

2C:33-12, 2C:33-12.1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:33-12, 2C:33-12.1; 2A:54A-1 to 2A:54A-5

(Public nuisance-include house of prostitution or place of lascivious material)

LAWS OF: 1983

CHAPTER: 234

Bill No: A2314

Sponsor(s): Wolf, Doyle and Hendrickson

Date Introduced: Dec. 27, 1982

Committee: Assembly: _____

Senate: Judiciary

Amended during passage: Yes // Amendments denoted by asterisks according to Governor's recommendations:

Date of Passage: Assembly: Jan. 11, 1983 Re-enacted 6-13-83

Senate: Feb. 9, 1983 Re-enacted 6-27-83

Date of Approval: June 30, 1983

Following statements are attached if available:

Sponsor statement: Yes //

Committee statement: Assembly /// No

Senate Yes //

Fiscal Note: /// No

Veto Message: Yes //

Message on Signing: /// No

Following were printed:

Reports: /// No

Hearings: /// No

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APPROVED 6-30-83

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ASSEMBLY, No. 2314

STATE OF NEW JERSEY

INTRODUCED DECEMBER 27, 1982

By Assemblymen WOLF, DOYLE and HENDRICKSON

AN ACT concerning maintenance of a nuisance, amending N. J. S. 2C:33-12 and N. J. S. 2C:33-12.1 and supplementing Title 2A of the New Jersey Statutes.

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

1 1. N. J. S. 2C:33-12 is amended to read as follows:

2 2C:33-12. Maintaining a Nuisance. A person is guilty of [a dis-
3 orderly persons offense] *maintaining a nuisance* when:

4 a. By conduct either unlawful in itself or unreasonable under all
5 the circumstances, he knowingly or recklessly creates or maintains
6 a condition which endangers the safety or health of a considerable
7 number of persons; [or]

8 b. He knowingly conducts or maintains any premises, place or
9 resort where persons gather for purposes of engaging in unlawful
10 conduct; or

11 **[c. *He knowingly conducts or maintains any premises, place or*
12 *resort* **[where lewdness or prostitution is conducted or permitted*
13 *or]* **as a house of assignation or prostitution or as a place* * *where*
14 *lascivious material is sold, photographed, manufactured, exhibited*
14A *or otherwise prepared or shown.*]**

14B **c. *He knowingly conducts or maintains any premises, place or*
14C *resort as a house of prostitution or as a place where obscene ma-*
14D *terial as defined in N. J. S. 2C:34-2 and N. J. S. 2C:34-3 is sold,*
14E *photographed, manufactured, exhibited or otherwise prepared or*
14F *shown in violation of N. J. S. 2C:34-2, N. J. S. 2C:34-3, and N. J. S.*
14G *2C:34-4.* **

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendment adopted January 24, 1983.

**—Assembly amendments adopted in accordance with Governor's recommendations April 11, 1983.

15 *A person is guilty of a disorderly person's offense if the person*
 16 *is convicted under subsections a. or b. of this section. A person*
 17 *is guilty of a crime of the fourth degree if the person is convicted*
 18 *under subsection c of this section.*

19 — Upon conviction under [subsection b. of] this section in addition
 20 to the sentence authorized by this code, the court may proceed as
 21 set forth in section 2C:33-12.1.

22 ****[As used in this section "lascivious material" means any de-**
 23 **scription, narrative account, display, depiction of a specified ana-**
 24 **tomical area or specified sexual activity contained in, or consisting**
 25 **of, a picture or other representation, publication, sound recording,**
 26 **live performance or film, which by means of posing, composition,**
 27 **format or animated sensual details, emit sensuality with sufficient**
 28 **impact to concentrate prurient interest on the area or activity.]****

1 2. N. J. S. 2C:33-12.1 is amended to read as follows:

2 2C:33-12.1. Abating Nuisance. a. In addition to the penalty
 3 imposed in case of conviction under [section 2C:33-12b] *N. J. S.*
 4 *2C:33-12*, the court may order the immediate abatement of the
 5 nuisance, and for that purpose may order the seizure and forfeiture
 6 or destruction of any chattels, liquors, ****[lascivious]** **obscene****
 7 *material* or other personal property which may be found in such
 8 building or place, and which the court is satisfied from the evidence
 9 were possessed or used with a purpose of maintaining the nuisance.
 10 Any such forfeiture shall be in the name and to the use of the State
 11 of New Jersey, and the court shall direct the forfeited property to
 12 be sold at public sale, the proceeds to be paid to the treasurer
 13 of the county wherein conviction was had.

14 b. If the owner of any building or place is found guilty of main-
 15 taining a nuisance, the court may order that the building or place
 16 where the nuisance was maintained be closed and not used for a
 17 period not exceeding one year from the date of the conviction.

1 3. (New section) In addition to any criminal prosecution brought
 2 for violation of N. J. S. 2C:33-12, whenever a nuisance as defined
 3 in subsection c. of N. J. S. 2C:33-12 exists, the Attorney Gen-
 4 eral****[,]** **or**** the prosecutor of the county in which the nui-
 5 sance exists ****[or any person who is a resident of that county]****
 6 may bring a civil action in the name of the State to abate the nui-
 7 sance and to permanently enjoin the person from maintaining the
 8 nuisance. ****[If the action is instituted by a person other than the**
 9 **Attorney General or county prosecutor, the petitioner shall execute**
 10 **a bond in an amount to be determined by the court but in no case**
 11 **in a sum of less than \$500.00, to secure the party enjoined for any**
 12 **damages sustained if the action is wrongfully brought, not main-**

13 tained until final judgment, is dismissed or if it is finally decided
 14 that the injunction ought not to have been granted. The party
 15 aggrieved by issuance of an injunction shall have recourse against
 16 the bond for all damages suffered including reasonable attorney's
 17 fees incurred by the party in defense of the action.】**

18 4. (New section) a. Any action instituted pursuant to the pro-
 19 visions of section 3 of this amendatory and supplementary act shall
 20 be brought in the Superior Court of the county in which the alleged
 21 nuisance exists. An action shall be instituted by the filing of a
 22 verified petition alleging the facts constituting the nuisance.

23 b. After the filing of the petition, application for a **【temporary】**
 24 **【preliminary】** injunction may be made to the court which
 25 shall grant a hearing within 10 days after the filing of the applica-
 26 tion. If an application for a **【temporary】** **【preliminary】**
 27 injunction is made, the court, on request of the applicant,
 28 **【shall】** **【may】** issue an ex parte order **【restraining the**
 29 defendant and all other persons from removing or in any manner
 30 interfering with the personal property and contents at the location
 31 where the nuisance is alleged to exist until the decision of the court
 32 with regard to the temporary order is made**】** **【to preserve**
 33 *samples of materials located at the premises which are allegedly in-*
 34 *volved in the nuisance***】**. The restraining order shall be served by
 35 delivering a copy of the order to a person in charge of the location or
 36 residing there or by posting a copy of the order upon one of the
 37 principal doors or entrances to the location. The officer serving
 38 the restraining order shall make and return to the court an in-
 39 ventory of the personal property used in maintaining the alleged
 40 nuisance **【and an inventory of the samples being held】**. A viola-
 41 tion of the restraining order or the removal or mutilation of a
 42 posted restraining order shall constitute contempt of court.

43 c. A copy of the petition together with a notice of the time and
 44 place of the hearing on the application for a **【temporary】**
 45 **【preliminary】** injunction, shall be served upon the defendant at
 46 least five days before the hearing. If, at the hearing, the allega-
 47 tions of the petition are sustained **【to the satisfaction of the**
 48 court**】** **【by clear and convincing evidence】**, a **【temporary】**
 49 **【preliminary】** injunction closing the place against its use for any
 50 purpose complained of in the petition **【shall】** **【may】** be
 51 issued. The order shall also continue in effect the restraining order
 52 provided in subsection b. if already issued, or, if not so issued,
 53 **【shall】** **【may】** include a restraining order. The owner of
 54 any real or personal property closed or restrained may appear
 55 between the filing of the petition and the hearing on the application

39 for a permanent injunction and may obtain the release of the
40 property if the court determines that the owner did not have any
41 knowledge that the property was being used in maintaining the
42 nuisance and if the owner agrees to take whatever action is neces-
43 sary to insure that the property will not be used to continue the
44 nuisance. The release of any property under this subsection shall
45 not affect any judgment, lien, penalty or liability to which that
46 property may be subjected.

1 5. (New section) In an action brought pursuant to section 3 of
2 this amendatory and supplementary act evidence of the general
3 reputation of the location or an admission or finding of guilt of the
4 person under the criminal laws against prostitution or obscenity
5 is admissible for the purpose of proving the existence of the
6 nuisance.

1 6. (New section) If, after final hearing, the court determines
2 that the existence of a nuisance as defined in subsection c. of N. J. S.
3 2C:33-12 exists, the court ****[shall]**** ****may**** enter a permanent
4 order enjoining the defendant and any other person from further
5 maintaining the nuisance at the location complained of and the
6 defendant from maintaining the nuisance elsewhere. In addition,
7 the court ****[shall]**** ****may**** proceed with the forfeiture of
8 property used for the purpose of maintaining the nuisance and the
9 closing of the location for one year pursuant to the provisions of
10 N. J. S. 2C:33-12.1.

1 7. (New section) Whenever a permanent injunction is issued
2 pursuant to the provisions of this amendatory and supplementary
3 act, a penalty of not less than \$300.00 nor more than \$1,000.00 shall
4 be imposed upon the person maintaining the nuisance.

1 8. This act shall take effect immediately.

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6 nuisance.

1 6. (New section) If, after final hearing, the court determines
2 that the existence of a nuisance as defined in subsection c. of N. J. S.
3 2C:33-12 exists, the court shall enter a permanent order enjoining
4 the defendant and any other person from further maintaining the
5 nuisance at the location complained of and the defendant from
6 maintaining the nuisance elsewhere. In addition, the court shall
7 proceed with the forfeiture of property used for the purpose of
8 maintaining the nuisance and the closing of the location for one
9 year pursuant to the provisions of N. J. S. 2C:33-12.1.

1 7. (New section) Whenever a permanent injunction is issued
2 pursuant to the provisions of this amendatory and supplementary
3 act, a penalty of not less than \$300.00 nor more than \$1,000.00 shall
4 be imposed upon the person maintaining the nuisance.

1 8. This act shall take effect immediately.

STATEMENT

This bill would include the maintenance of a place where prosti-
tution or lewdness is conducted or permitted or where lascivious
material is sold or exhibited under the offense of maintaining a
public nuisance. A person found guilty of maintaining a location
where such activities are conducted would be guilty of a crime of
the fourth degree.

In addition, this bill would establish a civil proceeding whereby
a nuisance involving a location where prostitution or lewdness is
conducted or permitted or where lascivious material is sold or
exhibited could be permanently abated through the issuance of an
injunction.

A2314 (1983)

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2314

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 24, 1983

Assembly Bill No. 2314 would include the maintenance of a place as a house of assignation or prostitution or where lascivious material is sold or exhibited under the offense of maintaining a public nuisance. A person found guilty of maintaining a location where such activities are conducted would be guilty of a crime of the fourth degree (up to 18 months imprisonment and/or a fine of up to \$1,500.00).

As originally drafted, the bill would have been applicable to a place where lewdness or prostitution is conducted. It was suggested that this language was too broad and would have covered legitimate operators of hotels and motels. Therefore, by committee amendment, this language was deleted and the phrase "house of assignation or prostitution" substituted.

In addition, the bill would establish a civil proceeding whereby a nuisance involving a location where prostitution or lewdness is conducted or permitted or where lascivious material is sold or exhibited could be permanently abated through the issuance of an injunction.

This civil proceeding, which is to be brought in the Superior Court, may be initiated by a petition of the Attorney General or the prosecutor or any resident of the county in which the alleged nuisance exists. If the action is brought by a resident, that resident must post a bond of not less than \$500.00 to secure the defendant for damages and legal fees if the action is dismissed or if the action is decided in the defendant's favor.

In the petition seeking an injunction, the plaintiff may also request an order restraining the defendant and others from removing any property from the location where the nuisance is alleged to exist.

If, after hearing, the court determines that such a nuisance exists, the court shall enter an order enjoining the defendant and other persons from further maintaining the nuisance at the location complained of and the defendant from maintaining the nuisance elsewhere.

The court is also required to impose a fine of not less than \$300.00 nor more than \$1,000.00 on the person imposing the nuisance. Addi-

tionally, the court may also institute forfeiture proceedings against property used to maintain the nuisance and order the closing of the location for one year.

The general reputation of the location and convictions for prostitution or obscenity are admissible at the hearing for the purpose of establishing that a nuisance exists.

Assembly Bill No. 2314 is identical to Senate Bill No. 1977.

DATE: 1/17/78 BY: [illegible]

Assembly Bill No. 2314 is identical to Senate Bill No. 1977.

A person found guilty of operating a location where such activities are conducted would be subject to a fine of not more than \$1,000.00 or a month's imprisonment, or both.

As originally drafted, the bill provided for a fine of not more than \$1,000.00 or a month's imprisonment, or both, for any person found guilty of operating a location where such activities are conducted.

In addition, the bill would provide that a person found guilty of operating a location where such activities are conducted could be permanently enjoined from operating such a location.

This civil procedure would be initiated by a petition filed by or on behalf of a person who is a resident of the county in which the location is situated. The petition would request that the court order the location closed and the defendant enjoined from operating such a location.

The court is also required to impose a fine of not less than \$500.00 and the defendant may maintain the nuisance elsewhere.

In the petition seeking an injunction, the plaintiff may also request an order restraining the defendant and others from operating any property from the location where the nuisance is alleged to exist.

If, after hearing, the court determines that such a nuisance exists, the court shall enter an order enjoining the defendant and other persons from further maintaining the nuisance at the location complained of and the defendant from maintaining the nuisance elsewhere.

The court is also required to impose a fine of not less than \$500.00 on the person upon whom the nuisance is enjoined.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 11, 1983

ASSEMBLY BILL NO. 2314 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 2314 (OCR) with my recommendations for reconsideration.

This bill amends our criminal nuisance statute and creates a civil nuisance action to enjoin the maintenance of premises where prostitution occurs and obscene material is sold or exhibited. I am returning the bill for substantial amendments in order to assure that it properly meshes with our existing criminal code, to give the courts discretion in fashioning the remedies under the bill and to avoid inhibiting the exercise of first amendment rights of free speech.

The bill establishes as a "nuisance" the maintenance of "any premises, place or resort as a house of assignation or prostitution or as a place where lascivious material is sold, photographed, manufactured, exhibited or otherwise prepared or shown." The maintenance of such a nuisance is punishable as a crime of the fourth degree.

This definition presents serious construction problems. First, "house of assignation" is not defined in the bill and we do not know what kind of facility is meant. Accordingly, I propose to delete this phrase from the bill. Secondly, the language creates a new prohibited class of material, namely "lascivious material." Use of this new term ignores the existing definition of "obscene material" in the New Jersey Criminal Code. In defining "lascivious material" the bill uses the existing definition of "obscene material" sold to minors set forth in the New Jersey statutes. The bill should be amended to directly refer to the existing definition of "obscene material" rather than create the confusion of a new phrase. In addition, the provision fails to articulate the distinction between private activities and commercial or public obscenity. Since the State's regulation of private activity is open to constitutional challenge, I am recommending amendments to clarify that the prohibited activity with respect to sale or exhibition of obscene material is that currently defined in our criminal code.

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EXECUTIVE DEPARTMENT

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The bill also clarifies that when a criminal nuisance is found, any obscene material may be seized and destroyed.

The second part of the bill provides for a civil nuisance action to enjoin the criminal nuisance described above. The Attorney General, the county prosecutor or any county resident would be permitted to bring a civil action in the name of the State to abate the nuisance and permanently enjoin maintenance of the nuisance. In order to avoid unreasonable harassment of legitimate businesses, I believe the power to institute these actions should be limited to public officials.

While the civil nuisance action is pending, the court is given the power to issue an ex parte restraining order preventing the removal of or interference with any of the personal property and contents of the premises. The court has no discretion whether or not to issue such an order but must do so upon the application of the plaintiff. The bill makes provision for service of the ex parte order and requires the officer serving the ex parte order to make an inventory of the contents of the premise. Violation of the restraining order constitutes contempt of court. The ex parte restraining order raises constitutional concerns since it would effectively close down the business before any finding is made that illegal activities are occurring there. At this preliminary stage in the proceeding the ex parte order should be limited to maintaining the status quo and preserving evidence. Accordingly, we recommend that the order direct the preservation of samples of materials at the premises and that an inventory of its contents be made.

The application for the restraining order must be coupled with an application for a temporary injunction. The hearing on the temporary injunction must be held within 10 days. A temporary injunction would close the premises against its use for any purpose complained of in the petition until the final hearing. The defendant must be served with notice of the application for a temporary injunction at least five days before the hearing. If the court finds at the hearing that the allegations in the petition are "sustained to the satisfaction

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EXECUTIVE DEPARTMENT

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of the court," a temporary injunction must be issued. In addition, the restraining order discussed above is to remain in effect (or if it had not been issued, it must now be included in the court's disposition). Thereafter, pending the final hearing on the application for a permanent injunction, the owner of the property may secure the release of the property from the court's order if the court finds "that the owner did not have any knowledge that the property was being used in maintaining the nuisance and if the owner agrees to take whatever action is necessary to insure that the property will not be used to continue the nuisance."

I recommend three amendments to the provisions governing the temporary injunction. First, to help assure that this kind of prior restraint has proper procedural safeguards to satisfy constitutional concerns, I recommend that the injunction be issued only after a finding by the court that clear and convincing evidence supports the application. Secondly, the court should have discretion in issuing the injunction and formulating the order. Finally, to be consistent with accepted legal terminology, the injunction should be referred to as a "preliminary" rather than "temporary" injunction.

If, at the final hearing, the court determines that the nuisance exists, it must enter a permanent order enjoining the defendant and any other person from maintaining the nuisance at that location and enjoining the defendant from maintaining the nuisance elsewhere. In addition, the court must proceed with the forfeiture of property used for maintaining the nuisance and must close the location for one year pursuant to N.J.S. 2C:33-12.1. My only amendment to these provisions is to give the court discretion to impose these remedies rather than mandating that the court do so. In addition, a penalty of not less than \$300 no more than \$1,000 must be imposed upon the person maintaining the nuisance.

The bill also provides that evidence of the general reputation of the location or an admission or finding of guilt under the criminal laws of prostitution or obscenity is admissible for the purpose of proving the existence of the nuisance.

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In accordance with the above observations, I herewith return Assembly Bill No. 2314 (OCR) and recommend that it be amended as follows:

Page 1, Section 1, lines 11 through 14A: Delete and after line 14A insert

"c. He knowingly conducts or maintains any premises, place or resort as a house of prostitution or as a place where obscene material as defined in N.J.S. 2C:34-2 and N.J.S. 2C:34-3 is sold, photographed, manufactured, exhibited or otherwise prepared or shown in violation of N.J.S. 2C:34-2, N.J.S. 2C:34-3, and N.J.S. 2C:34-4."

Page 2, Section 1, lines 22 through 28: Delete

Page 2, Section 2, line 6: Delete "lascivious" and insert "obscene"

Page 2, Section 3, line 3: After "Attorney General" delete "," and insert "or"

Page 2, Section 3, lines 4 and 5: Delete "or any person who is a resident of that county"

Page 2, Section 3, lines 7 through 17: On line 7, delete "If the action", delete lines 8 through 17

Page 3, Section 4, line 6: Delete "temporary" and insert "preliminary"

Page 3, Section 4, line 9: Delete "temporary" and insert "preliminary"

Page 3, Section 4, line 10: Delete "shall" and insert "may" delete "restraining the defendant"

Page 3, Section 4, lines 11 through 13: Delete

Page 3, Section 4, line 14: Delete "regard to the temporary order is made" and insert "to preserve samples of materials located at the premises which are allegedly involved in the nuisance"

Page 3, Section 4, line 20: After "nuisance" insert "and an inventory of the samples being held"

Page 3, Section 4, line 24: Delete "temporary" and insert "preliminary"

Page 3, Section 4, line 27: Delete "to the satisfaction of the court" and insert "by clear and convincing evidence" and delete "temporary" and insert "preliminary"

Page 3, Section 4, line 29: After "petition" delete "shall" and insert "may"

Page 3, Section 4, line 31: Delete "shall" and insert "may"

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Page 4, Section 6, line 3: Delete "shall" and insert "may"

Page 4, Section 6, line 6: Delete "shall" and insert "may"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Kenneth D. Merin

Deputy Chief Counsel

