

SENATE, No. 1340

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

SYNOPSIS

Upgrades assault on victims who are disabled.

CURRENT VERSION OF TEXT

As introduced.



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 the person:

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 the person:

20 (1) Attempts to cause serious bodily injury to another, or causes
21 injury purposely or knowingly or under circumstances manifesting
22 extreme indifference to the value of human life recklessly causes
23 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 the officer's duties while in uniform or exhibiting evidence of
36 authority or because of the officer's status as a law enforcement
37 officer; or

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

42 (c) Any person engaged in emergency first-aid or medical
43 services acting in the performance of the person's duties while in
44 uniform or otherwise clearly identifiable as being engaged in the
45 performance 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
3 school or school board while clearly identifiable as being engaged
4 in the performance of the person's duties or because of the person's
5 status as a member or employee of a public or nonpublic school or
6 school board or any school bus driver employed by an operator
7 under contract to a public or nonpublic school or school board while
8 clearly identifiable as being engaged in the performance of the
9 person's duties or because of the person's status as a school bus
10 driver; or

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

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

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

25 (h) Any Department of Corrections employee, county
26 correctional police officer, juvenile correctional police officer, State
27 juvenile facility employee, juvenile detention staff member,
28 juvenile detention officer, probation officer or any sheriff,
29 undersheriff, or sheriff's officer acting in the performance of the
30 person's duties while in uniform or exhibiting evidence of the
31 person's authority or because of the status as a Department of
32 Corrections employee, county correctional police officer, juvenile
33 correctional police officer, State juvenile facility employee, juvenile
34 detention staff member, juvenile detention officer, probation
35 officer, sheriff, undersheriff, or sheriff's officer; or

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

45 (j) Any health care worker employed by a licensed health care
46 facility to provide direct patient care, any health care professional
47 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
48 the Revised Statutes to practice a health care profession, except a

1 direct care worker at a State or county psychiatric hospital or State
2 developmental center or veterans' memorial home, while clearly
3 identifiable as being engaged in the duties of providing direct
4 patient care or practicing the health care profession; or

5 (k) Any direct care worker at a State or county psychiatric
6 hospital or State developmental center or veterans' memorial home,
7 while clearly identifiable as being engaged in the duties of
8 providing direct patient care or practicing the health care
9 profession, provided that the actor is not a patient or resident at the
10 facility who is classified by the facility as having a mental illness or
11 developmental disability; or

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

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

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

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

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

1 (11) Uses or activates a laser sighting system or device, or a
2 system or device which, in the manner used, would cause a
3 reasonable person to believe that it is a laser sighting system or
4 device, against a law enforcement officer acting in the performance
5 of the officer's duties while in uniform or exhibiting evidence of the
6 officer's authority. As used in this paragraph, "laser sighting system
7 or device" means any system or device that is integrated with or
8 affixed to a firearm and emits a laser light beam that is used to
9 assist in the sight alignment or aiming of the firearm; or

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

17 (13) Knowingly or, under circumstances manifesting extreme
18 indifference to the value of human life, recklessly obstructs the
19 breathing or blood circulation of a person who, with respect to the
20 actor, meets the definition of a victim of domestic violence, as
21 defined in subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-
22 19), by applying pressure on the throat or neck or blocking the nose
23 or mouth of such person, thereby causing or attempting to cause
24 bodily injury; or

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

33 Aggravated assault under paragraphs (1) and (6) of subsection b.
34 of this section is a crime of the second degree; under paragraphs
35 (2), (7), (9), and (10) of subsection b. of this section is a crime of
36 the third degree; under paragraphs (3) and (4) of subsection b. of
37 this section is a crime of the fourth degree; and under paragraph (5)
38 of subsection b. of this section is a crime of the third degree if the
39 victim suffers bodily injury, otherwise it is a crime of the fourth
40 degree. Aggravated assault under paragraph (8) of subsection b. of
41 this section is a crime of the third degree if the victim suffers bodily
42 injury; if the victim suffers significant bodily injury or serious
43 bodily injury it is a crime of the second degree. Aggravated assault
44 under paragraph (11) of subsection b. of this section is a crime of
45 the third degree. Aggravated assault under paragraph (12) or (13)
46 of subsection b. of this section is a crime of the third degree but the
47 presumption of non-imprisonment set forth in subsection e. of
48 N.J.S.2C:44-1 for a first offense of a crime of the third degree shall

1 not apply. Aggravated assault under paragraph (14) of subsection
2 b. of this section is a crime of the third degree and a person
3 convicted of a violation under paragraph (14) of subsection b. of
4 this section shall be sentenced to a term of imprisonment. The term
5 of imprisonment shall include the imposition of a minimum term of
6 three years during which the defendant shall be ineligible for
7 parole.

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

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

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

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

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

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

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

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

45 It shall be no defense to a prosecution for a violation of
46 subparagraph (a) or (b) of paragraph (3) of this subsection that the
47 defendant was unaware that the prohibited conduct took place while
48 on or within 1,000 feet of any school property or while driving

1 through a school crossing. Nor shall it be a defense to a prosecution
2 under subparagraph (a) or (b) of paragraph (3) of this subsection
3 that no juveniles were present on the school property or crossing
4 zone at the time of the offense or that the school was not in session.

5 (4) Assault by auto or vessel is a crime of the third degree if the
6 person purposely drives a vehicle in an aggressive manner directed
7 at another vehicle and serious bodily injury results and is a crime of
8 the fourth degree if the person purposely drives a vehicle in an
9 aggressive manner directed at another vehicle and bodily injury
10 results. For purposes of this paragraph, "driving a vehicle in an
11 aggressive manner" shall include, but is not limited to,
12 unexpectedly altering the speed of the vehicle, making improper or
13 erratic traffic lane changes, disregarding traffic control devices,
14 failing to yield the right of way, or following another vehicle too
15 closely.

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

19 d. A person who is employed by a facility as defined in section
20 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
21 defined in paragraph (1) or (2) of subsection a. of this section upon
22 an institutionalized elderly person as defined in section 2 of
23 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
24 degree.

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

26 f. A person who commits a simple assault as defined in
27 paragraph (1), (2), or (3) of subsection a. of this section in the
28 presence of a child under 16 years of age at a school or community
29 sponsored youth sports event is guilty of a crime of the fourth
30 degree. The defendant shall be strictly liable upon proof that the
31 offense occurred, in fact, in the presence of a child under 16 years
32 of age. It shall not be a defense that the defendant did not know
33 that the child was present or reasonably believed that the child was
34 16 years of age or older. The provisions of this subsection shall not
35 be construed to create any liability on the part of a participant in a
36 youth sports event or to abrogate any immunity or defense available
37 to a participant in a youth sports event. As used in this act, "school
38 or community sponsored youth sports event" means a competition,
39 practice, or instructional event involving one or more
40 interscholastic sports teams or youth sports teams organized
41 pursuant to a nonprofit or similar charter or which are member
42 teams in a youth league organized by or affiliated with a county or
43 municipal recreation department and shall not include collegiate,
44 semi-professional or professional sporting events.

45 (cf: P.L.2019, c.219, s.3)

46
47 2. This act shall take effect immediately.

STATEMENT

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

Under the bill, a "person with a disability" means a person who by reason of a pre-existing medically determinable physical or mental impairment is substantially incapable of exercising normal physical or mental power of resistance, and includes, but is not limited to, a person determined disabled pursuant to the federal Social Security Act or any other governmental retirement or benefits program that uses substantially the same criteria for determining eligibility.

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