

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 734 (Substitute S-1 reported)
Sponsor: Senator Bev Hammerstrom
Committee: Judiciary

CONTENT

The bill would amend the Code of Criminal Procedure to specify that evidence of a statement by a declarant would not be made inadmissible by the hearsay rule if the following applied: the statement purported to narrate, describe, or explain the infliction or threat of physical injury upon the declarant; the action in which the evidence was offered was an "offense involving domestic violence"; the statement was made at or near the time of the infliction or threat of physical injury, and under circumstances that would indicate its trustworthiness; and the statement was written, electronically recorded, or made to a law enforcement official.

The statement would be admissible only if its proponent (the party wanting to introduce it into evidence) made known to the adverse party the intention to offer the statement and the particulars of the statement sufficiently in advance to give the adverse party a fair opportunity to prepare to meet the statement. Evidence of a statement made more than five years before the current action or proceeding was filed would not be admissible under the bill.

"Offense involving domestic violence" would mean 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; or engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested. "Family or household member" would mean a spouse or former spouse; an individual with whom the person currently or previously resided; or an individual with whom the person had a child in common.

The bill also states that evidence of a defendant's other domestic violence would not be made inadmissible by court rules regarding character evidence or evidence of other crimes, wrongs, or acts if it were not excluded under court rules regarding the probative value of the evidence.

Proposed MCL 768.27a

Legislative Analyst: P. Affholter

FISCAL IMPACT

To the extent that evidence of a statement by a declarant would increase the number of convictions for domestic violence, the bill could result in increased costs to State and local government. In 1999, 282 people were convicted of some type of attempt or act of domestic violence. There are no data available to indicate how many more offenders a year would be convicted upon admission of a statement of a declarant. First-time offenders would be subject to probation or incarceration in a local facility. In most cases, offenders convicted of a second or third offense also would be subject to probation or incarceration in a local facility. Local units would incur the cost of probation as well as the cost of incarceration, which may vary between \$27 and \$62 per day. Third-time offenders would be guilty of a Class G felony, which has a minimum prison sentence range of 0-3 months to 7-23 months. The State would incur the cost of felony probation, estimated at \$4.23 per day, and the cost of incarceration in a State facility, at an average annual cost of \$22,000. If one additional offender were convicted and received the longest minimum sentence, the State's cost would be \$42,000. Date Completed: 11-6-01

Fiscal Analyst: B. Wicksall