

2A:115-1.6 to 1.11

LEGISLATIVE HISTORY CHECKLIST

NJSA 2A:115-1.6 to 2A:115-1.11 (Obscene materials--sale to minors)

Laws of 1971 Chapter 446

Bill No. S2197

Sponsor(s) Kelly & 13 others

Date Introduced April 5, 1971

Committee: Assembly Judiciary

Senate Judiciary

Amended during passage Yes No Amendments during passage denoted by asterisks.

Date of passage: Assembly January 11, 1972

Senate May 10, 1971

Date of approval Feb. 16, 1972

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

For background see:

974.90 NJ Commission to Study Obscenity and Depravity in Public Media.
014 Public hearing held 9/30/69. Trenton.
1969

974.90 NJ Commission to Study Obscenity and Depravity in Public Media.
014 Report to the Governor and Legislature. May 19, 1970.
1970

10/4/76
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SENATE, No. 2197

STATE OF NEW JERSEY

INTRODUCED APRIL 5, 1971

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

Referred to Committee on Judiciary

AN ACT concerning material deemed obscene for persons under 18 years of age, defining the same and prohibiting the sale of such material to persons under 18 years of age, repealing sections 3, 4 and 5 of P. L. 1966, c. 199, *and section 1 of P. L. 1957, c. 176* 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
2 of New Jersey:

1 1. The Legislature finds that salacious and lascivious material is
2 increasingly available to State residents under 18 years of age, that
3 it is harmful to their mental and moral health because they lack the
4 maturity to cope with it, and that, to help insulate them from it, it
5 is necessary to establish the separate standard of obscenity,
6 designated "material obscene for persons under 18," provided for
7 in this act, and to restrict the sale of such material for the purposes
8 cited herein.

1 2. As used in this act, except as the context may clearly require
2 or indicate otherwise:

3 a. "Material obscene for persons under 18" means any descrip-
4 tion, narrative account or depiction of a specified anatomical area
5 or specified sexual activity contained in, or consisting of, a picture
6 or other representation, publication, sound recording or film, which,
7 by means of posing, composition, format or animated sensual
8 details, emits sensuality with sufficient impact to concentrate
9 prurient interest on the area ***[of]*** *or* activity.

10 b. "Specified anatomical area" means

11 (1) less than completely and opaquely covered human genitals,
12 pubic region, buttock or female breast below a point immediately
13 above the top of the areola; ***[and]*** *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.

14 (2) human male genitals in a discernibly turgid state, even if
15 covered.

16 c. "Specified sexual activity" means

17 (1) human genitals in a state of sexual stimulation or arousal;
17A *or*

18 (2) any act of human masturbation, sexual intercourse or
19 sodomy; ***[and]*** *or*

20 (3) fondling or other erotic touching of covered or uncovered
21 human genitals, pubic region, buttock or female breast.

22 d. "Knowingly" means having knowledge of the character and
23 content of material described herein, or having failed to exercise
24 reasonable inspection which would disclose its character and
25 content.

1 3. A person who knowingly sells to a person under 18 years of
2 age material obscene for persons under 18, as defined in this act,
3 is guilty of a misdemeanor.

1 4. The sale to a person under 18 years of age of material obscene
2 for persons under 18 shall constitute presumptive evidence

3 a. that the defendant made the sale knowingly; and

4 b. that the defendant knew that the person was under 18 years
5 of age.

1 5. The establishment of all the following facts by a defendant in
2 a prosecution under this act shall constitute a complete defense to
3 the prosecution:

4 a. that the person under the age of 18 years falsely represented
5 in writing that he or she was 18 years of age or over; and

6 b. that the appearance of the person was such that an ordinary
7 prudent individual would believe him or her to be 18 years of age
8 or over; and

9 c. that the sale or distribution to the person was made in good
10 faith relying upon such written representation and appearance and
11 in the reasonable belief that the person was actually 18 years of
12 age or over.

1 6. If a part of this act is invalid, all valid parts that are severable
2 from the invalid part remain in effect. If a part of this act is
3 invalid in one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the invalid
5 applications.

1 7. Sections 3, 4 and 5 of P. L. 1966, c. 199 (C. 2A:115-1.3,
2 2A:115-1.4 and 2A:115-1.5) *and section 1 of P. L. 1957, c. 176
3 (C. 2A:115-3.2)* are repealed.

1 8. This act shall take effect immediately.

STATEMENT

This bill would replace existing statutory provisions aimed at preventing the sale and distribution to minors of materials which, while perhaps not fully "obscene" in an adult sense, are deemed a hazard to the moral and mental stability of persons who have not yet reached mature years. The Supreme Court of the United States has explicitly held (in *Ginsberg v. New York*, decided April 22, 1968) that to protect children the State may take action against material that would not be constitutionally actionable if it were addressed to an adult audience.

The existing law, which this bill would repeal and replace, is directed to this end, but employs definitional concepts which are complex and difficult to apply. This bill refers to certain specified anatomical areas and sexual activities which are placed within the proscribed zone, and forbids the sale to young persons (under 18) of material which shows or describes such things in such a way as to "emit sensuality with sufficient impact to concentrate prurient interest on the area of activity." Such a definition sweeps somewhat wider than the standard of "obscenity" for adults, which requires that proscribed material must have an "appeal to prurient interest" as its "dominant theme."

This bill, while protecting young people against varieties of lascivious material not "obscene" within the general (or adult) standard, and punishing sale to the young of such material as a misdemeanor, leaves untouched the further statutory provision (L. 1957, c. 176; C. 2A:115-3.2) under which exposure to children of material "obscene" within the adult meaning is a high misdemeanor.