



NEW JERSEY STATE BAR ASSOCIATION

June 12, 2024

Via Electronic Mail

The Honorable Vin Gopal
802 West Park Avenue, Suite 302
Ocean Township, New Jersey 07712

The Honorable William W. Spearman
608 North Broad Street, Suite 200
Woodbury, New Jersey 08096

Re: S3201 (Gopal)/A2378 (Spearman) – Upgrades certain penalties for assaulting law enforcement officer and requires offender to be tested for communicable diseases in certain instances

Dear Senator Gopal and Assemblyman Spearman:

On behalf of the New Jersey State Bar Association, I reiterate our concerns about this bill. We sent a letter dated September 25, 2023 outlining our concerns regarding S3093/A4697 which proposes to increase penalties for assault with bodily fluids if the victim is a law enforcement or other identified groups of individuals. The bill also mandates blood-sample draws or other biological samples to be collected in certain circumstances. Based on a preliminary review of proposed amendments, the NJSBA is appreciative that some changes were made to ameliorate those concerns outlined in our previous letter. However, there are still concerns.

The stated purpose of the bill is laudable as it seeks to protect law enforcement and other front-line individuals from an intentional exposure to bodily fluids that may cause them harm. There are existing laws that protect public officials, which include law enforcement officers, paid or volunteer firefighters, and people engaged in emergency first aid or medical services. Also, current law adequately punishes offenders for this conduct. We acknowledge that there appears to be a limitation to the category of bodily injury, but there does not appear to be any necessity to elevate charges against certain individuals as they remain protected under current law. By way of example:

- N.J.S. 2C:12-1, et seq. addresses both simple assault and aggravated assault. Currently, it is a crime of the third degree if a law enforcement officer suffers bodily injury, otherwise it is a crime of the fourth degree.

- N.J.S. 2C:11-1 includes definitions for serious bodily injury, significant bodily injury and bodily injury. Attempting to cause serious bodily injury to another, or causing injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causing such injury is a second degree crime, and thus not subject to the No Early Release Act (NERA)¹. For significant bodily injury, it is a crime of the third degree. All persons are covered under these current laws, including law enforcement officers.

The NJSBA acknowledges that a change was made to eliminate the prohibition against a person entering into a plea of guilty to a lesser offense, but there continues to be concerns that the bill curtails judicial discretion by imposing mandatory sentences for those convicted of offenses. The present criminal code provides a sufficient range of potential penalties to address cases in which offenders commit assaults upon law enforcement officers.

We also acknowledge an amendment that would compel a blood sample draw or other biological sample collection based upon “consent given by the person charged or in compliance with a warrant issued by a judge of the Superior Court.” We continue to have concerns, however. This language does not go far enough to protect the privacy interests of alleged offenders or the alleged victim. There is no guidance for the application of a warrant if it is believed that “the victim is at risk of transmission of a communicable disease.” There are concerns that this proposed legislation has the potential for discriminatory application of testing as an officer may be more likely to seek testing for an individual perceived to be a person of color or LGBTQ+ because of bias and/or ongoing misinformation regarding HIV transmission, for example. It is recommended that a warrant be required in all instances of medical testing.

We thank you for considering our comments and remain available to discuss these concerns with you if you have any further questions. Please feel free to contact me at lchapland@njsba.com, 732-214-8510 (office) or 732-239-3356 (cell). On behalf of the NJSBA, thank you for your continued leadership.

Very truly yours,

Lisa Chapland

Lisa Chapland, Esq.

cc: William H. Mergner, Jr., Esq., NJSBA President
Christine A. Amalfe, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director

¹ NERA mandates the service of 85% of any sentence before becoming eligible for parole.