

## **PREGNANCY EXPENSES BASED ON ABILITY TO PAY**

**House Bill 4013 (Substitute H-1)**  
**Sponsor: Rep. Gary Newell**

**House Bill 4768 (Substitute H-1)**  
**Sponsor: Doug Hart**

**Committee: Judiciary**  
**First Analysis (7-2-03)**

### ***THE APPARENT PROBLEM:***

Currently, under the Paternity Act, the parents of a child born out of wedlock are liable for the necessary support and education of the child, in addition to any funeral expenses for the child. The act further states that the father is liable to pay the expenses of the mother's confinement, and any expenses in connection with her pregnancy as the court deems appropriate.

In recent years, there has been considerable debate over the ability of the court to apportion the costs of a mother's confinement between both parents. In 1991, the Michigan Court of Appeals, in *Thompson v. Merritt*, noted that pursuant to the Paternity Act, a father is responsible for paying the necessary expenses of the mother's confinement. [In that particular case, the appeals court upheld a decision of trial court that that father was not responsible for the mother's confinement costs because she chose to use a facility that was not covered by her health insurance, as those costs were unnecessary.]

The court of appeals' decision in *Thompson* was recently reaffirmed by its ruling in *Rose v. Stokely* (2002). In *Rose*, the court of appeals ruled that the plain language of subsection 712(1) of the Paternity Act allocated liability for the birth-related expenses as follows: (1) both parents are liable for the child's necessary support and education, (2) both parents are liable for the child's funeral expenses, (3) the father is liable for the expenses of the mother's confinement, and (4) the father is liable for the pregnancy-related expenses, as the trial court deems proper. Further, the court ruled, "[t]he statutory language regarding the circuit court's discretion relates only to those expenses incurred in connection with the mother's pregnancy, and does not relate to the expenses of the mother's confinement."

As, such, legislation has been introduced that would apportion the costs related to the confinement and pregnancy of a mother between both parents.

### ***THE CONTENT OF THE BILL:***

House Bill 4013 and House Bill 4768 would amend the Paternity Act (MCL 722.712) so that the court would have to apportion the reasonable and necessary expenses of the mother's confinement and pregnancy between both parents based on the ability of each parent to pay and on any other relevant factor. This applies in cases of a child born out of wedlock.

In addition, both bills provide that if Medicaid has paid the confinement and pregnancy expenses of a mother, the court would not apportion confinement and pregnancy expenses to the mother. The court could apportion not more than 100 percent of the reasonable and necessary confinement and pregnancy costs to the father, based on his ability to pay and other relevant factors. Further, the court order regarding the allocation of expenses would provide that if the parents marry each other after the birth of the child and provide documentation of that marriage to the Friend of the Court, the father's obligation for payment of any remaining unpaid confinement and pregnancy expenses would be tolled, as of the date that documentation is provided to the FOC, during the duration of that marriage.

The two bills differ in two points. House Bill 4013 provides that the court would not apportion the confinement and pregnancy expenses unless the party that requests the apportionment offers *itemized* bills for those expenses (and for funeral expenses as well). Current law simply provides that the court in a proceeding under the act admit a bill for funeral, confinement, and pregnancy expenses as prima facie evidence of those expenses.

House Bill 4768 would permit the court to require the parent who did not pay the expenses to pay his or her share of the expense to the other parent. If someone other than a parent has paid the expenses of a mother's confinement or pregnancy, the court would order a non-paying parent to pay his or her share of the expenses to that person, if that other person requests the payment.

### **BACKGROUND INFORMATION:**

In *Thompson v. Merritt*, the father also argued that in requiring a father to pay the necessary costs of a mother's confinement and the costs related to her pregnancy as the court deems proper, the Paternity Act violates the equal protection guarantees of the federal and state constitutions. The court, in ruling that the act does not violate the equal protection guarantees, noted that "the language does not make gender a necessary consideration in determining which parent pays the costs. Instead, the state gives the court the power to apportion the costs between parents. Consequently, we believe that the challenged language reflects the intent of the Legislature to apportion the financial burdens of parenthood as equally and fairly as possible, keeping in mind the interest of the child and the financial status of the parties. If a differentiation is based on a factor other than sex, there is no sex-based denial of equal protection or due process of law unless it can be found to be a mere pretext to effect an invidious discrimination."

This same question regarding the constitutionality of the act was raised in *Rose v. Stokely*. However, in *Rose*, the appeals court disagreed with its earlier ruling from a decade ago, noting that the statutory language does, indeed, create a classification based on gender, and that the act, "clearly provides the father of a child born out of wedlock is liable for the mother's confinement expenses." In addition, "[t]he statute does not make the mother and the father jointly liable for these expenses, and does not grant a circuit court discretion to allocate those expenses on the basis of the parties' respective abilities to pay." The court further held that, "the Paternity Act's confinement cost allocation provision constitutes a gender-based classification that violated the Equal Protection Clauses of the Michigan and federal constitutions." Though the appeals court's ruling in *Rose* regarding the confinement cost allocation provisions runs counter to the court's earlier decision in *Thompson*, it was nonetheless constrained by MCR 7.215(I) to follow the precedent set in *Thompson*. [MCR 7.215(I) provides that a panel of the court of appeals must follow the rule of law established by a

prior published decision of the court issued on or after November 1, 1990 that has not been reversed or modified by the supreme court or by a special panel to review conflicting opinions. The rule also requires a panel of the court of appeals that follows a prior published decision only because it is required to do so by that rule, to indicate that in its ruling, and explain the disagreement with the prior decision. In this particular case, the court of appeals has convened a special panel to review the two conflicting decisions.]

### **FISCAL IMPLICATIONS:**

Fiscal information is not yet available.

### **ARGUMENTS:**

#### **For:**

The current provision of the Paternity Act regarding confinement costs is antiquated. Further, placing the onus solely on the father is not fair (and, as the Michigan Court of Appeals noted in *Rose v. Stokely*, in violation of the equal protection clauses of the state and federal constitutions). While one certainly expects the father to be responsible for at least a portion of the confinement costs, it is not reasonable to expect a father to pay all of the confinement costs if he lacks the means to pay. The law, however, still requires a father to pay, notwithstanding his inability to do so. Further, the current language precludes a court from determining otherwise, even if there is a preponderance of evidence to suggest that a father does not have the means to pay the confinement costs. To that end, the bill equitably apportions confinement costs among both parents based on the ability of each person to pay.

#### **Against:**

It is believed that any action regarding the bills should be stayed, pending the outcome of the special panel of the court of appeals to reconcile its conflicting opinions in *Thompson v. Merritt* and *Rose v. Stokely*.

#### **Response:**

Regardless of the decision of the special opinion, the bills should continue to move through the legislative process. The purported intent of the bills is to rectify the problem created in the confinement allocation provisions of the act. If the special panel rules that the provisions violate the equal protection clauses, then the act must be amended. If, however, the special panel rules that the provisions do not violate the equal protection clauses, the bill should still move forward, as the intent is to remedy a provision that is

unfair (even if it is determined that it is not inconsistent with the equal protections clauses).

***Against:***

It is believed by some that confinement costs should continue to be borne by the father. The reason for this is simply that the mother is the person who is inconvenienced as a result of her pregnancy, and that she is, in all likelihood, the person who will bear most of the responsibility for caring for that child in the years immediately following that child's birth.

***POSITIONS:***

The Friend of the Court Association supports the concept of the bills. (6-2-03)

The Family Law Section of the State Bar of Michigan supports the concepts of the bills. (6-23-03)

Dads of Michigan support the concept of the bills. (6-30-03)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.