

**SUBSTITUTE FOR  
HOUSE BILL NO. 5674**

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 4a, 16a, and 31 of chapter IX and section 56 of chapter XVII (MCL 769.4a, 769.16a, 769.31, and 777.56), section 4a of chapter IX as amended by 2001 PA 208, section 16a of chapter IX as amended by 2001 PA 204, section 31 of chapter IX as amended by 2002 PA 31, and section 56 of chapter XVII as added by 1998 PA 317.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 CHAPTER IX

2 Sec. 4a. (1) When an individual who has not been convicted  
3 previously of a violation of section 81 or 81a of the Michigan  
4 penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a violation  
5 of a local ordinance substantially corresponding to section 81 of  
6 that act, pleads guilty to, or is found guilty of, a violation of

1 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL  
2 750.81 and 750.81a, and the victim of the assault is the  
3 offender's spouse or former spouse, an individual who has had a  
4 child in common with the offender, an individual who has or has  
5 had a dating relationship with the offender, or an individual  
6 residing or having resided in the same household as the offender,  
7 the court, without entering a judgment of guilt and with the  
8 consent of the accused and of the prosecuting attorney in  
9 consultation with the victim, may defer further proceedings and  
10 place the accused on probation as provided in this section.  
11 However, before deferring proceedings under this subsection, the  
12 court shall contact the department of state police and determine  
13 whether, according to the records of the department of state  
14 police, the accused has previously been convicted under section  
15 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and  
16 750.81a, or under a local ordinance substantially corresponding  
17 to section 81 of that act, or has previously availed himself or  
18 herself of this section. If the search of the records reveals an  
19 arrest for a violation of section 81 or 81a of the Michigan penal  
20 code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance  
21 substantially corresponding to section 81 of that act but no  
22 disposition, the court shall contact the arresting agency and the  
23 court that had jurisdiction over the violation to determine the  
24 disposition of that arrest for purposes of this section. As used  
25 in this subsection, "dating relationship" means frequent,  
26 intimate associations primarily characterized by the expectation  
27 of affectional involvement. This term does not include a casual

1 relationship or an ordinary fraternization between 2 individuals  
2 in a business or social context.

3 (2) Upon a violation of a term or condition of probation, the  
4 court may enter an adjudication of guilt and proceed as otherwise  
5 provided in this chapter.

6 (3) An order of probation entered under subsection (1) may  
7 require the accused to participate in a mandatory counseling  
8 program. The court may order the accused to pay the reasonable  
9 costs of the **mandatory counseling** program. **The court also may**  
10 **order the accused to participate in a drug treatment court under**  
11 **chapter 10A of the revised judicature act of 1961, 1961 PA 236,**  
12 **MCL 600.1060 to 600.1082.**

13 (4) The court shall enter an adjudication of guilt and  
14 proceed as otherwise provided in this chapter if any of the  
15 following circumstances exist:

16 (a) The accused commits an assaultive crime during the period  
17 of probation. As used in this subdivision, "assaultive crime"  
18 means 1 or more of the following:

19 (i) That term as defined in section 9a of chapter X.

20 (ii) A violation of chapter XI of the Michigan penal code,  
21 1931 PA 328, MCL 750.81 to 750.90g.

22 (b) The accused violates an order of the court that he or she  
23 receive counseling regarding his or her violent behavior.

24 (c) The accused violates an order of the court that he or she  
25 have no contact with a named individual.

26 (5) Upon fulfillment of the terms and conditions, the court  
27 shall discharge the person and dismiss the proceedings against

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1 the person. Discharge and dismissal under this section shall be  
2 without adjudication of guilt and is not a conviction for  
3 purposes of this section or for purposes of disqualifications or  
4 disabilities imposed by law upon conviction of a crime.

5 (6) There may be only 1 discharge and dismissal under this  
6 section with respect to any individual. The department of state  
7 police shall retain a nonpublic record of an arrest and discharge  
8 or dismissal under this section. This record shall be furnished  
9 to a court or police agency upon request pursuant to  
10 subsection (1) **or to an office of prosecuting attorney** for the  
11 purpose of showing that a defendant in a criminal action under  
12 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL  
13 750.81 and 750.81a, or a local ordinance substantially  
14 corresponding to section 81 of that act has already once availed  
15 himself or herself of this section **or for the purpose of**  
16 **determining whether the defendant in a criminal action is**  
17 **eligible for discharge and dismissal of proceedings by a drug**  
18 **treatment court under section <<1076(5)>> of the revised judicature**  
19 **act of 1961, 1961 PA 236, MCL 600.1076.**

20 Sec. 16a. (1) Except as otherwise provided in subsection  
21 (3), upon final disposition of an original charge against a  
22 person of a felony or a misdemeanor for which the maximum  
23 possible penalty exceeds 92 days' imprisonment or a local  
24 ordinance for which the maximum possible penalty is 93 days'  
25 imprisonment and that substantially corresponds to a violation of  
26 state law that is a misdemeanor for which the maximum possible  
27 penalty is 93 days' imprisonment, or a misdemeanor in a case in

1 which the appropriate court was notified that fingerprints were  
2 forwarded to the department of state police, or upon final  
3 disposition of a charge of criminal contempt under section 2950  
4 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL  
5 600.2950 and 600.2950a, or final disposition of a charge of  
6 criminal contempt for violating a foreign protection order that  
7 satisfies the conditions for validity provided in section 2950i  
8 of the revised judicature act of 1961, 1961 PA 236, MCL  
9 600.2950i, the clerk of the court entering the disposition shall  
10 immediately report to the department of state police the final  
11 disposition of the charge on forms approved by the state court  
12 administrator and in a manner consistent with section 3 of 1925  
13 PA 289, MCL 28.243. The report to the department of state police  
14 shall include the finding of the judge or jury, including a  
15 finding of guilty, guilty but mentally ill, not guilty, or not  
16 guilty by reason of insanity, or the person's plea of guilty,  
17 nolo contendere, or guilty but mentally ill; if the person was  
18 convicted, the offense of which the person was convicted; and a  
19 summary of any sentence imposed. The summary of the sentence  
20 shall include any probationary term; any minimum, maximum, or  
21 alternative term of imprisonment; the total of all fines, costs,  
22 and restitution ordered; and any modification of sentence. The  
23 report shall include the sentence if imposed under any of the  
24 following:

25 (a) Section 7411 of the public health code, 1978 PA 368,  
26 MCL 333.7411.

27 (b) **Section 1076(4) of the revised judicature act of 1961,**

1 1961 PA 236, MCL 600.1076.

2 (c) Section 350a of the Michigan penal code, 1931 PA 328, MCL  
3 750.350a.

4 (d) Section 430 of the Michigan penal code, 1931 PA 328, MCL  
5 750.430.

6 (e) ~~(b)~~ Sections 11 to 15 of chapter II.

7 (f) ~~(e)~~ Section 4a of chapter IX.

8 (2) Upon sentencing a person convicted of a misdemeanor or of  
9 a violation of a local ordinance, other than a misdemeanor or  
10 local ordinance described in subsection (1), the clerk of the  
11 court imposing sentence immediately shall, if ordered by the  
12 court, advise the department of state police of the conviction on  
13 forms approved by the state court administrator.

14 (3) Except as otherwise provided in subsections (4) and (6),  
15 the clerk of a court shall not report a conviction of a  
16 misdemeanor offense under the Michigan vehicle code, 1949 PA 300,  
17 MCL 257.1 to 257.923, or a local ordinance substantially  
18 corresponding to a provision of that act unless 1 or more of the  
19 following apply:

20 (a) The offense is punishable by imprisonment for more than  
21 92 days.

22 (b) The offense is an offense that would be punishable by  
23 more than 92 days as a second conviction.

24 (c) A judge of the court orders the clerk to report the  
25 conviction.

26 (4) Unless ordered by the court, the clerk of a court is not  
27 required to report a conviction of a misdemeanor offense for a

1 violation of section 904(3)(a) of the Michigan vehicle code, 1949  
2 PA 300, MCL 257.904, or a local ordinance substantially  
3 corresponding to section 904(3)(a) of the Michigan vehicle code,  
4 1949 PA 300, MCL 257.904.

5 (5) As part of the sentence for a conviction of an offense  
6 described in subsection (2), if fingerprints have not already  
7 been taken, the court shall order that the fingerprints of the  
8 person convicted be taken and forwarded to the department of  
9 state police.

10 (6) As part of the sentence for a conviction of a listed  
11 offense as defined in section 2 of the sex offenders registration  
12 act, 1994 PA 295, MCL 28.722, the court shall order that the  
13 fingerprints of the person convicted be taken and forwarded as  
14 provided in the sex offenders registration act, 1994 PA 295,  
15 MCL 28.721 to 28.732, if fingerprints have not already been taken  
16 and forwarded as provided in that act.

17 (7) Within 21 days after the date a person licensed or  
18 registered under article 15 of the public health code, 1978  
19 PA 368, MCL 333.16101 to 333.18838, is convicted of a misdemeanor  
20 involving the illegal delivery, possession, or use of alcohol or  
21 a controlled substance or a felony, the clerk of the court  
22 entering the conviction shall report the conviction to the  
23 department of consumer and industry services on a form prescribed  
24 and furnished by that department.

25 Sec. 31. As used in this section and section 34 of this  
26 chapter:

27 (a) "Departure" means a sentence imposed that is not within

1 the appropriate minimum sentence range established under the  
2 sentencing guidelines set forth in chapter XVII.

3 (b) "Intermediate sanction" means probation or any sanction,  
4 other than imprisonment in a state prison or state reformatory,  
5 that may lawfully be imposed. Intermediate sanction includes,  
6 but is not limited to, 1 or more of the following:

7 (i) Inpatient or outpatient drug treatment **or participation**  
8 **in a drug treatment court under chapter 10A of the revised**  
9 **judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.**

10 (ii) Probation with any probation conditions required or  
11 authorized by law.

12 (iii) Residential probation.

13 (iv) Probation with jail.

14 (v) Probation with special alternative incarceration.

15 (vi) Mental health treatment.

16 (vii) Mental health or substance abuse counseling.

17 (viii) Jail.

18 (ix) Jail with work or school release.

19 (x) Jail, with or without authorization for day parole under  
20 1962 PA 60, MCL 801.251 to 801.258.

21 (xi) Participation in a community corrections program.

22 (xii) Community service.

23 (xiii) Payment of a fine.

24 (xiv) House arrest.

25 (xv) Electronic monitoring.

26 (c) "Offender characteristics" means only the prior criminal  
27 record of an offender.



1 (d) "Offense characteristics" means the elements of the crime  
2 and the aggravating and mitigating factors relating to the  
3 offense that the legislature determines are appropriate. For  
4 purposes of this subdivision, an offense described in section 33b  
5 of **the corrections code of 1953**, 1953 PA 232, MCL 791.233b, that  
6 resulted in a conviction and that arose out of the same  
7 transaction as the offense for which the sentencing guidelines  
8 are being scored shall be considered as an aggravating factor.

9 (e) "Prior criminal record" means all of the following:

10 (i) Misdemeanor and felony convictions.

11 (ii) Probation and parole violations involving criminal  
12 activity.

13 (iii) Dispositions entered under section 18 of chapter XIIIA  
14 of 1939 PA 288, MCL 712A.18, for acts that would have been crimes  
15 if committed by an adult.

16 (iv) Assignment to youthful trainee status under sections 11  
17 to 15 of chapter II.

18 (v) A conviction set aside under 1965 PA 213, MCL 780.621 to  
19 780.624.

20 (vi) Dispositions described in subparagraph (iii) that have  
21 been set aside under section 18e of chapter XIIIA of 1939 PA 288,  
22 MCL 712A.18e, or expunged.

23 CHAPTER XVII

24 Sec. 56. (1) Prior record variable 6 is relationship to the  
25 criminal justice system. Score prior record variable 6 by  
26 determining which of the following apply and by assigning the  
27 number of points attributable to the one that has the highest

1 number of points:

2 (a) The offender is a prisoner of the department  
3 of corrections or serving a sentence in jail..... 20 points

4 (b) The offender is incarcerated in jail awaiting  
5 adjudication or sentencing on a conviction or  
6 probation violation..... 15 points

7 (c) The offender is on parole, probation, or  
8 delayed sentence status or on bond awaiting  
9 adjudication or sentencing for a felony..... 10 points

10 (d) The offender is on probation or delayed  
11 sentence status or on bond awaiting adjudication or  
12 sentencing for a misdemeanor..... 5 points

13 (e) The offender has no relationship to the  
14 criminal justice system..... 0 points

15 (2) Score the appropriate points under this section if the  
16 offender is involved with the criminal justice system in another  
17 state or United States.

18 (3) As used in this section:

19 (a) "Delayed sentence status" includes, but is not limited  
20 to, an individual assigned or deferred under any of the  
21 following:

22 (i) Section 7411 of the public health code, 1978 PA 368, MCL  
23 333.7411.

24 (ii) **Section 1076(4) of the revised judicature act of 1961,**  
25 **1961 PA 236, MCL 600.1076.**

26 (iii) ~~(ii)~~ Section 350a of the Michigan penal code, 1931 PA  
27 328, MCL 750.350a.

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1 (iv) Section 430 of the Michigan penal code, 1931 PA 328, MCL  
2 750.430.

3 (v) ~~—(iii)—~~ Sections 11 to 15 of chapter II.

4 (vi) ~~—(iv)—~~ Section 4a of chapter IX.

5 (b) "Prisoner of the department of corrections or serving a  
6 sentence in jail" includes an individual who is an escapee.

<<Enacting section 1. This amendatory act takes effect January 1,  
2005.>>

7 Enacting section <<2>>. This amendatory act does not take  
8 effect unless Senate Bill No. 998 of the 92nd Legislature is  
9 enacted into law.