

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Jones, Rocca, Brandenburg, Hansen, Proos and Warren

ENROLLED SENATE BILL No. 845

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 4a of chapter IX (MCL 769.4a), as amended by 2006 PA 663.

The People of the State of Michigan enact:

CHAPTER IX

Sec. 4a. (1) When an individual who has not been convicted previously of 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 a dating relationship with the offender, or an individual residing or having resided in the same household as the offender, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this section. However, before deferring proceedings under this subsection, the court shall contact the department of state police and determine whether, according to the records of the department of state police, the accused has previously been convicted of an assaultive crime or has previously availed himself or herself of this section. If the search of the records reveals an arrest for an assaultive crime but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest for purposes of this section.

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

(3) An order of probation entered under subsection (1) may include any condition of probation authorized under section 3 of chapter XI, including, but not limited to, requiring the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the mandatory counseling program. The court also may order the accused to participate in a drug treatment court under chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084. The court may order the defendant to be imprisoned for not more than 12 months at the time or intervals, which may be consecutive or nonconsecutive and within the period of probation, as the court determines. However, the period of imprisonment shall not exceed the maximum period of imprisonment authorized for the offense if the maximum period is less than 12 months. The court may permit day parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The court may permit a work or school release from jail.

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

(a) The accused commits an assaultive crime during the period of probation.

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

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

(5) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, but it is a prior conviction in a prosecution under sections 81(3) and (4) and 81a(3) of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a.

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

(7) As used in this section:

(a) "Assaultive crime" means 1 or more of the following:

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

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

(iii) A violation of a law of another state or of a local ordinance of a political subdivision of this state or of another state substantially corresponding to a violation described in subparagraph (i) or (ii).

(b) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

Enacting section 1. This amendatory act takes effect April 1, 2013.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor