

LEGISLATIVE HISTORY OF R.S. 2A:90-4  
(Assault and battery upon law enforcement officer)

Previous bills introduced:

COPY NO. 2

- 1961 - A738 - Introduced August 28, 1961 by entire Democratic delegation.  
No action on the bill.
- 1961 - S240 - Introduced August 28 by Ridolfi, Waddington, Weber, Grossi, Cowgill, Lynch.  
Died in Senate Committee.
- 1962 - A48 - Introduced January 16 by Assemblyman Brady (and 7 others)  
Passed Assembly.  
Reached 2d reading in Senate.

The bill which became law was:

- L. 1962, Chapter 39, S74  
Introduced January 22 by Senators Waddington, Lynch, Cowgill, Grossi and Ridolfi.  
No statement.  
Not amended during passage.

No hearings or reports were located on the bill.

We searched the following without success:

- Clipping file
- New Jersey Law Journal
- New Jersey Judicial Conference, 1961, 1962
- New Jersey Municipalities, 1960, 1961, 1962

You may be interested in the following 1964 bill which passed both houses and was vetoed by the Governor.

- 1964 - A638  
Introduced April 13, 1964 by Fisher, Keith and Hering.  
Bill had statement. (copy enclosed)  
Veto message. (copy enclosed)

Note also 1967 bills:

RS/PC

1967-5481 - now Chap. 183, L. 1967

1967-5528 - introduced Nov. 20, 1967 - now L. 1967,  
W. STATEMENT

c. 262

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1967 Amendments.

- L. 1967 - C.183 - S.481 (copy enclosed)  
Introduced by Ridolfi.  
Approved July 27, 1967, Chapter 183.  
Not amended during passage.  
No statement on the bill.

974.905 (15) Legislative Bulletin  
L51 May 10, 1967,  
p. 7

- L. 1967 - C.262 - S.528 (copy enclosed)  
Introduced by Hughes.  
Approved January 8, 1968, Chapter 262.  
Not amended during passage.  
Statement reads as follows:

This bill would add firemen and ambulance, first-aid, and medical personnel to the categories of public servants (now limited to law enforcement officers), an assault and battery upon whom during the performance of their duties constitutes a high misdemeanor. A high misdemeanor is punishable under section 2A:85-6 of the New Jersey Statutes by a fine of not more than \$2,000.00, or imprisonment for not more than 7 years, or both.

We searched the following without success:

- New Jersey Judicial Conference - 1966, 1967.  
New Jersey Law Journal - 1967.  
New Jersey Municipalities - 1967.

JH/EH

VETOED 1-12-65

ASSEMBLY, No. 638

STATE OF NEW JERSEY

INTRODUCED APRIL 13, 1964

By Assemblymen FISHER, KEITH and HIERING

Referred to Committee on Judiciary

AN ACT concerning crimes and supplementing chapter 90 of Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. Any person who willfully and wrongfully wounds or inflicts griev-  
2 ous bodily harm upon another, either with or without a weapon, is guilty  
3 of a misdemeanor.

1 2. This act shall take effect immediately.

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STATEMENT

Under the present law a simple assault and battery is a violation of the Disorderly Persons Law.

The commission of an atrocious assault and battery by maiming or wounding another is a high misdemeanor but our courts have held that in order to convict a person under this statute it must be shown that the maiming or wounding was in a manner which was inhumanly cruel, outrageously brutal or violent.

There is now no statute which prohibits the willful and wrongful wounding or inflicition of grievous bodily harm upon another if it is not inhumanly cruel, outrageously brutal or violent, except the Disorderly Persons Law. The Supreme Court in the decision in *State v. Maier*, 13 N. J. 235 (1953) called attention to this gap in the criminal law and the purpose of this bill is to close this gap.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

January 12, 1965

ASSEMBLY BILL NO. 638

To the General Assembly:

I herewith return Assembly Bill No. 638, without my approval, for the following reasons:

Assembly Bill No. 638 would interpose a new category of criminal assault and battery between the existing statutory extremes of atrocious assault and battery, a high misdemeanor which carries a maximum penalty of seven years in prison and/or a \$2,000 fine, and simple assault and battery, a disorderly persons' offense which bears a maximum sanction of one year's imprisonment and/or a \$1,000 fine. This new category is intended to encompass, and to punish as a misdemeanor with a maximum prison sentence of three years, the sort of violent action which falls short of the "savagely brutal or outrageously or inhumanly cruel or violent" quality of an atrocious assault and battery (State v. Edwards, 28 N.J. 292 (1958)), but is sufficiently serious to warrant treatment as a misdemeanor rather than mere disorderly conduct.

The statement appended to this measure indicates that it was prompted as a result of the wide discrepancy between the sanctions which are attached respectively to atrocious assault and battery and to simple assault and battery. I agree that the creation of an intermediate misdemeanor of assault and battery would bring a desirable flexibility to this area of the law, and in some instances would render the quantum of punishment more fitting to the nature of the particular assault involved.

The Supreme Court has observed that "there is much to be said for such a gradation in an offense of such a wide range as assault and battery" (State v. Maier, 13 N.J. 235, 241 (1953)), and I would give favorable consideration to any legislation which effectively accomplishes a meaningful distinction among (1) the high misdemeanor of atrocious assault and battery;

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

Assembly Bill No. 638

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(2) the misdemeanor of assault and battery; and (3) the disorderly persons' offense of simple assault and battery.

This bill was passed by the Legislature on December 17 and delivered to my office on December 22, 1964, thus requiring action by this date. In the limited time available, I have endeavored to consider all aspects of this proposal. My review of this bill indicates that it fails to establish a separate and distinct offense. The misdemeanor which this measure would establish as a lesser crime than atrocious assault and battery is described in the following manner:

"Any person who willfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon, is guilty of a misdemeanor." (Emphasis added)

But N.J.S. 2A:90-1, the statute dealing with the high misdemeanor of atrocious assault and battery, provides:

"Any person who commits an atrocious assault and battery by maiming or wounding another is guilty of a high misdemeanor." (Emphasis added.)

Comparison fails to disclose any significant distinction between the statutory elements of the existing high misdemeanor and those of the less serious crime envisioned by Assembly Bill No. 638. The phrase "wounds or inflicts grievous bodily harm upon another" is conceptually indistinguishable from the prohibition against "maiming or wounding another." And while the courts have amplified the statutory characteristics of atrocious assault and battery to specify that the act must be "savagely brutal or outrageously or inhumanly cruel or violent," surely the act of a person who, in the language of this bill, "willfully and wrongfully wounds or inflicts grievous bodily harm upon another," more often than not would meet that criterion.

It is evident, therefore, that Assembly Bill No. 638, while purporting to establish a new misdemeanor which is different from and lesser than the existing high misdemeanor of atrocious assault and battery, merely paraphrases and recasts the greater crime in the form of the lesser. As a result, this bill could create unnecessary confusion in the administration

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EXECUTIVE DEPARTMENT

Assembly Bill No. 638

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of criminal justice, for the same act could be punished as either a high misdemeanor or a misdemeanor, depending upon the unguided discretion of the prosecutor and the court concerned.

Moreover, the proviso of Assembly Bill No. 638 that the injury can be inflicted "either with or without a weapon" would further compound the confusion. N.J.S. 2A:90-3 now makes it a high misdemeanor, separate and apart from the high misdemeanor of atrocious assault and battery, to commit a willful or malicious assault "with an offensive weapon or instrument \* \* \*." But under this bill, an attack with such a weapon would in effect be downgraded to an ordinary misdemeanor, with a maximum of three rather than seven years' imprisonment. In view of the serious and potentially deadly nature of the crime of armed assault, I cannot believe that the Legislature intended such a downgrading and I attribute that result to inadvertence.

This bill, in short, represents a basically sound idea which requires far more legislative consideration than it has received if it is to materialize as meaningful legislation. No one, I am certain, would want or expect any legislative proposal to be enacted into the law of this State until it has been carefully examined and evaluated against the background of all available factual information and pertinent legal considerations. It is the responsibility of the Legislature, in the first instance, to gather the operational facts, to measure the probable legal and social effectiveness of all proposals and to set forth properly such proposals in bill form. To the extent that the Legislature has not adequately discharged that function, this time-consuming but indispensable task has fallen upon my office with its limited resources.

On 27 occasions this year, I have returned to the Legislature measures with suggested changes. Most of these have related to technical problems.

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Assembly Bill No. 638

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While I would ordinarily attempt to suggest suitable language change for a bill of this type, it has not been possible to do so in the time allowed.

I am, therefore, returning herewith Assembly Bill No. 638 without my approval.

Respectfully,

RICHARD J. HUGHES

GOVERNOR

[SEAL]

Attest:

LAWRENCE BILDER

Acting Secretary to the Governor

CHAPTER 193 LAWS OF N. J. 1967  
APPROVED 7-27-67

**SENATE, No. 481**

**STATE OF NEW JERSEY**

INTRODUCED APRIL 24, 1967

By Senator RIDOLFI

(Without Reference)

AN ACT to amend "An act concerning crimes and supplementing chapter 90 of Title 2A of the New Jersey Statutes," approved May 10, 1962 (P. L. 1962, c. 39).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 1 of the act of which this act is amendatory is amended  
2 to read as follows:

3 1. Any person who commits an assault and battery upon any  
4 State, county or municipal officer, *or any public school law enforce-*  
5 *ment officer, or any other law enforcement officer, acting in the per-*  
6 *formance of his duties while in uniform or exhibiting evidence of*  
7 *his authority, is guilty of a high misdemeanor.*

1 2. This act shall take effect immediately.

CHAPTER 183 LAWS OF N. J. 1967

APPROVED 7-27-67

**SENATE, No. 481**

**STATE OF NEW JERSEY**

INTRODUCED APRIL 24, 1967

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5 *ment officer*, or any other law enforcement officer, acting in the per-  
6 formance of his duties while in uniform or exhibiting evidence of  
7 his authority, is guilty of a high misdemeanor.

1 2. This act shall take effect immediately.

SENATE, No. 528

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 20, 1967

By Senator HUGHES

(Without Reference)

AN ACT to amend "An act concerning crimes and supplementing chapter 90 of Title 2A of the New Jersey Statutes," approved May 10, 1962 (P. L. 1962, c. 39).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 1 of the act of which this act is amendatory is amended  
2 to read as follows:

3 Any person who commits an assault and battery upon:

4 a. Any State, county or municipal police officer, or any public  
5 school law enforcement officer, or any other law enforcement officer,  
6 acting in the performance of his duties while in uniform or  
7 exhibiting evidence of his authority~~]~~; or

8 b. Any paid or volunteer fireman acting in the performance of  
9 his duties while in uniform, or while riding in or upon a fire engine,  
10 hook and ladder truck or other fire-fighting apparatus or equip-  
11 ment, or while actively engaged in abating or quelling a fire, or  
12 while otherwise clearly identifiable as being engaged in the per-  
13 formance of the duties of a fireman; or

14 c. Any member of an ambulance, rescue, first-aid, or emergency  
15 squad or corps; or any physician, nurse, medical assistant, or em-  
16 ployee of a hospital, clinic, or ambulance service; acting in the  
17 performance of his duties while in uniform; or while wearing an  
18 armband or other clearly visible identification indicating his status  
19 as a person engaged in emergency, first-aid, or medical services;  
20 or while riding in or upon, or entering or leaving, any clearly  
21 identifiable ambulance or other emergency vehicle—

22 Is guilty of a high misdemeanor.

1 2. This act shall take effect immediately.

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

STATEMENT

This bill would add firemen and ambulance, first-aid, and medical personnel to the categories of public servants (now limited to law enforcement officers), an assault and battery upon whom during the performance of their duties constitutes a high misdemeanor. A high misdemeanor is punishable under section 2A:85-6 of the New Jersey Statutes by a fine of not more than \$2,000.00, or imprisonment for not more than 7 years, or both.

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# STATE OF NEW JERSEY

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2 to read as follows:

3 Any person who commits an assault and battery upon:

4 a. Any State, county or municipal police officer, or any public  
5 school law enforcement officer, or any other law enforcement officer,  
6 acting in the performance of his duties while in uniform or  
7 exhibiting evidence of his authority **[,]**; or

8 b. *Any paid or volunteer fireman acting in the performance of*  
9 *his duties while in uniform, or while riding in or upon a fire engine,*  
10 *hook and ladder truck or other fire-fighting apparatus or equip-*  
11 *ment, or while actively engaged in abating or quelling a fire, or*  
12 *while otherwise clearly identifiable as being engaged in the per-*  
13 *formance of the duties of a fireman; or*

14 c. *Any member of an ambulance, rescue, first-aid, or emergency*  
15 *squad or corps; or any physician, nurse, medical assistant, or em-*  
16 *ployee of a hospital, clinic, or ambulance service; acting in the*  
17 *performance of his duties while in uniform; or while wearing an*  
18 *armband or other clearly visible identification indicating his status*  
19 *as a person engaged in emergency, first-aid, or medical services;*  
20 *or while riding in or upon, or entering or leaving, any clearly*  
21 *identifiable ambulance or other emergency vehicle—*

22 Is guilty of a high misdemeanor.

1 2. This act shall take effect immediately.

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

## STATEMENT

This bill would add firemen and ambulance, first-aid, and medical personnel to the categories of public servants (now limited to law enforcement officers), an assault and battery upon whom during the performance of their duties constitutes a high misdemeanor. A high misdemeanor is punishable under section 2A:85-6 of the New Jersey Statutes by a fine of not more than \$2,000.00, or imprisonment for not more than 7 years, or both.