

[First Reprint]

ASSEMBLY, No. 2426

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED FEBRUARY 7, 2022

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

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Assemblywoman VERLINA REYNOLDS-JACKSON

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Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

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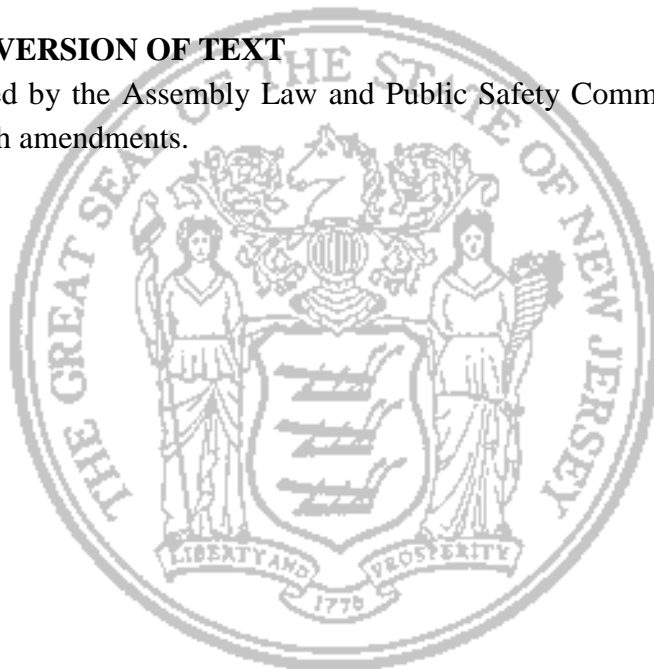
Assemblywoman Jasey and Assemblyman Tully

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on March 14, 2022, with amendments.



(Sponsorship Updated As Of: 3/24/2022)

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

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

27 (2) For purposes of ordering the pretrial detention of an eligible
28 defendant pursuant to this section and section 5 of P.L.2014, c.31
29 (C.2A:162-19) or pursuant to section 10 of P.L.2014, c.31
30 (C.2A:162-24), when determining whether no amount of monetary
31 bail, non-monetary conditions or combination of monetary bail and
32 conditions would reasonably assure the eligible defendant's
33 appearance in court when required, the protection of the safety of
34 any other person or the community, or that the eligible defendant
35 will not obstruct or attempt to obstruct the criminal justice process,
36 the court may consider the amount of monetary bail only with
37 respect to whether it will, by itself or in combination with non-
38 monetary conditions, reasonably assure the eligible defendant's
39 appearance in court when required.

40 b. Regarding the pretrial detention hearing moved for by the
41 prosecutor, except for when an eligible defendant is charged with a
42 crime set forth **[under paragraph]** in paragraphs (1) **[or (2)]**
43 through (4) of subsection b. of section 5 of P.L.2014, c.31
44 (C.2A:162-19), there shall be a rebuttable presumption that some

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALP committee amendments adopted March 14, 2022.

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

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

11 d. If the court does not order the pretrial detention of an
12 eligible defendant at the conclusion of the pretrial detention hearing
13 **【under】 pursuant to** this section and section 5 of P.L.2014, c.31
14 (C.2A:162-19), the court shall order the release of the eligible
15 defendant pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).¹
16 (cf: P.L.2014, c.31, s.4)

17

18 ¹**【1.】 2.**¹ Section 5 of P.L.2014, c.31 (C.2A:162-19) is
19 amended to read as follows:

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

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

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

28 (3) any crime if the eligible defendant has been convicted of two
29 or more offenses ¹**【under】 pursuant to**¹ paragraph (1) or (2) of this
30 subsection;

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

37 (5) any crime enumerated ¹**【under】 in**¹ subsection c. of
38 N.J.S.2C:43-6;

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

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

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

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

1 (c) the eligible defendant will obstruct or attempt to obstruct
2 justice, or threaten, injure, or intimidate, or attempt to threaten,
3 injure or intimidate, a prospective witness or juror.

4 b. When a motion for pretrial detention is filed pursuant to
5 subsection a. of this section, there shall be a rebuttable presumption
6 that the eligible defendant shall be detained pending trial because
7 no amount of monetary bail, non-monetary condition or
8 combination of monetary bail and conditions would 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, if the court finds probable
13 cause that the eligible defendant ¹committed¹:

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

15 (2) ¹**【committed】**¹ any crime for which the eligible defendant
16 would be subject to an ordinary or extended term of life
17 imprisonment; ¹**【or】**¹

18 (3) ¹**【committed】** any crime of the first or second degree
19 enumerated in subsection d. of section 2 of P.L.1997, c.117
20 (C.2C:43-7.2); or

21 (4) ¹any crime for which the eligible defendant would be subject
22 to a mandatory term of imprisonment pursuant to subsection c. of
23 N.J.S.2C:43-6 for a crime involving the use or possession of a
24 firearm ¹other than a violation of:

25 (a) subsection a. or d. of N.J.S.2C:39-3;

26 (b) paragraph (1) or (2) of subsection a. of N.J.S.2C:39-4;

27 (c) subsection a. of section 1 of P.L.1998, c.26, (C.2C:39-4.1);

28 or

29 (d) paragraph (1) of subsection b. or paragraph (1) or (2) of
30 subsection c. of N.J.S.2C:39-5¹ .

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 ¹**【under】** in¹ subsection b. of section 3 of P.L.2014, c.31
35 (C.2A:162-17) will reasonably assure the eligible defendant's
36 appearance in court when required, the protection of the safety of
37 any other person or the community, and that the eligible defendant
38 will not obstruct 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

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

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

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

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

40 (3) Except when an eligible defendant has failed to rebut a
41 presumption of pretrial detention pursuant to subsection b. of this
42 section, the court's finding to support an order of pretrial detention
43 pursuant to section 4 of P.L.2014, c.31 (C.2A:162-18) that no
44 amount of monetary bail, non-monetary conditions or combination
45 of monetary bail and conditions will reasonably assure the eligible
46 defendant's appearance in court when required, the protection of the
47 safety of any other person or the community, and that the eligible

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

13

14 ¹~~2.~~ 3.¹ This act shall take effect immediately.