

ASSEMBLY, No. 3509

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Establishes rebuttable presumption of pretrial detention for defendants subject to mandatory term or presumption of imprisonment.

CURRENT VERSION OF TEXT

As introduced.



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

2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (3) committed any crime for which the eligible defendant would
4 be subject to a mandatory term of imprisonment pursuant to
5 subsection c. of N.J.S.2C:43-6, subsection d. of section 2 of
6 P.L.1997, c.117 (C.2C:43-7.2), or any crime that is subject to a
7 presumption of imprisonment pursuant to subsection d. of
8 N.J.S.2C:44-1.

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

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

32 (2) Upon the filing of a motion by the prosecutor seeking the
33 pretrial detention of the eligible defendant and during any
34 continuance that may be granted by the court, the eligible defendant
35 shall be detained in jail, unless the eligible defendant was
36 previously released from custody before trial, in which case the
37 court shall issue a notice to appear to compel the appearance of the
38 eligible defendant at the detention hearing. The court, on motion of
39 the prosecutor or sua sponte, may order that, while in custody, an
40 eligible defendant who appears to be a drug dependent person
41 receive an assessment to determine whether that eligible defendant
42 is drug dependent.

43 e. (1) At the pretrial detention hearing, the eligible defendant
44 has the right to be represented by counsel, and, if financially unable
45 to obtain adequate representation, to have counsel appointed. The
46 eligible defendant shall be afforded an opportunity to testify, to
47 present witnesses, to cross-examine witnesses who appear at the
48 hearing, and to present information by proffer or otherwise. The

1 rules concerning admissibility of evidence in criminal trials shall
2 not apply to the presentation and consideration of information at the
3 hearing.

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

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

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

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

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38 2. This act shall take effect immediately.

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STATEMENT

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43 This bill establishes a rebuttable presumption that a defendant
44 subject to a mandatory prison term or a presumption of imprisonment
45 is to be detained prior to trial.

46 Under P.L.2014, c.31, also known as the "Bail Reform Law,"
47 criminal courts are authorized to order the pretrial release of a
48 defendant pending further proceedings, or order pretrial detention

1 of a defendant who is found to be a flight risk, a danger to another
2 or the community, or likely to obstruct further criminal
3 proceedings.

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

14 This bill provides that the rebuttable presumption of pretrial
15 detention also applies to defendants charged with a firearms offense
16 under the “Graves Act” or an offense subject to an 85 percent
17 mandatory minimum sentence under the No Early Release Act
18 (NERA), as well as an offense for which there is a presumption of
19 imprisonment.