

[First Reprint]

ASSEMBLY, No. 4591

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED NOVEMBER 19, 2007

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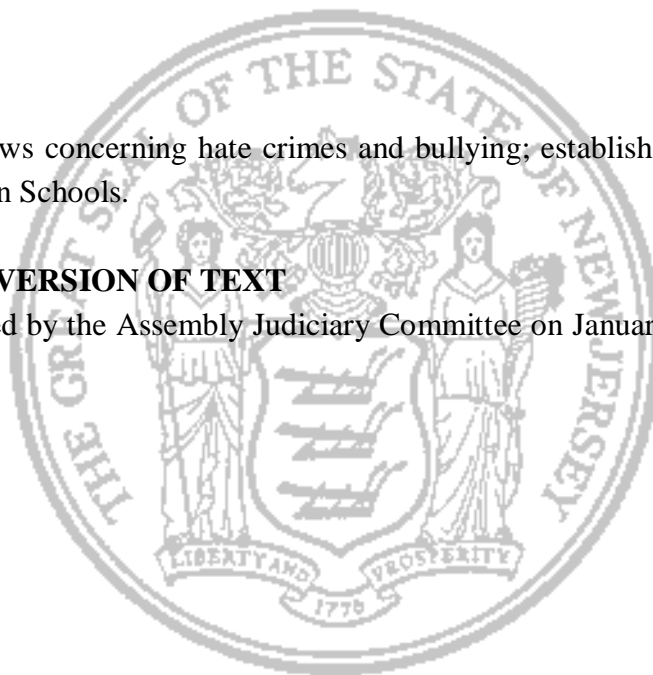
Assemblyman Johnson, Assemblywomen Jasey, Evans, Assemblyman Baroni, Assemblywoman Pou, Assemblymen Diegnan and Cryan

SYNOPSIS

Revises laws concerning hate crimes and bullying; establishes Commission on Bullying in Schools.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on January 3, 2008, with amendments.



(Sponsorship Updated As Of: 1/8/2008)

1 AN ACT concerning hate crimes and bullying, establishing a
2 commission, amending various parts of the statutory law, and
3 supplementing Title 52 of the Revised Statutes.

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

7
8 1. N.J.S.2C:16-1 is amended to read as follows:
9 2C:16-1. Bias Intimidation.

10 a. Bias Intimidation. A person is guilty of the crime of bias
11 intimidation if he commits, attempts to commit, conspires with
12 another to commit, or threatens the immediate commission of an
13 offense specified in chapters 11 through 18 of Title 2C of the New
14 Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or
15 N.J.S.2C:39-5,

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

25 (3) under circumstances that caused any victim of the
26 underlying offense to be intimidated and the victim, considering the
27 manner in which the offense was committed, reasonably believed
28 either that (a) the offense was committed with a purpose to
29 intimidate the victim or any person or entity in whose welfare the
30 victim is interested because of race, color, religion, gender,
31 **[handicap]** disability, sexual orientation, gender identity or
32 expression, national origin, or ethnicity, or (b) the victim or the
33 victim's property was selected to be the target of the offense
34 because of the victim's race, color, religion, gender, **[handicap]**
35 disability, sexual orientation, gender identity or expression, national
36 origin, or ethnicity.

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted January 3, 2008.

- 1 gender, **[handicap]** disability, sexual orientation, gender identity or
2 expression, national origin, or ethnicity.
- 3 c. Grading. Bias intimidation is a crime of the fourth degree if
4 the underlying offense referred to in subsection a. is a disorderly
5 persons offense or petty disorderly persons offense. Otherwise,
6 bias intimidation is a crime one degree higher than the most serious
7 underlying crime referred to in subsection a., except that where the
8 underlying crime is a crime of the first degree, bias intimidation is a
9 first-degree crime and the defendant upon conviction thereof may,
10 notwithstanding the provisions of paragraph (1) of subsection a. of
11 N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment
12 between 15 years and 30 years, with a presumptive term of 20
13 years.
- 14 d. Gender exemption in sexual offense prosecutions. It shall
15 not be a violation of subsection a. if the underlying criminal offense
16 is a violation of chapter 14 of Title 2C of the New Jersey Statutes
17 and the circumstance specified in paragraph (1), (2) or (3) of
18 subsection a. of this section is based solely upon the gender of the
19 victim.
- 20 e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or
21 any other provision of law, a conviction for bias intimidation shall
22 not merge with a conviction of any of the underlying offenses
23 referred to in subsection a. of this section, nor shall any conviction
24 for such underlying offense merge with a conviction for bias
25 intimidation. The court shall impose separate sentences upon a
26 conviction for bias intimidation and a conviction of any underlying
27 offense.
- 28 f. Additional Penalties. In addition to any fine imposed
29 pursuant to N.J.S.2C:43-3 or any term of imprisonment imposed
30 pursuant to N.J.S.2C:43-6, a court may order a person convicted of
31 bias intimidation to one or more of the following:
- 32 (1) complete a class or program on sensitivity to diverse
33 communities, or other similar training in the area of civil rights;
34 (2) complete a counseling program intended to reduce the
35 tendency toward violent and antisocial behavior; and
36 (3) make payments or other compensation to a community-based
37 program or local agency that provides services to victims of bias
38 intimidation.
- 39 g. As used in this section “gender identity or expression” means
40 having or being perceived as having a gender related identity or
41 expression whether or not stereotypically associated with a person’s
42 assigned sex at birth.
- 43 h. It shall not be a defense to a prosecution for a crime under
44 this section that the defendant was mistaken as to the race, color,
45 religion, gender, disability, sexual orientation, gender identity or
46 expression, national origin, or ethnicity of the victim.
47 (cf: P.L.2001, c.443, s.1)

1 2. Section 1 of P.L.1993, c.137 (C.2A:53A-21) is amended to
2 read as follows:

3 1. a. A person, acting with purpose to intimidate an individual
4 or group of individuals because of race, color, religion, gender,
5 **[handicap]** disability, sexual orientation, gender identity or
6 expression, national origin, or ethnicity, who engages in conduct
7 that is an offense under the provisions of the "New Jersey Code of
8 Criminal Justice," Title 2C of the New Jersey Statutes, commits a
9 civil offense.

10 b. Any person who sustains injury to person or property as a
11 result of a violation of subsection a. shall have a cause of action
12 against the person or persons who committed the civil offense
13 resulting in the injury. In the case of a homicide committed in
14 violation of subsection a., the estate of the deceased shall have a
15 cause of action. Nothing in this subsection shall be construed to
16 preclude the parent or legal guardian of a person who has sustained
17 injury as a result of a violation of subsection a. from initiating a
18 civil action on behalf of a minor child or ward.

19 c. The Attorney General, as parens patriae, may initiate a cause
20 of action against any person who violates subsection a. of this
21 section on behalf of any person or persons who have sustained
22 injury to person or property as a result of the commission of the
23 civil offense.

24 d. Upon proof, by a preponderance of the evidence, of a
25 defendant's violation of subsection a. of this section and of resulting
26 damages, the defendant shall be liable as follows:

27 (1) To the person or persons injured, for an award in the
28 amount of damages incurred as a result of the commission of the
29 civil offense, including damages for any emotional distress suffered
30 as a result of the civil offense, such punitive damages as may be
31 assessed, and any reasonable attorney's fees and costs of suit
32 incurred;

33 (2) To the State, in any case in which the Attorney General has
34 participated, reasonable attorney's fees and costs of investigation
35 and suit;

36 (3) Such injunctive relief as the court may deem necessary to
37 avoid the defendant's continued violation of subsection a.; and

38 (4) Any additional appropriate equitable relief, including
39 restraints to avoid repeated violation.

40 e. An award entered pursuant to paragraph (1) of subsection d.
41 of this section shall be reduced by the amount of any restitution that
42 has been awarded for the same injury following criminal conviction
43 or juvenile adjudication, and, notwithstanding the provisions of
44 paragraph (1) of subsection d., damages awarded for injuries that
45 have previously been compensated by the Violent Crimes
46 Compensation Board shall be paid to the board for deposit in the
47 Violent Crimes Compensation Board Account.

1 f. All fees and costs assessed for the benefit of the State
2 pursuant to paragraph (2) of subsection d. of this section shall be
3 paid to the State Treasurer for deposit in the Civil Rights
4 Enforcement Fund established pursuant to section 2 of this act.

5 g. The parent or guardian of a juvenile against whom an award
6 has been entered pursuant to paragraph (1) of subsection d. of this
7 section shall be liable for payment only if the parent has been
8 named as a defendant and it has been established, by a
9 preponderance of the evidence, that the parent or guardian's conduct
10 was a significant contributing factor in the juvenile's commission of
11 the offense.

12 (cf: P.L.1993, c.137, s.1)

13

14 3. Section 11 of P.L.1971, c.317 (C.52:4B-11) is amended to
15 read as follows:

16 11. The agency may order the payment of compensation in
17 accordance with the provisions of P.L.1971, c.317 for personal
18 injury or death which resulted from:

19 a. an attempt to prevent the commission of crime or to arrest a
20 suspected criminal or in aiding or attempting to aid a police officer
21 so to do; or

22 b. the commission or attempt to commit any of the following
23 offenses:

24 (1) aggravated assault;

25 (2) (Deleted by amendment, P.L.1995, c.135).

26 (3) threats to do bodily harm;

27 (4) lewd, indecent, or obscene acts;

28 (5) indecent acts with children;

29 (6) kidnapping;

30 (7) murder;

31 (8) manslaughter;

32 (9) aggravated sexual assault, sexual assault, aggravated
33 criminal sexual contact, criminal sexual contact;

34 (10) any other crime involving violence including domestic
35 violence as defined by section 3 of P.L.1981, c.426 (C.2C:25-3) or
36 section 3 of P.L.1991, c.261 (C.2C:25-19);

37 (11) burglary;

38 (12) tampering with a cosmetic, drug or food product;

39 (13) a violation of human trafficking, section 1 of P.L.2005,
40 c.77 (C.2C:13-8); or

41 c. the commission of a violation of R.S.39:4-50, section 5 of
42 P.L.1990, c.103 (C.39:3-10.13), section 19 of P.L.1954, c.236
43 (C.12:7-34.19) or section 3 of P.L.1952, c.157 (C.12:7-46); or

44 d. theft of an automobile pursuant to N.J.S.2C:20-2, eluding a
45 law enforcement officer pursuant to subsection b. of N.J.S.2C:29-2
46 or unlawful taking of a motor vehicle pursuant to subsection b., c.
47 or d. of N.J.S.2C:20-10 where injuries to the victim occur in the
48 course of operating an automobile in furtherance of the offense ; or

1 e. the commission of a violation of N.J.S. 2C:16-1, bias
2 intimidation.

3 (cf: P.L.2007, c.95, s.15)

4

5 4. Section 3 of P.L.1966, c.37 (C.52:17B-5.3) is amended to
6 read as follows:

7 3. a. All local and county police authorities shall submit a
8 quarterly report to the Attorney General, on forms prescribed by the
9 Attorney General, which report shall contain the number and nature
10 of offenses committed within their respective jurisdictions, the
11 disposition of such matters, information relating to criminal street
12 gang activities within their respective jurisdictions, information
13 relating to any offense directed against a person or group, or their
14 property, by reason of their race, color, religion, gender, disability,
15 sexual orientation, gender identity or expression, national origin, or
16 ethnicity and such other information as the Attorney General may
17 require, respecting information relating to the cause and prevention
18 of crime, recidivism, the rehabilitation of criminals and the proper
19 administration of criminal justice.

20 b. A law enforcement officer who responds to an offense
21 involving criminal street gang activity shall complete a gang related
22 incident offense report on a form prescribed by the Superintendent
23 of State Police. All information contained in the gang related
24 incident offense report shall be forwarded to the appropriate county
25 bureau of identification and to the Superintendent of State Police.
26 (cf: P.L.2005, c.332, s.1)

27

28 5. (New section) The Attorney General shall maintain a central
29 repository for the collection and analysis of information collected
30 pursuant to P.L.1966, c.37 (C.52:17B-5.3). Information in the
31 repository shall be made available to the public. The Attorney
32 General may designate the Division of State Police in the
33 Department of Law and Public Safety to be the agency to maintain
34 the repository and provide information from the repository to the
35 public.

36

37 6. (New section) The Police Training Commission shall require
38 all new police officers to complete two hours of training, which
39 may include interactive training, in identifying, responding to, and
40 reporting bias intimidation crimes. The Police Training
41 Commission shall develop or revise the training course in
42 consultation with the New Jersey Human Relations Council
43 established pursuant to section 1 of P.L.1997, c.257 (C.52:9DD-8).
44 The training course shall include the following topics:

45 a. features that identify or could identify a bias intimidation
46 crime;

47 b. laws dealing with bias intimidation crimes;

1 c. law enforcement procedures, reporting, and documentation of
2 bias intimidation crimes; and

3 d. techniques and methods to handle incidents of bias
4 intimidation crimes, including training on how to deal sensitively
5 with victims and referring victims of bias intimidation crimes to
6 organizations that provide assistance and compensation to victims.

7

8 7. Section 3 of P.L.2002, c.83 (C.18A:37-15) is amended to read
9 as follows:

10 3. a. Each school district shall adopt a policy prohibiting
11 harassment, intimidation or bullying on school property, at a
12 school-sponsored function or on a school bus. The school district
13 shall attempt to adopt the policy through a process that includes
14 representation of parents or guardians, school employees,
15 volunteers, students, administrators, and community
16 representatives.

17 b. A school district shall have local control over the content of
18 the policy, except that the policy shall contain, at a minimum, the
19 following components:

20 (1) a statement prohibiting harassment, intimidation or bullying
21 of a student;

22 (2) a definition of harassment, intimidation or bullying no less
23 inclusive than that set forth in section 2 of this act;

24 (3) a description of the type of behavior expected from each
25 student;

26 (4) consequences and appropriate remedial action for a person
27 who commits an act of harassment, intimidation or bullying;

28 (5) a procedure for reporting an act of harassment, intimidation
29 or bullying, including a provision that permits a person to report an
30 act of harassment, intimidation or bullying anonymously; however,
31 this shall not be construed to permit formal disciplinary action
32 solely on the basis of an anonymous report;

33 (6) a procedure for prompt investigation of reports of violations
34 and complaints, identifying either the principal or the principal's
35 designee as the person responsible for the investigation;

36 (7) the range of ways in which a school will respond once an
37 incident of harassment, intimidation or bullying is identified;

38 (8) a statement that prohibits reprisal or retaliation against any
39 person who reports an act of harassment, intimidation or bullying
40 and the consequence and appropriate remedial action for a person
41 who engages in reprisal or retaliation;

42 (9) consequences and appropriate remedial action for a person
43 found to have falsely accused another as a means of retaliation or as
44 a means of harassment, intimidation or bullying; **[and]**

45 (10) a statement of how the policy is to be publicized, including
46 notice that the policy applies to participation in school-sponsored
47 functions; and

1 (11) a requirement that the policy be posted on the school
2 district's website and distributed annually to parents and guardians
3 who have children enrolled in the school in the school district.

4 c. A school district shall adopt a policy and transmit a copy of
5 its policy to the appropriate county superintendent of schools by
6 September 1, 2003.

7 d. To assist school districts in developing policies for the
8 prevention of harassment, intimidation or bullying, the
9 Commissioner of Education shall develop a model policy applicable
10 to grades kindergarten through 12. This model policy shall be
11 issued no later than December 1, 2002.

12 e. Notice of the school district's policy shall appear in any
13 publication of the school district that sets forth the comprehensive
14 rules, procedures and standards of conduct for schools within the
15 school district, and in any student handbook.

16 (cf: P.L.2002, c.83, s.3)

17

18 '8. (New section) Within 60 days of the effective date of this
19 section each school district shall amend its bullying policy in
20 accordance with section 7 of P.L. , c. (pending before the
21 Legislature as this bill), make the policy available on the district's
22 website, and notify students and parents that the policy is available
23 on the district's website.'

24

25 '[8] 9'. (New section) a. There is hereby established the
26 Commission on Bullying in Schools.

27 b. The commission shall consist of '[13] 14' members as
28 follows:

29 (1) the Commissioner of the Department of Education, or his
30 designee;

31 (2) the Director of the Division on Civil Rights in the
32 Department of Law and Public Safety, or his designee;

33 (3) the Governor shall appoint '[seven] eight' public members:
34 one representative of the New Jersey Education Association, one
35 representative of the New Jersey School Boards Association, one
36 representative of the Anti-Defamation League, one representative of
37 the New Jersey Principals and Supervisors Association, and four
38 public members with a background in, or special knowledge of, the
39 legal, policy, educational, social or psychological aspects of
40 bullying in schools;

41 (4) the President of the Senate shall appoint two public members
42 with a background in, or special knowledge of, the legal, policy,
43 educational, social or psychological aspects of bullying in schools;
44 and

45 (5) the Speaker of the General Assembly shall appoint two public
46 members with a background in, or special knowledge of, the legal,

1 policy, educational, social or psychological aspects of bullying in
2 schools.

3 c. The commission shall study and make recommendations
4 regarding:

5 (1) the implementation and effectiveness of school bullying laws
6 and regulations;

7 (2) the adequacy of legal remedies available to students who are
8 victims of bullying and their parents and guardians;

9 (3) the adequacy of legal protections available to teachers who
10 are in compliance with school bullying policies;

11 (4) training of teachers, school administrators, and law
12 enforcement personnel in responding to, investigating and reporting
13 incidents of bullying;

14 (5) funding issues related to the implementation of the State
15 school bullying laws and regulations; and

16 (6) the implementation of a possible collaboration between the
17 Department of Education and the Division on Civil Rights in the
18 Department of Law and Public Safety on a Statewide initiative
19 against school bullying.

20 d. The members shall be appointed within 30 days of
21 enactment.

22 e. The members shall serve without compensation, but may be
23 reimbursed for necessary expenses incurred in the performance of
24 their duties, within the limits of funds appropriated or otherwise
25 made available to the commission for its purposes.

26 f. The commission shall choose a chairperson from among its
27 members.

28 g. Any vacancy in the membership shall be filled in the same
29 manner as the original appointment.

30 h. The commission is entitled to the assistance and service of
31 the employees of any State, county or municipal department, board,
32 bureau, commission or agency as it may require and as may be
33 available to it for its purposes, and to employ stenographic and
34 clerical assistance and to incur traveling or other miscellaneous
35 expenses as may be necessary in order to perform its duties, within
36 the limits of funds appropriated or otherwise made available to the
37 commission for its purposes.

38 i. The commission shall conduct a minimum of three public
39 hearings: one in the northern portion of the State; one in the central
40 portion of the State; and one in the southern portion of the State.

41 j. The commission shall report its findings and
42 recommendations, along with any legislation it desires to
43 recommend for adoption by the Legislature, to the Governor and the
44 Legislature in accordance with section 2 of P.L.1991, c.164
45 (C.52:14-19.1). The commission shall issue its final report no later
46 than nine months after final appointment of its members.

47 k. The commission shall expire upon submission of its final
48 report to the Governor and the Legislature.

1 '9 10'. Section **8** 9 of this act shall take effect immediately.
2 Sections 1 through '7 8' shall take effect on the 60th day after
3 enactment, but the Attorney General and the Commissioner of the
4 Department of Education shall take such anticipatory administrative
5 action in advance thereof as shall be necessary for the
6 implementation of this act.