ASSEMBLY, No. 3735

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:
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District 12 (Burlington, Middlesex, Monmouth and Ocean)
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District 25 (Morris and Somerset)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 5/1/2020)

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

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 status as a law enforcement officer or emergency services personnel; 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 status as a law enforcement officer or emergency services personnel; 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, or status as a law enforcement officer or emergency services personnel.

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, 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.

services personnel 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, or status as a law enforcement officer or emergency services personnel.

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**]** :

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

"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.

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

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, or the victim's status as a law enforcement officer or emergency services personnel.

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

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

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

3. This act shall take effect immediately.

STATEMENT

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

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

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

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

Additionally, this bill amends the bias intimidation statute in accordance with the holding in State v. Pomianek, 221 N.J. 66 (2015), that paragraph (3) of subsection a. of N.J.S.2C:16-1 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 (2010).

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 the person 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, ethnicity, or status as a law enforcement officer or emergency services personnel."

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