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FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Murphy signs legislation to criminalize false 911 calls as form of bias intimidation." The Daily Targum: Rutgers University of New Jersey (New Brunswick, NJ), September 3, 2020.

"Calling 911 with false claim because of race can now put you in prison." The Jersey Journal,(Jersey City, NJ), September 2, 2020: 007.

"'RACE-BASED' 911 CALLS NOW A BIAS CRIME IN NJ." The Record (Hackensack, NJ), September 2,2020: A3.

"Gov. Murphy signs 'Overdose Awareness Day' resolution during COVID-19 health emergency." The Trentonian (Trenton, NJ), September 2, 2020.

RWH/CL

P.L. 2020, CHAPTER 73, *approved August 31, 2020*
Assembly Committee Substitute for
Assembly, Nos. 1906 and 4230

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

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 or group of individuals because of race, color, religion, gender,
2 disability, sexual orientation, gender identity or expression, national
3 origin, or ethnicity.

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

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

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

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

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

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

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

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

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

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

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

2 2C:33-3. False Public Alarms. a. (1) (a) Except as otherwise
3 provided in this section, a person is guilty of a crime of the third
4 degree if he initiates or circulates a report or warning of an
5 impending fire, explosion, crime, catastrophe, emergency, or any
6 other incident knowing that the report or warning is false or
7 baseless and that it is likely to cause evacuation of a building, place
8 of assembly, or facility of public transport, or to cause public
9 inconvenience or alarm. (b) A person is guilty of a crime of the
10 second degree if the false alarm involves a report or warning of an
11 impending bombing, hostage situation, person armed with a deadly
12 weapon as defined by subsection c. of N.J.S.2C:11-1, or any other
13 incident that elicits an immediate or heightened response by law
14 enforcement or emergency services.

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

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

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

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

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

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

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

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

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

24

25 3. This act shall take effect immediately.

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

ASSEMBLY, No. 1906

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Co-Sponsored by:

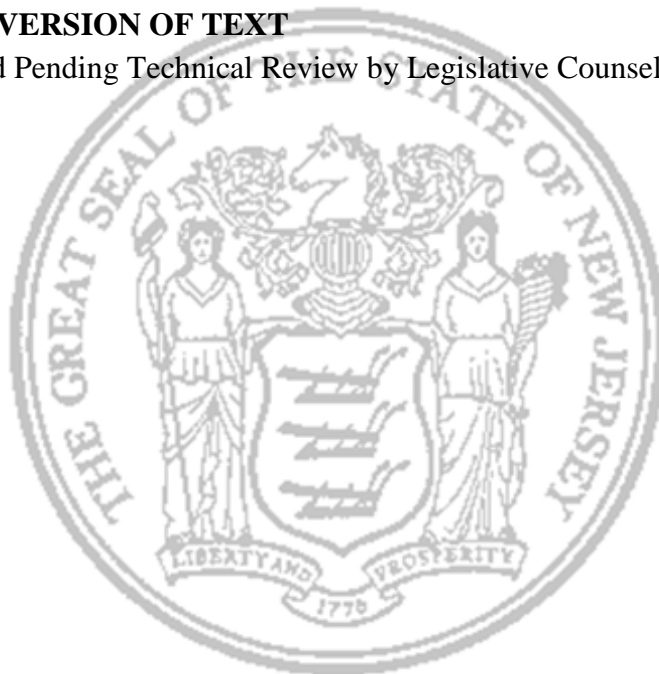
Assemblymen Dancer, Holley and Assemblywoman Timberlake

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

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/15/2020)

A1906 WIMBERLY, REYNOLDS-JACKSON

2

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2 amending N.J.S.2C:16-1 and N.J.S.2C:33-3.

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5 of New Jersey:

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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.

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

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

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

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

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

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

1 know that there was a declared period of emergency at the time the
2 crime occurred.

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

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

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

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

26

27 3. This act shall take effect immediately.

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STATEMENT

31

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

40 Under N.J.S.2C:16-1, a person is guilty of the crime of bias
41 intimidation if he commits, attempts to commit, conspires with
42 another to commit, or threatens the immediate commission of
43 certain offenses found in chapters 11 through 18 of Title 2C and
44 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
45 with, among other things, a purpose to intimidate an individual or
46 group of individuals because of race, color, religion, gender,

1 disability, sexual orientation, gender identity or expression, national
2 origin, or ethnicity. The offenses found in chapters 11 through 18
3 of Title 2C include, but are not limited to, terroristic threats, assault,
4 murder, and arson. The crimes specifically listed are N.J.S.2C:33-4
5 (harassment); N.J.S.2C:39-3 (prohibited weapons and devices);
6 N.J.S.2C:39-4 (possession of weapons for unlawful purpose); and
7 N.J.S.2C:39-5 (unlawful possession of weapons).

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

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

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

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

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

ASSEMBLY COMMUNITY DEVELOPMENT AND AFFAIRS
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1906 and 4230

STATE OF NEW JERSEY

DATED: JUNE 15, 2020

The Assembly Community Development and Affairs Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 1906 and 4230.

This committee substitute would expand the list of crimes that constitute a form of bias intimidation to include the crime of falsely incriminating another person or filing a false police report. Under the bill, a person who falsely incriminates, files a false police report, or calls the 9-1-1 emergency telephone system with the 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 would be subject to a criminal penalty.

Under 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 falsely incriminating someone or filing a false police report. Under N.J.S.2C:28-4, a person who knowingly gives or causes to be given false information to a law enforcement officer in order to implicate another commits false incrimination, a crime of the third degree. False incrimination is a crime of the second degree if the victim was implicated in a crime of the first or second degree. The penalty for a crime of the third degree is three to five years imprisonment, a fine of up to \$15,000, or both. Second degree crimes are punishable by five to 10 year imprisonment, a fine of up to \$150,000, or both.

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

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

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

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 1906 and 4230

STATE OF NEW JERSEY

DATED: JULY 28, 2020

The Senate Law and Public Safety Committee reports favorably the Assembly Committee Substitute for Assembly Bill Nos. 1906 and 4230.

As reported by the committee, this Assembly Committee Substitute adds the crimes of false incrimination and filing a fictitious police report as predicate crimes under the State's bias intimidation law.

The bill also expands the crime of initiating a false public alarm to include calling the 9-1-1 emergency telephone system with the 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.

Under current law, a person is guilty of the crime of bias intimidation pursuant to N.J.S.2C:16-1 if he or she commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of certain enumerated predicate criminal offenses with any of the following states of mind:

(1) 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;

(2) 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; or

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

These enumerated predicate criminal offenses include criminal homicide, assault, recklessly endangering another person, terroristic

threats, stalking, disarming a law enforcement officer, kidnapping and related offenses, sexual offenses, robbery, carjacking, arson and other property destruction, burglary, trespass, harassment, prohibited weapons and devices, unlawful possession of a weapon, and possession of a weapon for an unlawful purpose. The bill adds to this list the crimes of falsely incriminating someone and filing a false police report under N.J.S.2C:28-4.

Under N.J.S.2C:33-3, which establishes the crime of initiating a false public alarm, it is a fourth degree crime to call 9-1-1 without the purpose of reporting the need for 9-1-1 service. The bill adds to this law the third degree crime of knowingly placing a 9-1-1 call with purpose to intimidate or harass an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

As reported by the committee, the Assembly Committee Substitute for Assembly Nos. 1906 and 4230 is identical to Senate Bill No. 2635, which also was reported by the committee on this same date.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1906 and 4230
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JUNE 24, 2020

SUMMARY

- 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.
- Type of Impact:** Annual expenditure and revenue increases to State and local governments.
- Agencies Affected:** Department of Law and Public Safety; Administrative Office of the Courts; Law Enforcement Agencies; Department of Corrections; County Correctional Facilities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost Increase		Indeterminate	
State Revenue Increase		Indeterminate	
Local Cost Increase		Indeterminate	
Local Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) anticipates that the State, county prosecutor’s offices, local law enforcement agencies, and municipal courts will incur indeterminate additional annual operating expenses from enforcing, prosecuting, and trying the offenses established and expanded by the bill, and incarcerating any offenders. The State and municipal governments also may receive indeterminate additional annual revenue from fines and penalties imposed on and collected from individuals convicted of the offenses established by this bill.

BILL DESCRIPTION

This bill would expand the list of crimes that constitute a form of bias intimidation to include the crime of falsely incriminating another person or filing a false police report. Under the bill, a person who falsely incriminates, files a false police report, or calls the 9-1-1 emergency telephone system with the 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 would be subject to a criminal penalty.

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

N.J.S.2C:28-4 also establishes the fourth degree crime of reporting to law enforcement authorities an offense or other incident that did not occur, or pretending to furnish the authorities with information relating to an arrest or incident for which the offender has no information. This bill establishes a higher criminal penalty for falsely giving information to law enforcement agencies with the purpose to intimidate a victim because of his or her race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the State, county prosecutor's offices, local law enforcement agencies, and municipal courts will incur indeterminate additional annual operating expenses from enforcing, prosecuting, and trying the offenses established by the bill, and incarcerating any offenders. The State and municipal governments also may receive indeterminate additional annual revenue from fines and penalties imposed on and collected from individuals convicted of the offenses established by this bill.

The OLS, however, lacks sufficient information to quantify the bill's fiscal impacts. It is unclear how many persons would be prosecuted, tried, and sentenced for the expanded bias intimidation offenses in fiscal years following enactment.

Expenditure Increases: The OLS estimates that the bill will produce indeterminate annual expenditure increases to the State, counties, and municipalities; however, the OLS has no information on the additional workload and cost that the expansion of the bias intimidation law may impose on the affected State departments.

The bill is estimated to increase State operating expenditures if: a) the Department of Law and Public Safety enforces, and prosecutes violators of, the expanded bias intimidation law; b) the Judiciary adjudicates additional bias intimidation criminal cases; c) the Office of the Public Defender provides legal representation to low-income criminal defendants who are charged with having violated the expanded bias intimidation law; and d) the Department of Corrections houses and cares for individuals sentenced to certain prison terms.

FE to ACS for A1906

The bill's expansion of bias intimidation crimes and disorderly persons offenses will increase the workload of the Division of Criminal Justice in the Department of Law and Public Safety, county prosecutor's offices, the Administrative Office of the Courts, and municipal courts, as additional defendants will be prosecuted and tried. Crimes of the first, second, third, and fourth degree are adjudicated by the Superior Court. Disorderly person offenses are adjudicated by municipal courts, in most circumstances.

A presumption of incarceration applies to first degree and second degree crimes; however, a presumption of non-incarceration applies to first-time offenders of crimes of the third and fourth degree, and disorderly persons cases. Repeat offenders, however, could be incarcerated. The OLS notes that to the extent that the bill will result in additional incarcerations, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

The OLS, however, cannot project the number of future prosecutions, trials, and incarcerations related to the crimes established by the bill. Any additional State cost from the expansion of the State's bias intimidation law may be offset, in part, by criminal fines and penalties imposed by the courts on persons convicted of having violated the expanded law; however, the State's ability to collect criminal fines and penalties has historically been limited.

Revenue Gains: Additional indeterminate annual State and municipal revenue will accrue from fine and penalty payments from convicted violators of new and expanded statutory provisions.

In establishing the expansion of first, second, third, and fourth degree crimes and disorderly persons offenses, the bill creates the potential for recurring State and municipal revenue gains:

- Crimes of the first degree are punishable by a fine of up to \$200,000, a term of imprisonment between 15 years and 30 years, or both.
- Crimes of the second degree crime are punishable by a fine of up to \$150,000, a term of imprisonment of five to 10 years, or both.
- Crimes of the third degree are punishable by a term of imprisonment of up to three to five years, a fine of up to \$15,000, or both.
- Fourth degree crimes are punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.
- Disorderly persons offenses are punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

The OLS cannot determine the number of convictions of the bill's newly created third degree crimes for sending a false electronic message to a 9-1-1 emergency telephone system, and by extension the total of any resultant fine, fee, and assessment collections.

The OLS additionally notes that due to financial constraints many penalties go unpaid by persons who are convicted of disorderly persons offenses and crimes.

Section: Law and Public Safety

*Analyst: Kristin Brunner Santos
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

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.

23

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.

SENATE, No. 2578

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 15, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Includes crime of false reports to law enforcement authorities as form of bias intimidation.

CURRENT VERSION OF TEXT

As introduced.



S2578 SINGLETON, TURNER

2

1 AN ACT concerning bias intimidation and false reports to law
2 enforcement authorities and 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:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 **[or]**,
14 N.J.S.2C:39-5, or N.J.S.2C:28-4,

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

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

1 2. This act shall take effect on the 60th day following enactment
2 and shall be applicable to acts committed on or after the effective
3 date.

4

5

6

STATEMENT

7

8 This bill provides that the crime of providing false reports to law
9 enforcement authorities would constitute bias intimidation under
10 certain circumstances.

11 Pursuant to N.J.S.2C:16-1, a person is guilty of the crime of bias
12 intimidation if he commits, attempts to commit, conspires with
13 another to commit, or threatens the immediate commission of an
14 enumerated offense under certain circumstances. The enumerated
15 offenses are those set out in chapters 11 through 18 of Title 2C as
16 well as N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4, and
17 N.J.S.2C:39-5. Among other provisions, the statute provides that
18 the person will be guilty of bias intimidation if he committed an
19 enumerated offense (1) with a purpose to intimidate an individual or
20 group of individuals because of race, color, religion, gender,
21 disability, sexual orientation, gender identity or expression, national
22 origin, or ethnicity; or (2) knowing that the conduct constituting the
23 offense would cause an individual or group of individuals to be
24 intimidated because of race, color, religion, gender, disability,
25 sexual orientation, gender identity or expression, national origin, or
26 ethnicity.

27 The offenses found in chapters 11 through 18 of Title 2C
28 include, but are not limited to, terroristic threats, assault, murder,
29 and arson. The crimes specifically listed are N.J.S.2C:33-4,
30 harassment; N.J.S.2C:39-3, prohibited weapons and devices;
31 N.J.S.2C:39-4, possession of weapons for an unlawful purpose; and
32 N.J.S.2C:39-5, unlawful possession of weapons.

33 Bias intimidation is a crime of the fourth degree if the underlying
34 offense is a disorderly persons offense or petty disorderly persons
35 offense. Otherwise, bias intimidation is a crime graded one degree
36 higher than the most serious underlying crime, except that in cases
37 in which the underlying crime is of the first degree, bias
38 intimidation is a crime of the first degree and the defendant upon
39 conviction may be sentenced to an ordinary term of imprisonment
40 between 15 and 30 years.

41 This bill would expand the list of underlying offenses
42 constituting bias intimidation to include false reports to law
43 enforcement authorities (N.J.S.2C:28-4). Under subsection a. of
44 N.J.S.2C:28-4, Falsely Incriminating Another, a person is guilty of
45 a crime of the third degree if he knowingly gives or causes to be
46 given false information to any law enforcement officer with purpose
47 to implicate another. It is a crime of the second degree if the false
48 information would implicate the person in a crime of the first or

1 second degree. Under subsection b. of N.J.S.2C:28-4, Fictitious
2 Reports, a person commits a crime of the fourth degree if he: (1)
3 reports or causes to be reported to law enforcement authorities an
4 offense or other incident within their concern knowing that it did
5 not occur; or (2) pretends to furnish or causes to be furnished such
6 authorities with information relating to an offense or incident when
7 he knows he has no information relating to such offense or incident.

8 A crime of the fourth degree is punishable by up to 18 months'
9 imprisonment, a fine up to \$10,000, or both; a crime of the third
10 degree, by a term of imprisonment of three to five years, a fine of
11 up to \$15,000, or both; a crime of the second degree, by a term of
12 imprisonment of five to 10 years or a fine up to \$150,000, or both;
13 and a crime of the first degree, by a term of imprisonment of 10 to
14 20 years or a fine of up to \$200,000, or both.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2635 and 2578**

STATE OF NEW JERSEY

DATED: JULY 28, 2020

The Senate Law and Public Safety Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 2635 and 2578.

As reported by the committee, this committee substitute adds the crimes of false incrimination and filing a fictitious police report as predicate crimes under the State's bias intimidation law.

The bill also expands the crime of initiating a false public alarm to include calling the 9-1-1 emergency telephone system with the 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.

Under current law, a person is guilty of the crime of bias intimidation pursuant to N.J.S.2C:16-1 if he or she commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of certain enumerated predicate criminal offenses with any of the following states of mind:

(1) 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;

(2) 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; or

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

These enumerated predicate criminal offenses include criminal homicide, assault, recklessly endangering another person, terroristic threats, stalking, disarming a law enforcement officer, kidnapping and related offenses, sexual offenses, robbery, carjacking, arson and other

property destruction, burglary, trespass, harassment, prohibited weapons and devices, unlawful possession of a weapon, and possession of a weapon for an unlawful purpose. The bill adds to this list the crimes of falsely incriminating someone and filing a false police report under N.J.S.2C:28-4.

Under N.J.S.2C:33-3, which establishes the crime of initiating a false public alarm, it is a fourth degree crime to call 9-1-1 without the purpose of reporting the need for 9-1-1 service. The bill adds to this law the third degree crime of knowingly placing a 9-1-1 call with purpose to intimidate or harass an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

As reported by the committee, Senate Bill No. 2635 is identical to the Assembly Committee Substitute for Assembly Bill Nos. 1906 and 4230, which also was reported by the committee on this same date.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2635
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JULY 29, 2020

SUMMARY

- 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.
- Type of Impact:** Annual expenditure and revenue increases to the State and local governments.
- Agencies Affected:** Department of Law and Public Safety; Administrative Office of the Courts; Law Enforcement Agencies; Department of Corrections; County Correctional Facilities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost Increase		Indeterminate	
State Revenue Increase		Indeterminate	
Local Cost Increase		Indeterminate	
Local Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) anticipates that the State, county prosecutor’s offices, local law enforcement agencies, and municipal courts will incur indeterminate additional annual operating expenses from enforcing, prosecuting, and trying the offenses established and expanded by the bill, and incarcerating any offenders. The State and municipal governments also may receive indeterminate additional annual revenue from fines and penalties imposed on and collected from individuals convicted of the offenses established by this bill.

BILL DESCRIPTION

This bill would expand the list of crimes that constitute a form of bias intimidation to include the crime of falsely incriminating another person or filing a false police report. Under the bill, a person who falsely incriminates, files a false police report, or calls the 9-1-1 emergency telephone system with the 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 would be subject to a criminal penalty.

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

N.J.S.2C:28-4 also establishes the fourth degree crime of reporting to law enforcement authorities an offense or other incident that did not occur, or pretending to furnish the authorities with information relating to an arrest or incident for which the offender has no information. This bill establishes a higher criminal penalty for falsely giving information to law enforcement agencies with the purpose to intimidate a victim because of his or her race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the State, county prosecutor's offices, local law enforcement agencies, and municipal courts will incur indeterminate additional annual operating expenses from enforcing, prosecuting, and trying the offenses established by the bill, and incarcerating any offenders. The State and municipal governments also may receive indeterminate additional annual revenue from fines and penalties imposed on and collected from individuals convicted of the offenses established by this bill.

The OLS, however, lacks sufficient information to quantify the bill's fiscal impacts. It is unclear how many persons would be prosecuted, tried, and sentenced for the expanded bias intimidation offenses in fiscal years following enactment.

Expenditure Increases: The OLS estimates that the bill will produce indeterminate annual expenditure increases to the State, counties, and municipalities; however, the OLS has no information on the additional workload and cost that the expansion of the bias intimidation law may impose on the affected State departments.

The bill is estimated to increase State operating expenditures if: a) the Department of Law and Public Safety enforces, and prosecutes violators of, the expanded bias intimidation law; b) the Judiciary adjudicates additional bias intimidation criminal cases; c) the Office of the Public Defender provides legal representation to low-income criminal defendants who are charged with

having violated the expanded bias intimidation law; and d) the Department of Corrections houses and cares for individuals sentenced to certain prison terms.

The bill's expansion of bias intimidation crimes and disorderly persons offenses will increase the workload of the Division of Criminal Justice in the Department of Law and Public Safety, county prosecutor's offices, the Administrative Office of the Courts, and municipal courts, as additional defendants will be prosecuted and tried. Crimes of the first, second, third, and fourth degree are adjudicated by the Superior Court. Disorderly person offenses are adjudicated by municipal courts, in most circumstances.

A presumption of incarceration applies to first degree and second degree crimes; however, a presumption of non-incarceration applies to first-time offenders of crimes of the third and fourth degree, and disorderly persons cases. Repeat offenders, however, could be incarcerated. The OLS notes that to the extent that the bill will result in additional incarcerations, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

The OLS, however, cannot project the number of future prosecutions, trials, and incarcerations related to the crimes established by the bill. Any additional State cost from the expansion of the State's bias intimidation law may be offset, in part, by criminal fines and penalties imposed by the courts on persons convicted of having violated the expanded law; however, the State's ability to collect criminal fines and penalties has historically been limited.

Revenue Gains: Additional indeterminate annual State and municipal revenue will accrue from fine and penalty payments from convicted violators of new and expanded statutory provisions.

In establishing the expansion of first, second, third, and fourth degree crimes and disorderly persons offenses, the bill creates the potential for recurring State and municipal revenue gains:

- Crimes of the first degree are punishable by a term of imprisonment of 15 to 30 years, a fine of up to \$200,000, or both.
- Crimes of the second degree are punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.
- Crimes of the third degree are punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.
- Fourth degree crimes are punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.
- Disorderly persons offenses are punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

The OLS cannot determine the number of convictions of the bill's newly created third degree crimes for sending a false electronic message to a 9-1-1 emergency telephone system, and by extension the total of any resultant fine, fee, and assessment collections.

The OLS additionally notes that due to financial constraints many penalties go unpaid by persons who are convicted of disorderly persons offenses and crimes.

Section: Law and Public Safety

*Analyst: Kristin Brunner Santos
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Signs Legislation Criminalizing a False 9-1-1 Call Based on Race or Protected Class

08/31/2020

Governor Phil Murphy today signed legislation (A1906), which would amend current law to include false incrimination and filing a false police report as a form of bias intimidation. The bill also establishes crime of false 9-1-1 call with purpose to intimidate or harass based on race or other protected class.

"Using the threat of a 9-1-1 call or police report as an intimidation tactic against people of color is an unacceptable, abhorrent form of discrimination," **said Governor Murphy**. "This irresponsible misuse of our 9-1-1 system places victims in a potentially dangerous situation, and can erode trust between Black and Brown New Jerseyans and law enforcement. Individuals who choose to weaponize this form of intimidation should held be accountable to the fullest extent of the law."

"Over the past two years we've worked hard to build and strengthen trust between communities and law enforcement, and this law will help us further racial justice while keeping our residents safe," **said Attorney General Gurbir S. Grewal**. "Not only is falsely calling 911 a form of intimidation against people of color that places its victims in danger, it interferes with 911 emergency operators trying to save lives and puts law enforcement at risk. This law demonstrates New Jersey takes addressing racial bias incidents seriously."

In a joint-statement, Assemblymembers Benjie Wimberly, Yvonne Lopez, Verlina Reynolds-Jackson, and Cleopatra Tucker said:

"With the ongoing protests further highlighting the turbulent relationship between police officers and the black community, the insidious threat of a false 9-1-1 call or police report has never been clearer. We cannot allow anyone to call the police or file a report against someone simply because they do not like the victim's race, gender, religion or some other identifier. The police are not personal enforcers to be called whenever someone's identity offends you – they are to be called in the event of a true emergency. Today, our state makes it clear that this intimidation will not be tolerated here."

"Calling the police when no crime has occurred can be incredibly dangerous for victims of this attempt at bias intimidation, since officers have wide latitude to detain people in ways that can quickly escalate into life and death situations," **said Senator Nia Gill**. "The adoption of this law moves us one step closer to ensuring that New Jersey's police are not weaponized for purposes of bias intimidation, and those who attempt to do so will be held accountable under this law."

"As our country finds itself in the grips of racial and social unrest, those who seek to weaponize and enflame these tensions should be held accountable," **said Senator Troy Singleton**. "Not only are false 9-1-1 calls a waste of resources, but when they are used to harass or intimidate someone based on their race, religion, sexuality or other protected classes, they risk escalating it into a potentially deadly situation. Under this new law, anyone who files a false police report will be subject to criminal penalty."

"We have seen, time and time again, the immense physical and emotional impact of weaponizing the police against Black and brown individuals. No one should fear having the police called on them simply because they are walking their dog, barbecuing with friends or asking a fellow New Yorker to follow the law," **said Senator Shirley Turner**. "I am grateful Governor Murphy saw the value in criminalizing this dangerous tactic and I hope other states will follow suit."