ASSEMBLY, No. 2745

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Assemblyman JON M. BRAMNICK
District 21 (Morris, Somerset and Union)

Co-Sponsored by:
Assemblyman Dancer

SYNOPSIS

Eliminates provision in bias intimidation statute concerning victim's perception of defendant's purpose; replaces provision with language concerning a "reasonable" victim.

CURRENT VERSION OF TEXT

As introduced.

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

AN ACT concerning bias crimes 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 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:33-4; 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**]** would cause a reasonable individual or group of individuals to be intimidated because of the **[**victim's**]** individual's or group's race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

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 origin, or ethnicity.

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.

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

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

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

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 immediately.

STATEMENT

This bill would eliminate a provision in the bias intimidation statute, N.J.S.2C:16-1, concerning the victim's perception of the defendant's purpose. In a 2015 decision the New Jersey Supreme Court ruled that this provision is unconstitutional.

Currently, subsection a. of N.J.S.2C:16-1 provides that a person is guilty of the crime of bias intimidation if he commits an enumerated offense under any of the following circumstances:

(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 a victim . . . to be intimidated and the victim . . . 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.

In State v. Pomianek, 221 N.J. 66 (2015), the Supreme Court held that paragraph (3) of subsection a. violates the Due Process Clause of the Fourteenth Amendment. The court ruled that paragraph (3) "is sufficiently vague that a person of reasonable intelligence cannot discern the dividing line between criminal and lawful behavior. A line that moves based on the victim's perceptions, however reasonable and perhaps mistaken, does not give adequate notice of what is prohibited . . . "

This bill would eliminate the provision concerning the victim's perception and replace it with language concerning a "reasonable" victim. Similar language concerning a "reasonable" victim is set out in the stalking statute, subsection b. of section 1 of P.L.1992, c.209 (C.2C:12-10), and was upheld by the New Jersey Supreme Court in State v. Gandhi, 201 N.J. 161 (2008).

Under the bill, a person would be guilty of the crime of bias intimidation pursuant to paragraph (3) of subsection a. of N.J.S.2C:16-1 if he commits an enumerated crime "under circumstances that would cause a reasonable individual or group of individuals to be intimidated because of the individual's or group's race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity."