



**House
Legislative
Analysis
Section**

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**RAPE PROSECUTIONS: CIVIL SUITS
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House Bill 4293 (Substitute H-4)
First Analysis (10-12-89)

OCT 19 1989

Sponsor: Rep. William Van Regenmortel
Committee: Judiciary

Michigan State Law Library

THE APPARENT PROBLEM:

Of growing concern to various people, including those who counsel rape victims or prosecute rape cases, are recent incidents where men charged with rape have filed civil suits against their accusers. Typically, the criminal defendant charges that the rape victim has defamed him, and sues for damages while the criminal case is underway. Such actions have arisen several times in Michigan over the past few years, and carry with them the potential to discourage rape victims from reporting the assaults and cooperating with prosecutions. In addition, it appears that under the discovery procedures of civil cases, where parties to a case can be made to answer interrogatories, a rape victim may be made to answer questions about her sexual history, something that Michigan's rape shield law generally bars in criminal prosecutions for rape. To prevent the chilling effect on prosecutions that a rape-related civil suit can have, and to protect rape victims from the unnecessary humiliation that such a civil suit can bring, it has been proposed that the bringing of a rape-related civil suit be postponed until the criminal action is completed.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to bar certain civil suits by defendants being prosecuted for criminal sexual conduct or its attempt. A defendant could not commence a civil action against a victim of the crime for which the defendant was charged if the criminal action was pending in trial court and the civil action was based upon statements made by the victim and pertaining to an incident from which the criminal action was derived. (Under the bill, "victim" would include the parent of a minor or mentally incapacitated person.)

A civil action commenced in violation of the bill would be dismissed without prejudice. The period of limitations on bringing the civil action would be suspended while the criminal action was pending.

The bill would apply only with regard to prosecutions for crimes allegedly committed after the bill's effective date, which would be 90 days after enactment. The bill would not apply to a civil suit brought by the victim against the defendant and based upon the incident from which the criminal charges derived.

MCL 600.1902

FISCAL IMPLICATIONS:

Fiscal information is not available. (10-11-89)

ARGUMENTS:

For:

The bill would protect rape victims from the additional hardship presented by having to respond to a defendant's civil suit prior to the conclusion of the trial. At present, such

civil suits can be used to threaten and harass a rape victim, discouraging her from going forward with a prosecution, and putting her in the position of having to hire an attorney to defend herself against the defamation suit brought by the accused rapist. Without the protection afforded by the bill, rape victims could be faced not only with the expense of hiring an attorney, but also with the humiliation of questions on sexual history.

The bill balances a person's right to access to civil remedy against society's interest in protecting sexual assault victims against intimidation from defendants. The bill would not block defamation suits, but merely delay them until after the criminal trial was completed. To do so would do more than protect victims from undue harassment: it also would put events in their proper sequence. The outcome of the criminal trial is bound to be of importance in an associated civil suit, and a guilty verdict would defeat a rapist's inclination to intimidate a victim or waste court time with a defamation suit.

Against:

The bill may be overly broad. Committee testimony revealed at least one instance where the accuser in a rape case apparently made repeated calls to a defendant's professional associates. A person who is presumed innocent should not be prohibited from protecting himself against the malicious actions of his accuser, but the bill would bar a defendant from bringing a civil action to put a halt to such behavior. The bill would block not only actions seeking damages, but also civil actions seeking injunctions or similar relief. The bill would do better to limit its protections to those situations, such as statements made for the purposes of criminal prosecutions, where a rape victim clearly has the right to make certain communications.

Response: Criminal prosecution is a public matter; through news accounts and court proceedings the public is notified of criminal charges lodged against defendants. More importantly, however, if the bill were to establish limitations on the protection against civil suit while a rape trial was pending, it would create a situation where court proceedings and attorneys might be necessary to resolve whether a particular case met the exceptions provided by law. It could put a rape victim in a position of having to hire an attorney to protect herself against an unwarranted civil action.

Against:

The bill would not prevent an accused rapist from threatening his accuser with a civil suit. A defendant could, for example, have an attorney send the victim an intimidating letter stating the defendant's intention to file a civil suit following completion of the criminal trial.

Response: Such possibilities seem unlikely. The effect of the bill will be to put an end to groundless and intimidating damage suits brought in response to rape prosecutions.

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POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (10-10-89)

The Sexual Assault Information Network of Michigan supports the bill. (10-10-89)

The Michigan Judges Association is reviewing the bill and does not have a formal position at this time. (10-10-89)