

**SENATE, No. 3067**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED OCTOBER 22, 2020

**Sponsored by:**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**Senator JAMES BEACH**

**District 6 (Burlington and Camden)**

**SYNOPSIS**

Expands crime of bias intimidation; establishes additional penalties for crimes of bias intimidation, harassment, and cyber-harassment; establishes bias intimidation motivation damages.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/4/2021)**

1 AN ACT concerning bias intimidation and harassment and amending  
2 and supplementing various parts of the statutory law.

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]** the person commits, attempts to commit,  
11 conspires with another to commit, or threatens the immediate  
12 commission of an offense specified in chapters 11 through 18 of  
13 Title 2C of the New Jersey Statutes; section 4 of P.L.1984, c.184  
14 (C.2C:20-25); N.J.S.2C:33-3; N.J.S.2C:33-4; section 1 of P.L.2013,  
15 c.272 (C.2C:33-4.1); N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-  
16 5[.];

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

21 (2) knowing that the conduct constituting the offense would  
22 cause an individual or group of individuals to be intimidated  
23 because of race, color, religion, gender, disability, sexual  
24 orientation, gender identity or expression, national origin, or  
25 ethnicity**;** 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 because of the victim's race,**  
35 **color, religion, gender, disability, sexual orientation, gender identity**  
36 **or expression, national origin, or ethnicity.]** (Deleted by  
37 amendment, P.L. , c. ) (pending before the Legislature as this  
38 bill)

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

**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 that the defendant acted with a purpose to intimidate an individual  
2 or group of individuals because of race, color, religion, gender,  
3 disability, sexual orientation, gender identity or expression, national  
4 origin, or ethnicity.

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

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

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

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

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

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

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

41 g. As used in this section "gender identity or expression"  
42 means having or being perceived as having a gender related identity  
43 or expression whether or not stereotypically associated with a  
44 person's assigned sex at birth.

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

1       i. It shall not be a defense to a prosecution for a crime under  
2 this section that the defendant acted with a purpose or purposes in  
3 addition to a purpose to intimidate an individual or group of  
4 individuals because of race, color, religion, gender, disability,  
5 sexual orientation, gender identity or expression, national origin, or  
6 ethnicity.

7       j. A defendant may be convicted of committing a violation of  
8 subsection a. of this section against a person who is associated with  
9 an individual or group of individuals because of the race, color,  
10 religion, gender, disability, sexual orientation, gender identity or  
11 expression, national origin, or ethnicity of the individual or group  
12 of individuals, regardless of whether the associated person who is  
13 the victim is the same race, color, religion, gender, disability, sexual  
14 orientation, gender identity or expression, national origin, or  
15 ethnicity as the individual or group of individuals.

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

17  
18       2. (New section) a. In addition to any disposition authorized  
19 by this Title, the provisions of section 24 of P.L.1982, c.77  
20 (C.2A:4A-43), or any other statute indicating the dispositions that  
21 can be ordered for an adjudication of delinquency, every person  
22 convicted of or adjudicated delinquent for a violation of  
23 N.J.S.2C:16-1 shall be assessed for each offense a penalty fixed at:

24       (1) \$2,000 in the case of a crime of the first degree;

25       (2) \$1,000 in the case of a crime of the second degree;

26       (3) \$750 in the case of a crime of the third degree;

27       (4) \$500 in the case of a crime of the fourth degree;

28       (5) \$250 in the case of a disorderly persons or petty disorderly  
29 persons offense.

30       b. All penalties provided for in this section shall be collected as  
31 provided for collection of fines and restitutions in section 3 of  
32 P.L.1979, c.396 (C.2C:46-4), and shall be forwarded to the  
33 Department of the Treasury as provided in subsection c. of this  
34 section.

35       c. All moneys collected pursuant to this section shall be  
36 forwarded to the Department of the Treasury to be deposited in a  
37 nonlapsing revolving fund to be known as the "Bias Crime  
38 Prevention Fund" established pursuant to subsection d. of this  
39 section. Moneys in the fund shall be appropriated by the Legislature  
40 to the Department of Law and Public Safety on an annual basis for  
41 the purpose of investigating and prosecuting bias intimidation  
42 crimes, assisting and supporting community response to bias crime  
43 incidents, and funding training and educational programs on bias  
44 crimes and diversity, as well as other programs designed to enhance  
45 public awareness of bias crimes and diversity.

46       d. There shall be created in the Department of the Treasury a  
47 non-lapsing fund entitled the "Bias Crime Prevention Fund." The  
48 fund shall be the depository for assessments collected pursuant to

1 this section, to be appropriated and used in accordance with the  
2 purposes set forth in subsection c. of this section.

3  
4 3. Section 3 of P.L.1999, c.195 (C.2C:33-3.2) is amended to  
5 read as follows:

6 3. a. Any person who violates the provisions of N.J.S.2C:33-3  
7 shall be liable for a civil penalty of not less than \$2,000 or treble  
8 the actual costs incurred by or resulting from the law enforcement  
9 and emergency services response to the false alarm, whichever is  
10 higher. Any monies collected pursuant to this **【section】** subsection  
11 shall be made payable to the municipality or other entity providing  
12 the law enforcement or emergency services response to the false  
13 alarm. "Emergency services" includes, but is not limited to, paid or  
14 volunteer fire fighters, paramedics, members of an ambulance team,  
15 rescue squad or mobile intensive care unit.

16 b. In addition to any penalty imposed by the court and any  
17 other penalty imposed under current law, a person who violates the  
18 provisions of N.J.S.2C:33-3, shall be liable for monetary restitution  
19 in the amount of treble the amount of pecuniary damage incurred  
20 by:

21 (1) any person suffering personal injury; and

22 (2) the owner of any property which was damaged as a result of  
23 the law enforcement and emergency services response to the false  
24 alarm.

25 (cf: P.L.2002, c.26, s.17)

26  
27 4. Section 1 of P.L.2013, s.272 (C.2C:33-4.1) is amended to  
28 read as follows:

29 1. a. A person commits the crime of cyber-harassment if, while  
30 making a communication in an online capacity via any electronic  
31 device or through a social networking site and with the purpose to  
32 harass another, the person:

33 (1) threatens to inflict injury or physical harm to any person or  
34 the property of any person;

35 (2) knowingly sends, posts, comments, requests, suggests, or  
36 proposes any lewd, indecent, or obscene material to or about a  
37 person with the intent to emotionally harm a reasonable person or  
38 place a reasonable person in fear of physical or emotional harm to  
39 his person; **【or】**

40 (3) threatens to commit any crime against the person or the  
41 person's property;

42 (4) knowingly discloses personal identifying information of  
43 another person with the intent to expose that person or another to  
44 harassment or risk of harm to life or property; or

45 (5) knowingly discloses personal identifying information of  
46 another person with reckless disregard of the probability of  
47 exposure of that person or another to harassment or risk of harm to  
48 life or property.

b. Cyber-harassment is a crime of the fourth degree, unless the person is 21 years of age or older at the time of the offense and impersonates a minor for the purpose of cyber-harassing a minor , or the person commits a violation of paragraph (4) or (5) of subsection a. of this section with the intent or reckless disregard of the probability of exposing the person or another to harassment or risk of harm to life or property, in which case it is a crime of the third degree.

c. If a minor under the age of 16 is adjudicated delinquent for cyber-harassment, the court may order as a condition of the sentence that the minor, accompanied by a parent or guardian, complete, in a satisfactory manner, one or both of the following:

(1) a class or training program intended to reduce the tendency toward cyber-harassment behavior; or

(2) a class or training program intended to bring awareness to the dangers associated with cyber-harassment.

d. A parent or guardian who fails to comply with a condition imposed by the court pursuant to subsection c. of this section is a disorderly person and shall be fined not more than \$25 for a first offense and not more than \$100 for each subsequent offense.

e. For purposes of paragraphs (4) and (5) of subsection a. of this section, "personal identifying information" has the same meaning as that term is used in N.J.S.2C:20-1.

(cf: P.L.2013, c.272, s.1)

5. Section 2 of P.L.1995, c.142 (C.2A:15-5.10) is amended to read as follows:

2. As used in this act:

"Actual malice" means an intentional wrongdoing in the sense of an evil-minded act.

"Bias intimidation motivation" means 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.

"Clear and convincing evidence" means that standard of evidence which leaves no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is a standard which requires more than a preponderance of evidence, but less than beyond a reasonable doubt, to draw a conclusion.

"Compensatory damages" means damages intended to make good the loss of an injured party, and no more. The term includes general and special damages and does not include nominal, exemplary or punitive damages.

"Defendant" means any party against whom punitive damages are sought.

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

4 (2) knowing that the conduct constituting the offense would cause  
5 an individual or group of individuals to be intimidated because of race,  
6 color, religion, gender, disability, sexual orientation, gender identity or  
7 expression, national origin, or ethnicity; or

8 (3) under circumstances that caused any victim of the underlying  
9 offense to be intimidated and the victim, considering the manner in  
10 which the offense was committed, reasonably believed either that (a)  
11 the offense was committed with a purpose to intimidate the victim or  
12 any person or entity in whose welfare the victim is interested because  
13 of race, color, religion, gender, disability, sexual orientation, gender  
14 identity or expression, national origin, or ethnicity, or (b) the victim or  
15 the victim's property was selected to be the target of the offense  
16 because of the victim's race, color, religion, gender, disability, sexual  
17 orientation, gender identity or expression, national origin, or ethnicity.

18 These enumerated predicate offenses include criminal homicide,  
19 assault, recklessly endangering another person, terroristic threats,  
20 stalking, disarming a law enforcement officer, kidnapping and related  
21 offenses, sexual offenses, robbery, carjacking, arson and other  
22 property destruction, burglary, trespass, harassment, prohibited  
23 weapons and devices, unlawful possession of a weapon, and  
24 possession of a weapon for an unlawful purpose. This bill adds to  
25 these enumerated offenses computer criminal activity, initiating a false  
26 alarm, and cyber-harassment.

27 In State v. Pomianek, 221 N.J. 66 (2015), the New Jersey Supreme  
28 Court held that paragraph (3) of subsection a. of N.J.S.2C:16-1 (above)  
29 is unconstitutionally vague and violates due process because, rather  
30 than focusing on the defendant's state of mind, the law focuses on the  
31 victim's perception of the defendant's state of mind. The bill removes  
32 this unconstitutional provision from N.J.S.2C:16-1.

33 Under the bill, it is not a defense to a prosecution for bias  
34 intimidation that a defendant acted with a purpose, in addition to a  
35 purpose to intimidate an individual or group of individuals because of  
36 race, color, religion, gender, disability, sexual orientation, gender  
37 identity or expression, national origin, or ethnicity. The bill also  
38 provides that a defendant may be convicted of bias intimidation  
39 against a person who is associated with an individual or group because  
40 of the individual's or group's race, color, religion, gender, disability,  
41 sexual orientation, gender identity or expression, national origin, or  
42 ethnicity, regardless of whether the victim is the same race, color,  
43 religion, gender, disability, sexual orientation, gender identity or  
44 expression, national origin, or ethnicity as the individual or group.

45 The bill imposes additional penalties for a conviction of bias  
46 intimidation, for each offense, in the amount of: \$2,000 for a crime  
47 of the first degree; \$1,000 for a crime of the second degree; \$750  
48 for a crime of the third degree; \$500 for a crime of the fourth  
49 degree; and \$250 for a disorderly persons or petty disorderly



1 persons offense. These penalties are to be deposited into the Bias  
2 Crime Prevention Fund, established under the bill. The monies  
3 deposited are to be used for investigating and prosecuting bias  
4 intimidation crimes; supporting community response to bias crime  
5 incidents; funding training and educational programs on bias crimes  
6 and diversity, as well as other programs designed to enhance public  
7 awareness of bias crimes and diversity.

#### 8 *False Public Alarm*

9 Under current law, a person convicted of initiating a false public  
10 alarm is liable to a civil penalty of not less than \$2,000 or the actual  
11 costs resulting from law enforcement and emergency services in  
12 response to the false alarm, whichever is higher. The bill provides  
13 for the award of a civil penalty of not less than \$2,000 or treble the  
14 actual costs incurred, whichever is higher. The bill further provides  
15 that a person convicted of initiating a false alarm also is liable to a  
16 person suffering personal injury, and to the owner of property  
17 damaged as a result of law enforcement and emergency services  
18 response to the false alarm.

#### 19 *Cyber-Harassment*

20 The provisions of the bill expand the crime of cyber-harassment  
21 to provide that a person commits a third degree crime if the person  
22 knowingly discloses personal identifying information of another  
23 person with the intent to expose that person or another to  
24 harassment or risk of harm to life or property or in reckless  
25 disregard of the probability of the exposure. A crime of the third  
26 degree is punishable by a term of imprisonment of three to five  
27 years, a fine of up to \$15,000, or both.

#### 28 *Bias Intimidation Motivation Compensatory Damages Enhancement*

29 The bill also provides for an award of bias intimidation  
30 motivation compensatory damages enhancement. The bill defines  
31 “bias intimidation motivation” to mean with a purpose to intimidate  
32 an individual or group of individuals because of race, color,  
33 religion, gender, disability, sexual orientation, gender identity or  
34 gender expression, national origin, or ethnicity, or knowing that the  
35 conduct constituting the offense would cause an individual or group  
36 of individuals to be intimidated because of race, color, religion,  
37 gender, disability, sexual orientation, gender identity or expression,  
38 national origin, or ethnicity.

39 The bill provides that, in addition to any other recovery  
40 authorized under current law, treble the amount of compensatory  
41 damages is to be awarded to a plaintiff if the plaintiff proves, by a  
42 preponderance of evidence, that the harm suffered was the result of  
43 the defendant’s acts or omissions, and the acts or omissions were  
44 actuated by bias intimidation motivation.