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Senator Shawn Mitchell, District 23
Colorado Senate
200 E. Colfax
Denver, CO 80203

Dear Senator Mitchell,

After discussion with Senator Doug Lamborn I am writing to express my concerns with HB06-1267 concerning child support and in the hope that you will consider amending the bill to rectify injustices it will certainly propagate if passed in its present form. You have recently signed on as the Senate sponsor for this bill, which passed the House on February 27th and has been assigned to the Senate Judiciary committee, that you also sit on.

I am under the impression that one purpose of this bill may be an attempt to rectify in part the disastrous effects and mistakes of last years bill SB05-181 by Johnson/Jahn. However, in reading the current version of HB06-1267 I think in many ways this bill will make the current epidemic of paternity fraud even worse.

In talking with Senator Lamborn I had the impression that the magnitude of paternity fraud was unfamiliar to him and, by inference, may be to you. With nearly 400,000 DNA tests now being run annually in the United States, genetic laboratories consistently report a 30% exclusion rate. That is 30% of the men tested are **not** the father of the child(ren) in question. We list 18 different genetic testing laboratories¹ and all of them consistently find an exclusion rate of 30% with small variance. I've attached advertisements from two AABB-approved² testing labs and I've also included a recent article by noted conservative Phyllis Schlafly that reviews this problem as well. While I don't know the details of every case, there is no doubt that nearly one in three paternity cases involve fraud or deception.

While somewhat rarer, maternity fraud is also a problem. So when genetic testing is contemplated it is necessary to test all parties.³

The problem therefore doesn't involve insuring men pay their rightful child support. The problem is first ensuring that the man is, in fact, the father of the child(ren) based on the fundamental principle that a man must be considered innocent until proven guilty. And where

1. See www.dvmen.org/dv-181.htm#paternity.
2. The 2001 report from the American Association of Blood Banks who certifies the genetic testing laboratories is available at www.ejfi.org/PDF/AABB_2001_report.pdf and gives a 29.06% average exclusion rate for 46 laboratories.
3. A famous case of maternity fraud in Albuquerque, New Mexico, came to light in December 2004. See www.ejfi.org/family/family-70.htm.

Fellow, Geological Society of America
Marquis Who's Who in the World, 16th — 23rd Editions
Marquis Who's Who in America, 53rd — 60th Editions
Marquis Who's Who in Science and Engineering, 4th — 8th Editions

Marquis Who's Who in the West, 27th — 34th Editions
2000 Outstanding Scientists of the 20th Century
2000 Outstanding Scientists of the 21st Century—First Edition
Strathmore's Who's Who, 1998-1999 and 2000-2001 Editions

fraud and deception are involved, women will do everything in their power to try and prevent a man from obtaining a paternity test.

Common methods of keeping men away from their (presumed) children that I'm acquainted with are:

- The acquisition of a protection order using false allegations, and the protection order prevents the man from seeing the child(ren). Currently there are as many protection orders issued every year in Colorado as marriage licenses.
- One particularly noxious method involves an adulteress charging her husband with domestic violence after he finds out she is having an affair, or often even before he finds out. Almost never is violence involved but one 911 call gives her the house, the kids, the car, the checking account, and anything else she wants, no questions asked of her. The Equal Justice Foundation hears of more than 150 such cases each year.⁴ Of course the mandatory protection order keeps the man from seeing his children, or obtaining DNA samples for genetic testing.

There is also an extreme problem with entry of paternity orders. Estimates I see indicate from 30% to 70% of paternity orders are entered by default after the 30-day window within which a man must respond to a paternity claim without the man ever having a chance to defend himself.⁵ And advisements, as proposed by HB06-1267 are of no value if they are never received.

Typical reasons for a man never being served in a paternity case are that:

- The woman gives the wrong address (often deliberately), or doesn't even know his address.
- She often spells his name wrong and no follow up is made so he is never contacted or served with any notice.
- In El Paso County in many cases the serviceman is deployed and, even if he happens to receive the notice, there is no way he can get back within the 30 day window or get paternity testing done.
- In WIC applications it is common for women to list several possible candidates as the father.⁶ There is a strong tendency in such cases to pick the man with the deepest pockets as the presumptive father.
- She was drunk or on drugs, or simply out partying, and doesn't know the name of the father and hasn't seen him before or since. She then names a friend or other lover as the father.

And now, with HB06-1267, you want to make it impossible for such men to ever challenge the paternity order. With SB05-181 it is already impossible for an ex-husband to challenge paternity after final orders are entered in a divorce even though protection orders or domestic violence charges often prevent him from going anywhere near the children during the divorce.

This is slavery, not child support!

A man is innocent until proven guilty. But HB06-1267 requires a man to prove his innocence and within a very short time period at that. If he doesn't respond within 30 days after

4. See www.dvmen.org/dv-114.htm#adultery.

5. There are numerous bizarre default paternity orders. In one case a default paternity order was entered against a Colorado man who was sterile from birth.

6. See www.ejfi.org/family/family-65.htm#claims for examples.

notice is served (often service is no more than a first-class letter) a default order will be entered. One is then left to wonder how a man might manage to have genetic testing done prior to entry of the paternity order?

I frequently hear that even though it has been shown the man isn't the father he should continue paying child support in order to maintain the father-child relationship.

Nonsense!

Typically there is not, and never has been any relationship between the man and the child in the type of cases covered by HB06-1267. In § 19-4-105.5(3) it even allows proceedings to commence, and presumably conclude, prior to the birth of the child. Commonly the man has no idea the woman is even pregnant, and in many cases I hear about he doesn't even know the woman.

Even if the man had a relationship with the child, a permanent protection order (lifetime under Colorado law) is often used to keep him away from the child and mom's new boyfriend (who is often the biological father who should be supporting the child).

Suggested revisions

The evidence presented above clearly establishes that paternity fraud is occurring in horrendous numbers. Further, if marriage and families are to endure, such practices must not be condoned or encouraged.

Given that currently about 1 in 3 paternity cases almost certainly involve fraud or deception I would like to suggest amendments to HB-06-1267 that would discourage fraud and provide that biological fathers support their children. Also, § 19-4-105.5(3) currently allows paternity actions to commence prior to the birth of the child but there does not appear to be a provision that requires that the child be born alive before support commences, or provide for termination of support of the mother if the child dies, is abandoned, put in foster care, or put up for adoption after birth.

Section 2 of HB06-1267 — C.R.S. § 19-4-105.5. Commencement of proceedings - summons.

I suggest that under Section 2, p. 2, lines 12-18 of HB06-1267 should be deleted and § 19-4-105.5 amended to read:

Current text with suggested revisions in Courier font

- (1) All proceedings under this article shall be commenced in the manner provided by the Colorado rules of civil procedure or as otherwise provided in this section or section 26-13.5-104, C.R.S.
- (2) Upon commencement of a proceeding under this article by one of the parties, the other parties shall be served in the manner set forth in section 19-4-109 (2), the Colorado rules of civil procedure, or as otherwise provided in section 26-13.5-104, C.R.S.
- (3) ~~Proceedings under this article may be commenced prior to the birth of a child.~~ [The court shall order all parties submit to genetic testing as required by § 13-25-126 within 30 days unless one of the parties is outside the United States, in which case 60 days

shall be allowed to provide the court with genetic test results.]

[(a) Genetic testing done prior to commencing a paternity proceeding may be used so long as the chain of custody for samples can be established as defined in § 13-25-126(1)(c)]

[(b) If genetic testing cannot be completed within 60 days of commencing these proceedings the court shall either dismiss the action without prejudice or grant a single 60 day extension if it seems likely that genetic testing of all parties can be completed within 120 days of the original filing.]

- (4) If a petition is filed by an alleged father or possible father pursuant to the requirements of section 19-5-103.7, the licensed child placement agency involved shall receive notice of the action in the same manner as a party to the action.
- (5) A summons issued upon commencement of a proceeding under this article shall contain the following advisements:
 - (a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S.; and
 - (b) That, ~~if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final decree of dissolution, the genetic tests may not be allowed into evidence at a later date.~~ [no order of paternity shall enter unless and until genetic tests to determine parentage as required by § 13-25-126 have been completed and paternity established by clear and convincing evidence.]

Section 3 of HB06-1267 — 19-6-101. Initiation of proceedings — support — repayment of birth-related debt.

If the language suggested above is accepted and the principle that a paternity order cannot enter without evidence from proper genetic tests established then Section 3, p. 2, lines 21-23 and p. 3, lines 1-4 of HB06-1267 should be deleted and § 19-6-101(6)(b) should simply be deleted as shown below: It would also be wise to add § 19-6-101(1)(c) to ensure courts did not enter default paternity judgements without genetic testing.

Current text

- (1) (a) Proceedings to compel parents, or other legally responsible persons, to support a child or children may be commenced by any person filing a verified petition in the court of the county where the child resides or is physically present, or in the county where the obligor parent resides, or in any county where public assistance is or was being paid on behalf of the child.
- (b) Repealed.
- [(c) No order of paternity shall be entered without completion and submission into evidence of genetic tests of all parties as required by § 13-25-126(1)(a).]
- [(d) No order of paternity shall be entered without the court having satisfied itself that all litigants and interested

parties are corporeal by personal appearance before the bench of all parties to case or their bona fide representative if a party to the action is deceased.]

- (2) A petition under this article may be filed at any time prior to the twenty-first birthday of the child.
- (3) Once the court has acquired jurisdiction, such jurisdiction shall be retained regardless of the child's place of residence or physical presence.
- (4) The minority of the petitioner or of the respondent shall in no way affect the validity of the proceedings.
- (5) Actions brought under this article shall be entitled, "The People of the State of Colorado in the Interest of....., children, upon the Petition of....., petitioner, and concerning....., respondent."
- (6) A petition filed pursuant to this article shall contain the following advisements:
 - (a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S.; and
 - ~~(b) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final decree of dissolution, the genetic tests may not be allowed into evidence at a later date.~~

I would suggest § 19-6-101(6)(b) be replaced with a statement to the effect that:

[~~(b) No order of paternity shall be entered without completion and submission into evidence of genetic tests of all parties as required by § 13-25-126.~~]

Section 4 of HB06-1267 — § 19-4-110 Parties

Here HB06-1267 allows any woman to bring suit against the estate of any dead man she claims is the father of her child on the basis of a mere allegation. Given the magnitude of paternity fraud what I see happening in El Paso County, if this bill passes as written, is one dead soldier and three women claiming he is the father of her child to get his insurance money.

Likely the soldier's grieving parents are in another state, have very limited financial resources, and no way to determine whether their son even knew any of these women. Such women will naturally do everything they can to obscure the facts and no provision is made in HB06-1267 to require genetic testing even if the man's body were available (some of those coffins come back full of sand). Even if the soldier's body is returned, it will almost certainly be buried in his home state. So one or more of these malicious mothers will win their paternity suit by default. And it would appear that such injustice can be initiated against the man's estate any time up until the child is 21-years old.

I am appalled that any legislator would put forth a bill that promotes such injustice!

I understand that there are legitimate cases where a man fathers a child and is then killed or dies of natural causes before a paternity hearing can be held. But shouldn't we presume he is innocent unless paternity can be established? Why should his heirs and grieving relatives, even his widow, have to face a claim that has at least a 1 in 3 chance of being fraudulent?

At the very least I would request that Section 4, p. 3, lines 14-15 be amended to read:

“...opportunity to be heard. [If a man can be proven by genetic testing as defined in § 13-25-126 to be the father of a child but dies before a paternity hearing can be held] **THE PERSONAL REPRESENTATIVE OF HIS ESTATE, IF...**

That would protect his innocence, put the burden of proof on the claimant where it belongs, and deter fraudulent claims. Note that § 13-25-126(3) already allows that “For good cause shown, the court may order genetic testing of a deceased individual.”

Summary

The evidence for widespread paternity fraud that affects 30% of such cases is indisputable. As written HB06-1267 worsens the horrendous injustices associated with such fraud and provides no discernible public relief. Enslaving a man to pay for another’s child does not increase child support collections. Such servitude does degrade marriages and families and all possible action should be taken to end such fraud.

I have proposed reasonable amendments that would go far toward making paternity fraud difficult and alleviating the injustices inherent in the current version of HB06-1267. I hope you will give due consideration to incorporating these amendments into this bill and, if possible, let me know your thoughts on these recommendations before HB06-1267 comes before the Senate Judiciary committee. My email address is ccorry@ejfi.org.

I would also note that I speak solely as a distinguished scientist interested in justice and express the concerns about paternity fraud brought to me rather than from personal experience with one of these cases.

Thank you,

Charles E. Corry, Ph.D., F.G.S.A.

Encl: Atlanta DNA Center, Inc. advertisement
Infidelity Check DNA testing advertisement
Article “Repeal the Bradley Amendment” by Phyllis Schlafly