

SENATE, No. 1979

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Makes various changes to bias intimidation law.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning bias intimidation and amending N.J.S.2C:16-1.

2

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

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

7 2C:16-1. Bias Intimidation.

8 a. Bias Intimidation. A person is guilty of the crime of bias
9 intimidation if **【he】** the person commits, attempts to commit,
10 conspires with another to commit, or threatens the immediate
11 commission of an offense specified in chapters 11 through 18 of
12 Title 2C of the New Jersey Statutes; N.J.S.2C:33-3; N.J.S.2C:33-4;
13 section 1 of P.L.2013, c.272 (C.2C:33-4.1); N.J.S.2C:39-3;
14 N.J.S.2C:39-4, or N.J.S.2C:39-5**【,】**;

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

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

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

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

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.

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

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

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

26 f. Additional Penalties. (1) In addition to any fine imposed
27 pursuant to N.J.S.2C:43-3 or any term of imprisonment imposed
28 pursuant to N.J.S.2C:43-6, a court may order a person convicted of
29 bias intimidation to one or more of the following:

30 **[(1)]** (a) complete a class or program on sensitivity to diverse
31 communities, or other similar training in the area of civil rights;

32 **[(2)]** (b) complete a counseling program intended to reduce
33 the tendency toward violent and antisocial behavior; and

34 **[(3)]** (c) make payments or other compensation to a
35 community-based program or local agency that provides services to
36 victims of bias intimidation.

37 (2) The Division of Criminal Justice, in consultation with the
38 Division of Civil Rights, shall establish and maintain a State-wide
39 evidence-based training program on sensitivity to diverse
40 communities for defendants who have been convicted of bias
41 intimidation.

42 The training program shall address topics including, but not
43 limited to:

44 (a) gender and sexual orientation;

45 (b) race and ethnicity;

46 (c) disabilities;

47 (d) religious tolerance;

48 (e) unconscious bias; and

1 (f) diversity and inclusion.

2 The division periodically shall update the training program to
3 incorporate the most recent information available to facilitate a
4 productive discourse on issues of diversity and bias.

5 (3) The division shall provide grants to community-based
6 programs, local agencies, or other organizations that provide
7 counseling services to reduce violent and antisocial behavior and to
8 those that provide services to victims of bias crimes.

9 g. As used in this section "gender identity or expression"
10 means having or being perceived as having a gender related identity
11 or expression whether or not stereotypically associated with a
12 person's assigned sex at birth.

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

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

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19 2. This act shall take effect on the first day of the fourth month
20 next following enactment, but the Director of the Division of
21 Criminal Justice in the Department of Law and Public Safety may
22 take such anticipatory administrative action in advance as may be
23 necessary for the implementation of this act.

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STATEMENT

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28 This bill adds two predicate crimes to the State's bias
29 intimidation law and removes an unconstitutional provision. The
30 bill also requires certain training programs on sensitivity to diverse
31 communities be made available to defendants convicted of bias
32 intimidation.

33 Under current law, a person is guilty of the crime of bias
34 intimidation pursuant to N.J.S.2C:16-1 if he or she commits,
35 attempts to commit, conspires with another to commit, or threatens
36 the immediate commission of certain enumerated criminal offenses
37 with any of the following states of mind:

38 (1) with a purpose to intimidate an individual or group of
39 individuals because of race, color, religion, gender, disability,
40 sexual orientation, gender identity or expression, national origin, or
41 ethnicity;

42 (2) knowing that the conduct constituting the offense would
43 cause an individual or group of individuals to be intimidated
44 because of race, color, religion, gender, disability, sexual
45 orientation, gender identity or expression, national origin, or
46 ethnicity; or

47 (3) under circumstances that caused any victim of the
48 underlying offense to be intimidated and the victim, considering the

1 manner in which the offense was committed, reasonably believed
2 either that (a) the offense was committed with a purpose to
3 intimidate the victim or any person or entity in whose welfare the
4 victim is interested because of race, color, religion, gender,
5 disability, sexual orientation, gender identity or expression, national
6 origin, or ethnicity, or (b) the victim or the victim's property was
7 selected to be the target of the offense because of the victim's race,
8 color, religion, gender, disability, sexual orientation, gender identity
9 or expression, national origin, or ethnicity.

10 These enumerated predicate offenses include criminal homicide,
11 assault, recklessly endangering another person, terroristic threats,
12 stalking, disarming a law enforcement officer, kidnapping and
13 related offenses, sexual offenses, robbery, carjacking, arson and
14 other property destruction, burglary, trespass, harassment,
15 prohibited weapons and devices, unlawful possession of a weapon,
16 and possession of a weapon for an unlawful purpose. This bill adds
17 to these enumerated offenses initiating a false alarm and cyber-
18 harassment.

19 In State v. Pomianek, 221 N.J. 66 (2015), the New Jersey
20 Supreme Court held that paragraph (3) of subsection a. of
21 N.J.S.2C:16-1 (above) is unconstitutionally vague and violates due
22 process because, rather than focusing on the defendant's state of
23 mind, the law focuses on the victim's perception of the defendant's
24 state of mind. Under the law, a person could be convicted of bias
25 intimidation based on the victim's perception of the defendant's
26 state of mind, even if that perception was incorrect. The bill
27 removes this unconstitutional provision from N.J.S.2C:16-1.

28 This bill also requires the Division of Criminal Justice in the
29 Department of Law and Public Safety to establish a training
30 program for persons who have been convicted of bias intimidation.

31 The bill specifically requires the division, in consultation with
32 the Division of Civil Rights, to establish and maintain a State-wide
33 evidence-based training program on sensitivity to diverse
34 communities for defendants who have been convicted of bias
35 intimidation. The training program is required to address topics
36 such as gender and sexual orientation; race and ethnicity;
37 disabilities; religious tolerance; unconscious bias; and diversity and
38 inclusion. The division is required to periodically update the
39 training program to incorporate the latest information to facilitate a
40 productive discourse on issues of diversity and bias.

41 The bill further requires the division to provide grants to
42 community-based programs, local agencies, or other organizations
43 that provide counseling services to reduce violent and antisocial
44 behavior and to those that provide services to victims of bias
45 crimes.

46 Under current law, certain penalties in addition to incarceration
47 and fines may be imposed on defendants convicted of bias
48 intimidation. These penalties include taking a class or program on

1 sensitivity to diverse communities; attending counseling to reduce
2 the tendency toward violent and antisocial behavior; and making
3 payments or other compensation to a community-based program or
4 local agency that provides services to victims of bias intimidation.
5 According to the sponsor, these type classes and counseling
6 programs do not exist. This bill will assist in rehabilitating bias
7 intimidation defendants by making available to them bias sensitivity
8 programs and anti-violence counseling.