

**SUBSTITUTE FOR
HOUSE BILL NO. 5279**

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 9c and 15a of chapter IV, section 4a of
chapter IX, and section 9a of chapter X (MCL 764.9c, 764.15a,
769.4a, and 770.9a), section 9c of chapter IV as amended by 1999
PA 76, section 15a of chapter IV as amended by 1999 PA 269, sec-
tion 4a of chapter IX as amended by 1994 PA 68, and section 9a of
chapter X as amended by 1994 PA 195.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IV

2 Sec. 9c. (1) Except as provided in subsection (3), if a
3 police officer has arrested a person without a warrant for a mis-
4 demeanor or ordinance violation for which the maximum permissible
5 penalty does not exceed 93 days in jail or a fine, or both,
6 instead of taking the person before a magistrate and promptly

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1 filing a complaint as provided in section 13 of this chapter, the
2 officer may issue to and serve upon the person an appearance
3 ticket as defined in section 9f of this chapter and release the
4 person from custody.

5 (2) A public servant other than a police officer, who is
6 specially authorized by law or ordinance to issue and serve
7 appearance tickets with respect to a particular class of offenses
8 of less than felony grade, may issue and serve upon a person an
9 appearance ticket if the public servant has reasonable cause to
10 believe that the person has committed an offense.

11 (3) An appearance ticket shall not be issued to any of the
12 following:

13 (a) A person arrested for a violation of section 81 or 81a
14 of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a,
15 or a local ordinance substantially corresponding to section 81 of
16 the Michigan penal code, 1931 PA 328, MCL 750.81, if the victim
17 of the assault is the offender's spouse, former spouse, an indi-
18 vidual who has had a child in common with the offender, AN INDI-
19 VIDUAL WHO HAS OR HAS HAD A DATING RELATIONSHIP WITH THE
20 OFFENDER, or an individual residing or having resided in the same
21 household as the offender. AS USED IN THIS SUBDIVISION, "DATING
22 RELATIONSHIP" MEANS FREQUENT, INTIMATE ASSOCIATIONS PRIMARILY
23 CHARACTERIZED BY THE EXPECTATION OF AFFECTIONAL INVOLVEMENT.
24 THIS TERM DOES NOT INCLUDE A CASUAL RELATIONSHIP OR AN ORDINARY
25 FRATERNIZATION BETWEEN 2 INDIVIDUALS IN A BUSINESS OR SOCIAL
26 CONTEXT.

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1 (b) A person subject to detainment for violating a personal
2 protection order.

3 (c) A person subject to a mandatory period of confinement,
4 condition of bond, or other condition of release until he or she
5 has served that period of confinement or meets that requirement
6 of bond or other condition of release.

7 Sec. 15a. A peace officer may arrest an individual for vio-
8 lating section 81 or 81a of the Michigan penal code, 1931 PA 328,
9 MCL 750.81 and 750.81a, or a local ordinance substantially corre-
10 sponding to section 81 of that act regardless of whether the
11 peace officer has a warrant or whether the violation was commit-
12 ted in his or her presence if the peace officer has or receives
13 positive information that another peace officer has reasonable
14 cause to believe both of the following:

15 (a) The violation occurred or is occurring.

16 (b) The individual has had a child in common with the
17 victim, resides or has resided in the same household as the
18 victim, HAS OR HAS HAD A DATING RELATIONSHIP WITH THE VICTIM, or
19 is a spouse or former spouse of the victim. AS USED IN THIS SUB-
20 DIVISION, "DATING RELATIONSHIP" MEANS FREQUENT, INTIMATE ASSOCIA-
21 TIONS PRIMARILY CHARACTERIZED BY THE EXPECTATION OF AFFECTIONAL
22 INVOLVEMENT. THIS TERM DOES NOT INCLUDE A CASUAL RELATIONSHIP OR
23 AN ORDINARY FRATERNIZATION BETWEEN 2 INDIVIDUALS IN A BUSINESS OR
24 SOCIAL CONTEXT.

25 CHAPTER IX

26 Sec. 4a. (1) When an individual who has not been convicted
27 previously of a violation of section 81 or 81a of the Michigan

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1 penal code, ~~Act No. 328 of the Public Acts of 1931, as amended,~~
2 ~~being sections 750.81 and 750.81a of the Michigan Compiled Laws~~
3 1931 PA 328, MCL 750.81 AND 750.81A, or a violation of a local
4 ordinance substantially corresponding to section 81 of ~~Act~~
5 ~~No. 328 of the Public Acts of 1931~~ THAT ACT, pleads guilty to,
6 or is found guilty of, a violation of section 81 or 81a of ~~Act~~
7 ~~No. 328 of the Public Acts of 1931, as amended~~ THE MICHIGAN
8 PENAL CODE, 1931 PA 328, MCL 750.81 AND 750.81A, and the victim
9 of the assault is the offender's spouse or former spouse, an
10 individual who has had a child in common with the offender, AN
11 INDIVIDUAL WHO HAS OR HAS HAD A DATING RELATIONSHIP WITH THE
12 OFFENDER, or an individual residing or having resided in the same
13 household as the offender, the court, without entering a judgment
14 of guilt and with the consent of the accused and of the prosecut-
15 ing attorney in consultation with the victim, may defer further
16 proceedings and place the accused on probation as provided in
17 this section. However, before deferring proceedings under this
18 subsection, the court shall contact the department of state
19 police and determine whether, according to the records of the
20 department of state police, the accused has previously been con-
21 victed under section 81 or 81a of ~~Act No. 328 of the Public Acts~~
22 ~~of 1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81 AND
23 750.81A, or under a local ordinance substantially corresponding
24 to section 81 of ~~Act No. 328 of the Public Acts of 1931~~ THAT
25 ACT, or has previously availed himself or herself of this
26 section. If the search of the records reveals an arrest for a
27 violation of section 81 or 81a of ~~Act No. 328 of the Public Acts~~

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1 ~~of 1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81 AND
2 750.81A, or a local ordinance substantially corresponding to
3 section 81 of ~~Act No. 328 of the Public Acts of 1931~~ THAT ACT
4 but no disposition, the court shall contact the arresting agency
5 and the court that had jurisdiction over the violation to deter-
6 mine the disposition of that arrest for purposes of this
7 section. AS USED IN THIS SUBSECTION, "DATING RELATIONSHIP" MEANS
8 FREQUENT, INTIMATE ASSOCIATIONS PRIMARILY CHARACTERIZED BY THE
9 EXPECTATION OF AFFECTIONAL INVOLVEMENT. THIS TERM DOES NOT
10 INCLUDE A CASUAL RELATIONSHIP OR AN ORDINARY FRATERNIZATION
11 BETWEEN 2 INDIVIDUALS IN A BUSINESS OR SOCIAL CONTEXT.

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

15 (3) An order of probation entered under subsection (1) may
16 require the accused to participate in a mandatory counseling
17 program. The court may order the accused to pay the reasonable
18 costs of the program.

19 (4) The court shall enter an adjudication of guilt and pro-
20 ceed as otherwise provided in this chapter if any of the follow-
21 ing circumstances exist:

22 (a) The accused commits an assaultive crime during the
23 period of probation. As used in this subdivision, "assaultive
24 crime" means 1 or more of the following:

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

26 (ii) A violation of chapter XI of the Michigan penal code,
27 ~~Act No. 328 of the Public Acts of 1931, being sections 750.81 to~~

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1 ~~750.90 of the Michigan Compiled Laws~~ 1931 PA 328, MCL 750.81 TO
2 750.90G.

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

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

7 (5) Upon fulfillment of the terms and conditions, the court
8 shall discharge the person and dismiss the proceedings against
9 the person. Discharge and dismissal under this section shall be
10 without adjudication of guilt and is not a conviction for pur-
11 poses of this section or for purposes of disqualifications or
12 disabilities imposed by law upon conviction of a crime.

13 (6) There may be only 1 discharge and dismissal under this
14 section with respect to any individual. The department of state
15 police shall retain a nonpublic record of an arrest and discharge
16 or dismissal under this section. This record shall be furnished
17 to a court or police agency upon request pursuant to
18 subsection (1) for the purpose of showing that a defendant in a
19 criminal action under section 81 or 81a of ~~Act No. 328 of the~~
20 ~~Public Acts of 1931, as amended~~ THE MICHIGAN PENAL CODE, 1931 PA
21 328, MCL 750.81 AND 750.81A, or a local ordinance substantially
22 corresponding to section 81 of ~~Act No. 328 of the Public Acts of~~
23 ~~1931~~ THAT ACT has already once availed himself or herself of
24 this section.

25 CHAPTER X

26 Sec. 9a. (1) A defendant convicted of an assaultive crime
27 and awaiting sentence shall be detained and shall not be admitted

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1 to bail unless the trial court finds by clear and convincing
2 evidence that the defendant is not likely to pose a danger to
3 other persons.

4 (2) A defendant convicted of an assaultive crime and sen-
5 tenced to a term of imprisonment who has filed an appeal or an
6 application for leave to appeal shall be detained and shall not
7 be admitted to bail unless the trial court or the court to which
8 the appeal is taken finds by clear and convincing evidence that
9 both of the following exist:

10 (a) The defendant is not likely to pose a danger to other
11 persons.

12 (b) The appeal or application raises a substantial question
13 of law or fact.

14 (3) As used in this section, "assaultive crime" means an
15 offense against a person described in section 82, 83, 84, 86, 87,
16 88, 89, 316, 317, 321, 349, 349a, 350, 397, 411I, 520b, 520c,
17 520d, 520e, 520g, 529, 529a, or 530 of ~~Act No. 328 of the Public~~
18 ~~Acts of 1931, as amended, being sections~~ THE MICHIGAN PENAL
19 CODE, 1931 PA 328, MCL 750.82, 750.83, 750.84, 750.86, 750.87,
20 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a,
21 750.350, 750.397, 750.411I, 750.520b, 750.520c, 750.520d,
22 750.520e, 750.520g, 750.529, 750.529a, and 750.530. ~~of the~~
23 ~~Michigan Compiled Laws.~~

24 (4) The appeal or application for leave to appeal filed by a
25 person denied bail under this section shall be expedited pursuant
26 to rules adopted for that purpose by the supreme court.

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1 Enacting section 1. This amendatory act takes effect April
2 1, 2002.