

# ASSEMBLY, No. 4958

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 8, 2017

**Sponsored by:**

**Assemblyman R. BRUCE LAND**

**District 1 (Atlantic, Cape May and Cumberland)**

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**District 1 (Atlantic, Cape May and Cumberland)**

**SYNOPSIS**

Establishes rebuttable presumption that person who commits crime with bail restrictions be detained prior to trial.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning pretrial detention of certain offenders and  
2 amending P.L.2014, c.31 and P.L.1994, c.144.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (2) committed a crime with bail restrictions as defined in  
3 subsection a. of section 1 of P.L.1994, c.144 (C.2A:162-12) or any  
4 other crime for which the eligible defendant would be subject to an  
5 ordinary or extended term of life imprisonment.

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

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

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

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

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

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

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

34

35 2. Section 1 of P.L.1994, c.144 (C.2A:162-12) is amended to  
36 read as follows:

37 1. a. As used in this section:

38 "Crime with bail restrictions" means a crime of the first or  
39 second degree charged under any of the following sections:

- |                                      |                                   |
|--------------------------------------|-----------------------------------|
| 40 (1) Murder                        | 2C:11-3.                          |
| 41 (2) Manslaughter                  | 2C:11-4.                          |
| 42 (3) Kidnapping                    | 2C:13-1.                          |
| 43 (4) Sexual Assault                | 2C:14-2.                          |
| 44 (5) Robbery                       | 2C:15-1.                          |
| 45 (6) Carjacking                    | P.L.1993, c.221, s.1 (C.2C:15-2). |
| 46 (7) Arson and Related Offenses    | 2C:17-1.                          |
| 47 (8) Causing or Risking Widespread |                                   |
| 48 Injury or Damage                  | 2C:17-2.                          |

- 1 (9) Burglary 2C:18-2.  
2 (10) Theft by Extortion 2C:20-5.  
3 (11) Endangering the Welfare of Children 2C:24-4.  
4 (12) Resisting Arrest; Eluding Officer 2C:29-2.  
5 (13) Escape 2C:29-5.  
6 (14) Corrupting or Influencing a Jury 2C:29-8.  
7 (15) Possession of Weapons for Unlawful Purposes 2C:39-4.  
8 (16) Weapons Training for Illegal Activities  
9 P.L.1983, c.229, s.1 (C.2C:39-14).  
10 (17) Soliciting or Recruiting Gang Members  
11 P.L.1999, c.160, s.1 (C.2C:33-28).  
12 (18) Human Trafficking P.L.2005, c.77, s.1 (C.2C:13-8).  
13 "Crime with bail restrictions" also includes any first or second  
14 degree drug-related crimes under chapter 35 of Title 2C of the New  
15 Jersey Statutes and any first or second degree racketeering crimes  
16 under chapter 41 of Title 2C of the New Jersey Statutes.  
17 "Crime with bail restrictions" also includes any crime or offense  
18 involving domestic violence, as defined in subsection a. of section 3  
19 of P.L.1991, c.261 (C.2C:25-19), where the defendant was subject  
20 to a temporary or permanent restraining order issued pursuant to the  
21 provisions of the "Prevention of Domestic Violence Act of 1991,"  
22 P.L.1991, c.261 (C.2C:25-17 et al.) and is charged with a crime  
23 committed against a person protected under the order or where the  
24 defendant is charged with contempt pursuant to N.J.S.2C:29-9.  
25 b. Subject to the provisions of subsection c. of this section, a  
26 person charged with a crime with bail restrictions may post the  
27 required amount of bail only in the form of:  
28 (1) Full cash;  
29 (2) A surety bond executed by a corporation authorized under  
30 chapter 31 of Title 17 of the Revised Statutes; or  
31 (3) A bail bond secured by real property situated in this State  
32 with an unencumbered equity equal to the amount of bail  
33 undertaken plus \$20,000.  
34 c. **【There】** If a defendant is not detained prior to trial pursuant  
35 to subsection b. of section 5 of P.L.2014, c.31 (C.2A:162-19) there  
36 shall be a presumption in favor of the court designating the posting  
37 of full United States currency cash bail to the exclusion of other  
38 forms of bail when a defendant is charged with an offense as set  
39 forth in subsection a. of this section and:  
40 (1) has two other indictable cases pending at the time of the  
41 arrest; or  
42 (2) has two prior convictions for a first or second degree crime  
43 or for a violation of section 1 of P.L.1987, c.101 (C.2C:35-7) or any  
44 combination thereof; or  
45 (3) has one prior conviction for murder, aggravated  
46 manslaughter, aggravated sexual assault, kidnapping or bail  
47 jumping; or  
48 (4) was on parole at the time of the arrest; or

1 (5) was subject to a temporary or permanent restraining order  
2 issued pursuant to the provisions of the "Prevention of Domestic  
3 Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.), was  
4 charged with a crime committed against a person protected under  
5 that order, including a charge of contempt pursuant to N.J.S.2C:29-  
6 9, and either: (a) is charged with commission of a domestic violence  
7 crime that resulted in serious bodily injury to the victim; or (b) has  
8 at least one prior conviction for a crime or offense involving  
9 domestic violence against the same victim or has previously  
10 violated a final restraining order protecting the same victim, unless  
11 the court finds on the record that another form of bail authorized in  
12 subsection b. of this section will ensure the defendant's presence in  
13 court when required.

14 d. When bail is posted in the form of a bail bond secured by  
15 real property, the owner of the real property, whether the person is  
16 admitted to bail or a surety, shall also file an affidavit containing:

17 (1) A legal description of the real property;

18 (2) A description of each encumbrance on the real property;

19 (3) The market value of the unencumbered equity owned by the  
20 affiant as determined in a full appraisal conducted by an appraiser  
21 licensed by the State of New Jersey; and

22 (4) A statement that the affiant is the sole owner of the  
23 unencumbered equity.

24 e. Nothing herein is intended to preclude a court from releasing  
25 a person on the person's own recognizance when the court  
26 determines that such person is deserving.

27 (cf: P.L.2013, c.51, s.15)

28

29 3. This act shall take effect immediately.

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### STATEMENT

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34 This bill establishes a rebuttable presumption that a person charged  
35 with a crime with bail restrictions is to be detained prior to trial.

36 Under P.L.2014, c.31, also known as the "Criminal Justice  
37 Reform Law," criminal courts are authorized to order the pretrial  
38 release of a defendant pending further proceedings, or order pretrial  
39 detention of defendants who are found to be a flight risk, a danger  
40 to another or the community, or likely to obstruct further criminal  
41 proceedings.

42 In addition, section 1 of P.L.1994, c.144 (C.2A:162-12) provides  
43 that a person charged with a crime with bail restrictions may only use  
44 full cash, certain surety bonds or certain bail bonds as a means of  
45 posting bail. These crimes include: murder; manslaughter; kidnapping;  
46 sexual assault; robbery; carjacking; arson; causing or risking  
47 widespread injury or damage; burglary, theft by extortion; endangering  
48 the welfare of a child; resisting arrest and eluding an officer; escape;

1 corrupting or influencing a jury; possession of weapons for unlawful  
2 purposes; weapons training for illegal activities; soliciting or recruiting  
3 gang members; human trafficking; any first or second degree drug-  
4 related crimes; and certain domestic offenses. Persons charged with  
5 these enumerated crimes are not permitted to use the 10% cash option  
6 for posting bail.

7 Under this bill, if a court finds probable cause that a defendant  
8 committed a crime with bail restrictions there would be a rebuttable  
9 presumption that the person is to be detained pending trial because no  
10 amount of monetary bail, non-monetary conditions of release, or  
11 combination thereof would reasonably assure the defendant's  
12 appearance in court, the safety of any other person or the community,  
13 and that the defendant will not obstruct the criminal justice process.  
14 This presumption may be rebutted by the defendant upon a showing of  
15 the preponderance of the evidence in support of the defendant. If the  
16 defendant is unable to rebut the presumption, the court may order  
17 pretrial detention, but if rebutted, the prosecutor would still have the  
18 opportunity to establish grounds for pretrial detention. In addition, if  
19 the defendant is not detained prior to trial there would be a rebuttable  
20 presumption that a person charged with one of the enumerated crimes  
21 is prohibited from using the 10% cash option for posting bail.

22 A rebuttable presumption currently applies under P.L.2014, c.31  
23 when a prosecutor makes a motion for the pretrial detention of a  
24 defendant charged with murder or any crime for which the defendant  
25 would be subject to an ordinary or extended term of life  
26 imprisonment. This bill extends that presumption to crimes with  
27 bail restrictions.