

HOUSE BILL No. 4968

September 12, 2013, Introduced by Reps. Heise, Cotter, O'Brien and Nesbitt 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
2012 PA 550.

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, including, but not limited to, requiring the accused to
20 participate in a mandatory counseling program. The court may order
21 the accused to pay the reasonable costs of the mandatory counseling
22 program. The court also may order the accused to participate in a
23 drug treatment court under chapter 10A of the revised judicature
24 act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084. The court may
25 order the defendant to be imprisoned for not more than 12 months at
26 the time or intervals, which may be consecutive or nonconsecutive
27 and within the period of probation, as the court determines.

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

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

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

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

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

15 (5) Upon fulfillment of the terms and conditions, the court
16 shall discharge the person and dismiss the proceedings against the
17 person. Discharge and dismissal under this section shall be without
18 adjudication of guilt and is not a conviction for purposes of this
19 section or for purposes of disqualifications or disabilities
20 imposed by law upon conviction of a crime, but it is a prior
21 conviction in a prosecution under sections 81(3) and (4) and 81a(3)
22 of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a.
23 There shall be only 1 discharge and dismissal under this section
24 with respect to any individual.

25 (6) All court proceedings under this section shall be open to
26 the public. Except as provided in subsection (7), if the record of
27 proceedings as to the defendant is deferred under this section, the

1 record of proceedings during the period of deferral shall be closed
2 to public inspection.

3 (7) Unless the court enters a judgment of guilt under this
4 section, the department of state police shall retain a nonpublic
5 record of the arrest, court proceedings, and disposition of the
6 criminal charge under this section. However, the nonpublic record
7 shall be open to the following individuals and entities for the
8 purposes noted:

9 (a) The courts of this state, law enforcement personnel, **THE**
10 **DEPARTMENT OF CORRECTIONS**, and prosecuting attorneys for use only
11 in the performance of their duties.

12 (b) The courts of this state, law enforcement personnel, and
13 prosecuting attorneys for either of the following purposes:

14 (i) Showing that a defendant in a criminal action under section
15 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and
16 750.81a, or a local ordinance substantially corresponding to
17 section 81 of that act has already once availed himself or herself
18 of this section.

19 (ii) Determining whether the defendant in a criminal action is
20 eligible for discharge and dismissal of proceedings by a drug
21 treatment court under section 1076(5) of the revised judicature act
22 of 1961, 1961 PA 236, MCL 600.1076.

23 ~~—— (c) The department of corrections for ascertaining~~
24 ~~preemployment criminal history or to determine whether a department~~
25 ~~of corrections employee has violated conditions of employment.~~

26 (C) ~~(d)~~ The department of human services for enforcing child
27 protection laws and vulnerable adult protection laws or

1 ascertaining the preemployment criminal history of any individual
2 who will be engaged in the enforcement of child protection laws or
3 vulnerable adult protection laws.

4 (8) As used in this section:

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

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

7 (ii) A violation of chapter XI of the Michigan penal code, 1931
8 PA 328, MCL 750.81 to 750.90h.

9 (iii) A violation of a law of another state or of a local
10 ordinance of a political subdivision of this state or of another
11 state substantially corresponding to a violation described in
12 subparagraph (i) or (ii).

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