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Bryant Case Spurs States to Fortify Rape Shield Laws

By Alex Sundby, Special to Stateline.org

Two states have expanded protections for rape victims in the wake of the high-profile criminal case against Los Angeles Lakers guard Kobe Bryant in a continuing effort by states to guard accusers' identities and increase chances for successful prosecutions.

Legislators in Colorado and California this year passed laws to conceal accusers' identities from the public in sexual assault cases after Bryant's arrest brought intense pressure to learn more about his accuser.

The case captured the attention of the world's media for 14 months until prosecutors moved to drop charges in early September just before trial. The woman who accused the basketball star of rape decided against going ahead with the intensely publicized trial. Although a judge had allowed a pseudonym and ordered attorneys to protect her identity, the Colorado court mistakenly released her name on its Web site and accidentally e-mailed court documents about her sexual behavior to media outlets.

The woman now is suing Bryant for civil damages. After a federal judge in the civil case refused to allow her to continue using a pseudonym, the woman finally went public and filed a civil suit Oct. 14 using her real name.

The new law in Colorado, signed by the governor in April, gives alleged victims greater leeway to use a pseudonym, such as Jane Doe, in court documents and legal proceedings. The California Legislature voted to close court hearings and seal court records that discuss an accuser's sexual history unless a judge considers it admissible evidence.

The new laws have sparked a debate about whether sealed records and pseudonyms are the best way to protect accusers.

Many states have laws in place to protect the identities of sexual assault victims. Court records in Alaska must refer to victims only by their initials, according to the National Center for Victims of Crime. Pseudonyms also are used for accusers in Texas courts. Accusers cannot be identified before defendants are indicted in West Virginia. Victims in Nevada can sue if their confidential information is disclosed. Louisiana law requires public officers to keep the identities of victims confidential.

Since 2000, at least nine states have passed laws making victims' addresses confidential: Connecticut, Maine, Nebraska, Nevada, New Hampshire, North Carolina, Oklahoma, Texas and Vermont.

The Bryant case drew new attention to rape shield laws on the books in every state that are designed to keep a victim's sexual history private unless a judge finds it relevant enough to present to a jury. Shield laws are not intended to protect victims' identities, although media policies generally keep the names of sexual assault victims out of the news.

Colorado's shield law has been on the books since the 1970s and has survived numerous legal challenges. It gives judges discretion to decide after a hearing what parts of an accuser's sexual history the defense can and cannot use as evidence.

"Now that we've seen it in action, I don't think it's as strong as it could be," Kathy Redmond, founder of the Colorado-based National Coalition Against Violent Athletes, said of the state's shield law.

In the Bryant case, even though hearings regarding the accuser's sexual history were held in private, the defense's written motions were publicly available and provided details about the woman's sex life. Proponents of stronger shield laws argued that Bryant's attorneys used the public release of such documents to attack the accuser's reputation.

But Karen Steinhauser, a visiting associate professor at the University of Denver College of Law, said Colorado's shield law was applied properly. She described the Legislature's changes to the law as a reaction to the court's mistaken release of the accuser's name. "The rape shield law isn't meant to protect anyone from the media," she said.

Michelle Anderson, a professor at Villanova University School of Law, advocates a "rigorous revision" of rape shield laws. Courts should admit evidence from the accuser's sexual history only if it shows that another person may have committed the crime, that the accuser and defendant agreed to engage in certain sexual behavior or that the accuser has a pattern of lying, Anderson said.

The Colorado Legislature considered but failed to approve a provision that would have allowed accusers to sue those who reveal a victim's real name.

In California, Assemblyman Russ Bogh (R) said he proposed the state's new law, which closes certain court hearings and records in rape cases, to stop attempts to discredit accusers by exposing their sexual histories to the media. Besides the Bryant case, he says he also was motivated by a gang-rape trial in southern California that publicized the sex life of the teenaged accuser.

"Unscrupulous defense attorneys try to deny justice to victims by putting their sexual history out on display when it's not relevant to the case," Bogh said in a statement. "The law still gives the defendant the right to question his accuser. It's just done in private."

Although not connected to the Bryant case, Hawaii and Wisconsin this year also took action to further protect sexual assault victims.

Voters in Hawaii will decide Nov. 2 whether its Legislature can restore laws protecting the privacy of conversations between victims and their mental health counselors. On the ballot is a constitutional amendment approved by the Legislature at the request of Attorney General Mark Bennett (R). The amendment would reverse a 2003 court ruling that made victims' statements to counselors admissible in court.

Bennett said that the ruling "really hurt victim counseling."

Wisconsin this year enacted a law to prohibit police and district attorneys from requiring rape victims to take lie-detector tests. The law is intended to reduce victims' trauma when reporting sex crimes, according to state Rep. Scott Suder (R), the bill's primary sponsor.

"This comes directly from the individuals who had reported alleged crimes or who hadn't because of intimidation," Suder said.

The law bars police officers and prosecutors from forcing or even suggesting accusers take a lie detector test. Suder called the tests "unreliable" and said they prevent victims from reporting crimes to the police.

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