



JESSICA R. COOPER  
Prosecutor

Paul T. Walton  
Chief Assistant Prosecutor

October 7, 2019

The Honorable Graham Filler  
Chairman, House Committee on Judiciary  
P.O. Box 30014  
Lansing, Michigan 48909

Re: Senate Bill 257

Dear Chairman Filler,

Several years ago, in 2016, there was a legislative change in MCL 750.81 that inadvertently created a situation where a recidivist offender sentenced pursuant to MCLA 769.4a et al (domestic violence deferment) would not be subject to increased judicial sanctions. The Oakland County Prosecutor's Office and PAAM (Prosecuting Attorneys Association of Michigan) had brought this to the attention of the last legislature — and while a fix was promised, it seems to have been forgotten.

Senator Chang, in meetings with the Oakland County Sheriff's Office, has sponsored a bill that would fix this error in numbering issues that have created the above defined conflicts. I have attached the internal memorandum that more completely outlines the issues and the proposed fix.

Every year we are confronted with hundreds of domestic violence cases. The enhancement provisions provided for under MCL 750.81 had proven a useful tool to gaining additional oversight and judicial sentencing options. The failure to renumber MCL 769.4a has hampered our ability to hold a recidivist offender accountable as a recidivist. The Senate Bill sponsored by Senator Chang fixes the numbering issues created by the 2016 legislation and would once again allow us to pursue recidivist abuses and hold them fully accountable as contemplated by the original intent of the bill.

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This legislation passed with unanimous support in the Senate and we hope to get this legislation passed in the House as soon as possible.

Thank you for your time and consideration in advance. If you have any questions, please do not hesitate to call.

Very truly yours,

JESSICA R. COOPER  
PROSECUTING ATTORNEY

A handwritten signature in black ink, appearing to read "Paul T. Walton". The signature is written in a cursive style with a large, sweeping initial "P" that loops around the first part of the name.

Paul T. Walton  
Chief Assistant Prosecuting Attorney



JESSICA R. COOPER  
Prosecutor

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Chief Assistant Prosecutor

MEMORANDUM

TO: PAUL WALTON  
CHIEF ASSISTANT PROSECUTOR

FROM: DANIELLE WALTON  
ASSISTANT PROSECUTING ATTORNEY,  
APPELLATE DIVISION

RE: PROSPECTIVE AMENDMENT TO MCL 769.4a

DATE: JANUARY 11, 2019

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Introduction

Legislation passed in 2013 allowed for more stringent sentences for domestic violence recidivists. However, in 2016, one of the affected statutes was renumbered which does not allow much of the 2013 legislative amendments to have the intended effect.

2013 Legislation

MCL 769.4a allows for deferral of some domestic violence convictions after consultation with the victim. In 2013, by passage of Public Act 222, the Legislature amended this statute so that when an individual had received a deferral in the past, but commits another domestic-violence related crime, this past deferral would be treated as a conviction for enhancement purposes for the defendant's subsequent domestic-violence related conviction. The statute as amended read in the following manner:

(5) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications 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, 1931 PA 328, MCL 750.81 and 750.81a.* There shall be only 1 discharge and dismissal under this section with respect to any individual.

MCL 769.4a(5).

That statute referred to MCL 750.81 and MCL 750.81a which included the crimes of domestic violence and aggravated domestic violence and allowed for more stringent sentences for recidivist domestic violence offenders. When the amendment to MCL 769.4a was passed MCL 750.81 stated as follows:

(3) An individual who commits an assault or an assault and battery in violation of subsection (2), *and who has previously been convicted of assaulting or assaulting and battering 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 his or her household*, under any of the following, may be punished by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(4) An individual who commits an assault or an assault and battery in violation of subsection (2), *and who has 2 or more previous convictions for assaulting or assaulting and battering 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 his or her household*, under any of the following, is guilty of a felony punishable by imprisonment for not more than 25 years or a fine of not more than \$5,000 or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

MCL 750.81a stated as follows:

(3) An individual who commits an assault and battery in violation of subsection (2), *and who has 1 or more previous convictions for assaulting or assaulting*

***and battering 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,*** in violation of any of the following, is guilty of a felony punishable by imprisonment for not more than 25 years or a fine of not more than \$5,000 or both:

- (a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.
- (b) Section 81, 82, 83, 84, or 86.
- (c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81, 82, 83, 84, or 86.

Therefore, with this amendment to MCL 769.4a, if a defendant received a deferral in the past for a domestic violence related conviction, this deferral could subsequently be used to increase the defendant's sentence as a second and third domestic violence offender.

#### 2016 Legislation

However, in 2016, MCL 750.81 was re-numbered by the passage of Public Act 87 and therefore the recidivist provisions referred to by MCL 769.4a had changed.

MCL 750.81 as amended stated the following:

- (3) An individual who assaults or assaults and batters an individual who is pregnant and who knows the individual is pregnant is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- (4) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), ***and who has previously been convicted of assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following,*** is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:
  - (a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.
  - (b) Section 81a, 82, 83, 84, or 86.
  - (c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(5) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), **and who has 2 or more previous convictions for assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following**, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both:

- (a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.
- (b) Section 81a, 82, 83, 84, or 86.
- (c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

When MCL 750.81 was amended and renumbered in 2016, MCL 769.4a was not amended to refer to the re-numbered recidivism provisions in MCL 750.81.

#### Prospective Amendment

MCL 769.4a should be amended in the following manner:

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

MCL 769.4a(5).

Right now, we can use a prior deferral only to enhance a defendant from a domestic violence first to second offender, but not from a domestic violence second to third offender which is clearly contrary to the intent of the Legislature when it amended MCL 769.4a to penalize recidivist domestic violence offenders more harshly.