Texas rape bill opens door to prior conduct
Judge would decide if jury could hear previous uncharged allegations
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AUSTIN BUREAU
April 18, 2011, 8:45PM

AUSTIN — In what critics say could be a "seismic change" in state criminal law, the Texas Senate tentatively approved a bill that would allow jurors in sexual assault cases to hear testimony about similar allegations against a defendant — even if the previous incident did not result in a conviction or even criminal charges.

The bill by Sen. Joan Huffman, R-Houston, would allow the introduction of testimony about allegations of other sexual assaults to be admitted during the guilt or innocence phase of a trial if a judge — outside the presence of the jury — hears the evidence and deems it relevant.

The bill gives "greater resources to prosecutors and victims of sexual assault," Huffman said Monday. Allowing testimony of similar sex offenses "brings Texas closer in line with federal rules of evidence," she added.

Sen. Royce West, D-Dallas, opposed the bill, arguing the measure would bring about "more wrongful convictions" because jurors will be afraid to acquit a defendant against whom they have heard multiple allegations. Jurors who are skeptical of the evidence of the case before them could feel compelled to convict "because he (the defendant) must have done something wrong," West said.

"All of us want to be law and order and the whole nine yards," West said. "But this is carving new ground in criminal jurisprudence. You ought to think long and hard, 'is that fair?'"

Although the Senate gave initial approval to the bill on a 23-8 vote Monday, Huffman retreated on her first attempt to pass the bill last week when it was met with hostile questions.

"This is a hard bill for many to vote against," said Sen. Robert Duncan, R-Lubbock. While current rules of procedure "are designed to protect liberty," he said Huffman's measure would allow jurors to hear "allegations that have not even been vetted by a grand jury."

Constitutional issues

In an emotional response, Huffman described watching a 6-year-old girl clutching a teddy bear testify about a sexual assault.

"It would have been very helpful" to hear evidence about similar conduct by the defendant, she said. "Under current law, you can't do that."
Criminal law experts are split over the idea, said University of Houston law professor Adam Gershowitz.

"Defense attorneys believe it makes the trial more about the character of the defendant than whether they committed the act for which he is on trial," he said. "The evidence of prior behavior convinces the jury that he's a bad guy."

On the other hand, he continued, prosecutors find sexual assault cases difficult to prosecute because defendants charged with rape often claim the sex was consensual. Allowing testimony about similar acts would give jurors "evidence that this is not the first time it happened, that the defendant has a pattern of violent behavior."

"That's why it's a very hard issue," Gershowitz said. "I don't know which side is right."

Houston defense lawyer Pat McCann called it a terrible idea.

"With all due respect to Senator Huffman's sincere commitment to protecting victims of violent crime, this is probably one of the worst ideas that any senator has ever come up with," McCann said.

He said the rules of evidence are specifically designed to prevent juries from considering anything other than the facts of the case in front of them. Bringing in allegations that are too weak to garner an indictment or a criminal charge changes, fundamentally, the criminal justice system, he said.

"When you have an uncharged extraneous offense that somehow comes in at that phase, you have just guaranteed a guilty verdict and thrown out the U.S. Constitution," McCann said.

Similar bill in House

He noted that accused sex offenders are convicted every day without that provision.

A past president of the Harris County Criminal Lawyers Association, McCann said he was reminded of the Salem Witch trials.

"It's a dangerous, dangerous thing to convict people on past allegations, not convictions, not even charges," he said. "This is an unnecessary solution to a non-existent problem."

The Senate is expected to vote on final passage of the bill today. Rep. Beverly Woolley, R-Houston, has sponsored a companion bill which is pending in a House committee.