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**SFA****BILL ANALYSIS**

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Senate Bill 733 (as introduced 10-17-01)  
Sponsor: Senator Shirley Johnson  
Committee: Judiciary

Date Completed: 10-30-01

### **CONTENT**

The bill would amend the Code of Criminal Procedure to allow the admission of evidence of prior acts of domestic violence when a defendant was accused of committing a crime of domestic violence. Evidence of an act that occurred more than 10 years before the charged offense would not be admissible, however, unless the court determined that admitting the evidence was in the interest of justice.

Specifically, if a defendant were accused of committing a crime involving domestic violence or violating a personal protection order issued as a result of domestic violence and the victim were the defendant's spouse or former spouse, an individual with whom the defendant had a child in common, an individual with whom the defendant currently or previously had a dating relationship, or a resident or former resident of the same household as the defendant, evidence of the defendant's commission of prior acts of domestic violence would be admissible and would not be prohibited by Michigan Rule of Evidence (MRE) 404.

In an action in which evidence was offered under the bill, the prosecution would have to disclose the evidence to the defendant, including a witness statement or a summary of the substance of the testimony that was expected to be offered.

The bill states that it would not limit or preclude the court from allowing evidence to be admitted under any other statute, rule of evidence, or case law.

(Michigan Rule of Evidence 404(b)(1), states: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Evidence may be admissible under MRE 404(b)(1), however, "for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case".)

Proposed MCL 768.27b

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

To the extent that the admission of prior acts of domestic violence as evidence would increase the number of convictions for domestic violence or violation of a personal protection order, 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 prior acts of domestic violence. 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