

ASSEMBLY, No. 3447

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Establishes rebuttable presumption that person charged with certain sex crimes be detained prior to trial.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pretrial detention of certain offenders and
2 amending P.L.2014, c.31.

3

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

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

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

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

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

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

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

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

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

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

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

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

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

36 b. When a motion for pretrial detention is filed pursuant to
37 subsection a. of this section, there shall be a rebuttable presumption
38 that the eligible defendant shall be detained pending trial because
39 no amount of monetary bail, non-monetary condition or
40 combination of monetary bail and conditions would reasonably
41 assure the eligible defendant's appearance in court when required,
42 the protection of the safety of any other person or the community,
43 and that the eligible defendant will not obstruct or attempt to
44 obstruct the criminal justice process, if the court finds probable
45 cause that the eligible defendant:

**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.

- 1 (1) committed murder pursuant to N.J.S.2C:11-3; **【or】**
2 (2) committed any crime for which the eligible defendant would
3 be subject to an ordinary or extended term of life imprisonment **【.】**;
4 or
5 (3) any crime enumerated under paragraph (2) of subsection b.
6 of section 2 of P.L.1994, c.133 (C.2C:7-2) or crime involving
7 human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-
8 8) or P.L.2013, c.51 (C.52:17B-237 et al.) when the victim is a
9 minor, or the crime of endangering the welfare of a child under
10 N.J.S.2C:24-4.
- 11 c. A court shall hold a hearing to determine whether any
12 amount of monetary bail or non-monetary conditions or
13 combination of monetary bail and conditions, including those set
14 forth under subsection b. of section 3 of P.L.2014, c.31 (C.2A:162-
15 17) will reasonably assure the eligible defendant's appearance in
16 court when required, the protection of the safety of any other person
17 or the community, and that the eligible defendant will not obstruct
18 or attempt to obstruct the criminal justice process.
- 19 d. (1) Except as otherwise provided in this subsection, the
20 pretrial detention hearing shall be held no later than the eligible
21 defendant's first appearance unless the eligible defendant, or the
22 prosecutor, seeks a continuance. If a prosecutor files a motion for
23 pretrial detention after the eligible defendant's first appearance has
24 taken place or if no first appearance is required, the court shall
25 schedule the pretrial detention hearing to take place within three
26 working days of the date on which the prosecutor's motion was
27 filed, unless the prosecutor or the eligible defendant seeks a
28 continuance. Except for good cause, a continuance on motion of the
29 eligible defendant may not exceed five days, not including any
30 intermediate Saturday, Sunday, or legal holiday. Except for good
31 cause, a continuance on motion of the prosecutor may not exceed
32 three days, not including any intermediate Saturday, Sunday, or
33 legal holiday.
- 34 (2) Upon the filing of a motion by the prosecutor seeking the
35 pretrial detention of the eligible defendant and during any
36 continuance that may be granted by the court, the eligible defendant
37 shall be detained in jail, unless the eligible defendant was
38 previously released from custody before trial, in which case the
39 court shall issue a notice to appear to compel the appearance of the
40 eligible defendant at the detention hearing. The court, on motion of
41 the prosecutor or sua sponte, may order that, while in custody, an
42 eligible defendant who appears to be a drug dependent person
43 receive an assessment to determine whether that eligible defendant
44 is drug dependent.
- 45 e. (1) At the pretrial detention hearing, the eligible defendant
46 has the right to be represented by counsel, and, if financially unable
47 to obtain adequate representation, to have counsel appointed. The
48 eligible defendant shall be afforded an opportunity to testify, to

1 present witnesses, to cross-examine witnesses who appear at the
2 hearing, and to present information by proffer or otherwise. The
3 rules concerning admissibility of evidence in criminal trials shall
4 not apply to the presentation and consideration of information at the
5 hearing.

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

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

29 f. The hearing may be reopened, before or after a
30 determination by the court, at any time before trial, if the court
31 finds that information exists that was not known to the prosecutor
32 or the eligible defendant at the time of the hearing and that has a
33 material bearing on the issue of whether there are conditions of
34 release that will reasonably assure the eligible defendant's
35 appearance in court when required, the protection of the safety of
36 any other person or the community, or that the eligible defendant
37 will not obstruct or attempt to obstruct the criminal justice process.
38 (cf: P.L.2014, c.31, s.5)

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40 2. This act shall take effect immediately

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STATEMENT

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45 This bill establishes a rebuttable presumption that a person charged
46 with certain sex offenses and crimes against children is to be detained
47 prior to trial.

1 Under P.L.2014, c.31, also known as the “Bail Reform Law,”
2 criminal courts are authorized to order the pretrial release of a
3 defendant pending further proceedings, or order pretrial detention
4 of defendants who are found to be a flight risk, a danger to another
5 or the community, or likely to obstruct further criminal
6 proceedings. Currently, defendants who commit any Megan’s Law
7 sex offense enumerated under paragraph (2) of subsection b. of
8 section 2 of P.L.1994, c.133 (C.2C:7-2), or crime involving human
9 trafficking when the victim is a minor, or the crime of endangering
10 the welfare of a child are eligible for pretrial detention

11 Under this bill, if a court finds probable cause that a defendant
12 committed one of these sex offenses or crimes against children and the
13 prosecutor motions for pretrial detention, there would be a rebuttable
14 presumption that the person is to be detained pending trial because no
15 amount of monetary bail, non-monetary conditions or release, or
16 combination thereof would reasonably assure the safety of any other
17 person or the community. This presumption may be rebutted by the
18 defendant upon a showing of the preponderance of the evidence in
19 support of the defendant. If the defendant is unable to rebut the
20 presumption, the court may order pretrial detention, but if rebutted, the
21 prosecutor would still have the opportunity to establish grounds for
22 pretrial detention.

23 This rebuttable presumption applies under current law when a
24 prosecutor makes a motion for the pretrial detention of a defendant
25 charged with murder or any crime for which the defendant would be
26 subject to an ordinary or extended term of life imprisonment.