

[Second Reprint]

**ASSEMBLY, No. 2426**

**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

INTRODUCED FEBRUARY 7, 2022

**Sponsored by:**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

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**District 15 (Hunterdon and Mercer)**

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**Senator JOSEPH P. CRYAN**

**District 20 (Union)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Assemblywoman Jasey, Assemblyman Tully, Senators Bramnick, Singleton, Lagana, Cunningham, Assemblywoman McKnight and Assemblyman Conaway**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Senate Law and Public Safety Committee on June 13, 2022, with amendments.

(Sponsorship Updated As Of: 6/29/2022)

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 <sup>2</sup>**[**<sup>1</sup>1. 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:

<sup>1</sup>Assembly ALP committee amendments adopted March 14, 2022.

<sup>2</sup>Senate SLP committee amendments adopted June 13, 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).<sup>1</sup>  
16 (cf: P.L.2014, c.31, s.4)<sup>2</sup>

17  
18 <sup>1</sup>**【1.】** <sup>2</sup>**【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 <sup>1</sup>**【under】**  
25 **in**<sup>1</sup> 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 <sup>1</sup>**【under】 pursuant to**<sup>1</sup> paragraph (1) or (2) of this  
30 subsection;

31 (4) any crime enumerated <sup>1</sup>**【under】 in**<sup>1</sup> 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 <sup>1</sup>**【under】 pursuant to**<sup>1</sup> N.J.S.2C:24-4;

37 (5) any crime enumerated <sup>1</sup>**【under】 in**<sup>1</sup> 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

46 (c) the eligible defendant will obstruct or attempt to obstruct  
47 justice, or threaten, injure, or intimidate, or attempt to threaten,  
48 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 <sup>1</sup>committed<sup>1</sup>:

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

12       (2) <sup>1</sup>**【committed】**<sup>1</sup> any crime for which the eligible defendant  
13 would be subject to an ordinary or extended term of life  
14 imprisonment;<sup>1</sup>**【or】**<sup>1</sup>

15       (3) <sup>1</sup>**【committed】** any crime of the first or second degree  
16 enumerated in subsection d. of section 2 of P.L.1997, c.117  
17 (C.2C:43-7.2); or

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

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

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

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

25 or

26       (d) paragraph (1) of subsection b. or paragraph (1) or (2) of  
27 subsection c. of N.J.S.2C:39-5<sup>1</sup> .

28       c. A court shall hold a hearing to determine whether any  
29 amount of monetary bail or non-monetary conditions or  
30 combination of monetary bail and conditions, including those set  
31 forth <sup>1</sup>**【under】** in<sup>1</sup> subsection b. of section 3 of P.L.2014, c.31  
32 (C.2A:162-17) will 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, and that the eligible defendant  
35 will not obstruct or attempt to obstruct the criminal justice process.

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

1 three days, not including any intermediate Saturday, Sunday, or  
2 legal holiday.

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

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

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

36 (3) Except when an eligible defendant has failed to rebut a  
37 presumption of pretrial detention pursuant to subsection b. of this  
38 section, the court's finding to support an order of pretrial detention  
39 pursuant to section 4 of P.L.2014, c.31 (C.2A:162-18) that no  
40 amount of monetary bail, non-monetary conditions or combination  
41 of monetary bail and conditions will 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 shall be supported by clear and convincing evidence.

46 f. The hearing may be reopened, before or after a  
47 determination by the court, at any time before trial, if the court  
48 finds that information exists that was not known to the prosecutor  
49 or the eligible defendant at the time of the hearing and that has a

1 material bearing on the issue of whether there are conditions of  
2 release that will 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, or that the eligible defendant  
5 will not obstruct or attempt to obstruct the criminal justice process.

6 (cf: P.L.2014, c.31, s.5)]<sup>2</sup>

7  
8 <sup>2</sup>1. Section 5 of P.L.2014, c.31 (C.2A:162-19) is amended to  
9 read as follows:

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

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

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

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

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

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

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

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

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

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

34 (c) the eligible defendant will obstruct or attempt to obstruct  
35 justice, or threaten, injure, or intimidate, or attempt to threaten,  
36 injure or intimidate, a prospective witness or juror.

37 b. When a motion for pretrial detention is filed pursuant to  
38 subsection a. of this section, there shall be a rebuttable presumption  
39 that the eligible defendant shall be detained pending trial because  
40 no amount of monetary bail, non-monetary condition or  
41 combination of monetary bail and conditions would reasonably  
42 assure the eligible defendant's appearance in court when required,  
43 the protection of the safety of any other person or the community,  
44 and that the eligible defendant will not obstruct or attempt to  
45 obstruct the criminal justice process, if the court finds probable  
46 cause that the eligible defendant:

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

48 (2) committed any crime for which the eligible defendant would  
49 be subject to an ordinary or extended term of life imprisonment.

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

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

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

35 e. (1) At the pretrial detention hearing, the eligible defendant  
36 has the right to be represented by counsel, and, if financially unable  
37 to obtain adequate representation, to have counsel appointed. The  
38 eligible defendant shall be afforded an opportunity to testify, to  
39 present witnesses, to cross-examine witnesses who appear at the  
40 hearing, and to present information by proffer or otherwise. The  
41 rules concerning admissibility of evidence in criminal trials shall  
42 not apply to the presentation and consideration of information at the  
43 hearing.

44 (2) In pretrial detention proceedings for which there is no  
45 indictment, the prosecutor shall establish probable cause that the  
46 eligible defendant committed the predicate offense. A presumption  
47 of pretrial detention as provided in subsection b. of this section may  
48 be rebutted by proof provided by the eligible defendant, the  
49 prosecutor, or from other materials submitted to the court. The

1 standard of proof for a rebuttal of the presumption of pretrial  
2 detention shall be a preponderance of the evidence. If proof cannot  
3 be established to rebut the presumption, the court may order the  
4 eligible defendant's pretrial detention. If the presumption is rebutted  
5 by sufficient proof, the prosecutor shall have the opportunity to  
6 establish that the grounds for pretrial detention exist pursuant to this  
7 section.

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

18 f. The hearing may be reopened, before or after a  
19 determination by the court, at any time before trial, if the court  
20 finds that information exists that was not known to the prosecutor  
21 or the eligible defendant at the time of the hearing and that has a  
22 material bearing on the issue of whether there are conditions of  
23 release that will reasonably assure the eligible defendant's  
24 appearance in court when required, the protection of the safety of  
25 any other person or the community, or that the eligible defendant  
26 will not obstruct or attempt to obstruct the criminal justice process.

27 g. When a motion for pretrial detention is filed pursuant to  
28 subsection a. of this section, a pretrial recommendation of no release  
29 pursuant to subsection f. of section 6 of P.L.2014, c.31 (C.2A:162-20)  
30 may constitute prima facie evidence to overcome the presumption of  
31 release as set forth in subsection b. of section 4 of P.L.2014, c.31  
32 (C.2A:162-18), if the court finds probable cause that the eligible  
33 defendant committed any crime for which the eligible defendant would  
34 be subject to a mandatory term of imprisonment pursuant to subsection  
35 c. of N.J.S.2C:43-6 for a crime involving the use or possession of a  
36 firearm other than a violation of:

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

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

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

40 (4) paragraph (1) of subsection b. or paragraph (1) or (2) of  
41 subsection c. of N.J.S.2C:39-5.<sup>2</sup>

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

43

44 <sup>2</sup>2. Section 6 of P.L.2014, c.31 (C.2A:162-20) is amended to  
45 read as follows:

46 6. In determining in a pretrial detention hearing whether no  
47 amount of monetary bail, non-monetary conditions or combination  
48 of monetary bail and conditions would reasonably assure the  
49 eligible defendant's appearance in court when required, the



1 protection of the safety of any other person or the community, or  
2 that the eligible defendant will not obstruct or attempt to obstruct  
3 the criminal justice process, the court may take into account  
4 information concerning:

5 a. The nature and circumstances of the offense charged;

6 b. The weight of the evidence against the eligible defendant,  
7 except that the court may consider the admissibility of any evidence  
8 sought to be excluded;

9 c. The history and characteristics of the eligible defendant,  
10 including:

11 (1) the eligible defendant's character, physical and mental  
12 condition, family ties, employment, financial resources, length of  
13 residence in the community, community ties, past conduct, history  
14 relating to drug or alcohol abuse, criminal history, and record  
15 concerning appearances at court proceedings, except with respect to  
16 these factors, the court shall not consider manufacturing,  
17 distributing, or dispensing, or possessing or having under control  
18 with intent to manufacture, distribute, or dispense, marijuana or  
19 hashish in violation of paragraph (12) of subsection b. of  
20 N.J.S.2C:35-5, or possession of marijuana or hashish in violation of  
21 paragraph (3) of subsection a. of N.J.S.2C:35-10; and

22 (2) whether, at the time of the current offense or arrest, the  
23 eligible defendant was on probation, parole, or on other release  
24 pending trial, sentencing, appeal, or completion of sentence for an  
25 offense under federal law, or the law of this or any other state;

26 d. The nature and seriousness of the danger to any other person  
27 or the community that would be posed by the eligible defendant's  
28 release, if applicable;

29 e. The nature and seriousness of the risk of obstructing or  
30 attempting to obstruct the criminal justice process that would be  
31 posed by the eligible defendant's release, if applicable; and

32 f. The release recommendation of the pretrial services program  
33 obtained using a risk assessment instrument under section 11 of  
34 P.L.2014, c.31 (C.2A:162-25). Pretrial services shall recommend no  
35 release when a defendant has been charged with any crime for which  
36 the eligible defendant would be subject to a mandatory term of  
37 imprisonment pursuant to subsection c. of N.J.S.2C:43-6 for a crime  
38 involving the use or possession of a firearm other than a violation of:

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

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

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

42 (4) paragraph (1) of subsection b. or paragraph (1) or (2) of  
43 subsection c. of N.J.S.2C:39-5.<sup>2</sup>

44 (cf: P.L.2021, c.19, s.8)

45

46 <sup>1</sup>[2.] 3.<sup>1</sup> This act shall take effect immediately.