

Monday, September 5, 2005

Michigan will allow past allegations in sex offense cases

By David Eggert / Associated Press Writer

LANSING, Mich. -- It is a staple of criminal law that a defendant's past behavior is generally off limits during trial.

The reasoning is that jurors should not convict someone for being a "bad guy" but instead base their decision on evidence in the case before them.

But an exception would be made in cases involving alleged sexual crimes against children under legislation that has unanimously passed the Legislature and that Gov. Jennifer Granholm has said she will sign.

Supporters say sex offenders have a compulsion to rape or molest again, citing recent high-profile abductions and killings of children in Florida and Idaho.

Prosecutors say the measure would help jurors receive all the relevant information -- including a defendant's background and character -- to ensure that guilty people are convicted.

"Especially when it comes to sex offenses, history is a big predictor of the future," said Sen. Alan Cropsey, a DeWitt Republican and lawyer who is sponsoring the proposed rule change.

But opponents, mainly defense lawyers, think the change will lead to horrible results.

"You're basically going to convict everybody charged, or darn close to that," said **F. Martin Tieber**, past president of the Criminal Defense Attorneys of Michigan. "There are a lot of false allegations in criminal sexual conduct cases."

The bill, also sponsored by Republican Rep. David Law of West Bloomfield, is part of a multi-bill package aimed at preventing sex offenders from getting near children in schools and day care centers.

It would amend Michigan's court rules in cases where defendants are accused of sex crimes against youths under age 18. Prosecutors could introduce testimony that a defendant had committed another sex offense against a minor -- including offenses for which the defendant was neither charged nor convicted.

The new rule resembles federal court rules, enacted 10 years ago, that allow prior conduct to be admitted in child molestation and sexual assault trials. Backers routinely cite the federal policy as a reason for making the change.

But practically speaking, sex crimes are rarely prosecuted at the federal level, leading detractors to argue that a rule change will be quite drastic in Michigan. At least one other state, California, has a similar rule.

"You're adding more people to our prison system who probably didn't commit the particular crime they're charged with even though they may have done bad things in the past," Tieber said.

By allowing past behavior to be used as character evidence there is a classic danger of unfairness, he said. Past behavior already can be used in limited circumstances to show motive or intent, but that's not the same as character evidence, he said.

Tieber noted that jurors think the defendant is probably guilty if he has a propensity to act criminally. The question should be, "Did the defendant molest his accuser?" But it becomes, "Is the defendant a child molester?"

Add in the reality that many people are naturally repelled by charges of sexual conduct against vulnerable children, and the defendant is in trouble, Tieber said.

But prosecutors point to California as proof that jurors can be fair. There, a jury heard past allegations that pop star Michael Jackson molested or had designs on five other boys. They found him not guilty in the case before them.

"Juries will put the evidence in the context that is deserved," Livingston County Prosecutor David Morse said. "As a rule, I have confidence in the intelligence and wisdom of the jury."

Morse, who pushed for the rule change on behalf of the Prosecuting Attorneys Association of Michigan, noted that just because evidence can be introduced doesn't mean a judge will allow it.

He also said prosecutors are at a disadvantage in sex-related cases involving minors because children's memories are not as developed as adults, and they can be reluctant to testify, especially against family members.

"For a full examination of the truth, you ought to be able to take in the context of a person's past behavior to explain current behavior," Morse said. "Among the most egregious crimes are sex offenses against children."

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