

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 633

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 4a of chapter IX (MCL 769.4a), as amended by
2006 PA 663.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER IX

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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
who has had a child in common with the offender, an individual who
has or has had a dating relationship with the offender, or an
individual residing or having resided in the same household as the

1 offender, the court, without entering a judgment of guilt and with
2 the consent of the accused and of the prosecuting attorney in
3 consultation with the victim, may defer further proceedings and
4 place the accused on probation as provided in this section.

5 However, before deferring proceedings under this subsection, the
6 court shall contact the department of state police and determine
7 whether, according to the records of the department of state
8 police, the accused has previously been convicted of an assaultive
9 crime or has previously availed himself or herself of this section.

10 If the search of the records reveals an arrest for an assaultive
11 crime but no disposition, the court shall contact the arresting
12 agency and the court that had jurisdiction over the violation to
13 determine the disposition of that arrest for purposes of this
14 section.

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

18 (3) An order of probation entered under subsection (1) may
19 include any condition of probation authorized under section 3 of
20 chapter XI, ~~of the code of criminal procedure, 1927 PA 175, MCL~~
21 ~~771.3,~~ including, but not limited to, requiring the accused to
22 participate in a mandatory counseling program. The court may order
23 the accused to pay the reasonable costs of the mandatory counseling
24 program. The court also may order the accused to participate in a
25 drug treatment court under chapter 10A of the revised judicature
26 act of 1961, 1961 PA 236, MCL 600.1060 to ~~600.1082.~~ **600.1084.** The
27 court may order the defendant to be imprisoned for not more than 12

1 months at the time or intervals, which may be consecutive or
2 nonconsecutive and within the period of probation, as the court
3 determines. However, the period of imprisonment shall not exceed
4 the maximum period of imprisonment authorized for the offense if
5 the maximum period is less than 12 months. The court may permit day
6 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The
7 court may permit a work or school release from jail.

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

11 (a) The accused commits an assaultive crime during the period
12 of probation.

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

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

17 (5) Upon fulfillment of the terms and conditions, the court
18 shall discharge the person and dismiss the proceedings against the
19 person. Discharge and dismissal under this section shall be without
20 adjudication of guilt and is not a conviction for purposes of this
21 section or for purposes of disqualifications or disabilities
22 imposed by law upon conviction of a crime, **BUT IT IS A PRIOR**
23 **CONVICTION IN A PROSECUTION UNDER SECTIONS 81(3) AND (4) AND 81A(3)**
24 **OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81 AND 750.81A.**

25 ~~—(6)—There may~~ **SHALL** be only 1 discharge and dismissal under
26 this section with respect to any individual. ~~The department of~~
27 ~~state police shall retain a nonpublic record of an arrest and~~

~~discharge and dismissal under this section. This record shall be furnished to a court or police agency upon request pursuant to subsection (1) or to an office of prosecuting attorney for the purpose of showing that a defendant in a criminal action under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act has already once availed himself or herself of this section or for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(5) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.~~

(6) ALL COURT PROCEEDINGS UNDER THIS SECTION SHALL BE OPEN TO THE PUBLIC. EXCEPT AS PROVIDED IN SUBSECTION (7), IF THE RECORD OF PROCEEDINGS AS TO THE DEFENDANT IS DEFERRED UNDER THIS SECTION, THE RECORD OF PROCEEDINGS DURING THE PERIOD OF DEFERRAL SHALL BE CLOSED TO PUBLIC INSPECTION.

(7) UNLESS THE COURT ENTERS A JUDGMENT OF GUILT UNDER THIS SECTION, THE DEPARTMENT OF STATE POLICE SHALL RETAIN A NONPUBLIC RECORD OF THE ARREST, COURT PROCEEDINGS, AND DISPOSITION OF THE CRIMINAL CHARGE UNDER THIS SECTION. HOWEVER, THE NONPUBLIC RECORD SHALL BE OPEN TO THE FOLLOWING INDIVIDUALS AND ENTITIES FOR THE PURPOSES NOTED:

(A) THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND PROSECUTING ATTORNEYS FOR USE ONLY IN THE PERFORMANCE OF THEIR DUTIES.

(B) THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND

1 PROSECUTING ATTORNEYS FOR EITHER OF THE FOLLOWING PURPOSES:

2 (i) SHOWING THAT A DEFENDANT IN A CRIMINAL ACTION UNDER SECTION
3 81 OR 81A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81 AND
4 750.81A, OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO
5 SECTION 81 OF THAT ACT HAS ALREADY ONCE AVAILED HIMSELF OR HERSELF
6 OF THIS SECTION.

7 (ii) DETERMINING WHETHER THE DEFENDANT IN A CRIMINAL ACTION IS
8 ELIGIBLE FOR DISCHARGE AND DISMISSAL OF PROCEEDINGS BY A DRUG
9 TREATMENT COURT UNDER SECTION 1076(5) OF THE REVISED JUDICATURE ACT
10 OF 1961, 1961 PA 236, MCL 600.1076.

11 (C) THE DEPARTMENT OF CORRECTIONS FOR ASCERTAINING
12 PREEMPLOYMENT CRIMINAL HISTORY OR TO DETERMINE WHETHER A DEPARTMENT
13 OF CORRECTIONS EMPLOYEE HAS VIOLATED CONDITIONS OF EMPLOYMENT.

14 (D) THE DEPARTMENT OF HUMAN SERVICES FOR ENFORCING CHILD
15 PROTECTION LAWS AND VULNERABLE ADULT PROTECTION LAWS OR
16 ASCERTAINING THE PREEMPLOYMENT CRIMINAL HISTORY OF ANY INDIVIDUAL
17 WHO WILL BE ENGAGED IN THE ENFORCEMENT OF CHILD PROTECTION LAWS OR
18 VULNERABLE ADULT PROTECTION LAWS.

19 (8) ~~(7)~~As used in this section:

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

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

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

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

1 (b) "Dating relationship" means frequent, intimate
2 associations primarily characterized by the expectation of
3 affectional involvement. This term does not include a casual
4 relationship or an ordinary fraternization between 2 individuals in
5 a business or social context.

6 Enacting section 1. This amendatory act takes effect April 1,
7 2013.