

**SUBSTITUTE FOR  
SENATE BILL NO. 845**

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

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

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1 discharge and dismissal under this section. This record shall be  
2 furnished to a court or police agency upon request ~~pursuant to~~  
3 **UNDER** subsection (1) or to an office of prosecuting attorney for  
4 the purpose of showing that a defendant in a criminal action under  
5 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL  
6 750.81 and 750.81a, or a local ordinance substantially  
7 corresponding to section 81 of that act has already once availed  
8 himself or herself of this section or for the purpose of  
9 determining whether the defendant in a criminal action is eligible  
10 for discharge and dismissal of proceedings by a drug treatment  
11 court under section 1076(5) of the revised judicature act of 1961,  
12 1961 PA 236, MCL 600.1076.

13 (7) As used in this section:

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

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

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

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

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

27 Enacting section 1. This amendatory act takes effect [\[April 1,](#)

1 Senate Bill No. 845 (S-2) as amended November 28, 2012  
2013.]