

ASSEMBLY, No. 724

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Co-Sponsored by:

Assemblywoman Chaparro, Assemblyman Zwicker, Assemblywomen Pinkin, Tucker, Murphy and Assemblyman Rooney

SYNOPSIS

Includes crime of creating false public alarms as form of bias intimidation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

3

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

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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:33-3, N.J.S.2C:33-4; 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.

35 b. Permissive inference concerning selection of targeted person
36 or property. Proof that the target of the underlying offense was
37 selected by the defendant, or by another acting in concert with the
38 defendant, because of race, color, religion, gender, disability, sexual
39 orientation, gender identity or expression, national origin, or
40 ethnicity shall give rise to a permissive inference by the trier of fact
41 that the defendant acted with a purpose to intimidate an individual
42 or group of individuals because of race, color, religion, gender,
43 disability, sexual orientation, gender identity or expression, national
44 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,
4 bias 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), (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. 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) complete a class or program on sensitivity to diverse
31 communities, or other similar training in the area of civil rights;

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

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

37 g. As used in this section "gender identity or expression"
38 means having or being perceived as having a gender related identity
39 or expression whether or not stereotypically associated with a
40 person's assigned sex at birth.

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

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

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47 2. This act shall take effect immediately.

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STATEMENT

This bill expands the list of crimes that are a form of bias intimidation to include the crime of creating a false public alarm. Pursuant to N.J.S.2C:16-1, a person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of certain offenses found in chapters 11 through 18 of Title 2C and N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or N.J.S.2C:39-5 with, among other things, 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 offenses found in chapters 11 through 18 of Title 2C include, but are not limited to, terroristic threats, assault, murder, and arson. The crimes specifically listed are N.J.S.2C:33-4 harassment; N.J.S.2C:39-3 prohibited weapons and devices; N.J.S.2C:39-4 possession of weapons for unlawful purpose; and N.J.S.2C:39-5 unlawful possession of weapons.

Bias intimidation is a crime of the fourth degree if the underlying offense is a disorderly persons offense or petty disorderly persons offense. A crime of the fourth degree is punishable by up to 18 months imprisonment, a fine up to \$10,000, or both. Otherwise, bias intimidation is a crime graded one degree higher than the most serious underlying crime, except in cases in which the underlying crime is of the first degree, bias intimidation is a first-degree crime and the defendant upon conviction may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment between 15 years and 30 years, with a presumptive term of 20 years.

This bill would expand the list of underlying offenses for bias intimidation to include creating a false public alarm (N.J.S.2C:33-3). Under this offense, a person is guilty of a third degree crime if he initiates or circulates a report or warning of an impending fire, explosion, crime, catastrophe, emergency or any other incident knowing that the report or warning is false or baseless and that is likely to cause an evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm. A crime of the third degree carries a penalty of three to five years imprisonment, a fine of up to \$15,000, or both. Depending upon the circumstances, the crime of creating a false public alarm can range from a fourth degree to a first degree crime.