ASSEMBLY, No. 3749

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)
Assemblyman GORDON M. JOHNSON
District 37 (Bergen)

SYNOPSIS

Establishes defacement of certain gravesites where human remains are stored or interred as a possible Bias Intimidation offense.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/16/2020)

AN ACT concerning desecration of gravesites and amending P.L.1981, c.282 and N.J.S.2C:16-1.

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

1. Section 2 of P.L.1981, c.282 (C.2C:33-11) is amended to read as follows:

2. a. (1) A person is guilty of a crime of the fourth degree if he purposely defaces or damages, without authorization of the owner or tenant, any private premises or property primarily used for religious, educational, residential, memorial, or charitable **[**, or cemetery**]** purposes, or for assembly by persons for purpose of exercising any right guaranteed by law or by the Constitution of this State or of the United States by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence.

(2) A person is guilty of a crime of the fourth degree if he purposely defaces or damages, without authorization of the owner or tenant, any private premises or property primarily used for cemetery purposes by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence.

b. A person is guilty of a crime of the fourth degree if he purposely defaces or damages, without authorization of the owner or tenant, any private premises or property primarily used for cemetery purposes or used as a gravesite, crypt, mausoleum or other site where human remains are stored or interred.

c. A person convicted of an offense under this section that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required either to pay to the owner of the damaged property monetary restitution in the amount of pecuniary damage caused by the act of graffiti or to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days or not less than the number of days necessary to remove the graffiti from the property.

(cf: P.L.1995, c.251, s.3)

2. 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

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.

Jersey Statutes; N.J.S.2C:33-4; paragraph (2) of subsection a. of section 2 of P.L.1981, c.282 (C.2C:33-11); subsection b. of section 2 of P.L.1981, c.282 (C.2C:33-11); 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.

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.

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)

3. This act shall take effect immediately.

STATEMENT

This bill would provide that purposely defacing or damaging cemetery property or a gravesite would constitute a bias crime under certain circumstances.

Under section 2 of P.L.1981, c.282 (C.2C:33-11), it is a crime of the fourth degree to purposely deface or damage, without authorization of the owner or tenant, premises or property used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly, by placing thereon a symbol, object, characterization, appellation, or graffiti that exposes another to threat of violence.

This bill provides that it would also be a crime of the fourth degree to purposely deface or damage premises or property used as a gravesite, crypt, mausoleum or other site where human remains are stored or interred. The bill would add this new crime to the list of predicate offenses in the bias intimidation statute, N.J.S.2C:16-1.

The bill also adds to the bias intimidation statute the existing fourth degree crime of defacing or damaging premises or property used for cemetery purposes by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence. The bill separates this existing fourth degree crime from the other fourth degree crimes listed in section 2 of P.L.1981, c.282 (C.2C:33-11) in order to designate it as a predicate crime under the bias intimidation statute.

The bias intimidation statute, N.J.S.2C:16-1, provides that a person is guilty of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens to commit certain specified offenses 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. A person is guilty of bias intimidation under certain other circumstances as well. Bias intimidation is generally graded as a crime one degree higher than the most serious underlying crime committed by the defendant.

A crime of the fourth degree is punishable by a term of imprisonment up to 18 months imprisonment, a fine of up to $10,000 or both. Under the bill, if the defendant committing a fourth degree crime is found guilty of bias intimidation, it would be a crime of the third degree. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to $15,000 or both.