



**House  
Legislative  
Analysis  
Section**

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**PREGNANCY EXPENSES BASED ON  
ABILITY TO PAY**

**House Bill 5439 as introduced  
First Analysis (12-5-02)**

**Sponsor: Rep. Doug Hart  
Committee: Family and Children  
Services**

***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 a court to apportion the costs of a mother's confinement between both parents. Indeed, a recent Court of Appeals decision affirmed that the court does not have any discretion in apportioning confinement costs. In *Rose v. Stokely*, the Court of Appeals ruled that the plain language of subsection 712(1) of the Paternity Act allocates 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 of Appeals 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:***

The bill would amend to the Paternity Act to require the court, in instances of a child born out-of-wedlock, to apportion the expenses of a mother's confinement and any expenses in connection with her pregnancy based on each parent's ability to pay.

MCL 722.712

***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, quite frankly, not fair. 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 ability 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:***

The bill does not provide courts with discretion in apportioning confinement and pregnancy-related costs. While some believe that the law should grant courts discretion in apportioning costs, explicitly requiring them to do so can be problematic for two reasons. First, there are instances when confinement expenses are covered by state funds, which cannot be charged back to the mother and must be apportioned to the father. Secondly, there may be instances when unnecessary confinement costs are incurred by one party. For example, a father's insurance policy may cover certain birth expenses during a routine hospital delivery; however, the mother, contrary to the father's wishes, could insist upon using a midwife whose services are not covered by the father's insurance. As such, the father would assume a portion of those costs, which hardly seems fair. As such, the language should be permissive in granting the court the ability to apportion costs.

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***POSITIONS:***

The Friend of the Court Association supports the bill.  
(12-5-02)

Analyst: M. Wolf

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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.