

SENATE, No. 2478

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED AUGUST 1, 2016

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Monmouth)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Co-Sponsored by:

Senators Allen and Diegnan

SYNOPSIS

Expands crime of bias intimidation to include law enforcement officers and emergency personnel.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/20/2016)

1 AN ACT concerning bias intimidation, amending N.J.S.2C:16-1, and
2 supplementing Title 2C of the New Jersey Statutes.

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:16-1 is amended to read as follows:

8 2C:16-1. Bias Intimidation.

9 a. Bias Intimidation. A person is guilty of the crime of bias
10 intimidation if he commits, attempts to commit, conspires with
11 another to commit, or threatens the immediate commission of an
12 offense specified in chapters 11 through 18 of Title 2C of the New
13 Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or
14 N.J.S.2C:39-5**【,】**:

15 (1) with a purpose to intimidate an individual or group of
16 individuals because of race, color, religion, gender, disability,
17 sexual orientation, gender identity or expression, national origin,
18 **【or】** ethnicity, or status as a law enforcement officer or emergency
19 services personnel; or

20 (2) knowing that the conduct constituting the offense would
21 cause an individual or group of individuals to be intimidated
22 because of race, color, religion, gender, disability, sexual
23 orientation, gender identity or expression, national origin, **【or】**
24 ethnicity, or status as a law enforcement officer or emergency
25 services personnel; or

26 (3) under circumstances that **【**caused any victim of the
27 underlying offense to be intimidated and the victim, considering the
28 manner in which the offense was committed, reasonably believed
29 either that (a) the offense was committed with a purpose to
30 intimidate the victim or any person or entity in whose welfare the
31 victim is interested because of race, color, religion, gender,
32 disability, sexual orientation, gender identity or expression, national
33 origin, or ethnicity, or (b) the victim or the victim's property was
34 selected to be the target of the offense**】** would cause a reasonable
35 individual or group of individuals to be intimidated because of the
36 **【victim's】** individual's or group's race, color, religion, gender,
37 disability, sexual orientation, gender identity or expression, national
38 origin, **【or】** ethnicity, or status as a law enforcement officer or
39 emergency services personnel.

40 b. Permissive inference concerning selection of targeted person
41 or property. Proof that the target of the underlying offense was
42 selected by the defendant, or by another acting in concert with the
43 defendant, because of race, color, religion, gender, disability, sexual
44 orientation, gender identity or expression, national origin, **【or】**
45 ethnicity, or status as a law enforcement officer or emergency

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 services personnel shall give rise to a permissive inference by the
2 trier of fact that the defendant acted with a purpose to intimidate an
3 individual or group of individuals because of race, color, religion,
4 gender, disability, sexual orientation, gender identity or expression,
5 national origin, **or** ethnicity, or status as a law enforcement
6 officer or emergency services personnel.

7 c. Grading. Bias intimidation is a crime of the fourth degree if
8 the underlying offense referred to in subsection a. is a disorderly
9 persons offense or petty disorderly persons offense. Otherwise,
10 bias intimidation is a crime one degree higher than the most serious
11 underlying crime referred to in subsection a., except that where the
12 underlying crime is a crime of the first degree, bias intimidation is a
13 first-degree crime and the defendant upon conviction thereof may,
14 notwithstanding the provisions of paragraph (1) of subsection a. of
15 N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment
16 between 15 years and 30 years, with a presumptive term of 20
17 years.

18 d. Gender exemption in sexual offense prosecutions. It shall
19 not be a violation of subsection a. if the underlying criminal offense
20 is a violation of chapter 14 of Title 2C of the New Jersey Statutes
21 and the circumstance specified in paragraph (1), (2) or (3) of
22 subsection a. of this section is based solely upon the gender of the
23 victim.

24 e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or
25 any other provision of law, a conviction for bias intimidation shall
26 not merge with a conviction of any of the underlying offenses
27 referred to in subsection a. of this section, nor shall any conviction
28 for such underlying offense merge with a conviction for bias
29 intimidation. The court shall impose separate sentences upon a
30 conviction for bias intimidation and a conviction of any underlying
31 offense.

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

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

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

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

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

44 “Emergency services personnel” includes, but is not limited to,
45 paid or volunteer fire fighters, paramedics, or members of an
46 ambulance team, rescue squad, or mobile intensive care unit.

1 “Gender identity or expression” means having or being perceived
2 as having a gender related identity or expression whether or not
3 stereotypically associated with a person's assigned sex at birth.

4 “Law enforcement officer” means a person whose public duties
5 include the power to act as an officer for the detection,
6 apprehension, arrest, conviction, and detention of offenders against
7 the laws of this State.

8 h. It shall not be a defense to a prosecution for a crime under
9 this section that the defendant was mistaken as to the race, color,
10 religion, gender, disability, sexual orientation, gender identity or
11 expression, national origin, or ethnicity of the victim, or the
12 victim’s status as a law enforcement officer or emergency services
13 personnel.

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

15

16 2. (New section) a. The Attorney General shall promulgate
17 and adopt directives which provide that criminal charges for bias
18 intimidation based on a person’s status as a law enforcement
19 officer, in violation of N.J.S.2C:16-1, shall not be brought if the
20 underlying offense under subsection a. of N.J.S.2C:16-1 does not
21 result in bodily injury to the law enforcement officer unless the act
22 involves terroristic threats against the law enforcement officer
23 pursuant to N.J.S.2C:12-3.

24 b. Nothing in this section shall be construed to preclude a
25 prosecution or conviction for a violation of any other law.

26

27 3. This act shall take effect immediately.

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STATEMENT

31

32 This bill expands the crime of bias intimidation to include crimes
33 and offenses committed against law enforcement officers and
34 emergency services personnel.

35 Under current law, a person commits the crime of bias
36 intimidation if the person commits one of the enumerated offenses
37 with purpose to intimidate, or with knowledge that commission of
38 the crime will cause intimidation, based on: (1) race, (2) color, (3)
39 religion, (4) gender, (5) disability, (6) sexual orientation, (7) gender
40 identity or expression, (8) national origin, or (9) ethnicity. The law
41 provides that the crime of bias intimidation is graded one level
42 higher than the underlying offense and that a conviction for bias
43 intimidation will not merge with other convictions.

44 As detailed in recent media accounts, there has been a national
45 outbreak of violent and deadly attacks against members of the law
46 enforcement community and emergency services personnel. It is
47 the sponsor’s intent to provide additional protections to members of
48 the law enforcement community and emergency services personnel

1 in the State of New Jersey by expanding the definition of bias
2 intimidation to include crimes committed with purpose to intimidate
3 law enforcement officers and emergency services personnel.

4 Additionally, this bill amends the bias intimidation statute in
5 accordance with the holding in State v. Pomianek, 221 N.J. 66
6 (2015), that paragraph (3) of subsection a. of N.J.S.2C:16-1 violates
7 the Due Process Clause of the Fourteenth Amendment. The court
8 ruled that paragraph (3) “is sufficiently vague that a person of
9 reasonable intelligence cannot discern the dividing line between
10 criminal and lawful behavior. A line that moves based on the
11 victim’s perceptions, however reasonable and perhaps mistaken,
12 does not give adequate notice of what is prohibited”

13 This bill would eliminate the provision concerning the victim’s
14 perception and replace it with language concerning a “reasonable”
15 victim. Similar language concerning a “reasonable” victim is set out
16 in the stalking statute, subsection b. of section 1 of P.L.1992, c.209
17 (C.2C:12-10), and was upheld by the New Jersey Supreme Court in
18 State v. Gandhi, 201 N.J. 161 (2010).

19 Under the bill, a person would be guilty of the crime of bias
20 intimidation pursuant to paragraph (3) of subsection a. of
21 N.J.S.2C:16-1 if the person commits an enumerated crime “under
22 circumstances that would cause a reasonable individual or group of
23 individuals to be intimidated because of the individual’s or group’s
24 race, color, religion, gender, disability, sexual orientation, gender
25 identity or expression, national origin, ethnicity, or status as a law
26 enforcement officer or emergency services personnel.”

27 In addition, the Attorney General is required to promulgate and
28 adopt directives to provide that criminal charges for bias
29 intimidation based on a person’s status as a law enforcement officer
30 will not be brought if the underlying offense does not result in
31 bodily injury to the law enforcement officer unless the act involves
32 terroristic threats against the law enforcement officer.