

LEGISLATIVE HISTORY OF R.S. 2A:85-9

L. 1927, Chapter 218, Sec. 2 - A308
Introduced February 14 by Biro.
Statement on bill (copy of original bill enclosed).
"This act governs commutations
allowed prisoners in the State prison."
Not amended during passage.

COPY NO. 1

Amended L. 1940, Chapter 219, Sec. 2 - S181
Introduced April 1 by Van Winkle.
Statement on bill (copy of original bill enclosed).

"The object of this bill is to make
punishment for habitual criminals more severe
and there are parts of this measure that are
patterned after the so-called Baumes Law
of the State of New York.

This bill is introduced at the request
of the Bergen County Grand Jury Association
and has had the profound study of this
association".

Not amended during passage.

Amended L. 1950, Chapter 315, Sec. 1 - S195
Introduced March 8 by Caliero.
Statement on Bill

"The purpose of this bill is to eliminate
certain difficulties in the enforcement of
existing statutory provisions. The bill will
not weaken the law in respect to the punishment
of habitual offenders and the court will still
be able to impose additional sentences because
of previous convictions. This bill has the
approval of the Department of Institutions and
Agencies, the State Parole Board and the com-
mittee of judges established to study sentencing
practices in this State."

Not amended during passage.

Amended L. 1953, Chapter 166, Sec. 2 - S285
Introduced March 18 by Clapp.
Statement on bill (copy of original bill enclosed).
No amendments during passage.

No hearings or reports were located on these bills.

EGY/PC

ASSEMBLY, No. 308

(4 Comp. Stat., p. 4906.)

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 14, 1927.

By Mr. BIRO.

Referred to Committee on Revision of Laws.

A SUPPLEMENT to an act entitled "An act for the government and regulation of the
State Prison."

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

1 1. Any person who shall have been convicted and sentenced to the New
2 Jersey State Prison, and thereafter shall be convicted and sentenced to the New
3 Jersey State Prison for a second time, shall, in addition to the sentence pre-
4 scribed for such second offense, serve in addition to such sentence the commuta-
5 tion time earned and allowed by reason of the first sentence.

1 2. Any person sentenced to the New Jersey State Prison for a third time shall
2 serve the sentence imposed by law, and no commutation shall be allowed a pris-
3 oner on such third sentence, and in addition thereto such prisoner shall serve the
4 commutation time allowed and earned by such second sentence.

1 3. This act shall take effect immediately.

STATEMENT.

This act governs commutations allowed prisoners in the State prison.

SENATE, No. 181

STATE OF NEW JERSEY

INTRODUCED APRIL 1, 1940

By Mr. VAN WINKLE

Referred to Committee on Judiciary

AN ACT relating to crime, and amending sections 2:103-7, 2:103-9 and 2:103-10
of the Revised Statutes.

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

1 1. Section 2:103-7 of the Revised Statutes is amended to read as fol-
2 lows:

3 2:103-7. Any person who has been convicted [and sentenced to im-
4 prisonment in the State Prison] of a high misdemeanor under the laws of
5 this State, or of a crime under the laws of the United States or of any other
6 State or country, which crime would be a high misdemeanor if committed in
7 this State, and who thereafter is convicted of [a second offense of a like
8 nature] an offense enumerated in this subtitle may be sentenced to im-
9 prisonment in the State Prison for any period of time not exceeding double
10 the [time] maximum period for which he might have been sentenced [on
11 the] for a first offense.

1 2. Section 2:103-9 of the Revised Statutes is amended to read as fol-
2 lows:

3 2:103-9. Any person who has been twice convicted of high misdemeanors
4 under the laws of this State, or of crimes in any other State or country,
5 which crimes would be high misdemeanors under the laws of this State, and
6 who thereafter is convicted of an offense enumerated in this subtitle [sen-
7 tenced to the State Prison for a third time shall serve the sentence imposed

8 by law for such third offense,] may be sentenced for any period of time not
 9 exceeding three times the maximum period for which he might have been
 10 sentenced for a first offense, and no commutation shall be allowed him on the
 11 third sentence. In addition thereto, the prisoner shall serve the commuta-
 12 tion time earned and allowed under [his second] any previous sentence for an
 13 offense committed in this State.

1 3. Section 2:103-10 of the Revised Statutes is amended to read as fol-
 2 lows:

3 2:103-10. Any person who on three separate occasions has been [three
 4 times] convicted of [crimes enumerated in this subtitle and sentenced each
 5 time to the State Prison, and has served such three sentences so imposed, or
 6 any part thereof,] high misdemeanors in this State, or of crimes under the
 7 laws of the United States or of any other State or country, which crimes
 8 would be high misdemeanors if committed in this State, or whose convic-
 9 tions for such offenses in this State or under the laws of the United States
 10 or of any other State or country shall total three or more, and who shall
 11 thereafter be convicted of a subsequent offense enumerated in this subtitle,
 12 is hereby declared to be an habitual criminal, and the court in which such
 13 fourth or subsequent conviction is had, [in imposing sentence may, in its dis-
 14 cretion,] shall impose a life sentence in the State Prison upon the person so
 15 convicted.

1 4. This act shall take effect immediately.

STATEMENT

The object of this bill is to make punishment for habitual criminals more severe and there are parts of this measure that are patterned after the so-called Baumes Law of the State of New York.

This bill is introduced at the request of the Bergen County Grand Jury Association and has had the profound study of this association.

SENATE, No. 195

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1950

By Mr. CAFIERO

Referred to Committee on Institutions and Agencies

AN ACT concerning the punishment of persons convicted of crime, in certain cases, amending section 2:103-9, and repealing section 2:103-8, of the Revised Statutes, and repealing section thirteen of "An act providing for a system for the granting of paroles in certain cases, establishing a State Parole Board and defining its composition, powers and duties, and repealing sections 30:4-106.1, 30:4-106.2 and 30:4-142 of the Revised Statutes," approved May twenty-eighth, one thousand nine hundred and forty-eight (P. L. 1948, c. 84).

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

1 1. Section 2:103-9 of the Revised Statutes is amended to read as follows:

2 2:103-9. Any person who has been twice convicted of high misdemeanors
3 under the laws of this State, or of crimes in any other State or country,
4 which crimes would be high misdemeanors under the laws of this State, and
5 who thereafter is convicted of an offense enumerated in this subtitle may be
6 sentenced for any period of time not exceeding three times the maximum
7 period for which he might have been sentenced for a first offense [, and no
8 commutation shall be allowed him on the third sentence. In addition thereto,
9 the prisoner shall serve the commutation time earned and allowed under any
10 previous sentence for an offense committed in this State].

1 2. Section 2:103-8 of the Revised Statutes is repealed.

1 3. Section thirteen of "An act providing for a system for the granting
2 of paroles in certain cases, establishing a State Parole Board and defining
3 its composition, powers and duties, and repealing sections 30:4-106.1,
4 30:4-106.2 and 30:4-142 of the Revised Statutes," approved May twenty-
5 eighth, one thousand nine hundred and forty-eight, is repealed.

1 4. This act shall apply to all prisoners now in confinement and to
2 prisoners who may hereafter be confined for a conviction of crime, to the
3 end that in no such case shall any such prisoner be required to serve in
4 addition to the most recently imposed sentence upon him, commutation time
5 earned and allowed for good behavior on any prior sentences.

1 5. Nothing herein contained shall be deemed to affect or repeal the pro-
2 visions of chapter eighty-four of the laws of one thousand nine hundred and
3 forty-eight, except section thirteen thereof which is repealed by section three
4 of this act.

1 6. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to eliminate certain difficulties in the enforce-
ment of existing statutory provisions. The bill will not weaken the law in
respect to the punishment of habitual offenders and the court will still be able
to impose additional sentences because of previous convictions. This bill has
the approval of the Department of Institutions and Agencies, the State Parole
Board and the committee of judges established to study sentencing practices in
this State.

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SENATE, No. 195

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1950

By Mr. CAFIERO

Referred to Committee on Institutions and Agencies

AN ACT concerning the punishment of persons convicted of crime, in certain cases, amending section 2:103-9, and repealing section 2:103-8, of the Revised Statutes, and repealing section thirteen of "An act providing for a system for the granting of paroles in certain cases, establishing a State Parole Board and defining its composition, powers and duties, and repealing sections 30:4-106.1, 30:4-106.2 and 30:4-142 of the Revised Statutes," approved May twenty-eighth, one thousand nine hundred and forty-eight (P. L. 1948, c. 84).

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

1 1. Section 2:103-9 of the Revised Statutes is amended to read as follows:
2 2:103-9. Any person who has been twice convicted of high misdemeanors
3 under the laws of this State, or of crimes in any other State or country,
4 which crimes would be high misdemeanors under the laws of this State, and
5 who thereafter is convicted of an offense enumerated in this subtitle may be
6 sentenced for any period of time not exceeding three times the maximum
7 period for which he might have been sentenced for a first offense.

1 2. Section 2:103-8 of the Revised Statutes is repealed.

1 3. Section thirteen of "An act providing for a system for the granting
2 of paroles in certain cases, establishing a State Parole Board and defining
3 its composition, powers and duties, and repealing sections 30:4-106.1,
4 30:4-106.2 and 30:4-142 of the Revised Statutes," approved May twenty-
5 eighth, one thousand nine hundred and forty-eight, is repealed.

1 4. This act shall apply to all prisoners now in confinement and to
2 prisoners who may hereafter be confined for a conviction of crime, to the
3 end that in no such case shall any such prisoner be required to serve in
4 addition to the most recently imposed sentence upon him, commutation time
5 earned and allowed for good behavior on any prior sentences.

1 5. Nothing herein contained shall be deemed to affect or repeal the pro-
2 visions of chapter eighty-four of the laws of one thousand nine hundred and
3 forty-eight, except section thirteen thereof which is repealed by section three
4 of this act.

1 6. This act shall take effect immediately.

FEB 27 1974

SENATE, No. 285

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1953

By Mr. CLAPP

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning crimes, and amending sections 2A:85-8, 2A:85-9, 2A:85-12
and 2A:85-13 of the New Jersey Statutes.

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

1 1. Section 2A:85-8 of the New Jersey Statutes is amended to read as
2 follows:

3 2A:85-8. Any person convicted of a high misdemeanor under
4 the laws of this State, or of a crime under the laws of the United States
5 or any other State or country, which crime would be a high misdemeanor
6 under the laws of this State, and who thereafter is convicted of [an offense
7 enumerated in this subtitle,] a misdemeanor or a high misdemeanor under
8 the laws of this State, may be sentenced to imprisonment in the State Prison
9 for not more than double the maximum period for which he might have been
10 sentenced for a first offense.

11 Conviction of two or more of such crimes or high misdemeanors charged
12 in one indictment or accusation, or in two or more indictments or accusations
13 consolidated for trial, shall be deemed to be only one conviction.

1 2. Section 2A:85-9 of the New Jersey Statutes is amended to read as
2 follows:

3 2A:85-9. Any person twice convicted of high misdemeanors under the
 4 laws of this State, or of crimes under the laws of the United States or any
 5 other State or country, which crimes would be high misdemeanors under
 6 the laws of this State, and who thereafter is convicted of [an offense enu-
 7 merated in this subtitle,] a misdemeanor or a high misdemeanor under the
 8 laws of this State, may be sentenced to imprisonment in the State Prison
 9 for not more than three times the maximum period for which he might have
 10 been sentenced for a first offense.

11 Conviction of two or more of such crimes or high misdemeanors charged
 12 in one indictment or accusation, or in two or more indictments or accusa-
 13 tions consolidated for trial, shall be deemed to be only one conviction.

1 3. Section 2A:85-12 of the New Jersey Statutes is amended to read as
 2 follows:

3 2A:85-12. Any person convicted on three separate occasions of high
 4 misdemeanors in this State, or of crimes under the laws of the United
 5 States or any other State or country, which crimes would be high misde-
 6 meanors under the laws of this State, or whose convictions for such offenses
 7 in this State or under the laws of the United States or any other State or
 8 country shall total three or more, and who thereafter is convicted of [an
 9 offense enumerated in this subtitle,] a misdemeanor or a high misdemeanor
 10 under the laws of this State, is hereby declared to be an habitual criminal,
 11 and the court in which such fourth or subsequent conviction is had, [shall
 12 impose a life sentence] may impose upon the person so convicted a sentence
 13 in the State Prison for any term of years or for life [in the State Prison
 14 upon the person so convicted].

15 Conviction of two or more of such crimes or high misdemeanors charged
 16 in one indictment or accusation, or in two or more indictments or accusations
 17 consolidated for trial, shall be deemed to be only one conviction.

1 4. Section 2A:85-13 of the New Jersey Statutes is amended to read as
2 follows:

3 2A:85-13. If at any time, before sentence, it shall appear that a person
4 convicted of a misdemeanor or a high misdemeanor under the laws of this
5 State has previously been convicted as set forth either in sections 2A:85-8,
6 2A:85-9 or 2A:85-12 of this Title, [it shall be the duty of] and it also ap-
7 pears to the court by whom such person is to be sentenced that the offenses
8 resulting in such conviction are such as to warrant the imposition of a pen-
9 alty greater than the maximum which may be imposed upon a person con-
10 victed of such misdemeanor or high misdemeanor who had not previously
11 been convicted as aforesaid, then the court shall direct the prosecutor of
12 the county in which such conviction was had to file an accusation accusing
13 the said person of such previous convictions. Whereupon, the court in
14 which such conviction was had, shall cause the said person to be brought
15 before it and shall inform him of the allegations contained in such accusa-
16 tion and of his right to be tried as to the truth thereof, and shall require
17 such [offender] person to plead to the accusation. If such [offender] per-
18 son refuses to plead or remains silent or pleads not guilty, a not guilty plea
19 shall be entered and a jury shall be impanelled to inquire whether [the
20 offender] said person is guilty as outlined in sections 2A:85-8, 2A:85-9 and
21 2A:85-12 of this Title, respectively.

22 If the jury finds [the offender] said person guilty or if he pleads guilty
23 or non vult, the court [shall] may sentence him to the punishment pre-
24 scribed in sections 2A:85-8, 2A:85-9 and 2A:85-12, as the case may be.
25 [The allegation shall be filed before the defendant is sentenced.]

26 The said person shall have the right to waive, in writing, the trial by
27 jury provided in this section, and if he shall do so, the court, in its discre-
28 tion, may accept the waiver and try and decide the issue without a jury, and if
29 the said person is found guilty, the court may impose the same sentence
30 as though said person had been found guilty by the jury.

1 5. This act shall take effect immediately.

STATEMENT

The reason for substituting the words "a misdemeanor or a high misdemeanor under the laws of this State" for "an offense enumerated in this subtitle" wherever they appear in the present act, is that not all crimes are "enumerated in this subtitle." For example, crimes relating to narcotics are not enumerated under this subtitle, so that a violator of the narcotics laws may not be proceeded against as a multiple offender, under the statute as it now reads.

The reason for making a life sentence permissive in 2A:95-12 rather than mandatory for fourth offenders, is that often the fourth or the previous offenses are not serious enough to warrant life imprisonment, or a great many years may have elapsed between the offenses. Faced with a mandatory life sentence, fourth offenders rarely plead guilty, when they otherwise might do so. Grand juries are reluctant to indict, and petit juries to convict, for relatively minor fourth offenses when they know defendant must be sentenced to life. Judges are very reluctant to impose life sentences under such circumstances.

The defendant's previous record is known before sentence. Where the court intends to sentence defendant as a multiple offender, the defendant is entitled to a trial to prove that he is a multiple offender, but otherwise no such trial is necessary. Under section 2A:85-13 as it now stands, numerous accusations have been filed against defendants who thereafter were nevertheless sentenced to not more than the maximum for a first offense. Under this proposed amendment, such accusations will be filed only when necessary. The practice under the present statute is expensive, takes much time in preparation and trial, slows up sentencing, and keeps defendants in the county jail at county expense for long periods before transfer to State institutions.

The Attorney-General and all of the county prosecutors favor the passage of this bill.

FEB 27 1974

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SENATE, No. 285

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1953

By Mr. CLAPP

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning crimes, and amending sections 2A:85-8, 2A:85-9, 2A:85-12 and 2A:85-13 of the New Jersey Statutes.

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

1 1. Section 2A:85-8 of the New Jersey Statutes is amended to read as
2 follows:

3 2A:85-8. Any person convicted of a high misdemeanor under
4 the laws of this State, or of a crime under the laws of the United States
5 or any other State or country, which crime would be a high misdemeanor
6 under the laws of this State, and who thereafter is convicted of a
7 misdemeanor or a high misdemeanor under the laws of this State,
8 may be sentenced to imprisonment in the State Prison for not more
9 than double the maximum period for which he might have been sentenced
10 for a first offense.

11 Conviction of two or more of such crimes or high misdemeanors charged
12 in one indictment or accusation, or in two or more indictments or accusations
13 consolidated for trial, shall be deemed to be only one conviction.

1 2. Section 2A:85-9 of the New Jersey Statutes is amended to read as
2 follows:

3 2A:85-9. Any person twice convicted of high misdemeanors under the
4 laws of this State, or of crimes under the laws of the United States or any

5 other State or country, which crimes would be high misdemeanors under
 6 the laws of this State, and who thereafter is convicted of a misdemeanor or
 7 a high misdemeanor under the laws of this State, may be sentenced to im-
 8 prisonment in the State Prison for not more than three times the maximum
 9-10 period for which he might have been sentenced for a first offense.

11 Conviction of two or more of such crimes or high misdemeanors charged
 12 in one indictment or accusation, or in two or more indictments or accusa-
 13 tions consolidated for trial, shall be deemed to be only one conviction.

1 3. Section 2A:85-12 of the New Jersey Statutes is amended to read as
 2 follows:

3 2A:85-12. Any person convicted on three separate occasions of high
 4 misdemeanors in this State, or of crimes under the laws of the United
 5 States or any other State or country, which crimes would be high misde-
 6 meanors under the laws of this State, or whose convictions for such offenses
 7 in this State or under the laws of the United States or any other State or
 8 country shall total three or more, and who thereafter is convicted of
 9 a misdemeanor or a high misdemeanor under the laws of this State, is
 10 hereby declared to be an habitual criminal, and the court in which such fourth
 11 or subsequent conviction is had, may impose upon the person so convicted a
 12-14 sentence in the State Prison for any term of years or for life.

15 Conviction of two or more of such crimes or high misdemeanors charged
 16 in one indictment or accusation, or in two or more indictments or accusations
 17 consolidated for trial, shall be deemed to be only one conviction.

1 4. Section 2A:85-13 of the New Jersey Statutes is amended to read as
 2 follows:

3 2A:85-13. If at any time, before sentence, it shall appear that a person
 4 convicted of a misdemeanor or a high misdemeanor under the laws of this
 5 State has previously been convicted as set forth either in sections 2A:85-8,
 6 2A:85-9 or 2A:85-12 of this Title, and it also appears to the court
 7 by whom such person is to be sentenced that the offenses resulting
 8 in such conviction are such as to warrant the imposition of a penalty

9 greater than the maximum which may be imposed upon a person con-
10 victed of such misdemeanor or high misdemeanor who had not previously
11 been convicted as aforesaid, then the court shall direct the prosecutor of
12 the county in which such conviction was had to file an accusation accusing
13 the said person of such previous convictions. Whereupon, the court in
14 which such conviction was had, shall cause the said person to be brought
15 before it and shall inform him of the allegations contained in such accusa-
16 tion and of his right to be tried as to the truth thereof, and shall require
17 such person to plead to the accusation. If such person refuses to plead or
18 remains silent or pleads not guilty, a not guilty plea shall be entered and a
19 jury shall be impanelled to inquire whether said person is guilty as outlined
20 in sections 2A:85-8, 2A:85-9 and 2A:85-12 of this Title, respectively.

21 If the jury finds said person guilty or if he pleads guilty or non vult,
22 the court may sentence him to the punishment prescribed in sections 2A:85-8,
23 2A:85-9 and 2A:85-12, as the case may be.

24 The said person shall have the right to waive, in writing, the trial by
25 jury provided in this section, and if he shall do so, the court, in its discre-
26 tion, may accept the waiver and try and decide the issue without a jury, and if
27 the said person is found guilty, the court may impose the same sentence
28 as though said person had been found guilty by the jury.

1 5. This act shall take effect immediately.