ASSEMBLY, No. 4833

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED OCTOBER 19, 2020

Sponsored by:
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District 36 (Bergen and Passaic)
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District 14 (Mercer and Middlesex)
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SYNOPSIS

Expands crime of bias intimidation; establishes additional penalties for crimes of bias intimidation, harassment, and cyber-harassment; establishes bias intimidation motivation damages.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 1/25/2021)

AN ACT concerning bias intimidation and harassment and amending and supplementing various parts of the statutory law.

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; section 4 of P.L.1984, c.184 (C.2C:20-25); 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

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.

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) **[**,**]** 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. 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.

i. It shall not be a defense to a prosecution for a crime under this section that the defendant acted with a purpose or purposes in addition to 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.

j. A defendant may be convicted of committing a violation of subsection a. of this section against a person who is associated with an individual or group of individuals because of the race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity of the individual or group of individuals, regardless of whether the associated person who is the victim is the same race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity as the individual or group of individuals.

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

2. (New section) a. In addition to any disposition authorized by this Title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, every person convicted of or adjudicated delinquent for a violation of N.J.S.2C:16-1 shall be assessed for each offense a penalty fixed at:

(1) $2,000 in the case of a crime of the first degree;

(2) $1,000 in the case of a crime of the second degree;

(3) $750 in the case of a crime of the third degree;

(4) $500 in the case of a crime of the fourth degree;

(5) $250 in the case of a disorderly persons or petty disorderly persons offense.

b. All penalties provided for in this section shall be collected as provided for collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4), and shall be forwarded to the Department of the Treasury as provided in subsection c. of this section.

c. All moneys collected pursuant to this section shall be forwarded to the Department of the Treasury to be deposited in a nonlapsing revolving fund to be known as the "Bias Crime Prevention Fund" established pursuant to subsection d. of this section. Moneys in the fund shall be appropriated by the Legislature to the Department of Law and Public Safety on an annual basis for the purpose of investigating and prosecuting bias intimidation crimes, assisting and supporting community response to bias crime incidents, and funding training and educational programs on bias crimes and diversity, as well as other programs designed to enhance public awareness of bias crimes and diversity.

d. There shall be created in the Department of the Treasury a non-lapsing fund entitled the "Bias Crime Prevention Fund." The fund shall be the depository for assessments collected pursuant to

this section, to be appropriated and used in accordance with the purposes set forth in subsection c. of this section.

3. Section 3 of P.L.1999, c.195 (C.2C:33-3.2) is amended to read as follows:

3. a. Any person who violates the provisions of N.J.S.2C:33-3 shall be liable for a civil penalty of not less than $2,000 or treble the actual costs incurred by or resulting from the law enforcement and emergency services response to the false alarm, whichever is higher. Any monies collected pursuant to this **[**section**]** subsection shall be made payable to the municipality or other entity providing the law enforcement or emergency services response to the false alarm. "Emergency services" includes, but is not limited to, paid or volunteer fire fighters, paramedics, members of an ambulance team, rescue squad or mobile intensive care unit.

b. In addition to any penalty imposed by the court and any other penalty imposed under current law, a person who violates the provisions of N.J.S.2C:33-3, shall be liable for monetary restitution in the amount of treble the amount of pecuniary damage incurred by:

(1) any person suffering personal injury; and

(2) the owner of any property which was damaged as a result of the law enforcement and emergency services response to the false alarm.

(cf: P.L.2002, c.26, s.17)

4. Section 1 of P.L.2013, s.272 (C.2C:33-4.1) is amended to read as follows:

1. a. A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:

(1) threatens to inflict injury or physical harm to any person or the property of any person;

(2) knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; **[**or**]**

(3) threatens to commit any crime against the person or the person's property;

(4) knowingly discloses personal identifying information of another person with the intent to expose that person or another to harassment or risk of harm to life or property; or

(5) knowingly discloses personal identifying information of another person with reckless disregard of the probability of exposure of that person or another to harassment or risk of harm to life or property.

b. Cyber-harassment is a crime of the fourth degree, unless the person is 21 years of age or older at the time of the offense and impersonates a minor for the purpose of cyber-harassing a minor , or the person commits a violation of paragraph (4) or (5) of subsection a. of this section with the intent or reckless disregard of the probability of exposing the person or another to harassment or risk of harm to life or property, in which case it is a crime of the third degree.

c. If a minor under the age of 16 is adjudicated delinquent for cyber-harassment, the court may order as a condition of the sentence that the minor, accompanied by a parent or guardian, complete, in a satisfactory manner, one or both of the following:

(1) a class or training program intended to reduce the tendency toward cyber-harassment behavior; or

(2) a class or training program intended to bring awareness to the dangers associated with cyber-harassment.

d. A parent or guardian who fails to comply with a condition imposed by the court pursuant to subsection c. of this section is a disorderly person and shall be fined not more than $25 for a first offense and not more than $100 for each subsequent offense.

e. For purposes of paragraphs (4) and (5) of subsection a. of this section, "personal identifying information" has the same meaning as that term is used in N.J.S.2C:20-1.

(cf: P.L.2013, c.272, s.1)

5. Section 2 of P.L.1995, c.142 (C.2A:15-5.10) is amended to read as follows:

2. As used in this act:

"Actual malice" means an intentional wrongdoing in the sense of an evil-minded act.

"Bias intimidation motivation" means with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or gender expression, national origin, or ethnicity, or 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.

"Clear and convincing evidence" means that standard of evidence which leaves no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is a standard which requires more than a preponderance of evidence, but less than beyond a reasonable doubt, to draw a conclusion.

"Compensatory damages" means damages intended to make good the loss of an injured party, and no more. The term includes general and special damages and does not include nominal, exemplary or punitive damages.

"Defendant" means any party against whom punitive damages are sought.

"Nominal damages" are damages that are not designed to compensate a plaintiff and are less than $500.

"Plaintiff" means any party claiming punitive damages.

"Punitive damages" includes exemplary damages and means damages awarded against a party in a civil action because of aggravating circumstances in order to penalize and to provide additional deterrence against a defendant to discourage similar conduct in the future. Punitive damages do not include compensatory damages or nominal damages.

"Wanton and willful disregard" means a deliberate act or omission with knowledge of a high degree of probability of harm to another and reckless indifference to the consequences of such act or omission.

(cf: P.L.1995, c.142, s.2)

6. Section 3 of P.L.1995, c.142 (C.2A:15-5.11) is amended to read as follows:

3. An award of punitive damages <u>or a bias motivation compensatory damages enhancement</u> must be specifically prayed for in the complaint.

(cf: P.L.1995, c.142, s.3)

7. (New section) a. In addition to any other recovery authorized under P.L.1995, c.142 (C.2A:15-5.10 et seq.) or any other law, treble the amount of compensatory damages shall be awarded to the plaintiff if the plaintiff proves, by a preponderance of evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by bias intimidation motivation.

b. It shall not be a defense to liability under subsection a. of this section that the defendant acted with a motivation or motivations in addition to a bias intimidation motivation.

8. This act shall take effect on the first day of the fourth month next following the date of enactment.

STATEMENT

This bill expands the State's bias intimidation law and removes an unconstitutional provision; establishes additional penalties for the crimes of bias intimidation, harassment, and cyber-harassment, and provides for the award of bias intimidation motivation damages.

Bias Intimidation

Under current law, N.J.S.2C:16-1, a person is guilty of the crime of bias intimidation if the person 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 computer criminal activity, 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. The bill removes this unconstitutional provision from N.J.S.2C:16-1.

Under the bill, it is not a defense to a prosecution for bias intimidation that a defendant acted with a purpose, in addition to 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. The bill also provides that a defendant may be convicted of bias intimidation against a person who is associated with an individual or group because of the individual’s or group’s race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity, regardless of whether the victim is the same race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity as the individual or group.

The bill imposes additional penalties for a conviction of bias intimidation, for each offense, in the amount of: $2,000 for a crime of the first degree; $1,000 for a crime of the second degree; $750 for a crime of the third degree; $500 for a crime of the fourth degree; and $250 for a disorderly persons or petty disorderly

persons offense. These penalties are to be deposited into the Bias Crime Prevention Fund, established under the bill. The monies deposited are to be used for investigating and prosecuting bias intimidation crimes; supporting community response to bias crime incidents; funding training and educational programs on bias crimes and diversity, as well as other programs designed to enhance public awareness of bias crimes and diversity.

False Public Alarm

Under current law, a person convicted of initiating a false public alarm is liable to a civil penalty of not less than $2,000 or the actual costs resulting from law enforcement and emergency services in response to the false alarm, whichever is higher. The bill provides for the award of a civil penalty of not less than $2,000 or treble the actual costs incurred, whichever is higher. The bill further provides that a person convicted of initiating a false alarm also is liable to a person suffering personal injury, and to the owner of property damaged as a result of law enforcement and emergency services response to the false alarm.

Cyber-Harassment

The provisions of the bill expand the crime of cyber-harassment to provide that a person commits a third degree crime if the person knowingly discloses personal identifying information of another person with the intent to expose that person or another to harassment or risk of harm to life or property or in reckless disregard of the probability of the exposure. 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.

Bias Intimidation Motivation Compensatory Damages Enhancement

The bill also provides for an award of bias intimidation motivation compensatory damages enhancement. The bill defines "bias intimidation motivation" to mean with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or gender expression, national origin, or ethnicity, or 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.

The bill provides that, in addition to any other recovery authorized under current law, treble the amount of compensatory damages is to be awarded to a plaintiff if the plaintiff proves, by a preponderance of evidence, that the harm suffered was the result of the defendant's acts or omissions, and the acts or omissions were actuated by bias intimidation motivation.