

# ASSEMBLY, No. 4101

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2016

**Sponsored by:**

**Assemblyman RONALD S. DANCER**

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

**SYNOPSIS**

Expands crime of bias intimidation to include law enforcement officers and emergency personnel.

**CURRENT VERSION OF TEXT**

As introduced.



A4101 DANCER

2

1 AN ACT concerning bias intimidation, amending N.J.S.2C:16-1, and  
2 supplementing Title 2C of the New Jersey Statutes.

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 commits, attempts to commit, conspires with  
11 another to commit, or threatens the immediate commission of an  
12 offense specified in chapters 11 through 18 of Title 2C of the New  
13 Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or  
14 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,  
18 **【or】** ethnicity, or status as a law enforcement officer or emergency  
19 services personnel; 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 status as a law enforcement officer or emergency  
25 services personnel; 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**】** would cause a reasonable  
35 individual or group of individuals to be intimidated because of the  
36 **【victim's】** individual's or group's race, color, religion, gender,  
37 disability, sexual orientation, gender identity or expression, national  
38 origin, **【or】** ethnicity, or status as a law enforcement officer or  
39 emergency services personnel.

40 b. Permissive inference concerning selection of targeted person  
41 or property. Proof that the target of the underlying offense was  
42 selected by the defendant, or by another acting in concert with the  
43 defendant, because of race, color, religion, gender, disability, sexual  
44 orientation, gender identity or expression, national origin, **【or】**

**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 ethnicity, or status as a law enforcement officer or emergency  
2 services personnel shall give rise to a permissive inference by the  
3 trier of fact that the defendant acted with a purpose to intimidate an  
4 individual or group of individuals because of race, color, religion,  
5 gender, disability, sexual orientation, gender identity or expression,  
6 national origin, **【or】** ethnicity, or status as a law enforcement  
7 officer or emergency services personnel.

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

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

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

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

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

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

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

44 g. As used in this section **【"gender】** :

45 “Emergency services personnel” includes, but is not limited to,  
46 paid or volunteer fire fighters, paramedics, or members of an  
47 ambulance team, rescue squad, or mobile intensive care unit.



1 in the State of New Jersey by expanding the definition of bias  
2 intimidation to include crimes committed with purpose to intimidate  
3 law enforcement officers and emergency services personnel.

4 Additionally, this bill amends the bias intimidation statute in  
5 accordance with the holding in State v. Pomianek, 221 N.J. 66  
6 (2015), that paragraph (3) of subsection a. of N.J.S.2C:16-1 violates  
7 the Due Process Clause of the Fourteenth Amendment. The court  
8 ruled that paragraph (3) “is sufficiently vague that a person of  
9 reasonable intelligence cannot discern the dividing line between  
10 criminal and lawful behavior. A line that moves based on the  
11 victim’s perceptions, however reasonable and perhaps mistaken,  
12 does not give adequate notice of what is prohibited . . . .”

13 This bill would eliminate the provision concerning the victim’s  
14 perception and replace it with language concerning a “reasonable”  
15 victim. Similar language concerning a “reasonable” victim is set out  
16 in the stalking statute, subsection b. of section 1 of P.L.1992, c.209  
17 (C.2C:12-10), and was upheld by the New Jersey Supreme Court in  
18 State v. Gandhi, 201 N.J. 161 (2010).

19 Under the bill, a person would be guilty of the crime of bias  
20 intimidation pursuant to paragraph (3) of subsection a. of  
21 N.J.S.2C:16-1 if the person commits an enumerated crime “under  
22 circumstances that would cause a reasonable individual or group of  
23 individuals to be intimidated because of the individual’s or group’s  
24 race, color, religion, gender, disability, sexual orientation, gender  
25 identity or expression, national origin, ethnicity, or status as a law  
26 enforcement officer or emergency services personnel.”

27 In addition, the Attorney General is required to promulgate and  
28 adopt directives to provide that criminal charges for bias  
29 intimidation based on a person’s status as a law enforcement officer  
30 will not be brought if the underlying offense does not result in  
31 bodily injury to the law enforcement officer unless the act involves  
32 terroristic threats against the law enforcement officer.