

Legislative Analysis



DOMESTIC VIOLENCE EVIDENCE

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Senate Bill 120

Sponsor: Sen. Shirley Johnson

Senate Bill 263

Sponsor: Sen. Bev Hammerstrom

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 2-13-06

A SUMMARY OF SENATE BILLS 120 & 263 AS PASSED BY THE SENATE 11-3-05

Senate Bills 120 and 263 would each amend the Code of Criminal Procedure.

Senate Bill 120 (MCL 768.27b) would provide for the admissibility of evidence of prior acts of domestic violence when a person was accused of an offense involving domestic violence.

Senate Bill 236 (MCL 768.27b) would specify that evidence of a statement by a declarant (a person who made a statement) would be admissible in an offense involving domestic violence under certain circumstances.

Under either bill, a prosecuting attorney who intended to offer evidence would have to disclose the evidence to the defendant at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown. This would include the statements of witnesses or a summary of the substance of any testimony that was expected to be offered

Under both bills, "domestic violence" or "offense involving domestic violence" would mean an occurrence of one or more of the following acts 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 any of the following: a spouse or former spouse; an individual with whom the person resides or has resided; an individual with whom the person has or has had a child in common; or an individual with whom the person has or has had a dating relationship.

("Dating relationship" would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. The term would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.)

Senate Bill 120 (S-4)

The bill specifies that, in a criminal action in which the defendant was accused of an offense involving domestic violence, evidence of his or her commission of other acts of domestic violence would be admissible for any purpose for which it was relevant, if the evidence were not otherwise excluded under MRE 403 (described below). However, evidence of an act occurring 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.

The bill specifies that it would not limit or preclude the admission or consideration of evidence under any other statute, rule of evidence, or case law.

[Michigan Rule of Evidence 403 states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."]

Senate Bill 263 (S-6)

Under the bill, evidence of a statement by a declarant (a person who made a statement) would be admissible, 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.

- The statement was made under circumstances that would indicate its trustworthiness.

- The statement was made to a law enforcement officer or to a firefighter, paramedic, or emergency medical technician who assisted the declarant at or near the time of the infliction of physical injury or threat of physical injury.

Evidence of a statement made more than five years before the filing of the action or proceeding would be inadmissible.

Circumstances relevant to the issue of trustworthiness would include 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 would be admissible only under the bill.

The bill specifies that nothing in it could be construed to abrogate any privilege conferred by law.

FISCAL IMPACT:

Depending on the extent to which the bills enabled additional or more serious convictions to be obtained, they could increase state or local correctional costs. Assuming that the evidence of prior offenses allowed by the bills would be used to sustain felony charges, the state could incur costs of prison incarceration or felony probation. Current costs of prison incarceration average about \$30,000 per prisoner per year, and costs of felony parole and probation supervision average about \$2,000 per supervised offender per year. Costs of jail sentences would be borne by the affected counties, and vary across the state. Any increase in penal fine revenues would go to local libraries, who are the constitutionally-designated recipients of those revenues.

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