

SENATE, No. 1273

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

SYNOPSIS

Requires certain defendants to be eligible for monetary bail upon issuance of complaint-warrant.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pretrial release 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:

5

6 1. Section 1 of P.L.2014, c.31 (C.2A:162-15) is amended to
7 read as follows:

8 1. The provisions of sections 1 through 11 and section 20 of
9 P.L.2014, c.31 **[(C.2A:162-15 et seq.)]** (C.2A:162-15 through
10 C.2A:162-26) shall be liberally construed to effectuate the purpose
11 of primarily relying upon pretrial release by monetary or non-
12 monetary means to reasonably assure an eligible defendant's
13 appearance in court when required, the protection of the safety of
14 any other person or the community, that the eligible defendant will
15 not obstruct or attempt to obstruct the criminal justice process, and
16 that the eligible defendant will comply with all conditions of
17 release, while authorizing the court, with respect to any first degree
18 crime and upon motion of a prosecutor, to order pretrial detention
19 of the eligible defendant when it finds clear and convincing
20 evidence that no condition or combination of conditions can
21 reasonably assure the effectuation of these goals. **[Monetary bail**
22 **may be set for an eligible defendant only when it is determined that**
23 **no other conditions of release will reasonably assure the eligible**
24 **defendant's appearance in court when required.]**

25 For the purposes of sections 1 through 11 of P.L.2014, c.31
26 (C.2A:162-15 et seq.), "eligible defendant" shall mean a person for
27 whom a complaint-warrant is issued for an initial charge involving
28 an indictable offense or a disorderly persons offense unless
29 otherwise provided in sections 1 through 11 of P.L.2014, c.31
30 (C.2A:162-15 et seq.).

31 (cf: P.L.2014, c.31, s.1)

32

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

35 2. a. An eligible defendant shall be bailable by monetary bail
36 immediately, following the issuance of a complaint-warrant
37 pursuant to the conditions set forth under subsection c. of this
38 section, unless the eligible defendant is arrested on a complaint-
39 warrant for a crime of the first degree, in which case the eligible
40 defendant shall be temporarily detained to allow the Pretrial
41 Services Program to prepare a risk assessment with
42 recommendations on conditions of release pursuant to section 11 of
43 P.L.2014, c.31 (C.2A:162-25) and for the court to issue a pretrial
44 release decision.

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 b. For any eligible defendant who is found by a court not to be
2 immediately bailable pursuant to subsection a. of this section, or
3 who is immediately bailable pursuant to that subsection but is
4 unable to post bail:

5 (1) Except as otherwise provided under sections 4 and 5 of
6 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19), the court, pursuant
7 to section 3 of P.L.2014, c.31 (C.2A:162-17), shall make a pretrial
8 release decision for the eligible defendant without unnecessary
9 delay, but in no case later than **[48]** 96 hours after the eligible
10 defendant's commitment to jail. The court shall consider the
11 Pretrial Services Program's risk assessment and recommendations
12 on conditions of release before making any pretrial release decision
13 for the eligible defendant.

14 (2) After considering all the circumstances, the Pretrial Services
15 Program's risk assessment and recommendations on conditions of
16 release, and any information that may be provided by a prosecutor
17 or the eligible defendant, the court, pursuant to any of the following
18 conditions as deemed appropriate by the court in its sole discretion,
19 shall order that the eligible defendant be:

20 (a) released on the eligible defendant's own recognizance **[or on**
21 **execution of an unsecured appearance bond]**; or

22 (b) released on a non-monetary condition or conditions, with the
23 condition or conditions being the least restrictive condition or
24 combination of conditions that the court determines will reasonably
25 assure the eligible defendant's appearance in court when required,
26 the protection of the safety of any other person or the community,
27 or that the eligible defendant will not obstruct or attempt to obstruct
28 the criminal justice process; or

29 (c) released on monetary bail, or modified monetary bail if bail
30 was previously set pursuant to subsection a. of this section, other
31 than an unsecured appearance bond, to reasonably assure the
32 eligible defendant's appearance in court when required, or a
33 combination of monetary bail and non-monetary conditions, to
34 reasonably assure the eligible defendant's appearance in court when
35 required, the protection of the safety of any other person or the
36 community, or that the eligible defendant will not obstruct or
37 attempt to obstruct the criminal justice process; or

38 (d) detained in jail, upon motion of the prosecutor, pending a
39 pretrial detention hearing pursuant to sections 4 and 5 of
40 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19).

41 c. A law enforcement officer shall not apply for a complaint-
42 warrant except in accordance with guidelines issued by the Attorney
43 General, and a court may not issue a complaint-warrant except as
44 may be authorized by the Rules of Court.

45 d. (1) A defendant who is charged on a complaint-summons
46 shall be released from custody and shall not be subject to the
47 provisions of sections 1 through 11 and section 20 of P.L.2014, c.31
48 **[(C.2A:162-15 et seq.)]** (C.2A:162-15 through C.2A:162-26).

1 (2) (a) If a defendant who was released from custody after
2 being charged on a complaint-summons pursuant to paragraph (1)
3 of this subsection is subsequently arrested on a warrant for failure
4 to appear in court when required, that defendant shall be eligible for
5 release on personal recognizance or release on bail by sufficient
6 sureties at the discretion of the court. If monetary bail was not set
7 when an arrest warrant for the defendant was issued, the defendant
8 shall have monetary bail set without unnecessary delay, but in no
9 case later than 12 hours after arrest. Pursuant to the Rules of Court,
10 if the defendant is unable to post monetary bail, the defendant shall
11 have that bail reviewed promptly and may file an application with
12 the court seeking a bail reduction, which shall be heard in an
13 expedited manner.

14 (b) If the defendant fails to post the required monetary bail set
15 by the court pursuant to this paragraph, the defendant may not be
16 detained on the charge or charges contained in the complaint-
17 summons beyond the maximum term of incarceration or term of
18 probation supervision for the offense or offenses charged.

19 (cf: P.L.2014, c.31, s.2)

20

21 3. Section 3 of P.L.2014, c.31 (C.2A:162-17) is amended to
22 read as follows:

23 3. Except as otherwise provided under sections 4 and 5 of
24 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) concerning a
25 hearing on pretrial detention, whenever an eligible defendant is
26 found by a court not to be immediately bailable pursuant to
27 subsection a. of section 2 of P.L.2014, c.31 (C.2A:162-16), or is
28 immediately bailable pursuant to that subsection but unable to post
29 bail, a court shall make, pursuant to this section, a pretrial release
30 decision for an eligible defendant without unnecessary delay~~],~~ but
31 in but in no case~~]~~ . A pretrial release decision shall not be made
32 later than [48] 96 hours after the eligible defendant's commitment
33 to jail.

34 a. The court shall order the pretrial release of the eligible
35 defendant on personal recognizance ~~or on the execution of an~~
36 ~~unsecured appearance bond~~ when, after considering all the
37 circumstances, the Pretrial Services Program's risk assessment ~~and~~
38 recommendations on conditions of release prepared pursuant to
39 section 11 of P.L.2014, c.31 (C.2A:162-25)], and any information
40 that may be provided by a prosecutor or the eligible defendant, the
41 court finds that the release would reasonably assure the eligible
42 defendant's appearance in court when required, the protection of the
43 safety of any other person or the community, and that the eligible
44 defendant will not obstruct or attempt to obstruct the criminal
45 justice process.

46 b. (1) If the court does not find, after consideration, that the
47 release described in subsection a. of this section will reasonably

1 assure the eligible defendant's appearance in court when required,
2 the protection of the safety of any other person or the community,
3 and that the eligible defendant will not obstruct or attempt to
4 obstruct the criminal justice process, the court may order the
5 pretrial release of the eligible defendant subject to the following:

6 (a) the eligible defendant shall not commit any offense during
7 the period of release;

8 (b) the eligible defendant shall avoid all contact with an alleged
9 victim of the crime;

10 (c) the eligible defendant shall avoid all contact with all
11 witnesses who may testify concerning the offense that are named in
12 the document authorizing the eligible defendant's release or in a
13 subsequent court order; and

14 (d) any one or more non-monetary conditions as set forth in
15 paragraph (2) of this subsection.

16 (2) The non-monetary condition or conditions of a pretrial
17 release ordered by the court pursuant to this paragraph shall be the
18 least restrictive condition, or combination of conditions, that the
19 court determines will reasonably assure the eligible defendant's
20 appearance in court when required, the protection of the safety of
21 any other person or the community, and that the eligible defendant
22 will not obstruct or attempt to obstruct the criminal justice process,
23 which may include that the eligible defendant:

24 (a) remain in the custody of a designated person, who agrees to
25 assume supervision and to report any violation of a release
26 condition to the court, if the designated person is able to reasonably
27 assure the court that the eligible defendant will appear in court
28 when required, will not pose a danger to the safety of any other
29 person or the community, and will not obstruct or attempt to
30 obstruct the criminal justice process;

31 (b) maintain employment, or, if unemployed, actively seek
32 employment;

33 (c) maintain or commence an educational program;

34 (d) abide by specified restrictions on personal associations,
35 place of abode, or travel;

36 (e) report on a regular basis to a designated law enforcement
37 agency, or other agency, or pretrial services program;

38 (f) comply with a specified curfew;

39 (g) refrain from possessing a firearm, destructive device, or
40 other dangerous weapon;

41 (h) refrain from excessive use of alcohol, or any use of a
42 narcotic drug or other controlled substance without a prescription
43 by a licensed medical practitioner;

44 (i) undergo available medical, psychological, or psychiatric
45 treatment, including treatment for drug or alcohol dependency, and
46 remain in a specified institution if required for that purpose;

47 (j) return to custody for specified hours following release for
48 employment, schooling, or other limited purposes;

1 (k) be placed in a pretrial home supervision capacity with or
2 without the use of an approved electronic monitoring device. The
3 court may order the eligible defendant to pay all or a portion of the
4 costs of the electronic monitoring, but the court may waive the
5 payment for an eligible defendant who is indigent and who has
6 demonstrated to the court an inability to pay all or a portion of the
7 costs; or

8 (l) satisfy any other condition that is necessary to reasonably
9 assure the eligible defendant's appearance in court when required,
10 the protection of the safety of any other person or the community,
11 and that the eligible defendant will not obstruct or attempt to
12 obstruct the criminal justice process.

13 c. (1) **【If the court does not find, after consideration, that the**
14 **release described in subsection a. or b. of this section will**
15 **reasonably assure the eligible defendant's appearance in court when**
16 **required, the】** The court may order the pretrial release of the
17 eligible defendant on monetary bail, 【other than an unsecured
18 appearance bond】 or modified monetary bail if bail was previously
19 set pursuant to subsection a. of section 2 of P.L.2014, c.31
20 (C.2A:162-16). The court may only impose or modify monetary
21 bail pursuant to this subsection to reasonably assure the eligible
22 defendant's appearance. The court shall not impose or modify the
23 monetary bail to reasonably assure the protection of the safety of
24 any other person or the community or that the eligible defendant
25 will not obstruct or attempt to obstruct the criminal justice process,
26 or for the purpose of preventing the release of the eligible
27 defendant. Nothing in this section shall prohibit a court from
28 imposing monetary bail to assure an eligible defendant's appearance
29 in addition to non-monetary conditions if, in the court's discretion,
30 a combination of monetary bail and conditions are necessary to
31 facilitate the immediate and safe release of the defendant.

32 (2) If the eligible defendant is unable to post the monetary bail
33 imposed by the court pursuant to this subsection, and for that reason
34 remains detained in jail, the provisions of section 8 of P.L.2014,
35 c.31 (C.2A:162-22) shall apply to the eligible defendant.

36 d. (1) If the court does not find, after consideration, that the
37 release described in subsection a., b., or c. of this section will
38 reasonably assure the eligible defendant's appearance in court when
39 required, the protection of the safety of any other person or the
40 community, and that the eligible defendant will not obstruct or
41 attempt to obstruct the criminal justice process, the court may order
42 the pretrial release of the eligible defendant using a combination of
43 non-monetary conditions as set forth in subsection b. of this section,
44 and monetary bail as set forth in subsection c. of this section.

45 (2) If the eligible defendant is unable to post the monetary bail
46 imposed by the court in combination with non-monetary conditions
47 pursuant to this subsection, and for that reason remains detained in

1 jail, the provisions of section 8 of P.L.2014, c.31 (C.2A:162-22)
2 shall apply to the eligible defendant.

3 e. For purposes of the court's consideration for pretrial release
4 described in this section, with respect to whether the particular
5 method of release will reasonably assure that the eligible defendant
6 will not obstruct or attempt to obstruct the criminal justice process,
7 this reasonable assurance may be deemed to exist if the prosecutor
8 does not provide the court with information relevant to the risk of
9 whether the eligible defendant will obstruct or attempt to obstruct
10 the criminal justice process.

11 f. If a court orders a non-monetary condition as set forth in
12 subsection b. of this section and monetary bail as set forth in
13 subsection c. of this section, and the eligible defendant breaches
14 only a non-monetary condition, a bail agent or agency as defined in
15 section 1 of P.L.2003, c.202 (C.17:31-10) shall not be liable for the
16 forfeiture of a bail bond. This subsection shall not be construed to
17 relieve a bail agent or agency from liability for the forfeiture of a
18 bail bond when an eligible defendant willfully fails to appear in
19 court when required.

20 g. Nothing in this section or the provisions of P.L.2014, c.31
21 shall prevent a court from imposing monetary bail, with or without
22 conditions, following a finding that an eligible defendant previously
23 violated a condition of release on the eligible defendant's own
24 personal recognizance or a non-monetary condition of a pretrial
25 release ordered by the court.

26 (cf: P.L.2014, c.31, s.3)

27
28 4. Section 4 of P.L.2014, c.31 (C.2A:162-18) is amended to
29 read as follows:

30 4. a. (1) The court may order, before trial, the detention of an
31 eligible defendant charged with **any** a crime **],** or any offense
32 involving domestic violence as defined in subsection a. of section 3
33 of P.L.1991, c.261 (C.2C:25-19), enumerated in subsection a. of
34 section 5 of P.L.2014, c.31 (C.2A:162-19), of the first degree if
35 the prosecutor seeks the pretrial detention of the eligible defendant
36 under section 5 of P.L.2014, c.31 (C.2A:162-19) and after a hearing
37 pursuant to that section the court finds clear and convincing
38 evidence that no amount of monetary bail, non-monetary conditions
39 of pretrial release or combination of monetary bail and conditions
40 would reasonably assure the eligible defendant's appearance in
41 court when required, the protection of the safety of any other person
42 or the community, and that the eligible defendant will not obstruct
43 or attempt to obstruct the criminal justice process. The court may
44 also order the pretrial detention of an eligible defendant when the
45 prosecutor moves for a pretrial detention hearing and the eligible
46 defendant fails to rebut a presumption of pretrial detention that may
47 be established for the crimes enumerated under subsection b. of
48 section 5 of P.L.2014, c.31 (C.2A:162-19).

1 (2) For purposes of ordering the pretrial detention of an eligible
2 defendant pursuant to this section and section 5 of P.L.2014, c.31
3 (C.2A:162-19) or pursuant to section 10 of P.L.2014, c.31
4 (C.2A:162-24), when determining whether no amount of monetary
5 bail, non-monetary conditions or combination of monetary bail and
6 conditions would reasonably assure the eligible defendant's
7 appearance in court when required, the protection of the safety of
8 any other person or the community, or that the eligible defendant
9 will not obstruct or attempt to obstruct the criminal justice process,
10 the court may consider the amount of monetary bail only with
11 respect to whether it will, by itself or in combination with non-
12 monetary conditions, reasonably assure the eligible defendant's
13 appearance in court when required.

14 b. Regarding the pretrial detention hearing moved for by the
15 prosecutor, except for when an eligible defendant is charged with a
16 crime set forth under paragraph (1) or (2) of subsection b. of section
17 5 of P.L.2014, c.31 (C.2A:162-19), there shall be a rebuttable
18 presumption that some amount of monetary bail, non-monetary
19 conditions of pretrial release or combination of monetary bail and
20 conditions would reasonably assure the eligible defendant's
21 appearance in court when required, the protection of the safety of
22 any other person or the community, and that the eligible defendant
23 will not obstruct or attempt to obstruct the criminal justice process.

24 c. An eligible defendant may appeal an order of pretrial
25 detention pursuant to the Rules of Court. The appeal shall be heard
26 in an expedited manner. The eligible defendant shall be detained
27 pending the disposition of the appeal.

28 d. If the court does not order the pretrial detention of an
29 eligible defendant at the conclusion of the pretrial detention hearing
30 under this section and section 5 of P.L.2014, c.31 (C.2A:162-19),
31 the court shall order the release of the eligible defendant pursuant to
32 section 3 of P.L.2014, c.31 (C.2A:162-17).

33 (cf: P.L.2014, c.31, s.4)

34
35 5. Section 5 of P.L.2014, c.31 (C.2A:162-19) is amended to
36 read as follows:

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

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

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

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

47 (4) any crime enumerated under paragraph (2) of subsection b.
48 of section 2 of P.L.1994, c.133 (C.2C:7-2) or crime involving

1 human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-
2 8) or P.L.2013, c.51 (C.52:17B-237 et al.) when the victim is a
3 minor, or the crime of endangering the welfare of a child under
4 N.J.S.2C:24-4;

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

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

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

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

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

13 (c) the eligible defendant will obstruct or attempt to obstruct
14 justice, or threaten, injure, or intimidate, or attempt to threaten,
15 injure or intimidate, a prospective witness or juror **】** charged with a
16 crime of the first degree.

17 b. When a motion for pretrial detention is filed pursuant to
18 subsection a. of this section, there shall be a rebuttable presumption
19 that the eligible defendant shall be detained pending trial because
20 no amount of monetary bail, non-monetary condition or
21 combination of monetary bail and conditions would reasonably
22 assure the eligible defendant's appearance in court when required,
23 the protection of the safety of any other person or the community,
24 and that the eligible defendant will not obstruct or attempt to
25 obstruct the criminal justice process, if the court finds probable
26 cause that the eligible defendant:

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

28 (2) committed any crime of the first degree for which the
29 eligible defendant would be subject to an ordinary or extended term
30 of life imprisonment.

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

39 d. (1) Except as otherwise provided in this subsection, the
40 pretrial detention hearing shall be held no later than the eligible
41 defendant's first appearance unless the eligible defendant, or the
42 prosecutor, seeks a continuance. If a prosecutor files a motion for
43 pretrial detention after the eligible defendant's first appearance has
44 taken place or if no first appearance is required, the court shall
45 schedule the pretrial detention hearing to take place within three
46 working days of the date on which the prosecutor's motion was
47 filed, unless the prosecutor or the eligible defendant seeks a
48 continuance. Except for good cause, a continuance on motion of the

1 eligible defendant may not exceed five days, not including any
2 intermediate Saturday, Sunday, or legal holiday. Except for good
3 cause, a continuance on motion of the prosecutor may not exceed
4 three days, not including any intermediate Saturday, Sunday, or
5 legal holiday.

6 (2) Upon the filing of a motion by the prosecutor seeking the
7 pretrial detention of the eligible defendant and during any
8 continuance that may be granted by the court, the eligible defendant
9 shall be detained in jail, unless the eligible defendant was
10 previously released from custody before trial, in which case the
11 court shall issue a notice to appear to compel the appearance of the
12 eligible defendant at the detention hearing. The court, on motion of
13 the prosecutor or sua sponte, may order that, while in custody, an
14 eligible defendant who appears to be a drug dependent person
15 receive an assessment to determine whether that eligible defendant
16 is drug dependent.

17 e. (1) At the pretrial detention hearing, the eligible defendant
18 has the right to be represented by counsel, and, if financially unable
19 to obtain adequate representation, to have counsel appointed. The
20 eligible defendant shall be afforded an opportunity to testify, to
21 present witnesses, to cross-examine witnesses who appear at the
22 hearing, and to present information by proffer or otherwise. The
23 rules concerning admissibility of evidence in criminal trials shall
24 not apply to the presentation and consideration of information at the
25 hearing.

26 (2) In pretrial detention proceedings for which there is no
27 indictment, the prosecutor shall establish probable cause that the
28 eligible defendant committed the predicate offense. A presumption
29 of pretrial detention as provided in subsection b. of this section may
30 be rebutted by proof provided by the eligible defendant, the
31 prosecutor, or from other materials submitted to the court. The
32 standard of proof for a rebuttal of the presumption of pretrial
33 detention shall be a preponderance of the evidence. If proof cannot
34 be established to rebut the presumption, the court may order the
35 eligible defendant's pretrial detention. If the presumption is rebutted
36 by sufficient proof, the prosecutor shall have the opportunity to
37 establish that the grounds for pretrial detention exist pursuant to this
38 section.

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

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

11
12 6. Section 8 of P.L.2014, c.31 (C.2A:162-22) is amended to
13 read as follows:

14 8. a. Concerning an eligible defendant **【subject to】** who has
15 been charged with a first degree crime and for whom pretrial
16 detention **【as】** is ordered by a court pursuant to sections 4 and 5 of
17 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) or an eligible
18 defendant who is detained in jail due to the inability to post the
19 monetary bail imposed by the court pursuant to subsection c. or d.
20 of section 3 of P.L.2014, c.31 (C.2A:162-17):

21 (1) (a) The eligible defendant shall not remain detained in jail
22 for more than 90 days, not counting excludable time for reasonable
23 delays as set forth in subsection b. of this section, prior to the return
24 of an indictment. If the eligible defendant is not indicted within
25 that period of time, the eligible defendant shall be released from jail
26 unless, on motion of the prosecutor, the court finds that a
27 substantial and unjustifiable risk to the safety of any other person or
28 the community or the obstruction of the criminal justice process
29 would result from the eligible defendant's release from custody, so
30 that no appropriate conditions for the eligible defendant's release
31 could reasonably address that risk, and also finds that the failure to
32 indict the eligible defendant in accordance with the time
33 requirement set forth in this subparagraph was not due to
34 unreasonable delay by the prosecutor. If the court finds that a
35 substantial and unjustifiable risk to the safety of any other person or
36 the community or the obstruction of the criminal justice process
37 would result, and also finds that the failure to indict the eligible
38 defendant in accordance with the time requirement set forth in this
39 subparagraph was not due to unreasonable delay by the prosecutor,
40 the court may allocate an additional period of time, not to exceed 45
41 days, in which the return of an indictment shall occur.
42 Notwithstanding the court's previous findings for ordering the
43 eligible defendant's pretrial detention, or if the court currently does
44 not find a substantial and unjustifiable risk or finds unreasonable
45 delay by the prosecutor as described in this subparagraph, the court
46 shall order the release of the eligible defendant pursuant to section 3
47 of P.L.2014, c.31 (C.2A:162-17).

1 (b) If the eligible defendant is charged with or indicted for a
2 first degree crime on another matter resulting in the eligible
3 defendant's pretrial detention, the time calculations set forth in
4 subparagraph (a) of this paragraph for each matter shall run
5 independently.

6 (2) (a) An eligible defendant who has been indicted for a first
7 degree crime shall not remain detained in jail for more than 180
8 days on that charge following the return or unsealing of the
9 indictment, whichever is later, not counting excludable time for
10 reasonable delays as set forth in subsection b. of this section, before
11 commencement of the trial. If the trial does not commence within
12 that period of time, the eligible defendant shall be released from jail
13 unless, on motion of the prosecutor, the court finds that a
14 substantial and unjustifiable risk to the safety of any other person or
15 the community or the obstruction of the criminal justice process
16 would result from the eligible defendant's release from custody, so
17 that no appropriate conditions for the eligible defendant's release
18 could reasonably address that risk, and also finds that the failure to
19 commence trial in accordance with the time requirement set forth in
20 this subparagraph was not due to unreasonable delay by the
21 prosecutor. If the court finds that a substantial and unjustifiable
22 risk to the safety of any other person or the community or the
23 obstruction of the criminal justice process would result, and also
24 finds that the failure to commence trial in accordance with the time
25 requirement set forth in this subparagraph was not due to
26 unreasonable delay by the prosecutor, the court may allocate an
27 additional period of time in which the eligible defendant's trial shall
28 commence. Notwithstanding the court's previous findings for
29 ordering the eligible defendant's pretrial detention, or if the court
30 currently does not find a substantial and unjustifiable risk or finds
31 unreasonable delay by the prosecutor as described in this
32 subparagraph, the court shall order the release of the eligible
33 defendant pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).
34 Notwithstanding any other provision of this section, an eligible
35 defendant shall be released from jail pursuant to section 3 of
36 P.L.2014, c.31 (C.2A:162-17) after a release hearing if, two years
37 after the court's issuance of the pretrial detention order for the
38 eligible defendant, excluding any delays attributable to the eligible
39 defendant, the prosecutor is not ready to proceed to voir dire or to
40 opening argument, or to the hearing of any motions that had been
41 reserved for the time of trial.

42 (b) (i) For the purposes of this paragraph, a trial is considered
43 to have commenced when the court determines that the parties are
44 present and directs them to proceed to voir dire or to opening
45 argument, or to the hearing of any motions that had been reserved
46 for the time of trial.

47 (ii) The return of a superseding indictment against the eligible
48 defendant shall extend the time for the trial to commence.

- 1 (iii) If an indictment is dismissed without prejudice upon motion
2 of the eligible defendant for any reason, and a subsequent
3 indictment is returned, the time for trial shall begin running from
4 the date of the return of the subsequent indictment.
- 5 (iv) A trial ordered after a mistrial or upon a motion for a new
6 trial shall commence within 120 days of the entry of the order of the
7 court. A trial ordered upon the reversal of a judgment by any
8 appellate court shall commence within 120 days of the service of
9 that court's trial mandate.
- 10 (c) If the eligible defendant is indicted for a first degree crime
11 on another matter resulting in the eligible defendant's pretrial
12 detention, the time calculations set forth in this paragraph for each
13 matter shall run independently.
- 14 b. (1) The following periods shall be excluded in computing
15 the time in which a case shall be indicted or tried:
- 16 (a) The time resulting from an examination and hearing on
17 competency and the period during which the eligible defendant is
18 incompetent to stand trial or incapacitated;
- 19 (b) The time from the filing to the disposition of an eligible
20 defendant's application for supervisory treatment pursuant to
21 N.J.S.2C:36A-1 or N.J.S.2C:43-12 et seq., special probation
22 pursuant to N.J.S.2C:35-14, drug or alcohol treatment as a condition
23 of probation pursuant to N.J.S.2C:45-1, or other pretrial treatment
24 or supervisory program;
- 25 (c) The time from the filing to the final disposition of a motion
26 made before trial by the prosecutor or the eligible defendant;
- 27 (d) The time resulting from a continuance granted, in the court's
28 discretion, at the eligible defendant's request or at the request of
29 both the eligible defendant and the prosecutor;
- 30 (e) The time resulting from the detention of an eligible
31 defendant in another jurisdiction provided the prosecutor has been
32 diligent and has made reasonable efforts to obtain the eligible
33 defendant's presence;
- 34 (f) The time resulting from exceptional circumstances
35 including, but not limited to, a natural disaster, the unavoidable
36 unavailability of an eligible defendant, material witness or other
37 evidence, when there is a reasonable expectation that the eligible
38 defendant, witness or evidence will become available in the near
39 future;
- 40 (g) On motion of the prosecutor, the delay resulting when the
41 court finds that the case is complex due to the number of defendants
42 or the nature of the prosecution;
- 43 (h) The time resulting from a severance of codefendants when
44 that severance permits only one trial to commence within the time
45 period for trial set forth in this section;
- 46 (i) The time resulting from an eligible defendant's failure to
47 appear for a court proceeding;

- 1 (j) The time resulting from a disqualification or recusal of a
2 judge;
- 3 (k) The time resulting from a failure by the eligible defendant to
4 provide timely and complete discovery;
- 5 (l) The time for other periods of delay not specifically
6 enumerated if the court finds good cause for the delay; and
- 7 (m) Any other time otherwise required by statute.
- 8 (2) The failure by the prosecutor to provide timely and
9 complete discovery shall not be considered excludable time unless
10 the discovery only became available after the time set for discovery.
11 (cf: P.L.2014, c.31, s.8)

12

13 7. Section 11 of P.L.2014, c.31 (C.2A:162-25) is amended to
14 read as follows:

15 11. a. The Administrative Director of the Courts shall establish
16 and maintain a Statewide Pretrial Services Program which shall
17 provide pretrial services to effectuate the purposes of sections 1
18 through 11 and section 20 of P.L.2014, c.31 **[(C.2A:162-15 et**
19 **seq.)]** (C.2A:162-15 through C.2A:162-26).

20 b. The Pretrial Services Program shall, **[**after an eligible
21 defendant is temporarily detained pursuant to subsection a. of
22 section 2 of P.L.2014, c.31 (C.2A:162-16)**]** following the issuance
23 of a complaint-warrant for an eligible defendant found not to be
24 immediately bailable pursuant to subsection a. of section 2 of
25 P.L.2014, c.31 (C.2A:162-16), conduct a risk assessment on that
26 eligible defendant for the purpose of making recommendations to
27 the court concerning an appropriate pretrial release decision,
28 including whether the eligible defendant shall be: released on the
29 eligible defendant's own personal recognizance **[**or on execution of
30 an unsecured appearance bond**]**; released on a non-monetary
31 condition or conditions as set forth under subsection b. of section 3
32 of P.L.2014, c.31 (C.2A:162-17); released **[**on monetary**]** upon
33 execution of a bail bond or modified bail bond if bail was
34 previously set pursuant to subsection a. of section 2 of P.L.2014,
35 c.31 (C.2A:162-16), other than an unsecured appearance bond;
36 released on a combination of monetary bail and non-monetary
37 conditions set forth under section 3 of P.L.2014, c.31 (C.2A:162-
38 17); or any other conditions necessary to effectuate the purposes of
39 sections 1 through 11 and section 20 of P.L.2014, c.31 **[(C.2A:162-**
40 **15 et seq.)]** (C.2A:162-15 through C.2A:162-26. The risk
41 assessment shall be completed and presented to the court so that the
42 court can, without unnecessary delay, but in no case later than **[48]**
43 96 hours after the eligible defendant's commitment to jail, make a
44 pretrial release decision on the eligible defendant pursuant to
45 section 3 of P.L.2014, c.31 (C.2A:162-17).

1 c. The pretrial risk assessment shall be conducted using a risk
2 assessment instrument approved by the Administrative Director of
3 the Courts that meets the requirements of this subsection.

4 (1) The approved risk assessment instrument shall be objective,
5 standardized, and developed based on analysis of empirical data and
6 risk factors relevant to **the** an eligible defendant's risk of failure
7 to appear in court when required and the eligible defendant's danger
8 to the community while on pretrial release and which may include
9 consideration of the factors set forth in sections 3 and 6 of
10 P.L.2014, c.31 (C.2A:162-17 and C.2A:162-20). The risk
11 assessment instrument shall not be required to include factors
12 specifically pertaining to the risk for obstructing or attempting to
13 obstruct the criminal justice process.

14 (2) The approved risk assessment instrument shall gather
15 demographic information about the eligible defendant including, but
16 not limited to, race, ethnicity, gender, financial resources, and
17 socio-economic status. Recommendations for pretrial release shall
18 not be discriminatory based on race, ethnicity, gender, or socio-
19 economic status.

20 d. In addition to the pretrial risk assessments made pursuant to
21 this section, the Pretrial Services Program shall monitor appropriate
22 eligible defendants released on conditions as ordered by the court.

23 (cf: P.L.2014, c.31, s.11)
24

25 8. Sections 1 through 7 shall take effect on December 30, 2016,
26 but the Administrative Director of the Courts may take any
27 anticipatory administrative action in advance of that date as shall be
28 necessary for the implementation of this act.
29
30

31 STATEMENT 32

33 This bill makes several changes to P.L.2014, c.31, which
34 implemented a recently approved constitutional amendment
35 providing for pretrial detention of certain criminal defendants. (see
36 N.J. Const. (1947), Article I, paragraph 11).

37 Specifically, the bill establishes that only defendants charged
38 with a crime of the first degree may be detained prior to trial and
39 grants defendants charged with lesser offenses the initial option of
40 being released on monetary bail following the issuance of a
41 complaint-warrant. The bill also extends the time period from 48
42 to 96 hours during which a court is required to make a pretrial
43 release determination for defendants who are ineligible for
44 immediate release.

45 The bill also removes an eligible defendant's ability to be
46 released on an unsecured appearance bond. Unsecured bonds are
47 generally executed when a defendant is released without posting

1 cash or collateral. Under the bill, an eligible defendant may still be
2 released on his or her own recognizance as provided by current law.

3 In addition, the bill allows an eligible defendant to be released on
4 monetary bail if a court finds that the defendant has previously
5 violated non-monetary release conditions or conditions imposed
6 when released on personal recognizance. The bill provides that bail
7 agents are to be liable for the forfeiture of a bail bond resulting
8 from an eligible defendant's violation of non-monetary conditions.

9 Under P.L.2014, c.31, an eligible defendant charged with certain
10 crimes is required to be temporarily detained so that the Pretrial
11 Services Program is able to prepare a risk assessment with
12 recommendations on conditions of release and for the court to issue
13 a pretrial release decision. Currently, defendants who commit the
14 following crimes are eligible for pretrial detention: (1) a crime of
15 the first or second degree enumerated under subsection d. of section
16 2 of P.L.1997, c.117 (C.2C:43-7.2), part of the State's "No Early
17 Release Act"; (2) a crime for which the eligible defendant would be
18 subject to an ordinary or extended term of life imprisonment; (3)
19 any crime, if previously convicted of two or more crimes described
20 in categories (1) or (2); (4) any criminal sexual offense enumerated
21 under paragraph (2) of subsection b. of section 2 of P.L.1994, c.133
22 (C.2C:7-2) or crime involving human trafficking pursuant to section
23 1 of P.L.2005, c.77 (C.2C:13-8) or P.L.2013, c.51 (C.52:17B-237 et
24 al.) when the victim is a minor, or the crime of endangering the
25 welfare of a child under N.J.S.2C:24-4; (5) any crime that imposes
26 a mandatory minimum term of imprisonment and parole
27 ineligibility, due to the use or possession of a firearm while in the
28 course of committing or attempting to commit the crime, as set
29 forth in subsection c. of N.J.S.2C:43-6, part of the Graves Act
30 (P.L.1981, c.31); (6) any crime or offense involving domestic
31 violence as defined in subsection a. of section 3 of P.L.1991, c.261
32 (C.2C:25-19); and (7) any other crime for which the prosecutor
33 believes there is a serious risk that the eligible defendant would not
34 appear in court, would pose a danger to another person or the
35 community, or would obstruct or attempt to obstruct justice or
36 threaten, injure, or intimidate a prospective witness or juror.

37 Because of the financial burden that may be placed on the
38 Pretrial Services Program, which is required to conduct a risk
39 assessment of individuals charged with these crimes, the bill limits
40 pretrial detention to defendants charged with a crime of the first
41 degree. In addition, this bill establishes that monetary bail is the
42 initial option for release, making all eligible defendants
43 immediately bailable, except for defendants charged with a crime of
44 the first degree or defendants who are unable to post bail.