

# Lawmakers push bills to help child witnesses

By Tim Richard  
staff writer

A package of bills aimed at obtaining convictions in child abuse cases is slowly, cautiously, being pushed through the Michigan Legislature.

"The process of obtaining convictions is so grueling for a child that it's sometimes better not to prosecute," said state Rep. David Honigman, R-West Bloomfield.

Honigman, a freshman lawmaker and an attorney by profession, works on much of the legislation in his assignment on the House Judiciary Committee.

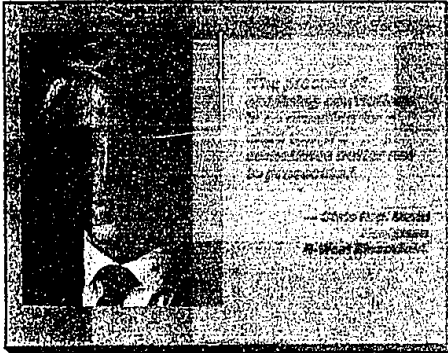
Last week the Judiciary Committee, without dissent, reported out Senate Resolution 7 urging the Michigan Supreme Court to amend the rule against "hearsay" evidence by allowing an adult to testify to something reported by a child. It's known as the "tender years" exception.

"THE COMMITTEE reported out my bill on the duty to report child abuse," Honigman said in an interview after the session.

Present law requires teachers and principals to report cases of suspected child abuse to law enforcement authorities, he said, but fails to impose the same duty on the mother.

"We can't charge the mother (with failure to report) where a live-in boyfriend abuses a child," he said. "So a jury acquits (the boyfriend) because they can't understand why the mother is let off the hook."

"I got the idea from Ed Somick, who used to prosecute this kind of case,"



Honigman said. Somick is a former assistant Oakland County prosecutor who last year was elected district judge in the Birmingham-Bloomfield-West Bloomfield area.

A bill allowing use of anatomically correct dolls so that children can describe sexual molestation without words has passed the House. "It is not controversial," Honigman said.

ANOTHER BILL moving ahead would allow videotapes of statements by abused children to be used as evi-

dence, rather than requiring the child to face an adult defendant in court. Experts told legislators that child victims themselves feel guilty and suffer emotional shock for getting an adult in trouble.

That bill, sponsored by Rep. Mary Brown, D-Kalamazoo, passed the House in spring and is in the Senate Judiciary Committee.

The State Bar Association's criminal law section opposes the bill because it eliminates eye-to-eye courtroom confrontation. Questions also were raised by Andrew Watson, University of Michigan professor of law and psychiatry.

"If the defendant has no opportunity to confront the accuser, then the accuser is shielded from a lot of human responses," Watson said.

Donald Duquette, director of the U-M Law School's Child Advocacy Clinic, also has a "slight problem" with the bill. But Duquette adds that the U.S. Supreme Court has never addressed the issue directly except to indicate that "the nature of confrontation isn't abso-

lute — there are exceptions."

As written, the bill allows use of videotaped testimony only if a judge finds the child witness is mentally or emotionally unable to testify in court.

SOME CONTROVERSY still surrounds SR 7, the "tender years" exception to the hearsay rule in sexual abuse cases.

The sponsor, state Sen. Connie Binsfeld, R-Maple City, built a case for it before a Senate committee. A principal, teacher and mother told a Senate committee how a second-grade girl broke down emotionally after having to tell her story of a stepfather's sexual abuse eight times.

After talking to two school authorities, a social worker and sheriff's department officers, the girl went to places when telling the story to the prosecutor and wound up crouching in a corner of the room.

This was the day before she was to testify in the district court pre-trial examination. Because she was unable to testify, the stepfather was let off.

THE BINSFELD resolution, which was passed by the Senate and reported out of the House Judiciary Committee, would lack the force of law. It asks the state Supreme Court to reintroduce the "tender years" exception to its rules of evidence.

The tender years exception was adopted in 1885 but abolished by high court decisions in 1978.

The House committee last week backed the Binsfeld resolution, but amended it to require "corroborating evidence" before hearsay testimony could be introduced.

Duquette, the U-M professor, said he supports it on balance because it would "ease the situation for kids and protect their legitimate special needs. The justice system has not been very responsive to their needs. But the final drafting must be done very carefully so that legal rights of defendants also are protected."

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