

LEGISLATIVE HISTORY OF R.S. 2A:115-3.3 to 3.10
(Obscene Publications)

COPY NO. 2

1964 bills

- A267 - Introduced January 27 by Mrs. Hughes (and others).
April 27 - Passed Assembly
Died in Senate Committee.
- A283 - Died in Assembly Committee (copy enclosed)
- A339 - Died in Assembly Committee (copy enclosed)
- AGR 45 - Died in Assembly Committee (copy enclosed)
- S352 - Died in Senate Committee (copy enclosed)
- S362 - Died in Senate Committee (copy enclosed)

1965 bills

- Al4 - In Assembly Committee (copy enclosed)
- A372 - Bill had statement (copy enclosed)
Approved September 30, 1965
Became Chapter 172, L. 1965
- Al03 - No statement (bill enclosed)
Approved May 28, 1965
Became Chapter 69, L. 1965
- Al04 - May 10, 1965, Passed Assembly, amended.
May 24, 1965, Passed Senate, amended.
December 13, 1965, Senate amendment passed Assembly.
~~Not yet signed by Governor.~~ (copy of all forms of bill enclosed).
Vetoed by Governor (veto message enclosed)
- A768 - No statement on the bill (bill enclosed).
May 24 - Passed Assembly.
December 13 - Passed Senate.
~~Not yet signed by Governor.~~
Vetoed by Governor (veto message enclosed)
- AGR 18 - In Assembly Committee (copy enclosed)
- SL53 - In Senate Committee (copy enclosed)

PROPERTY OF
NEW JERSEY STATE LIBRARY

105 W. State Street
Trenton, N.J.

DEPOSITORY COPY

DEPOSITORY COPY

DEPOSITORY COPY

Do Not Remove From Library

ASSEMBLY, No. 283

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1964

By Assemblyman MUSTO and Assemblywoman HUGHES

Referred to Committee on Judiciary

AN ACT concerning disorderly persons, and supplementing subtitle 12 of Title 2A of the New Jersey Statutes.

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

1 1. Any person who, for himself or as agent for another, exposes to view
2 for the purpose of sale or for any other purpose in any showcase or show
3 window or on any newsstand or other stand visible to the public, any book or
4 magazine having a cover containing a picture or other illustration which
5 portrays or purports to portray that which, if true, would suggest the com-
6 mission of a crime or crimes or of an immoral or indecent action or a picture
7 or other illustration of a person or persons of either or both sexes, in a
8 state of undress or partial undress, which would not be lawful in a public
9 place in the case of a real person, is a disorderly person.

10 Nothing herein contained shall be deemed to preclude the sale of any
11 such book or magazine having such a cover to any adult person provided the
12 same shall not have been exposed to the aforesaid public view, it being the
13 purpose of this act to prevent the impairment of the public morals, and
14 particularly the morals of minors, by the exposition to view of the said
15 pictures and other illustrations on the covers of books and magazines in
16 showcases, show windows, newsstands and other stands.

1 2. This act shall take effect July 1, 1965.

STATEMENT

Considerable public utterance has been made with regard to literature exhibited on news and magazine stands, particularly with respect to its effect on youth. In recent years, otherwise decent books and magazines have used cover illustrations of questionable decency to attract the purchaser and thus increase sales. The end result of this bill prohibiting display of such materials would be twofold, it would remove such indecency from public view, especially that of minors, and would serve as a deterrent to the publishers to use indecent and misleading illustrations to promote the sale of magazines and books.

ASSEMBLY, No. 339

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1964

By Assemblyman BRESSLER

Referred to Committee on State, County and Municipal Government

AN ACT providing for the establishment in the State Department of Education of a Motion Picture Review Board, providing for appointment of members of the board, their power, duties and compensation; requiring the advisory preview of certain motion picture films and their classification as suitable or unsuitable for exhibition before youth, providing fees for such previews and classification and penalties for violations, and making an appropriation.

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

1 1. The Legislature finds that, while it is not desired to have the State
2 license or censor motion pictures, it is advisable for the State to provide
3 youth, parents, educators and the public with guides as to those motion
4 pictures which are appropriate for exhibition to children of various age
5 groups and to require theatre operators to give conspicuous notice of motion
6 pictures which are found to be appropriate or inappropriate for attend-
7 ance by youth.

1 2. There is hereby established in the Department of Education a Motion
2 Picture Review Board, the duty of which shall be to preview motion pictures
3 prior to their public exhibition in New Jersey for the purpose of providing
4 guides to the public as to the suitability of films for exhibition to children of
5 various age groups.

1 3. The Commissioner of Education, with the approval of the State Board
2 of Education, shall appoint and, within the limits of funds appropriated there-

3 for, fix the compensation of not less than 3 or more than 7 persons who shall
4 constitute the Motion Picture Review Board. Members shall be appointed
5 for terms of 3 years. The commissioner shall provide suitable office work
6 space and equipment for the board; he shall appoint and assign necessary
7 office assistance to the board and may combine its work with such other
8 administrative activities of the department as he shall determine. The com-
9 missioner may provide for division of the board into preview committees but
10 no preview shall be made by less than 2 persons.

1 4. The board shall maintain a record of films previewed and of its
2 classification thereof as suitable or not suitable for exhibition to children of
3 various age groups, whether accompanied or unaccompanied by adults. The
4 board shall notify the person submitting the film for review of its classifica-
5 tion of the film and shall publish, release or otherwise disseminate its
6 classification of films. The board shall classify as unsuitable for exhibition
7 before children of ages to be stated in the classification any film which in its
8 judgment portrays obscenity, nudity, lewdness, horror, violence, brutality,
9 sadism, juvenile delinquency, drug addiction or sexual conduct or relation-
10 ship in a manner or to an extent contrary to the proper mental, ethical and
11 moral development of youth. When a film is classified as not suitable the
12 board, on request of the person who submitted the same for review, shall
13 provide a written report of its reasons for its classification. Any person
14 aggrieved by the review board's classification may appeal to the State
15 Board of Education.

1 5. The board, by regulation, shall prescribe the form of notice of the
2 film's classification which shall be conspicuously displayed at the entrance
3 of the place of exhibition and in advertising media. The board, by regula-
4 tion, shall require the person submitting a film for review by the board to
5 notify all exhibitors of the film of the board's classification of the film and
6 of the notice thereof to be given to the public at the place of its exhibition
7 and in any advertising thereof. Any person who shall fail to provide such
8 notices or shall otherwise violate such regulation of the board shall be sub-
9 ject to a fine of not less than \$25.00 or more than \$500.00.

6. Every person who intends to distribute a motion picture film for public exhibition in New Jersey and every person who intends to exhibit publicly a motion picture film which has not been submitted to the State Motion Picture Review Board shall submit a copy of such film to the review board for preview and classification in accordance with this act.

7. The applicant shall at the time of submitting a film for preview and classification pay to the State a fee of \$2.00 per 1,000 feet of film submitted.

8. The board shall preview all films submitted, as promptly as possible, and shall communicate its classification thereof to the applicant and otherwise as is in this act provided.

9. The board shall by regulation prescribe the place and method of submitting films.

10. Any person, required under this act to submit motion picture film for review, who fails to submit the same for review or who fails to communicate to exhibitors the classification thereof shall be punishable by a fine of not less than \$100.00 or more than \$5,000.00.

11. 8. The following types of motion picture films shall not require classification and need not be submitted to the board for review:

a. Current event films, i.e. all films exclusively portraying current events or pictorial news of the day, commonly called newsreels, or excerpts from the public press.

b. Scientific, educational, charitable and religious films, i.e. all films of a strictly scientific character intended for use by the learned professions and not for exhibition at any private or public place of amusement; all films intended solely for educational, charitable or religious purposes; and all films exhibited by an employer for the instruction or welfare of his employees.

9. The board, in the name of the State, may apply to the Superior Court for injunctive relief to prevent public exhibition of any motion picture required to be submitted to the board for review which shall be exhibited to the public without submission to the board.

10. Nothing in this act shall authorize prohibiting the attendance of any person at the exhibition of any motion picture film. Nothing in this act shall prohibit any motion film exhibitor from regulating or admitting, as he shall see fit, attendance at any motion picture.

11. Whenever the board shall find a motion picture film to be obscene, as the same is defined in chapter 165 of the laws of 1962 it shall notify the Attorney General. It shall not be necessary for any such communication to be made public.

12. The Board of Motion Picture Review, the Commissioner and the State Board of Education shall be entitled to the services of the Attorney General in the enforcement of this act and of regulations of the board issued thereunder.

13. Any penalty to be imposed for violation of this act may be sued for and collected by the board in the name of the State by summary proceeding in accordance with the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.).

14. All fees collected and fines imposed and collected pursuant to this act shall be remitted to the general treasury.

15. There is hereby appropriated to the Department of Education for the administration of this act until June 30, 1965, the sum of \$50,000.00.

16. This act shall be known and may be cited as the "Motion Picture Review Board Act."

17. This act shall take effect 90 days after enactment.

ASSEMBLY CONCURRENT RESOLUTION No. 45

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1964

By Assemblyman MUSTO, Assemblywoman HUGHES,

Assemblymen BURKE and POLICASTRO

Referred to Committee on Judiciary

A CONCURRENT RESOLUTION to amend Article VI, Section V, of the Constitution of the State of New Jersey

1 BE IT RESOLVED by the General Assembly of the State of New Jersey, (the
2 Senate concurring):

1 1. The following proposed amendment to the Constitution of the State
2 of New Jersey is agreed to:

PROPOSED AMENDMENT

3 Amend Article VI, Section V, by the addition thereto of the following
4 paragraph, to read as follows:

5 5. In all criminal prosecutions for the publication, distribution, sale and
6 dissemination of any obscene or indecent book, pamphlet, picture or other
7 representation, however made, the jury shall be the judge of the law and the
8 fact, and the standards to be utilized by the jury in determining whether an
9 item or representation is obscene or indecent shall be the community stand-
10 ards of the county of the State of New Jersey wherein the violation or the
11 offense was committed.

1 2. When this proposed amendment to the Constitution is finally agreed
2 to, pursuant to Article IX, paragraph 1, of the Constitution, it shall be sub-
3 mitted to the people at the next general election occurring more than 3

4 months after such final agreement and shall be published at least once in at least one newspaper of each county designated by the President of the Senate and the Speaker of the General Assembly and the Secretary of State, not less than 3 months prior to said general election.

3. This proposed amendment to the Constitution shall be submitted to the people at said election in the following manner and form:

There shall be printed on each official ballot to be used at such general election, the following:

a. In every municipality in which voting machines are not used, a legend which shall immediately precede the question, as follows:

If you favor the proposition printed below make a cross (X), plus (+) or check (V) in the square opposite the word "Yes." If you are opposed thereto to make a cross (X), plus (+) or check (V) in the square opposite the word "No."

b. In every municipality the following question:

	Yes.	Shall the following amendment to Article VI, Section V, of the Constitution, agreed to by to by the Legislature be adopted? "5. In all criminal prosecutions for the publication, distribution, sale and dissemination of any obscene or indecent book, pamphlet, picture or other representation, however made, the jury shall be the judge of the law and the fact, and the standards to be utilized by the jury in determining whether an item or representation is obscene or indecent shall be the community standards of the county of the State of New Jersey wherein the violation or the offense was committed."
	No.	

4. This amendment shall become effective on the second Tuesday in January following its adoption by the people, if at said election all of the members of the General Assembly are elected; but, otherwise, it shall become effective upon the second Tuesday in January following the next general election.

STATEMENT

In the landmark case, *Roth v. United States*, 1957, 354 U. S. 476, the United States Supreme Court declared that "Obscenity is not expression protected by the First Amendment." In that same case, the majority of the court stated that the test of obscenity is "... whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest..." and approvingly cited the American Law Institute's definition of prurient interest: "... a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters..."

In a subsequent case, *Manual Enterprises v. Sullivan*, 1962, 370 U. S. 478, the United States Supreme Court qualified its Roth standards of obscenity by declaring that "... obscenity... requires proof of 2 distinct elements: (1) patent offensiveness; and (2) 'prurient interest' appeal..."

The United States Supreme Court, however, has not explicitly defined "community" as employed in its Roth standards; it has not stated whether the "contemporary community standards" are national, State, county or local standards.

In 1962, the New Jersey Legislature accepted a recommendation of its Joint Commission to Study Obscenity in Certain Publications and enacted legislation incorporating in our statutes the Roth standards of obscenity (N. J. S. 2A:115-1.1). There is no evidence in the hearings and report of that commission that trial of offenses should not be based on the standards of the county wherein the offense is committed.

In a recent New Jersey Supreme Court decision, *State of New Jersey v. Hudson County News Co. et al* (1963, 41 N. J. 247), it was declared that "... the Legislature in enacting N. J. S. A. 2A:115-2 [prior to enacting the above-cited section, N. J. S. 2A:115-1.1] intended to forbid obscene matter to the fullest extent permissible under the First Amendment, made applicable to the States by the Fourteenth Amendment. Accordingly, the 'contemporary community standard' to be applied in enforcement of the statute must comport

with the limitations imposed on the State by and the freedoms guaranteed by the First Amendment. We are of the opinion that such a standard must necessarily be uniform throughout the nation. . . ." In support of this conclusion the court quoted several commentators (45 *Minn. L. Rev.* 111-112) who expressed confidence that "... when the Supreme Court is clearly presented with this issue, the court will resolve the issue against the application of State and local community standards. . . ."

This ruling is contrary to the intent of the Legislature in enacting N. J. S. 2A:115-1.1. The constitutional amendment proposed in this resolution would, in the absence of a United States Supreme Court decision to the contrary, restore that intent. It would negate the reduction of the Roth standards of obscenity to a national least common denominator.

The Joint Commission to Study Obscenity in Certain Publications 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 that "... only by constant and continuing vigilance on the part of all citizens can this illicit traffic be minimized. . . ." This proposed constitutional amendment would restore an effective public weapon against this clear and present danger.

SENATE, No. 352

STATE OF NEW JERSEY

INTRODUCED APRIL 27, 1964

By Senators SARCONE and KELLY

Referred to Committee on Judiciary

AN ACT concerning disorderly persons, and supplementing subtitle 12 of Title
2A of the New Jersey Statutes.

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

1 1. Any person who, for himself or as an agent for another, exposes to
2 view, in any showcase, show window, newsstand or other place visible to
3 the public, any book, publication, pamphlet, magazine or periodical having
4 a cover containing an illustration which portrays or purports to portray an
5 action or actions which, if real, would constitute a crime or crimes or an in-
6 decent or obscene occurrence is a disorderly person.

7 Nothing in this act, however, shall be deemed to prohibit the sale of
8 any such book, publication, pamphlet, magazine or periodical to any adult
9 person provided said book or periodical shall not have been so exposed to
10 public view.

1 2. This act shall take effect 90 days after enactment.

SENATE, No. 362

STATE OF NEW JERSEY

INTRODUCED MAY 4, 1964

By Senator SARCONE

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning indecency and obscenity, supplementing chapter 115 of Title 2A of the New Jersey Statutes, and repealing "An act concerning indecency and obscenity and supplementing chapter 115 of Title 2A of the New Jersey Statutes," approved August 12, 1957 (P. L. 1957, c. 176).

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

1 1. Any person who willfully or knowingly, without just cause, sells, lends,
2 gives away, shows, exposes to view, advertises for sale or distributes com-
3 mercially, or possesses with intent to sell, lend, give away, show, expose to
4 view, advertise or distribute commercially to any person under the age of 18
5 years, or imports, prints, publishes, designs, prepares or possesses with in-
6 tent to sell, lend, give away, show, expose to view, advertise for sale or dis-
7 tribute commercially to any person under the age of 18 years any pornographic
8 motion picture, or any still picture or photograph, or any book, "pocket
9 book," pamphlet or magazine, the cover or content of which exploits, is de-
10 voted to, or is principally made up of descriptions of illicit sex or sexual im-
11 morality or which is obscene, lewd, lascivious, filthy, indecent or disgusting,
12 or which consists of pictures of nude or partially denuded figures, posed or
13 presented in a manner to provoke or arouse lust or passion or to exploit sex,
14 lust, perversion for commercial gain or any article or instrument of indecent
15 or immoral use shall be guilty of a misdemeanor.

16 For the purposes of this act, "knowingly" shall mean having knowledge
17 of the character and content of the publication or failure to exercise reason-
18 able inspection which would disclose the content and character of the same.

1 - 2. Chapter 176 of the laws of 1957 is repealed:

1 3. This act shall take effect immediately.

ASSEMBLY, No. 44

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1965.

By Assemblyman MUSTO, Assemblywoman HUGHES and Assemblyman CURRY

Referred to Committee on Judiciary.

AN ACT concerning disorderly persons, and supplementing subtitle 12 of Title
2A of the New Jersey Statutes.

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

1 1. Any person who, for himself or as agent for another, exposes to view
2 for the purpose of sale or for any other purpose in any showcase or show
3 window or on any newsstand or other stand visible to the public, any book or
4 magazine having a cover containing a picture or other illustration which
5 portrays or purports to portray that which, if true, would suggest the com-
6 mission of a crime or crimes or of an immoral or indecent action or a picture
7 or other illustration of a person or persons of either or both sexes, in a
8 state of undress or partial undress, which would not be lawful in a public
9 place in the case of a real person, is a disorderly person.

10 Nothing herein contained shall be deemed to preclude the sale of any
11 such book or magazine having such a cover to any adult person provided the
12 same shall not have been exposed to the aforesaid public view, it being the
13 purpose of this act to prevent the impairment of the public morals, and
14 particularly the morals of minors, by the exposition to view of the said
15 pictures and other illustrations on the covers of books and magazines in
16 showcases, show windows, newsstands and other stands.

1 2. This act shall take effect July 1, 1966.

STATEMENT

Considerable public utterance has been made with regard to literature exhibited on news and magazine stands, particularly with respect to its effect on youth. In recent years, otherwise decent books and magazines have used cover illustrations of questionable decency to attract the purchaser and thus increase sales. The end result of this bill prohibiting display of such materials would be twofold, it would remove such indecency from public view, especially that of minors, and would serve as a deterrent to the publishers to use indecent and misleading illustrations to promote the sale of magazines and books.

ASSEMBLY, No. 403

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1965

By Assemblywoman HUGHES; Assemblymen MUSTO, CURRY, Assemblywoman KORDJA, Assemblymen TANZMAN, LYNCH, DOREN, BRIGIANI, MARAZITI, McDONOUGH, McGANN, Assemblywoman HIGGINS, Assemblymen SEARS and LA CORTE

Referred to Committee on Judiciary

AN Act to amend "An act relating to obscenity, defining the word 'obscene' and providing for the issuance of a judgment granting relief in the nature of injunctive relief by the Superior Court to prevent the acquisition, possession or sale of obscene materials; and supplementing Title 2A of the New Jersey Statutes," approved October 18, 1962 (P.L. 1962, c. 166).

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

1 1. Section 3 of the act of which this act is amendatory is amended to read
2 as follows:

3 3. The county prosecutor, chief of police, or any person acting pro tem as
4 such officer in any county or municipality, in which a person, firm or corpo-
5 ration sells or distributes or is about to sell or distribute or has in his posses-
6 sion with intent to sell or distribute or is about to acquire possession with in-
7 tent to sell or distribute any book, magazine, pamphlet, comic book, story
8 paper, writing, paper, picture drawing, photograph, figure, image or any
9 written or printed matter [of an indecent character,] which is obscene, [lewd,
10 lascivious, filthy or indecent or which contains an article or instrument of in-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

11 decent or immoral use or purports to be for indecent or immoral use or pur-
12 pose,] may maintain an action for a judgment granting relief in the nature
13 of injunctive relief against such person, firm or corporation in the Superior
14 Court to prevent the sale or further sale or the distribution or further dis-
15 tribution or the acquisition or possession with intent to sell or distribute of
16 any book, magazine, pamphlet, comic book, story paper, writing, paper, pic-
17 ture, drawing, photograph, figure or image or any written or printed matter
18 [of an indecent character,] *which is obscene.* [herein described].

19 2. Section 4 of the act of which this act is amendatory is amended to read
20 as follows:

21 4. The person, firm or corporation sought to be restrained shall be entitled
22 to a trial of the issue within 1 day after joinder of issue and a judgment shall
23 be rendered by the court as promptly as possible after the conclusion of the
24 trial. [Should trial] *Trial by jury may be demanded*, as of right, the judg-
25 ment of the court shall follow jury verdict] *by the person, firm or corporation*
26 *sought to be restrained. It shall be competent for the jury, if one is demanded,*
27 *to determine the issue of obscenity.*

28 3. This act shall take effect immediately.

ASSEMBLY, No. 404

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1965

By Assemblywomen HUGHES, KORDJA, Assemblymen CURRY, DOREN,
LYNCH, BRIGIANI, MARAZITI, SEARS, McGANN, Assemblywoman
HIGGINS, Assemblymen McDONOUGH and LA CORTE

Referred to Committee on Judiciary

**AN ACT creating a commission to study obscenity in certain publications, pre-
scribing its powers and duties, and making an appropriation therefor.**

1 WHEREAS, Widespread public concern has been evidenced relative to the con-

2 tinued dissemination within this State of certain publications of an ob-

3 scene nature; and

4 WHEREAS, The Legislature created a commission in 1960 which investigated

5 this subject and reported its findings and recommendations to the Legis-

6 lature in 1962; and

7 WHEREAS, Many of the commission's recommendations were enacted into

8 law; and

9 WHEREAS, In spite of the new legislation in this area, obscene publications

10 are still being distributed in the State of New Jersey; and

11 WHEREAS, It appears that there is a continuing need for additional study

12 and legislation to terminate the distribution of such publications; now,

13 therefore,

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

1. There is hereby created a bipartisan commission to study obscenity

2 in certain publications which shall consist of 2 members of the Senate to be

3 appointed by the President thereof; 2 members of the General Assembly to
4 be appointed by the Speaker thereof, and 4 citizens of this State to be ap-
5 pointed by the Governor. No more than one member of each group of 2 and
6 2 members of each group of 4 shall be of the same political party. Each of
7 the members of the commission appointed from either House of the Legisla-
8 ture shall serve so long as he shall be a member of the Senate or of the Gen-
9 eral Assembly, as the case may be. In case of vacancy, the same shall be
10 filled in the same manner as the original appointment was made.

1 2. Each of the members shall serve without compensation but shall be en-
2 titled to receive his necessary expenses incurred in the performance of his
3 duties.

1 3. The commission shall organize as soon as may be after the appoint-
2 ment of its members and shall elect a chairman from among its members.
3 The commission may appoint a secretary who need not be a member of the
4 commission.

1 4. It shall be the duty of said commission to make a continuing study of
2 the dissemination of obscene publications and, if warranted, recommend the
3 enactment of remedial legislation to curb the distribution of such
4 publications.

1 5. The commission shall be entitled to call to its assistance and avail
2 itself of the services of such employees of any State, county or municipal
3 department, board, bureau, commission or agency as it may require and as
4 may be available to it for said purpose, and to employ such legal, steno-
5 graphic, technical and clerical assistants and incur such traveling and other
6 miscellaneous expenses as it may deem necessary, in order to perform its
7 duties, and as may be within the limits of funds appropriated or otherwise
8 made available to it for said purposes.

1 6. The commission shall have all the powers provided by the provisions
2 of chapter 13 of Title 52 of the Revised Statutes.

1 7. The commission may meet and hold hearings at such place or places
2 as it shall designate during the sessions or recesses of the Legislature and

3 shall report from time to time its findings and recommendations to the
4 Governor and the Legislature accompanying the same with any legislative
5 bills which it may desire to recommend for adoption by the Legislature.

1 8. There is hereby appropriated to the commission the sum of \$10,000.00
2 or so much thereof as may be necessary for said purpose to carry out the
3 purpose of this act.

1 9. This act shall take effect immediately.

ASSEMBLY COMMITTEE AMENDMENT TO

ASSEMBLY, No. 404

STATE OF NEW JERSEY

ADOPTED MAY 10, 1965

Amend page 3, section 8, line 1, omit "\$10,000.00", insert "\$5,000.00".

[OFFICIAL-COPY REPRINT]

ASSEMBLY, No. 404

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1965

By Assemblywomen HUGHES, KORDJA, Assemblymen CURRY, DOREN,
LYNCH, BRIGIANI, MARAZITI, SEARS, McGANN, Assembly-
woman HIGGINS, Assemblymen McDONOUGH and LA CORTE

Referred to Committee on Judiciary

AN ACT creating a commission to study obscenity in certain publications, pre-
scribing its powers and duties, and making an appropriation therefor.

1 WHEREAS, Widespread public concern has been evidenced relative to the con-

2 tinued dissemination within this State of certain publications of an ob-

3 scene nature; and

4 WHEREAS, The Legislature created a commission in 1960 which investigated

5 this subject and reported its findings and recommendations to the Legis-

6 lature in 1962; and

7 WHEREAS, Many of the commission's recommendations were enacted into

8 law; and

9 WHEREAS, In spite of the new legislation in this area, obscene publications

10 are still being distributed in the State of New Jersey; and

11 WHEREAS, It appears that there is a continuing need for additional study

12 and legislation to terminate the distribution of such publications; now,

13 therefore,

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

1 1. There is hereby created a bipartisan commission to study obscenity
2 in certain publications which shall consist of 2 members of the Senate to be

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted
and is intended to be omitted in the law.

3 appointed by the President thereof; 2 members of the General Assembly to
 4 be appointed by the Speaker thereof, and 4 citizens of this State to be ap-
 5 pointed by the Governor. No more than one member of each group of 2 and
 6 2 members of each group of 4 shall be of the same political party. Each of
 7 the members of the commission appointed from either House of the Legisla-
 8 ture shall serve so long as he shall be a member of the Senate or of the Gen-
 9 eral Assembly, as the case may be. In case of vacancy, the same shall be
 10 filled in the same manner as the original appointment was made.

1 2. Each of the members shall serve without compensation but shall be en-
 2 titled to receive his necessary expenses incurred in the performance of his
 3 duties.

1 3. The commission shall organize as soon as may be after the appoint-
 2 ment of its members and shall elect a chairman from among its members.

3 4. The commission may appoint a secretary who need not be a member of the
 4 commission.

1 5. It shall be the duty of said commission to make a continuing study of
 2 the dissemination of obscene publications and, if warranted, recommend the
 3 enactment of remedial legislation to curb the distribution of such
 4 publications.

1 6. The commission shall be entitled to call to its assistance and avail
 2 itself of the services of such employees of any State, county or municipal
 3 department, board, bureau, commission or agency as it may require and as
 4 may be available to it for said purpose, and to employ such legal, steno-
 5 graphic, technical and clerical assistants and incur such traveling and other
 6 miscellaneous expenses as it may deem necessary, in order to perform its
 7 duties, and as may be within the limits of funds appropriated or otherwise
 8 made available to it for said purposes.

1 7. The commission shall have all the powers provided by the provisions
 2 of chapter 13 of Title 52 of the Revised Statutes.

1 8. The commission may meet and hold hearings at such place or places
 2 as it shall designate during the sessions or recesses of the Legislature and

3 shall report from time to time its findings and recommendations to the
4 Governor and the Legislature accompanying the same with any legislative
5 bills which it may desire to recommend for adoption by the Legislature.

1 8. There is hereby appropriated to the commission the sum of
2 *~~[\$10,000.00]~~* *\$5,000.00* or so much thereof as may be necessary for said
3 purpose to carry out the purpose of this act.

1 9. This act shall take effect immediately.

SENATE COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 404

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED MAY 17, 1965

Amend page 2, section 1, line 4, omit "4", insert "2".

Amend page 2, section 1, line 5, after "2", omit "and".

Amend page 2, section 1, line 6, omit "2 members of each group of 4".

Amend Article 3 section 1 the 2d word "and" insert "or" after "and" of the
Amend Article 3 section 1 the 2d word "and" insert "or" after "and" of the
Amend Article 3 section 1 the 2d word "and" insert "or" after "and" of the

ADOPTED BY THE LEGISLATURE

STATE OF NEW JERSEY

[OFFICIAL COPY PRINTED]

ASSEMBLY NO. 100

OF THE LEGISLATURE OF THE STATE OF NEW JERSEY

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 404

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1965

By Assemblywomen HUGHES, KORDJA, Assemblymen CURRY, DOREN,
LYNCH, BRIGIANI, MARAZITI, SEARS, McGANN, Assembly
woman HIGGINS, Assemblymen McDONOUGH and LA CORTE

Referred to Committee on Judiciary

AN Act creating a commission to study obscenity in certain publications, pre-
scribing its powers and duties, and making an appropriation therefor;

1 WHEREAS, Widespread public concern has been evidenced relative to the con-

2 tinued dissemination within this State of certain publications of an ob-

3 scene nature; and

4 WHEREAS, The Legislature created a commission in 1960 which investigated

5 this subject and reported its findings and recommendations to the Legis-

6 lature in 1962; and

7 WHEREAS, Many of the commission's recommendations were enacted into

8 law; and

9 WHEREAS, In spite of the new legislation in this area, obscene publications

10 are still being distributed in the State of New Jersey; and

11 WHEREAS, It appears that there is a continuing need for additional study

12 and legislation to terminate the distribution of such publications; now,

13 therefore,

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted
and is intended to be omitted in the law.

1 1. There is hereby created a bipartisan commission to study obscenity
2 in certain publications which shall consist of 2 members of the Senate to be
3 appointed by the President thereof; 2 members of the General Assembly to
4 be appointed by the Speaker thereof, and **[4]** **2** citizens of this State
5 to be appointed by the Governor. No more than one member of each group of
6 2 **[and 2 members of each group of 4]** shall be of the same political party.
7 Each of the members of the commission appointed from either House of the
8 Legislature shall serve so long as he shall be a member of the Senate or of
9 the General Assembly, as the case may be. In case of vacancy, the same shall
10 be filled in the same manner as the original appointment was made.

1 2. Each of the members shall serve without compensation but shall be en-
2 titled to receive his necessary expenses incurred in the performance of his
3 duties.

1 3. The commission shall organize as soon as may be after the appoint-
2 ment of its members and shall elect a chairman from among its members.
3 The commission may appoint a secretary who need not be a member of the
4 commission.

1 4. It shall be the duty of said commission to make a continuing study of
2 the dissemination of obscene publications and, if warranted, recommend the
3 enactment of remedial legislation to curb the distribution of such
4 publications.

1 5. The commission shall be entitled to call to its assistance and avail
2 itself of the services of such employees of any State, county or municipal
3 department, board, bureau, commission or agency as it may require and as
4 may be available to it for said purpose, and to employ such legal, steno-
5 graphic, technical and clerical assistants and incur such traveling and other
6 miscellaneous expenses as it may deem necessary, in order to perform its
7 duties, and as may be within the limits of funds appropriated or otherwise
8 made available to it for said purposes.

1 6. The commission shall have all the powers provided by the provisions
2 of chapter 13 of Title 52 of the Revised Statutes.

1 7. The commission may meet and hold hearings at such place or places
2 as it shall designate during the sessions or recesses of the Legislature and
3 shall report from time to time its findings and recommendations to the
4 Governor and the Legislature accompanying the same with any legislative
5 bills which it may desire to recommend for adoption by the Legislature.

1 8. There is hereby appropriated to the commission the sum of
2 *~~[\$10,000.00]~~* *\$5,000.00* or so much thereof as may be necessary for said
3 purpose to carry out the purpose of this act.

1 9. This act shall take effect immediately.

ASSEMBLY NO. 768

STATE OF NEW JERSEY

Introduced May 17, 1965

by Assemblywoman Hughes, Assemblyman Musto, Assemblywoman Kordja, Assemblymen Curry, Brigiani, Lynch, McGann, Maraziti, Keegan, Sears, Assemblywoman Higgins, Assemblymen Doren, Tanzman, Halpin, Policastro, Addonizio and Burke.

(Without Reference)

AN ACT relating to obscenity with relation to the exposure, sale, loan, gift or distribution of certain publications, photographs, films and other materials to children under 18 years of age, and supplementing chapter 115 of Title 2A of the New Jersey Statutes.

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

1. As used in chapter 115 of Title 2A of the New Jersey Statutes and chapter 66 of the laws of 1962, the word "obscene," with relation to the exposure, sale, loan, gift or distribution of items or materials to a child under 18 years of age shall mean and include:

a. Portrayal in still or motion pictures or similar representation of any person or persons of the age of puberty or older, posed or presented in such a manner as to exploit lust for commercial gain and which would appeal to the lust of persons under the age of 18 years or to their curiosity as to sex or to the anatomical differences between the sexes and which shows, depicts or reveals such person or persons:

(1) with less than a fully opaque covering of his or her genitals, pubic areas or buttocks, and, if that person is a female, with less than a fully opaque covering of any portion of the breast below a point immediately above the top of the areola, or

(2) engaged in an act or acts of masturbation, homosexuality, or sexual intercourse, or in physical contact with another person's genitals, pubic areas, buttock or buttocks or the breast or breasts of a female, or,

(3) in a posture or way that the viewer's attention or concentration is primarily focused on that person's or those persons' genitals, pubic areas, buttock or buttocks, female breast or breasts, even if those portions of the anatomy are covered, or

b. Any book, "pocket book," pamphlet or magazine, phonograph record, tape or similar electronic reproduction of sound, containing details, descriptions, or narrative accounts of:

(1) the genitals in a state or condition of sexual stimulation or arousal,

(2) acts of masturbation, or

(3) acts of homosexuality, or

(4) acts of sexual intercourse, or

(5) acts of physical contact with another person's genitals, pubic areas, buttock or buttocks or the breast or breasts of a female, which contact is made in an act of sexual stimulation, gratification or perversion,

which details, descriptions or narrative accounts are written or presented in such a manner as to exploit lust for commercial gain and which would appeal to the lust of persons under the age of 18 years or to their curiosity as to sex or to the anatomical differences between the sexes and which are to be distinguished from flat and factual statements of the facts, causes, functions or purposes of the subject of the writing or presentation, such as would be found in bona fide medical or biological textbooks.

2. If any part or provision of this act or its application to any person or circumstances is for any reason adjudged invalid or unconstitutional by a court of competent jurisdiction, such judgment shall be limited in its effect to the facts involved in the controversy in which such judgment shall have been rendered and shall not affect the validity of the remainder of this act or its application to other persons and circumstances.

3. This act shall take effect immediately.

ASSEMBLY CONCURRENT RESOLUTION No. 18

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1965

By Assemblyman MUSTO, Assemblywoman HUGHES,

Assemblymen BURKE and POLICASTRO

Referred to Committee on Judiciary

A CONCURRENT RESOLUTION to amend Article VI, Section V, of the Constitution of the State of New Jersey

1 BE IT RESOLVED by the General Assembly of the State of New Jersey (the
2 Senate concurring):

1 1. The following proposed amendment to the Constitution of the State
2 of New Jersey is agreed to:

PROPOSED AMENDMENT

3 Amend Article VI, Section V, by the addition thereto of the following
4 paragraph, to read as follows:

5 5. In all criminal prosecutions for the publication, distribution, sale and
6 dissemination of any obscene or indecent book, pamphlet, picture or other
7 representation, however made, the jury shall be the judge of the law and the
8 fact, and the standards to be utilized by the jury in determining whether an
9 item or representation is obscene or indecent shall be the community stand-

10 ards of the county of the State of New Jersey wherein the violation or the
11 offense was committed.

1 2. When this proposed amendment to the Constitution is finally agreed
2 to, pursuant to Article IX, paragraph 1, of the Constitution, it shall be sub-
3 mitted to the people at the next general election occurring more than 3

4 months after such final agreement and shall be published at least once in at least one newspaper of each county designated by the President of the Senate and the Speaker of the General Assembly and the Secretary of State, not less than 3 months prior to said general election.

3. This proposed amendment to the Constitution shall be submitted to the people at said election in the following manner and form:

There shall be printed on each official ballot to be used at such general election, the following:

a. In every municipality in which voting machines are not used, a legend which shall immediately precede the question, as follows:

If you favor the proposition printed below make a cross (X), plus (+) or check (V) in the square opposite the word "Yes." If you are opposed thereto to make a cross (X), plus (+) or check (V) in the square opposite the word "No."

b. In every municipality the following question:

Yes.	<p>Shall the following amendment to Article VI, Section V, of the Constitution, agreed to by to by the Legislature be adopted?</p> <p>"5. In all criminal prosecutions for the publication, distribution, sale and dissemination of any obscene or indecent book, pamphlet, picture or other representation, however made, the jury shall be the judge of the law and the fact, and the standards to be utilized by the jury in determining whether an item or representation is obscene or indecent shall be the community standards of the county of the State of New Jersey wherein the violation or the offense was committed."</p>
No.	

4. This amendment shall become effective on the second Tuesday in January following its adoption by the people, if at said election all of the members of the General Assembly are elected; but, otherwise, it shall become effective upon the second Tuesday in January following the next general election.

STATEMENT

In the landmark case, *Roth v. United States*, 1957, 354 U. S. 476, the United States Supreme Court declared that "Obscenity is not expression protected by the First Amendment." In that same case, the majority of the court stated that the test of obscenity is "... whether the average person, applying contemporary community standards, the dominant theme of the material taken as a whole

appeals to prurient interest..." and approvingly cited the American Law Institute's definition of prurient interest: "... a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters..."

In a subsequent case, *Manual Enterprises v. Sullivan*, 1962, 370 U. S. 478, the United States Supreme Court qualified its Roth standards of obscenity by declaring that "... obscenity... requires proof of 2 distinct elements: (1) patent offensiveness; and (2) 'prurient interest' appeal..."

The United States Supreme Court, however, has not explicitly defined "community" as employed in its Roth standards; it has not stated whether the "contemporary community standards" are national, State, county or local standards.

In 1962, the New Jersey Legislature accepted a recommendation of its Joint Commission to Study Obscenity in Certain Publications and enacted legislation incorporating in our statutes the Roth standards of obscenity (N. J. S. 2A:115-1.1). There is no evidence in the hearings and report of that commission that trial of offenses should not be based on the standards of the county wherein the offense is committed.

In a recent New Jersey Supreme Court decision, *State of New Jersey v. Hudson County News Co. et al.* (1963, 41 N. J. 247), it was declared that "... the Legislature in enacting N. J. S. A. 2A:115-2 intended to forbid obscene matter to the fullest extent permissible under the First Amendment, made applicable to the States by the Fourteenth Amendment. Accordingly, the 'contemporary community standard' to be applied in enforcement of the statute must

comport with the limitations imposed on the State by and the freedoms guaran-

anteed by the First Amendment. We are of the opinion that such a standard must necessarily be uniform throughout the nation. . . . In support of this conclusion the court quoted several commentators (45 *Minn. L. Rev.* 111-112) who expressed confidence that "... when the Supreme Court is clearly presented with this issue, the court will resolve the issue against the application of State and local community standards. . . ."

This ruling is contrary to the intent of the Legislature in enacting N. J. S. 2A:115-1.1. The constitutional amendment proposed in this resolution would, in the absence of a United States Supreme Court decision to the contrary, restore that intent. It would negate the reduction of the Roth standards of obscenity to a national least common denominator.

The Joint Commission to Study Obscenity in Certain Publications 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 that "... only by constant and continuing vigilance on the part of all citizens can this illicit traffic be minimized. . . ." This proposed constitutional amendment would restore an effective public weapon against this clear and present danger.

In 1962, the New Jersey Legislature created a commission to study obscenity in certain publications and conduct legislation in our state. The local standards of obscenity (N. J. S. 2A:115-1.1) are evidence in the history and report of that commission that the standards should not be based on the standards of the county wherein the offense is committed. In a recent New Jersey Supreme Court decision, *State of New Jersey v. ...* (N. J. S. 2A:115-1.1) it was held that the Legislature in enacting N. J. S. 2A:115-1.1 intended to forbid obscene matter to the fullest extent possible under the First Amendment, made applicable to the States by the Fourteenth Amendment. Accordingly, the "community standards" to be applied in enforcement of the statute must

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 11, 1966

ASSEMBLY BILL NO. 768

To the General Assembly:

I herewith return Assembly Bill No. 768, without my approval, for the following reasons:

Assembly Bill No. 768, which has been commonly referred to as the anti-obscenity bill, undertakes to set forth specific definitions of the word "obscene" with regard to the exposure, sale, loan, gift or distribution of items to children under the age of 18 years.

The uttering or exposing of obscene literature or pictures has been a crime in New Jersey for many decades. In recent years, the sale or distribution of obscene material to children under the age of 18 has been made a high misdemeanor.

During my first year of office, these general statutes were strengthened by legislation, sponsored in part by the primary sponsor of Assembly Bill No. 768, and approved by me. Chapter 165 of the Laws of 1962 incorporated into our criminal statutes concerning indecency and obscenity, the definition of "obscenity" applied by the U. S. Supreme Court in Roth v. U. S., 354 U.S. 476. Another law further strengthened the enforcement of the State's obscenity laws by permitting law enforcement officials to maintain an action for injunctive relief against persons who handled obscene materials. P. L. 1962, c. 166. A third law prohibited book and magazine wholesalers from distributing material, whether obscene or not, which was not requested or desired by the retailer.

Each of these statutes represented, in my opinion, a meaningful improvement in law enforcement. The validity of these statutes has been tested in the courts and sustained.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 768

- 2 -

As this record demonstrates, not many persons today seriously contend that traffic in obscene material should be tolerated. And, even this number undoubtedly shrinks to an infinitesimal few on the question as to whether children should be exposed to such materials. The problem presented by Assembly Bill No. 768, therefore, is not whether the State's anti-obscenity laws should be strengthened, but whether this particular bill represents a meaningful improvement over the extensive body of law now on the New Jersey statute books. In this regard, it is significant to note that this bill does not expand existing obscenity statutes by establishing new offenses nor does it broaden the penalties applicable to existing offenses.

Assembly Bill No. 768 undertakes merely to set forth a comprehensive definition of what constitutes obscenity. It would establish several specific tests of obscenity against which publications and pictorial material would be measured. Presumably, it seeks to bring an element of certainty to an area of law which, admittedly, is most uncertain.

I can readily understand why the supporters of this legislation have favored it. I believe that most persons would favor the adoption of a workable and simple test which would permit all persons to determine whether materials are obscene under our laws. This question must be a legal one since the United States Constitution protects the right to prepare and distribute publications under the First Amendment guarantee of freedom of speech or press unless such publications are declared to be obscene and therefore beyond the protection of this great constitutional provision.

This bill may seem especially attractive to some because it contains the very detail and specificity which has been so lacking in this area. It creates, for example, what could be termed the anatomy test. If certain parts of the body are revealed or prominently displayed in photographs or

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 768

- 3 -

movies, the bill implies that such material is obscene. With regard to written materials, a sexual activity test is adopted. If certain sexual acts, such as sexual intercourse, are described in a book or publication, the bill implies that such materials are bad.

The draftsman of this measure, however, must have realized what some of the more ardent supporters of this legislation have not. He was astute enough to know that neither an anatomy or a sexual activity test alone would be sufficient under the requirements of the United States Constitution. So, she added certain additional qualifications to these simple tests.

He provided, for instance, that descriptions of sexual intercourse or pictures of the undraped body would be obscene only if such matters were presented in a manner

(1) as to exploit lust for commercial gain; and

(2) (a) which would appeal to the lust of persons under the age of 18 years; or

(b) which would appeal to the curiosity of persons under the age of 18 as to sex or to the anatomical differences between the sexes.

Thus, what started out to be a simple measure of obscenity necessarily developed into a formula of extreme complexity. And, it is this union of the simple on the one hand with the undeniably complex on the other that creates much of the difficulty about this bill.

It is a basic requirement of due process in criminal proceedings that a criminal statute clearly set forth the elements of the offense.

"It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. * * * * A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press." Winters v. New York, 333 U.S. 507, 509 (1948).

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 768

- 4 -

While Assembly Bill No. 768 is in some respects exceedingly definitive, the requirements that the material in question "exploit lust for commercial gain" and "appeal to the lust of persons under the age of 18 years" are so subjective as to render their application on any given occasion a matter of wide conjecture. Because of its vagueness, it is doubtful this bill can satisfy the due process requirements of the Fourteenth Amendment to the United States Constitution.

The bill also presents a very clear challenge to the constitutional protections of speech and press set forth in both our State and Federal Constitutions. Under the definition of obscenity, this bill would seek to ban the distribution of material to children which would appeal "to their curiosity as to sex or to the anatomical differences between the sexes." No court has ever held that materials can be banned as obscene simply because they deal with the question of sex itself. Again, it is doubtful that this bill can accommodate itself to the constitutional provisions which guarantee freedom of speech and press.

Assembly Bill No. 768, however, raises questions beyond those of constitutionality. I have received an unusually large number of letters and telegrams from persons, especially those involved in the teaching of our youth, who have questioned seriously this bill's provisions. The New Jersey School Library Association, the New Jersey Library Association, the New Jersey Education Association and many other groups and individuals whose concern for our children is beyond reproach have expressed their concern that this bill could seriously interfere with the orderly education of our children in many important areas.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 768

- 5 -

The library associations, for example, provided me with lists of materials, all of which are in standard use by children under the age of 18, which would fall within the specific wording of Assembly Bill No. 768. Books such as illustrated versions of Dante's Inferno, the works of Chaucer, books on the fine arts and works of our leading artists such as Michelangelo and Rodin and even materials as familiar as the National Geographic Magazine would fall within the interdiction of Assembly Bill No. 768. Similarly, whole series of books now used in our schools, which are designed to acquaint growing adolescents with the problems of sex, would fall clearly within the language of the bill unless they qualified under a further exception which purports to exclude "flat and factual statements . . . such as would be found in bona fide medical or biological textbooks."

It is true that not all such works would be held to be obscene because they may not "exploit lust for commercial gain." But, such a decision would ultimately depend upon a determination by the proper law enforcement officials. Our educators and librarians, therefore, would handle this material at their peril. I could see the wisdom of placing such a burden upon smut peddlers and those who traffic in such illicit materials. This bill, however, makes no such distinction.

The genuine concern of these educators, librarians and other professionals involved in the development and education of our children, about the possible adverse effects upon them of this legislation, cannot be ignored or dismissed. I certainly am not now in a position to state that their fears are groundless. By the same token, I cannot state that there is no need for

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 768

- 6 -

additional legislation to contend with the continuing problem of obscenity, especially insofar as it concerns our children. I do believe, however, that any additional authority which is found necessary to provide greater protection to our children from obscene publications and materials can be expressed in a manner which would be much less disruptive to our educational institutions, our libraries and our cultural endeavors.

I am today also returning to the Legislature Assembly Bill No. 404 for the reasons expressed in the message attached to that bill. In that message I recommend that a commission be established forthwith which would undertake a careful review of the existing obscenity statutes, and of the most recent court decisions concerning this subject with a view to developing such additional legislation as may be required. I would hope that the Legislature would act promptly on this request. In that way, we can seek to achieve the laudable objectives of Assembly Bill No. 768.

Respectfully,

/s/ RICHARD J. HUGHES

GOVERNOR

[SEAL]

Attest:

/s/ JOHN W. GLEESON

Secretary to the Governor

SENATE, No. 153

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1965

By Senator WEBER

Referred to Committee on Judiciary

AN ACT concerning crimes, and supplementing chapter 115 of Title 2A of the
New Jersey Statutes.

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

1 1. Any person who telephones another and addresses to such person any
2 lewd, lascivious, indecent or disgusting remarks, is guilty of a misdemeanor.

1 2. This act shall take effect immediately.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 11, 1966

ASSEMBLY BILL NO. 404

To the General Assembly:

I herewith return Assembly Bill No. 404, without my approval for the following reasons:

Assembly Bill No. 404 would create a bipartisan legislative commission "to make a continuing study of the dissemination of obscene publications and, if warranted, recommend the enactment of remedial legislation to curb the distribution of such publications."

When this bill was introduced on February 1, 1965, it provided that the commission should consist of 4 legislators and 4 citizen members appointed by the Governor from among the public at large. The bill in its original form also appropriated to the commission the sum of \$10,000.00. It was my firm belief that such a panel, constituted so as to provide for direct participation by the people through its citizen members, and equipped with adequate funds to do its work, could make a real contribution in this important area. On that basis, I publicly stated that I favored Assembly Bill No. 404.

Unfortunately, however, the Legislature did not pass this bill in its original form. Over the protests of its principal sponsor and many others, the bill was watered down by restrictive amendments to the point where it has lost much of its force. The most damaging of these amendments reduced the public membership from 4 to 2, thereby depriving the people of an effective voice in the commission's affairs. Operating in a field which encompasses so many divergent shades of public opinion, this commission in particular should have a large enough public membership to accommodate all responsible viewpoints and to guarantee effective participation by the people.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 404

- 2 -

Another amendment cut the proposed appropriation of \$10,000.00 to \$5,000.00. No explanation was made for such an exercise of "economy" in so important an undertaking. I do not believe that such a limited appropriation can finance the comprehensive study visualized by this bill.

For these reasons, and with the concurrence of the principal sponsor of Assembly Bill No. 404, I am returning this bill without my approval. As a first order of business during the next legislative session, I shall seek to have a commission on obscenity constituted with 8 public members and an appropriation of \$25,000.00. I would hope that the new Legislature will join in creating this worthwhile commission.

Respectfully,

/s/ RICHARD J. HUGHES

GOVERNOR

[SEAL]

Attest:

/s/ JOHN W. GLEESON

Secretary to the Governor