

HOUSE BILL No. 4765

May 15, 2001, Introduced by Reps. Scranton, Vander Veen and Godchaux and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding sections 27a and 27b to
chapter VIII.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VIII

SEC 27A. (1) EVIDENCE OF A STATEMENT BY A DECLARANT IS NOT
MADE INADMISSIBLE BY THE HEARSAY RULE IF ALL OF THE FOLLOWING
APPLY:

(A) THE STATEMENT PURPORTS TO NARRATE, DESCRIBE, OR EXPLAIN
THE INFLICTION OR THREAT OF PHYSICAL INJURY UPON THE DECLARANT.

(B) THE ACTION IN WHICH THE EVIDENCE IS OFFERED UNDER THIS
SECTION IS AN OFFENSE INVOLVING DOMESTIC VIOLENCE.

(C) THE STATEMENT WAS MADE AT OR NEAR THE TIME OF THE
INFLICTION OR THREAT OF PHYSICAL INJURY. EVIDENCE OF A STATEMENT

1 MADE MORE THAN 5 YEARS BEFORE THE FILING OF THE CURRENT ACTION OR
2 PROCEEDING IS INADMISSIBLE UNDER THIS SECTION.

3 (D) THE STATEMENT WAS MADE UNDER CIRCUMSTANCES THAT WOULD
4 INDICATE THE STATEMENT'S TRUSTWORTHINESS.

5 (E) THE STATEMENT WAS MADE IN WRITING, WAS ELECTRONICALLY
6 RECORDED, OR WAS MADE TO A LAW ENFORCEMENT OFFICIAL.

7 (2) FOR THE PURPOSE OF SUBSECTION (1)(D), CIRCUMSTANCES REL-
8 EVANT TO THE ISSUE OF TRUSTWORTHINESS INCLUDE, BUT ARE NOT
9 LIMITED TO, ALL OF THE FOLLOWING:

10 (A) WHETHER THE STATEMENT WAS MADE IN CONTEMPLATION OF PEND-
11 ING OR ANTICIPATED LITIGATION IN WHICH THE DECLARANT WAS
12 INTERESTED.

13 (B) WHETHER THE DECLARANT HAS A BIAS OR MOTIVE FOR FABRICAT-
14 ING THE STATEMENT, AND THE EXTENT OF ANY BIAS OR MOTIVE.

15 (C) WHETHER THE STATEMENT IS CORROBORATED BY EVIDENCE OTHER
16 THAN STATEMENTS THAT ARE ADMISSIBLE ONLY UNDER THIS SECTION.

17 (3) A STATEMENT IS ADMISSIBLE UNDER THIS SECTION ONLY IF THE
18 PROPONENT OF THE STATEMENT MAKES KNOWN TO THE ADVERSE PARTY THE
19 INTENTION TO OFFER THE STATEMENT AND THE PARTICULARS OF THE
20 STATEMENT SUFFICIENTLY IN ADVANCE OF THE PROCEEDINGS IN ORDER TO
21 PROVIDE THE ADVERSE PARTY WITH A FAIR OPPORTUNITY TO PREPARE TO
22 MEET THE STATEMENT.

23 (4) AS USED IN THIS SECTION:

24 (A) "DECLARANT" MEANS A PERSON WHO MAKES A STATEMENT.

25 (B) "FAMILY OR HOUSEHOLD MEMBER" MEANS 1 OF THE FOLLOWING:

26 (i) A SPOUSE OR FORMER SPOUSE.

1 (ii) AN INDIVIDUAL WITH WHOM THE PERSON RESIDES OR HAS
2 RESIDED.

3 (iii) AN INDIVIDUAL WITH WHOM THE PERSON HAS A CHILD IN
4 COMMON.

5 (C) "OFFENSE INVOLVING DOMESTIC VIOLENCE" MEANS AN OCCUR-
6 RENCE OF 1 OR MORE OF THE FOLLOWING ACTS BY A PERSON THAT IS NOT
7 AN ACT OF SELF-DEFENSE:

8 (i) CAUSING OR ATTEMPTING TO CAUSE PHYSICAL OR MENTAL HARM
9 TO A FAMILY OR HOUSEHOLD MEMBER.

10 (ii) PLACING A FAMILY OR HOUSEHOLD MEMBER IN FEAR OF PHYSI-
11 CAL OR MENTAL HARM.

12 (iii) CAUSING OR ATTEMPTING TO CAUSE A FAMILY OR HOUSEHOLD
13 MEMBER TO ENGAGE IN INVOLUNTARY SEXUAL ACTIVITY BY FORCE, THREAT
14 OF FORCE, OR DURESS.

15 (iv) ENGAGING IN ACTIVITY TOWARD A FAMILY OR HOUSEHOLD
16 MEMBER THAT WOULD CAUSE A REASONABLE PERSON TO FEEL TERRORIZED,
17 FRIGHTENED, INTIMIDATED, THREATENED, HARASSED, OR MOLESTED.

18 SEC. 27B. (1) EXCEPT AS PROVIDED IN SUBSECTION (4), IN A
19 CRIMINAL ACTION IN WHICH THE DEFENDANT IS ACCUSED OF AN OFFENSE
20 INVOLVING DOMESTIC VIOLENCE, EVIDENCE OF THE DEFENDANT'S COMMIS-
21 SION OF OTHER DOMESTIC VIOLENCE IS NOT MADE INADMISSIBLE BY
22 MICHIGAN RULE OF EVIDENCE 404 REGARDING CHARACTER EVIDENCE OR
23 EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS, IF THE EVIDENCE IS NOT
24 EXCLUDED UNDER THE MICHIGAN RULE OF EVIDENCE 403 REGARDING THE
25 PROBATIVE VALUE OF THE EVIDENCE.

26 (2) IN AN ACTION IN WHICH EVIDENCE IS OFFERED UNDER THIS
27 SECTION, THE PROSECUTION SHALL DISCLOSE THE EVIDENCE TO THE

1 DEFENDANT, INCLUDING A WITNESS STATEMENT OR A SUMMARY OF THE
2 SUBSTANCE OF TESTIMONY THAT IS EXPECTED TO BE OFFERED.

3 (3) THIS SECTION DOES NOT LIMIT OR PRECLUDE THE ADMITTING OR
4 CONSIDERING OF EVIDENCE UNDER ANY OTHER STATUTE, RULE OF EVI-
5 DENCE, OR CASE LAW.

6 (4) EVIDENCE OF AN ACT OCCURRING MORE THAN 10 YEARS BEFORE
7 THE CHARGED OFFENSE IS INADMISSIBLE UNDER THIS SECTION, UNLESS
8 THE COURT DETERMINES THAT ADMITTING THIS EVIDENCE IS IN THE
9 INTEREST OF JUSTICE.

10 (5) AS USED IN THIS SECTION:

11 (A) "FAMILY OR HOUSEHOLD MEMBER" MEANS 1 OF THE FOLLOWING:

12 (i) A SPOUSE OR FORMER SPOUSE.

13 (ii) AN INDIVIDUAL WITH WHOM THE PERSON RESIDES OR HAS
14 RESIDED.

15 (iii) AN INDIVIDUAL WITH WHOM THE PERSON HAS A CHILD IN
16 COMMON.

17 (B) "OFFENSE INVOLVING DOMESTIC VIOLENCE" MEANS AN OCCUR-
18 RENCE OF 1 OR MORE OF THE FOLLOWING ACTS BY A PERSON THAT IS NOT
19 AN ACT OF SELF-DEFENSE:

20 (i) CAUSING OR ATTEMPTING TO CAUSE PHYSICAL OR MENTAL HARM
21 TO A FAMILY OR HOUSEHOLD MEMBER.

22 (ii) PLACING A FAMILY OR HOUSEHOLD MEMBER IN FEAR OF PHYSI-
23 CAL OR MENTAL HARM.

24 (iii) CAUSING OR ATTEMPTING TO CAUSE A FAMILY OR HOUSEHOLD
25 MEMBER TO ENGAGE IN INVOLUNTARY SEXUAL ACTIVITY BY FORCE, THREAT
26 OF FORCE, OR DURESS.

1 (iv) ENGAGING IN ACTIVITY TOWARD A FAMILY OR HOUSEHOLD
2 MEMBER THAT WOULD CAUSE A REASONABLE PERSON TO FEEL TERRORIZED,
3 FRIGHTENED, INTIMIDATED, THREATENED, HARASSED, OR MOLESTED.