

Children make easy marks in an unequal legal system

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what the prosecutor brings into court."

But other judges say Marutak can look at more information. Circuit Court Judges James Kelley Jr. and Patrick Conlin say they rely heavily on the pre-sentencing investigation reports that probation agents prepare for each conviction. The reports give the full version of the incident, not just the facts presented in the plea.

The 'Tender Years Exception'

In recent years, other states have moved to make the courtroom more amiable for children. In Massachusetts, young witnesses are given small chairs to keep their feet from dangling uncomfortably. In Maryland, children whose voices freeze can draw or write their testimony. In Texas, their statements are videotaped in advance and played in the courtroom. In Colorado, lawyers' queries are filtered through a therapist to the child in court. In Washington, a psychologist can testify on hearsay — what a child told him or her after the incident.

But in Michigan, recent changes in the law have made the courtroom less hospitable to children. The law also has made it tougher to get convictions in child sex abuse cases.

For more than 100 years, Michigan courts allowed adults to repeat a story told to them by a child if the child could not or would not testify. The so-called "Tender Years Exception" allowed testimony that otherwise would have been dismissed as hearsay evidence and that, prosecutors say, often was essential in prosecuting sex abuse.

In a December 1982 ruling on a Wayne County child abuse case, the state Supreme Court threw out the exception after finding it never had been codified into the state rules of evidence. Now a child's word to parents can become evidence only if the judge rules it is an "excited utterance," or a statement made directly after a "startling occasion . . . before there has been time to contrive and misrepresent."

That move makes Michigan's evidence rules tighter than federal rules, which allow judges to use discretion on allowing hearsay evidence.

Critics of the Tender Years Exception say it cast children as weapons in adult battles. Supporters say it was the only guarantee that a young child's testimony would survive the long delay between an incident and a trial.

"Without Tender Years, we're often crippled in these cases," says Brian Mackie, an assistant Washtenaw County

Coming up . . .

TUESDAY: The high-profile case of Paul Merwin, perhaps the state's worst mass sex offender.

WEDNESDAY: Rapists who committed many sex assaults rarely were punished for more than one.

THURSDAY: Will the state Supreme Court's new sentencing guidelines make sex crime sentences more uniform, or more lenient?

prosecutor. "Perhaps the Supreme Court didn't consider how traumatic it can be for a child on the witness stand."

"I often deal with cops, who are professional witnesses. They're nervous every time they testify, even though they're confident of what they're going to say. Now think of a child — she's young, she's a victim, she's scared as heck, and she has to tell everything to a room full of people, including the guy who assaulted her. How can any four-year-old be expected to do that?"

Recently Mackie lost a case in which a 29-year-old Ann Arbor businessman was charged with molesting his 2½-year-old daughter during a weekend visitation. The girl came home from the visit crying and the next day told her mother that "Daddy rubbed his penis on me."

The girl repeated the story to police and attorneys. But at her father's preliminary examination, Mackie says, she froze while looking at her father and could not repeat the story. Washtenaw County District Judge Thomas Shea refused to allow the girl's mother to repeat what the child had told her as an "excited utterance," so the case was dismissed.

"The defendant left the courtroom laughing and joking," Mackie says. "It was some lesson in the justice system and our attitude toward children."

'Diddlers' are targets in prison

Others say the justice system's attitude toward children is further reflected in judges' unspoken reluctance to send molesters to prison. Criminal lore has it that among convicts,

child abusers — called "diddlers" in prison — are considered contemptible. They often are targets of jailhouse rape, assault or even murder.

"A lot of the guys here for hurting kids get hurt themselves," says David Liparoto, a Riverside Correctional Facility inmate serving 10 to 50 years for forcing a 10-year-old girl to perform oral sex. "I work with weights, and other guys leave me alone when they see me toasting around 250 to 300 pounds. But smaller guys in for molesting kids are in trouble."

Recorder's Court Judge Dalton Roberson says he has heard stories about what happens to child abusers in prison, but "I can't really worry about that."

"If I choose to give probation to a first-time offender," he says, "that's because I feel it's better to send him to therapy than to prison. For many of these people, psychological treatment is really the best answer. In prison they get no therapy at all."

One man sentenced to therapy was David John Wickland, who was charged with two counts of first-degree and two counts of second-degree criminal sexual conduct for assaulting two girls in 1982 at his home near downtown Detroit.

At the time, Wickland was on probation after being convicted of stealing wheels and tires from a pickup truck at a Detroit Chevrolet dealer. He had prior convictions for car theft, furnishing alcohol to a minor and selling marijuana and LSD.

The first-degree counts were dismissed in Detroit District Court because there was no evidence of vaginal penetration. After a trial in Recorder's Court, Judge John O'Brien found Wickland guilty of a lesser charge — assault with intent to commit criminal sexual conduct against one of the girls — a seven-year-old.

According to court documents, Wickland, then 42, touched the girl's vagina with his hand and mouth.

For stealing tires, Wickland had received a 30-day jail term. For assaulting the girl, he got five years' probation and was ordered to support his family, perform 100 days of community service and participate in the Recorder's Court psychiatric clinic.

How effective is that clinic?

Judge Roberson shrugs at the question. "With the money problems and everything else . . . people just get lost in the system all the time. But I still think treatment programs often make better sense than prison."

'A most dangerous individual'

One who disagrees is Monroe County Circuit Judge James Kelley Jr. Last year, Kelley presided over five child sex abuse cases that resulted in convictions. The result: five prison terms ranging from three to 50 years.

"One of the important features of incest cases is the effect on the victim," he says. "If the victim is going to be frightened if the offender is let loose, perhaps the offender ought to be taken out of society for a time, until the victim recovers — partially recovers anyhow — and loses this immediate fear."

Oakland County Prosecutor L. Brooks Patterson agrees with Kelley: "Too often, we're giving the child rapist two or three bites of the apple before we put him away. We're taking a person who commits a serious crime, and we're saying, 'We'll give you probation this time, and maybe next time, but why don't you consider being a good boy?' Isn't that how the system treated Michael Forbes?"

Forbes — the Union Lake man who raped his 13-year-old stepdaughter while his wife fondled her — is at the State Prison of Southern Michigan at Jackson. But the prison sentence did not come until he accepted an 11-year-old school crossing guard, his third sex-related conviction.

Judge Templin, who eight months earlier placed Forbes on probation for raping his daughter, ordered him back into court for violating that probation. Forbes' attorney, Cyril Hall, argued against incarceration. He said Forbes, who walked with a limp from a car crash, would "be at the prey of all the prisoners in Jackson. . . . He's going to be meat for some of the inmates."

But Templin withdrew the probation. He said: "This court considers you to be a most dangerous individual . . . and you have the whole community just scared to death." Templin then imposed a 10-year sentence.

Forbes' sentence already has been cut by 180 days because of prison overcrowding. At that rate, Forbes will be free in another four years.

Patterson, who argued the case against Forbes, calls the sentence "fair but long overdue."

"Forbes got probation for raping (a nine-year-old girl), and then he got probation for raping his daughter," Patterson says. "Only after his third screwup did the court decide things were serious enough to send him away."

"We're teaching our children some lesson about criminal justice there."