

LEGISLATIVE HISTORY OF R.S.2A:115-1.1 through 1.5
("Obscene" defined)

Previous bills on obscenity generally which may or may not define the term.

1954 - A401
1955 - A137, A325, A369
1956 - ACR31
1957 - A2, A209, A316, ACR31, S193, S194, S195, S217
1958 - A312, ACR28
1959 - A322, ACR18, S178, S202
1960 - A221, A544, ACR15
1962 - A7, A8, A219, A492, A819, S83, S183

L.1962 - Chap.165 - S84
Jan.22 - Introduced by Crane and 4 others.
Feb.5 - Passed in Senate.
Apr.30 - Passed in Assembly.
Oct.18 - Approved, Chapter 84.
Not amended during passage.
No Statement.
Governor's Statement on signing (copy enclosed).

1963 - A23, A61
1964 - A267, A283, A339, ACR45, S352, S362
1965 - A44, A372, A403, A404, A768, ACR18, S153
1966 - A368, S32, S96

Amendment

L.1966 - Chap.199 - S428
May 25 - Introduced by Hughes and 4 others.
June 8 - Passed in Senate, amended.
June 27 - Passed in Assembly.
July 21 - Approved, Chapter 199.
No Statement.
Amended during passage (copy enclosed of original bill and amendment).
Governor's Statement on signing (copy enclosed).

1967 - S197, S527
1968 - A957, S78, S893
1969 - A162, A1084, A1087, S109, S213, S214, S444, SCR44, SR12, SR13
1970 - A25, A34, A215, A306, A549, A617, A1287, S401
1971 - A2124, A2177, S2126, S2197, S2198, S2199

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Amendment

L.1971 - Chap.449 - S2202

Apr.5 - Introduced by H. Kelly and 13 others.

May 10 - Passed in Senate.

Jan.11, 1972 - Passed in Assembly.

Feb.16, 1972 - Approved, Chapter 449.

Statement. (copy enclosed)

Case: Cinecom Theatres Eastern States Inc. v. Lordi CIV. no.911-72
351 F. Supp 42 D.C. N.J. (1972) DECLARED THE STATUTE
UNCONSTITUTIONAL

Hearings and reports:

974.90 N.J. Legislature. Joint Commission to
014 Study Obscenity in Certain Publications
1961
Public hearing...Oct.17, 1961

974.90 N.J. Legislature. Joint Commission to
014 Study and Investigate Obscenity in
1962 Certain Publications
Preliminary report, Jan.9, 1962.

974.90 N.J. Legislature. Joint Commission to
014 Study Obscenity in Certain Publications
1962a
Final report

974.90 N.J. Commission to Study Obscenity and
014 Depravity in Public Media
1969
Public Hearing Sept. 30, 1969
Vols.1, II, III, IV, V
Supp. to Vol. II

974.90 Commission
014 Report
1970

Newspaper clippings

Numerous clippings are available in the State Library
Vertical File under N.J.-Censorship.

JH/EH
Encl.

SENATE, No. 428

STATE OF NEW JERSEY

INTRODUCED MAY 25, 1966

By Senators HUGHES, MUSTO and HILLERY

Referred to Committee on Revision and Amendment of Laws

AN ACT to amend and supplement "An act concerning crimes and supplementing chapter 115 of Title 2A of the New Jersey Statutes," approved October 18, 1962 (P. L. 1962, c. 165).

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

1 1. Section 1 of the act of which this act is amendatory is amended to read
2 as follows:

3 1. (a) The word "obscene" wherever it appears in the chapter to which
4 this act is a supplement shall mean that which to the average person, apply-
5 ing contemporary community standards, when considered as a whole, has as
6 its dominant theme or purpose an appeal to prurient interest.

7 (b) *Any book, publication, picture, writing, record or other mechanical*
8 *or electronic audio or visual reproduction or other material shall be obscene*
9 *within the meaning of subsection (a) hereof if it is established that:*

10 (1) *The dominant theme of the material taken as a whole appeals to*
11 *a prurient interest;*

12 (2) *The material is patently offensive because it affronts contempo-*
13 *rary community standards relating to the description or representation*
14 *of sexual matters; and*

15 (3) *The material is utterly without redeeming social value.*

1 2. In any prosecution under the provisions of the chapter to which this

2 act is a supplement, evidence of pandering or evidence that the sale or dis-
3 tribution of the material in question was exploited on the basis of its appeal
4 to prurient interests, may be considered in determining whether the material
5 is utterly without redeeming social value.

1 3. Any person who knowingly sells, lends or gives away to a person
2 under the age of 18 years or induces or seeks to induce a person under the
3 age of 18 years to buy, borrow, or receive

4 a. Any book, publication, picture, writing, record or other mechanical or
5 electronic audio or visual reproduction or other material of any person or
6 person of age of puberty or older, posed or presented in such a manner as to
7 exploit lust for commercial gain and which would appeal to the lust of per-
8 sons under the age of 18 years and which shows, depicts or reveals such per-
9 son or persons in acts of sexual stimulation, deviation or perversion with
10 one's self or with another or others.

11 b. Any collection, series or combination of photographs, drawings or
12 other similar representations, whether or not contained in books, publications,
13 pictures, writings, records or other mechanical or electronic audio or visual
14 reproductions, of any person or persons of the age of puberty or older, posed
15 or presented in such a manner as to exploit lust for commercial gain, and de-
16 picted or shown in such a posture or way that the viewer's attention or con-
17 centration is primarily focused on that person or those persons in acts of
18 sexual stimulation, deviation or perversion which would appeal to the lust of
19 persons under the age of 18 years, or

20 c. Any book, publication, picture, writing, record or other mechanical or
21 electronic audio or visual reproduction or other material, containing details,
22 descriptions or narrative accounts of acts of sexual stimulation, gratification,
23 deviation or perversion with one's self or with another or others, which de-
24 tails, descriptions or narrative accounts are written or presented in such a
25 manner as to exploit lust for commercial gain and which would appeal to the
26 lust of persons under the age of 18 years and which are to be distinguished
27 from flat and factual statements of the facts, causes, functions or purposes of

28 the subject of the writing or presentation, such as would be found in bona
29 fide medical or biological text books, shall be guilty of a misdemeanor.

30 For the purposes of this section, "knowingly" shall mean having knowl-
31 edge of the character and content of any item described in this section, or
32 failure to exercise reasonable inspection which would disclose the character
33 and content of the item.

1 4. The establishment of all of the following facts by a defendant in a
2 prosecution hereunder shall constitute a defense to the prosecution; (a) that
3 the person under the age of 18 years falsely represented in writing that he
4 or she was 18 years of age or over, and (b) that the appearance of the per-
5 son was such that an ordinary prudent individual would believe him or her
6 to be 18 years of age or over, and (c) that the sale or distribution to the per-
7 son was made in good faith relying upon such written representation and
8 appearance and in the reasonable belief that the person was actually 18 years
9 of age or over.

1 5. It is declared to be the legislative intent that if any section or sections
2 of this act or any provision thereof shall be declared to be unconstitutional,
3 invalid or inoperative in whole or in part, by a court of competent jurisdic-
4 tion, such section or provisions shall, to the extent that it is not unconstitu-
5 tional, invalid or inoperative be enforced and effectuated and no such
6 determination shall be deemed to invalidate or make ineffectual the remain-
7 ing provisions of the sections of this act.

1 6. This act shall take effect immediately.

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SENATE AMENDMENT TO
SENATE, No. 428

STATE OF NEW JERSEY

ADOPTED JUNE 6, 1966

Amend page 2, section 3, line 22, delete "gratification,".

FOR IMMEDIATE RELEASE
October 18, 1962

From: Office of the Governor

Governor Richard J. Hughes today signed Assembly Bill No. 8 and Senate Bill No. 84. The Governor also announced that he would return Assembly Bill No. 492, with recommendations for amendments, to the General Assembly when it returns November 19th.

Senate Bill No. 84 incorporates into the present criminal statutes concerning indecency and obscenity, the definition of "obscenity" applied by Justice Brennan in the U. S. Supreme Court case of Roth v. U. S., 354 U. S. 476.

Assembly Bill No. 8 authorizes the county prosecutor or a municipal chief of police to maintain an action for injunctive relief against persons selling or distributing obscene material.

Assembly Bill No. 492 would prohibit the distribution of newspapers, magazines or other publications to retailers unless such publications were "delivered pursuant to a written order specifying the title or titles desired."

At the time of the signing of Senate Bill No. 84 and Assembly Bill No. 8, Governor Hughes stated:

These legislative proposals were recommended by the Commission to Study Obscenity in Certain Publications which diligently reviewed the entire problem of obscene publications in New Jersey under the chairmanship of Assemblywoman Mildred Hughes. I believe that the entire membership of this Commission is to be commended for the care and effort they expended in an attempt to deal with the question of obscenity in a responsible legislative manner.

The Commission in its final report concluded that "the present sale of obscene and pornographic material constitutes a serious threat to the ethical and moral well-being of the youth of the State and thus creates a clear and present danger to all its citizens. Yet, in the final analysis, governmental action, including the new legislation proposed in this report, can be fully effective only if parents, with the aid of civil and religious groups, exercise appropriate supervision over their children's reading and cooperate with law enforcement agencies in their efforts to control the traffic in obscene publications. As with any other criminal activity, the sale of pornography can

never be completely eradicated by legal means. Only by a constant and continuing vigilance on the part of all citizens can this illicit traffic be minimized."

As a Superior Court Judge, I had occasion in 1957 to come to grips directly with the question of obscene publications. It was my great pleasure to work with a group of public spirited citizens on the Grand Jury of Union County in the prosecution of a number of publishing companies which had violated the bounds of decency. At the time that the Grand Jury had completed its work I remarked to them:

"There is in our country today grave concern at the frequent manifestation of juvenile crime and violence. Some segments of public opinion have come to believe that at least one of the causes of this national disease is the exposure of the young mind to lewd and filthy literature, openly sold upon most of the newsstands of the nation. This grand jury and its predecessor struck hard blows at this corrupt traffic by the return of several indictments for conspiracy against publishers, distributors and individuals. In so doing you have rendered a public service which no other body, including law enforcement agencies of the federal government itself, could hope to accomplish."

As the Commission report indicates, this same concern to protect our children remains today. It has sparked the drive to curb obscenity by legislative as well as judicial means.

There is universal agreement on the proposition that the sale and distribution of obscene publications is detrimental to the general welfare and should be eliminated. This stems from a constitutional as well as a moral viewpoint. As the United States Supreme Court has noted "it has been accepted as a postulate that the primary requirements of decency may be enforced against obscene publication." Ringsley Books, Inc. v. Brown, 354 U. S. 436, 440 (1957).

It is, therefore, fitting and proper for government to join with its citizenry in a war against obscenity so long as we are mindful that we do not trample protected rights of free expression in our zeal to eradicate obscene publications.

Senate Bill No. 84, through its adoption of a definition of "obscenity" which has been laid down by the United States Supreme Court, provides a legal standard against which our citizens can test their conduct and behavior. Such a definition is essential if we are to maintain a meaningful distinction between obscenity and the constitutionally established right of freedom of expression.

Assembly Bill No. 8, by providing a civil method for testing whether certain publications are obscene, permits law enforcement officials to proceed diligently against obscenity wherever they may find it, while it protects the constitutional rights of our citizens. It therefore strikes a necessary balance between the rights of the public and the rights of individuals. Although I have signed Assembly No. 8, I shall suggest to the Legislature that this bill be amended in the near future to eliminate several technical deficiencies. None of these deficiencies, however, were serious enough to warrant rejecting the bill.

Unfortunately, I cannot conclude that Assembly No. 492 strikes such a balance. The restrictions against the distribution of any printed matter to retailers unless first ordered by them in writing is unnecessarily broad and of doubtful validity. Similar restrictions of the right to distribute publications have been stricken down as an infringement of freedom of the press, which would be the probable fate of this bill if signed in its present form.

The stated purpose of this bill indicates that it is intended to relieve retail dealers of the burden of handling and storing unwanted publications. In the considerable mail I have received on this proposal, I do not recall seeing a single letter from a retail dealer seeking such protection. The only representative of retail dealers who appeared before the Commission at its public hearing on Assembly No. 492 called the proposal "definitely unworkable".

Unquestionably, the enactment of Assembly No. 492 would seriously hamper the distribution of all publications whether obscene in character or not. As the Commission itself has noted, a retail dealer cannot possibly be familiar with the various publications available for distribution before he receives them. Few of the thousands of books and periodicals that are distributed annually are of an obscene character. Yet, under the bill in its present form, no publications, however innocent, could reach the retailer and ultimately the general public unless first ordered in writing by name. The bill, therefore, would deny the public free access to many fine books and periodicals, including new ones which come on the market from time to time. The way to encourage decent literature and discourage obscene literature is not to inhibit the distribution of all literature but to permit newsdealers to reject that which is harmful.

I believe that the root of the problem which Assembly No. 492 seeks to eliminate, the mechanical distribution of publications without regard to content, can be reached without completely destroying our present distribution methods and all that they mean to the principle of free speech. A dealer becoming aware of the receipt of improper literature should be legally able to warn the distributor, by notice in writing, not to deliver it henceforth, and to pick it up from his store at an early convenient time. Consequently, when the Legislature returns on November 19th I shall recommend that Assembly No. 492 be amended to prohibit the delivery of any publications to a retail dealer which that dealer has specified in writing he does not wish to receive. I shall also recommend that the distributor assume the inconvenience and expense of prompt removal of any offensive publication which he has, whether intentionally or not, delivered the dealer.

These recommendations will enable each local dealer to handle such type of publications as his conscience and his respect for the community he serves shall dictate. Such provisions would seem to me to be entirely effective for the protection of the dealer. This is especially true since there is already a law on the books inhibiting the "tie-in" sales of unwanted publications by a distributor. Such sales could have otherwise been used to coerce the dealer into handling the offensive as the price of receiving decent publications.

FOR RELEASE: July 22, 1966

FROM: OFFICE OF THE GOVERNOR

Governor Richard J. Hughes has signed the following bills:

Senate No. 131 - which amends the law concerning school elections regarding the compensation payable to election officers.

Senate No. 181 - which amends the law concerning adoption of children to clarify the right of adopted children to inherit from a natural parent under certain circumstances.

Senate No. 294 - authorizes the closing of certain county pension funds and the transferring of new employees to the Public Employees Retirement System. This bill applies specifically to Passaic County.

Senate No. 306 - which provides a procedure for liquidating or transferring the assets of certain bridge companies.

Senate No. 368 - amends the law concerning assistance for indigent children to authorize continued assistance for children over the age of 18 who are still attending school.

Senate No. 428 - amends the statute concerning obscene publications to incorporate the definition of obscenity enunciated by the United States Supreme Court and to prohibit the sale of certain materials to persons under the age of 18.

At the time of approving this measure, Governor Hughes made the following statement:

"I have approved Senate Bill No. 428 which amends and supplements New Jersey's laws prohibiting the distribution of obscene materials. I consider this measure to be a considerable improvement over Assembly Bill No. 768 (1965) which I felt constrained to veto last January.

"The proponents of this bill are confident that the evil against which it is directed can be successfully attacked without crossing constitutional barriers. The Legislature, which has acted again swiftly on this most sensitive subject, obviously concurs with that judgment. I do not believe, as Chief Executive, I can justify overturning the Legislature's determination on this issue and have,

therefore, given this measure my approval. This is especially so since I am in complete accord with the objectives which are sought to be attained by this legislation."

Assembly No. 213 - amends the optional charter law to authorize employment of individuals who have been convicted of certain offenses provided the Civil Service Commission finds they have achieved a necessary degree of rehabilitation.

Assembly No. 265 - incorporates a provision similar to that in Assembly Bill No. 213 in the general Civil Service statute concerning local governmental units.

Assembly No. 344 - amends the law concerning joint purchases by municipalities to authorize municipalities in adjoining counties to participate in such purchases.

Assembly No. 588 - amends the law concerning the proceeds from commissaries or stores maintained by State institutions to authorize any profits accruing to be used for the benefit and general welfare of the inmate or patient population.

Assembly No. 687 - amends the Motor Vehicle Law to permit the Division of Motor Vehicles to issue markers, as well as metal insignias, for special parking privilege purposes.

Assembly No. 694 - establishes the "County Sewerage Financing Law" which permits counties to engage in and finance the construction, purchase or expansion of sewerage disposal facilities.

Assembly No. 750 - amends the law concerning pari-mutuel betting to authorize the submission of a night racing question at the general election to be held this November.

Assembly No. 778 - amends the law concerning net fishing to limit the mesh size of a fyke net leader.

Assembly No. 833 - appropriates \$10,000 to the Department of Conservation and Economic Development to defray State expenses incurred in connection with the holding of the National Convention of the Jewish War Veterans in Atlantic City.

Assembly 897 - amends the Motor Vehicles laws concerning tractor-trailer registration fees.