

ASSEMBLY, No. 1647

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Upgrades assault on victims who are disabled.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/15/2020)

1 **AN ACT** concerning assault and amending N.J.S.2C:12-1.

2

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

5

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

7 2C:12-1. Assault. a. Simple assault. A person is guilty of
8 assault if he:

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (d) Any school board member, school administrator, teacher,
45 school bus driver or other employee of a public or nonpublic school
46 or school board while clearly identifiable as being engaged in the
47 performance of his duties or because of his status as a member 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 employee of a public or nonpublic school or school board or any
2 school bus driver employed by an operator under contract to a
3 public or nonpublic school or school board while clearly
4 identifiable as being engaged in the performance of his duties or
5 because of his status as a school bus driver; or
- 6 (e) Any employee of the Division of Child Protection and
7 Permanency while clearly identifiable as being engaged in the
8 performance of his duties or because of his status as an employee of
9 the division; or
- 10 (f) Any justice of the Supreme Court, judge of the Superior
11 Court, judge of the Tax Court or municipal judge while clearly
12 identifiable as being engaged in the performance of judicial duties
13 or because of his status as a member of the judiciary; or
- 14 (g) Any operator of a motorbus or the operator's supervisor or
15 any employee of a rail passenger service while clearly identifiable
16 as being engaged in the performance of his duties or because of his
17 status as an operator of a motorbus or as the operator's supervisor or
18 as an employee of a rail passenger service; or
- 19 (h) Any Department of Corrections employee, county
20 corrections officer, juvenile corrections officer, State juvenile
21 facility employee, juvenile detention staff member, juvenile
22 detention officer, probation officer or any sheriff, undersheriff, or
23 sheriff's officer acting in the performance of his duties while in
24 uniform or exhibiting evidence of his authority or because of his
25 status as a Department of Corrections employee, county corrections
26 officer, juvenile corrections officer, State juvenile facility
27 employee, juvenile detention staff member, juvenile detention
28 officer, probation officer, sheriff, undersheriff, or sheriff's officer;
29 or
- 30 (i) Any employee, including any person employed under
31 contract, of a utility company as defined in section 2 of P.L.1971,
32 c.224 (C.2A:42-86) or a cable television company subject to the
33 provisions of the "Cable Television Act," P.L.1972, c.186
34 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in
35 the performance of his duties in regard to connecting, disconnecting
36 or repairing or attempting to connect, disconnect or repair any gas,
37 electric or water utility, or cable television or telecommunication
38 service; or
- 39 (j) Any health care worker employed by a licensed health care
40 facility to provide direct patient care, any health care professional
41 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
42 the Revised Statutes to practice a health care profession, except a
43 direct care worker at a State or county psychiatric hospital or State
44 developmental center or veterans' memorial home, while clearly
45 identifiable as being engaged in the duties of providing direct
46 patient care or practicing the health care profession; or
- 47 (k) Any direct care worker at a State or county psychiatric
48 hospital or State developmental center or veterans' memorial home,

- 1 while clearly identifiable as being engaged in the duties of
2 providing direct patient care or practicing the health care
3 profession, provided that the actor is not a patient or resident at the
4 facility who is classified by the facility as having a mental illness or
5 developmental disability; or
- 6 (6) Causes bodily injury to another person while fleeing or
7 attempting to elude a law enforcement officer in violation of
8 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
9 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
10 other provision of law to the contrary, a person shall be strictly
11 liable for a violation of this paragraph upon proof of a violation of
12 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
13 violation of subsection c. of N.J.S.2C:20-10 which resulted in
14 bodily injury to another person; or
- 15 (7) Attempts to cause significant bodily injury to another or
16 causes significant bodily injury purposely or knowingly or, under
17 circumstances manifesting extreme indifference to the value of
18 human life recklessly causes such significant bodily injury; or
- 19 (8) Causes bodily injury by knowingly or purposely starting a
20 fire or causing an explosion in violation of N.J.S.2C:17-1 which
21 results in bodily injury to any emergency services personnel
22 involved in fire suppression activities, rendering emergency
23 medical services resulting from the fire or explosion or rescue
24 operations, or rendering any necessary assistance at the scene of the
25 fire or explosion, including any bodily injury sustained while
26 responding to the scene of a reported fire or explosion. For
27 purposes of this paragraph, "emergency services personnel" shall
28 include, but not be limited to, any paid or volunteer fireman, any
29 person engaged in emergency first-aid or medical services and any
30 law enforcement officer. Notwithstanding any other provision of
31 law to the contrary, a person shall be strictly liable for a violation of
32 this paragraph upon proof of a violation of N.J.S.2C:17-1 which
33 resulted in bodily injury to any emergency services personnel; or
- 34 (9) Knowingly, under circumstances manifesting extreme
35 indifference to the value of human life, points or displays a firearm,
36 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of
37 a law enforcement officer; or
- 38 (10) Knowingly points, displays or uses an imitation firearm, as
39 defined in subsection v. of N.J.S.2C:39-1, at or in the direction of a
40 law enforcement officer with the purpose to intimidate, threaten or
41 attempt to put the officer in fear of bodily injury or for any unlawful
42 purpose; or
- 43 (11) Uses or activates a laser sighting system or device, or a
44 system or device which, in the manner used, would cause a
45 reasonable person to believe that it is a laser sighting system or
46 device, against a law enforcement officer acting in the performance
47 of his duties while in uniform or exhibiting evidence of his
48 authority. As used in this paragraph, "laser sighting system or

1 device" means any system or device that is integrated with or
2 affixed to a firearm and emits a laser light beam that is used to
3 assist in the sight alignment or aiming of the firearm; or

4 (12) Attempts to cause significant bodily injury or causes
5 significant bodily injury purposely or knowingly or, under
6 circumstances manifesting extreme indifference to the value of
7 human life, recklessly causes significant bodily injury to a person
8 who, with respect to the actor, meets the definition of a victim of
9 domestic violence, as defined in subsection d. of section 3 of
10 P.L.1991, c.261 (C.2C:25-19); or

11 (13) Causes bodily injury to a person with a disability. As used
12 in this paragraph, "person with a disability" means a person who by
13 reason of a pre-existing medically determinable physical or mental
14 impairment is substantially incapable of exercising normal physical
15 or mental power of resistance, and includes, but is not limited to, a
16 person determined disabled pursuant to the federal Social Security
17 Act or any other governmental retirement or benefits program that
18 uses substantially the same criteria for determining eligibility.

19 Aggravated assault under paragraphs (1) and (6) of subsection b.
20 of this section is a crime of the second degree; under paragraphs
21 (2), (7), (9) and (10) of subsection b. of this section is a crime of the
22 third degree; under paragraphs (3) and (4) of subsection b. of this
23 section is a crime of the fourth degree; and under paragraph (5) of
24 subsection b. of this section is a crime of the third degree if the
25 victim suffers bodily injury, otherwise it is a crime of the fourth
26 degree. Aggravated assault under paragraph (8) of subsection b. of
27 this section is a crime of the third degree if the victim suffers bodily
28 injury; if the victim suffers significant bodily injury or serious
29 bodily injury it is a crime of the second degree. Aggravated assault
30 under paragraph (11) of subsection b. of this section is a crime of
31 the third degree. Aggravated assault under paragraph (12) of
32 subsection b. of this section is a crime of the third degree but the
33 presumption of non-imprisonment set forth in subsection e. of
34 N.J.S.2C:44-1 for a first offense of a crime of the third degree shall
35 not apply. Aggravated assault under paragraph (13) of subsection
36 b. of this section is a crime of the third degree and a person
37 convicted of a violation under paragraph (13) of subsection b. of
38 this section shall be sentenced to a term of imprisonment. The term
39 of imprisonment shall include the imposition of a minimum term of
40 three years during which the defendant shall be ineligible for
41 parole.

42 c. (1) A person is guilty of assault by auto or vessel when the
43 person drives a vehicle or vessel recklessly and causes either
44 serious bodily injury or bodily injury to another. Assault by auto or
45 vessel is a crime of the fourth degree if serious bodily injury results
46 and is a disorderly persons offense if bodily injury results. Proof
47 that the defendant was operating a hand-held wireless telephone
48 while driving a motor vehicle in violation of section 1 of P.L.2003,

1 c.310 (C.39:4-97.3) may give rise to an inference that the defendant
2 was driving recklessly.

3 (2) Assault by auto or vessel is a crime of the third degree if the
4 person drives the vehicle while in violation of R.S.39:4-50 or
5 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily
6 injury results and is a crime of the fourth degree if the person drives
7 the vehicle while in violation of R.S.39:4-50 or section 2 of
8 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

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

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

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

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

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

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

31 It shall be no defense to a prosecution for a violation of
32 subparagraph (a) or (b) of paragraph (3) of this subsection that the
33 defendant was unaware that the prohibited conduct took place while
34 on or within 1,000 feet of any school property or while driving
35 through a school crossing. Nor shall it be a defense to a prosecution
36 under subparagraph (a) or (b) of paragraph (3) of this subsection
37 that no juveniles were present on the school property or crossing
38 zone at the time of the offense or that the school was not in session.

39 (4) Assault by auto or vessel is a crime of the third degree if the
40 person purposely drives a vehicle in an aggressive manner directed
41 at another vehicle and serious bodily injury results and is a crime of
42 the fourth degree if the person purposely drives a vehicle in an
43 aggressive manner directed at another vehicle and bodily injury
44 results. For purposes of this paragraph, "driving a vehicle in an
45 aggressive manner" shall include, but is not limited to,
46 unexpectedly altering the speed of the vehicle, making improper or
47 erratic traffic lane changes, disregarding traffic control devices,

1 failing to yield the right of way, or following another vehicle too
2 closely.

3 As used in this subsection, "vessel" means a means of
4 conveyance for travel on water and propelled otherwise than by
5 muscular power.

6 d. A person who is employed by a facility as defined in section
7 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
8 defined in paragraph (1) or (2) of subsection a. of this section upon
9 an institutionalized elderly person as defined in section 2 of
10 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
11 degree.

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

13 f. A person who commits a simple assault as defined in
14 paragraph (1), (2) or (3) of subsection a. of this section in the
15 presence of a child under 16 years of age at a school or community
16 sponsored youth sports event is guilty of a crime of the fourth
17 degree. The defendant shall be strictly liable upon proof that the
18 offense occurred, in fact, in the presence of a child under 16 years
19 of age. It shall not be a defense that the defendant did not know
20 that the child was present or reasonably believed that the child was
21 16 years of age or older. The provisions of this subsection shall not
22 be construed to create any liability on the part of a participant in a
23 youth sports event or to abrogate any immunity or defense available
24 to a participant in a youth sports event. As used in this act, "school
25 or community sponsored youth sports event" means a competition,
26 practice or instructional event involving one or more interscholastic
27 sports teams or youth sports teams organized pursuant to a
28 nonprofit or similar charter or which are member teams in a youth
29 league organized by or affiliated with a county or municipal
30 recreation department and shall not include collegiate, semi-
31 professional or professional sporting events.
32 (cf: P.L.2015, c.100, s.1)

33

34 2. This act shall take effect immediately.

35

36

37 STATEMENT

38

39 This bill would upgrade the offense of assault in situations where
40 the victim is disabled. Under the bill, a person who causes bodily
41 injury to a person with a disability would be guilty of a crime of the
42 third degree and would be sentenced to a mandatory term of
43 imprisonment of three years.

44 Under the bill, a "person with a disability" means a person who
45 by reason of a pre-existing medically determinable physical or
46 mental impairment is substantially incapable of exercising normal
47 physical or mental power of resistance, and includes, but is not
48 limited to, a person determined disabled pursuant to the federal

1 Social Security Act or any other governmental retirement or
2 benefits program that uses substantially the same criteria for
3 determining eligibility.

4 This bill was prompted by the brutal assault and mugging of Joey
5 Damiano, a Trenton man with an intellectual disability, in May
6 2006. According to Trenton police, Joey was beaten and blinded in
7 one eye by an unknown assailant, or group of assailants, as he was
8 taking his daily walk on Washington Street and Roebling Avenue in
9 the Chambersburg section of Trenton.