

SENATE BILL No. 646

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

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 81, 81a, 81b, 82, and 84 (MCL 750.81,
750.81a, 750.81b, 750.82, and 750.84), sections 81 and 81a as
amended by 2001 PA 190, section 81b as added by 1994 PA 65, and
section 82 as amended by 1994 PA 158, and by adding section 81e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81. (1) Except as otherwise provided in this section,
2 a person who assaults or assaults and batters an individual, if
3 no other punishment is prescribed by law, is guilty of a
4 misdemeanor punishable by imprisonment for not more than 93 days
5 or a fine of not more than \$500.00, or both.

6 (2) Except as provided in subsection (3), ~~or~~ (4), or (5),
7 an individual who assaults or assaults and batters his or her
8 spouse or former spouse, an individual with whom he or she has or

1 has had a dating relationship, an individual with whom he or she
 2 has had a child in common, or a resident or former resident of
 3 his or her household, is guilty of a misdemeanor punishable by
 4 imprisonment for not more than 93 days or a fine of not more than
 5 \$500.00, or both.

6 (3) An individual who commits an assault or an assault and
 7 battery in violation of subsection (2), and who has ~~previously~~
 8 ~~been convicted~~ **a prior conviction** of assaulting or assaulting
 9 and battering his or her spouse or former spouse, an individual
 10 with whom he or she has or has had a dating relationship, an
 11 individual with whom he or she has had a child in common, or a
 12 resident or former resident of his or her household ~~—, under any~~
 13 ~~of the following,~~ may be punished by imprisonment for not more
 14 than 1 year or a fine of not more than \$1,000.00, or both. ~~→~~

15 ~~—— (a) This section or an ordinance of a political subdivision~~
 16 ~~of this state substantially corresponding to this section.~~

17 ~~—— (b) Section 81a, 82, 83, 84, or 86.~~

18 ~~—— (c) A law of another state or an ordinance of a political~~
 19 ~~subdivision of another state substantially corresponding to this~~
 20 ~~section or section 81a, 82, 83, 84, or 86.~~

21 (4) An individual who commits an assault or an assault and
 22 battery in violation of subsection (2), and who has 2 or more
 23 ~~previous~~ **prior** convictions for assaulting or assaulting and
 24 battering his or her spouse or former spouse, an individual with
 25 whom he or she has or has had a dating relationship, an
 26 individual with whom he or she has had a child in common, or a
 27 resident or former resident of his or her household ~~—, under any~~

1 ~~of the following,~~ is guilty of a felony punishable by
 2 imprisonment for not more than 2 years or a fine of not more than
 3 \$2,500.00, or both. ~~—~~

4 ~~—— (a) This section or an ordinance of a political subdivision~~
 5 ~~of this state substantially corresponding to this section.~~

6 ~~—— (b) Section 81a, 82, 83, 84, or 86.~~

7 ~~—— (c) A law of another state or an ordinance of a political~~
 8 ~~subdivision of another state substantially corresponding to this~~
 9 ~~section or section 81a, 82, 83, 84, or 86.~~

10 (5) An individual who assaults or assaults and batters his
 11 or her spouse or former spouse, an individual with whom he or she
 12 has or has had a dating relationship, an individual with whom he
 13 or she has had a child in common, or a resident or former
 14 resident of the same household 3 or more times within a 12-month
 15 period is guilty of a felony punishable by imprisonment for not
 16 more than 4 years or a fine of not more than \$2,000.00, or both.
 17 The 3 or more assaults committed within a 12-month period do not
 18 have to have been committed against the same person.

19 (6) ~~—(5)—~~ This section does not apply to an individual using
 20 necessary reasonable physical force in compliance with
 21 section 1312 of the revised school code, 1976 PA 451, MCL
 22 380.1312.

23 (7) ~~—(6)—~~ As used in this section: ~~—, "dating~~

24 (a) **"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 (b) "Prior conviction" means a conviction under any of the
3 following:

4 (i) This section or an ordinance of a political subdivision
5 of this state substantially corresponding to this section.

6 (ii) Section 81a, 82, 83, 84, or 86.

7 (iii) A law of another state or an ordinance of a political
8 subdivision of another state substantially corresponding to this
9 section or section 81a, 82, 83, 84, or 86.

10 Sec. 81a. (1) Except as otherwise provided in this section,
11 a person who assaults **and batters** an individual without a weapon
12 and inflicts serious or aggravated injury upon that individual
13 ~~without intending to commit murder or to inflict great bodily~~
14 ~~harm less than murder~~ is guilty of a ~~misdemeanor~~ **felony**
15 punishable by imprisonment for not more than ~~1 year~~ **4 years** or
16 a fine of not more than ~~\$1,000.00~~ **\$2,000.00**, or both.

17 (2) ~~Except as provided in subsection (3), an~~ **An** individual
18 who assaults **and batters** his or her spouse or former spouse, an
19 individual with whom he or she has or has had a dating
20 relationship, an individual with whom he or she has had a child
21 in common, or a resident or former resident of the same household
22 without a weapon and inflicts serious or aggravated injury upon
23 that individual ~~without intending to commit murder or to inflict~~
24 ~~great bodily harm less than murder~~ is guilty of a ~~misdemeanor~~
25 **felony** punishable by imprisonment for not more than ~~1 year~~ **4**
26 **years** or a fine of not more than ~~\$1,000.00~~ **\$2,000.00**, or both.

27 ~~(3) An individual who commits an assault and battery in~~

~~1 violation of subsection (2), and who has 1 or more previous~~
~~2 convictions for assaulting or assaulting and battering his or her~~
~~3 spouse or former spouse, an individual with whom he or she has or~~
~~4 has had a dating relationship, an individual with whom he or she~~
~~5 has had a child in common, or a resident or former resident of~~
~~6 the same household, in violation of any of the following, is~~
~~7 guilty of a felony punishable by imprisonment for not more than~~
~~8 2 years or a fine of not more than \$2,500.00, or both:~~

~~9 — (a) This section or an ordinance of a political subdivision~~
~~10 of this state substantially corresponding to this section.~~

~~11 — (b) Section 81, 82, 83, 84, or 86.~~

~~12 — (c) A law of another state or an ordinance of a political~~
~~13 subdivision of another state substantially corresponding to this~~
~~14 section or section 81, 82, 83, 84, or 86.~~

15 (3) ~~—(4)~~ As used in this section: ~~—, "dating~~

16 (a) **"Dating** relationship" means frequent, intimate
 17 associations primarily characterized by the expectation of
 18 affectional involvement. This term does not include a casual
 19 relationship or an ordinary fraternization between 2 individuals
 20 in a business or social context.

21 (b) **"Serious or aggravated injury"** means any physical injury
 22 that seriously impairs a person's health or physical well-being,
 23 including, but not limited to, a bone fracture, dislocation,
 24 sprain, internal injury, burn or scald, or severe cut.

25 Sec. 81b. The following provisions apply in any case in
 26 which the prosecuting attorney seeks an enhanced sentence under
 27 section 81(3) or (4) or ~~81a(3)~~ **81e(3)**:

1 (a) The charging document or amended charging document shall
2 include a notice provision that states that the prosecuting
3 attorney intends to seek an enhanced sentence under section 81(3)
4 or (4) or ~~81a(3)~~ **81e(3)** and lists the prior conviction or
5 convictions that will be relied upon for that purpose. The
6 notice shall be separate and distinct from the language charging
7 the current offense, and shall not be read or otherwise disclosed
8 to the jury if the case proceeds to trial before a jury.

9 (b) The defendant's prior conviction or convictions shall be
10 established at sentencing. The existence of a prior conviction
11 and the factual circumstances establishing the required
12 relationship between the defendant and the victim of the prior
13 assault or assault and battery may be established by any evidence
14 that is relevant for that purpose, including, but not limited to,
15 1 or more of the following:

16 (i) A copy of a judgment of conviction.

17 (ii) A transcript of a prior trial, plea-taking, or
18 sentencing proceeding.

19 (iii) Information contained in a presentence report.

20 (iv) A statement by the defendant.

21 (c) The defendant or his or her attorney shall be given an
22 opportunity to deny, explain, or refute any evidence or
23 information relating to the defendant's prior conviction or
24 convictions before the sentence is imposed, and shall be
25 permitted to present evidence relevant for that purpose unless
26 the court determines and states upon the record that the
27 challenged evidence or information will not be considered as a

1 basis for imposing an enhanced sentence under section 81(3) or
2 (4) or ~~81a(3)~~ **81e(3)**.

3 (d) A prior conviction may be considered as a basis for
4 imposing an enhanced sentence under section 81(3) or (4) or
5 ~~81a(3)~~ **81e(3)** if the court finds the existence of both of the
6 following by a preponderance of the evidence:

7 (i) The prior conviction.

8 (ii) 1 or more of the required relationships between the
9 defendant and the victim of the prior assault or assault and
10 battery.

11 **Sec. 81e. (1) A person who causes physical injury by**
12 **assaulting and battering another person is guilty of a**
13 **misdemeanor punishable by imprisonment for not more than 1 year**
14 **or a fine of not more than \$1,000.00, or both.**

15 (2) Except as provided in subsection (3), an individual who
16 causes physical injury by assaulting and battering his or her
17 spouse or former spouse, an individual with whom he or she has
18 had a dating relationship, an individual with whom he or she has
19 had a child in common, or a resident or former resident of the
20 same household is guilty of a misdemeanor punishable by
21 imprisonment for not more than 1 year or a fine of not more than
22 \$1,000.00, or both.

23 (3) An individual who violates subsection (2) and who has a
24 prior conviction for assaulting or assaulting and battering his
25 or her spouse or former spouse, an individual with whom he or she
26 has or has had a dating relationship, an individual with whom he
27 or she has had a child in common, or a resident or former

1 resident of the same household is guilty of a felony punishable
2 by imprisonment for not more than 2 years or a fine of not more
3 than \$2,500.00, or both.

4 (4) As used in this section:

5 (a) "Physical injury" means any injury to a person's physical
6 condition.

7 (b) "Prior conviction" means a conviction under any of the
8 following:

9 (i) This section or an ordinance of a political subdivision
10 of this state substantially corresponding to this section.

11 (ii) Section 81a, 82, 83, 84, or 86.

12 (iii) A law of another state or an ordinance of a political
13 subdivision of another state substantially corresponding to this
14 section or section 81a, 82, 83, 84, or 86.

15 (c) "Dating relationship" means frequent intimate
16 associations primarily characterized by the expectation of
17 affectional involvement. This term does not include a casual
18 relationship or an ordinary fraternization between 2 individuals
19 in a business or social context.

20 Sec. 82. (1) Except as provided in subsection (2), (3), or
21 (4), a person who assaults another person with a ~~gun, revolver,~~
22 ~~pistol, knife, iron bar, club, brass knuckles, or other~~
23 ~~dangerous weapon, without intending to commit murder or to~~
24 ~~inflict great bodily harm less than murder~~ or an article used or
25 fashioned in a manner to lead the assaulted person to reasonably
26 believe it to be a dangerous weapon, is guilty of a felony
27 punishable by imprisonment for not more than 4 years or a fine of

1 not more than \$2,000.00, or both.

2 (2) A person who violates subsection (1) and causes physical
3 injury to another person is guilty of a felony punishable by
4 imprisonment for not more than 10 years or a fine of not more
5 than \$5,000.00, or both.

6 (3) A person who violates subsection (1) and causes serious
7 impairment of a body function to another person is guilty of a
8 felony punishable by imprisonment for not more than 20 years or a
9 fine of not more than \$25,000.00, or both.

10 (4) ~~-(2)-~~ A person who violates subsection (1) in a weapon
11 free school zone is guilty of a felony punishable by 1 or more of
12 the following:

13 (a) Imprisonment for not more than 4 years.

14 (b) Community service for not more than 150 hours.

15 (c) A fine of not more than \$6,000.00.

16 (5) ~~-(3)-~~ As used in this section:

17 (a) "Dangerous weapon" includes, but is not limited to, a
18 gun, revolver, pistol, knife, iron bar, club, and brass knuckles.

19 (b) ~~-(a)-~~ "School" means a public, private, denominational,
20 or parochial school offering developmental kindergarten,
21 kindergarten, or any grade from 1 through 12.

22 (c) ~~-(b)-~~ "School property" means a building, playing field,
23 or property used for school purposes to impart instruction to
24 children or used for functions and events sponsored by a school,
25 except a building used primarily for adult education or college
26 extension courses.

27 (d) ~~-(e)-~~ "Weapon free school zone" means school property and

1 a vehicle used by a school to transport students to or from
2 school property.

3 (e) "Physical injury" means any injury to a person's physical
4 condition.

5 (f) "Serious impairment of a body function" includes, but is
6 not limited to, 1 or more of the following:

7 (i) Loss of a limb or use of a limb.

8 (ii) Loss of a hand, foot, finger, or thumb, or use of a
9 hand, foot, finger, or thumb.

10 (iii) Loss of an eye or ear, or the use of an eye or ear.

11 (iv) Loss or substantial impairment of a bodily function.

12 (v) Serious visible disfigurement.

13 (vi) A comatose state that lasts for more than 3 days.

14 (vii) Measurable brain damage or mental impairment.

15 (viii) A skull fracture or other serious bone fracture.

16 (ix) Subdural hemorrhage or subdural hematoma.

17 Sec. 84. (1) ~~Assault with intent to do great bodily harm~~
18 ~~less than murder~~ Any Except as provided in subsection (2), a
19 person who ~~shall assault~~ assaults another person with intent to
20 do great bodily harm ~~— less than the crime of murder, shall be~~
21 is guilty of a felony punishable by imprisonment ~~in the state~~
22 ~~prison~~ for not more than 10 years, or by a fine of not more than
23 ~~5,000 dollars~~ \$5,000.00, or both.

24 (2) A person who violates subsection (1) and causes serious
25 impairment of a body function to another person is guilty of a
26 felony punishable by imprisonment for not more than 20 years or a
27 fine of not more than \$25,000.00, or both.

1 (3) As used in this section, "serious impairment of a body
2 function" includes, but is not limited to, 1 or more of the
3 following:

4 (a) Loss of a limb or use of a limb.

5 (b) Loss of a hand, foot, finger, or thumb, or use of a
6 hand, foot, finger, or thumb.

7 (c) Loss of an eye or ear, or the use of an eye or ear.

8 (d) Loss or substantial impairment of a bodily function.

9 (e) Serious visible disfigurement.

10 (f) A comatose state that lasts for more than 3 days.

11 (g) Measurable brain damage or mental impairment.

12 (h) A skull fracture or other serious bone fracture.

13 (i) Subdural hemorrhage or subdural hematoma.