

2C:34-3

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1999 **CHAPTER:** 227
NJSA: 2C:34-3 (Obscene Material, under 18 -- crime)
BILL NO: S1391 (Combined with A2391, A2424, A2919)

SPONSOR(S): Bassano and Cardinale

DATE INTRODUCED: September 28, 1998

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE: Law and Public Safety

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 24, 1999

SENATE: January 28, 1999; July 1, 1999

DATE OF APPROVAL: September 30, 1999

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Assembly Committee Substitute for S1391, A2391, A2424, A2919 – 1st Reprint)
(Amendments during passage denoted by superscript numbers)

ACS for S1391, A2391, A2424, A2919

SPONSORS STATEMENT: No

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENTS: [Yes](#) [6-10-99](#)

LEGISLATIVE FISCAL ESTIMATE: No

S1391

SPONSORS STATEMENT: (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENTS: [Yes](#) [12-10-98](#)

LEGISLATIVE FISCAL ESTIMATE: No

A2391

SPONSORS STATEMENT: (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: No
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: No

A2424

SPONSORS STATEMENT: (Begins on page 4 of original bill) [Yes](#)
Bill and Sponsor Statement identical to S1391

COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: No
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: No

A2919

SPONSORS STATEMENT: (Begins on page 4 of original bill) [Yes](#)
Bill is identical to S1391

COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: No
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: [Yes](#)

FOLLOWING WERE PRINTED:

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REPORTS: No
HEARINGS: No
NEWSPAPER ARTICLES: No

P.L. 1999, CHAPTER 227, *approved September 30, 1999*
Assembly Committee Substitute (*First Reprint*) for
Senate, No. 1391, Assembly, Nos. 2391, 2424 and 2919

1 AN ACT concerning obscene films or obscene materials for persons
2 under 18 years of age and amending N.J.S.2C:34-3.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.2C:34-3 is amended to read as follows:

8 2C:34-3. Obscenity For Persons Under 18. a. Definitions for
9 purposes of this section:

10 (1) "Obscene material" means any description, narrative account,
11 display, depiction of a specified anatomical area or specified sexual
12 activity contained in, or consisting of, a picture or other
13 representation, publication, sound recording, live performance or film,
14 which by means of posing, composition, format or animated sensual
15 details, emits sensuality with sufficient impact to concentrate prurient
16 interest on the area or activity.

17 (2) "Obscene film" means any motion picture film or preview or
18 trailer to a film, not including newsreels portraying actual current
19 events or pictorial news of the day, in which a scene, taken by itself:

20 (a) Depicts a specified anatomical area or specified sexual activity,
21 or the simulation of a specified sexual activity, or verbalization
22 concerning a specified sexual activity; and

23 (b) Emits sensuality sufficient, in terms of the duration and impact
24 of the depiction, to appeal to prurient interest.

25 (3) "Specified anatomical area" means:

26 (a) Less than completely and opaquely covered human genitals,
27 pubic region, buttock or female breasts below a point immediately
28 above the top of the areola; or

29 (b) Human male genitals in a discernibly turgid state, even if
30 covered.

31 (4) "Specified sexual activity" means:

32 (a) Human genitals in a state of sexual stimulation or arousal; or

33 (b) Any act of human masturbation, sexual intercourse or deviate
34 sexual intercourse; or

35 (c) Fondling or other erotic touching of covered or uncovered
36 human genitals, pubic region, buttock or female breast.

37 (5) "Knowingly" means:

38 (a) Having knowledge of the character and content of the material
39 or film described herein; or

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted June 10, 1999.

1 (b) Having failed to exercise reasonable inspection which would
2 disclose its character and content.

3 (6) "Exhibit" means the sale of admission to view obscene
4 material.

5 (7) "Show" means cause or allow to be seen.

6 b. Promoting obscene material.

7 (1) A person who knowingly sells, distributes , rents or exhibits to
8 a person under 18 years of age obscene material is guilty of a crime of
9 the ~~fourth~~third degree.

10 (2) A person who knowingly shows obscene material to a person
11 under 18 years of age ¹with the knowledge or purpose to arouse,
12 gratify or stimulate himself or another¹ is guilty of a crime of the third
13 degree if the person showing the obscene material is at least four years
14 older than the person under 18 years of age viewing the material.

15 c. Admitting to exhibition of obscene film.

16 (1) Any person who knowingly admits a person under 18 years of
17 age to a theatre then exhibiting an obscene film is guilty of a crime of
18 the ~~fourth~~third degree.

19 (2) A person who knowingly shows an obscene film to a person
20 under 18 years of age ¹with the knowledge or purpose to arouse,
21 gratify or stimulate himself or another ¹ is guilty of a crime of the third
22 degree if the person showing the obscene film is at least four years
23 older than the person under 18 years of age viewing the film.

24 d. Presumption of knowledge and age.

25 The requisite knowledge with regard to the character and content
26 of the film or material and of the age of the person is presumed in the
27 case of an actor who sells, distributes, rents ~~or~~ , exhibits or shows
28 obscene material to a person under 18 years of age or admits to a film
29 obscene for a person under 18 years of age a person who is under 18
30 years of age.

31 e. Defenses.

32 (1) It is an affirmative defense to a prosecution under subsections
33 b. and c. which the defendant must prove by a preponderance of
34 evidence that:

35 (a) The person under age 18 falsely represented in or by writing
36 that he was age 18 or over;

37 (b) The person's appearance was such that an individual of
38 ordinary prudence would believe him to be age 18 or over; and

39 (c) The sale, distribution, rental, showing or exhibition to or
40 admission of the person was made in good faith relying upon such
41 written representation and appearance and in the reasonable belief that
42 he was actually age 18 or over.

43 (2) It is an affirmative defense to a prosecution under subsection
44 c. that the defendant is an employee in a motion picture theatre who
45 has no financial interest in that motion picture theatre other than his
46 wages and has no decision-making authority or responsibility with

1 respect to the selection of the motion picture show which is exhibited.
2 (cf: P.L.1989, c.54, s.2)

3

4 2. This act shall take effect on the first day of the second month
5 following enactment.

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10 Establishes showing of obscene films or materials to persons under 18
11 years of age as crime by violator four or more years older than the
12 person viewing them; upgrades crime of sale, distribution, rental or
13 exhibition.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
SENATE NO. 1391, ASSEMBLY, Nos. 2391, 2424 and 2919

STATE OF NEW JERSEY

DATED: MARCH 11, 1999

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Senate Bill No. 1391 and Assembly Bill Nos. 2391, 2424 and 2919.

This substitute would establish the showing of an obscene film or obscene materials to a person under the age of 18 years as a crime of the third degree if the person showing the film or materials is at least four years older than the minor to whom they are being shown. Presently merely showing these materials or films without charging a fee is not a criminal offense.

Under current law, it is a crime of the fourth degree for a person to sell, distribute, rent or exhibit obscene materials to a person under 18 years of age. Similarly, it is a crime of the fourth degree for a person to charge a person under the age of 18 a fee to see an obscene film. This substitute upgrades these crimes to crimes of the third degree. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine not to exceed \$15,000.00, or both.

STATEMENT TO

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
SENATE, No. 1391, ASSEMBLY, Nos. 2391, 2424 and 2919**

with Assembly Floor Amendments
(Proposed By Assemblyman LUONGO)

ADOPTED: JUNE 10, 1999

These floor amendments insert the phrase "with the knowledge or purpose to arouse, gratify or stimulate himself or another" in new paragraphs (2) of subsections b. and c. of N.J.S.2C:34-3 concerning knowingly showing obscene material or an obscene film to a person under 18 years of age if the person showing the obscene material or film is at least four years older than the person under 18 years of age viewing the material.

SENATE, No. 1391

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED SEPTEMBER 28, 1998

Sponsored by:

Senator C. LOUIS BASSANO

District 21 (Essex and Union)

Senator GERALD CARDINALE

District 39 (Bergen)

SYNOPSIS

Establishes showing of obscene films or materials to persons under 18 years of age as a crime if the violator is five or more years older than the minor viewing the materials.

CURRENT VERSION OF TEXT

As introduced.



S1391 BASSANO, CARDINALE

2

1 AN ACT concerning the showing of obscene films or obscene
2 materials to a person under 18 years of age and amending
3 N.J.S.2C:34-3.

4

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

7

8 1. N.J.S.2C:34-3 is amended to read as follows:

9 2C:34-3. Obscenity For Persons Under 18. a. Definitions for
10 purposes of this section:

11 (1) "Obscene material" means any description, narrative account,
12 display, depiction of a specified anatomical area or specified sexual
13 activity contained in, or consisting of, a picture or other
14 representation, publication, sound recording, live performance or film,
15 which by means of posing, composition, format or animated sensual
16 details, emits sensuality with sufficient impact to concentrate prurient
17 interest on the area or activity.

18 (2) "Obscene film" means any motion picture film or preview or
19 trailer to a film, not including newsreels portraying actual current
20 events or pictorial news of the day, in which a scene, taken by itself:

21 (a) Depicts a specified anatomical area or specified sexual activity,
22 or the simulation of a specified sexual activity, or verbalization
23 concerning a specified sexual activity; and

24 (b) Emits sensuality sufficient, in terms of the duration and impact
25 of the depiction, to appeal to prurient interest.

26 (3) "Specified anatomical area" means:

27 (a) Less than completely and opaquely covered human genitals,
28 pubic region, buttock or female breasts below a point immediately
29 above the top of the areola; or

30 (b) Human male genitals in a discernibly turgid state, even if
31 covered.

32 (4) "Specified sexual activity" means:

33 (a) Human genitals in a state of sexual stimulation or arousal; or

34 (b) Any act of human masturbation, sexual intercourse or deviate
35 sexual intercourse; or

36 (c) Fondling or other erotic touching of covered or uncovered
37 human genitals, pubic region, buttock or female breast.

38 (5) "Knowingly" means:

39 (a) Having knowledge of the character and content of the material
40 or film described herein; or

41 (b) Having failed to exercise reasonable inspection which would
42 disclose its character and content.

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

Matter underlined thus is new matter.

1 (6) "Exhibit" means the sale of admission to view obscene material.

2 b. Promoting obscene material.

3 (1) A person who knowingly sells, distributes, rents or exhibits to
4 a person under 18 years of age obscene material is guilty of a crime of
5 the fourth degree.

6 (2) A person who knowingly shows obscene material to a person
7 under 18 years of age shall be guilty of a crime of the fourth degree if
8 that person showing the obscene material is at least five years older
9 than the minor viewing material.

10 c. Admitting to exhibition of obscene film.

11 (1) Any person who knowingly admits a person under 18 years of
12 age to a theatre then exhibiting an obscene film is guilty of a crime of
13 the fourth degree.

14 (2) A person who knowingly shows an obscene film to a person
15 under 18 years of age shall be guilty of a crime of the fourth degree if
16 that person showing the obscene film is at least five years older than
17 the minor viewing material.

18 d. Presumption of knowledge and age.

19 The requisite knowledge with regard to the character and content
20 of the film or material and of the age of the person is presumed in the
21 case of an actor who sells, distributes, rents or exhibits obscene
22 material to a person under 18 years of age or admits to a film obscene
23 for a person under 18 years of age a person who is under 18 years of
24 age.

25 e. Defenses.

26 (1) It is an affirmative defense to a prosecution under subsections
27 b. and c. which the defendant must prove by a preponderance of
28 evidence that:

29 (a) The person under age 18 falsely represented in or by writing
30 that he was age 18 or over;

31 (b) The person's appearance was such that an individual of ordinary
32 prudence would believe him to be age 18 or over; and

33 (c) The sale, distribution, rental or exhibition to or admission of the
34 person was made in good faith relying upon such written
35 representation and appearance and in the reasonable belief that he was
36 actually age 18 or over.

37 (2) It is an affirmative defense to a prosecution under subsection
38 c. that the defendant is an employee in a motion picture theatre who
39 has no financial interest in that motion picture theatre other than his
40 wages and has no decision-making authority or responsibility with
41 respect to the selection of the motion picture show which is exhibited.

42 (cf: P.L.1989, c.54, s.2)

43

44 2. This act shall take effect on the first day of the second month
45 following enactment.

STATEMENT

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This bill would establish the showing of an obscene film or obscene materials to a person under the age of 18 years as a crime of the fourth degree if the person showing that film or those materials is at least five years older than the minor to whom they are being shown.

Under current law, it is a crime of the fourth degree for a person to sell, distribute or rent obscene materials to a person under 18 years of age. Similarly, it is a crime of the fourth degree for a person to charge a person under the age of 18 a fee to see an obscene film or obscene materials. Fourth degree crimes are punishable by a fine of up to \$10,000; imprisonment for a term of up to 18 months; or both.

The purpose of this bill is to stop those persons who, to evade the letter of the law, do not charge fees to minors to view obscene films and materials. All too often, such persons are predators and deviants seeking to prey upon or exploit these teenagers.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 1391

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 1998

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1391.

As amended and released by the committee, this bill would establish the showing of an obscene film or obscene materials to a person under the age of 18 years as a crime of the fourth degree if the person showing that film or those materials is at least four years older than the minor to whom they are being shown.

Under current law, it is a crime of the fourth degree for a person to sell, distribute or rent obscene materials to a person under 18 years of age. Similarly, it is a crime of the fourth degree for a person to charge a person under the age of 18 a fee to see an obscene film or obscene materials. Fourth degree crimes are punishable by a fine of up to \$10,000; imprisonment for a term of up to 18 months; or both.

As introduced, the bill provided that the person showing the film or materials must be at least five years older than the minor. The committee amended the bill to provide that the person must be at least four years older. The other committee amendment is clarifying and technical in nature.

It is the committee's understanding that the purpose of this bill is to stop those persons who, to evade the letter of the law, do not charge fees to minors to view obscene films and materials. All too often, such persons are predators and deviants seeking to prey upon or exploit these teenagers.

STATEMENT TO
[First Reprint]
SENATE, No. 1391

with Senate Floor Amendments
(Proposed By Senator BASSANO)

ADOPTED: DECEMBER 10, 1998

Senate Bill No. 1391 (1R) establishes the showing of an obscene film or obscene materials to a person under the age of 18 years as a crime of the fourth degree if the person showing that film or those materials is at least four years older than the minor to whom they are being shown.

Under these Senate floor amendments, a person who knowingly sells, distributes or rents obscene material to a person under 18 years of age continues to be guilty of a crime of the fourth degree. However, the amendments upgrade the crime of showing or exhibiting obscene material to a minor from a crime of the fourth degree to a crime of the third degree if a person at least four years older than the minor shows or exhibits the material to the minor with the knowledge or purpose to arouse, gratify or stimulate himself or another.

ASSEMBLY, No. 2391

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED SEPTEMBER 14, 1998

Sponsored by:

Assemblyman GUY F. TALARICO

District 38 (Bergen)

Assemblywoman ROSE MARIE HECK

District 38 (Bergen)

SYNOPSIS

Prohibits the showing of obscene material to minors.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning obscene materials and amending N.J.S.2C:34-3.

2

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

5

6 1. N.J.S.2C:34-3 is amended to read as follows:

7 2C:34-3. Obscenity For Persons Under 18. a. Definitions for
8 purposes of this section: (1) "Obscene material" means any
9 description, narrative account, display, depiction of a specified
10 anatomical area or specified sexual activity contained in, or consisting
11 of, a picture or other representation, publication, sound recording, live
12 performance or film, which by means of posing, composition, format
13 or animated sensual details, emits sensuality with sufficient impact to
14 concentrate prurient interest on the area or activity. (2) "Obscene
15 film" means any motion picture film or preview or trailer to a film, not
16 including newsreels portraying actual current events or pictorial news
17 of the day, in which a scene, taken by itself:

18 (a) Depicts a specified anatomical area or specified sexual activity,
19 or the simulation of a specified sexual activity, or verbalization
20 concerning a specified sexual activity; and

21 (b) Emits sensuality sufficient, in terms of the duration and impact
22 of the depiction, to appeal to prurient interest.

23 (3) "Specified anatomical area" means:

24 (a) Less than completely and opaquely covered human genitals,
25 pubic region, buttock or female breasts below a point immediately
26 above the top of the areola; or

27 (b) Human male genitals in a discernibly turgid state, even if
28 covered.

29 (4) "Specified sexual activity" means:

30 (a) Human genitals in a state of sexual stimulation or arousal; or

31 (b) Any act of human masturbation, sexual intercourse or deviate
32 sexual intercourse; or

33 (c) Fondling or other erotic touching of covered or uncovered
34 human genitals, pubic region, buttock or female breast.

35 (5) "Knowingly" means:

36 (a) Having knowledge of the character and content of the material
37 or film described herein; or

38 (b) Having failed to exercise reasonable inspection which would
39 disclose its character and content.

40 (6) "Exhibit" means the sale of admission to view obscene material.

41 (7) "Show" means to cause or allow to be seen.

42 b. Promoting obscene material.

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

Matter underlined thus is new matter.

A2391 TALARICO, HECK

4

1 would make it a crime to "show" obscene material to a minor.
2 Specifically, this bill would make it a crime of the fourth degree if a
3 person over the age of 18 knowingly shows a person under the age of
4 18 any obscene material. Crimes of the fourth degree are punishable
5 by up to 18 months imprisonment, a fine of up to \$10,000, or both.
6 In order to eliminate as an element of the offense the requirement
7 that admission be charged, this bill would amend the current provision
8 of law to define "exhibit" as showing, or causing to be shown, obscene
9 material.

ASSEMBLY, No. 2424

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED SEPTEMBER 17, 1998

Sponsored by:

Assemblyman GERALD J. LUONGO

District 4 (Camden and Gloucester)

SYNOPSIS

Establishes showing of obscene films or materials to persons under 18 years of age as a crime if the violator is five or more years older than the minor viewing the materials.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the showing of obscene films or obscene
2 materials to persons under 18 years of age and amending
3 N.J.S.2C:34-3.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:34-3 is amended to read as follows:

9 2C:34-3. Obscenity For Persons Under 18. a. Definitions for
10 purposes of this section:

11 (1) "Obscene material" means any description, narrative account,
12 display, depiction of a specified anatomical area or specified sexual
13 activity contained in, or consisting of, a picture or other
14 representation, publication, sound recording, live performance or film,
15 which by means of posing, composition, format or animated sensual
16 details, emits sensuality with sufficient impact to concentrate prurient
17 interest on the area or activity.

18 (2) "Obscene film" means any motion picture film or preview or
19 trailer to a film, not including newsreels portraying actual current
20 events or pictorial news of the day, in which a scene, taken by itself:

21 (a) Depicts a specified anatomical area or specified sexual activity,
22 or the simulation of a specified sexual activity, or verbalization
23 concerning a specified sexual activity; and

24 (b) Emits sensuality sufficient, in terms of the duration and impact
25 of the depiction, to appeal to prurient interest.

26 (3) "Specified anatomical area" means:

27 (a) Less than completely and opaquely covered human genitals,
28 pubic region, buttock or female breasts below a point immediately
29 above the top of the areola; or

30 (b) Human male genitals in a discernibly turgid state, even if
31 covered.

32 (4) "Specified sexual activity" means:

33 (a) Human genitals in a state of sexual stimulation or arousal; or

34 (b) Any act of human masturbation, sexual intercourse or deviate
35 sexual intercourse; or

36 (c) Fondling or other erotic touching of covered or uncovered
37 human genitals, pubic region, buttock or female breast.

38 (5) "Knowingly" means:

39 (a) Having knowledge of the character and content of the material
40 or film described herein; or

41 (b) Having failed to exercise reasonable inspection which would
42 disclose its character and content.

43 (6) "Exhibit" means the sale or admission to view obscene material.

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

Matter underlined thus is new matter.

1 b. Promoting obscene material.

2 (1) A person who knowingly sells, distributes, rents or exhibits to
3 a person under 18 years of age obscene material is guilty of a crime of
4 the fourth degree.

5 (2) A person who knowingly shows obscene material to a person
6 under 18 years of age shall be guilty of a crime of the fourth degree if
7 that person showing the obscene material is at least five years older
8 than the minor viewing material.

9 c. Admitting to exhibition of obscene film.

10 (1) Any person who knowingly admits a person under 18 years of
11 age to a theatre then exhibiting an obscene film is guilty of a crime of
12 the fourth degree.

13 (2) A person who knowingly shows an obscene film to a person
14 under 18 years of age shall be guilty of a crime of the fourth degree if
15 that person showing the obscene film is at least five years older than
16 the minor viewing material.

17 d. Presumption of knowledge and age.

18 The requisite knowledge with regard to the character and content
19 of the film or material and of the age of the person is presumed in the
20 case of an actor who sells, distributes, rents or exhibits obscene
21 material to a person under 18 years of age or admits to a film obscene
22 for a person under 18 years of age a person who is under 18 years of
23 age.

24 e. Defenses.

25 (1) It is an affirmative defense to a prosecution under subsections
26 b. and c. which the defendant must prove by a preponderance of
27 evidence that:

28 (a) The person under age 18 falsely represented in or by writing
29 that he was age 18 or over;

30 (b) The person's appearance was such that an individual of ordinary
31 prudence would believe him to be age 18 or over; and

32 (c) The sale, distribution, rental or exhibition to or admission of the
33 person was made in good faith relying upon such written
34 representation and appearance and in the reasonable belief that he was
35 actually age 18 or over.

36 (2) It is an affirmative defense to a prosecution under subsection
37 c. that the defendant is an employee in a motion picture theatre who
38 has no financial interest in that motion picture theatre other than his
39 wages and has no decision-making authority or responsibility with
40 respect to the selection of the motion picture show which is exhibited.
41 (cf: P.L.1989, c.54, s.2)

42

43 2. This act shall take effect on the first day of the second month
44 following enactment.

1 STATEMENT

2

3 This bill would establish the showing of an obscene film or obscene
4 materials to a person under the age of 18 years as a crime of the fourth
5 degree if the person showing that film or those materials is at least five
6 years older than the minor to whom they are being shown.

7 Under current law, it is a crime of the fourth degree for a person to
8 sell, distribute or rent obscene materials to a person under 18 years of
9 age. Similarly, it is a crime of the fourth degree for a person to charge
10 a person under the age of 18 a fee to see an obscene film or obscene
11 materials. Fourth degree crimes are punishable by a fine of up to
12 \$10,000; imprisonment for a term of up to 18 months; or both.

13 The purpose of this bill is to stop those persons who, to evade the
14 letter of the law, do not charge fees to minors to view obscene films
15 and materials. All too often, such persons are predators and deviants
16 seeking to prey upon or exploit these teenagers.

ASSEMBLY, No. 2919

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MARCH 4, 1999

Sponsored by:

Assemblyman RICHARD A. MERKT

District 25 (Morris)

SYNOPSIS

Establishes showing of obscene films or materials to persons under 18 years of age as a crime if the violator is four or more years older than the minor viewing the materials.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the showing of obscene films or obscene materials
2 to a person under 18 years of age and amending N.J.S.2C:34-3.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.2C:34-3 is amended to read as follows:

8 2C:34-3. Obscenity For Persons Under 18. a. Definitions for
9 purposes of this section:

10 (1) "Obscene material" means any description, narrative account,
11 display, depiction of a specified anatomical area or specified sexual
12 activity contained in, or consisting of, a picture or other
13 representation, publication, sound recording, live performance or film,
14 which by means of posing, composition, format or animated sensual
15 details, emits sensuality with sufficient impact to concentrate prurient
16 interest on the area or activity.

17 (2) "Obscene film" means any motion picture film or preview or
18 trailer to a film, not including newsreels portraying actual current
19 events or pictorial news of the day, in which a scene, taken by itself:

20 (a) Depicts a specified anatomical area or specified sexual activity,
21 or the simulation of a specified sexual activity, or verbalization
22 concerning a specified sexual activity; and

23 (b) Emits sensuality sufficient, in terms of the duration and impact
24 of the depiction, to appeal to prurient interest.

25 (3) "Specified anatomical area" means:

26 (a) Less than completely and opaquely covered human genitals,
27 pubic region, buttock or female breasts below a point immediately
28 above the top of the areola; or

29 (b) Human male genitals in a discernibly turgid state, even if
30 covered.

31 (4) "Specified sexual activity" means:

32 (a) Human genitals in a state of sexual stimulation or arousal; or

33 (b) Any act of human masturbation, sexual intercourse or deviate
34 sexual intercourse; or

35 (c) Fondling or other erotic touching of covered or uncovered
36 human genitals, pubic region, buttock or female breast.

37 (5) "Knowingly" means:

38 (a) Having knowledge of the character and content of the material
39 or film described herein; or

40 (b) Having failed to exercise reasonable inspection which would
41 disclose its character and content.

42 (6) "Exhibit" means the sale of admission to view obscene material.

43 b. Promoting obscene material.

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

Matter underlined thus is new matter.

1 (1) A person who knowingly sells, distributes [.] or rents [or
2 exhibits] to a person under 18 years of age obscene material is guilty
3 of a crime of the fourth degree.

4 (2) A person who knowingly shows or exhibits obscene material to
5 a person under 18 years of age with the knowledge or purpose to
6 arouse, gratify or stimulate himself or another shall be guilty of a crime
7 of the third degree if that person showing the obscene material is at
8 least four years older than the minor viewing the material.

9 c. Admitting to exhibition of obscene film.

10 (1) Any person who knowingly admits a person under 18 years of
11 age to a theatre then exhibiting an obscene film is guilty of a crime of
12 the fourth degree.

13 (2) A person who knowingly shows an obscene film to a person
14 under 18 years of age shall be guilty of a crime of the fourth degree if
15 that person showing the obscene film is at least four years older than
16 the minor viewing the material.

17 d. Presumption of knowledge and age.

18 The requisite knowledge with regard to the character and content
19 of the film or material and of the age of the person is presumed in the
20 case of an actor who sells, distributes, rents or exhibits obscene
21 material to a person under 18 years of age or admits to a film obscene
22 for a person under 18 years of age a person who is under 18 years of
23 age.

24 e. Defenses.

25 (1) It is an affirmative defense to a prosecution under subsections
26 b. and c. which the defendant must prove by a preponderance of
27 evidence that:

28 (a) The person under age 18 falsely represented in or by writing
29 that he was age 18 or over;

30 (b) The person's appearance was such that an individual of ordinary
31 prudence would believe him to be age 18 or over; and

32 (c) The sale, distribution, rental, showing or exhibition to or
33 admission of the person was made in good faith relying upon such
34 written representation and appearance and in the reasonable belief that
35 he was actually age 18 or over.

36 (2) It is an affirmative defense to a prosecution under subsection
37 c. that the defendant is an employee in a motion picture theatre who
38 has no financial interest in that motion picture theatre other than his
39 wages and has no decision-making authority or responsibility with
40 respect to the selection of the motion picture show which is exhibited.
41 (cf: P.L.1989, c.54, s.2)

42
43 2. This act shall take effect on the first day of the second month
44 following enactment.

1 STATEMENT

2

3 This bill would establish the showing of an obscene film or obscene
4 materials to a person under the age of 18 years as a crime if the
5 person showing that film or those materials is at least four years older
6 than the minor to whom they are being shown.

7 Under current law, it is a crime of the fourth degree for a person to
8 sell, distribute or rent obscene materials to a person under 18 years of
9 age. Similarly, it is a crime of the fourth degree for a person to charge
10 a person under the age of 18 a fee to see an obscene film or obscene
11 materials. Fourth degree crimes are punishable by a fine of up to
12 \$10,000; imprisonment for a term of up to 18 months; or both.

13 The bill provides that it is a crime of the third degree if a person
14 who is at least four years older than the minor shows or exhibits the
15 material to the minor with the knowledge or purpose to arouse, gratify
16 or stimulate himself or another. A person who knowingly shows an
17 obscene film to a person under 18 years of age is guilty of a crime of
18 the fourth degree if that person showing the obscene film is at least
19 four years older than the minor viewing the material.

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Office of the Governor
NEWS RELEASE

CONTACT: Gene Herman
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RELEASE: September 30, 1999

Gov. Christie Whitman today signed the following piece of legislation:

ACS for S-1391, A-2391, A-2424 and A-2919 creates a third- degree offense that can be used to prosecute an individual who shows obscene materials to a minor. In order to be prosecuted for this offense, the offender must have acted with the purpose of arousing or gratifying himself or another, and be four years older than the minor. The requirement that the offender act with the purpose of arousing or gratifying himself or another prevents this bill from being interpreted to prohibit a museum that admits minors from exhibiting works that depict nudity. The four-year age difference also is consistent with other related provisions of the Criminal Code, such as sexual assault.

The bill also would upgrade the offense of exhibiting obscene materials to a minor from a fourth-degree offense to a third- degree offense. Exhibiting obscene materials is defined as the sale of admission to view obscene materials. The legislation was sponsored by Senators C. Louis Bassano (R-Essex/Union) and Gerald Cardinale (R-Bergen) and Assembly Members Guy F. Talarico (R- Bergen), Rose Marie Heck (R-Bergen), Gerald J. Luongo (R- Camden/ Gloucester) and Richard A. Merkt (R-Morris).