

SENATE BILL No. 845

November 10, 2011, Introduced by Senators JONES, ROCCA, BRANDENBURG, HANSEN, PROOS and WARREN 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:

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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

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

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

20 (3) An order of probation entered under subsection (1) may
21 include any condition of probation authorized under section 3 of
22 chapter XI of the code of criminal procedure, 1927 PA 175, MCL
23 771.3, including, but not limited to, requiring the accused to
24 participate in a mandatory counseling program. The court may order
25 the accused to pay the reasonable costs of the mandatory counseling
26 program. The court also may order the accused to participate in a
27 drug treatment court under chapter 10A of the revised judicature

1 act of 1961, 1961 PA 236, MCL 600.1060 to ~~600.1082.~~ **600.1084.** The
2 court may order the defendant to be imprisoned for not more than 12
3 months at the time or intervals, which may be consecutive or
4 nonconsecutive and within the period of probation, as the court
5 determines. However, the period of imprisonment shall not exceed
6 the maximum period of imprisonment authorized for the offense if
7 the maximum period is less than 12 months. The court may permit day
8 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The
9 court may permit a work or school release from jail.

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

13 (a) The accused commits an assaultive crime during the period
14 of probation.

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

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

19 (5) Upon fulfillment of the terms and conditions, the court
20 shall discharge the person and dismiss the proceedings against the
21 person. ~~Discharge~~ **EXCEPT AS PROVIDED IN THIS SUBSECTION, DISCHARGE**
22 and dismissal under this section shall be without adjudication of
23 guilt and is not a conviction for purposes of this section or for
24 purposes of disqualifications or disabilities imposed by law upon
25 conviction of a crime. **HOWEVER, A DEFERRAL AND DISMISSAL UNDER THIS**
26 **SECTION CONSTITUTES A PRIOR CONVICTION IN A PROSECUTION UNDER**
27 **SECTION 81(3) OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81.**

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

15 (7) As used in this section:

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

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

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

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

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

1 a business or social context.