



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 257 (as passed by the Senate)
Sponsor: Senator Stephanie Chang
Committee: Judiciary and Public Safety

Date Completed: 9-25-19

RATIONALE

Section 4a of the Code of Criminal Procedure allows an individual to obtain a deferral for a domestic violence or aggravated domestic violence charge if he or she pleads guilty to or is found guilty of the charge; he or she does not have any previous convictions for domestic or aggravated domestic violence; and the defendant, the prosecutor, in consultation with the victim, and the judge consent. If the individual successfully completes a probationary period, the charges then are dismissed. Section 4a specifies that a discharge and dismissal is not a conviction.

Public Act 550 of 2012, however, revised Section 4a to specify that a discharge and dismissal under Section 4a is considered a "prior conviction" in a prosecution under Sections 81(3), 81(4), 81a(3) of the Michigan Penal Code (for more information on those sections, see **BACKGROUND**).

Public Act 87 of 2016 revised Section 81 of the Penal Code to prescribe a specific penalty for assaulting or battering a pregnant woman. This provision became Section 81(3) of the Penal Code. The language of Sections 81(3) and 81(4) were retained, but those sections were renumbered as Sections 81(4) and 81(5), respectively. The references to these provisions in Section 4a, however, were not revised to reflect the changes. It has been suggested that the references to the Penal Code in Section 4a be revised to refer to the correct, renumbered domestic violence subsections.

CONTENT

The bill would amend Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure to change, for the purposes of deferred domestic violence proceedings, Michigan Compiled Laws references pertaining to certain assault and battery offenses.

Under Section 4a of Chapter IX of the Code, a court may defer the proceedings against a first-time domestic assault offender, and dismiss the charges after he or she serves a probationary period. An individual may receive only one discharge and dismissal under Section 4a. The discharge and dismissal must be without adjudication of guilt and is not a conviction for purposes of Section 4a or for disqualification or disabilities imposed by law upon conviction of a crime, but it is a prior conviction in a prosecution under Sections 81(3) and (4) and 81a(3) of the Michigan Penal Code.

Instead of Section 81(3) and (4) of the Penal Code, the bill would refer to Sections 81(4) and (5), respectively.

The bill would take effect 90 days after its enactment.

MCL 769.4a

BACKGROUND

Under Section 81a(3) of the Penal Code, except as otherwise provided, an individual who assaults his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of the same household without a weapon and inflicts serious or aggravated injury on that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by up to one years' imprisonment or a maximum fine of \$1,000.00, or both.

An individual who commits an assault and battery against an individual specified above, and who has one or more previous convictions for assault or assaulting and battering that individual, is guilty of a felony punishable by up to five years' imprisonment or a maximum fine of \$5,000, or both.

Formerly, Section 81(3) specified that a person who committed an assault or assault and battery against his or her spouse or former spouse, an individual with whom he or she currently or previously had a dating relationship, an individual with whom he or she had a child in common, or a resident or former resident of his or her household, and who had previously been convicted of assaulting and battering an individual described above was guilty of a misdemeanor punishable by up to one years' imprisonment or a maximum fine of \$1,000, or both.

Section 81(4) specified that a person who committed an assault or assault and battery against an individual described above, and who had two or more previous convictions for assaulting or assaulting and battering that individual, was guilty of a felony punishable by up to five years' imprisonment or a maximum fine of \$5,000, or both.

Public Act 87 of 2016 retained the provisions specified in Sections 81(3) and 81(4), but renumbered them as Sections 81(4) and 81(5), respectively.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Because Section 4a of the Code of Criminal Procedure refers to Sections 81(3) and 81(4) of the Penal Code, prosecutors may use a previous deferral to enhance a defendant's sentence from a domestic violence first offense to a domestic violence second offense under Section 81(4) (previously Section 81(3)), but may not use a previous deferral to seek sentence enhancement for an individual who has two or more previous domestic violence convictions under Section 81(5) (previously Section 81(4)). This is contrary to the Legislature's goal when it amended Section 4a to penalize repeat domestic violence offenders more harshly.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco
Michael Siracuse

SAS\A1920\s257a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.