

March 15, 1973

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

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

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

L.1962 - Chap.165 - S84

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

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

Amendment

L.1966 - Chap.199 - S428

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

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

Amendment

L.1971 - Chap.449 - S2202
Apr.5 - Introduced by H. Kelly and 13 others.
May 10 - Passed in Senate.
Jan.11, 1972 - Passed in Assembly.
Feb.16, 1972 - Approved, Chapter 449.
Statement. (copy enclosed)

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

Hearings and reports:

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

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

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

974.90 N.J. Commission to Study Obscenity and
014 Depravity in Public Media
1969
Public Hearing Sept. 30, 1969
974.90 Commission..... Vols.1, II, III, IV, V
014 Report. Supp. to Vol. II
1970

Newspaper clippings

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

JH/EH
Encl.

SENATE, No. 2202

STATE OF NEW JERSEY

INTRODUCED APRIL 5, 1971

By Senators H. A. KELLY, WHITE, MILLER, ITALIANO,
McDERMOTT, GIULIANO, DELTUFO, RINALDO, MATTURRI,
SCIRO, WALLWORK, MARAZITI, MUSTO and DUMONT

Referred to Committee on Judiciary

AN ACT to amend the title of "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), so that the same shall read "An act relating to obscenity 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," supplementing the body of said act, amending P. L. 1962, c. 165, and repealing section 2 of P. L. 1962, c. 166 and section 2 of P. L. 1966, c. 199.

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

1 1. The title of P. L. 1962, c. 166 is amended to read as follows:
2 An act relating to obscenity **[**, defining the word "obscene" **]** and
3 providing for the issuance of a judgment granting relief in the
4 nature of injunctive relief by the Superior Court to prevent the
5 acquisition, possession or sale of obscene materials, and supple-
6 menting Title 2A of the New Jersey Statutes.

1 2. The Legislature finds that the standards of obscenity now
2 enunciated in chapter 115 of Title 2A of the New Jersey Statutes
3 as amended and supplemented in recent years is unnecessarily
4 permissive and a hindrance to effective legal action against obscene
5 matter. The Legislature further finds that such unnecessary
6 permissiveness has resulted from the incorporation into New
7 Jersey Statutes of language from influential opinions authored by

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

8 certain United States Supreme Court justices; which language,
 9 however, does not represent binding majority decisions of the
 10 Supreme Court and, accordingly, need not bind the Legislature
 11 or the Judiciary of this State. The Legislature further finds that
 12 the most recent binding definition of "obscenity" enunciated by
 13 the United States Supreme Court is represented by section 1 of
 14 chapter 165, laws of 1962, prior to subsequent amendments; and
 15 that said subsequent amendments ought to be repealed in order
 16 to reestablish a workable definition of "obscenity" within the
 17 framework of our statutory law, and that certain other changes
 18 should be made in other statutes for the purpose of consistency.

1 3. Section 1 of P. L. 1962, c. 165 (C. 2A:115-1.1) is amended to
 2 read as follows:

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

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

12 (1) The dominant theme of the material taken as a whole appeals
 13 to a prurient interest;

14 (2) The material is patently offensive because it affronts con-
 15 temporary community standards relating to the description or
 16 representation of sexual matters; and

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

1 4. Section 2 of P. L. 1966, c. 199 (C. 2A:115-1.2) and section 2
 2 of P. L. 1962, c. 166 (C. 2A:115-3.4) are repealed.

1 5. This act shall take effect immediately.

STATEMENT

In 1957, the United States Supreme Court enunciated (in *Roth v. United States*, 354 U. S. 476) the only definition of "obscenity" in which a majority of its members have ever concurred—viz., that the "obscene" is that which predominantly "appeals to prurient interest." In 1962, this Legislature, in two acts, incorporated that definition into our statutes (where it had previously stood undefined). In nearly identical language, P. L. 1962, c. 165 § 1 and P. L. 1962, c. 166 § 2 defined the term as follows:

“The word ‘obscene’ . . . shall mean that which to the average person, applying contemporary community standards, when considered as a whole, has as its dominant theme or purpose an appeal to prurient interest.”

Since then the Federal Supreme Court has fragmented in deciding several obscenity cases, agreeing upon results, but unable to reach a single opinion commanding majority agreement. Such nonmajority opinions do not constitute law binding upon lower courts. In 1966, however, one such binding opinion proved highly influential; in that opinion (in the so-called “Fanny Hill” case, 383 U. S. 413) three justices proposed that the test of “obscenity” should comprise three elements, “prurient appeal” being only one of them. The other two tests were those which have become known as the “patent offensiveness” and “social value” tests. Some States—New Jersey included—hastened to incorporate these supposed “tests” into their statutory law, without reflecting that (a) if the tests were part of a binding Supreme Court decision they were already the “law of the land” without further action, and (b) if they were not already thus binding, their enactment would unnecessarily hinder law enforcement.

Subsequent experience has shown that the additional “tests”—particularly that which requires that an item be “utterly without redeeming social value”—erect an almost-insuperable barrier to prosecution, and allow the most objectionable materials to circulate unhampered. Meanwhile, other jurisdictions, which never adopted the added “tests,” have been able to make convictions stick. Recently, for example, the United States Supreme Court refused to reverse a Maryland adjudication of the obscenity of a film—the same film which a New Jersey Superior Court judge in 1969 “reluctantly and with regret” found it necessary to rule not obscene because it “does possess a modicum of social value.”

This bill would return New Jersey law to the pre-1966 standard—a standard which is constitutionally viable and which would permit action to be taken against the accumulating flood of salacious films and literature which in recent years has seriously alarmed our citizens.

To conform to the reestablished standard, this bill would also repeal P. L. 1966, c. 199, § 2 (C. 2A:115-1.2), which merely establishes a rule of evidence concerning the “social value” test; and P. L. 1962, c. 166, § 2 (C. 2A:115-1.1), which is a needless duplication of language already found in P. L. 1962, c. 165, § 1 and applying to all of chapter 115 in Title 2A.