

ASSEMBLY, No. 2732

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

Assemblywoman BETTYLOU DECROCE

District 26 (Essex, Morris and Passaic)

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SYNOPSIS

Upgrades assault against servicemember to aggravated assault; expands crime of bias intimidation to encompass crimes and offenses committed against servicemembers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/13/2020)

1 AN ACT concerning offenses committed against servicemembers
2 and amending N.J.S.2C:12-1 and N.J.S.2C:16-1.

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 the person:

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 the person:

21 (1) Attempts to cause serious bodily injury to another, or causes
22 injury purposely or knowingly or under circumstances manifesting
23 extreme indifference to the value of human life recklessly causes
24 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 subsection f. of N.J.S.2C:39-1, at or in the direction of another,
32 whether or not the actor believes it to be loaded; or

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

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

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

43 (c) Any person engaged in emergency first-aid or medical
44 services acting in the performance of the person's duties while in

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 uniform or otherwise clearly identifiable as being engaged in the
2 performance of emergency first-aid or medical services; or

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

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

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

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

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

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

47 (j) Any health care worker employed by a licensed health care
48 facility to provide direct patient care, any health care professional

1 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
2 the Revised Statutes to practice a health care profession, except a
3 direct care worker at a State or county psychiatric hospital or State
4 developmental center or veterans' memorial home, while clearly
5 identifiable as being engaged in the duties of providing direct
6 patient care or practicing the health care profession; or

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

14 (l) Any servicemember while in uniform or because of his
15 status as a servicemember. As used in this subparagraph,
16 “servicemember” means any veteran or enlisted person or officer of
17 the United States Armed Forces, or a reserve component thereof, or
18 the organized militia of the State of New Jersey pursuant to
19 N.J.S.38A:1-3; or

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

29 (7) Attempts to cause significant bodily injury to another or
30 causes significant bodily injury purposely or knowingly or, under
31 circumstances manifesting extreme indifference to the value of
32 human life recklessly causes such significant bodily injury; or

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

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

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

10 (11) Uses or activates a laser sighting system or device, or a
11 system or device which, in the manner used, would cause a
12 reasonable person to believe that it is a laser sighting system or
13 device, against a law enforcement officer acting in the performance
14 of the officer's duties while in uniform or exhibiting evidence of the
15 officer's authority. As used in this paragraph, "laser sighting system
16 or device" means any system or device that is integrated with or
17 affixed to a firearm and emits a laser light beam that is used to
18 assist in the sight alignment or aiming of the firearm; or

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

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

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

1 N.J.S.2C:44-1 for a first offense of a crime of the third degree shall
2 not apply.

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

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

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

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

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

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

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

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

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

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

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

15 d. A person who is employed by a facility as defined in section
16 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
17 defined in paragraph (1) or (2) of subsection a. of this section upon
18 an institutionalized elderly person as defined in section 2 of
19 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
20 degree.

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

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

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

42

43 2. N.J.S.2C:16-1 is amended to read as follows:

44 2C:16-1. Bias Intimidation.

45 a. Bias Intimidation. A person is guilty of the crime of bias
46 intimidation if he commits, attempts to commit, conspires with
47 another to commit, or threatens the immediate commission of an
48 offense specified in chapters 11 through 18 of Title 2C of the New

1 Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or
2 N.J.S.2C:39-5~~[],~~ :

3 (1) with a purpose to intimidate an individual or group of
4 individuals because of race, color, religion, gender, disability,
5 sexual orientation, gender identity or expression, national origin,
6 **[or] ethnicity, or status as a servicemember;** or

7 (2) knowing that the conduct constituting the offense would
8 cause an individual or group of individuals to be intimidated
9 because of race, color, religion, gender, disability, sexual
10 orientation, gender identity or expression, national origin, **[or]**
11 **ethnicity, or status as a servicemember** **];** or

12 (3) under circumstances that caused any victim of the
13 underlying offense to be intimidated and the victim, considering the
14 manner in which the offense was committed, reasonably believed
15 either that (a) the offense was committed with a purpose to
16 intimidate the victim or any person or entity in whose welfare the
17 victim is interested because of race, color, religion, gender,
18 disability, sexual orientation, gender identity or expression, national
19 origin, or ethnicity, or (b) the victim or the victim's property was
20 selected to be the target of the offense because of the victim's race,
21 color, religion, gender, disability, sexual orientation, gender identity
22 or expression, national origin, or ethnicity**].**

23 b. Permissive inference concerning selection of targeted person
24 or property. Proof that the target of the underlying offense was
25 selected by the defendant, or by another acting in concert with the
26 defendant, because of race, color, religion, gender, disability, sexual
27 orientation, gender identity or expression, national origin, **[or]**
28 **ethnicity, or status as a servicemember** shall give rise to a
29 permissive inference by the trier of fact that the defendant acted
30 with a purpose to intimidate an individual or group of individuals
31 because of race, color, religion, gender, disability, sexual
32 orientation, gender identity or expression, national origin, **[or]**
33 **ethnicity, or status as a servicemember.**

34 c. Grading. Bias intimidation is a crime of the fourth degree if
35 the underlying offense referred to in subsection a. is a disorderly
36 persons offense or petty disorderly persons offense. Otherwise,
37 bias intimidation is a crime one degree higher than the most serious
38 underlying crime referred to in subsection a., except that where the
39 underlying crime is a crime of the first degree, bias intimidation is a
40 first-degree crime and the defendant upon conviction thereof may,
41 notwithstanding the provisions of paragraph (1) of subsection a. of
42 N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment
43 between 15 years and 30 years, with a presumptive term of 20
44 years.

45 d. Gender exemption in sexual offense prosecutions. It shall
46 not be a violation of subsection a. if the underlying criminal offense
47 is a violation of chapter 14 of Title 2C of the New Jersey Statutes

1 and the circumstance specified in paragraph (1)**[,]** or (2) **[or (3)]** of
2 subsection a. of this section is based solely upon the gender of the
3 victim.

4 e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or
5 any other provision of law, a conviction for bias intimidation shall
6 not merge with a conviction of any of the underlying offenses
7 referred to in subsection a. of this section, nor shall any conviction
8 for such underlying offense merge with a conviction for bias
9 intimidation. The court shall impose separate sentences upon a
10 conviction for bias intimidation and a conviction of any underlying
11 offense.

12 f. Additional Penalties. In addition to any fine imposed
13 pursuant to N.J.S.2C:43-3 or any term of imprisonment imposed
14 pursuant to N.J.S.2C:43-6, a court may order a person convicted of
15 bias intimidation to one or more of the following:

16 (1) complete a class or program on sensitivity to diverse
17 communities, or other similar training in the area of civil rights;

18 (2) complete a counseling program intended to reduce the
19 tendency toward violent and antisocial behavior; and

20 (3) make payments or other compensation to a community-
21 based program or local agency that provides services to victims of
22 bias intimidation.

23 g. As used in this section **["gender"]** :

24 "Gender identity or expression" means having or being perceived
25 as having a gender related identity or expression whether or not
26 stereotypically associated with a person's assigned sex at birth.

27 "Servicemember" means any veteran or enlisted person or
28 officer of the United States Armed Forces, or a reserve component
29 thereof, or the organized militia of the State of New Jersey pursuant
30 to N.J.S.38A:1-3.

31 h. It shall not be a defense to a prosecution for a crime under
32 this section that the defendant was mistaken as to the victim's race,
33 color, religion, gender, disability, sexual orientation, gender identity
34 or expression, national origin, **[or]** ethnicity **[of the victim]** , or
35 status as a servicemember.

36 (cf: P.L.2007, c.303, s.1)

37
38 3. This act shall take effect immediately.
39
40

41 STATEMENT

42
43 This bill would upgrade the offense of simple assault to
44 aggravated assault if committed against a servicemember, and
45 would expand the crime of bias intimidation to encompass crimes
46 and offenses committed against servicemembers.

1 DEFINITION

2 The bill defines “servicemember” as any veteran or enlisted
3 person or officer of the United States Armed Forces, or a reserve
4 component thereof, or the organized militia of the State of New
5 Jersey pursuant to N.J.S.38A:1-3.

6 ASSAULT

7 Currently, N.J.S.2C:12-1 provides that 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. A disorderly persons offense
18 is generally punishable by a term of imprisonment of up to six
19 months or a fine of up to \$1,000 or both; a petty disorderly persons
20 offense, by a term of up to 30 days or a fine of up to \$500 or both.

21 However, under paragraph (5) of subsection b. of the statute,
22 simple assault is upgraded to the crime of aggravated assault if
23 committed against certain individuals. These individuals include
24 law enforcement officers, corrections officers, judges, utility
25 company employees, health care workers, and others. Aggravated
26 assault against such individuals is a crime of the third degree if the
27 victim suffers bodily injury; otherwise it is a crime of the fourth
28 degree. A crime of the third degree is generally punishable by a
29 term of imprisonment of three to five years; a fine of up to \$15,000;
30 or both; a crime of the fourth degree, by a term of up to 18 months;
31 a fine of up to \$10,000; or both.

32 This bill provides that a simple assault committed against a
33 servicemember while in uniform or because of his status as a
34 servicemember would also constitute aggravated assault under
35 paragraph (5) of subsection b. of the statute.

36 BIAS CRIMES

37 Under N.J.S.2C:16-1, a person is guilty of bias intimidation if he
38 commits, attempts to commit, conspires with another to commit, or
39 threatens the immediate commission of an enumerated offense:

40 (1) with a purpose to intimidate an individual or group of
41 individuals because of race, color, religion, gender, disability,
42 sexual orientation, gender identity or expression, national origin, or
43 ethnicity; or

44 (2) knowing that the conduct would cause intimidation because
45 of those grounds; or

46 (3) under circumstances that caused a victim to be intimidated
47 and the victim reasonably believed either that: (a) the offense was
48 committed with a purpose to intimidate on those grounds, or (b) the

1 victim or the victim's property was selected to be the target of the
2 offense on those grounds.

3 Under the statute, the crime of bias intimidation is generally
4 graded one level higher than the underlying offense. A conviction
5 for bias intimidation does not merge with a conviction for an
6 underlying offense.

7 This bill would amend the bias crimes statute to include an
8 individual or group of individuals who were targeted because of
9 their status as servicemembers.

10 ADDITIONAL AMENDMENT TO BIAS CRIMES STATUTE

11 In addition, the bill amends the bias intimidation statute to delete
12 paragraph (3) of subsection a., in accordance with a 2015 New
13 Jersey Supreme Court decision that held the provision
14 unconstitutional. In State v. Pomianek, 221 N.J. 66 (2015), the
15 court ruled that paragraph (3) violates the Due Process Clause of
16 the Fourteenth Amendment because, in focusing on the victim's
17 perception and not on the defendant's intent, paragraph (3) "does
18 not give a defendant sufficient guidance or notice on how to
19 conform to the law." The court found that paragraph (3)
20 unconstitutionally allows a defendant to be convicted of a bias
21 crime "even though a jury may conclude that the defendant had no
22 intent to commit such a crime."