

ASSEMBLY, No. 4958

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 8, 2017

Sponsored by:

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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:

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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)

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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)

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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.