

SENATE, No. 3531

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED SEPTEMBER 12, 2024

Sponsored by:

Senator MICHAEL L. TESTA, JR.

District 1 (Atlantic, Cape May and Cumberland)

Senator BRIAN P. STACK

District 33 (Hudson)

Co-Sponsored by:

Senators Holzapfel, Steinhardt, Henry and Corrado

SYNOPSIS

Establishes rebuttable presumption of pretrial detention for child sexual abuse and child endangerment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/12/2024)

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 4 of P.L.2014, c.31 (C.2A:162-18) is amended to read
7 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 section 5 of
14 P.L.2014, c.31 (C.2A:162-19) and after a hearing pursuant to that
15 section the court finds clear and convincing evidence that no
16 amount of monetary bail, non-monetary conditions of pretrial
17 release or combination of monetary bail and conditions would
18 reasonably assure the eligible defendant's appearance in court when
19 required, the protection of the safety of any other person or the
20 community, and that the eligible defendant will not obstruct or
21 attempt to obstruct the criminal justice process. The court may also
22 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 subsection b. of
26 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 (1) **[or]**, (2), (3), or (4) of
43 subsection b. of section 5 of P.L.2014, c.31 (C.2A:162-19), there
44 shall be a rebuttable presumption that some amount of monetary
45 bail, non-monetary conditions of pretrial release or combination of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

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

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

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

16
17 2. Section 5 of P.L.2014, c.31 (C.2A:162-19) is amended to read
18 as follows:

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

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

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

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

29 (4) any crime enumerated under paragraph (2) of subsection b. of
30 section 2 of P.L.1994, c.133 (C.2C:7-2) or crime involving human
31 trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or
32 P.L.2013, c.51 (C.52:17B-237 et al.) when the victim is a minor,
33 **[or]** the crime of endangering the welfare of a child under
34 N.J.S.2C:24-4, the crime of sexual assault pursuant to N.J.S.2C:14-
35 2 when the victim is a minor, or the crime of criminal sexual
36 contact pursuant to N.J.S.2C:14-3 when the victim is a minor;

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

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

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

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

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

45 (c) the eligible defendant will obstruct or attempt to obstruct
46 justice, or threaten, injure, or intimidate, or attempt to threaten,
47 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:

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

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

14 (3) committed sexual assault pursuant to N.J.S.2C:14-2 when the
15 victim is a minor or criminal sexual contact pursuant to
16 N.J.S.2C:14-3 when the victim is a minor; or

17 (4) committed the crime of endangering the welfare of a child
18 pursuant to N.J.S.2C:24-4.

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

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

42 (2) Upon the filing of a motion by the prosecutor seeking the
43 pretrial detention of the eligible defendant and during any
44 continuance that may be granted by the court, the eligible defendant
45 shall be detained in jail, unless the eligible defendant was
46 previously released from custody before trial, in which case the
47 court shall issue a notice to appear to compel the appearance of the
48 eligible defendant at the detention hearing. The court, on motion of

1 the prosecutor or sua sponte, may order that, while in custody, an
2 eligible defendant who appears to be a drug-dependent person
3 receive an assessment to determine whether that eligible defendant
4 is drug-dependent.

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

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

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

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

46 g. When a motion for pretrial detention is filed pursuant to
47 subsection a. of this section, a pretrial recommendation of no
48 release pursuant to subsection f. of section 6 of P.L.2014, c.31

1 (C.2A:162-20) may constitute prima facie evidence to overcome the
2 presumption of release as set forth in subsection b. of section 4 of
3 P.L.2014, c.31 (C.2A:162-18), if the court finds probable cause that
4 the eligible defendant committed any crime for which the eligible
5 defendant would be subject to a mandatory term of imprisonment
6 pursuant to subsection c. of N.J.S.2C:43-6 for a crime involving the
7 use or possession of a firearm other than a violation of:

- 8 (1) subsection a. or d. of N.J.S.2C:39-3;
9 (2) paragraph (1) or (2) of subsection a. of N.J.S.2C:39-4;
10 (3) subsection a. of section 1 of P.L. 1998, c.26 (C.2C:39-4.1); or
11 (4) paragraph (1) of subsection b. or paragraph (1) or (2) of
12 subsection c. of N.J.S.2C:39-5.
13 (cf: P.L.2022, c.43, s.1)

14

15 3. This act shall take effect immediately.

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STATEMENT

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20 This bill establishes a rebuttable presumption of pretrial
21 detention for a defendant charged with sexual assault or criminal
22 sexual contact when the victim is a minor, or endangering the
23 welfare of a child.

24 Under P.L.2014, c.31, also known as the “Bail Reform Law,”
25 criminal courts are authorized to order the pretrial release of a
26 defendant pending further proceedings, or order pretrial detention
27 of a defendant who is found to be a flight risk, a danger to another
28 or the community, or likely to obstruct further criminal
29 proceedings.

30 Currently, there is a rebuttable presumption that a defendant who
31 is charged with murder or a crime that subjects the defendant to an
32 ordinary or extended term of life imprisonment is to be detained
33 pending trial. This rebuttable presumption applies when a
34 prosecutor makes a motion for pretrial detention, but may be
35 rebutted upon a showing of proof, by a preponderance of the
36 evidence, in favor of the defendant. If the presumption is not
37 rebutted, the court may order pretrial detention of the defendant. If
38 the presumption is rebutted, the prosecutor still has the opportunity
39 to establish other grounds for pretrial detention.

40 This bill provides that the rebuttable presumption of pretrial
41 detention also applies to defendants charged with the crime of
42 sexual assault pursuant to N.J.S.2C:14-2 when the victim is a
43 minor, the crime of criminal sexual contact pursuant to
44 N.J.S.2C:14-3 when the victim is a minor, and the crime of
45 endangering the welfare of a child under N.J.S.2C:24-4.