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Despite outcry, sex assault sentence followed precedent

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David Becker, a former basketball player at East Longmeadow High School, received probation after admitting to sexual assault.

By **Matt Rocheleau** and **Nestor Ramos**

GLOBE STAFF SEPTEMBER 05, 2016

The sentence recently handed down in an East Longmeadow sexual assault case — widely criticized as too light — was not out of the ordinary in Massachusetts courtrooms, according to a Globe review of state statistics.

A national outcry erupted after Palmer District Judge Thomas Estes' Aug. 15 [sentencing of 18-year-old David Becker to two years' probation](#) after the teen admitted to assaulting one unconscious high school classmate and acknowledged he'd likely be found guilty of doing the same to another. Despite the outcry, the state's top district court judge on Aug. 26 called the case's procedures "lawful" and declined to review the matter.

The case has added fuel to a raging national discussion surrounding cases involving sexual violence, and as of Sunday night, nearly 46,400 signatures had been collected on an online petition calling for Estes to lose his job.

But the majority of Massachusetts defendants without criminal records, like Becker, have been given no time behind bars for convictions on indecent assault and battery charges at the district court level in recent years, a Globe review of publicly available sentencing data shows.

Critics say the Becker case is just the latest example of judges' tendency to hand down lighter sentences for certain defendants — white male student athletes like Becker, for example.





Top Mass. judge says controversial sex assault sentence was lawful

Judge Paul Dawley has denied a request to review a sexual assault case that has drawn national attention for a sentence that some feel was lenient.

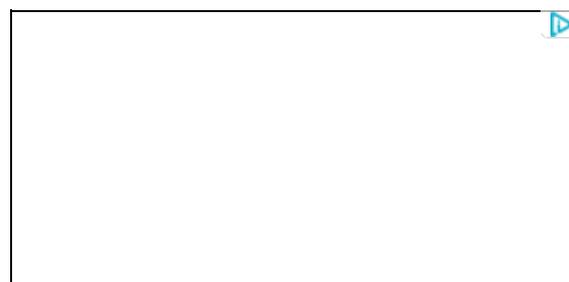
Petitioners say judge should lose job over sex assaulter's probation

How dozens of convicted rapists in Mass. have avoided prison

“This case brings up a lot of the complexities of these situations,” said Debra Robbin, executive director of Jane Doe, Inc., the Massachusetts Coalition Against Sexual Assault and Domestic Violence.

She said the case underlined persistent questions about how courts handle sexual assault, including “disparities in sentencing and . . . the way in which racial differences play out in the justice system.”

Incarceration rates for black and Latino men are much higher than for whites, and Robbin questioned whether a minority defendant in Becker's position would also have avoided jail time.





A Globe review of state court system statistics found 586 cases in which defendants with either no criminal record or one defined by the system as “minor” were convicted in district court of indecent assault and battery during the 12-year period that concluded at the end of June 2013.

In 259 of the cases, or 44 percent, defendants’ sentences included some time incarcerated, but in the rest of those cases, the defendants avoided incarceration, the data show.

However, the reports did not detail specific cases or identify defendants in a way that would allow for racial or socioeconomic comparisons, and the state trial court office — which is exempt from public record disclosure laws — has declined to release further details. The most recent year for which data were available was fiscal year 2013.

When indecent assault and battery cases made their way to superior court, defendants were more likely to serve time, but a substantial number still avoided incarceration.

Superior court defendants with no records, or minor records, were put behind bars 54 percent of the time.

If defendants had records deemed “moderate” or worse, their incarceration rates were at least 67 percent in district court and at least 78 percent in superior court.

The state’s sentencing guidelines recommend that defendants with no records or minor records receive anywhere from two years of incarceration to no time behind bars for a conviction of indecent assault and battery, but judges aren’t required to follow the guidelines.

In the case of Becker, who had originally been charged with two counts of rape, prosecutors had asked for two years in prison and a requirement to register as a sex offender.

The case began with a house party in April. He and two female classmates from East Longmeadow High School stayed to clean up after a party at which alcohol had been present.

All three eventually slept in the same bed, with each victim later reporting that she awoke to find Becker penetrating her with his finger.

Becker admitted to one of the assaults and though he did not admit to the allegation of the second victim, he acknowledged that there was sufficient evidence to convict him.

Sentencing decisions can vary widely based on a host of circumstances specific to each case, and experts say the details of each case are critical. In court for Becker's sentencing on Aug. 15, Estes acknowledged the difficulty of determining an appropriate sentence.

"This does not present an easy decision for the court," Estes said, according to a transcript, and he outlined several factors influencing his decision.

He said he had been swayed in part by one victim's statement that she did "not want to be responsible for ruining [Becker's] life."

"That is moving to the court," Estes said.

The other victim did not appear at the hearing or provide a letter, according to the transcript, and a clinician's report on Becker graded him at low risk to reoffend.

Finding Becker guilty "given [his] position in life . . . would slam a lot of doors," Estes said. He also said Becker already had faced significant "collateral consequences to simply being charged with the offense in the first place."

Though he pleaded guilty, Becker was not convicted. Estes ordered that the case be continued without a finding, meaning that as long as Becker successfully completes his two-year probation sentence without violations, the charges will ultimately be dismissed.

James Leydon, the Hampden district attorney's spokesman, said Becker was allowed to plead down from rape charges to indecent assault and battery "due to mitigating factors surrounding the case," but he declined to elaborate. Prosecutors have no way of appealing the sentencing decision, Leydon said.

To some, Estes' language echoed other high-profile cases where sentencing decisions came under heavy criticism, such as the case of Brock Turner, who was a freshman at Stanford University when he was caught sexually assaulting an unconscious woman behind a dumpster in January 2015.

Convicted of three counts of felony sexual assault in March 2016, he served only three months of his six-month jail sentence and was released last week.

“The courts' concern with perpetrators' futures — particularly privileged perpetrators — without equal concern for victims' voice and their futures certainly skews the system,” said Meg Garvin, executive director of the National Crime Victim Law Institute in Portland, Ore., in an e-mail.

“It is finally news, because folks are making noise about the outrageousness,” she said.

State Representative Tricia Farley-Bouvier, a Pittsfield Democrat who has sponsored legislation in Massachusetts to support victims of sexual assault, said the victim often gets lost in the process.

“What people seem to not take into account in these cases is the deep and lasting impact of sexual assault on a victim,” she said.

Estes has not commented on the judge's sentencing decision, and ethical rules forbid judges from speaking publicly about active cases, officials said.

Becker's case is technically still pending because if he violates probation, the case will return to court.

Becker's attorney, Thomas Rooke, did not respond to a message left for him at his office last week.

The request to the high court to review Becker's sentence came in a letter dated Aug. 23 by Michael Albano, a member of the Governor's Council and former mayor of Springfield, who is running for sheriff of Hampden County.

In declining Albano's request, District Court Chief Justice Paul C. Dawley, noted that judges “are vested, by legislative enactments and well-established decisional authority, with broad discretion in setting a sentence.”

Albano, who has declined to say whether he agrees with Estes' decision, said he is researching whether he can request the case be reviewed through another avenue.

In an e-mail, Alan M. Rubin, attorney in charge at the Northampton office of the Committee for Public Counsel Services, called Estes “fair-minded, even-tempered, thoughtful, courteous, and knowledgeable.”

The two worked together when Estes worked as a public defender and then as a supervisor, and Rubin later spoke at his judicial confirmation hearing.

“I do not know how Judge Estes is reacting to this,” said Rubin. “But as a lawyer I am very concerned by the ‘remove the judge’ response when there is a ruling or sentencing that does not meet with public approval.”

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