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RES 2A : 113 - 8

April 21, 1971

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Trenton, N. J.  
LEGISLATIVE HISTORY OF R.S.2A:113-8  
(Advocating or threatening to take life)

Copy 3

L.1908 - chap.45 (Copy enclosed)

Compiled Statutes p.1782: Wording identical to Laws 1908, chapter 45.

1937 Revision: 2:138-8 (copy enclosed)

Changed wording from 1908 law. Wording of all three drafts of this revision remained the same. There were no revisors notes.

1950 Revision of Title 2  
2:138-8 became 2A:138-8. Wording changed (copy enclosed). There were no revisors notes or comments.

NJ N.J. Advisory Commission on Revision  
KA6.2 of the Statutes.  
2 Suggested changes to the Tentative  
1951a drafts of the revisions of Titles 2 and 3

No changes suggested for 2A:138-8

L.1951 - First special session - Chapter 344.  
Adopted Revision Titles of 2 and 3 to Titles 2A and 3A  
No statement on the bill.  
2:138-8 became 2A:113-8 Wording changed slightly from draft of revision.  
We can locate no comment on this slight change from the revision.

For discussion of section see also:

N.J. Judicial Conference Proceedings... 1951  
pp. 101-103 [enclosed]

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Enclosure

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inted), the members and officers  
legislature of this State, and the  
and United States Senators,  
pective terms of office, shall pass  
ge on all railroads now or here-  
tate.  
effect immediately.  
08.

CHAPTER 45.

A Further Supplement to an act entitled "An act for the  
punishment of crimes (Revision of 1898)," approved  
June fourteenth, one thousand eight hundred and  
ninety-eight.

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

CHAPTER 44.

to an act entitled "An act rela-  
and management of the insane  
owned by the State of New Jer-  
h eleventh, one thousand eight  
hree, which supplement was ap-  
one thousand nine hundred and

ic Senate and General Assembly  
sey:  
ppriated for the maintenance of  
insane, and for the State Home  
me for Girls and the Home for  
at Vineland, in this State, in  
acts, shall be available monthly  
bills of said insane asylums or

of act inconsistent with the pro-  
ereby repealed.  
effect immediately.  
908.

1. Any person who shall, in public or private, ad-  
vocate, by speech, writing, printing, drawing, or by any  
other method, the death of any person, or who shall, in  
public or private, by speech, writing, printing, drawing,  
or by any other method, threaten to take or to procure  
the taking of the life of any person, shall be guilty of  
a high misdemeanor, and punished by imprisonment at  
hard labor for a term of not exceeding fifteen years or  
by a fine not exceeding five thousand dollars, or both,  
at the discretion of the court.

Penalty for  
threatening  
to take life.

2. Nothing herein contained shall be construed to  
repeal or limit any of the provisions of an act entitled  
"A supplement to an act entitled 'An act for the punish-  
ment of crimes (Revision of 1898),' approved June  
fourteenth, one thousand eight hundred and ninety-  
eight," which said supplement was approved April third,  
one thousand nine hundred and two.

Construction  
of act.

3. This act shall take effect immediately.  
Approved April 1, 1908.

# Revision of 1937 - 1934 Draft

2:138-1

ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE

2:138-1

imposed upon a conviction of murder in the second degree.

Source: L. 1898, c. 235, §107, p. 824 [C. S. p. 1780, §107], as am. by L. 1917, c. 238, §1, p. 801 [1924 Suppl. §52-107].

**2:138-1. Murder; punishment.** Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.

Every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty years.

Source: L. 1898, c. 235, §108, p. 825 [C. S. p. 1781, §108], as am. by L. 1916, c. 270, §1, p. 576, L. 1919, c. 134, §1, p. 303 [1924 Suppl. §52-108].

**2:138-5. Manslaughter.** Any person who shall commit the crime of manslaughter shall be punished by fine not exceeding one thousand dollars, or imprisonment at hard labor or otherwise not exceeding ten years, or both.

Source: L. 1898, c. 235, §109, p. 825, as am. by L. 1908, c. 300, §1, p. 609 [C. S. p. 1781, §109].

**2:138-6. Killing by misadventure; self-defense or defense of others.** Any person who shall kill another by misadventure, or in his or her own

defense, or in the defense of himself or of his wife, parent, child, brother, sister, ancestor, mistress or servant, or who shall kill any person attempting to commit arson, burglary, larceny, rape, robbery or seduction, shall be acquitted and totally acquitted and discharged.

Source: L. 1898, c. 235, §110, p. 825 [C. S. p. 1781, §110].

**2:138-7. Attempts to kill by poisoning.** All willful poisoning of any person that shall be done, or attempted to be done, with intent to kill, although death shall not ensue therefrom, shall be a high misdemeanor, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.

Source: L. 1898, c. 235, §111, p. 825 [C. S. p. 1782, §111].

**2:138-8. Advocating or threatening to take life.** Any person who shall, in public or private, by speech, writing, printing or drawing, or by any other method:

a. Advocate the death of any person; or

b. Threaten to take or procure the taking of the life of any person—

shall be guilty of a high misdemeanor, and punished by fine not exceeding five thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.

Source: L. 1908, c. 45, §1, p. 63 [C. S. p. 1782, §111a], suppl. to L. 1898, c. 235, p. 794.

## Chapter 139. INCEST.

Section

2:139-1. Incest.

**2:139-1. Incest.** Persons who shall intermarry within the degrees prohibited by law, or who, being related within such degrees, shall together commit fornication or adultery, shall be guilty of incest, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding five years, or both.

Source: L. 1898, c. 235, §45, p. 807 [C. S. p. 1760, §45].

**2:139-2. Incestuous conduct between parent and child.** Every parent who shall be guilty of incest, fornication, adultery or open lewdness with, or any

Section

2:139-2. Incestuous conduct between parent and child.

act of indecency towards, or tending to debauch the morals and manners of any child or children of such parent, or who shall make any infamous proposal to any child or children of his own flesh and blood, with intent to commit adultery or fornication with such child, shall be guilty of a high misdemeanor, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.

Source: L. 1898, c. 235, §46, p. 807 [C. S. p. 1760, §46].

## Chapter 140. INDECENCY AND OBSCENITY.

Section

2:140-1. Lewdness or indecency.

2:140-2. Uttering or exposing obscene literature or pictures.

2:140-3. Causing indecencies in publication.

**2:140-1. Lewdness or indecency.** Any person who shall be guilty of open lewdness, or any notorious act of public indecency, grossly scandalous and tending to debauch the morals and manners of the people, or who shall in private be guilty of any act of lewdness or carnal indecency with another, grossly scandalous and tending to debauch the morals and manners of the people, shall be guilty of a misdemeanor.

Source: L. 1898, c. 235, §51, p. 808, as am. by L. 1906, c. 71, §1, p. 101 [C. S. p. 1762, §51].

Section

2:140-4. Indecent communications to female.

2:140-5. Exposing to view body of one who has suffered death penalty; exceptions.

**2:140-2. Uttering or exposing obscene literature or pictures.** Any person who, without just cause, shall utter or expose to the view of another, or have in his possession with intent to utter or expose to the view of another, or to sell the same, any obscene or indecent book, pamphlet, picture or other representation, however made, or who shall in any way advertise, or aid in advertising the same, or shall in any manner give or cause to be given, or aid in giving any information how or

murder, and if, upon arraignment, such plea should be offered, it shall be disregarded, and the plea of not guilty entered, and a jury, duly impaneled, shall try the case in manner aforesaid.

Nothing herein contained shall prevent the accused from pleading non vult or nolo contendere to such indictment; the sentence to be imposed, if such plea be accepted, shall be either imprisonment at hard labor for life or the same as that imposed upon a conviction of murder in the second degree.

Source. R. S. 2:138-3.

**2A:138-4. Murder; punishment.** Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death, if the jury unanimously agrees upon such penalty, in which case the verdict shall be "guilty of murder in the first degree". The jury may by its verdict and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case the verdict shall be "guilty of murder in the first degree with a recommendation of imprisonment at hard labor for life", and upon such recommendation, this and no greater punishment shall be imposed.

Every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding 30 years.

Source. R. S. 2:138-4.

*Note of Reporter.* This is a revision of language rather than an actual amendment. Its design is to make clear that the verdict and all of its parts must be unanimous. (See *State v. Bunk*, 4 N. J. 461.)

**2A:138-5. Manslaughter.** Any person who shall commit the crime of manslaughter shall be guilty of a high misdemeanor and be punished by fine not exceeding \$10,000, or imprisonment at hard labor or otherwise not exceeding 10 years, or both.

Source. R. S. 2:138-5.

**2A:138-6. Killing by misadventure; self-defense or defense of others.** Any person who shall kill another by misadventure, or in his or her own

defense, or in the defense of his or her husband, wife, parent, child, brother, sister, master, mistress or servant, or who shall kill any person attempting to commit arson, burglary, murder, rape, robbery or sodomy, shall be guiltless and totally acquitted and discharged.

Source. R. S. 2:138-6.

**2A:138-7. Attempts to kill by poisoning.** All willful poisoning of any person that shall be done, or attempted to be done, with intent to kill, although death shall not ensue therefrom, shall be a high misdemeanor, and punished by fine not exceeding \$10,000, or imprisonment at hard labor not exceeding 15 years, or both.

Source. R. S. 2:138-7.

**2A:138-8. Advocating or threatening to take life.** Any person who shall, in public or private, by speech, writing, printing or drawing, or by any other method:

a. Advocate the homicidal death of any person;

or

b. Threaten to take or procure the taking of the life of any person—

shall be guilty of a high misdemeanor, and punished by fine not exceeding \$5,000, or imprisonment at hard labor not exceeding 15 years, or both.

Source. R. S. 2:138-8.

*Note of Reporter.* In *State v. Gibbs*, 134 N. J. L. 366, the supreme court said that "a" meant homicidal death.

**2A:138-9. Killing by driving vehicle carelessly and heedlessly; judgment or conviction not evidence in action for damages.** Any person who shall cause the death of another by driving any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others shall be guilty of a misdemeanor; but it shall be unlawful to use or offer in evidence the record of any judgment or conviction obtained hereunder in any civil action brought to recover damages arising out of the accident in which such death occurred.

Source. R. S. 2:138-9.

## Chapter 139. INCEST.

### Section

2A:139-1. Incest.

**2A:139-1. Incest.** Persons who shall intermarry within the degrees prohibited by law, or who, being related within such degrees, shall together commit fornication or adultery, shall be guilty of incest, and punished by fine not exceeding \$1,000, or imprisonment at hard labor not exceeding 5 years, or both.

Source. R. S. 2:139-1.

**2A:139-2. Incestuous conduct between parent and child.** Every parent who shall be guilty of incest, fornication, adultery or open or private

### Section

2A:139-2. Incestuous conduct between parent and child.

lewdness with, or any act of indecency towards, or tending to debauch the morals and manners of any child or children of such parent, or who shall make any infamous proposal to any child or children of his own flesh and blood, with intent to commit adultery or fornication with such child, shall be guilty of a high misdemeanor, and punished by fine not exceeding \$1,000, or imprisonment at hard labor not exceeding 15 years, or both.

Source. R. S. 2:139-2.

and a minimum fine of \$1,000 up to a maximum.

JUDGE FRANCIS: I don't think that we have been construing it that way in our County. We have been following "a year or," although we are entirely in sympathy with the sentiment that it ought to read \$1,000 fine or a year in jail or both.

MR. DIXON: My criticism is not directed to the vesting of discretion in the trial judges as to whether he should impose both, but inasmuch as it was the law for some forty years to impose both fine and imprisonment, a minimum of \$1,000 and a minimum of one year. And despite the fact that notwithstanding the provisions of the Act, there was some indication that there may have been a violation of the statute during that period of time. It would seem inadvisable to re-enact the statute now so as to eliminate completely any floor under the penalty that might be provided.

There has been an increase in the penalty that may be imposed as a monetary penalty, but there is no floor in the statute now so that the judge could impose a nominal fine with no imprisonment, which would seem to be contrary to the present tendency to stamp out organized gambling.

It would be my thought, therefore, that the Committee should not report this particular statute or this section of the statute without some floor as to the fine and imprisonment that might be imposed.

JUDGE FRANCIS: Chapter 136. (No comment.)

Chapter 138.

MR. AUERBACHER: In degrees of murder, I see the Committee

has enlarged the present language. In other words, murder in the first degree is not only the killing and the perpetration of these various offenses, but also cases in which death shall ensue from the perpetration.

Now, as I remember it in the case of State v. Bunk you held that the defendants would be acquitted if someone other than one of the defendants did the killing, and it seems to me that situation now is quite an abrupt change from what the law was before that. If there is a robbery in a tavern, for example, and one of the patrons takes a gun and shoots somebody during the affray, under this language those who committed the robbery or made the entrance--it says an attempt here-- would be held liable for first degree murder.

JUDGE FRANCIS: So they would, and that was the intention of the re-draft.

MR. AUERBACHER: If this is an enlargement I think the members of the Bar ought to understand that this is a considerable change from the existing language.

JUDGE FRANCIS: Well, depending upon whether or not I was right in the Bunk case, it may be there isn't any substantial change in the wording, but there is a separation of the clause, "which shall ensue," so that now it appears to make sense and would justify the submission of such a death as you indicate on the proximate cause theory which has been espoused in so many States. It is for the jury's determination.

MR. WEINTRAUB: May I comment that so far as I know at

least there is no case which has heretofore construed the "ensuing" clause. While under the statute as it presently exists one might suspect that an ensuing death, whatever it is, would be murder in the second degree, I don't understand that in the Bunk case the situation described by Mr. Auerbacher is regarded as falling in that situation at all. More recently I did urge a like contention in State v. Meyer, but the Court did not interpret that clause.

So while it is true that we did shift it so that clearly an ensuing death would be first degree, no one knows what an ensuing death really is, and I am not so sure that we have really accomplished much by the change.

JUDGE FRANCIS: I am more optimistic.

Chapter 139. (No comment.)

Chapter 140. (No comment.)

Chapter 143. (No comment.)

MR. HOLLERAN: 2A:145-1, page 255. I don't know whether or not it was intentionally done, but it makes any unlawful taking from a person a high misdemeanor. In the community where I come from, the City of Newark, being a Metropolitan area, you can find instances where a man might be taking up with a female, in a tavern or some such place, and the next morning he finds himself relieved of his pocketbook. I don't think, if you can show that the young lady might have taken it from his person, that there was ever any intention to make her guilty of a high misdemeanor. I think that the reasoning that your Honor advanced before might very probably get us into