

SENATE BILL No. 645

July 17, 2003, Introduced by Senators JOHNSON and HAMMERSTROM and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 4a of chapter IX and section 16d of chapter
XVII (MCL 769.4a and 777.16d), section 4a of chapter IX as
amended by 2001 PA 208 and section 16d of chapter XVII as amended
by 2002 PA 269.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 4a. (1) When an individual who has not been convicted
previously of a violation of section ~~81 or 81a~~ **81(1) or (2)** of
the Michigan penal code, 1931 PA 328, MCL 750.81, ~~and 750.81a~~,
or a violation of a local ordinance substantially corresponding
to section ~~81~~ **81(1) or (2)** of that act, pleads guilty to, or is
found guilty of, a violation of section ~~81 or 81a~~ **81(1) or (2)**
of the Michigan penal code, 1931 PA 328, MCL 750.81, ~~and~~

1 ~~750.81a,~~ and the victim of the assault is the offender's spouse
2 or former spouse, an individual who has had a child in common
3 with the offender, an individual who has or has had a dating
4 relationship with the offender, or an individual residing or
5 having resided in the same household as the offender, the court,
6 without entering a judgment of guilt and with the consent of the
7 accused and of the prosecuting attorney in consultation with the
8 victim, may defer further proceedings and place the accused on
9 probation as provided in this section. However, before deferring
10 proceedings under this subsection, the court shall contact the
11 department of state police and determine whether, according to
12 the records of the department of state police, the accused has
13 previously been convicted under section 81 or 81a of the Michigan
14 penal code, 1931 PA 328, MCL 750.81 and 750.81a, or under a local
15 ordinance substantially corresponding to section 81 of that act,
16 or has previously availed himself or herself of this section. If
17 the search of the records reveals an arrest for a violation of
18 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL
19 750.81 and 750.81a, or a local ordinance substantially
20 corresponding to section 81 of that act but no disposition, the
21 court shall contact the arresting agency and the court that had
22 jurisdiction over the violation to determine the disposition of
23 that arrest for purposes of this section. As used in this
24 subsection, "dating relationship" means frequent, intimate
25 associations primarily characterized by the expectation of
26 affectional involvement. This term does not include a casual
27 relationship or an ordinary fraternization between 2 individuals

1 in a business or social context.

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

5 (3) An order of probation entered under subsection (1) may
6 require the accused to participate in a mandatory counseling
7 program. The court may order the accused to pay the reasonable
8 costs of the program.

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

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

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

16 (ii) A violation of chapter XI of the Michigan penal code,
17 1931 PA 328, MCL 750.81 to 750.90g.

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

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

22 (5) Upon fulfillment of the terms and conditions, the court
23 shall discharge the person and dismiss the proceedings against
24 the person. Discharge and dismissal under this section shall be
25 without adjudication of guilt and is not a conviction for
26 purposes of this section or for purposes of disqualifications or
27 disabilities imposed by law upon conviction of a crime.

(6) There may be only 1 discharge and dismissal under this section with respect to any individual. The department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request pursuant to subsection (1) for the purpose of showing that a defendant in a criminal action under section ~~81 or 81a~~ **81(1) or (2)** of the Michigan penal code, 1931 PA 328, MCL 750.81, ~~and 750.81a,~~ or a local ordinance substantially corresponding to section ~~81~~ **81(1) or (2)** of that act has already once availed himself or herself of this section.

CHAPTER XVII

Sec. 16d. This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

<u>M.C.L.</u>	<u>Category</u>	<u>Class</u>	<u>Description</u>	<u>Stat Max</u>
750.81(4)	Person	G	Domestic assault with prior convictions	2
750.81a(3)	Person	G	Aggravated domestic assault with prior convictions	2
750.81(5)	Person	F	Domestic assault -- multiple offenses within 12 months	4
750.81a(1)	Person	F	Assault and battery causing serious or aggravated injury	4
750.81a(2)	Person	F	Domestic assault causing serious or aggravated injury	4
750.81d(1)	Person	G	Assaulting, resisting, or obstructing certain persons	2

1 2 3	750.81d(2)	Person	F	Assaulting, resisting, or obstructing certain persons causing injury	4
4 5 6 7	750.81d(3)	Person	C	Assaulting, resisting, or obstructing certain persons causing serious impairment	15
8 9 10	750.81d(4)	Person	B	Assaulting, resisting, or obstructing certain persons causing death	20
11 12 13	750.81e(3)	Person	G	Domestic assault causing physical injury with prior conviction	2
14	750.82(1)	Person	F	Felonious assault	4
15 16	750.82(2)	Person	D	Felonious assault causing physical harm	10
17 18 19	750.82(3)	Person	B	Felonious assault causing serious impairment of body function	20
20 21 22	750.82(2) 750.82(4)	Person	F	Felonious assault -- weapon-free school zone	4
23 24	750.83	Person	A	Assault with intent to murder	Life
25 26 27	750.84 750.84(1)	Person	D	Assault with intent to do great bodily harm less than murder	10
28 29 30 31 32	750.84(2)	Person	B	Assault with intent to do great bodily harm causing serious impairment of a body function	20
33 34	750.86	Person	D	Assault with intent to maim	10
35 36	750.87	Person	D	Assault with intent to commit a felony	10
37 38	750.88	Person	C	Assault with intent to commit unarmed robbery	15
39	750.89	Person	A	Assault with intent to	

1				commit armed robbery	Life
2	750.90	Person	D	Sexual intercourse under	
3				pretext of medical	
4				treatment	10
5	750.90a	Person	A	Assault against a	
6				pregnant individual	
7				causing miscarriage,	
8				stillbirth, or death to	
9				embryo or fetus with	
10				intent or recklessness	Life
11	750.90b(a)	Person	C	Assault against a	
12				pregnant individual	
13				resulting in	
14				miscarriage,	
15				stillbirth, or death to	
16				embryo or fetus	15
17	750.90b(b)	Person	D	Assault against a	
18				pregnant individual	
19				resulting in great	
20				bodily harm to embryo	
21				or fetus	10
22	750.90c(a)	Person	C	Gross negligence against	
23				a pregnant individual	
24				resulting in	
25				miscarriage,	
26				stillbirth, or death to	
27				embryo or fetus	15
28	750.90c(b)	Person	E	Gross negligence against	
29				a pregnant individual	
30				resulting in great	
31				bodily harm to embryo	
32				or fetus	5
33	750.90d(a)	Person	C	Operating a vehicle under	
34				the influence or while	
35				impaired causing	
36				miscarriage,	
37				stillbirth, or death to	
38				embryo or fetus	15
39	750.90d(b)	Person	E	Operating a vehicle under	
40				the influence or while	
41				impaired causing	
42				serious or aggravated	
43				injury to embryo or	
44				fetus	5

1	750.90e	Person	G	Careless or reckless	
2				driving causing	
3				miscarriage,	
4				stillbirth, or death to	
5				embryo or fetus	2
6	750.90g(3)	Person	A	Performance of procedure	
7				on live infant with	
8				intent to cause death	Life
9	750.91	Person	A	Attempted murder	Life
10	Enacting section 1. This amendatory act does not take				
11	effect unless Senate Bill No. 646				
12	of the 92nd Legislature is enacted into				
13	law.				