

SENATE BILL No. 263

March 2, 2005, Introduced by Senators HAMMERSTROM and JOHNSON and referred to the Committee on Judiciary.

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 INADMISSIBLE AS HEARSAY IF ALL OF THE FOLLOWING APPLY:

(A) THE STATEMENT PURPORTS TO NARRATE, DESCRIBE, OR EXPLAIN THE INFLECTION 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

1 INFLICTION OR THREAT OF PHYSICAL INJURY. EVIDENCE OF A STATEMENT
2 MADE MORE THAN 5 YEARS BEFORE THE FILING OF THE CURRENT ACTION OR
3 PROCEEDING IS INADMISSIBLE UNDER THIS SECTION.

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

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

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

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

13 (B) WHETHER THE DECLARANT HAS A BIAS OR MOTIVE FOR FABRICATING
14 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.

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

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

2 (C) "OFFENSE INVOLVING DOMESTIC VIOLENCE" MEANS AN OCCURRENCE
3 OF 1 OR MORE OF THE FOLLOWING ACTS BY A PERSON THAT IS NOT AN ACT
4 OF SELF-DEFENSE:

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

7 (ii) PLACING A FAMILY OR HOUSEHOLD MEMBER IN FEAR OF PHYSICAL
8 OR MENTAL HARM.

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

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

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

23 (2) IN AN ACTION IN WHICH EVIDENCE IS OFFERED UNDER THIS
24 SECTION, THE PROSECUTION SHALL DISCLOSE THE EVIDENCE TO THE
25 DEFENDANT, INCLUDING A WITNESS STATEMENT OR A SUMMARY OF THE
26 SUBSTANCE OF TESTIMONY THAT IS EXPECTED TO BE OFFERED.

27 (3) THIS SECTION DOES NOT LIMIT OR PRECLUDE THE ADMITTING OR

1 CONSIDERING OF EVIDENCE UNDER ANY OTHER STATUTE, RULE OF EVIDENCE,
2 OR CASE LAW.

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

7 (5) AS USED IN THIS SECTION:

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

9 (i) A SPOUSE OR FORMER SPOUSE.

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

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

12 (B) "OFFENSE INVOLVING DOMESTIC VIOLENCE" MEANS AN OCCURRENCE
13 OF 1 OR MORE OF THE FOLLOWING ACTS BY A PERSON THAT IS NOT AN ACT
14 OF SELF-DEFENSE:

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

17 (ii) PLACING A FAMILY OR HOUSEHOLD MEMBER IN FEAR OF PHYSICAL
18 OR MENTAL HARM.

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

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