

[Second Reprint]

ASSEMBLY, No. 4833

STATE OF NEW JERSEY

219th LEGISLATURE

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 1, 2021.

(Sponsorship Updated As Of: 3/25/2021)

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 **[he]** 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; ¹N.J.S.2C:28-4;¹ 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

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:

¹Assembly AHS committee amendments adopted January 25, 2021.

²Assembly floor amendments adopted March 1, 2021.

1 that the defendant acted with a purpose to intimidate an individual
2 or group of individuals because of race, color, religion, gender,
3 disability, sexual orientation, gender identity or expression, national
4 origin, or ethnicity.

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

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

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

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

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

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

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

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

45 h. It shall not be a defense to a prosecution for a crime under
46 this section that the defendant was mistaken as to the race, color,
47 religion, gender, disability, sexual orientation, gender identity or
48 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 ²**【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.

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)]²

²[5.] ^{4.} 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.

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 ²**[6.] 5.**² Section 3 of P.L.1995, c.142 (C.2A:15-5.11) is
19 amended to 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 ²**[7.] 6.**² (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 ²**[8.] 7.**² This act shall take effect on the first day of the fourth
37 month next following the date of enactment.