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Even when DNA test results prove there is no biological link, some men are forced to pay child support for children who aren't theirs. (ABCNEWS.com)

Duped Dads

Men Fight Centuries-Old Paternity Laws

By [Geraldine Sealey](#)



Oct. 2 — "Is it yours? If not, you still have to pay!" That statement, plastered on a New Jersey billboard above a picture of a visibly pregnant woman, is enough to make many male motorists slow down in rush hour traffic.

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Patrick McCarthy, president of New Jersey Citizens Against Paternity Fraud, the group sponsoring nine of these billboards across the state, says he's just trying to prevent the victimization of other men.

Three years ago, McCarthy found out he was not the biological father of his then-15-year-old daughter. Though divorced from her mother for well over a decade and not intimately involved in her life, McCarthy paid child support for the girl.

When McCarthy, remarried with two other children, petitioned the courts for relief from his financial obligations, he discovered he had little recourse. The DNA test McCarthy paid for could not be presented in court. As far as the state of New Jersey was concerned, McCarthy still bore financial obligations to a child who

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was not his.

McCarthy testified this week before a New Jersey legislative committee in support of a "paternity fraud" bill, which would allow a man to challenge paternity at any time.

"Some people say 'If you had doubts you should have asked for a DNA test.' I had no reason to ever think my wife slept with someone outside of our marriage. She committed adultery," he said.

Roots in Common Law

Angry men calling themselves "duped dads" are waging a state-by-state battle to change centuries-old laws they say are biased against them. Bills are pending in seven states — Florida, Michigan, New Jersey,

Oklahoma, Oregon, Pennsylvania, and Vermont — that would relieve some men of paternity obligations based on DNA testing.

Twelve states already have such laws. Last week, California Gov. Gray Davis vetoed a "paternity fraud" bill, saying the measure would only delay child support collection and let some biological fathers wriggle out of parental responsibilities.

The paternity debate is heating up in the courts, too. Two men recently attempted and failed to get the U.S. Supreme Court to hear their cases after lower courts ruled they must continue paying support for children who turned out not to be theirs. One, Carnell Smith of Decatur, Ga., is trying to recoup more than \$40,000 from his ex-girlfriend after learning three years ago that her 13-year-old daughter is not his.

Statistics on paternity are understandably difficult to come by. Usually DNA testing for the purpose of proving paternity are only performed in cases where there is a reason to doubt a biological family connection.

Supporters of paternity identification bills point to a 1999

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study by the American Association of Blood Banks that found that in 30 percent of 280,000 blood tests performed to determine paternity, the man tested was not the biological father.

The presumption of paternity regardless of biology goes back centuries. Most state laws are based on Medieval English common law, which assumed that a married woman's husband fathered all of her children. The U.S. Supreme Court upheld this presumption in 1989 when it gave a custodial father rights over a noncustodial biological father.

Despite the courts' leanings, advocates of "paternity fraud" bills say forcing a man to support a child who is not his is fundamentally unfair.

Government: The Relationship Regulator

Opponents of such legislation, who oppose the phrase "paternity fraud" because it assumes deception was involved, say they're aware of the public relations struggle ahead of them.

"I think on the surface there is this 'poor guy' reaction," said Paula Roberts, senior staff attorney for the non-profit Center for Law and Social Policy. "Then when you start thinking about it on a deeper level and think about the child, you have a different take on it."

Parental relationships are more than just a genetic connection, Roberts said.

"This goes to the fundamental question of what it means to be a father," Roberts said. "Is a father just a sperm donor? If that's all there is, I suppose you would opt for a system in which you discover you weren't the sperm donor so you should be able to get out."

In truth, when a father and child develop a relationship over the years, even if their DNA does not match, they are still family, she said.

The truth about the child's identity is in the child's best interest, advocates of paternity fraud laws counter.

"You just can't lie to kids," Lowell Jaks, president of the Internet-based Alliance for Non-Custodial Parents Rights.

"The truth is that this or that man is or is not his or her biological father, period. It is a basic part of your identity."

Like it or not, says California State Sen. Sheila Kuehl, who opposed her state's proposal, government has historically regulated familial relationships.

"There's no such thing as a legal parent except through the state as there is no such thing as a legal marriage. The state is called upon to regulate relationships by law, otherwise benefits that flow from marriage would not flow," Kuehl said. "It's an ancient practice going back thousands of years for the government or king or chieftain to make a rule about who is the child's parent. And it really was a way of organizing society."

Taking Advantage of DNA

Using that argument, men could justify many socially unacceptable practices by relying on centuries-old law, say fathers' rights advocates. "Well, fine, if you want to bring back common law, then I own children and even a woman as chattel. If I catch the woman in an adulterous relationship, I can kill her. Do you want to bring that back?" Jaks said.

Just as criminal courts are using DNA evidence to exonerate the innocent and condemn the guilty, family courts should take advantage of scientific progress to find the truth, say father's rights supporters.

"DNA really equals truth and honesty," McCarthy said. "To not use DNA and continue to let paternity fraud happen only allows lies, deceptions and false paternity to occur in our court system right now."

Men hoping to use DNA to escape child support obligations should consider the ramifications of their efforts, Roberts said. What if mothers and biological fathers could use DNA tests to interrupt life-long relationships between men and children they love who happen not to be theirs?

"If you have a rule that allows the father to say 'not my sperm I want out,' you also have to allow the mother to do the same thing and the [biological father] to do the same thing. It's not just about the man who isn't the father who has rights here," she said. "You can't have one rule for

one set of people and one rule for others." ■

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