

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5968

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 4a of chapter IX (MCL 769.4a), as amended by
2004 PA 220.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

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Sec. 4a. (1) When an individual who has not been convicted
~~previously of a violation of section 81 or 81a of the Michigan~~
~~penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a violation of~~
~~a local ordinance substantially corresponding to section 81 of that~~
~~act,~~ **AN ASSAULTIVE CRIME** pleads guilty to, or is found guilty of,
a violation of section 81 or 81a of the Michigan penal code, 1931
PA 328, MCL 750.81 and 750.81a, and the victim of the assault is
the offender's spouse or former spouse, an individual who has had a
child in common with the offender, an individual who has or has had

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

26 (2) Upon a violation of a term or condition of probation, the
27 court may enter an adjudication of guilt and proceed as otherwise

1 provided in this chapter.

2 (3) An order of probation entered under subsection (1) may
 3 ~~require~~ **INCLUDE ANY CONDITION OF PROBATION AUTHORIZED UNDER**
 4 **SECTION 3 OF CHAPTER XI OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA**
 5 **175, MCL 771.3, INCLUDING, BUT NOT LIMITED TO, REQUIRING** the
 6 accused to participate in a mandatory counseling program. The court
 7 may order the accused to pay the reasonable costs of the mandatory
 8 counseling program. The court also may order the accused to
 9 participate in a drug treatment court under chapter 10A of the
 10 revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to
 11 600.1082. **THE COURT MAY ORDER THE DEFENDANT TO BE IMPRISONED FOR**
 12 **NOT MORE THAN 12 MONTHS AT THE TIME OR INTERVALS, WHICH MAY BE**
 13 **CONSECUTIVE OR NONCONSECUTIVE AND WITHIN THE PERIOD OF PROBATION,**
 14 **AS THE COURT DETERMINES. HOWEVER, THE PERIOD OF IMPRISONMENT SHALL**
 15 **NOT EXCEED THE MAXIMUM PERIOD OF IMPRISONMENT AUTHORIZED FOR THE**
 16 **OFFENSE IF THE MAXIMUM PERIOD IS LESS THAN 12 MONTHS. THE COURT MAY**
 17 **PERMIT DAY PAROLE AS AUTHORIZED UNDER 1962 PA 60, MCL 801.251 TO**
 18 **801.258. THE COURT MAY PERMIT A WORK OR SCHOOL RELEASE FROM JAIL.**

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

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

25 ~~—— (i) That term as defined in section 9a of chapter X.~~

26 ~~—— (ii) A violation of chapter XI of the Michigan penal code, 1931~~
 27 ~~PA 328, MCL 750.81 to 750.90g.~~

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

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

5 (5) Upon fulfillment of the terms and conditions, the court
6 shall discharge the person and dismiss the proceedings against the
7 person. Discharge and dismissal under this section shall be without
8 adjudication of guilt and is not a conviction for purposes of this
9 section or for purposes of disqualifications or disabilities
10 imposed by law upon conviction of a crime.

11 (6) There may be only 1 discharge and dismissal under this
12 section with respect to any individual. The department of state
13 police shall retain a nonpublic record of an arrest and discharge
14 ~~or~~ **AND** dismissal under this section. This record shall be
15 furnished to a court or police agency upon request pursuant to
16 subsection (1) or to an office of prosecuting attorney for the
17 purpose of showing that a defendant in a criminal action under
18 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL
19 750.81 and 750.81a, or a local ordinance substantially
20 corresponding to section 81 of that act has already once availed
21 himself or herself of this section or for the purpose of
22 determining whether the defendant in a criminal action is eligible
23 for discharge and dismissal of proceedings by a drug treatment
24 court under section 1076(5) of the revised judicature act of 1961,
25 1961 PA 236, MCL 600.1076.

26 (7) **AS USED IN THIS SECTION:**

27 (A) **"ASSAULTIVE CRIME" MEANS 1 OR MORE OF THE FOLLOWING:**

1 (i) THAT TERM AS DEFINED IN SECTION 9A OF CHAPTER X.

2 (ii) A VIOLATION OF CHAPTER XI OF THE MICHIGAN PENAL CODE, 1931
3 PA 328, MCL 750.81 TO 750.90G.

4 (iii) A VIOLATION OF A LAW OF ANOTHER STATE OR OF A LOCAL
5 ORDINANCE OF A POLITICAL SUBDIVISION OF THIS STATE OR OF ANOTHER
6 STATE SUBSTANTIALLY CORRESPONDING TO A VIOLATION DESCRIBED IN
7 SUBPARAGRAPH (i) OR (ii) .

8 (B) "DATING RELATIONSHIP" MEANS FREQUENT, INTIMATE
9 ASSOCIATIONS PRIMARILY CHARACTERIZED BY THE EXPECTATION OF
10 AFFECTIONAL INVOLVEMENT. THIS TERM DOES NOT INCLUDE A CASUAL
11 RELATIONSHIP OR AN ORDINARY FRATERNIZATION BETWEEN 2 INDIVIDUALS IN
12 A BUSINESS OR SOCIAL CONTEXT.