

**AMEND RULES OF EVIDENCE RE:
DOMESTIC VIOLENCE**

House Bill 4765

Sponsor: Rep. Judith Scranton

House Bill 5283

Sponsor: Rep. Derrick Hale

Committee: Criminal Justice

Complete to 10-27-01

A SUMMARY OF HOUSE BILLS 4765 AND 5283 AS INTRODUCED 10-17-01

House Bill 4765. Under the Michigan Rules of Evidence, hearsay is not admissible except as provided in the rules (MRE 802). The rules define hearsay and establish a number of exceptions for various types of statements that would not be excluded under the hearsay rule. The bill would amend Chapter VIII of the Code of Criminal Procedure (MCL 768.27a and 768.27b), entitled "Trials", to establish specific conditions under which evidence of a statement by a declarant would not be made inadmissible by the hearsay rule. Among many conditions, evidence of a statement would be admissible if the action in which it was offered involved domestic violence; purported to narrate, describe, or explain the infliction or threat of physical injury upon the declarant; was made at or near the time of the infliction or threat of physical injury; and was made within five years of the filing of the action or proceeding. In order to be admissible under the bill, the proponent of the statement would have to make the intention to offer the statement, and the particulars of the statement, known to the adverse party in advance of the proceedings.

Further, Michigan Rules of Evidence 404 addresses the admissibility of character evidence or evidence of other crimes, wrongs, or acts that are not excluded under another rule (MRE 403) that pertains to the probative value of the evidence. The bill would specify that in a criminal action involving domestic violence, evidence of a defendant's commission of other domestic violence would not be made inadmissible by MRE 404. However, evidence of an act that occurred more than 10 years before the charged offense would be inadmissible under the bill unless the court determined that admitting the evidence was in the interest of justice.

An "offense involving domestic violence" would be defined as an occurrence of one or more of the following acts that did not involve an act of self-defense:

- Causing or attempting to cause physical or mental harm to a family or household member.
- Placing a family or household member in fear of physical or mental harm.
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

House Bill 5283 would amend Chapter VIII of the Code of Criminal Procedure (MCL 768.27b), entitled “Trials”, to specify that evidence of a defendant’s commission of prior acts of domestic violence would be admissible and not prohibited by Michigan Rules of Evidence 404. The bill’s provisions would apply when a defendant was accused of committing a crime involving domestic violence or violating a personal protection order (PPO) issued as a result of domestic violence and the victim was the defendant’s spouse, former spouse, an individual with whom he or she had a child in common, an individual with whom he or she had a dating relationship, or a resident or former resident of the same household.

The prosecution would have to disclose the evidence to the defendant and include a witness statement or a summary of the substance of testimony that was expected to be offered. The bill would not limit or preclude the court from allowing the admission of evidence under any other statute, rule of evidence, or case law. Evidence of an act that occurred more than 10 years before the charged offense would be inadmissible unless the court determined that admitting the evidence was in the interest of justice. “Domestic violence” would mean the term as defined in the domestic violence act, Public Act 389 of 1978 (MCL 400.1501).

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.