

SENATE, No. 701

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

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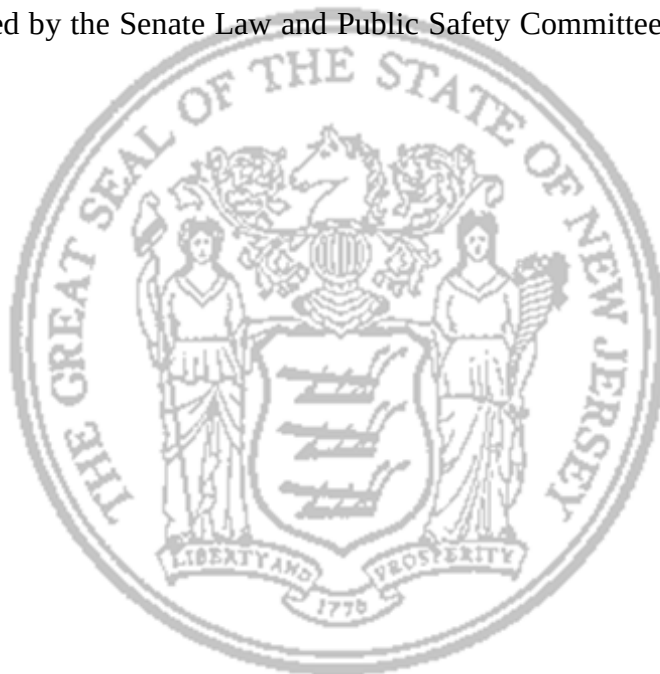
Senator Scutari

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee with technical review.



(Sponsorship Updated As Of: 2/10/2020)

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.

1 b. When a motion for pretrial detention is filed pursuant to
2 subsection a. of this section, there shall be a rebuttable presumption
3 that the eligible defendant shall be detained pending trial because
4 no amount of monetary bail, non-monetary condition or
5 combination of monetary bail and conditions would reasonably
6 assure the eligible defendant's appearance in court when required,
7 the protection of the safety of any other person or the community,
8 and that the eligible defendant will not obstruct or attempt to
9 obstruct the criminal justice process, if the court finds probable
10 cause that the eligible defendant committed:

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

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

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

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

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

42 (2) Upon the filing of a motion by the prosecutor seeking the
43 pretrial detention of the eligible defendant and during any
44 continuance that may be granted by the court, the eligible defendant
45 shall be detained in jail, unless the eligible defendant was
46 previously released from custody before trial, in which case the

1 court shall issue a notice to appear to compel the appearance of the
2 eligible defendant at the detention hearing. The court, on motion of
3 the prosecutor or sua sponte, may order that, while in custody, an
4 eligible defendant who appears to be a drug dependent person
5 receive an assessment to determine whether that eligible defendant
6 is drug dependent.

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

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

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

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

- 1 will not obstruct or attempt to obstruct the criminal justice process.
- 2 (cf: P.L.2014, c.31, s.5)
- 3
- 4 3. This act shall take effect immediately.