

## CHAPTER 303

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

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

1. N.J.S.2C:16-1 is amended to read as follows:

Bias intimidation.

2C:16-1. Bias Intimidation.

a. Bias Intimidation. 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 an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; 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,

(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; or

(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.

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

c. Grading. Bias intimidation is a crime of the fourth degree if the underlying offense referred to in subsection a. is a disorderly persons offense or petty disorderly persons offense. Otherwise, bias intimidation is a crime one degree higher than the most serious underlying crime referred to in subsection a., except that where the underlying crime is a crime of the first degree, bias intimidation is a first-degree crime and the defendant upon conviction thereof 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.

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

e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction for bias intimidation shall not merge with a conviction of any of the

underlying offenses referred to in subsection a. of this section, nor shall any conviction for such underlying offense merge with a conviction for bias intimidation. The court shall impose separate sentences upon a conviction for bias intimidation and a conviction of any underlying offense.

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

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

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

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

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

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

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

C.2A:53A-21 Civil cause of action for bias crime victims.

1. a. A person, acting with 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, who engages in conduct that is an offense under the provisions of the "New Jersey Code of Criminal Justice," Title 2C of the New Jersey Statutes, commits a civil offense.

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

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

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

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

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

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

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

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

f. All fees and costs assessed for the benefit of the State pursuant to paragraph (2) of subsection d. of this section shall be paid to the State Treasurer for deposit in the Civil Rights Enforcement Fund established pursuant to section 2 of P.L.1993, c.137 (C.2A:53A-22).

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

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

C.52:4B-11 Victim compensation.

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

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

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

(1) aggravated assault;

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

(3) threats to do bodily harm;

(4) lewd, indecent, or obscene acts;

(5) indecent acts with children;

(6) kidnapping;

(7) murder;

(8) manslaughter;

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

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

(11) burglary;

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

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

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

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

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

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

C.52:17B-5.3 Quarterly crime report by local and county police; contents, incidence of street gang activity, bias crime.

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

b. A law enforcement officer who responds to an offense involving criminal street gang activity shall complete a gang related incident offense report on a form prescribed by the Superintendent of State Police. All information contained in the gang related incident offense report shall be forwarded to the appropriate county bureau of identification and to the Superintendent of State Police.

C.52:17B-5.4a Collection, analysis of information, central repository.

5. The Attorney General shall maintain a central repository for the collection and analysis of information collected pursuant to section 3 of P.L.1966, c.37 (C.52:17B-5.3). Information in the repository shall be made available to the public. The Attorney General may designate the Division of State Police in the Department of Law and Public Safety to be the agency to maintain the repository and provide information from the repository to the public.

C.52:17B-77.12 Required training concerning bias intimidation crimes for police officers.

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

- a. features that identify or could identify a bias intimidation crime;
- b. laws dealing with bias intimidation crimes;
- c. law enforcement procedures, reporting, and documentation of bias intimidation crimes; and
- d. techniques and methods to handle incidents of bias intimidation crimes, including training on how to deal sensitively with victims and referring victims of bias intimidation crimes to organizations that provide assistance and compensation to victims.

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

C.18A:37-15 Adoption of policy concerning intimidation or bullying by each school district.

3. a. Each school district shall adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus. The school

district shall attempt to adopt the policy through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.

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

- (1) a statement prohibiting harassment, intimidation or bullying of a student;
- (2) a definition of harassment, intimidation or bullying no less inclusive than that set forth in section 2 of P.L.2002, c.83 (C.18A:37-14);
- (3) a description of the type of behavior expected from each student;
- (4) consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying;
- (5) a procedure for reporting an act of harassment, intimidation or bullying, including a provision that permits a person to report an act of harassment, intimidation or bullying anonymously; however, this shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report;
- (6) a procedure for prompt investigation of reports of violations and complaints, identifying either the principal or the principal's designee as the person responsible for the investigation;
- (7) the range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified;
- (8) a statement that prohibits reprisal or retaliation against any person who reports an act of harassment, intimidation or bullying and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;
- (9) consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying;
- (10) a statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions; and
- (11) a requirement that the policy be posted on the school district's website and distributed annually to parents and guardians who have children enrolled in a school in the school district.

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

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

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

#### C.18A:37-15.2 Actions required relative to bullying policy.

8. Within 60 days of the effective date of this section each school district shall amend its bullying policy in accordance with section 3 of P.L.2002, c.83 (C.18A:37-15) as amended by section 7 of P.L.2007, c.303, make the policy available on the district's website, and notify students and parents that the policy is available on the district's website.

9. a. There is hereby established the Commission on Bullying in Schools.

b. The commission shall consist of 14 members as follows:

- (1) the Commissioner of the Department of Education, or his designee;
  - (2) the Director of the Division on Civil Rights in the Department of Law and Public Safety, or his designee;
  - (3) the Governor shall appoint eight public members: one representative of the New Jersey Education Association, one representative of the New Jersey School Boards Association, one representative of the Anti-Defamation League, one representative of the New Jersey Principals and Supervisors Association, and four public members with a background in, or special knowledge of, the legal, policy, educational, social or psychological aspects of bullying in schools;
  - (4) the President of the Senate shall appoint two public members with a background in, or special knowledge of, the legal, policy, educational, social or psychological aspects of bullying in schools; and
  - (5) the Speaker of the General Assembly shall appoint two public members with a background in, or special knowledge of, the legal, policy, educational, social or psychological aspects of bullying in schools.
- c. The commission shall study and make recommendations regarding:
- (1) the implementation and effectiveness of school bullying laws and regulations;
  - (2) the adequacy of legal remedies available to students who are victims of bullying and their parents and guardians;
  - (3) the adequacy of legal protections available to teachers who are in compliance with school bullying policies;
  - (4) training of teachers, school administrators, and law enforcement personnel in responding to, investigating and reporting incidents of bullying;
  - (5) funding issues related to the implementation of the State school bullying laws and regulations; and
  - (6) the implementation of a possible collaboration between the Department of Education and the Division on Civil Rights in the Department of Law and Public Safety on a Statewide initiative against school bullying.
- d. The members shall be appointed within 30 days of enactment.
- e. The members shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to the commission for its purposes.
- f. The commission shall choose a chairperson from among its members.
- g. Any vacancy in the membership shall be filled in the same manner as the original appointment.
- h. The commission is entitled to the assistance and service of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ stenographic and clerical assistance and to incur traveling or other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to the commission for its purposes.
- i. The commission shall conduct a minimum of three public hearings: one in the northern portion of the State; one in the central portion of the State; and one in the southern portion of the State.
- j. The commission shall report its findings and recommendations, along with any legislation it desires to recommend for adoption by the Legislature, to the Governor and the Legislature in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1). The commission shall issue its final report no later than nine months after final appointment of its members.

P.L. 2007, CHAPTER 303

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

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

Approved January 13, 2008.