ASSEMBLY, No. 682

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

SYNOPSIS

Makes various changes to bias intimidation law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning bias intimidation and amending N.J.S.2C:16-1.

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

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

2C:16-1. Bias Intimidation.

a. Bias Intimidation. A person is guilty of the crime of bias intimidation if **[**he**]** the person commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.2C:33-3; N.J.S.2C:33-4; section 1 of P.L.2013, c.272 (C.2C:33-4.1); N.J.S.2C:39-3; N.J.S.2C:39-4, or N.J.S.2C:39-5**[**,**]**:

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

(2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity**[**; or**]**.

(3) **[**under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that (a) the offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity, or (b) the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.**]** Deleted by amendment, P.L. c. (pending before the Legislature as this bill)

b. Permissive inference concerning selection of targeted person or property. Proof that the target of the underlying offense was selected by the defendant, or by another acting in concert with the defendant, because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity shall give rise to a permissive inference by the trier of fact that the defendant acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national

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.

origin, or ethnicity.

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

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

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

f. Additional Penalties. (1) In addition to any fine imposed pursuant to N.J.S.2C:43-3 or any term of imprisonment imposed pursuant to N.J.S.2C:43-6, a court may order a person convicted of bias intimidation to one or more of the following:

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

[(2)**]** (b) complete a counseling program intended to reduce the tendency toward violent and antisocial behavior; and

[(3)**]** (c) make payments or other compensation to a community-based program or local agency that provides services to victims of bias intimidation.

(2) The Division of Criminal Justice, in consultation with the Division of Civil Rights, shall establish and maintain a State-wide evidence-based training program on sensitivity to diverse communities for defendants who have been convicted of bias intimidation.

The training program shall address topics including, but not limited to:

(a) gender and sexual orientation;

(b) race and ethnicity;

(c) disabilities;

(d) religious tolerance;

(e) unconscious bias; and

(f) diversity and inclusion.

The division periodically shall update the training program to incorporate the most recent information available to facilitate a productive discourse on issues of diversity and bias.

(3) The division shall provide grants to community-based programs, local agencies, or other organizations that provide counseling services to reduce violent and antisocial behavior and to those that provide services to victims of bias crimes.

g. As used in this section "gender identity or expression" means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth.

h. It shall not be a defense to a prosecution for a crime under this section that the defendant was mistaken as to the race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity of the victim.

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

2. This act shall take effect on the first day of the fourth month next following enactment, but the Director of the Division of Criminal Justice in the Department of Law and Public Safety may take such anticipatory administrative action in advance as may be necessary for the implementation of this act.

STATEMENT

This bill adds two predicate crimes to the State's bias intimidation law and removes an unconstitutional provision. The bill also requires certain training programs on sensitivity to diverse communities be made available to defendants convicted of bias intimidation.

Under current law, a person is guilty of the crime of bias intimidation pursuant to N.J.S.2C:16-1 if he or she commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of certain enumerated criminal offenses with any of the following states of mind:

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

(2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or

(3) under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that (a) the offense was committed with a purpose to intimidate the victim or

any person or entity in whose welfare the victim is interested because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity, or (b) the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

These enumerated predicate offenses include criminal homicide, assault, recklessly endangering another person, terroristic threats, stalking, disarming a law enforcement officer, kidnapping and related offenses, sexual offenses, robbery, carjacking, arson and other property destruction, burglary, trespass, harassment, prohibited weapons and devices, unlawful possession of a weapon, and possession of a weapon for an unlawful purpose. This bill adds to these enumerated offenses initiating a false alarm and cyber-harassment.

In State v. Pomianek, 221 N.J. 66 (2015), the New Jersey Supreme Court held that paragraph (3) of subsection a. of N.J.S.2C:16-1 (above) is unconstitutionally vague and violates due process because, rather than focusing on the defendant's state of mind, the law focuses on the victim's perception of the defendant's state of mind. Under the law, a person could be convicted of bias intimidation based on the victim's perception of the defendant's state of mind, even if that perception was incorrect. The bill removes this unconstitutional provision from N.J.S.2C:16-1.

This bill also requires the Division of Criminal Justice in the Department of Law and Public Safety to establish a training program for persons who have been convicted of bias intimidation.

The bill specifically requires the division, in consultation with the Division of Civil Rights, to establish and maintain a State-wide evidence-based training program on sensitivity to diverse communities for defendants who have been convicted of bias intimidation. The training program is required to address topics such as gender and sexual orientation; race and ethnicity; disabilities; religious tolerance; unconscious bias; and diversity and inclusion. The division is required to periodically update the training program to incorporate the latest information to facilitate a productive discourse on issues of diversity and bias.

The bill further requires the division to provide grants to community-based programs, local agencies, or other organizations that provide counseling services to reduce violent and antisocial behavior and to those that provide services to victims of bias crimes.

Under current law, certain penalties in addition to incarceration and fines may be imposed on defendants convicted of bias intimidation. These penalties include taking a class or program on sensitivity to diverse communities; attending counseling to reduce the tendency toward violent and antisocial behavior; and making payments or other compensation to a community-based program or local agency that provides services to victims of bias intimidation law.