect or uncertain circumstances. It is part of a series of reports produced by the Texas Child and Family Research Partnership (CFRP) for the Child Support Division of the Texas Office of the Attorney General (OAG). The OAG requested that CFRP provide recommendations regarding ways to expand paternity education, increase or sustain federal performance of paternity measures, and reduce the incidence of rescissions of
paternity establishments. Ultimately, the findings in this report aim to promote higher and more accurate levels of paternity establishment among unmarried fathers.

To assess the impact of the 2011 Texas Family Code reforms, CFRP examined roughly 12 years’ worth of statewide data on paternity rescission collected by the Department of State Health Services’ Vital Statistics Unit (VSU) and the Texas Office of the Attorney General. Although the overall rate of paternity rescission remains extremely low, these data show that the rate has increased since the reforms went into effect in September of 2011, suggesting the regulatory changes enacted that year succeeded in eliminating barriers to rescission by simplifying the process. Data also indicate that the vast majority of children with rescinding fathers do not have paternity voluntarily established again, though a small portion of children acquire a new AOP from a different father in the months following the rescission. Even without a subsequent AOP, however, children may be assigned legal paternity through other means, such as adjudication. In fact, a substantial portion of children with rescinding fathers are affiliated with an OAG case in which the rescinding father is currently listed as the child’s “primary” father, implying that in these instances the rescission may have been ultimately unsuccessful in terminating the legal relationship between father and child.

To better understand parents’ paternity decisions, including circumstances that may precipitate a rescission, CFRP also analyzed survey data from a sample of approximately 800 Texas mothers who had recently given birth outside of marriage. Because the decision to rescind paternity can only follow the decision to voluntarily establish it, CFRP examined parents’ reasons for voluntarily signing the AOP, especially in cases of uncertain paternity. A range of relationship indicators is also presented in an effort to contextualize this small, but important, group of fathers who sign the AOP despite misgivings about their genetic tie to the child.

Findings show that fathers who establish paternity in the hospital tend to be more engaged with the family than those who do not, regardless of whether they doubt paternity. Moreover, mothers and children associated with AOP-signing fathers tend to have fewer health problems, even when fathers are unsure if the child is theirs. Together, these outcomes suggest that fathers’ symbolic commitment to the fatherhood role may be more important than their doubts about paternity when it comes to the lived experience of the family. Nevertheless, behind the scenes, fathers who sign the AOP despite remaining skeptical of the child’s paternity appear to cause mothers some degree of strife. Relationship instability and family violence are particular concerns, and mothers voice a clear unease about the fathers’ prospects for sticking around. As the group most intuitively primed for rescission, fathers who doubt paternity may benefit from expanded outreach about the availability of DNA testing. Wider use of DNA testing would likely improve the accuracy of paternity establishment and reduce rates of rescission.
CURRENT RESCISSION LAW

Under current state law in Texas, anyone who has established legal fatherhood by signing an Acknowledgement of Paternity (AOP) retains the right to rescind that declaration under limited circumstances. (The rescission process is also available to signatories of a Denial of Paternity in cases of a third-party AOP.) Just as the AOP is intended to provide a streamlined method for paternity establishment, the procedure for voluntary rescission is designed to be a simple, administrative—rather than judicial—process. An AOP signatory seeking to rescind paternity (or a third-party AOP signatory wishing to rescind denial) completes a short legal document, sends copies to all other AOP signatories, and files the document free of charge with the Vital Statistics Unit (along with proof of having mailed copies to the other AOP signatories). Upon receipt of the document, the VSU will approve rescission as long as the procedural requirements are met (i.e., the form was filled out accurately, all instructions were followed, and the form was mailed in on time). Upon approval, the VSU considers the postmark date to be the effective date of rescission.

This simple procedure is allowed only within a narrow timeframe. According to the Texas Family Code, the form must be filed by “the earlier of” two dates: (1) the 60th day after the AOP’s effective date, or (2) the “date a proceeding to which the signatory is a party is initiated before a court to adjudicate an issue relating to the child, including a proceeding that establishes child support.”

Options Beyond Rescission

Challenge
Once the rescission period expires, an AOP signatory wishing to retract the acknowledgment (or denial) of paternity can no longer use an administrative process. Instead of rescinding paternity, he must commence a proceeding to challenge the AOP (or DOP) “on the basis of fraud, duress, or material mistake of fact.” Furthermore, such a proceeding must begin before “the issuance of an order affecting the child identified in the acknowledgment, including an order relating to support of the child.” Referred to as a “challenge,” this process is judicial; as such, it is substantially more difficult than rescission, which is designed to be carried out like a routine administrative procedure.

Termination
Once an order has been issued, a challenge as described above is no longer allowed, therefore an AOP signatory’s options for disestablishment are further limited. From that point on, a signatory seeking to terminate the parent-child relationship may do so only by filing suit. In order to file suit, he must have signed the AOP “without obtaining genetic testing.” Moreover, he must allege that he signed the AOP due to “the mistaken belief ... that he was the child's

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* A third-party AOP is necessary when a mother has a child with someone other than her husband or recent ex-husband (someone to whom she has been married within the 300 days prior to the birth of the child). In order for the biological father to establish paternity, the husband or recent ex-husband must deny paternity. In these instances, all parties—mother, biological father, and husband (or recent ex-husband)—sign the same form.
genetic father based on misrepresentations that led him to that conclusion.” As with rescission, a time limit applies. The AOP signatory may file suit only within two years of his discovery that he was not the child’s genetic father. Ultimately, the outcome of a termination proceeding is up to the discretion of the judge. Termination is more difficult than a challenge, and significantly more difficult than rescission.

BACKGROUND

Although these and similar laws in other states allow for circumstances under which the parent-child relationship may be terminated, this approach to paternity disestablishment is relatively new. Drawing from British law, U.S. courts have traditionally applied Lord Mansfield’s Rule in cases where a parent wishes to disestablish paternity. Established in 1777, the rule holds that if a child was born during marriage, neither the husband nor wife can declare the child illegitimate.

The rule is based on another fundamental principle in paternity law: “marital presumption.” Originating in Roman law, this tenet holds that a mother’s husband is the presumed father of her child unless he was physically incapable of conceiving (either due to physical injury or illness, or because he had no access to his wife at the time of conception). Lord Mansfield’s Rule applied in cases when parents wished to present evidence that would dispute this presumption. In principle, the rule favored family stability and welfare of the child over the wishes of one or both parents. This fundamental tension between the rights of parents and children reflects a theme that remains salient in paternity law today, particularly in cases—such as mistaken paternity—when the interests of a child and a nonbiological father may be at odds.

This tension presents a dilemma for courts and state lawmakers in efforts to keep pace with technological advancements—such as genetic testing and assisted reproductive technology—that complicate traditional approaches to determining paternity. The improved accuracy, accessibility, and affordability of genetic testing in particular has given rise to an increasing number of paternity disestablishment court cases, as well as a movement advocating for legislation that makes it easier to use genetic testing in pursuit of disestablishment. As some have pointed out, the question courts and legislators face is, “At what point should the truth about genetic parentage outweigh the consequences of leaving a child fatherless?”

Only nine states fully follow Lord Mansfield’s Rule today. In these states, neither husband nor wife may introduce evidence demonstrating a child’s alternate lineage. However, the Social Security Agency does allow for their statements to “furnish leads to other competent evidence which SSA may use in rebutting the presumption of paternity.”

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b In the original legislation, passed in 2011, a father wishing to terminate paternity had to do so within one year. In 2013, House Bill 154 adjusted the requirement to two years.

c Kansas, Nebraska, New Hampshire, New York, Oregon, Rhode Island, Utah, Vermont, West Virginia (https://secure.ssa.gov/apps10/poms.nsf/lnx/0200305025)
Lord Mansfield’s Rule applies only to children born to married parents. Children born outside of marriage were long considered under common law to be *filius nullius*, or “the child of nobody,” leaving neither father nor child with legal standing to make claims with regard to custody rights or financial support. Paternity disestablishment did not exist for illegitimate children because in the eyes of the law, there was no paternity to begin with. The “curious legal fiction” and “biological impossibility” of *filius nullius* gradually disappeared in the 1960s and 1970s with a series of Supreme Court decisions and the promulgation, in 1973, of the Uniform Law Commission’s Uniform Parentage Act (UPA). The act rejected the term “illegitimate” and declared that the “parent and child relationship extends equally to every child and every parent, regardless of the marital status of the parent.”

Federal legislation has also been an important driver of paternity establishment policy, beginning with the enactment of Title IV-D of the Social Security Act in 1975. Title IV-D preceded a series of legislative acts in the 1980s and 1990s that encouraged states to increase paternity establishment rates and streamline the AOP process. Procedures for rescission of these paternity establishment agreements emerged a bit later, and in general there has been less federal guidance on this aspect of paternity policy. The 1996 Personal and Work Opportunity Act (PRWORA) specifies—in language reflected in today’s Texas Family Code—that a voluntary AOP be “subject to the right of any signatory to rescind the acknowledgment within the earlier of (I) 60 days; or (II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.” It further specifies that there be procedures for contesting paternity after the 60-day period “in court only on the basis of fraud, duress, or material mistake of fact.”

Similar language appeared a year later in the Uniform Law Commission’s 1997 draft update of the UPA as well as in its final revision, published in 2000 (later amended in 2002), which was designed to reflect federal level mandates and the best practices drawn from state law. With the passage of House Bill 920 in 2001, Texas became the first state to adopt the revised UPA, followed by eight other states.

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RECENT CHANGES: SENATE BILLS 502 AND 785

Texas’ HB 920 did not include an administrative means of rescinding the AOP. At that time, a signatory seeking to rescind an acknowledgment (or denial) of paternity had to commence a proceeding to do so, and the allowed timeframe was limited to the first 60 days after signing the AOP (or less, if a hearing “to adjudicate an issue relating to the child” began even earlier). After the rescission period expired, a signatory could still commence a proceeding to challenge the AOP, but only “on the basis of fraud, duress, or material mistake of fact” and only within four years of signing the AOP.33

The administrative procedure in place today was introduced in the 2011 legislative session by Senate Bill 502 in order to provide a window of time in which the rescission process would be less burdensome.34 Under another 2011 bill, SB 785, the procedures for filing suit were similarly adjusted in response to the grievances of AOP signatories and adjudicated fathers who had discovered they were not the biological father but were unable to challenge paternity within the limits set by the UPA.35

SB 785 expanded the grounds for terminating the parent-child relationship by eliminating the four-year time limit established in 2001 and untethering the deadline from the AOP’s effective date.36 The bill required instead that a signatory (or adjudicated father) file suit within one year of his discovery that he was not the biological father37 (amended in 2013 to two years).38 The bill also included an adjustment in approach to the “best interest of the child” standard. Previously, a court could terminate the parent-child relationship only if it was determined to be in a child’s best interest. SB 785 made an exception to this standard in cases when DNA evidence disproved the genetic tie between father and child. SB 785 went into effect May 12, 2011,39 and SB 502—which dealt specifically with the rescission process—went into effect later that year, on September 1.40

Today, in accordance with federal law,41 every state has a procedure available for rescission of voluntary acknowledgment of paternity.42 In addition, nearly every state employs a 60-day limitation on the rescission process (generally restricted further by the date of a procedure related to the child), and nearly all43 have a procedure for challenging the AOP after the rescission period expires.43 Like Texas, many states4 also have in place a more general procedure for disestablishment of paternity beyond both the rescission process and the “challenge” procedure that follows expiration of the rescission period.44 However, even in those states without legislation on general paternity disestablishment, judicial rules and procedures have been used to address the issue.45

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*States without a 60-day time limit: Kentucky (no time limit), Michigan (within three years of child’s birth of one year of the AOP’s effective date), Mississippi (within the earlier of one year since the AOP’s effective date or a judicial proceeding relating to the child). States without a procedure for challenging the AOP after expiration of the rescission period: the District of Columbia, Iowa, Kentucky, and Michigan.

DATA

This report examines paternity rescission in Texas before and after implementation of the Texas Family Code reforms passed in SB 502 by the state legislature. These reforms, which created an administrative means of rescinding paternity, went into effect September 1, 2011. Prior to their implementation, the rescission process was judicial and thus significantly more burdensome and time-consuming. The new administrative process is the point of primary distinction between the old and new forms of rescission [Table 1].

Table 1: Rescission, Before and After September 1, 2011.

<table>
<thead>
<tr>
<th>Rescission</th>
<th>Type</th>
<th>Time limit</th>
<th>Other Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before Policy Change</td>
<td>Judicial</td>
<td>60 days</td>
<td>Option expires upon initiation of a hearing to adjudicate an issue relating to the child</td>
</tr>
<tr>
<td>After Policy Change</td>
<td>Administrative</td>
<td>60 days</td>
<td>Option expires upon initiation of any proceeding before a court to adjudicate an issue relating to the child</td>
</tr>
</tbody>
</table>


As Table 1 shows, other aspects of the rescission process have not changed. As is the case today, the rescission process prior to the policy change was limited to the 60-day window of time following paternity establishment. Furthermore, as is also still the case, that window of time could be cut short by other circumstances. Before the policy change, the rescission period could end early upon initiation of judicial action relating to the child. Under the policy change, the rescission period can still end early, upon initiation of any proceeding adjudicating an issue relating to the child. Today, once the rescission option has expired, any parent wishing to disestablish paternity must pursue a challenge. This distinction between a rescission and a challenge was in place before the policy change as well [Table 2].

Table 2: A Challenge, Before and After September 1, 2011.

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Type</th>
<th>Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before Policy Change</td>
<td>Judicial</td>
<td>• On the basis of fraud, duress, or material mistake of fact</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Within four years of signing the AOP</td>
</tr>
<tr>
<td>After Policy Change</td>
<td>Judicial</td>
<td>• On the basis of fraud, duress, or material mistake of fact</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Proceeding must begin before issuance of an order affecting the child</td>
</tr>
</tbody>
</table>


In order to assess the impact of the 2011 reforms, CFRP examined 12 years of statewide data on paternity rescission collected by the VSU and Texas OAG. CFRP also examined data collected in 2013 from unmarried parents in Texas, drawn from the Paternity Establishment Study (PES).
ADMINISTRATIVE DATA

Data presented in the first half of this report are drawn primarily from the Hospital-Based Paternity Screen Portal (HBPP) data file, which contains child-level paternity information for all nonmarital births, and two administrative data files provided by the Texas OAG: the Member Demographics (DEMO) data file and the Member to Case Cross Reference (MCXR) data file. The HBPP data include the relevant dates associated with orders of acknowledgment, denial, and rescission of paternity for children born outside of marriage. The DEMO data include demographic information (e.g., gender, race/ethnicity, marital status) for all members (children, parents, etc.) in the child support system, and additional information related to paternity establishment (i.e., date paternity was established and the paternity case ID associated with a particular dependent). The MCXR data file facilitates linkages between individual member and case-level data tables, and in addition, contains information about the relationship of members to the case (e.g., custodial parent, dependent, alleged father, etc.) and to the dependent (e.g., mother, father, grandmother, etc.). Moreover, MCXR data include the current status of each member on the case (primary, excluded, active, inactive) and provide the rationale for those members whose status is listed as excluded (court-ordered or DNA-test supported). All individuals in the child support system have a unique member ID. This ID can be used in conjunction with the case ID, which is unique to each child support case, to link individual-level information with case-level data. For those children in HBPP with member IDs, information from HBPP at the child level was merged with information available from DEMO and MCXR at both the member and case level in order to provide the complete paternity establishment details associated with a particular child’s case.

Data Limitations

Rescission Timing: Effective Dates vs. Transaction Dates
The HBPP data file does not directly track rescission dates (which by law must occur within 60 days of paternity establishment). Instead, it records a “transaction” date every time a data entry is made pertaining to a child in the system. When a data entry pertains to rescission, it has an associated transaction date; however, that date may be days or weeks after the official effective date of the rescission. (After the policy change, the effective date would be the postmark date of the rescission form.) In the absence of data reflecting the effective dates, CFRP’s analysis uses the transaction dates associated with rescissions as a proxy for the actual dates of rescission. As such, some rescissions appear to be occurring after expiration of the rescission period.
**Rescission vs. Challenge**

Due to changes in data entry practices prompted by the policy change, direct comparisons of HBPP data across time periods are difficult. Prior to the policy change, both rescissions and challenges were recorded by the VSU as “rescissions.” However, given the associated transaction dates, it is likely that rescissions recorded more than 60 days after paternity establishment are actually challenges. In fact, only one rescission before the policy change appears to be a legitimate rescission—all others occurred well after the 60-day window.

After the 2011 policy change, VSU staff were trained to distinguish between rescissions and other forms of disestablishment. Therefore, most rescissions recorded in the HBPP data file after the policy change—and after the 2011 transition year, in particular—should represent legitimate rescissions. Nonetheless, given the number of rescission transactions recorded well beyond the 60-day window, some error in the data set is likely.

**Paternity Establishment Study (PES) Data**

In addition to state administrative data, this report draws on data collected through PES, a statewide survey of 805 unmarried Texas mothers who gave birth during the first two weeks of January 2013. The PES study is a longitudinal birth cohort study currently comprising two waves collected 3 and 15 months after the birth. This report relies on data from wave 1, when the focal child was approximately 3 months old. In constructing the sampling target, mothers who did not establish paternity in the hospital were oversampled in an effort to maximize statistical power for this subgroup. Results presented in this report have been weighted to reflect the true proportions of relative subgroups in the population. Although the PES study asks respondents about paternity rescission, there are no cases of true rescission in the sample. Instead, the data are used to give context to circumstances that may precipitate a rescission.

The PES study has a response rate of 67.7 percent and a refusal rate of 1.8 percent among eligible mothers in the sampling target. A smaller group of respondents completed the survey voluntarily, and were pooled with the target sample to improve the reliability of subgroup estimates; voluntary respondents do not differ demographically from respondents in the original sampling target. A small group of fathers (N=286) also completed the PES survey. Ideally, both mother and father survey data would inform this analysis; however, a high degree of positive selection among fathers who completed the survey yields a biased sample. As a result, PES data presented in the second half of this report draw solely from mother reports.
RESCISSIONS ON THE RISE

Historically, paternity rescission has been extremely rare in Texas. The first recorded rescission appears in OAG data in 2003, and in the ensuing years, the annual rate remained low, often at just one per year. Despite a slight uptick in 2009, the number of rescissions remained negligible until 2011. Beginning in that year, the number began to climb, particularly in the wake of SB 502, which went into effect on September 1 of 2011 [Figure 1]. In the years 2003-2010, the cumulative number of rescissions reached only 22. Then, in 2011, that number more than doubled to 57. It doubled yet again to 117 in 2012 [Table 3]. Although the overall number of rescissions has remained extremely low relative to the annual number of AOPs signed (approximately 120,000), this finding suggests that the rescission process was indeed easier and more attainable once the new, simplified procedure became available.

Figure 1: Rescissions in Texas

Source: Texas Office of the Attorney General, Hospital Based Paternity Screen Portal (HBPP) data file. (N=347)
As Table 3 shows, the number of rescissions occurring specifically within 60 days of paternity establishment also increased dramatically during and after 2011, as did the proportion of rescissions occurring within that timeframe relative to those occurring later. This result is consistent with the 2011 policy change implementing an administrative avenue for rescissions within 60 days of signing the AOP. From 2012 on, the majority of rescissions occurred within this 60-day window. (Although 2015 appears to be an exception, it is premature to draw conclusions, because the data represent only the first month of the year.) These findings demonstrate that the overall increase in paternity rescissions stems primarily from those happening within the timeframe of interest.

**Table 3: Time Between AOP and Rescission, by Year of Rescission**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Rescissions</th>
<th>% &lt; 60 days</th>
<th>% &lt; 74 days</th>
<th>% &lt; 180 days</th>
<th>% &gt; 180 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-2011</td>
<td>22</td>
<td>5%</td>
<td>5%</td>
<td>14%</td>
<td>86%</td>
</tr>
<tr>
<td>2011</td>
<td>57</td>
<td>28%</td>
<td>40%</td>
<td>44%</td>
<td>56%</td>
</tr>
<tr>
<td>2012</td>
<td>117</td>
<td>56%</td>
<td>91%</td>
<td>95%</td>
<td>5%</td>
</tr>
<tr>
<td>2013</td>
<td>95</td>
<td>59%</td>
<td>78%</td>
<td>83%</td>
<td>17%</td>
</tr>
<tr>
<td>2014</td>
<td>49</td>
<td>65%</td>
<td>76%</td>
<td>84%</td>
<td>16%</td>
</tr>
<tr>
<td>Jan. 2015*</td>
<td>7</td>
<td>43%</td>
<td>71%</td>
<td>86%</td>
<td>14%</td>
</tr>
<tr>
<td>Total</td>
<td>347</td>
<td>50%</td>
<td>71%</td>
<td>76%</td>
<td>24%</td>
</tr>
</tbody>
</table>

Source: Texas Office of the Attorney General, Hospital Based Paternity Screen Portal (HBPP) data file. (N=347)
Note:*Data for 2015 only include rescissions through Jan. 30, 2015.

Notably, prior to the policy change, rescission of paternity would still have been easier within the 60-day timeframe than outside of it. Although anyone wishing to rescind paternity would have had to commence a judicial proceeding to do so, only after the 60-day window would the rescinding party additionally have had to prove "fraud, duress, or material mistake of fact." This distinction appears to have had little effect on the timing for rescissions, however. Prior to 2011, only one person rescinded within 60 days of acknowledging paternity (representing 5 percent of pre-2011 rescissions, as seen in Table 3). Indeed, the requirement that parents take judicial action may have been prohibitive regardless of the burden of proof required. It is likely that taking judicial action within such a short time—just 60 days after signing the AOP—was particularly prohibitive.

Although the majority of post-2011 rescissions took place within the 60-day timeframe, a significant number still appear to occur later. This finding likely reflects data recording practices, as discussed earlier. Prior to the 2011 policy change, both forms of judicial action—disestablishments taking place within the rescission period and after—were recorded by the VSU as rescissions. However, the transaction dates suggest that most of the rescissions were in fact challenges.
After the policy change, staff were taught to distinguish between rescissions and challenges, and to record only rescissions in the rescission field. It is possible that some data nonetheless represent clerical error (e.g., a challenge mistakenly recorded as a rescission). However, the majority likely represent legitimate rescissions. The rescission dates in the data file represent not the day the rescission form was filed (i.e., postmarked) but the transaction date (most likely the date the rescission designation was entered into the system). It is reasonable to conclude that this processing lag accounts for most of the rescissions recorded after expiration of the 60-day rescission period. In fact, as Table 3 shows, a substantial number of rescissions are recorded within the two-week window after day 60. Overall, the majority of rescissions have been recorded within 74 days of the AOP effective date.

The number of rescissions recorded more than 74 days after paternity establishment was extremely low in 2012 (the first full year of policy implementation). This finding suggests that the hands-on training occurring at that time was largely successful, and that VSU staff understood the distinction between a rescission and a challenge. By contrast, the number of late rescissions has been much higher in subsequent years. In each year, about 1 in every 6 rescissions was recorded at least 180 days (nearly six months) after paternity establishment, well after expiration of the rescission period. It is unclear whether this lag represents prolonged processing time or errors in data entry (e.g., a challenge mistakenly recorded as a rescission). One possible interpretation of the lag is a diminishing effect of the initial training period.
The dramatic change in the frequency and pace of rescissions before and after the 2011 policy change is particularly clear in Figures 2 and 3 below, which demonstrate, for each year from 2010 to 2014, when rescission transactions took place relative to paternity establishment. Figure 2 shows that in 2009 and 2010, rescissions were spread out fairly evenly over time, and most occurred long after 60 days had passed. In 2010, for example, the first rescission did not take place until roughly 500 days had passed, more than a year since parents had signed the AOP. The pace quickens substantially in the following years, with the graph showing a steep rise in rescissions in the time period immediately following paternity establishment. The transition year, in 2011, shows a short, rapid rise in the months after paternity establishment, followed by a quickened pace of rescissions relative to previous years through the first 1,000 days (a little under three years) following the AOP. By contrast, each ensuing year features an even steeper rise in the number of rescissions in the first few months after the AOP, followed by a long tail in which the pace slackens considerably. Post-2011, the majority of rescissions take place long before the 500-day mark.

**Figure 2: Frequency and Rate of Rescission, by Year**

![Graph showing frequency and rate of rescissions by year](source)

*Source: Texas Office of the Attorney General, Hospital Based Paternity Screen Portal (HBPP) data file. Years 2003-2008 not shown due to limited number of rescission cases (one or less per year). Due to incomplete data, 2015 is not shown. (N=338)*
Figure 3 focuses on the first 160 days after parents sign the AOP. Again, in the years following the 2011 policy change, the graph illustrates a quickened pace in the rate of rescissions in the early days after paternity establishment. The majority take place within the first 75 days, followed by a sharp deceleration as the remaining few rescissions spread out over the long tail. By contrast, the year 2010—which precedes the policy change—does not even appear in the graph, because the first rescission that year occurred much later than 160 days. Meanwhile, 2009 appears only briefly, with just one rescission taking place within the timeframe, nearly 140 days—more than four months—after paternity establishment.

**Figure 3: Frequency and Rate of Rescission, by Year (Truncated at 160 Days)**

Source: Texas Office of the Attorney General, Hospital Based Paternity Screen Portal (HBPP) data file. Years 2003-2008 not shown due to limited number of rescission cases (one or less per year). Due to incomplete data, 2015 is not shown. (N=338)
Overall, the data show that paternity rescission practices have changed substantially since the implementation of an administrative option. Rescissions are occurring in higher numbers since 2011, and they are happening much more quickly after the establishment of paternity. Due to limitations in the data, it is unclear whether there has been a corresponding change in the number of challenges, which are not only substantially more difficult for parents to pursue, but which also require considerable time and resources on the part of the OAG. This question may be worthy of future study.

Despite these changes, rescission remains extremely rare in Texas. Among all the AOPs signed in 2013, only 0.055 percent were associated with a subsequent rescission by January 30, 2015 [Figure 4]. Put differently, the rate of rescission for AOPs signed in 2013 is approximately 1 in 1,800.\(^h\)

**Figure 4: Rescissions as Percentage of Paternity Establishments, by Year**

![Graph showing the percentage of AOPs rescinded from 2000 to 2014.](source)

Of the 123,069 AOPs signed in 2013, 71 were rescinded.

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\(^h\) The year 2013 is the most recent year of paternity establishment data for which all subsequent corresponding rescissions are recorded. Because the data set contains dates only through January 30, 2015, it does not include potential February rescissions by parents who signed the AOP 60 days prior, in December 2014—therefore, the rescission data corresponding to AOPs signed in 2014 are incomplete.
CHILDREN’S POST-RESCISSION AOP STATUS

Following a rescission of paternity, the majority of children in Texas do not have a subsequent AOP signed. Since 2003, only 21 of the 347 children who have had paternity rescinded have a new AOP on file with the VSU [Figure 5]. In all 21 cases, the AOP has been signed by a new father. New fathers tend to establish paternity fairly quickly following a rescission. Since the policy change in September 2011, the average time elapsed between the original rescission and voluntary acknowledgement by a new father is 4.8 months, with new AOPs ranging from one week to 20 months post-rescission.

Though the vast majority of children with rescinded paternity do not have a new AOP on file, many may have had paternity established through other means. Any party affected by the rescission, for example, may choose to pursue paternity establishment through adjudication. This process may result in paternity being established for the original rescinding father, a new father, or neither.

**Figure 5: Children's Post-Rescission AOP Status**

![Pie chart showing that most children do not acquire a new AOP.](chart)

Source: Texas Office of the Attorney General, Hospital Based Paternity Screen Portal (HBPP) data file. (N=347)
OAG ASSOCIATION WITH CHILDREN OF RESCINDING PARENTS

Among children of rescinding parents, the majority have a member ID associated with OAG administrative records [Figure 6]. When a child appears in OAG administrative data, it means that someone associated with the child has applied for OAG services. Such services include locating a noncustodial parent; establishing paternity; establishing, enforcing, reviewing, or modifying a child support order or collecting child support payments (e.g., through income withholding); establishing or enforcing a medical support order; or enrolling the child in a health insurance plan. This finding suggests that the need for services may be high among children of rescinding fathers.

Figure 6: OAG Association with Children of Rescinding Parents

The OAG administrative data also lists family members associated with the dependent for each case. Using children’s member IDs and fathers’ names, it is possible to determine the rescinding father’s status on a child’s case. The available designations for a rescinding father’s member status with the original child include “primary father,” “excluded father” (due to court order or blood test), “active father,” “inactive father,” or “not listed” (i.e., the rescinding father’s name does not appear on the child’s case). Figure 7 shows that the majority of rescinding fathers are distributed across three categories: primary father, excluded father, and father not listed. Of these, the most common listing is primary father, denoting that the rescinding father has been identified as the father relevant to the child support or paternity case despite rescinding. Because there are no cases in which a rescinding father voluntarily signs a new AOP for the same child, it is likely that the rescinding father’s member status in OAG records was identified through other avenues, such as adjudication. According to the Texas Family Code, “Any party affected by the rescission, including the Title IV-D agency, may contest the rescission by bringing a proceeding under Subchapter G to adjudicate the parentage of the child.”
In approximately another third of cases, the rescinding father is listed as excluded on the child’s case. Most fathers are excluded due to court order, though 20 are excluded due to a blood test. Excluded fathers appear to have successfully terminated their relationship to the child. Finally, roughly one-third of fathers do not appear on the child’s case at all. These fathers may be listed as primary or excluded in the future; however, current records suggest they have dissolved their connection to the child. A small number of rescinding fathers are listed either as active, which typically applies to a custodial parent, or as inactive, which is primarily an administrative designation for members who were added to a case but perhaps shouldn’t have been (e.g., in error, deceased, a duplicate member, etc.).

**Figure 7: Rescinding Fathers' Member Status on Child’s Case in OAG Administrative Records**

Source: Texas Office of the Attorney General, HBPP, DEMO, and MXCR data files. (N=347)

**AGE**

To understand whether parents who rescind paternity are demographically different from the broader population of Texas couples who have children outside of marriage, CFRP analyzed the age of parents in both groups at the time of the child’s birth. Statistical analysis shows there is no significant age difference between rescinding parents and unmarried Texas parents at large. For both groups, the average age of the mother at the time of the child’s birth is approximately 24, while the average age of the father is 28. The statistical similarity in age between rescinding parents and parents who give birth outside of marriage holds among the smaller subset of parents who have rescinded since the policy change in September 2011.
RESIDENTIAL ANALYSIS

To ascertain parents’ residential patterns and regional differences in rescission rates, CFRP examined data on parents’ home addresses—both at the time of paternity establishment and at the time of rescission. The data show that only a handful of parents have different addresses recorded at the time of paternity establishment and the time of rescission. It is unclear whether addresses logged at the time of rescission truly reflect parents’ living circumstances at that time, or whether data entry processes auto-populate the address from the time of paternity establishment. This section presents residential analysis using the addresses logged for both parents at the time of rescission, though the findings may be interpreted as residential patterns at the time of paternity establishment with little substantive difference in conclusions.

The data show that among rescinding couples, most mothers and fathers live with or very near each other. Nearly 40 percent live together, and another 24 percent live within five miles of each other. Very few—less than 10 percent—live more than 50 miles apart. Although the vast majority of parents report Texas addresses, a handful—primarily fathers—live out of state. About 5 percent of rescinding fathers report addresses outside of Texas, primarily in neighboring New Mexico and Oklahoma. Two rescinding fathers have reported addresses out of the country, in Mexico [Table 4]. Only five mothers in the dataset have reported out-of-state addresses: two in New Mexico, one each in Arkansas and Louisiana, and one in Mexico (not shown).

Table 4: State/Country of Residence for Fathers Who Rescind Paternity in Texas

<table>
<thead>
<tr>
<th>State/Country</th>
<th>Fathers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>321</td>
</tr>
<tr>
<td>New Mexico</td>
<td>3</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3</td>
</tr>
<tr>
<td>Mexico</td>
<td>2</td>
</tr>
<tr>
<td>Missouri</td>
<td>2</td>
</tr>
<tr>
<td>Nevada</td>
<td>2</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1</td>
</tr>
<tr>
<td>Louisiana</td>
<td>1</td>
</tr>
<tr>
<td>Arizona</td>
<td>1</td>
</tr>
<tr>
<td>Colorado</td>
<td>1</td>
</tr>
<tr>
<td>Idaho</td>
<td>1</td>
</tr>
<tr>
<td>Maryland</td>
<td>1</td>
</tr>
<tr>
<td>North Carolina</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>340</strong></td>
</tr>
</tbody>
</table>

*Source: Texas Office of the Attorney General, Hospital Based Paternity Screen Portal (HBPP) data file.*

*Note: Address recorded at the time of rescission. Father’s address missing in 7 of 347 rescission records.*
As illustrated in the map below [Figure 8], rescinding parents tend to cluster in major population centers. Only six cities have been home to 10 or more rescinding fathers since 2003 (Houston, Dallas, Brownsville, San Antonio, El Paso, and Austin). Among those cities, only one—Brownsville—is not in the state’s top 10 most populous cities. Nonetheless, Brownsville is among the state’s top 20 most populous cities, as are all cities with three or more rescinding fathers [Table 5, below].

**Figure 8: Rescissions by Parent Address, Jan. 2003-Jan. 2015**

Source: Texas Office of the Attorney General, Hospital Based Paternity Screen Portal (HBPP) data file. (N=687)

Note: Address recorded at the time of rescission. Father’s address missing in 7 of 347 rescission records
Consistent with its distinction as Texas’ most populous city, Houston has been home to the greatest number of rescinding fathers, as shown in Table 5 below. In fact, with 44 rescissions, Houston has had more than twice the number of rescissions as the next city, Dallas, home to 20 rescinding fathers. Although population density plays a clear role in regional variation, rescission rates appear to be disproportionate to population size in some cases. Houston’s population is not quite twice that of Dallas, which suggests that its per-capita rate of rescission is higher. Brownsville has been home to more rescinding fathers than Austin, yet its population is about one-fifth the size of Austin’s. However, general population size can provide only a rough idea of variation in rescission rates among cities. Future research in this area would benefit from a comparison of rescissions to city-level data on nonmarital births and AOPs.

Table 5: Texas City of Residence for Fathers who Rescind Paternity in Texas

<table>
<thead>
<tr>
<th>Texas City</th>
<th>Fathers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Houston</td>
<td>44</td>
</tr>
<tr>
<td>Dallas</td>
<td>20</td>
</tr>
<tr>
<td>Brownsville</td>
<td>15</td>
</tr>
<tr>
<td>San Antonio</td>
<td>15</td>
</tr>
<tr>
<td>El Paso</td>
<td>11</td>
</tr>
<tr>
<td>Austin</td>
<td>10</td>
</tr>
<tr>
<td>Arlington</td>
<td>7</td>
</tr>
<tr>
<td>Fort Worth</td>
<td>7</td>
</tr>
<tr>
<td>Garland</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>189</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>321</strong></td>
</tr>
</tbody>
</table>

Source: Texas Office of the Attorney General, Hospital Based Paternity Screen Portal (HBPP) data file.
Note: Address recorded at the time of rescission. Father’s address missing in 7 of 347 rescission records.
THE ROLE OF DOUBT IN PARENTS’ PATERNITY ESTABLISHMENT DECISIONS

It is unclear why some men choose to establish paternity but later rescind. One possibility is that some fathers harbor doubts about paternity early on, yet sign the AOP anyway due to pressure from hospital staff, pressure from the mother, or a desire to maintain a connection to the mother and child. Other doubting fathers may sign the AOP due to a lack of understanding of paternity establishment and its implications, or an unfamiliarity with the options for DNA testing. In this section, we turn our attention toward this small but important group of fathers who question their genetic tie to the child, yet sign a legal document saying otherwise. We focus on these fathers in part because they may be the most likely to rescind later on, but also because their decision to sign the AOP—whether they rescind or not—is cause for concern.

Survey data gathered from a representative sample of unmarried Texas parents show that approximately 14 percent of men who establish paternity in the hospital doubt that they are the biological father of the child. By contrast, most unmarried fathers who doubt paternity do not sign an AOP to begin with. Indeed, among fathers who are present at the birth, doubts about the child’s lineage are an important predictor of the decision not to establish paternity.47 Nonetheless, despite their reservations, 44 percent of doubting fathers go on to sign the AOP. If rescissions originate largely from this group of fathers, hospitals may be able to address their concerns—along with those of doubters who decline to sign the AOP—by expanding outreach about paternity testing and, where resources are available, exploring the feasibility of providing free or reduced-cost DNA testing at the time of birth. Wider availability and promotion of DNA testing among unmarried parents might improve the rate and accuracy of paternity establishment, thereby reducing rates of rescission.

WHO ARE THE DOUBTING SIGNERS?

To better understand parents who doubt paternity yet sign the AOP, it is useful to compare this group (doubting signers) to three other groups of unmarried parents: those who also doubt paternity but decline to sign the AOP (doubting non-signers), parents who sign the AOP and do not doubt paternity (certain signers), and those who neither doubt paternity nor sign an AOP (certain non-signers). CFRP examined these groups across a variety of indicators in order to understand parents’ relationships and the nature of fathers’ commitment to the family.

Fundamentally, doubting signers are ambivalent about their connection to the child—their actions (e.g., signing the AOP, attending the 20-week ultrasound, remaining in a relationship with the mother) are at odds with their feelings of doubt. Fathers who are more certain of their connection to the child, yet fail to sign, are in a similar predicament—their actions are at odds with their belief. The data indicate that these two “ambivalent” groups have much in common, particularly in terms of relationship quality with the mother.
Nonetheless, the two groups that share the most in common are those who sign the AOP. The similarities between doubting and non-doubting signers are particularly salient for indicators of commitment to the family and child health outcomes. Overall, this finding suggests that paternity establishment acts as a stronger signal of a father’s commitment to his family than does doubt about his genetic tie to the child. This conclusion is consistent with low rates of rescission—very few fathers choose to rescind once they have deliberately signaled their intention to take responsibility for a child.

At the same time, the data show a clear association between doubt and greater family instability, particularly for indicators of relationship quality during the pregnancy and the presence of family violence. Although the vast majority of couples with these traits will not rescind paternity, these indicators may nonetheless act as early signs that a father will consider seeking rescission of his status as the child’s legal father.

The following sections explore these findings in greater detail.
THE POWER OF AMBIVALENCE

Paternity establishment appears in many ways to counteract the destabilizing influence of paternity doubt. On several measures of family commitment and stability, PES survey data show that doubting families actually do better than non-doubting families when the former has established paternity and the latter has not. Still, these two groups—signers who doubt paternity and non-signers who do not doubt—tend to be closely aligned. For instance, in these groups, roughly half of couples experience at least one break-up during pregnancy. The same is true for only 15 percent of parents who sign the AOP and harbor no doubts about paternity. Meanwhile, among doubting parents who do not sign the AOP, more than 80 percent break up at least once before the birth. A similar pattern can be observed among other indicators of relationship quality [Figure 9].

Figure 9: Similarities Between Ambivalent Groups: Doubting Signers and Certain Non-signers

The similarities between doubting signers and certain non-signers may be counterintuitive because the two groups are the inverse of one another—one signs and doubts; the other group does neither. However, what they have in common is a dissonance between parents’ beliefs and actions: in one case, they establish paternity despite doubt; in the other, they fail to do so despite certainty. It appears that this ambivalence can dampen a father’s commitment toward the relationship and the child such that both groups perform poorly relative to those parents who sign the AOP and have no doubt about the child’s lineage. Nonetheless, the ambivalent groups consistently fare better than those parents who neither believe their genetic tie nor establish paternity. In short, the ambivalent groups cluster in the middle, as can be seen in both Figures 9 and 10.
THE POWER OF PATERNITY ESTABLISHMENT

Despite these similarities, the data show that the signing groups also share a strong connection. In fact, they perform better than the non-signing groups on most indicators, particularly those signaling commitment to the family. For instance, doubting signers—just like other signers—are more supportive and involved during the pregnancy, more likely to take responsibility for the child, and more likely to maintain a relationship with the mother than either of the non-signing groups of parents [Figure 10].

Moreover, the signing groups have more in common with each other across most indicators than the doubting groups have with each other. These findings suggest that there is something special about signing the AOP that to some degree overrides the influence of doubt about the father’s genetic tie to the child. Indeed, although signing, non-doubting parents are the group most likely to have stable, committed relationships and to be involved in the child’s life, both groups of signing parents perform well in this regard relative to the non-signing groups.

Figure 10: Similarities Among Signing Groups and Among Ambivalent Groups

![Figure 10: Lack of Father Commitment to Mother and Child](image)

Source: PES Mothers at 3 months, weighted. (N=779)

Note: Significance testing not reported. Substantive group differences may not be statistically significant.
The Importance of Showing Up

Voluntary paternity establishment acts as a powerful signal that a father has taken on the fatherhood identity. However, as previous CFRP research has shown, it is also a strong indicator that the father attended the birth of his child. Fathers who attend the birth are much more likely to sign an AOP than those who do not attend. It is especially important to take into account birth attendance when comparing doubting signers to their ambivalent counterparts—those parents who do not sign the AOP even though they are more certain of paternity. The latter group is composed largely of fathers who were not at the birth and therefore not present when the opportunity to sign was presented. Meanwhile, the characteristics shared by the signing groups may reflect characteristics common to fathers who are less likely to shirk the responsibility of attending the birth.

Maternal Stress and Child Health Outcomes

The similarity between doubting and non-doubting signers is particularly notable when considering maternal and child health outcomes. As Figure 11 demonstrates, mothers and children in the signing groups fare better across all four of the health indicators that were analyzed. It may be possible that paternity establishment is part of a pattern of behavior demonstrating willingness to take responsibility for a child. This behavior may be reassuring to the mother and, in turn, mitigate the negative health outcomes often linked to maternal stress.

Figure 11: Signing Groups Have More in Common Than Other Groups

Source: PES Mothers at 3 months, weighted. (N=779)
Note: Significance testing not reported. Substantive group differences may not be statistically significant.
Past CFRP research has found some evidence for a relationship between pregnancy complications, child health outcomes, and father involvement. This research builds on previous studies demonstrating that elevated maternal stress can increase the likelihood of pregnancy complications. CFRP’s findings show that mothers with pregnancy complications are substantially more likely to report that the father was not present at one of two pivotal events: the 20-week ultrasound or the child’s birth. As previously discussed, fathers who attend the birth are much more likely to sign the AOP. Together these findings suggest that paternity establishment, birth attendance, and presence at the 20-week ultrasound may all be part of a pattern of behavior that contributes to alleviating maternal stress and diminishing the likelihood of negative health outcomes—irrespective of parents’ convictions about paternity.

Not only do children of signers fare better across all four of the health indicators that were analyzed, but the figures hew together more closely for signers than for the ambivalent groups or the doubting groups. This finding suggests that doubt about paternity does not alter the fundamental distinction between signers and non-signers. In many respects, paternity establishment acts as a stronger signal of a father’s commitment to the family than does uncertainty about the child’s lineage. This finding may help explain why rescission rates remain low—doubting signers are a small group to begin with, and many show great commitment to the family despite uncertainties about the child’s true paternity.
THE POWER OF DOUBT

Despite similarities among doubting and non-doubting signers, the data show that for some indicators, doubt does act as an overwhelming signal of instability in the family. The doubting groups are more likely than their non-doubting peers to report deteriorating relationships over the course of the pregnancy and to experience family violence. For these indicators, doubt acts as a stronger signal of family instability than paternity establishment for roughly two in five signing doubters [Figure 12].

**Figure 12: Doubting Groups Share Similarities**

Notably, three months after the birth, mothers in the doubting groups are more likely to report that the father is either currently on child support, in the process of being put on child support, or that they anticipate putting the father on child support in the future [Figure 12].

Similarly, as shown in Figure 13 below, when mothers report reasons for establishing paternity, child support emerges as one of the most distinct differences between doubters and non-doubters. Among mothers who sign the AOP, those in the doubting group are twice as likely to say that concern about the ability to file for child support was among their reasons. They are also more likely to report having wanted to ensure that the child had a legal father, that the father would be responsible for the child, and that he would be emotionally invested.
At the same time, doubting signers are slightly less likely to report that the father wanted to establish paternity and substantially more likely to report that the father was pressured into signing the AOP. Notably, mothers’ families are less likely to have thought that paternity establishment was important. This finding points to potential tension in the extended family and disapproval of the father. Among doubting signers, the mother’s desire for the father to commit may be at odds not just with the father’s wishes but with her family’s wishes as well.

**Figure 13: Doubting Signers Express Concerns about Fathers’ Commitment to the Child**

![Figure 13: Doubting Signers Express Concerns about Fathers’ Commitment to the Child](image)

Source: PES Mothers at 3 months, weighted. (N=779)

Note: ***p<0.001, **p<0.01, *p<0.05, t<0.10.
Given that mothers in the doubting group have experienced rocky relationships with the father during the pregnancy (as discussed in relation to Figure 12), these findings suggest that they are more likely to suspect that the father will disengage over time. These mothers are particularly skeptical of the father’s emotional and financial commitment to the child and more likely to view paternity establishment as a way to bind him to that commitment. This interpretation is consistent with data showing that among doubting parents—and particularly those who sign the AOP—it is nearly always the father alone who doubts paternity. In fact, it is rare for mothers to report uncertainty about a child’s lineage. Among all unmarried parents, mothers are the lone doubters in less than 1 percent of couples, and in less than 3 percent of couples do both parents doubt. By contrast, in nearly 19 percent of cases, it is the unmarried father alone who harbors doubts about paternity. Moreover, no doubting mothers signed an AOP among the parents in the PES study, and less than half of couples signed when both parents doubted paternity (not shown). Therefore, the overwhelming majority of doubting signers are couples in which it is the father alone who has expressed doubt about the child’s lineage, and parents’ interests may be in direct conflict.
CONCLUSION

For most parents who voluntarily establish paternity, the event is a proud one, symbolizing the connection between father and child and laying the foundation for a host of legal benefits for the family. For others, though, establishing paternity may take place under imperfect or uncertain circumstances. In some cases, paternity may even be established in error. For fathers seeking to undo the voluntary establishment of paternity, options have historically been limited and burdensome. In 2011, however, the Texas legislature passed SB 502, creating a simplified administrative process for rescinding paternity. In the wake of this policy change, the number of rescissions increased considerably, though as a percentage of AOPs the numbers remain almost negligible. Although a small percentage of children with rescinding fathers acquire a new AOP from a different father in the months following the rescission, the vast majority do not have paternity voluntarily acknowledged again. Interestingly, most children of rescinding fathers appear in OAG administrative data, suggesting someone affiliated with the child has applied for OAG services. In roughly one-third of these cases, the rescinding father is listed as the primary father on the child’s case, implying that events after the original rescission may have resulted in the reestablishment of a legal relationship between father and child.

Because rescissions may spring from a broader population of fathers who doubt paternity but sign the AOP regardless, the second half of this report examines these parents in hopes of illuminating the circumstances that may precipitate a rescission. Fathers in this group are similar to others who sign the AOP on most indicators of commitment to the family; however, they are also more likely to have a history of relationship instability, including family violence. Mothers associated with fathers who doubt paternity but sign the AOP anyway express concerns that the father will disengage from the family, and they appear to view paternity establishment as a way of binding him to the responsibilities of fatherhood. Though the vast majority of these men will not rescind paternity, their decision to sign the AOP in spite of their doubt remains problematic.

POLICY IMPLICATIONS

One aim of this report is to provide recommendations for expanding paternity education, increasing or sustaining federal performance measures related to paternity establishment, and reducing the incidence of rescissions. Ultimately, educational outreach may benefit most from an expanded focus on options for DNA testing prior to, and at the time of, the birth. Efforts to inform both parents about the availability of genetic testing would likely result in more accurate paternity establishments and fewer rescissions. Expanded education around this issue may also reduce court costs associated with disputed paternity, especially considering that termination of the parent-child relationship—the last resort once the rescission period has expired and a challenge is no longer an option—can happen only if the AOP was signed in the absence of genetic testing. For fathers who sign the AOP having taken a DNA test, for example, termination and its associated costs are precluded. Wider use of genetic testing would likely trim the number of challenges as well, which must be made “on the basis of fraud, duress, or material mistake of fact.”
Additionally, exploring the feasibility of providing greater access to free or reduced-cost DNA testing for unmarried parents who doubt the child’s paternity could be considered. Currently, the Texas OAG provides free lab-accredited paternity testing to unmarried parents; however, parents must first open a child support case to receive this service. This approach is similar to the one taken by several other states, including Oklahoma, Louisiana, Arizona, and Alaska. Most simply, the OAG could expand outreach about this service without making any substantive policy change. If expanded use of the service is considered too costly, the OAG might favor revising current policy to require men who test positive as the child’s father to reimburse the state for the cost of the test, as is done in Oklahoma, Louisiana, Arizona, and Alaska.

Finally, the OAG could explore the possibility of decoupling free paternity testing from the requirement to file for child support and integrating it within birthing hospitals themselves. This approach would allow parents who are unsure of the child’s paternity to initiate testing at the time of the birth, the critical moment in which most parents make a decision about legal fatherhood. Though there may be operational barriers related to systematizing this procedure alongside existing hospital protocols, the primary limitation of in-hospital DNA testing is likely to be cost. The financial, administrative, and operational resources required to provide free genetic testing in the hospital could be prohibitive for a number of reasons, not least of which is the prevalence of uncertain paternity. Each year in Texas, nearly 37,000 unmarried couples will have at least one parent who expresses some doubt about the child’s lineage. Almost 16,000 of these couples will sign the AOP. Though it is difficult to estimate the number of parents who would take advantage of free in-hospital DNA testing, it is unlikely to be this high. Still, the number of rescissions, at roughly 50 to 100 per year, pales in comparison to these figures.

Beyond the potential resource constraints, it is not clear that addressing a problem of this magnitude lies within the mission and goals of the OAG. Indeed, thousands of unmarried parents who doubt paternity will never interact with the OAG. Still, data suggest that many will—almost half of doubting parents sign an AOP at the child’s birth, and others are likely to apply for OAG services in the years ahead. In light of these trends, verifying the identity of more fathers sooner may help to streamline future establishment of child support orders.

Moreover, although the number of rescissions remains low, the impact on each child affected by paternity disestablishment—whether it is accomplished through rescission, challenge, or termination—is high. To the extent that disestablishments can be prevented by identifying the correct father from birth, this may be a goal worth pursuing. At a more basic level, the OAG may have an interest in the correct father being identified as the legal parent of the child—even if an incorrect father would have never sought disestablishment. Ensuring that children know the true identity of their biological parents could be considered a legitimate goal in and of itself.

Efforts to reduce paternity disestablishment through increased promotion of DNA testing may not only relieve families from the burden of future court proceedings, but may also obviate attendant costs to the state, potentially offsetting expenses associated with expanded outreach. Whichever strategy is adopted, it seems clear that wider use of genetic testing would
promote the integrity of in-hospital paternity establishment while providing a trusted vehicle to secure legal fatherhood and support for more children.

This report also highlights several considerations for enhancing procedures related to the rescission process itself. Because mothers associated with rescinding fathers are likely to become involved with OAG services, the OAG could consider developing an informational outreach strategy for mothers in these circumstances to learn about relevant services, including how to file for child support and how to establish paternity through alternate means. Each rescission entered into the VSU data file, for example, could trigger a letter notifying mothers of the OAG services available to them. This automated approach would be largely unobtrusive, and could prove helpful to mothers who are unsure of where to turn following a rescission. Informing mothers of their options may be especially relevant in light of the finding that many rescinding fathers later appear in OAG records as the primary father on the child’s case.

In addition, future research would benefit from a greater understanding of data entry protocols at the VSU, particularly in light of policy changes like the 2011 rescission reforms, which pose significant challenges to maintaining continuity and comparability of data over time. To the extent that inaccurate rescission data affect OAG services and operations, the OAG may also benefit from improved data protocols at the VSU. One step that could be taken by the VSU to enhance the integrity of rescission data would be to add a date field in the HBPP data file for recording the postmark date on each rescission form. Forms postmarked more than 60 days after the AOP effective date could be reviewed and diverted to alternate routes of disestablishment, as necessary. VSU staff may also benefit from additional clarification on the distinction between rescissions and other forms of disestablishment for purposes of data reporting. Though the number of rescissions is small, accurate reporting remains a priority to ensure that each rescission takes the appropriate path and results in the proper outcome for all parties involved.
ENDNOTES


3 Uniform Parentage Act, Texas Family Code, §160.306.


5 Email correspondence with OAG-CSD Staff, May 22, 2015.

6 Email correspondence with OAG-CSD Staff, May 22, 2015.

7 Uniform Parentage Act, Texas Family Code, §160.307.

8 Uniform Parentage Act, Texas Family Code, §160.308.

9 Uniform Parentage Act, Texas Family Code, §160.308.

10 Uniform Parentage Act, Texas Family Code, §161.005.

11 Uniform Parentage Act, Texas Family Code, §161.005.

12 Uniform Parentage Act, Texas Family Code, §161.005.

13 Uniform Parentage Act, Texas Family Code, §161.005.


36 Senate Bill 785, 82nd Texas Legislative Session §161.005 (2011).
37 Senate Bill 785, 82nd Texas Legislative Session §161.005 (2011).
38 House Bill 154, 83rd Texas Legislative Session §161.005 (2013).
40 Texas Legislature Online. Senate Bill 502, 82nd Texas Legislative Session http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=SB502
Strengthening Families & Enhancing Public Policy Through Rigorous Research

The Child and Family Research Partnership is an independent, nonpartisan research center under the direction of Dr. Cynthia Osborne at the LBJ School of Public Affairs at The University of Texas at Austin. CFRP specializes in rigorous research on policy issues related to young children, teens, and their parents. CFRP seeks to understand how current demographic trends affect parents and their children, what factors contribute to both positive and negative child outcomes, and what policy and programmatic changes can be implemented to improve child and family wellbeing.

Research Areas

Family Structure and Wellbeing
Family Instablility • Marriage & Cohabitation • Child Support
Economic Security • Family Violence

Father Involvement
Responsible Fatherhood • Paternity Establishment
Father Participation in Social Programs

Early Childhood
Home Visiting Programs • Systems-Level Change
Program Retention • Public Pre-Kindergarten

Child Welfare
Child Welfare Workforce • Permanency • Effectiveness of Mediation • Family Safety

Adolescent Health and Wellbeing
Teen Pregnancy • Teen Fathers • Healthy Relationships • Youth Homelessness

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