

# SENATE, No. 2635

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 29, 2020

**Sponsored by:**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**SYNOPSIS**

Includes false incrimination and filing false police report as form of bias intimidation; establishes crime of false 9-1-1 call with purpose to intimidate or harass based on race or other protected class.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning false police reports and bias intimidation and  
2 amending N.J.S.2C:16-1 and N.J.S.2C:33-3.

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:33-4; 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.

45 c. Grading. Bias intimidation is a crime of the fourth degree if

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

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

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

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

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

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

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

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

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

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

45

46 2. N.J.S.2C:33-3 is amended to read as follows:

47 2C:33-3. False Public Alarms. a. (1) (a) Except as otherwise  
48 provided in this section, a person is guilty of a crime of the third

1 degree if he initiates or circulates a report or warning of an  
2 impending fire, explosion, crime, catastrophe, emergency, or any  
3 other incident knowing that the report or warning is false or  
4 baseless and that it is likely to cause evacuation of a building, place  
5 of assembly, or facility of public transport, or to cause public  
6 inconvenience or alarm. (b) A person is guilty of a crime of the  
7 second degree if the false alarm involves a report or warning of an  
8 impending bombing, hostage situation, person armed with a deadly  
9 weapon as defined by subsection c. of N.J.S.2C:11-1, or any other  
10 incident that elicits an immediate or heightened response by law  
11 enforcement or emergency services.

12 (c) A person is guilty of a crime of the second degree if the false  
13 alarm involves a report or warning about any critical infrastructure  
14 located in this State. For purposes of this subparagraph, "critical  
15 infrastructure" means any building, place of assembly, or facility  
16 that is indispensably necessary for national security, economic  
17 stability, or public safety.

18 (2) A person is guilty of a crime of the third degree if he  
19 knowingly causes the false alarm to be transmitted to or within any  
20 organization, official or volunteer, for dealing with emergencies  
21 involving danger to life or property.

22 b. A person is guilty of a crime of the second degree if in  
23 addition to the report or warning initiated, circulated or transmitted  
24 under subsection a. of this section, he places or causes to be placed  
25 any false or facsimile bomb in a building, place of assembly, or  
26 facility of public transport or in a place likely to cause public  
27 inconvenience or alarm. A violation of this subsection is a crime of  
28 the first degree if it occurs during a declared period of national,  
29 State or county emergency.

30 c. A person is guilty of a crime of the second degree if a  
31 violation of subsection a. of this section in fact results in serious  
32 bodily injury to another person or occurs during a declared period  
33 of national, State or county emergency. A person is guilty of a  
34 crime of the first degree if a violation of subsection a. of this  
35 section in fact results in death.

36 d. For the purposes of this section, "in fact" means that strict  
37 liability is imposed. It shall not be a defense that the death or  
38 serious bodily injury was not a foreseeable consequence of the  
39 person's acts or that the death or serious bodily injury was caused  
40 by the actions of another person or by circumstances beyond the  
41 control of the actor. The actor shall be strictly liable upon proof  
42 that the crime occurred during a declared period of national, State  
43 or county emergency. It shall not be a defense that the actor did not  
44 know that there was a declared period of emergency at the time the  
45 crime occurred.

46 e. A person is guilty of a crime of the fourth degree if the  
47 person knowingly places a call to a 9-1-1 emergency telephone  
48 system without purpose of reporting the need for 9-1-1 service.

1 f. A person is guilty of a crime of the third degree if the person  
2 knowingly places a call to a 9-1-1 emergency telephone system with  
3 purpose to intimidate or harass an individual or group of individuals  
4 because of race, color, religion, gender, disability, sexual  
5 orientation, gender identity or expression, national origin, or  
6 ethnicity.

7 All local and county law enforcement authorities shall submit an  
8 annual report, on a form prescribed by the Attorney General, to the  
9 Uniform Crime Reporting Unit, within the Division of State Police  
10 in the Department of Law and Public Safety, or to another  
11 designated recipient determined by the Attorney General,  
12 containing the number and nature of offenses under this section  
13 committed within their respective jurisdictions and the disposition  
14 of these offenses. Every two years, the Uniform Crime Reporting  
15 Unit or other designated recipient of the annual reports shall  
16 forward a summary of all reports received during the preceding  
17 two-year period, along with a summary of offenses investigated by  
18 the Division of State Police for the same period, to the State's  
19 Office of Emergency Management.

20 (cf: P.L.2015, c.156, s.1)

21  
22 3. This act shall take effect immediately.

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24  
25 STATEMENT

26  
27 This bill would expand the list of crimes that constitute a form of  
28 bias intimidation to include the crime of falsely incriminating  
29 another person or filing a false police report. Under the bill, a  
30 person who falsely incriminates, files a false police report, or calls  
31 the 9-1-1 emergency telephone system with the purpose to  
32 intimidate an individual or group of individuals because of race,  
33 color, religion, gender, disability, sexual orientation, gender identity  
34 or expression, national origin, or ethnicity would be subject to a  
35 criminal penalty.

36 Under N.J.S.2C:16-1, a person is guilty of the crime of bias  
37 intimidation if he commits, attempts to commit, conspires with  
38 another to commit, or threatens the immediate commission of  
39 certain offenses found in chapters 11 through 18 of Title 2C and  
40 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  
41 with, among other things, a purpose to intimidate an individual or  
42 group of individuals because of race, color, religion, gender,  
43 disability, sexual orientation, gender identity or expression, national  
44 origin, or ethnicity. The offenses found in chapters 11 through 18  
45 of Title 2C include, but are not limited to, terroristic threats, assault,  
46 murder, and arson. The crimes specifically listed are N.J.S.2C:33-4  
47 (harassment); N.J.S.2C:39-3 (prohibited weapons and devices);

1 N.J.S.2C:39-4 (possession of weapons for unlawful purpose); and  
2 N.J.S.2C:39-5 (unlawful possession of weapons).

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

14 • This bill would expand the list of underlying offenses for  
15 bias intimidation to include falsely incriminating  
16 someone or filing a false police report. Under  
17 N.J.S.2C:28-4, a person who knowingly gives or causes  
18 to be given false information to a law enforcement  
19 officer in order to implicate another commits false  
20 incrimination, a crime of the third degree. False  
21 incrimination is a crime of the second degree if the  
22 victim was implicated in a crime of the first or second  
23 degree. The penalty for a crime of the third degree is  
24 three to five years imprisonment, a fine of up to \$15,000,  
25 or both. Second degree crimes are punishable by five to  
26 10 year imprisonment, a fine of up to \$150,000, or both.

27 N.J.S.2C:28-4 also establishes the fourth degree crime of  
28 reporting to law enforcement authorities an offense or other  
29 incident that did not occur, or pretending to furnish the authorities  
30 with information relating to an arrest or incident for which the  
31 offender has no information.

32 This bill establishes a higher criminal penalty for falsely giving  
33 information to law enforcement agencies with the purpose to  
34 intimidate a victim because of his or her race, color, religion,  
35 gender, disability, sexual orientation, gender identity or expression,  
36 national origin, or ethnicity.

37 In addition, the bill establishes a third degree crime of knowingly  
38 placing a 9-1-1 call with purpose to intimidate or harass an  
39 individual or group of individuals because of race, color, religion,  
40 gender, disability, sexual orientation, gender identity or expression,  
41 national origin, or ethnicity. Under N.J.S.2C:33-3, it is a fourth  
42 degree crime to call 9-1-1 without the purpose of reporting the need  
43 for 9-1-1 service.