ASSEMBLY, No. 447

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman GREGORY P. MCGUCKIN
District 10 (Ocean)

SYNOPSIS

Establishes rebuttable presumption of pretrial detention for child sexual abuse.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning pretrial detention and amending P.L.2014, c.31.

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

1. Section 4 of P.L.2014, c.31 (C.2A:162-18) is amended to read as follows:

4. a. (1) The court may order, before trial, the detention of an eligible defendant charged with any crime, or any offense involving domestic violence as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), enumerated in subsection a. of section 5 of P.L.2014, c.31 (C.2A:162-19), if the prosecutor seeks the pretrial detention of the eligible defendant under section 5 of P.L.2014, c.31 (C.2A:162-19) and after a hearing pursuant to that section the court finds clear and convincing evidence that no amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process. The court may also order the pretrial detention of an eligible defendant when the prosecutor moves for a pretrial detention hearing and the eligible defendant fails to rebut a presumption of pretrial detention that may be established for the crimes enumerated under subsection b. of section 5 of P.L.2014, c.31 (C.2A:162-19).

(2) For purposes of ordering the pretrial detention of an eligible defendant pursuant to this section and section 5 of P.L.2014, c.31 (C.2A:162-19) or pursuant to section 10 of P.L.2014, c.31 (C.2A:162-24), when determining whether no amount of monetary bail, non-monetary conditions or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, the court may consider the amount of monetary bail only with respect to whether it will, by itself or in combination with non-monetary conditions, reasonably assure the eligible defendant's appearance in court when required.

b. Regarding the pretrial detention hearing moved for by the prosecutor, except for when an eligible defendant is charged with a crime set forth under paragraph (1) **[**or**]**, (2), or (3) of subsection b. of section 5 of P.L.2014, c.31 (C.2A:162-19), there shall be a rebuttable presumption that some amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the eligible defendant's

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

Matter underlined thus is new matter.

appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

c. An eligible defendant may appeal an order of pretrial detention pursuant to the Rules of Court. The appeal shall be heard in an expedited manner. The eligible defendant shall be detained pending the disposition of the appeal.

d. If the court does not order the pretrial detention of an eligible defendant at the conclusion of the pretrial detention hearing under this section and section 5 of P.L.2014, c.31 (C.2A:162-19), the court shall order the release of the eligible defendant pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).

(cf: P.L.2014, c.31, s.4)

2. Section 5 of P.L.2014, c.31 (C.2A:162-19) is amended to read as follows:

5. a. A prosecutor may file a motion with the court at any time, including any time before or after an eligible defendant's release pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17), seeking the pretrial detention of an eligible defendant for:

(1) any crime of the first or second degree enumerated under subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2);

(2) any crime for which the eligible defendant would be subject to an ordinary or extended term of life imprisonment;

(3) any crime if the eligible defendant has been convicted of two or more offenses under paragraph (1) or (2) of this subsection;

(4) any crime enumerated under paragraph (2) of subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-2) or crime involving human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or P.L.2013, c.51 (C.52:17B-237 et al.) when the victim is a minor, **[**or**]** the crime of endangering the welfare of a child under N.J.S.2C:24-4, the crime of sexual assault pursuant to N.J.S.2C:14-2 when the victim is a minor, or the crime of criminal sexual contact pursuant to N.J.S.2C:14-3 when the victim is a minor;

(5) any crime enumerated under subsection c. of N.J.S.2C:43-6;

(6) any crime or offense involving domestic violence as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19); or

(7) any other crime for which the prosecutor believes there is a serious risk that:

(a) the eligible defendant will not appear in court as required;

(b) the eligible defendant will pose a danger to any other person or the community; or

(c) the eligible defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure or intimidate, a prospective witness or juror.

b. When a motion for pretrial detention is filed pursuant to subsection a. of this section, there shall be a rebuttable presumption

that the eligible defendant shall be detained pending trial because no amount of monetary bail, non-monetary condition or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, if the court finds probable cause that the eligible defendant:

(1) committed murder pursuant to N.J.S.2C:11-3; **[**or**]**

(2) committed sexual assault pursuant to N.J.S.2C:14-2 when the victim is a minor or criminal sexual contact pursuant to N.J.S.2C:14-3 when the victim is a minor; or

[(2)**]**(3) committed any crime for which the eligible defendant would be subject to an ordinary or extended term of life imprisonment.

c. A court shall hold a hearing to determine whether any amount of monetary bail or non-monetary conditions or combination of monetary bail and conditions, including those set forth under subsection b. of section 3 of P.L.2014, c.31 (C.2A:162-17) will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

d. (1) Except as otherwise provided in this subsection, the pretrial detention hearing shall be held no later than the eligible defendant's first appearance unless the eligible defendant, or the prosecutor, seeks a continuance. If a prosecutor files a motion for pretrial detention after the eligible defendant's first appearance has taken place or if no first appearance is required, the court shall schedule the pretrial detention hearing to take place within three working days of the date on which the prosecutor's motion was filed, unless the prosecutor or the eligible defendant seeks a continuance. Except for good cause, a continuance on motion of the eligible defendant may not exceed five days, not including any intermediate Saturday, Sunday, or legal holiday. Except for good cause, a continuance on motion of the prosecutor may not exceed three days, not including any intermediate Saturday, Sunday, or legal holiday.

(2) Upon the filing of a motion by the prosecutor seeking the pretrial detention of the eligible defendant and during any continuance that may be granted by the court, the eligible defendant shall be detained in jail, unless the eligible defendant was previously released from custody before trial, in which case the court shall issue a notice to appear to compel the appearance of the eligible defendant at the detention hearing. The court, on motion of the prosecutor or sua sponte, may order that, while in custody, an

eligible defendant who appears to be a drug dependent person receive an assessment to determine whether that eligible defendant is drug dependent.

e. (1) At the pretrial detention hearing, the eligible defendant has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The eligible defendant shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing.

(2) In pretrial detention proceedings for which there is no indictment, the prosecutor shall establish probable cause that the eligible defendant committed the predicate offense. A presumption of pretrial detention as provided in subsection b. of this section may be rebutted by proof provided by the eligible defendant, the prosecutor, or from other materials submitted to the court. The standard of proof for a rebuttal of the presumption of pretrial detention shall be a preponderance of the evidence. If proof cannot be established to rebut the presumption, the court may order the eligible defendant's pretrial detention. If the presumption is rebutted by sufficient proof, the prosecutor shall have the opportunity to establish that the grounds for pretrial detention exist pursuant to this section.

(3) Except when an eligible defendant has failed to rebut a presumption of pretrial detention pursuant to subsection b. of this section, the court's finding to support an order of pretrial detention pursuant to section 4 of P.L.2014, c.31 (C.2A:162-18) that no amount of monetary bail, non-monetary conditions or combination of monetary bail and conditions will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process shall be supported by clear and convincing evidence.

f. The hearing may be reopened, before or after a determination by the court, at any time before trial, if the court finds that information exists that was not known to the prosecutor or the eligible defendant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

(cf: P.L.2014, c.31, s.5)

3. This act shall take effect immediately.

STATEMENT

This bill establishes a rebuttable presumption of pretrial detention for a defendant charged with sexual assault or criminal sexual contact when the victim is a minor.

Under P.L.2014, c.31, also known as the "Bail 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 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.

This bill provides that the rebuttable presumption of pretrial detention also applies to defendants charged with sexual assault pursuant to N.J.S.2C:14-2 or criminal sexual contact pursuant to N.J.S.2C:14-3 when the victim is a minor.