



HOUSE BILL No. 4308

February 18, 1993, Introduced by Reps. Clack, Leland, Curtis, Barns, Gubow, Bullard, Brown, Dolan, Byrum, Kilpatrick, Murphy, Yokich and Cropsey and referred to the Committee on Judiciary.

A bill to amend section 4a of chapter IX of Act No. 175 of the Public Acts of 1927, entitled as amended "The code of criminal procedure," as amended by Act No. 471 of the Public Acts of 1980, being section 769.4a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 4a of chapter IX of Act No. 175 of the
2 Public Acts of 1927, as amended by Act No. 471 of the Public Acts
3 of 1980, being section 769.4a of the Michigan Compiled Laws, is
4 amended to read as follows:

5 **CHAPTER IX**

6 Sec. 4a. (1) When a person ~~—~~ who has not been convicted
7 previously of a violation of section 81 or 81a of THE MICHIGAN
8 PENAL CODE, Act No. 328 of the Public Acts of 1931, as amended,
9 being sections 750.81 and 750.81a of the Michigan Compiled Laws,

1 ~~and the victim of the assault is the offender's spouse, former~~
2 ~~spouse, or a person residing or having resided in the same house-~~
3 ~~hold as the victim,~~ pleads guilty to, or is found guilty of, a
4 violation of section 81 or 81a of Act No. 328 of the Public Acts
5 of 1931, as amended, AND THE VICTIM OF THE ASSAULT IS THE
6 OFFENDER'S SPOUSE OR FORMER SPOUSE, OR A PERSON RESIDING OR
7 HAVING RESIDED IN THE SAME HOUSEHOLD AS THE OFFENDER, the court,
8 without entering a judgment of guilt ~~—~~ and with the consent of
9 the accused, may defer further proceedings and place the accused
10 on probation as provided in this section. HOWEVER, BEFORE DEFER-
11 RING PROCEEDINGS UNDER THIS SUBSECTION, THE COURT SHALL CONTACT
12 THE DEPARTMENT OF STATE POLICE AND DETERMINE WHETHER, ACCORDING
13 TO THE RECORDS OF THE DEPARTMENT OF STATE POLICE, THE ACCUSED HAS
14 PREVIOUSLY BEEN CONVICTED UNDER SECTION 81 OR 81A OF ACT NO. 328
15 OF THE PUBLIC ACTS OF 1931, OR HAS PREVIOUSLY AVAILED HIMSELF OR
16 HERSELF OF THIS SECTION. IF THE SEARCH OF THE RECORDS REVEALS AN
17 ARREST FOR A VIOLATION OF SECTION 81 OR 81A OF ACT NO. 328 OF THE
18 PUBLIC ACTS OF 1931 BUT NO DISPOSITION, THE COURT SHALL CONTACT
19 THE ARRESTING AGENCY AND THE COURT THAT HAD JURISDICTION OVER THE
20 VIOLATION TO DETERMINE THE DISPOSITION OF THAT ARREST FOR PUR-
21 POSES OF THIS SECTION.

22 (2) Upon a violation of a term or condition of probation,
23 the court may enter an adjudication of guilt and proceed as oth-
24 erwise provided in this chapter.

25 (3) ~~(2)~~ An order of probation entered under subsection (1)
26 may require the accused to participate in a mandatory counseling

1 program. The court may order the accused to pay the reasonable
2 costs of the program.

3 (4) THE COURT SHALL ENTER AN ADJUDICATION OF GUILT AND PRO-
4 CEED AS OTHERWISE PROVIDED IN THIS CHAPTER IF ANY OF THE FOLLOW-
5 ING CIRCUMSTANCES EXIST:

6 (A) THE ACCUSED COMMITS A CRIME OF VIOLENCE AGAINST THE
7 VICTIM DURING THE PERIOD OF PROBATION.

8 (B) THE ACCUSED VIOLATES AN ORDER OF THE COURT THAT HE OR
9 SHE RECEIVE COUNSELING REGARDING HIS OR HER VIOLENT BEHAVIOR.

10 (C) THE ACCUSED VIOLATES AN ORDER OF THE COURT THAT HE OR
11 SHE HAVE NO CONTACT WITH A NAMED INDIVIDUAL.

12 (5) ~~(3)~~ Upon fulfillment of the terms and conditions, the
13 court shall discharge the person and dismiss the proceedings
14 against the person. Discharge and dismissal under this section
15 shall be without adjudication of guilt and is not a conviction
16 for purposes of this section or for purposes of disqualifications
17 or disabilities imposed by law upon conviction of a crime.

18 (6) ~~(4)~~ There may be only ~~2 discharges and dismissals~~ 1
19 DISCHARGE AND DISMISSAL under this section with respect to any
20 person. The department of state police shall retain a nonpublic
21 record of an arrest and discharge or dismissal under this
22 section. This record shall be furnished to a court or police
23 agency upon request PURSUANT TO SUBSECTION (1) for the purpose of
24 showing that a defendant in a criminal action under section 81 or
25 81a of Act No. 328 of the Public Acts of 1931, as amended, has
26 already once availed himself or herself of this section.