

SENATE, No. 3143

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED AUGUST 10, 2015

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator KEVIN J. O'TOOLE

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Removes presumption of non-imprisonment when drunk drivers commit assault by auto resulting in serious bodily injury.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning assault by auto or vessel and amending
2 N.J.S.2C:12-1 and N.J.S.2C:44-1.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.2C:12-1 is amended to read as follows:

8 2C:12-1. Assault. a. Simple assault. A person is guilty of
9 assault if he:

10 (1) Attempts to cause or purposely, knowingly or recklessly
11 causes bodily injury to another; or

12 (2) Negligently causes bodily injury to another with a deadly
13 weapon; or

14 (3) Attempts by physical menace to put another in fear of
15 imminent serious bodily injury.

16 Simple assault is a disorderly persons offense unless committed
17 in a fight or scuffle entered into by mutual consent, in which case it
18 is a petty disorderly persons offense.

19 b. Aggravated assault. A person is guilty of aggravated assault
20 if he:

21 (1) Attempts to cause serious bodily injury to another, or causes
22 such injury purposely or knowingly or under circumstances
23 manifesting extreme indifference to the value of human life
24 recklessly causes such injury; or

25 (2) Attempts to cause or purposely or knowingly causes bodily
26 injury to another with a deadly weapon; or

27 (3) Recklessly causes bodily injury to another with a deadly
28 weapon; or

29 (4) Knowingly under circumstances manifesting extreme
30 indifference to the value of human life points a firearm, as defined
31 in section 2C:39-1f., at or in the direction of another, whether or not
32 the actor believes it to be loaded; or

33 (5) Commits a simple assault as defined in subsection a. (1), (2)
34 or (3) of this section upon:

35 (a) Any law enforcement officer acting in the performance of
36 his duties while in uniform or exhibiting evidence of his authority
37 or because of his status as a law enforcement officer; or

38 (b) Any paid or volunteer fireman acting in the performance of
39 his duties while in uniform or otherwise clearly identifiable as being
40 engaged in the performance of the duties of a fireman; or

41 (c) Any person engaged in emergency first-aid or medical
42 services acting in the performance of his duties while in uniform or
43 otherwise clearly identifiable as being engaged in the performance
44 of emergency first-aid or medical services; or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (d) Any school board member, school administrator, teacher,
2 school bus driver or other employee of a public or nonpublic school
3 or school board while clearly identifiable as being engaged in the
4 performance of his duties or because of his status as a member or
5 employee of a public or nonpublic school or school board or any
6 school bus driver employed by an operator under contract to a
7 public or nonpublic school or school board while clearly
8 identifiable as being engaged in the performance of his duties or
9 because of his status as a school bus driver; or

10 (e) Any employee of the Division of Child Protection and
11 Permanency while clearly identifiable as being engaged in the
12 performance of his duties or because of his status as an employee of
13 the division; or

14 (f) Any justice of the Supreme Court, judge of the Superior
15 Court, judge of the Tax Court or municipal judge while clearly
16 identifiable as being engaged in the performance of judicial duties
17 or because of his status as a member of the judiciary; or

18 (g) Any operator of a motorbus or the operator's supervisor or
19 any employee of a rail passenger service while clearly identifiable
20 as being engaged in the performance of his duties or because of his
21 status as an operator of a motorbus or as the operator's supervisor or
22 as an employee of a rail passenger service; or

23 (h) Any Department of Corrections employee, county
24 corrections officer, juvenile corrections officer, State juvenile
25 facility employee, juvenile detention staff member, juvenile
26 detention officer, probation officer or any sheriff, undersheriff, or
27 sheriff's officer acting in the performance of his duties while in
28 uniform or exhibiting evidence of his authority; or

29 (i) Any employee, including any person employed under
30 contract, of a utility company as defined in section 2 of P.L.1971,
31 c.224 (C.2A:42-86) or a cable television company subject to the
32 provisions of the "Cable Television Act," P.L.1972, c.186
33 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in
34 the performance of his duties in regard to connecting, disconnecting
35 or repairing or attempting to connect, disconnect or repair any gas,
36 electric or water utility, or cable television or telecommunication
37 service; or

38 (j) Any health care worker employed by a licensed health care
39 facility to provide direct patient care, any health care professional
40 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
41 the Revised Statutes to practice a health care profession, except a
42 direct care worker at a State or county psychiatric hospital or State
43 developmental center or veterans' memorial home, while clearly
44 identifiable as being engaged in the duties of providing direct
45 patient care or practicing the health care profession; or

46 (k) Any direct care worker at a State or county psychiatric
47 hospital or State developmental center or veterans' memorial home,
48 while clearly identifiable as being engaged in the duties of

1 providing direct patient care or practicing the health care
2 profession, provided that the actor is not a patient or resident at the
3 facility who is classified by the facility as having a mental illness or
4 developmental disability; or

5 (6) Causes bodily injury to another person while fleeing or
6 attempting to elude a law enforcement officer in violation of
7 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
8 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
9 other provision of law to the contrary, a person shall be strictly
10 liable for a violation of this subsection upon proof of a violation of
11 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
12 violation of subsection c. of N.J.S.2C:20-10 which resulted in
13 bodily injury to another person; or

14 (7) Attempts to cause significant bodily injury to another or
15 causes significant bodily injury purposely or knowingly or, under
16 circumstances manifesting extreme indifference to the value of
17 human life recklessly causes such significant bodily injury; or

18 (8) Causes bodily injury by knowingly or purposely starting a
19 fire or causing an explosion in violation of N.J.S.2C:17-1 which
20 results in bodily injury to any emergency services personnel
21 involved in fire suppression activities, rendering emergency
22 medical services resulting from the fire or explosion or rescue
23 operations, or rendering any necessary assistance at the scene of the
24 fire or explosion, including any bodily injury sustained while
25 responding to the scene of a reported fire or explosion. For
26 purposes of this subsection, "emergency services personnel" shall
27 include, but not be limited to, any paid or volunteer fireman, any
28 person engaged in emergency first-aid or medical services and any
29 law enforcement officer. Notwithstanding any other provision of
30 law to the contrary, a person shall be strictly liable for a violation of
31 this paragraph upon proof of a violation of N.J.S.2C:17-1 which
32 resulted in bodily injury to any emergency services personnel; or

33 (9) Knowingly, under circumstances manifesting extreme
34 indifference to the value of human life, points or displays a firearm,
35 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of
36 a law enforcement officer; or

37 (10) Knowingly points, displays or uses an imitation firearm, as
38 defined in subsection v. of N.J.S.2C:39-1, at or in the direction of a
39 law enforcement officer with the purpose to intimidate, threaten or
40 attempt to put the officer in fear of bodily injury or for any unlawful
41 purpose; or

42 (11) Uses or activates a laser sighting system or device, or a
43 system or device which, in the manner used, would cause a
44 reasonable person to believe that it is a laser sighting system or
45 device, against a law enforcement officer acting in the performance
46 of his duties while in uniform or exhibiting evidence of his
47 authority. As used in this paragraph, "laser sighting system or
48 device" means any system or device that is integrated with or

1 affixed to a firearm and emits a laser light beam that is used to
2 assist in the sight alignment or aiming of the firearm.

3 Aggravated assault under subsections b. (1) and b. (6) is a crime
4 of the second degree; under subsections b. (2), b. (7), b. (9) and b.
5 (10) is a crime of the third degree; under subsections b. (3) and b.
6 (4) is a crime of the fourth degree; and under subsection b. (5) is a
7 crime of the third degree if the victim suffers bodily injury,
8 otherwise it is a crime of the fourth degree. Aggravated assault
9 under subsection b.(8) is a crime of the third degree if the victim
10 suffers bodily injury; if the victim suffers significant bodily injury
11 or serious bodily injury it is a crime of the second degree.
12 Aggravated assault under subsection b. (11) is a crime of the third
13 degree.

14 c. (1) A person is guilty of assault by auto or vessel when the
15 person drives a vehicle or vessel recklessly and causes either
16 serious bodily injury or bodily injury to another. Assault by auto or
17 vessel is a crime of the fourth degree if serious bodily injury results
18 and is a disorderly persons offense if bodily injury results. Proof
19 that the defendant was operating a hand-held wireless telephone
20 while driving a motor vehicle in violation of section 1 of P.L.2003,
21 c.310 (C.39:4-97.3) may give rise to an inference that the defendant
22 was driving recklessly.

23 (2) Assault by auto or vessel is a crime of the third degree if the
24 person drives the vehicle while in violation of R.S.39:4-50 or
25 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily
26 injury results and is a crime of the fourth degree if the person drives
27 the vehicle while in violation of R.S.39:4-50 or section 2 of
28 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results. The
29 presumption of non-imprisonment set forth in subsection e. of
30 N.J.S.2C:44-1 for persons who have not previously been convicted
31 of an offense shall not apply to a person who is convicted of third
32 degree assault by auto or vessel under the provisions of this
33 paragraph.

34 (3) Assault by auto or vessel is a crime of the second degree if
35 serious bodily injury results from the defendant operating the auto
36 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,
37 c.512 (C.39:4-50.4a) while:

38 (a) on any school property used for school purposes which is
39 owned by or leased to any elementary or secondary school or school
40 board, or within 1,000 feet of such school property;

41 (b) driving through a school crossing as defined in R.S.39:1-1 if
42 the municipality, by ordinance or resolution, has designated the
43 school crossing as such; or

44 (c) driving through a school crossing as defined in R.S.39:1-1
45 knowing that juveniles are present if the municipality has not
46 designated the school crossing as such by ordinance or resolution.

1 Assault by auto or vessel is a crime of the third degree if bodily
2 injury results from the defendant operating the auto or vessel in
3 violation of this paragraph.

4 A map or true copy of a map depicting the location and
5 boundaries of the area on or within 1,000 feet of any property used
6 for school purposes which is owned by or leased to any elementary
7 or secondary school or school board produced pursuant to section 1
8 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
9 subparagraph (a) of paragraph (3) of this subsection.

10 It shall be no defense to a prosecution for a violation of
11 subparagraph (a) or (b) of paragraph (3) of this subsection that the
12 defendant was unaware that the prohibited conduct took place while
13 on or within 1,000 feet of any school property or while driving
14 through a school crossing. Nor shall it be a defense to a prosecution
15 under subparagraph (a) or (b) of paragraph (3) of this subsection
16 that no juveniles were present on the school property or crossing
17 zone at the time of the offense or that the school was not in session.

18 (4) Assault by auto or vessel is a crime of the third degree if the
19 person purposely drives a vehicle in an aggressive manner directed
20 at another vehicle and serious bodily injury results and is a crime of
21 the fourth degree if the person purposely drives a vehicle in an
22 aggressive manner directed at another vehicle and bodily injury
23 results. For purposes of this paragraph, "driving a vehicle in an
24 aggressive manner" shall include, but is not limited to,
25 unexpectedly altering the speed of the vehicle, making improper or
26 erratic traffic lane changes, disregarding traffic control devices,
27 failing to yield the right of way, or following another vehicle too
28 closely.

29 As used in this section, "vessel" means a means of conveyance
30 for travel on water and propelled otherwise than by muscular
31 power.

32 d. A person who is employed by a facility as defined in section
33 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
34 defined in paragraph (1) or (2) of subsection a. of this section upon
35 an institutionalized elderly person as defined in section 2 of
36 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
37 degree.

38 e. (Deleted by amendment, P.L.2001, c.443).

39 f. A person who commits a simple assault as defined in
40 paragraph (1), (2) or (3) of subsection a. of this section in the
41 presence of a child under 16 years of age at a school or community
42 sponsored youth sports event is guilty of a crime of the fourth
43 degree. The defendant shall be strictly liable upon proof that the
44 offense occurred, in fact, in the presence of a child under 16 years
45 of age. It shall not be a defense that the defendant did not know
46 that the child was present or reasonably believed that the child was
47 16 years of age or older. The provisions of this subsection shall not
48 be construed to create any liability on the part of a participant in a

1 youth sports event or to abrogate any immunity or defense available
2 to a participant in a youth sports event. As used in this act, "school
3 or community sponsored youth sports event" means a competition,
4 practice or instructional event involving one or more interscholastic
5 sports teams or youth sports teams organized pursuant to a
6 nonprofit or similar charter or which are member teams in a youth
7 league organized by or affiliated with a county or municipal
8 recreation department and shall not include collegiate, semi-
9 professional or professional sporting events.
10 (cf: P.L.2012, c.22, s.2)

11

12 2. N.J.S.2C:44-1 is amended to read as follows:

13 2C:44-1. a. In determining the appropriate sentence to be
14 imposed on a person who has been convicted of an offense, the
15 court shall consider the following aggravating circumstances:

16 (1) The nature and circumstances of the offense, and the role of
17 the actor therein, including whether or not it was committed in an
18 especially heinous, cruel, or depraved manner;

19 (2) The gravity and seriousness of harm inflicted on the victim,
20 including whether or not the defendant knew or reasonably should
21 have known that the victim of the offense was particularly
22 vulnerable or incapable of resistance due to advanced age, ill-
23 health, or extreme youth, or was for any other reason substantially
24 incapable of exercising normal physical or mental power of
25 resistance;

26 (3) The risk that the defendant will commit another offense;

27 (4) A lesser sentence will depreciate the seriousness of the
28 defendant's offense because it involved a breach of the public trust
29 under chapters 27 and 30, or the defendant took advantage of a
30 position of trust or confidence to commit the offense;

31 (5) There is a substantial likelihood that the defendant is
32 involved in organized criminal activity;

33 (6) The extent of the defendant's prior criminal record and the
34 seriousness of the offenses of which he has been convicted;

35 (7) The defendant committed the offense pursuant to an
36 agreement that he either pay or be paid for the commission of the
37 offense and the pecuniary incentive was beyond that inherent in the
38 offense itself;

39 (8) The defendant committed the offense against a police or
40 other law enforcement officer, correctional employee or fireman,
41 acting in the performance of his duties while in uniform or
42 exhibiting evidence of his authority; the defendant committed the
43 offense because of the status of the victim as a public servant; or the
44 defendant committed the offense against a sports official, athletic
45 coach or manager, acting in or immediately following the
46 performance of his duties or because of the person's status as a
47 sports official, coach or manager;

- 1 (9) The need for deterring the defendant and others from
2 violating the law;
- 3 (10) The offense involved fraudulent or deceptive practices
4 committed against any department or division of State government;
- 5 (11) The imposition of a fine, penalty or order of restitution
6 without also imposing a term of imprisonment would be perceived
7 by the defendant or others merely as part of the cost of doing
8 business, or as an acceptable contingent business or operating
9 expense associated with the initial decision to resort to unlawful
10 practices;
- 11 (12) The defendant committed the offense against a person who
12 he knew or should have known was 60 years of age or older, or
13 disabled; and
- 14 (13) The defendant, while in the course of committing or
15 attempting to commit the crime, including the immediate flight
16 therefrom, used or was in possession of a stolen motor vehicle.
- 17 b. In determining the appropriate sentence to be imposed on a
18 person who has been convicted of an offense, the court may
19 properly consider the following mitigating circumstances:
 - 20 (1) The defendant's conduct neither caused nor threatened
21 serious harm;
 - 22 (2) The defendant did not contemplate that his conduct would
23 cause or threaten serious harm;
 - 24 (3) The defendant acted under a strong provocation;
 - 25 (4) There were substantial grounds tending to excuse or justify
26 the defendant's conduct, though failing to establish a defense;
 - 27 (5) The victim of the defendant's conduct induced or facilitated
28 its commission;
 - 29 (6) The defendant has compensated or will compensate the
30 victim of his conduct for the damage or injury that he sustained, or
31 will participate in a program of community service;
 - 32 (7) The defendant has no history of prior delinquency or
33 criminal activity or has led a law-abiding life for a substantial
34 period of time before the commission of the present offense;
 - 35 (8) The defendant's conduct was the result of circumstances
36 unlikely to recur;
 - 37 (9) The character and attitude of the defendant indicate that he is
38 unlikely to commit another offense;
 - 39 (10) The defendant is particularly likely to respond affirmatively
40 to probationary treatment;
 - 41 (11) The imprisonment of the defendant would entail excessive
42 hardship to himself or his dependents;
 - 43 (12) The willingness of the defendant to cooperate with law
44 enforcement authorities;
 - 45 (13) The conduct of a youthful defendant was substantially
46 influenced by another person more mature than the defendant.

1 c. (1) A plea of guilty by a defendant or failure to so plead shall
2 not be considered in withholding or imposing a sentence of
3 imprisonment.

4 (2) When imposing a sentence of imprisonment the court shall
5 consider the defendant's eligibility for release under the law
6 governing parole, including time credits awarded pursuant to Title
7 30 of the Revised Statutes, in determining the appropriate term of
8 imprisonment.

9 d. Presumption of imprisonment. The court shall deal with a
10 person who has been convicted of a crime of the first or second
11 degree, or a crime of the third degree where the court finds that the
12 aggravating factor in paragraph (5) of subsection a. applies, by
13 imposing a sentence of imprisonment unless, having regard to the
14 character and condition of the defendant, it is of the opinion that his
15 imprisonment would be a serious injustice which overrides the need
16 to deter such conduct by others. Notwithstanding the provisions of
17 subsection e. of this section, the court shall deal with a person who
18 has been convicted of theft of a motor vehicle or of the unlawful
19 taking of a motor vehicle and who has previously been convicted of
20 either offense by imposing a sentence of imprisonment unless,
21 having regard to the character and condition of the defendant, it is
22 of the opinion that his imprisonment would be a serious injustice
23 which overrides the need to deter such conduct by others.

24 e. The court shall deal with a person convicted of an offense
25 other than a crime of the first or second degree, who has not
26 previously been convicted of an offense, without imposing a
27 sentence of imprisonment unless, having regard to the nature and
28 circumstances of the offense and the history, character and
29 condition of the defendant, it is of the opinion that his imprisonment
30 is necessary for the protection of the public under the criteria set
31 forth in subsection a., except that this subsection shall not apply if
32 the court finds that the aggravating factor in paragraph (5) of
33 subsection a. applies or if the person is convicted of any of the
34 following crimes of the third degree: theft of a motor vehicle;
35 unlawful taking of a motor vehicle; eluding; if the person is
36 convicted of a crime of the third degree constituting use of a false
37 government document in violation of subsection c. of section 1 of
38 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
39 of the third degree constituting distribution, manufacture or
40 possession of an item containing personal identifying information in
41 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-
42 17.3); if the person is convicted of a crime of the third or fourth
43 degree constituting bias intimidation in violation of N.J.S.2C:16-1;
44 if the person is convicted of a crime of the third degree under
45 section 2 of P.L.1997, c.111 (C.2C:12-1.1); **【or】** if the person is
46 convicted of a crime of the third or fourth degree under the
47 provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-29 or

1 C.2C:33-30); or if the person is convicted of third degree assault by
2 auto in violation of paragraph (2) of subsection c. of N.J.S.2C:12-1.

3 f. Presumptive Sentences. (1) Except for the crime of murder,
4 unless the preponderance of aggravating or mitigating factors, as set
5 forth in subsections a. and b., weighs in favor of a higher or lower
6 term within the limits provided in N.J.S.2C:43-6, when a court
7 determines that a sentence of imprisonment is warranted, it shall
8 impose sentence as follows:

9 (a) To a term of 20 years for aggravated manslaughter or
10 kidnapping pursuant to paragraph (1) of subsection c. of
11 N.J.S.2C:13-1 when the offense constitutes a crime of the first
12 degree;

13 (b) Except as provided in paragraph (a) of this subsection to a
14 term of 15 years for a crime of the first degree;

15 (c) To a term of seven years for a crime of the second degree;

16 (d) To a term of four years for a crime of the third degree; and

17 (e) To a term of nine months for a crime of the fourth degree.

18 In imposing a minimum term pursuant to 2C:43-6b., the
19 sentencing court shall specifically place on the record the
20 aggravating factors set forth in this section which justify the
21 imposition of a minimum term.

22 Unless the preponderance of mitigating factors set forth in
23 subsection b. weighs in favor of a lower term within the limits
24 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
25 presumptive term of life imprisonment. Unless the preponderance
26 of aggravating and mitigating factors set forth in subsections a. and
27 b. weighs in favor of a higher or lower term within the limits
28 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a
29 presumptive term of 50 years' imprisonment; sentences imposed
30 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'
31 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)
32 shall have a presumptive term of seven years' imprisonment.

33 In imposing a minimum term pursuant to 2C:43-7b., the
34 sentencing court shall specifically place on the record the
35 aggravating factors set forth in this section which justify the
36 imposition of a minimum term.

37 (2) In cases of convictions for crimes of the first or second
38 degree where the court is clearly convinced that the mitigating
39 factors substantially outweigh the aggravating factors and where the
40 interest of justice demands, the court may sentence the defendant to
41 a term appropriate to a crime of one degree lower than that of the
42 crime for which he was convicted. If the court does impose
43 sentence pursuant to this paragraph, or if the court imposes a
44 noncustodial or probationary sentence upon conviction for a crime
45 of the first or second degree, such sentence shall not become final
46 for 10 days in order to permit the appeal of such sentence by the
47 prosecution.

1 g. Imposition of Noncustodial Sentences in Certain Cases. If
2 the court, in considering the aggravating factors set forth in
3 subsection a., finds the aggravating factor in paragraph a.(2), a.(5),
4 a.(10), or a.(12) and does not impose a custodial sentence, the court
5 shall specifically place on the record the mitigating factors which
6 justify the imposition of a noncustodial sentence.

7 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
8 11), the presumption of imprisonment as provided in subsection d.
9 of this section shall not preclude the admission of a person to the
10 Intensive Supervision Program, established pursuant to the Rules
11 Governing the Courts of the State of New Jersey.
12 (cf: P.L.2010, c.30, s.1)

13

14 3. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 This bill removes the presumption of non-imprisonment when a
20 drunk driver commits assault by auto resulting in serious bodily
21 injury.

22 Under current law, it is a crime of the third degree if a person
23 commits assault by auto while driving in violation of R.S.39:4-50,
24 the State's drunk driving law, and serious bodily injury results.
25 Third degree crimes are punishable by a term of imprisonment of
26 three-to-five years, a fine of up to \$15,000, or both.

27 Currently, a person convicted of assault by auto under these
28 circumstances is entitled to the presumption of non-imprisonment
29 generally afforded persons convicted of a third degree crime who
30 have not previously been convicted of a crime. Under the bill, these
31 offenders would not be entitled to the presumption of non-
32 imprisonment.

33 It is the sponsor's intent that drunk drivers who seriously injure
34 innocent bystanders be eligible to serve jail time.