

ASSEMBLY, No. 3615

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MAY 12, 2016

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District 15 (Hunterdon and Mercer)

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Assemblyman JAY WEBBER

District 26 (Essex, Morris and Passaic)

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Assemblyman Coughlin

SYNOPSIS

Upgrades assault on victims who are elderly or disabled.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/28/2016)

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

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 or school board while clearly identifiable as being engaged in the
2 performance of his duties or because of his status as a member or
3 employee of a public or nonpublic school or school board or any
4 school bus driver employed by an operator under contract to a
5 public or nonpublic school or school board while clearly
6 identifiable as being engaged in the performance of his duties or
7 because of his status as a school bus driver; or

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

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

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

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

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

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

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

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

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

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

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

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

45 (11) Uses or activates a laser sighting system or device, or a
46 system or device which, in the manner used, would cause a
47 reasonable person to believe that it is a laser sighting system or
48 device, against a law enforcement officer acting in the performance

1 of his duties while in uniform or exhibiting evidence of his
2 authority. As used in this paragraph, "laser sighting system or
3 device" means any system or device that is integrated with or
4 affixed to a firearm and emits a laser light beam that is used to
5 assist in the sight alignment or aiming of the firearm; or

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

13 (13) Causes bodily injury to a person with a disability or to a
14 senior citizen who is 60 years of age or older. As used in this
15 paragraph, "person with a disability" means a person who by reason
16 of a pre-existing medically determinable physical or mental
17 impairment is substantially incapable of exercising normal physical
18 or mental power of resistance, and includes, but is not limited to, a
19 person determined disabled pursuant to the federal Social Security
20 Act or any other governmental retirement or benefits program that
21 uses substantially the same criteria for determining eligibility.

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

47 c. (1) A person is guilty of assault by auto or vessel when the
48 person drives a vehicle or vessel recklessly and causes either

1 serious bodily injury or bodily injury to another. Assault by auto or
2 vessel is a crime of the fourth degree if serious bodily injury results
3 and is a disorderly persons offense if bodily injury results. Proof
4 that the defendant was operating a hand-held wireless telephone
5 while driving a motor vehicle in violation of section 1 of P.L.2003,
6 c.310 (C.39:4-97.3) may give rise to an inference that the defendant
7 was driving recklessly.

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

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

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

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

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

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

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

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

44 (4) Assault by auto or vessel is a crime of the third degree if the
45 person purposely drives a vehicle in an aggressive manner directed
46 at another vehicle and serious bodily injury results and is a crime of
47 the fourth degree if the person purposely drives a vehicle in an
48 aggressive manner directed at another vehicle and bodily injury

1 results. For purposes of this paragraph, "driving a vehicle in an
2 aggressive manner" shall include, but is not limited to,
3 unexpectedly altering the speed of the vehicle, making improper or
4 erratic traffic lane changes, disregarding traffic control devices,
5 failing to yield the right of way, or following another vehicle too
6 closely.

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

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

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

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

36 (cf: P.L.2015, c.100, s.1)

37

38 2. This act shall take effect immediately.

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STATEMENT

42

43 This bill would upgrade the offense of assault in situations where
44 the victim is disabled or elderly. Under the bill, a person who
45 causes bodily injury to a person with a disability or to a senior
46 citizen who is 60 years of age or older would be guilty of a crime of
47 the third degree and would be sentenced to a mandatory term of
48 imprisonment of three years.

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

9 This bill was prompted in part by the brutal assault and mugging
10 of Joey Damiano, a Trenton man with an intellectual disability.
11 According to Trenton police, Joey was beaten and blinded in one
12 eye by an unknown assailant, or group of assailants, as he was
13 taking his daily walk on Washington Street and Roebling Avenue in
14 the Chambersburg section of Trenton. Further, the bill was
15 prompted by recent assaults involving elderly victims. One
16 instance involved an assault and restraint involving a 92 year old
17 woman during a home invasion in Ewing. Another assault involved
18 the carjacking and robbery of a 78 year old woman at a shopping
19 center in Lawrence Township.