

# ASSEMBLY, No. 1708

## STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblyman RONALD S. DANCER**

**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

**Assemblyman JAY WEBBER**

**District 26 (Essex, Morris and Passaic)**

**SYNOPSIS**

Expands crime of bias intimidation to include law enforcement officers.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



A1708 DANCER, WEBBER

2

1 AN ACT concerning bias intimidation and law enforcement officers  
2 and amending P.L.2001, c.443.

3

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

6

7 1. Section 1 of P.L.2001, c.443 (C.2C:16-1) is amended to read  
8 as follows:

9 2C:16-1. Bias Intimidation.

10 1. a. Bias Intimidation. A person is guilty of the crime of bias  
11 intimidation if he commits, attempts to commit, conspires with  
12 another to commit, or threatens the immediate commission of an  
13 offense specified in chapters 11 through 18 of Title 2C of the New  
14 Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or  
15 N.J.S.2C:39-5,

16 (1) with a purpose to intimidate an individual or group of  
17 individuals because of race, color, religion, gender, disability,  
18 sexual orientation, gender identity or expression, national origin,  
19 **[or]** ethnicity, , or status as a law enforcement officer; or

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

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

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

**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 because of race, color, religion, gender, disability, sexual  
2 orientation, gender identity or expression, national origin, **[or]**  
3 ethnicity , or status as a law enforcement officer.

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]** :

41 "Gender identity or expression" means having or being perceived  
42 as having a gender related identity or expression whether or not  
43 stereotypically associated with a person's assigned sex at birth ; and

44 "Law enforcement officer" means a person whose public duties  
45 include the power to act as an officer for the detection,  
46 apprehension, arrest, conviction, and detention of offenders against  
47 the laws of this State.

1 h. It shall not be a defense to a prosecution for a crime under  
2 this section that the defendant was mistaken as to the race, color,  
3 religion, gender, disability, sexual orientation, gender identity or  
4 expression, national origin, or ethnicity of the victim, or as to the  
5 victim's status as a law enforcement officer.

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

7  
8 2. This act shall take effect immediately.

9  
10  
11 STATEMENT

12  
13 This bill expands the crime of bias intimidation to include crimes  
14 and offenses committed against law enforcement officers.

15 Under current law, a person commits the crime of bias  
16 intimidation if he commits one of the enumerated offenses with  
17 purpose to intimidate, or with knowledge that commission of the  
18 crime will cause intimidation, based on: (1) race, (2) color, (3)  
19 religion, (4) gender, (5) disability, (6) sexual orientation, (7) gender  
20 identity or expression, (8) national origin, or (9) ethnicity. The law  
21 provides that the crime of bias intimidation is graded one level  
22 higher than the underlying offense and that a conviction for bias  
23 intimidation will not merge with other convictions.

24 As detailed in numerous recent media accounts, there has been a  
25 national outbreak of violent and deadly attacks against members of  
26 the law enforcement community. In January of 2015, the National  
27 Fraternal Order of Police (FOP) wrote to Congress and the  
28 President of the United States to request that members of the law  
29 enforcement community be added as a protected class in the federal  
30 hate crime law, due to the targeted nature of the violence. Both FOP  
31 letters noted that of the 47 police deaths by gunfire in 2014, 19  
32 percent were due to so-called "ambush attacks." The purposeful  
33 targeting of officers has continued into 2015 with multiple fatal  
34 attacks.

35 In response, it is the sponsor's intent that this bill provide the  
36 protections demanded at the federal level to members of the law  
37 enforcement community in the State of New Jersey by expanding  
38 the definition of bias intimidation to include crimes committed with  
39 purpose to intimidate law enforcement officers.

40 Additionally, this bill amends the bias intimidation statute in  
41 accordance with the holding in State v. Pomianek, 221 N.J. 66, 91  
42 (2015), that paragraph (3) of subsection a. of N.J.S.A.2C:16-1 "fails  
43 to give adequate notice of conduct that it "proscribes" and is  
44 therefore, unconstitutional. Consequently, this bill deletes that  
45 provision of the law.