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BILL



ANALYSIS

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House Bill 4013 (Substitute S-2 as reported)
House Bill 4768 (Substitute S-1 as reported)
Sponsor: Representative Doug Hart (H.B. 4013)
Representative Gary Newell (H.B. 4768)
House Committee: Judiciary
Senate Committee: Families and Human Services

Date Completed: 5-27-04

RATIONALE

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, "The father is liable to pay the expenses of the mother's confinement, and also is liable to pay expenses in connection with her pregnancy as the court in its discretion may deem proper." The issue of the father's liability for confinement (hospital) expenses has been the subject of litigation.

Two Michigan Court of Appeals cases, *Thompson v Merritt* in 1991 and *Rose v Stokely* in 2002, involved questions as to whether the court's discretion in assigning liability applies to confinement expenses as well as pregnancy expenses, and whether assigning certain expenses to one parent based solely on gender is constitutional. In *Thompson*, the Court found that the Act obligates the father to pay necessary confinement costs, and upheld the trial court's decision that, because the mother chose a facility that was not covered by her health insurance, her confinement costs were not necessary and, therefore, the father was not liable for them. The Court also determined that the statute did not create an unconstitutional classification based on gender. In *Rose*, the Court found that the statute's language regarding the court's discretion to apportion expenses applied only to the pregnancy costs and not to the confinement costs. The Court then determined that the confinement cost provision *did* amount to gender-based

discrimination in violation of the Equal Protection Clause of the State and U.S. Constitutions. The Court, however, was bound to follow the precedent set in *Thompson*. The Court of Appeals then convened a special panel to review the conflicting decisions; in 2003, the panel found that the court's apportionment discretion applies only to the mother's pregnancy costs, but concluded that the statute is not unconstitutional in assigning responsibility for the mother's confinement costs solely to the father. (The two cases and the special panel's opinion are described under **BACKGROUND**, below.)

It has been suggested that the Act be changed to allow a court to apportion both pregnancy and confinement costs for a child born out of wedlock based on the parents' ability to pay, and provide for a mechanism for the abatement of a father's obligation to pay these costs if he marries the child's mother.

CONTENT

House Bill 4013 (S-1) would amend the Paternity Act to provide for the abatement of a father's costs related to the confinement and pregnancy of the mother of a child born out of wedlock, if the father married the mother after the child's birth.

House Bill 4768 (S-1) would amend the Paternity Act to provide for apportionment of costs related to the confinement and pregnancy of the

mother between both parents of a child born out of wedlock.

The bills would take effect on October 1, 2004. They are described in further detail below.

House Bill 4013 (S-1)

Under the bill, a court order assigning liability for pregnancy and confinement expenses would have to provide that if the father married the mother after the child's birth and provided documentation of the marriage to the Friend of the Court (FOC), his obligation for payment of any remaining expenses would be abated subject to reinstatement after notice and hearing for good cause shown, including dissolution of the marriage. The remaining unpaid amount would be abated as of the date that documentation of the marriage was given to the FOC.

The bill specifies that each order for confinement and pregnancy expenses entered by the court on or before the bill's effective date would be considered by operation of law to provide for the abatement of the remaining unpaid expenses if the father married the mother, and would have to be implemented under the same circumstances and enforced in the same manner as provided for the abatement of confinement and pregnancy expenses, as described above.

House Bill 4768 (S-1)

The bill would delete from the Act language providing that the father of a child born out of wedlock is liable to pay the expenses of the mother's confinement and the expenses connected with her pregnancy, as the court in its discretion may deem proper. Under the bill, the court could apportion, in the same manner as the child's medical expenses were divided under the child support formula, the reasonable and necessary confinement expenses between the parents, based on each parent's ability to pay and any other relevant factor. The court could require the parent who did not pay the expenses to pay his or her share to the other parent. At the request of a person other than a parent who had paid the mother's expenses, the court could order a parent against whom the request was made

to pay his or her share of the expenses to that other person.

The court could not apportion confinement and pregnancy expenses to the mother if Medicaid had paid them. After the bill's effective date, based on the father's ability to pay and any other relevant factor, the court could apportion up to 100% of the reasonable and necessary confinement and pregnancy costs to the father.

If a pregnancy or a pregnancy complication had been determined in another proceeding to have been the result of either a physical or sexual battery by a party to the case, the court would have to apportion the expenses to the party who was the perpetrator.

MCL 722.712

BACKGROUND

Thompson v Merritt (192 Mich App 412)

In this 1991 Court of Appeals case, the father of a child born out of wedlock challenged the Act's requirement that the father bear the entire burden of the mother's hospital confinement costs on the grounds that it amounted to gender-based discrimination in violation of the Equal Protection Clause of both the State and U.S. Constitutions. The Court disagreed, stating, "In our view, the language does not make gender a necessary consideration in determining which parent pays the costs. Instead, the statute gives the court the power to apportion the costs between the parents." The Court determined that the Act granted a court the power to "apportion" the costs of parenthood between the parents, in the sense that both parents are responsible for pregnancy costs as the court deems appropriate, the father must pay for necessary confinement costs, and the mother must pay for unnecessarily incurred confinement costs.

The Court concluded, "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 interests 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."

Rose v Stokely (253 Mich App 236)

This case, which the Court of Appeals decided in 2002, involved a child born out of wedlock to a Medicaid beneficiary whose birth expenses were paid by the Family Independence Agency (FIA). The father objected when the prosecutor requested an order requiring him to reimburse the FIA for the mother's confinement expenses. He argued that these costs should be apportioned between the mother and the father according to their respective abilities to pay because the Paternity Act, if interpreted to impose liability for confinement expenses on the father alone, would violate the Equal Protection Clause. Citing the *Thompson* decision, the circuit court determined that not only did the statute allow for the apportionment of confinement costs, but also that this interpretation was necessary to maintain the statute's constitutionality. The circuit court then apportioned the confinement expenses between the mother and father according to their respective abilities to pay.

The prosecutor in the case applied for leave to appeal, which the Court of Appeals denied. The prosecutor then sought leave to appeal to the Supreme Court, which remanded the case to the Court of Appeals. The Court of Appeals concluded that the statutory language regarding the circuit court's discretionary authority applied only to pregnancy costs and, therefore, the statute did *not* grant a circuit court discretion to apportion confinement costs between the parents.

Next, the Court of Appeals examined whether the Act's allocation of confinement expenses to the father created a classification based on gender in violation of the Equal Protection Clause of the Michigan and U.S. Constitutions. The Court stated, "were we not compelled to follow the rule of law established in *Thompson*, ...we would hold that the statutory language does create a classification based on gender."

Because the Court was required to follow the precedent set in *Thompson*, it reversed the circuit court's decision and ordered the

father to pay the mother's share of the confinement expenses.

Rose v Stokely Special Panel (258 Mich App 283)

A special panel of the Court of Appeals was convened to rehear the *Stokely* case for the purpose of resolving the conflict with *Thompson*.

In its August 2003 opinion, the special panel determined that encouraging unmarried mothers to seek proper medical care is a means to achieving the important governmental objective of the Paternity Act: ensuring that minor children born outside a marriage are provided with support and education. The panel stated, "[W]hen the Legislature concluded that most expenses for the support and education of a child born out of wedlock could be allocated on the basis of each parent's respective ability to pay, it properly granted the circuit court the discretion to make such an allocation. The Legislature recognized...that there would be differences in the ability of each parent to pay for the child's support and education...and so drafted the other provisions in the Paternity Act regarding the support and education of the child to provide a street that can run in both directions.

"However, with respect to the mother's necessary confinement expenses, the Legislature drew the line. It recognized that this is a street that runs in only one direction. Only the mother will bear the physical burden of confinement before, during, and after the birth of the child. This is an immutable difference between the sexes, and the guarantee of equal protection under the law does not require things that are different in fact or opinion to be treated as though they were the same."

With this reasoning, the Court determined that the confinement cost provisions of the Paternity Act "are a constitutionally permissible means to an important legislatively established end".

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The current provision of the Paternity Act regarding confinement costs is antiquated and unfair. The law was enacted at a time when men were the primary breadwinners and women were more financially dependent on men than they are today. While one certainly may expect the father to be responsible for a portion of the confinement costs, it is unreasonable to expect him to pay all of those costs, especially if he lacks the ability to do so. Both of the people who had a part in creating a child should be responsible for the confinement expenses, as they are both responsible for the other costs associated with having the child, such as education and funeral expenses. In taking into account each parent's ability to pay, the bill would apportion the costs in a more equitable manner and would promote the best interests of the child. As the dissent to the special panel in *Stokely* said, "[T]he interest of the child in obtaining necessary support is not substantially furthered by the arbitrary and inflexible rule of liability for confinement expenses based solely on a parent's sex."

Legislative Analyst: Julie Koval

FISCAL IMPACT

It appears that the bills would have no fiscal impact on State or local government. A mother's Medicaid eligibility is not determined by whether child support is being received; therefore, the bills would have no impact on Medicaid expenditures.

Fiscal Analyst: Constance Cole

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.