



**House
Legislative
Analysis
Section**

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DOMESTIC ASSAULT DISCHARGES

House Bill 4308 as introduced
First Analysis (4-22-93)

Sponsor: Rep. Floyd Clack
Committee: Judiciary

THE APPARENT PROBLEM:

Despite a growing public awareness about domestic violence and its consequences for family members and society as a whole, and despite the enactment of various laws aimed at reducing domestic violence and providing shelter and services to victims of abuse, domestic violence continues at an alarming rate. Nationwide, some three to four million women annually are physically attacked by their husbands or partners; about four women each day are killed. Michigan's domestic violence figures are equally sobering: in 1985, local agencies reported 16,576 domestic violence offenses to the Michigan State Police; in 1990, that figure was 25,436; and in 1991, 27,201. While it is unclear to what degree these figures reflect an increase in reporting, rather than an increase in the rate of violence, it is clear that domestic violence remains a significant problem in this state.

Under Michigan law, one of the alternatives available to deal with a domestic violence problem is the "discharge and dismissal" of assault charges if the accused successfully completes the terms and conditions of probation, including any court-ordered counseling. The alternative offers a means to effectively deal with a domestic violence problem without resorting to the continuing stigma of a criminal conviction. However, the law is perceived by many to be overly lenient in allowing an offender two opportunities to have domestic assault charges discharged and dismissed. It is argued that if offenders are to take seriously the consequences of domestic assault, they should be allowed only one chance to escape prosecution this way.

THE CONTENT OF THE BILL:

The Code of Criminal Procedure allows the discharge and dismissal of domestic assault charges if the accused successfully completes the terms and conditions of probation, including any court-ordered counseling. The bill would reduce from two to one the number of times this alternative may be used; it

also would require the court to check with the state police for prior instances of domestic assault. The court would explicitly be required to enter a judgement of guilt if the accused committed a crime of violence against the victim during the probationary period, if the accused failed to complete court-ordered counseling, or if the accused contacted the victim in violation of a court order.

MCL 769.4a

FISCAL IMPLICATIONS:

There is no fiscal information at present.

ARGUMENTS:

For:

Many perpetrators of domestic violence fail to take responsibility for their actions and blame the victim; to the degree that society fails to hold these people accountable for their actions, it reinforces this belief and decreases the chances that the person will change his or her behavior. Domestic violence is not a private matter, and legal intervention can effectively get this message across. To this end, legislation has been proposed that would strengthen law enforcement response to domestic violence. The bill, part of this larger package, would further those aims by reducing the number of times that an offender can benefit from the "discharge and dismiss" provisions of the Code of Criminal Procedure. An offender would have a greater incentive to sincerely participate in any court-ordered counseling, and the elimination of a second opportunity to avoid prosecution would make it clear that society considers domestic assault to be a serious offense.

Against:

It would be better to eliminate the "discharge and dismiss" provisions altogether. Their very existence fosters the belief that domestic assault somehow is

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not a "real" assault, and thus is deserving of special treatment.

Response:

Appropriately designed counseling programs for batterers (that is, ones that recognize the unequal power relationships in domestic violence situations and require batterers to take responsibility for their actions) can significantly affect the behavior of their clients. The discharge and dismiss provisions offer a means of diverting offenders into effective programs, without the trauma and stigma that a criminal prosecution can create for the entire family. The alternative can preserve the family and keep the family's means of support out of jail. The discharge and dismiss provisions also provide batterers with an incentive to cooperate with authorities rather than demand a trial, thus minimizing burdens on the criminal justice system.

Against:

There is no guarantee someone who escapes prosecution under the discharge and dismiss provisions will not commit domestic assault again. If he or she does repeat the violence, the earlier offense should at least count as a prior offense when determining whether the person was a repeat offender subject to any enhanced penalties that might apply. There should be assurances that an offense that was discharged and dismissed under the bill would count as a prior offense for determining whether a person was a repeat offender.

POSITIONS:

In its report issued in September 1991, the Inter-agency Domestic Violence Task Force recommended that a limitation to only one discharge and dismissal for an act of domestic violence be a condition for court-ordered counseling in a deferred sentence probation.

The Prosecuting Attorneys Association of Michigan supports the bill. (4-21-93)

The Department of State Police supports the concept of the bill. (4-20-93)

The Michigan Coalition Against Domestic Violence supports the bill with amendment to ensure that deferral and dismissal will count as a prior offense for purposes of enhanced penalties for repeat offenders. (4-21-93)