

Legislative Analysis



CROSS-REFERENCE TO CERTAIN ASSAULT AND DOMESTIC VIOLENCE PROVISIONS

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Senate Bill 257 as reported from House committee

Sponsor: Sen. Stephanie Chang

House Committee: Judiciary

Senate Committee: Judiciary and Public Safety

Complete to 10-10-19

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 115 of 2019)

SUMMARY:

Senate Bill 257 would amend the Code of Criminal Procedure to correct a statutory citation in a provision that counts a previous discharge and dismissal of certain offenses involving domestic violence or assault and battery against a pregnant woman as a prior conviction in a prosecution for such an offense. The proposed amendment would reflect changes made by 2016 PA 87 to the numbering of the subsections being cited. (For a more detailed explanation, see **Background**, below.)

Specifically, the bill would change a reference to “section 81(3) and (4)” of the Michigan Penal Code to “section 81(4) and (5).”

The bill would take effect 90 days after its enactment.

MCL 769.4a

BACKGROUND:

Under the Code of Criminal Procedure, if an individual pleads guilty to, or is found guilty of, assault or assault and battery involving domestic violence, the court may defer further proceedings with the consent of the accused and the prosecuting attorney (in consultation with the victim) and place the accused on probation. Upon the successful fulfillment of the terms and conditions of the probation, the court is required to discharge the person and dismiss the charges. A discharge and dismissal under this provision is done 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. A person is eligible for only one discharge and dismissal under this provision and is not eligible if he or she has a previous conviction for an assaultive crime. Additionally, a discharge and dismissal constitutes a prior conviction in a prosecution under provisions of the Michigan Penal Code pertaining to assault or assault and battery involving domestic violence.

2016 PA 87 amended the assault and assault and battery provisions of the Penal Code to create a new crime of assault or assault and battery against a pregnant woman. The addition of this new crime necessitated the renumbering of several provisions that pertain to repeat violations involving domestic violence. The new crime was added as section 81(3) of the Penal Code, the existing section 81(3) was renumbered as 81(4), the existing 81(4) became 81(5), and so forth. However, a reference in the Code of Criminal Procedure to section 81(3) and (4) of the Penal Code was not likewise renumbered. The provision, as described above, states that a previous

discharge and dismissal constitutes a prior conviction in a prosecution for repeat assault and battery violations involving domestic violence.

Reportedly, if the statutory citation to the provisions of the Michigan Penal Code is not corrected in section 4a of Chapter IX of the Code of Criminal Procedure, prosecutors will be unable to apply the enhanced criminal penalties to those who commit another domestic violence offense. Domestic violence is considered to be a repetitive crime, which means that, unless they obtain appropriate treatment, many will continue to engage in abusive and battering behaviors. The ability to apply an enhanced penalty to a repeat offender is one way prosecutors can hold domestic violence offenders accountable.

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local units of government.

POSITIONS:

A representative of the Oakland County Sheriff's Office testified in support of the bill. (10-8-19)

The following entities indicated support for the bill (10-8-19):

- Michigan Domestic and Sexual Violence Prevention and Treatment Board
- Michigan Coalition to End Domestic and Sexual Violence
- Prosecuting Attorneys Association of Michigan (PAAM)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

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