

SENATE BILL No. 633

September 8, 2011, Introduced by Senators SMITH, JONES, GLEASON, MARLEAU, BIEDA, PROOS
and PAPPAGEORGE 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 (MCL 769.4a), as amended by
2006 PA 663.

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
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
offender, the court, without entering a judgment of guilt and with

1 the consent of the accused and of the prosecuting attorney in
2 consultation with the victim, may defer further proceedings and
3 place the accused on probation as provided in this section.
4 However, before deferring proceedings under this subsection, the
5 court shall contact the department of state police and determine
6 whether, according to the records of the department of state
7 police, the accused has previously been convicted of an assaultive
8 crime or has previously availed himself or herself of this section.
9 If the search of the records reveals an arrest for an assaultive
10 crime but no disposition, the court shall contact the arresting
11 agency and the court that had jurisdiction over the violation to
12 determine the disposition of that arrest for purposes of this
13 section.

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

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

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

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

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

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

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

16 (5) Upon fulfillment of the terms and conditions, the court
17 shall discharge the person and dismiss the proceedings against the
18 person. Discharge and dismissal under this section shall be without
19 adjudication of guilt and is not a conviction for purposes of this
20 section or for purposes of disqualifications or disabilities
21 imposed by law upon conviction of a crime.

22 (6) There may be only 1 discharge and dismissal under this
23 section with respect to any individual. The department of state
24 police shall retain a nonpublic record of an arrest, **DIVERSION**, and
25 discharge and dismissal under this section. This record shall be
26 furnished to a court or police agency upon request pursuant to
27 subsection (1) or to an office of prosecuting attorney for the

1 purpose of showing that a defendant in a criminal action under
2 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL
3 750.81 and 750.81a, or a local ordinance substantially
4 corresponding to section 81 of that act has already once availed
5 himself or herself of this section or for the purpose of
6 determining whether the defendant in a criminal action is eligible
7 for discharge and dismissal of proceedings by a drug treatment
8 court under section 1076(5) of the revised judicature act of 1961,
9 1961 PA 236, MCL 600.1076.

10 (7) As used in this section:

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

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

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

15 (iii) A violation of a law of another state or of a local
16 ordinance of a political subdivision of this state or of another
17 state substantially corresponding to a violation described in
18 subparagraph (i) or (ii).

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