

# HOUSE BILL No. 5674

March 23, 2004, Introduced by Rep. Acciavatti and referred to the Committee on Judiciary.

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

**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  
7 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL  
8 750.81 and 750.81a, and the victim of the assault is the

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

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

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

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

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

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

18           (ii) A violation of chapter XI of the Michigan penal code,  
19 1931 PA 328, MCL 750.81 to 750.90g.

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

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

24           (5) Upon fulfillment of the terms and conditions, the court  
25 shall discharge the person and dismiss the proceedings against  
26 the person. Discharge and dismissal under this section shall be  
27 without adjudication of guilt and is not a conviction for

1 purposes of this section or for purposes of disqualifications or  
2 disabilities imposed by law upon conviction of a crime.

3 (6) There may be only 1 discharge and dismissal under this  
4 section with respect to any individual. The department of state  
5 police shall retain a nonpublic record of an arrest and discharge  
6 or dismissal under this section. This record shall be furnished  
7 to a court or police agency upon request pursuant to  
8 subsection (1) **or to an office of prosecuting attorney** for the  
9 purpose of showing that a defendant in a criminal action under  
10 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL  
11 750.81 and 750.81a, or a local ordinance substantially  
12 corresponding to section 81 of that act has already once availed  
13 himself or herself of this section.

14 **Sec. 4b. If an individual who is eligible for admission to**  
15 **a drug treatment court under chapter 10A of the revised**  
16 **judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082,**  
17 **pleads guilty to or is found guilty of a crime, the court,**  
18 **without entering a judgment of guilt, may defer sentencing and**  
19 **place the individual on probation in a drug treatment court**  
20 **program under chapter 10A of the revised judicature act of 1961,**  
21 **1961 PA 236, MCL 600.1060 to 600.1082.**

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

1 state law that is a misdemeanor for which the maximum possible  
2 penalty is 93 days' imprisonment, or a misdemeanor in a case in  
3 which the appropriate court was notified that fingerprints were  
4 forwarded to the department of state police, or upon final  
5 disposition of a charge of criminal contempt under section 2950  
6 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL  
7 600.2950 and 600.2950a, or final disposition of a charge of  
8 criminal contempt for violating a foreign protection order that  
9 satisfies the conditions for validity provided in section 2950i  
10 of the revised judicature act of 1961, 1961 PA 236, MCL  
11 600.2950i, the clerk of the court entering the disposition shall  
12 immediately report to the department of state police the final  
13 disposition of the charge on forms approved by the state court  
14 administrator and in a manner consistent with section 3 of 1925  
15 PA 289, MCL 28.243. The report to the department of state police  
16 shall include the finding of the judge or jury, including a  
17 finding of guilty, guilty but mentally ill, not guilty, or not  
18 guilty by reason of insanity, or the person's plea of guilty,  
19 nolo contendere, or guilty but mentally ill; if the person was  
20 convicted, the offense of which the person was convicted; and a  
21 summary of any sentence imposed. The summary of the sentence  
22 shall include any probationary term; any minimum, maximum, or  
23 alternative term of imprisonment; the total of all fines, costs,  
24 and restitution ordered; and any modification of sentence. The  
25 report shall include the sentence if imposed under any of the  
26 following:

27 (a) Section 7411 of the public health code, 1978 PA 368,

1 MCL 333.7411.

2 (b) Sections 11 to 15 of chapter II.

3 (c) Section 4a of chapter IX.

4 (d) **Chapter 10A of the revised judicature act of 1961, 1961**  
5 **PA 236, MCL 600.1060 to 600.1082.**

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

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

18 (a) The offense is punishable by imprisonment for more than  
19 92 days.

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

22 (c) A judge of the court orders the clerk to report the  
23 conviction.

24 (4) Unless ordered by the court, the clerk of a court is not  
25 required to report a conviction of a misdemeanor offense for a  
26 violation of section 904(3)(a) of the Michigan vehicle code, 1949  
27 PA 300, MCL 257.904, or a local ordinance substantially

1 corresponding to section 904(3)(a) of the Michigan vehicle code,  
2 1949 PA 300, MCL 257.904.

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

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

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

23 Sec. 31. As used in this section and section 34 of this  
24 chapter:

25 (a) "Departure" means a sentence imposed that is not within  
26 the appropriate minimum sentence range established under the  
27 sentencing guidelines set forth in chapter XVII.

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

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

8 (ii) Probation with any probation conditions required or  
9 authorized by law.

10 (iii) Residential probation.

11 (iv) Probation with jail.

12 (v) Probation with special alternative incarceration.

13 (vi) Mental health treatment.

14 (vii) Mental health or substance abuse counseling.

15 (viii) Jail.

16 (ix) Jail with work or school release.

17 (x) Jail, with or without authorization for day parole under  
18 1962 PA 60, MCL 801.251 to 801.258.

19 (xi) Participation in a community corrections program.

20 (xii) Community service.

21 (xiii) Payment of a fine.

22 (xiv) House arrest.

23 (xv) Electronic monitoring.

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

26 (d) "Offense characteristics" means the elements of the crime  
27 and the aggravating and mitigating factors relating to the



1 offense that the legislature determines are appropriate. For  
2 purposes of this subdivision, an offense described in section 33b  
3 of **the corrections code of 1953**, 1953 PA 232, MCL 791.233b, that  
4 resulted in a conviction and that arose out of the same  
5 transaction as the offense for which the sentencing guidelines  
6 are being scored shall be considered as an aggravating factor.

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

8 (i) Misdemeanor and felony convictions.

9 (ii) Probation and parole violations involving criminal  
10 activity.

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

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

16 (v) A conviction set aside under 1965 PA 213, MCL 780.621 to  
17 780.624.

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

21 Enacting section 1. This amendatory act does not take  
22 effect unless Senate Bill No. 998 of the 92nd Legislature is  
23 enacted into law.