



SENATE BILL No. 326

February 3, 1993, Introduced by Senator EMMONS and referred to the Committee on Judiciary.

A bill to amend section 81 of Act No. 328 of the Public Acts of 1931, entitled as amended "The Michigan penal code," being section 750.81 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 81 of Act No. 328 of the Public Acts of
2 1931, being section 750.81 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 81. (1) ~~Assault and assault and battery~~ Any A
5 person who ~~shall be convicted of an assault or an assault and~~
6 ~~battery where~~ ASSAULTS OR ASSAULTS AND BATTERS ANOTHER PERSON,
7 IF no other punishment is prescribed ~~shall be~~ BY LAW, IS guilty
8 of a misdemeanor PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90
9 DAYS, OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.

1 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A PERSON WHO
2 ASSAULTS OR ASSAULTS AND BATTERS HIS OR HER SPOUSE OR FORMER
3 SPOUSE, OR A RESIDENT OR FORMER RESIDENT OF HIS OR HER HOUSEHOLD,
4 IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT
5 MORE THAN 93 DAYS, OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.

6 (3) A PERSON WHO ASSAULTS OR ASSAULTS AND BATTERS HIS OR HER
7 SPOUSE OR FORMER SPOUSE, OR A RESIDENT OR FORMER RESIDENT OF HIS
8 OR HER HOUSEHOLD, IN VIOLATION OF SUBSECTION (2), AND WHO HAS
9 PREVIOUSLY BEEN CONVICTED OF ASSAULTING OR ASSAULTING AND BATTER-
10 ING HIS OR HER SPOUSE OR FORMER SPOUSE, OR A RESIDENT OR FORMER
11 RESIDENT OF HIS OR HER HOUSEHOLD, IN VIOLATION OF THIS SECTION OR
12 SECTION 81A, 82, 83, 84, OR 86, MAY BE PUNISHED BY IMPRISONMENT
13 FOR NOT MORE THAN 1 YEAR, OR A FINE OF NOT MORE THAN \$500.00, OR
14 BOTH.

15 (4) THE FOLLOWING APPLY IN ANY CASE IN WHICH THE PROSECUTING
16 ATTORNEY SEEKS THE IMPOSITION OF AN ENHANCED SENTENCE UNDER
17 SUBSECTION (3):

18 (A) THE CHARGING DOCUMENT, OR AN AMENDED CHARGING DOCUMENT,
19 SHALL INCLUDE A NOTICE PROVISION THAT STATES THAT THE PROSECUTING
20 ATTORNEY INTENDS TO SEEK AN ENHANCED SENTENCE UNDER
21 SUBSECTION (3), AND THAT LISTS THE PRIOR CONVICTION OR CONVIC-
22 TIONS THAT WILL BE RELIED UPON FOR THAT PURPOSE. THE NOTICE PRO-
23 VISION SHALL BE SEPARATE AND DISTINCT FROM THE LANGUAGE CHARGING
24 THE CURRENT OFFENSE, AND SHALL NOT BE READ OR OTHERWISE DISCLOSED
25 TO THE JURY IF THE CASE PROCEEDS TO TRIAL BEFORE A JURY.

26 (B) THE DEFENDANT'S PRIOR CONVICTION OR CONVICTIONS SHALL BE
27 ESTABLISHED AT SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION

1 AND THE FACTUAL CIRCUMSTANCES ESTABLISHING THE REQUIRED
2 RELATIONSHIP BETWEEN THE DEFENDANT AND THE VICTIM OF THE PRIOR
3 ASSAULT OR ASSAULT AND BATTERY MAY BE ESTABLISHED BY ANY EVIDENCE
4 THAT IS RELEVANT FOR THAT PURPOSE, INCLUDING, BUT NOT LIMITED TO,
5 1 OR MORE OF THE FOLLOWING:

6 (i) A COPY OF A JUDGMENT OF CONVICTION.

7 (ii) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR SENTENC-
8 ING PROCEEDING.

9 (iii) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

10 (iv) A STATEMENT BY THE DEFENDANT.

11 (C) THE DEFENDANT, OR HIS OR HER ATTORNEY, SHALL BE GIVEN AN
12 OPPORTUNITY TO DENY, EXPLAIN, OR REFUTE ANY EVIDENCE OR INFORMA-
13 TION PERTAINING TO THE DEFENDANT'S PRIOR CONVICTION OR CONVIC-
14 TIONS BEFORE THE SENTENCE IS IMPOSED, AND SHALL BE PERMITTED TO
15 PRESENT EVIDENCE THAT IS RELEVANT FOR THAT PURPOSE UNLESS THE
16 COURT DETERMINES, AND STATES UPON THE RECORD, THAT THE CHALLENGED
17 EVIDENCE OR INFORMATION WILL NOT BE CONSIDERED AS A BASIS FOR
18 IMPOSING AN ENHANCED SENTENCE UNDER SUBSECTION (3).

19 (D) A PRIOR CONVICTION MAY BE CONSIDERED AS A BASIS FOR
20 IMPOSING AN ENHANCED SENTENCE UNDER SUBSECTION (3) IF THE COURT
21 FINDS THAT THE EXISTENCE OF THE PRIOR CONVICTION AND 1 OR MORE OF
22 THE REQUIRED RELATIONSHIPS BETWEEN THE DEFENDANT AND THE VICTIM
23 OF THE PRIOR ASSAULT OR ASSAULT AND BATTERY HAVE BEEN ESTABLISHED
24 BY A PREPONDERANCE OF THE EVIDENCE.