

ASSEMBLY, No. 4683

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 21, 2020

Sponsored by:

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

Establishes rebuttable presumption that person charged with certain firearm offenses 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 committed:

**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
3 would be subject to an ordinary or extended term of life
4 imprisonment; or

5 (3) possession of a firearm in violation of subsections a., b., c.,
6 or f. of N.J.S.2C:39-5 during the commission of another crime or
7 when a person is prohibited from purchasing, owning, possessing,
8 or controlling a firearm pursuant to section 6 of P.L.1979, c.179
9 (C.2C:39-7).

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

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

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

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

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

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

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

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

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39 2. This act shall take effect immediately.

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STATEMENT

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44 This bill establishes a rebuttable presumption that a person charged
45 with possession of a firearm during the commission of a crime or as a
46 person prohibited from owning or possessing a firearm in violation of
47 section 6 of P.L.1979, c.179 (C.2C:39-7) is to be detained prior to
48 trial.

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

7 Under section 6 of P.L.1979, c.179 (C.2C:39-7), persons
8 convicted of certain serious crimes are prohibited from owning or
9 possessing a firearm. A violation of this statute constitutes a crime
10 of the second degree, which is punishable by a term of
11 imprisonment of five to 10 years, a fine of up to \$150,000, or both.

12 Under this bill, if a court finds probable cause that a defendant
13 possessed a firearm during the commission of a crime or was a person
14 prohibited from owning or possessing a firearm there would be a
15 rebuttable presumption that the person is to be detained pending trial
16 because no amount of monetary bail, non-monetary conditions of
17 release, or combination thereof would reasonably assure the safety of
18 any other person or the community. This presumption may be rebutted
19 by the defendant upon a showing of a preponderance of the evidence
20 in support of the defendant.

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