

ASSEMBLY, No. 2426

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 7, 2022

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

SYNOPSIS

Establishes rebuttable presumption of pretrial detention for defendants who commit certain firearm offenses under Graves Act.

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:

5

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 for a crime involving the use or
6 possession of a firearm.

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

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

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

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

1 not apply to the presentation and consideration of information at the
2 hearing.

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

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

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

36

37 2. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 This bill establishes a rebuttable presumption that a defendant
43 subject to a mandatory prison term for a firearm-related crime pursuant
44 to the "Graves Act" is to be detained prior to trial. P.L.1981, c.31,
45 also known as the "Graves Act," sets forth mandatory minimum
46 terms of imprisonment for individuals convicted of certain crimes
47 involving the use or possession of a firearm.

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 a defendant who is found to be a flight risk, a danger to
5 another or the community, or likely to obstruct further criminal
6 proceedings.

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

17 This bill provides that the rebuttable presumption of pretrial
18 detention also applies to defendants charged with a firearm related
19 crime under the “Graves Act.” The act requires the court to
20 sentence a person who unlawfully possesses a firearm or commits
21 certain serious crimes while possessing a firearm to a mandatory
22 term of incarceration. The mandatory term of incarceration is one-
23 third to one-half of the sentence imposed, or three years, whichever
24 is greater.