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Judge strikes down part of law

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An Isabella County Trial Court judge has ruled that an amendment to the state's drunken driving law is unconstitutional.

Prosecutor Larry Burdick plans to ask the Michigan Court of Appeals to overturn Chief Judge Paul Chamberlain's ruling that prosecutors can't charge defendants with felony drunken driving using convictions that predate the amendment.

Prior to the state Legislature adopting "Heidi's Law," a defendant could only be charged with felony drunken driving if they had two or more drunken driving convictions within the previous 10 years.

Heidi's Law removed the 10-year time frame, and prosecutors statewide interpreted the law to mean that two prior drunken driving convictions could extend an entire lifetime, Mt. Pleasant defense attorney Dan O'Neil said.

Chamberlain ruled that prosecu-

tors could only use prior drunken driving convictions dating back to 1997 -- 10 years before the amendment was adopted -- rather than a lifetime.

Chamberlain's ruling came after O'Neil argued on behalf of two men who faced felony drunken driving charges that the law is unconstitutional because it punishes defendants for prior offenses that had previously been adjudicated.

In one of the cases, the defendant, Joseph Wayne Lesage, was charged

with third-offense drunken driving in May.

Prosecutors charged Lesage with felony drunken driving based on prior convictions in 1975 and two in 1991, O'Neil said.

In the other case, James Doyle Perkins was charged in March with third-offense drunken driving, felony drunken driving and several other offenses; he has four prior alcohol-related convictions, in 1990, 1992, 1993 and 2005, according to O'Neil.

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Ruling

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O'Neil argued that Heidi's Law was not intended to include prior convictions that were time barred when the law went into effect and because it is a violation of due process.

In his ruling, Chamberlain -- who initially ruled that the new law is constitutional but reversed his opinion after studying a Michigan Supreme Court precedent related to statute of limitations laws -- said that any alcohol-related conviction prior to Jan. 3, 1997 is time barred and can't be considered when Heidi's Law is applied to a case.

Burdick, however, believes Chamberlain's initial ruling was correct and that the reversal of that decision is "erroneous and the great weight of precedence on very similar cases supports the validity of the law."

Chamberlain did not find in his ruling that the law itself is unconstitutional, only that prosecutors can't use alcohol-related convictions prior to 1997.

O'Neil said that he expected Burdick to appeal the decision and that he believes the issue will eventually be decided by either the Michigan Supreme Court or a federal court.

"Ultimately, I believe Judge Chamberlain's ruling will be upheld," O'Neil said. "It is encouraging that these defendants found a judge that had the courage to say that there is a limit on how far the Legislature can go back and change the law."

"Heidi's Law is well intended and is a proper exercise by the Michigan Legislature, however, it does not take a legal scholar to realize that it is unfair to change the law and use conduct that happened 15, 20 or even 30 years ago against a defendant."

O'Neil added that it would be nearly impossible to find records or court files of offenses that happened more than 30 years ago and that defendants who were convicted more than 10 years before Heidi's law went into effect "faced their punishment, did their time."

Burdick said a circuit judge in Wayne County issued a ruling similar to Chamberlain's and that the Wayne County Prosecutor's Office filed an appeals brief Thursday.

Burdick said the state court of appeals will ultimately decide the issue and that his appeal will probably be consolidated with Wayne County's.