

ASSEMBLY HOMELAND SECURITY AND STATE
PREPAREDNESS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4833

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 25, 2021

The Assembly Homeland Security and State Preparedness Committee reports favorably and with committee amendments Assembly Bill No. 4833.

As reported by the committee, Assembly Bill No. 4833 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.

COMMITTEE AMENDMENTS

The committee amendments are technical in nature and incorporate P.L.2020, c.73 into section 1.