

[First Reprint]

**ASSEMBLY, No. 4833**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED OCTOBER 19, 2020

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen and Passaic)**

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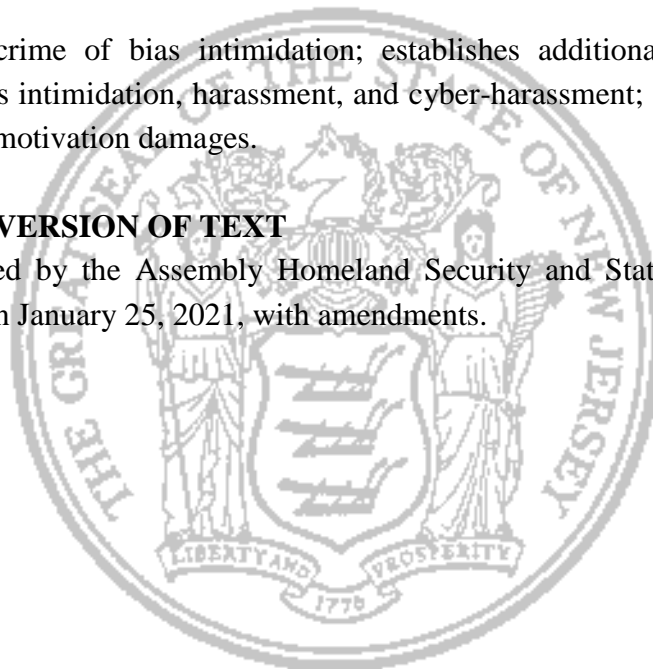
**Assemblyman Holley, Assemblywomen Vainieri Huttie, Timberlake,  
Quijano, Swain and Assemblyman Conaway**

**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 reported by the Assembly Homeland Security and State Preparedness Committee on January 25, 2021, with amendments.



**(Sponsorship Updated As Of: 3/1/2021)**

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

3

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

6

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

8 2C:16-1. Bias Intimidation.

9 a. Bias Intimidation. A person is guilty of the crime of bias  
10 intimidation if **the** the person commits, attempts to commit,  
11 conspires with another to commit, or threatens the immediate  
12 commission of an offense specified in chapters 11 through 18 of  
13 Title 2C of the New Jersey Statutes; section 4 of P.L. 1984, c.184  
14 (C.2C:20-25); N.J.S.2C:33-3; <sup>1</sup>N.J.S.2C:28-4;<sup>1</sup> N.J.S.2C:33-4;  
15 section 1 of P.L.2013, c.272 (C.2C:33-4.1); N.J.S.2C:39-3;  
16 N.J.S.2C:39-4; or N.J.S.2C:39-5**[,]**;

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

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

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

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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Assembly AHS committee amendments adopted January 25, 2021.

1 or group of individuals because of race, color, religion, gender,  
2 disability, sexual orientation, gender identity or expression, national  
3 origin, or ethnicity.

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

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

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

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

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

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

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

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

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

1        i. It shall not be a defense to a prosecution for a crime under  
2 this section that the defendant acted with a purpose or purposes in  
3 addition to a purpose to intimidate an individual or group of  
4 individuals because of race, color, religion, gender, disability,  
5 sexual orientation, gender identity or expression, national origin, or  
6 ethnicity.

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

16 (cf: P.L.2020, c.73, s.1)

17  
18        2. (New section) a. In addition to any disposition authorized  
19 by this Title, the provisions of section 24 of P.L.1982, c.77  
20 (C.2A:4A-43), or any other statute indicating the dispositions that  
21 can be ordered for an adjudication of delinquency, every person  
22 convicted of or adjudicated delinquent for a violation of  
23 N.J.S.2C:16-1 shall be assessed for each offense a penalty fixed at:

24        (1) \$2,000 in the case of a crime of the first degree;

25        (2) \$1,000 in the case of a crime of the second degree;

26        (3) \$750 in the case of a crime of the third degree;

27        (4) \$500 in the case of a crime of the fourth degree;

28        (5) \$250 in the case of a disorderly persons or petty disorderly  
29 persons offense.

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

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

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

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

3

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

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

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

21 (1) any person suffering personal injury; and

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

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

26

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25  
26       5. Section 2 of P.L.1995, c.142 (C.2A:15-5.10) is amended to  
27 read as follows:

28       2. As used in this act:

29       “Actual malice” means an intentional wrongdoing in the sense of  
30 an evil-minded act.

31       “Bias intimidation motivation” means with a purpose to  
32 intimidate an individual or group of individuals because of race,  
33 color, religion, gender, disability, sexual orientation, gender identity  
34 or gender expression, national origin, or ethnicity, or knowing that  
35 the conduct constituting the offense would cause an individual or  
36 group of individuals to be intimidated because of race, color,  
37 religion, gender, disability, sexual orientation, gender identity or  
38 expression, national origin, or ethnicity.

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

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

1 “Defendant” means any party against whom punitive damages  
2 are sought.

3 “Nominal damages” are damages that are not designed to  
4 compensate a plaintiff and are less than \$500.

5 “Plaintiff” means any party claiming punitive damages.

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

12 “Wanton and willful disregard” means a deliberate act or  
13 omission with knowledge of a high degree of probability of harm to  
14 another and reckless indifference to the consequences of such act or  
15 omission.

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

17

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

20 3. An award of punitive damages or a bias motivation  
21 compensatory damages enhancement must be specifically prayed  
22 for in the complaint.

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

24

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

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

35

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