SYNOPSIS

Transfers authority to regulate bail agents from DOBI to DLPS; requires certain defendants to be eligible for monetary bail upon issuance of complaint-warrant.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Judiciary Committee.

(Sponsorship Updated As Of: 5/23/2017)
AN ACT concerning bail bond agents and pretrial release,
supplementing Title 17 of the Revised Statutes and Title 2C of
the New Jersey Statutes, and amending P.L.2014, c.31.

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

1. (New section) All of the functions, powers, and duties
pertaining to the licensing and oversight of bail agents or agencies
as defined in section 1 of P.L.2003, c.202 (C.17:31-10), except as
otherwise provided, are transferred to the Department of Law and
Public Safety and shall be exercised by the Bail Agent Enforcement
Unit established pursuant to section 2 of P.L.   , c.   (C.       )
(pending before the Legislature as this bill). All records,
equipment, and other personal property, appropriations, and any
unexpended balances of funds appropriated or otherwise available
to the Department of Banking and Insurance pertaining to the
licensure and oversight of bail agents and agencies subject to the
provisions of this act shall be transferred to the Bail Agent
Enforcement Unit in the Department of Law and Public Safety
pursuant to the “State Agency Transfer Act,” P.L.1971, c.375
(C.52:14D-1 et seq.).

2. (New section) a. The Attorney General shall establish and
maintain a Bail Agent Enforcement Unit within the Department of
Law and Public Safety which shall be responsible for the licensing
and oversight of bail agents or agencies as defined in section 1 of

b. The Bail Agent Enforcement Unit shall be empowered to
ensure that the methods of operation of bail agents or agencies are
conducted in accordance with current law and shall be authorized to
investigate whether a bail agent or agency has engaged in, or is
engaging in, any criminal act or offense under Title 2C of the New
Jersey Statutes or Title 17 of the Revised Statutes. In carrying out
its functions and duties under this act, the Bail Agent Enforcement
Unit shall be authorized to:

   (1) inspect any premises of any bail agency operating in this
State and examine any record, book, computer, electronic database,
recording device, document, account, paper, or other tangible thing
in connection with any investigation;

   (2) upon obtaining a court order or warrant, seize and impound
any record, book, computer, electronic database, recording device,
document, account, paper, or other tangible thing in connection
with any investigation;

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.
(3) work in coordination with the Superintendent of State Police to facilitate the arrest of any bail agent who engages in illegal activity; and

(4) work in coordination with the Commissioner of Banking and Insurance to ensure that each bail agent or agency is working in accordance with all statutes and regulations relative to the negotiation, solicitation or sale of bail bonds in this State.

c. The Bail Agent Enforcement Unit established under this section shall be supervised by a chief of staff appointed by the Attorney General and shall employ field investigators and administrative staff to assist in the enforcement of subsection b. of this section.

d. The powers granted to the Bail Enforcement Unit pursuant to this act shall not be construed to deny a bail agent due process, including as appropriate, notice and an opportunity to be heard.

3. (New section) a. For the purposes of this section, "bail agent or agency" shall have the same meaning as set forth in section 1 of P.L.2003, c.202 (C.17:31-10).

b. Following the effective date of this act, the Department of Banking and Insurance shall cease issuing licenses to bail bond agents and all licenses, and enforcement of licensing requirements shall be conducted by the Bail Agent Enforcement Unit in accordance with section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. As a condition of licensure pursuant to the provisions of P.L.2001, c.210 (C.17:22A-26 et seq.), a bail agent shall possess and display an identification card containing the bail agent’s photograph, license number, and any other information deemed appropriate by the Attorney General.

d. A license shall be issued to an applicant who:

(1) consents to a criminal history record background check to be performed. The Bail Agent Enforcement Unit is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules, and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the Bail Agent Enforcement Unit in the event a current or prospective licensee, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed;

(2) satisfactorily completes a training program approved by the Attorney General, which shall include, but not be limited to, instruction in arrest, search and seizure, and criminal law;
3 successfully completes a written competency examination
4 approved by the Attorney General; and
5 (4) complies with any further information that the Attorney
6 General may require by regulation of the applicant.
7 e. The Bail Agent Enforcement Unit may deny the issuance of
8 a license on the basis of the criminal history background check or
9 failure to comply with the requirements set forth under subsection
10 a. of this section. The denial of licensure as a bail enforcement
11 agent under this section shall be reviewable by administrative
12 adjudication as set forth in the "Administrative Procedure Act,"
13 P.L.1968, c.410 (C.52:14B-1 et seq.).
14 f. The Bail Agent Enforcement Unit shall revoke the license of
15 any bail agent or agency if the Attorney General finds, after a
16 hearing, that the agent, agency, or any licensed or unlicensed
17 representative thereof, has:
18 (1) facilitated telephone communication via three-way telephone
19 call between any person incarcerated in a State correctional facility
20 or a county jail and a third party, except when the three-way
21 telephone call is necessary to facilitate underwriting the bail bond;
22 (2) solicited business from any person incarcerated in a State
23 correctional facility or a county jail, either directly or by means of
24 any third party; or
25 (3) compensated an unlicensed individual, either directly or
26 indirectly, for referring business to the bail agent or agency unless
27 the unlicensed individual is regularly employed by, receives a
28 salary from, and operates under the supervision of a licensed bail
29 agent.
30 g. A bail agent who was licensed by the Department of Banking
31 and Insurance prior to the effective date of this act shall be entitled
32 to a license issued by the Bail Agent Enforcement Unit and shall be
33 deemed to have complied with subsections d. and e. of this section.
34 4. (New section) a. As used in this section, “bail agent or
35 agency” means any person or entity that solicits, negotiates, or sells
36 bail bonds, or is affiliated in any manner with the execution of bail.
37 b. In addition to any penalties imposed pursuant to section 15 of
38 P.L.2001, c.210 (C.17:22A-40), a person commits a crime of the
39 fourth degree if he operates as a bail agent or agency without a
41 5. Section 1 of P.L.2014, c.31 (C.2A:162-15) is amended to read
42 as follows:
43 1. The provisions of sections 1 through 11 of P.L.2014, c.31
44 (C.2A:162-15 et seq.) shall be liberally construed to effectuate the
45 purpose of primarily relying upon pretrial release by monetary or
46 non-monetary means to reasonably assure an eligible defendant's
47 appearance in court when required, the protection of the safety of
48 any other person or the community, that the eligible defendant will
not obstruct or attempt to obstruct the criminal justice process, and
that the eligible defendant will comply with all conditions of
release, while authorizing the court, with respect to any crime of
the first degree crime or any other crime involving certain risks as
set forth in paragraph (2) of subsection a, section 5 of P.L.2014,
c.31 (C.2A:162-19) and upon motion of a prosecutor, to order
pretrial detention of the eligible defendant when it finds clear and
convincing evidence that no condition or combination of conditions
can reasonably assure the effectuation of these goals. [Monetary
bail may be set for an eligible defendant only when it is determined
that no other conditions of release will reasonably assure the
eligible defendant's appearance in court when required.]  

For the purposes of sections 1 through 11 of P.L.2014, c.31
(C.2A:162-15 et seq.), "eligible defendant" shall mean a person for
whom a complaint-warrant is issued for an initial charge involving
an indictable offense or a disorderly persons offense unless
otherwise provided in sections 1 through 11 of P.L.2014, c.31
(C.2A:162-15 et seq.).
(cf:  P.L.2014, c.31, s.1)

6.  Section 2 of P.L.2014, c.31 (C.2A:162-16) is amended to read
as follows:
   2.  a.  An eligible defendant shall be bailable by monetary bail
immediately, following the issuance of a complaint-warrant
pursuant to the conditions set forth under subsection c. of this
section, unless the eligible defendant is arrested on a complaint-
warrant for a crime of the first degree or any other crime involving
certain risks as set forth in paragraph (2) of subsection a. section 5
of P.L.2014, c.31 (C.2A:162-19), in which case the eligible
defendant shall be temporarily detained to allow the Pretrial
Services Program to prepare a risk assessment with
recommendations on conditions of release pursuant to section 11 of
P.L.2014, c.31 (C.2A:162-25) and for the court to issue a pretrial
release decision.
   b.  For any eligible defendant who is found by a court not to be
immediately bailable pursuant to subsection a. of this section, or
who is immediately bailable pursuant to that subsection but is
unable to post bail:
      (1) Except as otherwise provided under sections 4 and 5 of
P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19), the court, pursuant
to section 3 of P.L.2014, c.31 (C.2A:162-17), shall make a pretrial
release decision for the eligible defendant without unnecessary
delay, but in no case later than 48 hours after the eligible
defendant's commitment to jail. The court shall consider the
Pretrial Services Program's risk assessment and recommendations
on conditions of release before making any pretrial release decision
for the eligible defendant.
(2) After considering all the circumstances, the Pretrial Services Program's risk assessment and recommendations on conditions of release, and any information that may be provided by a prosecutor or the eligible defendant, the court, pursuant to any of the following conditions as deemed appropriate by the court in its sole discretion, shall order that the eligible defendant be:

(a) released on the eligible defendant's own recognizance or on execution of an unsecured appearance bond; or

(b) released on a non-monetary condition or conditions, with the condition or conditions being the least restrictive condition or combination of conditions that the court determines will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process; or

(c) released on monetary bail, or modified monetary bail if bail was previously set pursuant to subsection a. of this section, other than an unsecured appearance bond, to reasonably assure the eligible defendant's appearance in court when required, or a combination of monetary bail and non-monetary conditions, to reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process; or

(d) detained in jail, upon motion of the prosecutor, pending a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19).

c. A law enforcement officer shall not apply for a complaint-warrant except in accordance with guidelines issued by the Attorney General, and a court may not issue a complaint-warrant except as may be authorized by the Rules of Court.

d. (1) A defendant who is charged on a complaint-summons shall be released from custody and shall not be subject to the provisions of sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).

(2) (a) If a defendant who was released from custody after being charged on a complaint-summons pursuant to paragraph (1) of this subsection is subsequently arrested on a warrant for failure to appear in court when required, that defendant shall be eligible for release on personal recognizance or release on bail by sufficient sureties at the discretion of the court. If monetary bail was not set when an arrest warrant for the defendant was issued, the defendant shall have monetary bail set without unnecessary delay, but in no case later than 12 hours after arrest. Pursuant to the Rules of Court, if the defendant is unable to post monetary bail, the defendant shall have that bail reviewed promptly and may file an application with the court seeking a bail reduction, which shall be heard in an expedited manner.
(b) If the defendant fails to post the required monetary bail set
by the court pursuant to this paragraph, the defendant may not be
detained on the charge or charges contained in the complaint-
summons beyond the maximum term of incarceration or term of
probation supervision for the offense or offenses charged.
(cf: P.L.2014, c.31, s.2)

7. Section 3 of P.L.2014, c.31 (C.2A:162-17) is amended to read
as follows:

3. Except as otherwise provided under sections 4 and 5 of
hearing on pretrial detention, whenever an eligible defendant is
found by a court not to be immediately bailable pursuant to
subsection a. of section 2 of P.L.2014, c.31 (C.2A:162-16), or is
immediately bailable pursuant to that subsection but unable to post
bail, a court shall make, pursuant to this section, a pretrial release
decision for an eligible defendant without unnecessary delay, but
in no case. A pretrial release determination shall not be
made later than 48 hours after the eligible defendant's commitment
to jail.

a. The court shall order the pretrial release of the eligible
defendant on personal recognizance or on the execution of an
unsecured appearance bond when, after considering all the
circumstances, the Pretrial Services Program's risk assessment and
recommendations on conditions of release prepared pursuant to
section 11 of P.L.2014, c.31 (C.2A:162-25), and any information
that may be provided by a prosecutor or the eligible defendant, the
court finds that the release would reasonably assure the eligible
defendant's appearance in court when required, the protection of the
safety of any other person or the community, and that the eligible
defendant will not obstruct or attempt to obstruct the criminal
justice process.

b. (1) If the court does not find, after consideration, that the
release described in subsection a. of this section will reasonably
assure the eligible defendant's appearance in court when required,
the protection of the safety of any other person or the community,
and that the eligible defendant will not obstruct or attempt to
obstruct the criminal justice process, the court may order the
pretrial release of the eligible defendant subject to the following:

(a) the eligible defendant shall not commit any offense during
the period of release;

(b) the eligible defendant shall avoid all contact with an alleged
victim of the crime;

(c) the eligible defendant shall avoid all contact with all
witnesses who may testify concerning the offense that are named in
the document authorizing the eligible defendant's release or in a
subsequent court order; and
(d) any one or more non-monetary conditions as set forth in paragraph (2) of this subsection.

(2) The non-monetary condition or conditions of a pretrial release ordered by the court pursuant to this paragraph shall be the least restrictive condition, or combination of conditions, that the court determines will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, which may include that the eligible defendant:

(a) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able to reasonably assure the court that the eligible defendant will appear in court when required, will not pose a danger to the safety of any other person or the community, and will not obstruct or attempt to obstruct the criminal justice process;

(b) maintain employment, or, if unemployed, actively seek employment;

(c) maintain or commence an educational program;

(d) abide by specified restrictions on personal associations, place of abode, or travel;

(e) report on a regular basis to a designated law enforcement agency, or other agency, or pretrial services program;

(f) comply with a specified curfew;

(g) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(h) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;

(i) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(j) return to custody for specified hours following release for employment, schooling, or other limited purposes;

(k) be placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device. The court may order the eligible defendant to pay all or a portion of the costs of the electronic monitoring, but the court may waive the payment for an eligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs; or

(l) satisfy any other condition that is necessary to reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.
c. (1) [If the court does not find, after consideration, that the release described in subsection a. or b. of this section will reasonably assure the eligible defendant's appearance in court when required, the] The court may order the pretrial release of the eligible defendant on monetary bail, other than an unsecured appearance bond or modified monetary bail if bail was previously set pursuant to subsection a. of section 2 of P.L.2014, c.31 (C.2A:162-16). The court may only impose or modify monetary bail pursuant to this subsection to reasonably assure the eligible defendant's appearance. The court shall not impose or modify the monetary bail to reasonably assure the protection of the safety of any other person or the community or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, or for the purpose of preventing the release of the eligible defendant. Nothing in this section shall prohibit a court from imposing monetary bail to assure an eligible defendant’s appearance in addition to non-monetary conditions if, in the court’s discretion, a combination of monetary bail and conditions is necessary to facilitate the immediate and safe release of the defendant.

(2) If the eligible defendant is unable to post the monetary bail imposed by the court pursuant to this subsection, and for that reason remains detained in jail, the provisions of section 8 of P.L.2014, c.31 (C.2A:162-22) shall apply to the eligible defendant.

d. (1) If the court does not find, after consideration, that the release described in subsection a., b., or c. will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, the court may order the pretrial release of the eligible defendant using a combination of non-monetary conditions as set forth in subsection b. of this section, and monetary bail as set forth in subsection c. of this section.

(2) If the eligible defendant is unable to post the monetary bail imposed by the court in combination with non-monetary conditions pursuant to this subsection, and for that reason remains detained in jail, the provisions of section 8 of P.L.2014, c.31 (C.2A:162-22) shall apply to the eligible defendant.

e. For purposes of the court's consideration for pretrial release described in this section, with respect to whether the particular method of release will reasonably assure that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, this reasonable assurance may be deemed to exist if the prosecutor does not provide the court with information relevant to the risk of whether the eligible defendant will obstruct or attempt to obstruct the criminal justice process.

f. If a court orders a non-monetary condition as set forth in subsection b. of this section and monetary bail as set forth in subsection c. of this section, and the eligible defendant breaches
only a non-monetary condition, a bail agent or agency as defined in section 1 of P.L.2003, c.202 (C.17:31-10) shall not be liable for the forfeiture of a bail bond. This subsection shall not be construed to relieve a bail agent or agency from liability for the forfeiture of a bail bond when an eligible defendant willfully fails to appear in court when required.

g. Nothing in this section or the provisions of P.L.2014, c.31 shall prevent a court from imposing monetary bail, with or without conditions, following a finding that an eligible defendant previously violated a condition of release on the eligible defendant's own personal recognizance or a non-monetary condition of a pretrial release ordered by the court.

(cf: P.L.2014, c.31, s.3)

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

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

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

b. Regarding the pretrial detention hearing moved for by the prosecutor, except for when an eligible defendant is charged with a crime set forth under paragraph (1) or (2) of subsection b. of section 5 of P.L.2014, c.31 (C.2A:162-19), there shall be a rebuttable presumption that some amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

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

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

(cf: P.L.2014, c.31, s.4)

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

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

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

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

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

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

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

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

charged with: (1) a crime of the first degree; or

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

(a) the eligible defendant will not appear in court as required;
(b) the eligible defendant will pose a danger to any other person or the community; or

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

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

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

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

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

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

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

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

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

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

(cf: P.L.2014, c.31, s.5)
10. Section 8 of P.L.2014, c.31 (C.2A:162-22) is amended to read as follows:

8. a. Concerning an eligible defendant subject to who has been charged with a crime of the first degree or any other crime involving certain risks as set forth in paragraph (2) of subsection a. section 5 of P.L.2014, c.31 (C.2A:162-19) and for whom pretrial detention is ordered by a court pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) or an eligible defendant who is detained in jail due to the inability to post the monetary bail imposed by the court pursuant to subsection c. or d. of section 3 of P.L.2014, c.31 (C.2A:162-17):

   (1) (a) The eligible defendant shall not remain detained in jail for more than 90 days, not counting excludable time for reasonable delays as set forth in subsection b. of this section, prior to the return of an indictment. If the eligible defendant is not indicted within that period of time, the eligible defendant shall be released from jail unless, on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the eligible defendant's release from custody, so that no appropriate conditions for the eligible defendant's release could reasonably address that risk, and also finds that the failure to indict the eligible defendant in accordance with the time requirement set forth in this subparagraph was not due to unreasonable delay by the prosecutor. If the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to indict the eligible defendant in accordance with the time requirement set forth in this subparagraph was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time, not to exceed 45 days, in which the return of an indictment shall occur. Notwithstanding the court's previous findings for ordering the eligible defendant's pretrial detention, or if the court currently does not find a substantial and unjustifiable risk or finds unreasonable delay by the prosecutor as described in this subparagraph, the court shall order the release of the eligible defendant pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).

   (b) If the eligible defendant is charged with or indicted for a crime of the first degree or any other crime involving certain risks as set forth in paragraph (2) of subsection a. section 5 of P.L.2014, c.31 (C.2A:162-19) on another matter resulting in the eligible defendant's pretrial detention, the time calculations set forth in subparagraph (a) of this paragraph for each matter shall run independently.

   (2) (a) An eligible defendant who has been indicted for a crime of the first degree or any other crime involving certain risks as set forth in paragraph (2) of subsection a. section 5 of P.L.2014, c.31...
(C.2A:162-19) shall not remain detained in jail for more than 180 days on that charge following the return or unsealing of the indictment, whichever is later, not counting excludable time for reasonable delays as set forth in subsection b. of this section, before commencement of the trial. If the trial does not commence within that period of time, the eligible defendant shall be released from jail unless, on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the eligible defendant's release from custody, so that no appropriate conditions for the eligible defendant's release could reasonably address that risk, and also finds that the failure to commence trial in accordance with the time requirement set forth in this subparagraph was not due to unreasonable delay by the prosecutor. If the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to commence trial in accordance with the time requirement set forth in this subparagraph was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time in which the eligible defendant's trial shall commence. Notwithstanding the court's previous findings for ordering the eligible defendant's pretrial detention, or if the court currently does not find a substantial and unjustifiable risk or finds unreasonable delay by the prosecutor as described in this subparagraph, the court shall order the release of the eligible defendant pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).

Notwithstanding any other provision of this section, an eligible defendant shall be released from jail pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17) after a release hearing if, two years after the court's issuance of the pretrial detention order for the eligible defendant, excluding any delays attributable to the eligible defendant, the prosecutor is not ready to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial.

(b) (i) For the purposes of this paragraph, a trial is considered to have commenced when the court determines that the parties are present and directs them to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial.

(ii) The return of a superseding indictment against the eligible defendant shall extend the time for the trial to commence.

(iii) If an indictment is dismissed without prejudice upon motion of the eligible defendant for any reason, and a subsequent indictment is returned, the time for trial shall begin running from the date of the return of the subsequent indictment.

(iv) A trial ordered after a mistrial or upon a motion for a new trial shall commence within 120 days of the entry of the order of the
A trial ordered upon the reversal of a judgment by any appellate court shall commence within 120 days of the service of that court's trial mandate.

(c) If the eligible defendant is indicted for a first degree crime or any other crime involving certain risks as set forth in paragraph (2) of subsection a, section 5 of P.L. 2014, c.31 (C.2A:162-19) on another matter resulting in the eligible defendant's pretrial detention, the time calculations set forth in this paragraph for each matter shall run independently.

b. (1) The following periods shall be excluded in computing the time in which a case shall be indicted or tried:

(a) The time resulting from an examination and hearing on competency and the period during which the eligible defendant is incompetent to stand trial or incapacitated;

(b) The time from the filing to the disposition of an eligible defendant's application for supervisory treatment pursuant to N.J.S.2C:36A-1 or N.J.S.2C:43-12 et seq., special probation pursuant to N.J.S.2C:35-14, drug or alcohol treatment as a condition of probation pursuant to N.J.S.2C:45-1, or other pretrial treatment or supervisory program;

(c) The time from the filing to the final disposition of a motion made before trial by the prosecutor or the eligible defendant;

(d) The time resulting from a continuance granted, in the court's discretion, at the eligible defendant's request or at the request of both the eligible defendant and the prosecutor;

(e) The time resulting from the detention of an eligible defendant in another jurisdiction provided the prosecutor has been diligent and has made reasonable efforts to obtain the eligible defendant's presence;

(f) The time resulting from exceptional circumstances including, but not limited to, a natural disaster, the unavoidable unavailability of an eligible defendant, material witness or other evidence, when there is a reasonable expectation that the eligible defendant, witness or evidence will become available in the near future;

(g) On motion of the prosecutor, the delay resulting when the court finds that the case is complex due to the number of defendants or the nature of the prosecution;

(h) The time resulting from a severance of codefendants when that severance permits only one trial to commence within the time period for trial set forth in this section;

(i) The time resulting from an eligible defendant's failure to appear for a court proceeding;

(j) The time resulting from a disqualification or recusal of a judge;

(k) The time resulting from a failure by the eligible defendant to provide timely and complete discovery;
The time for other periods of delay not specifically
enumerated if the court finds good cause for the delay; and
(m) Any other time otherwise required by statute.
(2) The failure by the prosecutor to provide timely and complete
discovery shall not be considered excludable time unless the
discovery only became available after the time set for discovery.
(cf: P.L.2014, c.31, s.8)

11. Section 11 of P.L.2014, c.31 (C.2A:162-25) is amended to
read as follows:

11. a. The Administrative Director of the Courts shall establish
and maintain a Statewide Pretrial Services Program which shall
provide pretrial services to effectuate the purposes of sections 1
through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).

b. The Pretrial Services Program shall, after an eligible
defendant is temporarily detained pursuant to subsection a. of
section 2 of P.L.2014, c.31 (C.2A:162-16) following the issuance
of a complaint-warrant for an eligible defendant found not to be
immediately bailable pursuant to subsection a. of section 2 of
P.L.2014, c.31 (C.2A:162-16), conduct a risk assessment on that
eligible defendant for the purpose of making recommendations to
the court concerning an appropriate pretrial release decision,
including whether the eligible defendant shall be: released on the
eligible defendant's own personal recognizance or on execution of
an unsecured appearance bond; released on a non-monetary
condition or conditions as set forth under subsection b. of section 3
of P.L.2014, c.31 (C.2A:162-17); released on monetary execution of a bail bond or modified bail bond if bail was
previously set pursuant to subsection a. of section 2 of P.L.2014,
c.31 (C.2A:162-16), other than an unsecured appearance bond;
released on a combination of monetary bail and non-monetary
conditions set forth under section 3 of P.L.2014, c.31 (C.2A:162-17);
or any other conditions necessary to effectuate the purposes of
sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.). The
risk assessment shall be completed and presented to the court so
that the court can, without unnecessary delay, but in no case later
than 48 hours after the eligible defendant's commitment to jail,
make a pretrial release decision on the eligible defendant pursuant
to section 3 of P.L.2014, c.31 (C.2A:162-17).

c. The pretrial risk assessment shall be conducted using a risk
assessment instrument approved by the Administrative Director of
the Courts that meets the requirements of this subsection.

(1) The approved risk assessment instrument shall be objective,
standardized, and developed based on analysis of empirical data and
risk factors relevant to an eligible defendant's risk of failure
to appear in court when required and the eligible defendant's danger
to the community while on pretrial release. The risk assessment
instrument shall not be required to include factors specifically
The approved risk assessment instrument shall gather demographic information about the eligible defendant including, but not limited to, race, ethnicity, gender, financial resources, and socio-economic status. Recommendations for pretrial release shall not be discriminatory based on race, ethnicity, gender, or socio-economic status.

d. In addition to the pretrial risk assessments made pursuant to this section, the Pretrial Services Program shall monitor appropriate eligible defendants released on conditions as ordered by the court.

(2) The approved risk assessment instrument shall gather demographic information about the eligible defendant including, but not limited to, race, ethnicity, gender, financial resources, and socio-economic status. Recommendations for pretrial release shall not be discriminatory based on race, ethnicity, gender, or socio-economic status.

12. Sections 1 through 4 of this act shall take effect on the first day of the 10th month following the date of enactment, and sections 5 through 12 shall take effect on December 30, 2016, but the Attorney General, Commissioner of Banking and Insurance, and Administrative Director of the Courts may take any anticipatory administrative action in advance of those dates as shall be necessary for the implementation of this act.