

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 2426**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 14, 2022

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 2426, with committee amendments

As amended and reported by the committee, Assembly Bill No. 2426 establishes a rebuttable presumption that a defendant subject to a mandatory prison term for a firearm-related crime pursuant to the “Graves Act” is to be detained prior to trial. P.L.1981, c.31, also known as the “Graves Act,” sets forth mandatory minimum terms of imprisonment for individuals convicted of certain crimes involving the use or possession of a firearm.

Under P.L.2014, c.31, also known as the Criminal Justice Reform Law, criminal courts are authorized to order the pretrial release of a defendant pending further proceedings, or order pretrial detention of a defendant who is found to be a flight risk, a danger to another or the community, or likely to obstruct further criminal proceedings.

Currently, there is a rebuttable presumption that a defendant who is charged with murder or a crime that subjects the defendant to an ordinary or extended term of life imprisonment is to be detained pending trial. This rebuttable presumption applies when a prosecutor makes a motion for the pretrial detention, and may be rebutted upon a showing of proof, by a preponderance of the evidence, in favor of the defendant. If the presumption is not rebutted, the court may order pretrial detention of the defendant. If the presumption is rebutted, the prosecutor still has the opportunity to establish grounds for pretrial detention.

The amended bill provides that the rebuttable presumption of pretrial detention also applies to defendants charged with certain violent crimes and certain crimes involving a firearm. Specifically, under the amended bill, the rebuttable presumption of pretrial detention also applies to a defendant who is charged with a first or second degree crime subject to an 85 percent mandatory minimum sentence under the No Early Release Act (NERA). Under the amended bill, the rebuttable presumption also applies to crime involving a firearm under the Graves Act. However, as amended, the provisions of the bill provide that the rebuttable presumption of pretrial detention would not apply to defendants charged with certain

firearms possession offenses. Under the Graves Act, the court is required to sentence a person who unlawfully possesses a firearm or commits certain serious crimes while possessing a firearm to a mandatory minimum term of incarceration.

#### COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) provide that the rebuttable presumption of pretrial detention applies to a person charged with committing a first or second degree crime subject to an 85 percent mandatory minimum sentence under NERA;

(2) provide that a defendant charged with certain crimes involving a firearm under the Graves Act would not be subject to the rebuttable presumption of pretrial detention; as introduced, all Graves Act offenses would be subject to the rebuttable presumption; specifically, a person charged with any of the following offenses involving a firearm would not be subject to the rebuttable presumption: possession of any destructive device or defaced firearm; possession of a firearm with an unlawful purpose; possession of a firearm that is transferred among, between, or within an association of two or more people, known as a “community gun”; possession of a firearm while committing certain offenses involving a controlled dangerous substance or a crime of bias intimidation; or possession of handguns, rifles, or shotguns without a permit;

(3) modify another section of the Criminal Justice Reform Law to make it consistent with the provisions of the bill; and

(4) make technical changes to the bill.