

HOUSE BILL No. 6516

September 24, 2008, Introduced by Reps. Simpson, Brown, Angerer, Valentine, Condino, Griffin, Robert Jones, Donigan, Wojno, Warren, Byrnes, Alma Smith, Bauer, Hammel, Kathleen Law, Dean, Hammon, Meadows and Spade 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 2006 PA 663 and section 16d of chapter XVII as amended by 2005 PA 336.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 4a. (1) When an individual who has not been convicted previously of an assaultive crime pleads guilty to, or is found guilty of, a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, and the victim of the assault is the offender's spouse or former spouse, an individual

1 who has had a child in common with the offender, an individual
2 who has or has had a dating relationship with the offender, or an
3 individual residing or having resided in the same household as
4 the offender, the court, without entering a judgment of guilt and
5 with the consent of the accused and of the prosecuting attorney
6 in consultation with the victim, may defer further proceedings
7 and place the accused on probation as provided in this section.
8 However, before deferring proceedings under this subsection, the
9 court shall contact the department of state police and determine
10 whether, according to the records of the department of state
11 police, the accused has previously been convicted of an
12 assaultive crime or has previously availed himself or herself of
13 this section. If the search of the records reveals an arrest for
14 an assaultive crime but no disposition, the court shall contact
15 the arresting agency and the court that had jurisdiction over the
16 violation to determine the disposition of that arrest for
17 purposes of this section.

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

21 (3) An order of probation entered under subsection (1) may
22 include any condition of probation authorized under section 3 of
23 chapter XI of the code of criminal procedure, 1927 PA 175, MCL
24 771.3, including, but not limited to, requiring the accused to
25 participate in a mandatory counseling program. The court may
26 order the accused to pay the reasonable costs of the mandatory
27 counseling program. The court also may order the accused to

1 participate in a drug treatment court under chapter 10A of the
2 revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to
3 600.1082. The court may order the defendant to be imprisoned for
4 not more than 12 months at the time or intervals, which may be
5 consecutive or nonconsecutive and within the period of probation,
6 as the court determines. However, the period of imprisonment
7 shall not exceed the maximum period of imprisonment authorized
8 for the offense if the maximum period is less than 12 months. The
9 court may permit day parole as authorized under 1962 PA 60, MCL
10 801.251 to 801.258. The court may permit a work or school release
11 from jail.

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

15 (a) The accused commits an assaultive crime during the
16 period of probation.

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

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

21 (5) Upon fulfillment of the terms and conditions, the court
22 shall discharge the person and dismiss the proceedings against
23 the person. Discharge and dismissal under this section shall be
24 without adjudication of guilt and is not a conviction for
25 purposes of this section or for purposes of disqualifications or
26 disabilities imposed by law upon conviction of a crime, **BUT IS A**
27 **PRIOR CONVICTION FOR PURPOSES OF SECTIONS 81(3) AND (4) AND**

1 81A(3) OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81 AND
2 750.81A.

3 (6) There may be only 1 discharge and dismissal under this
4 section with respect to any individual. The department of state
5 police shall retain a nonpublic record of an arrest and discharge
6 and dismissal under this section. This record shall be furnished
7 to a court or police agency upon request pursuant to subsection
8 (1) or to an office of prosecuting attorney for the purpose of
9 showing that a defendant in a criminal action under section 81 or
10 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and
11 750.81a, or a local ordinance substantially corresponding to
12 section 81 of that act has already once availed himself or
13 herself of this section or for the purpose of determining whether
14 the defendant in a criminal action is eligible for discharge and
15 dismissal of proceedings by a drug treatment court under section
16 1076(5) of the revised judicature act of 1961, 1961 PA 236, MCL
17 600.1076.

18 (7) As used in this section:

19 (a) "Assaultive crime" means 1 or more of the following:

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

21 (ii) A violation of chapter XI of the Michigan penal code,
22 1931 PA 328, MCL 750.81 to 750.90g.

23 (iii) A violation of a law of another state or of a local
24 ordinance of a political subdivision of this state or of another
25 state substantially corresponding to a violation described in
26 subparagraph (i) or (ii).

27 (b) "Dating relationship" means frequent, intimate

1 associations primarily characterized by the expectation of
 2 affectional involvement. This term does not include a casual
 3 relationship or an ordinary fraternization between 2 individuals
 4 in a business or social context.

CHAPTER XVII

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

8	M.C.L.	Category	Class	Description	Stat Max
9	750.81(4)	Person	GE	Domestic assault with prior convictions	25
10	750.81a(3)	Person	GE	Aggravated domestic assault with prior convictions	25
11	750.81d(1)	Person	G	Assaulting, resisting, or obstructing certain persons	2
12	750.81d(2)	Person	F	Assaulting, resisting, or obstructing certain persons causing injury	4
13	750.81d(3)	Person	C	Assaulting, resisting, or obstructing certain persons causing serious impairment	15
14	750.81d(4)	Person	B	Assaulting, resisting, or obstructing certain persons causing death	20
15	750.82(1)	Person	F	Felonious assault	4

1	750.82(2)	Person	F	Felonious assault – weapon-free school zone	4
2	750.83	Person	A	Assault with intent to murder	Life
3	750.84	Person	D	Assault with intent to do great bodily harm less than murder	10
4	750.85	Person	A	Torture	Life
5	750.86	Person	D	Assault with intent to maim	10
6	750.87	Person	D	Assault with intent to commit a felony	10
7	750.88	Person	C	Assault with intent to commit unarmed robbery	15
8	750.89	Person	A	Assault with intent to commit armed robbery	Life
9	750.90	Person	D	Sexual intercourse under pretext of medical treatment	10
10	750.90a	Person	A	Assault against a pregnant individual causing miscarriage, stillbirth, or death to embryo or fetus with intent or recklessness	Life
11	750.90b(a)	Person	C	Assault against a pregnant individual resulting in miscarriage, stillbirth, or death to embryo or fetus	15

1	750.90b(b)	Person	D	Assault against a pregnant individual resulting in great bodily harm to embryo or fetus	10
2	750.90c(a)	Person	C	Gross negligence against a pregnant individual resulting in miscarriage, stillbirth, or death to embryo or fetus	15
3	750.90c(b)	Person	E	Gross negligence against a pregnant individual resulting in great bodily harm to embryo or fetus	5
4	750.90d(a)	Person	C	Operating a vehicle under the influence or while impaired causing miscarriage, stillbirth, or death to embryo or fetus	15
5	750.90d(b)	Person	E	Operating a vehicle under the influence or while impaired causing serious or aggravated injury to embryo or fetus	5
6	750.90e	Person	G	Careless or reckless driving causing miscarriage, stillbirth, or death to embryo or fetus	2
7	750.90g(3)	Person	A	Performance of procedure on live infant with intent to cause death	Life
8	750.91	Person	A	Attempted murder	Life

9 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect
3 unless all of the following bills of the 94th Legislature are
4 enacted into law:

5 (a) Senate Bill No. ____ or House Bill No. 6522(request no.
6 06312'07 *).

7 (b) Senate Bill No. ____ or House Bill No. 6517(request no.
8 06312'08 b).