

HOUSE BILL No. 5968

April 25, 2006, Introduced by Reps. Schuitmaker, Taub, Robertson, Emmons, Elsenheimer, Pearce, Green, Proos, Jones, Booher, Hansen, Amos, Moolenaar, Van Regenmorter, Gaffney, Hoogendyk, Wenke, Newell, Farhat, Palsrok, Ball and Acciavatti and referred to the Committee on Judiciary.

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

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

1 the 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 had
3 a dating relationship with the offender, or an individual residing
4 or having resided in the same household as the offender, the court,
5 without entering a judgment of guilt and with the consent of the
6 accused and of the prosecuting attorney in consultation with the
7 victim, may defer further proceedings and place the accused on
8 probation as provided in this section. However, before deferring
9 proceedings under this subsection, the court shall contact the
10 department of state police and determine whether, according to the
11 records of the department of state police, the accused has
12 previously been convicted ~~under section 81 or 81a of the Michigan~~
13 ~~penal code, 1931 PA 328, MCL 750.81 and 750.81a, or under a local~~
14 ~~ordinance substantially corresponding to section 81 of that act,~~
15 **OF AN ASSAULTIVE CRIME** or has previously availed himself or herself
16 of this section. If the search of the records reveals an arrest for
17 ~~a violation of section 81 or 81a of the Michigan penal code, 1931~~
18 ~~PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially~~
19 ~~corresponding to section 81 of that act~~ **AN ASSAULTIVE CRIME** 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, intimate~~
24 ~~associations primarily characterized by the expectation of~~
25 ~~affectional involvement. This term does not include a casual~~
26 ~~relationship or an ordinary fraternization between 2 individuals in~~
27 ~~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 order
8 the accused to participate in a drug treatment court under chapter
9 10A of the revised judicature act of 1961, 1961 PA 236, MCL
10 600.1060 to 600.1082.

11 (4) The court shall enter an adjudication of guilt and proceed
12 as otherwise provided in this chapter if any of the following
13 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, 1931~~
19 ~~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 the
26 person. Discharge and dismissal under this section shall be without
27 adjudication of guilt and is not a conviction for purposes of this

1 section or for purposes of disqualifications or disabilities
2 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 to
7 a court or police agency upon request pursuant to subsection (1) or
8 to an office of prosecuting attorney for the purpose of showing
9 that a defendant in a criminal action under section 81 or 81a of
10 the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a
11 local ordinance substantially corresponding to section 81 of that
12 act has already once availed himself or herself of this section or
13 for the purpose of determining whether the defendant in a criminal
14 action is eligible for discharge and dismissal of proceedings by a
15 drug treatment court under section 1076(5) of the revised
16 judicature act of 1961, 1961 PA 236, MCL 600.1076.

17 (7) AS USED IN THIS SECTION:

18 (A) "ASSAULTIVE CRIME" 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, 1931
21 PA 328, MCL 750.81 TO 750.90G.

22 (iii) A VIOLATION OF A LOCAL ORDINANCE SUBSTANTIALLY
23 CORRESPONDING TO A VIOLATION DESCRIBED IN SUBPARAGRAPH (i) OR (ii).

24 (B) "DATING RELATIONSHIP" MEANS FREQUENT, INTIMATE
25 ASSOCIATIONS PRIMARILY CHARACTERIZED BY THE EXPECTATION OF
26 AFFECTIONAL INVOLVEMENT. THIS TERM DOES NOT INCLUDE A CASUAL
27 RELATIONSHIP OR AN ORDINARY FRATERNIZATION BETWEEN 2 INDIVIDUALS IN

1 A BUSINESS OR SOCIAL CONTEXT.