

SENATE, No. 701

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 29 (Essex)

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District 20 (Union)

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SYNOPSIS

Establishes rebuttable presumption that person who commits domestic violence by strangling victim be detained prior to trial.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/30/2020)

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:*

6

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

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

28 (2) For purposes of ordering the pretrial detention of an eligible
29 defendant pursuant to this section and section 5 of P.L.2014, c.31
30 (C.2A:162-19) or pursuant to section 10 of P.L.2014, c.31
31 (C.2A:162-24), when determining whether no amount of monetary
32 bail, non-monetary conditions or combination of monetary bail and
33 conditions would 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 the court may consider the amount of monetary bail only with
38 respect to whether it will, by itself or in combination with non-
39 monetary conditions, reasonably assure the eligible defendant's
40 appearance in court when required.

41 b. Regarding the pretrial detention hearing moved for by the
42 prosecutor, except for when an eligible defendant is charged with a
43 crime set forth under paragraph (1) **【or】**, (2) .or (3) of subsection b.
44 of section 5 of P.L.2014, c.31 (C.2A:162-19), there shall be a
45 rebuttable presumption that some amount of monetary bail, non-

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 monetary conditions of pretrial release or combination of monetary
2 bail and conditions would reasonably assure the eligible defendant's
3 appearance in court when required, the protection of the safety of
4 any other person or the community, and that the eligible defendant
5 will not obstruct or attempt to obstruct the criminal justice process.

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

10 d. If the court does not order the pretrial detention of an
11 eligible defendant at the conclusion of the pretrial detention hearing
12 under this section and section 5 of P.L.2014, c.31 (C.2A:162-19),
13 the court shall order the release of the eligible defendant pursuant to
14 section 3 of P.L.2014, c.31 (C.2A:162-17)
15 (cf: P.L.2014, c.31, s.4)

16
17 2. Section 5 of P.L.2014, c.31 (C.2A:162-19) is amended to
18 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (2) **【committed】** any crime for which the eligible defendant
11 would be subject to an ordinary or extended term of life
12 imprisonment **【.】**; or

13 (3) aggravated assault against a victim of domestic violence by
14 recklessly obstructing the breathing or blood circulation of the
15 victim in violation of paragraph (13) of subsection b. of
16 N.J.S.2C:12-1.

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

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

40 (2) Upon the filing of a motion by the prosecutor seeking the
41 pretrial detention of the eligible defendant and during any
42 continuance that may be granted by the court, the eligible defendant
43 shall be detained in jail, unless the eligible defendant was
44 previously released from custody before trial, in which case the
45 court shall issue a notice to appear to compel the appearance of the
46 eligible defendant at the detention hearing. The court, on motion of

1 the prosecutor or sua sponte, may order that, while in custody, an
2 eligible defendant who appears to be a drug dependent person
3 receive an assessment to determine whether that eligible defendant
4 is drug dependent.

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

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

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

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

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

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill establishes a rebuttable presumption that a person who is
7 charged with aggravated assault by strangling a victim of domestic
8 violence is to be detained prior to trial.

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

15 Current law also upgrades the crime of simple assault to aggravated
16 assault if the defendant knowingly or, under circumstances
17 manifesting extreme indifference to the value of human life,
18 recklessly obstructs the breathing or blood circulation of a person
19 who, with respect to the actor, meets the definition of a victim of
20 domestic violence, by applying pressure on the throat or neck or
21 blocking the nose or mouth of the person, thereby causing or
22 attempting to cause bodily injury. It is a crime of the third degree to
23 commit aggravated assault against a victim of domestic violence. A
24 crime of the third degree is punishable by a term of imprisonment
25 of three to five years, a fine up to \$15,000, or both. The
26 presumption of non-imprisonment generally applicable to third
27 degree and fourth degree crimes committed by first-time offenders
28 does not apply to persons who commit aggravated assault against a
29 victim of domestic violence.

30 Under this bill, if a court finds probable cause that a defendant
31 committed aggravated assault by strangling a domestic violence
32 victim there would be a rebuttable presumption that the person is to be
33 detained pending trial because no amount of monetary bail, non-
34 monetary conditions of release, or combination thereof would
35 reasonably assure the defendant’s appearance in court, the safety of
36 any other person or the community, and that the defendant will not
37 obstruct the criminal justice process. This presumption may be
38 rebutted by the defendant upon a showing of the preponderance of the
39 evidence in support of the defendant. If the defendant is unable to
40 rebut the presumption, the court may order pretrial detention, but if
41 rebutted, the prosecutor would still have the opportunity to establish
42 grounds for pretrial detention. In addition, if the defendant is not
43 detained prior to trial there would be a rebuttable presumption that a
44 person charged with one of the enumerated crimes is prohibited from
45 using the 10 percent cash option for posting bail.

46 A rebuttable presumption currently applies under P.L.2014, c.31
47 when a prosecutor makes a motion for the pretrial detention of a

1 defendant charged with murder or any crime for which the defendant
2 would be subject to an ordinary or extended term of life
3 imprisonment. This bill extends that presumption to aggravated
4 assault in situations where the defendant is charged with aggravated
5 assault by strangling a victim of domestic violence.