



HOUSE BILL No. 4325

February 23, 1993, Introduced by Reps. Yokich, DeMars, Byrum, Gire, Baade, Dolan, Johnson, Clack, Gubow, Profit, Freeman and McBryde and referred to the Committee on Judiciary.

A bill to amend sections 81 and 81a of Act No. 328 of the Public Acts of 1931, entitled as amended

"The Michigan penal code,"

being sections 750.81 and 750.81a of the Michigan Compiled Laws; and to add section 81b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 81 and 81a of Act No. 328 of the Public
2 Acts of 1931, being sections 750.81 and 750.81a of the Michigan
3 Compiled Laws, are amended and section 81b is added to read as
4 follows:

5 Sec. 81. (1) ~~Assault and assault and battery~~ Any A
6 person who ~~shall be convicted of an assault or an assault and~~
7 ~~battery where~~ ASSAULTS OR ASSAULTS AND BATTERS ANOTHER PERSON,
8 IF no other punishment is prescribed ~~shall be~~ BY LAW, IS guilty

1 of a misdemeanor PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90
2 DAYS OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.

3 (2) EXCEPT AS PROVIDED IN SUBSECTION (3) OR (4), A PERSON
4 WHO ASSAULTS OR ASSAULTS AND BATTERS HIS OR HER SPOUSE OR FORMER
5 SPOUSE, OR A RESIDENT OR FORMER RESIDENT OF HIS OR HER HOUSEHOLD,
6 IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT
7 MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.

8 (3) A PERSON WHO ASSAULTS OR ASSAULTS AND BATTERS HIS OR HER
9 SPOUSE OR FORMER SPOUSE, OR A RESIDENT OR FORMER RESIDENT OF HIS
10 OR HER HOUSEHOLD, IN VIOLATION OF SUBSECTION (2), AND WHO HAS
11 PREVIOUSLY BEEN CONVICTED OF ASSAULTING OR ASSAULTING AND BATTER-
12 ING HIS OR HER SPOUSE OR FORMER SPOUSE, OR A RESIDENT OR FORMER
13 RESIDENT OF HIS OR HER HOUSEHOLD, IN VIOLATION OF THIS SECTION OR
14 SECTION 81A, 82, 83, 84, OR 86, MAY BE PUNISHED BY IMPRISONMENT
15 FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$500.00, OR
16 BOTH.

17 (4) A PERSON WHO ASSAULTS OR ASSAULTS AND BATTERS HIS OR HER
18 SPOUSE OR FORMER SPOUSE, OR A RESIDENT OR FORMER RESIDENT OF HIS
19 OR HER HOUSEHOLD, IN VIOLATION OF SUBSECTION (2), AND WHO HAS 2
20 OR MORE PREVIOUS CONVICTIONS FOR ASSAULTING OR ASSAULTING AND
21 BATTERING HIS OR HER SPOUSE OR FORMER SPOUSE, OR A RESIDENT OR
22 FORMER RESIDENT OF HIS OR HER HOUSEHOLD, IN VIOLATION OF THIS
23 SECTION OR SECTION 81A, 82, 83, 84, OR 86, IS GUILTY OF A FELONY
24 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF
25 NOT MORE THAN \$1,000.00, OR BOTH.

26 Sec. 81a. (1) ~~Any~~ A person who ~~shall assault~~ ASSAULTS
27 another PERSON without ~~any~~ A weapon and ~~inflict~~ INFLICTS

1 serious or aggravated injury upon ~~the~~ THAT person ~~of another~~
2 without intending to commit ~~the crime of~~ murder ~~, and without~~
3 ~~intending~~ OR to inflict great bodily harm less than ~~the crime~~
4 ~~of murder~~ ~~, shall be~~ IS guilty of a misdemeanor ~~, punishable~~
5 by imprisonment ~~in the county jail or the state prison~~ for ~~a~~
6 ~~period of~~ not more than 1 year ~~, or~~ A fine of NOT MORE THAN
7 \$500.00, or both.

8 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A PERSON WHO
9 ASSAULTS HIS OR HER SPOUSE OR FORMER SPOUSE, OR A RESIDENT OR
10 FORMER RESIDENT OF HIS OR HER HOUSEHOLD, WITHOUT A WEAPON AND
11 INFLECTS SERIOUS OR AGGRAVATED INJURY UPON THAT PERSON WITHOUT
12 INTENDING TO COMMIT MURDER OR TO INFLECT GREAT BODILY HARM LESS
13 THAN MURDER IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
14 FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$500.00, OR
15 BOTH.

16 (3) A PERSON WHO ASSAULTS HIS OR HER SPOUSE OR FORMER
17 SPOUSE, OR A RESIDENT OR FORMER RESIDENT OF HIS OR HER HOUSEHOLD,
18 IN VIOLATION OF SUBSECTION (2), AND WHO HAS 2 OR MORE PREVIOUS
19 CONVICTIONS FOR ASSAULTING OR ASSAULTING AND BATTERING HIS OR HER
20 SPOUSE OR FORMER SPOUSE, OR A RESIDENT OR FORMER RESIDENT OF HIS
21 OR HER HOUSEHOLD, IN VIOLATION OF THIS SECTION OR SECTION 81, 82,
22 83, 84, OR 86, IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT
23 FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$1,000.00,
24 OR BOTH.

25 SEC. 81B. THE FOLLOWING PROVISIONS APPLY IN ANY CASE IN
26 WHICH THE PROSECUTING ATTORNEY SEEKS AN ENHANCED SENTENCE UNDER
27 SECTION 81(3) OR (4) OR 81A(3):

1 (A) THE CHARGING DOCUMENT OR AMENDED CHARGING DOCUMENT SHALL
2 INCLUDE A NOTICE PROVISION THAT STATES THAT THE PROSECUTING
3 ATTORNEY INTENDS TO SEEK AN ENHANCED SENTENCE UNDER SECTION 81(3)
4 OR (4) OR 81A(3) AND LISTS THE PRIOR CONVICTION OR CONVICTIONS
5 THAT WILL BE RELIED UPON FOR THAT PURPOSE. THE NOTICE SHALL BE
6 SEPARATE AND DISTINCT FROM THE LANGUAGE CHARGING THE CURRENT
7 OFFENSE, AND SHALL NOT BE READ OR OTHERWISE DISCLOSED TO THE JURY
8 IF THE CASE PROCEEDS TO TRIAL BEFORE A JURY.

9 (B) THE DEFENDANT'S PRIOR CONVICTION OR CONVICTIONS SHALL BE
10 ESTABLISHED AT SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION
11 AND THE FACTUAL CIRCUMSTANCES ESTABLISHING THE REQUIRED RELATION-
12 SHIP BETWEEN THE DEFENDANT AND THE VICTIM OF THE PRIOR ASSAULT OR
13 ASSAULT AND BATTERY MAY BE ESTABLISHED BY ANY EVIDENCE THAT IS
14 RELEVANT FOR THAT PURPOSE, INCLUDING, BUT NOT LIMITED TO, 1 OR
15 MORE OF THE FOLLOWING:

16 (i) A COPY OF A JUDGMENT OF CONVICTION.

17 (ii) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR SENTENC-
18 ING PROCEEDING.

19 (iii) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

20 (iv) A STATEMENT BY THE DEFENDANT.

21 (C) THE DEFENDANT OR HIS OR HER ATTORNEY SHALL BE GIVEN AN
22 OPPORTUNITY TO DENY, EXPLAIN, OR REFUTE ANY EVIDENCE OR INFORMA-
23 TION RELATING TO THE DEFENDANT'S PRIOR CONVICTION OR CONVICTIONS
24 BEFORE THE SENTENCE IS IMPOSED, AND SHALL BE PERMITTED TO PRESENT
25 EVIDENCE RELEVANT FOR THAT PURPOSE UNLESS THE COURT DETERMINES
26 AND STATES UPON THE RECORD THE CHALLENGED EVIDENCE OR INFORMATION

1 WILL NOT BE CONSIDERED AS A BASIS FOR IMPOSING AN ENHANCED
2 SENTENCE UNDER SECTION 81(3) OR (4) OR 81A(3).

3 (D) A PRIOR CONVICTION MAY BE CONSIDERED AS A BASIS FOR
4 IMPOSING AN ENHANCED SENTENCE UNDER SECTION 81(3) OR (4) OR
5 81A(3) IF THE COURT FINDS THE EXISTENCE OF BOTH OF THE FOLLOWING
6 BY A PREPONDERANCE OF THE EVIDENCE:

7 (i) THE PRIOR CONVICTION.

8 (ii) 1 OR MORE OF THE REQUIRED RELATIONSHIPS BETWEEN THE
9 DEFENDANT AND THE VICTIM OF THE PRIOR ASSAULT OR ASSAULT AND
10 BATTERY.