

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.81b Enhanced sentence; provisions.

Sec. 81b.

The following provisions apply in any case in which the prosecuting attorney seeks an enhanced sentence under section 81(3) or (4) or 81a(3):

(a) The charging document or amended charging document shall include a notice provision that states that the prosecuting attorney intends to seek an enhanced sentence under section 81(3) or (4) or 81a(3) and lists the prior conviction or convictions that will be relied upon for that purpose. The notice shall be separate and distinct from the language charging the current offense, and shall not be read or otherwise disclosed to the jury if the case proceeds to trial before a jury.

(b) The defendant's prior conviction or convictions shall be established at sentencing. The existence of a prior conviction and the factual circumstances establishing the required relationship between the defendant and the victim of the prior assault or assault and battery may be established by any evidence that is relevant for that purpose, including, but not limited to, 1 or more of the following:

- (i) A copy of a judgment of conviction.
- (ii) A transcript of a prior trial, plea-taking, or sentencing proceeding.
- (iii) Information contained in a presentence report.
- (iv) A statement by the defendant.

(c) The defendant or his or her attorney shall be given an opportunity to deny, explain, or refute any evidence or information relating to the defendant's prior conviction or convictions before the sentence is imposed, and shall be permitted to present evidence relevant for that purpose unless the court determines and states upon the record that the challenged evidence or information will not be considered as a basis for imposing an enhanced sentence under section 81(3) or (4) or 81a(3).

(d) A prior conviction may be considered as a basis for imposing an enhanced sentence under section 81(3) or (4) or 81a(3) if the court finds the existence of both of the following by a preponderance of the evidence:

- (i) The prior conviction.
- (ii) 1 or more of the required relationships between the defendant and the victim of the prior assault or assault and battery.

History: Add. 1994, Act 65, Eff. July 1, 1994