

# SENATE BILL NO. 257

April 10, 2019, Introduced by Senator CHANG and referred to the Committee on Judiciary and Public Safety.

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  
2013 PA 222.

## 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 an assaultive crime pleads guilty to, or is found  
4 guilty of, a violation of section 81 or 81a of the Michigan penal

1 code, 1931 PA 328, MCL 750.81 and 750.81a, and the victim of the  
2 assault is the offender's spouse or former spouse, an individual  
3 who has had a child in common with the offender, an individual who  
4 has or has had a dating relationship with the offender, or an  
5 individual residing or having resided in the same household as the  
6 offender, the court, without entering a judgment of guilt and with  
7 the consent of the accused and of the prosecuting attorney in  
8 consultation with the victim, may defer further proceedings and  
9 place the accused on probation as provided in this section.  
10 However, before deferring proceedings under this subsection, the  
11 court shall contact the department of state police and determine  
12 whether, according to the records of the department of state  
13 police, the accused has previously been convicted of an assaultive  
14 crime or has previously availed himself or herself of this section.  
15 If the search of the records reveals an arrest for an assaultive  
16 crime but no disposition, the court shall contact the arresting  
17 agency and the court that had jurisdiction over the violation to  
18 determine the disposition of that arrest for purposes of this  
19 section.

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

23 (3) An order of probation entered under subsection (1) may  
24 include any condition of probation authorized under section 3 of  
25 chapter XI, including, but not limited to, requiring the accused to  
26 participate in a mandatory counseling program. The court may order  
27 the accused to pay the reasonable costs of the mandatory counseling  
28 program. The court also may order the accused to participate in a  
29 drug treatment court under chapter 10A of the revised judicature

1 act of 1961, 1961 PA 236, MCL 600.1060 to ~~600.1084.~~ **600.1088**. The  
2 court may order the defendant to be imprisoned for not more than 12  
3 months at the time or intervals, which may be consecutive or  
4 nonconsecutive and within the period of probation, as the court  
5 determines. However, the period of imprisonment ~~shall~~**must** not  
6 exceed the maximum period of imprisonment authorized for the  
7 offense if the maximum period is less than 12 months. The court may  
8 permit day parole as authorized under 1962 PA 60, MCL 801.251 to  
9 801.258. The court may permit a work or school release from jail.

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

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

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

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

19 (5) Upon fulfillment of the terms and conditions, the court  
20 shall discharge the person and dismiss the proceedings against the  
21 person. Discharge and dismissal under this section ~~shall~~**must** be  
22 without adjudication of guilt and is not a conviction for purposes  
23 of this section or for purposes of disqualifications or  
24 disabilities imposed by law upon conviction of a crime, but it is a  
25 prior conviction in a prosecution under sections ~~81(3) and (4)~~  
26 **81(4) and (5)** and 81a(3) of the Michigan penal code, 1931 PA 328,  
27 MCL 750.81 and 750.81a. There ~~shall~~**must** be only 1 discharge and  
28 dismissal under this section with respect to any individual.

29 (6) All court proceedings under this section ~~shall~~**must** be

1 open to the public. Except as provided in subsection (7), if the  
2 record of proceedings as to the defendant is deferred under this  
3 section, the record of proceedings during the period of deferral  
4 shall ~~shall~~ **must** be closed to public inspection.

5 (7) Unless the court enters a judgment of guilt under this  
6 section, the department of state police shall retain a nonpublic  
7 record of the arrest, court proceedings, and disposition of the  
8 criminal charge under this section. However, the nonpublic record  
9 shall ~~shall~~ **must** be open to the following individuals and entities for  
10 the purposes noted:

11 (a) The courts of this state, law enforcement personnel, the  
12 department of corrections, and prosecuting attorneys for use only  
13 in the performance of their duties or to determine whether an  
14 employee of the court, law enforcement agency, department of  
15 corrections, or prosecutor's office has violated his or her  
16 conditions of employment or whether an applicant meets criteria for  
17 employment with the court, law enforcement agency, department of  
18 corrections, or prosecutor's office.

19 (b) The courts of this state, law enforcement personnel, and  
20 prosecuting attorneys for either of the following purposes:

21 (i) Showing that a defendant in a criminal action under section  
22 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and  
23 750.81a, or a local ordinance substantially corresponding to  
24 section 81 of that act has already once availed himself or herself  
25 of this section.

26 (ii) Determining whether the defendant in a criminal action is  
27 eligible for discharge and dismissal of proceedings by a drug  
28 treatment court under section 1076(5) of the revised judicature act  
29 of 1961, 1961 PA 236, MCL 600.1076.

1 (c) The department of **health and** human services for enforcing  
2 child protection laws and vulnerable adult protection laws or  
3 ascertaining the preemployment criminal history of any individual  
4 who will be engaged in the enforcement of child protection laws or  
5 vulnerable adult protection laws.

6 (8) As used in this section:

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

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

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

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

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

20 Enacting section 1. This amendatory act takes effect 90 days  
21 after the date it is enacted into law.