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Senate Bill 734 (as introduced 10-17-01)
Sponsor: Senator Bev Hammerstrom
Committee: Judiciary

Date Completed: 10-30-01

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 all of 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. (Evidence of a statement made more than five years before the current action or proceeding was filed would not be admissible under the bill.)
- The statement was made under circumstances that would indicate its trustworthiness.
- The statement was made in writing, was electronically recorded, or was made to a law enforcement official.

Circumstances relevant to the issue of a statement's trustworthiness would include, but would not be limited to, all of the following:

- Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.
- Whether the declarant had a bias or motive for fabricating the statement, and the extent of any bias or motive.
- Whether the statement was corroborated by evidence other than statements that were admissible only under the bill.

A statement would be admissible under the bill only if the proponent of the statement (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 of the proceedings in order to give the adverse party a fair opportunity to prepare to meet the statement.

For purposes of the bill, "offense involving domestic violence" would mean an occurrence of one or more of the following acts by a person that was not 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.

"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.

(Under the "hearsay rule" contained in the Michigan Rules of Evidence, hearsay is not admissible except as provided by the rules (Rule 802). "Hearsay" is defined as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted (Rule 801). The rules describe circumstances under which statements are not considered hearsay, and contain a number of exceptions to the hearsay rule.)

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. Offenders convicted of first-offense domestic violence receive misdemeanor sentences of up to 93 days. A second-time offender may receive up to one year's imprisonment, and a third offense is a Class G felony, which has a minimum sentence range of 0-3 months to 7-23 months.

Offenders convicted of a first-time misdemeanor 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. In most cases, offenders convicted of a second or third offense also would be subject to probation or incarceration in a local facility, and third-time offenders would be eligible for a prison sentence. 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 annual average cost of \$22,000. If one additional offender were convicted and sentenced to prison, and received the longest minimum sentence, the cost to the State would be \$42,000.

Fiscal Analyst: B. Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.