

ASSEMBLY, No. 4542

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 13, 2024

Sponsored by:

Assemblywoman SHAMA A. HAIDER

District 37 (Bergen)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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:

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:28-4; N.J.S.2C:33-3; N.J.S.2C:33-4;
14 N.J.S.2C:39-3; 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.

46 c. Grading. Bias intimidation is a crime of the fourth degree if
47 the underlying offense referred to in subsection a. is a disorderly
48 persons offense or petty disorderly persons offense. Otherwise,

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

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

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

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

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

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

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

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

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

42 (cf: P.L.2020, c.73, s.1)

43

44 2. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

This bill expands the list of crimes that are a form of bias intimidation to include the crime of creating a false public alarm under N.J.S.2C:33-3.

Under current law, 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, which include terroristic threats, assault, murder, arson, harassment, and certain weapons offenses, with 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 bill also removes paragraph (3) of subsection a. of N.J.S.2C:16-1 from the statute. In State v. Pomianek, 221 N.J. 66 (2015), the New Jersey Supreme Court held that the provision was unconstitutionally vague and violates due process because, rather than focusing on the defendant's state of mind, the law focuses on the victim's perception of the defendant's state of mind.

Depending upon the circumstances, the crime of creating a false public alarm can range from a fourth degree to a first degree crime. Bias intimidation is a crime of the fourth degree if the underlying offense is a disorderly persons offense or petty disorderly persons offense. 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. A crime of the fourth degree is typically punishable by a term of up to 18 months imprisonment, a fine up to \$10,000, or both. A crime of the first degree is typically punishable by a term of 10 to 20 years imprisonment, a fine of up to \$200,000, or both. A conviction for bias intimidation as a first-degree crime may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be an ordinary term of imprisonment between 15 years and 30 years, with a presumptive term of 20 years.