

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3507 and 4098

STATE OF NEW JERSEY
217th LEGISLATURE

ADOPTED NOVEMBER 14, 2016

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

Assemblywoman SHEILA Y. OLIVER

District 34 (Essex and Passaic)

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

Co-Sponsored by:

Assemblymen Caputo, Johnson, Assemblywoman Chaparro,

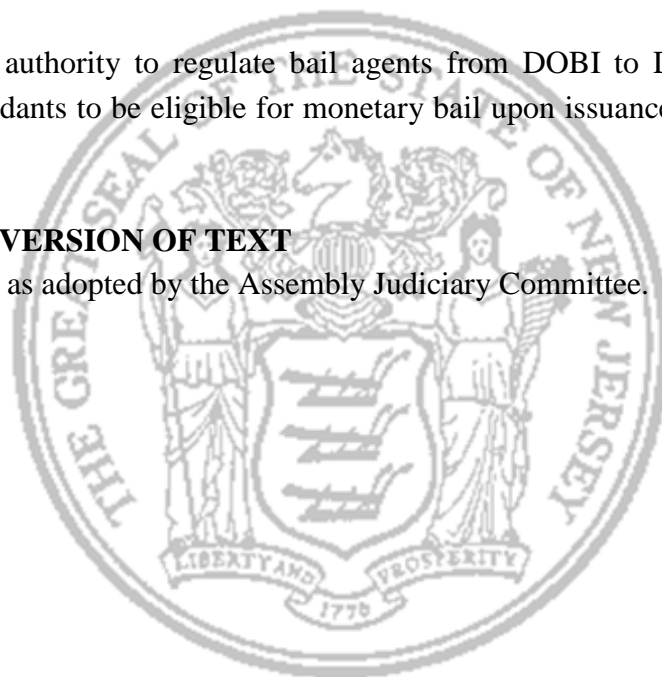
Assemblymen Andrzejczak, Giblin, Assemblywomen Caride and Jones

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)

1 AN ACT concerning bail bond agents and pretrial release,
2 supplementing Title 17 of the Revised Statutes and Title 2C of
3 the New Jersey Statutes, and amending P.L.2014, c.31.
4

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

7
8 1. (New section) All of the functions, powers, and duties
9 pertaining to the licensing and oversight of bail agents or agencies
10 as defined in section 1 of P.L.2003, c.202 (C.17:31-10), except as
11 otherwise provided, are transferred to the Department of Law and
12 Public Safety and shall be exercised by the Bail Agent Enforcement
13 Unit established pursuant to section 2 of P.L. , c. (C.)
14 (pending before the Legislature as this bill). All records,
15 equipment, and other personal property, appropriations, and any
16 unexpended balances of funds appropriated or otherwise available
17 to the Department of Banking and Insurance pertaining to the
18 licensure and oversight of bail agents and agencies subject to the
19 provisions of this act shall be transferred to the Bail Agent
20 Enforcement Unit in the Department of Law and Public Safety
21 pursuant to the "State Agency Transfer Act," P.L.1971, c.375
22 (C.52:14D-1 et seq.).
23

24 2. (New section) a. The Attorney General shall establish and
25 maintain a Bail Agent Enforcement Unit within the Department of
26 Law and Public Safety which shall be responsible for the licensing
27 and oversight of bail agents or agencies as defined in section 1 of
28 P.L.2003, c.202 (C.17:31-10).

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

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

41 (2) upon obtaining a court order or warrant, seize and impound
42 any record, book, computer, electronic database, recording device,
43 document, account, paper, or other tangible thing in connection
44 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.

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

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

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

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

16
17 3. (New section) a. For the purposes of this section, "bail agent
18 or agency" shall have the same meaning as set forth in section 1 of
19 P.L.2003, c.202 (C.17:31-10).

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

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

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

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

46 (2) satisfactorily completes a training program approved by the
47 Attorney General, which shall include, but not be limited to,
48 instruction in arrest, search and seizure, and criminal law;

- 1 (3) successfully completes a written competency examination
2 approved by the Attorney General; and
- 3 (4) complies with any further information that the Attorney
4 General may require by regulation of the applicant.
- 5 e. The Bail Agent Enforcement Unit may deny the issuance of
6 a license on the basis of the criminal history background check or
7 failure to comply with the requirements set forth under subsection
8 a. of this section. The denial of licensure as a bail enforcement
9 agent under this section shall be reviewable by administrative
10 adjudication as set forth in the "Administrative Procedure Act,"
11 P.L.1968, c.410 (C.52:14B-1 et seq.).
- 12 f. The Bail Agent Enforcement Unit shall revoke the license of
13 any bail agent or agency if the Attorney General finds, after a
14 hearing, that the agent, agency, or any licensed or unlicensed
15 representative thereof, has:
- 16 (1) facilitated telephone communication via three-way telephone
17 call between any person incarcerated in a State correctional facility
18 or a county jail and a third party, except when the three-way
19 telephone call is necessary to facilitate underwriting the bail bond;
- 20 (2) solicited business from any person incarcerated in a State
21 correctional facility or a county jail, either directly or by means of
22 any third party; or
- 23 (3) compensated an unlicensed individual, either directly or
24 indirectly, for referring business to the bail agent or agency unless
25 the unlicensed individual is regularly employed by, receives a
26 salary from, and operates under the supervision of a licensed bail
27 agent.
- 28 g. A bail agent who was licensed by the Department of Banking
29 and Insurance prior to the effective date of this act shall be entitled
30 to a license issued by the Bail Agent Enforcement Unit and shall be
31 deemed to have complied with subsections d. and e. of this section.
32
- 33 4. (New section) a. As used in this section, "bail agent or
34 agency" means any person or entity that solicits, negotiates, or sells
35 bail bonds, or is affiliated in any manner with the execution of bail.
- 36 b. In addition to any penalties imposed pursuant to section 15 of
37 P.L.2001, c.210 (C.17:22A-40), a person commits a crime of the
38 fourth degree if he operates as a bail agent or agency without a
39 license in violation of section 4 of P.L.2001, c.210 (C.17:22A-29).
40
- 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

1 not obstruct or attempt to obstruct the criminal justice process, and
2 that the eligible defendant will comply with all conditions of
3 release, while authorizing the court, with respect to any crime of
4 the first degree crime or any other crime involving certain risks as
5 set forth in paragraph (2) of subsection a. section 5 of P.L.2014,
6 c.31 (C.2A:162-19) and upon motion of a prosecutor, to order
7 pretrial detention of the eligible defendant when it finds clear and
8 convincing evidence that no condition or combination of conditions
9 can reasonably assure the effectuation of these goals. **【Monetary**
10 **bail may be set for an eligible defendant only when it is determined**
11 **that no other conditions of release will reasonably assure the**
12 **eligible defendant's appearance in court when required.】**

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

20

21 6. Section 2 of P.L.2014, c.31 (C.2A:162-16) is amended to read
22 as follows:

23 2. a. An eligible defendant shall be bailable by monetary bail
24 immediately, following the issuance of a complaint-warrant
25 pursuant to the conditions set forth under subsection c. of this
26 section, unless the eligible defendant is arrested on a complaint-
27 warrant for a crime of the first degree or any other crime involving
28 certain risks as set forth in paragraph (2) of subsection a. section 5
29 of P.L.2014, c.31 (C.2A:162-19), in which case the eligible
30 defendant shall be temporarily detained to allow the Pretrial
31 Services Program to prepare a risk assessment with
32 recommendations on conditions of release pursuant to section 11 of
33 P.L.2014, c.31 (C.2A:162-25) and for the court to issue a pretrial
34 release decision.

35 b. For any eligible defendant who is found by a court not to be
36 immediately bailable pursuant to subsection a. of this section, or
37 who is immediately bailable pursuant to that subsection but is
38 unable to post bail:

39 (1) Except as otherwise provided under sections 4 and 5 of
40 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19), the court, pursuant
41 to section 3 of P.L.2014, c.31 (C.2A:162-17), shall make a pretrial
42 release decision for the eligible defendant without unnecessary
43 delay, but in no case later than 48 hours after the eligible
44 defendant's commitment to jail. The court shall consider the
45 Pretrial Services Program's risk assessment and recommendations
46 on conditions of release before making any pretrial release decision
47 for the eligible defendant.

1 (2) After considering all the circumstances, the Pretrial Services
2 Program's risk assessment and recommendations on conditions of
3 release, and any information that may be provided by a prosecutor
4 or the eligible defendant, the court, pursuant to any of the following
5 conditions as deemed appropriate by the court in its sole discretion,
6 shall order that the eligible defendant be:

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

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

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

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

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

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

35 (2) (a) If a defendant who was released from custody after
36 being charged on a complaint-summons pursuant to paragraph (1)
37 of this subsection is subsequently arrested on a warrant for failure
38 to appear in court when required, that defendant shall be eligible for
39 release on personal recognizance or release on bail by sufficient
40 sureties at the discretion of the court. If monetary bail was not set
41 when an arrest warrant for the defendant was issued, the defendant
42 shall have monetary bail set without unnecessary delay, but in no
43 case later than 12 hours after arrest. Pursuant to the Rules of Court,
44 if the defendant is unable to post monetary bail, the defendant shall
45 have that bail reviewed promptly and may file an application with
46 the court seeking a bail reduction, which shall be heard in an
47 expedited manner.

1 (b) If the defendant fails to post the required monetary bail set
2 by the court pursuant to this paragraph, the defendant may not be
3 detained on the charge or charges contained in the complaint-
4 summons beyond the maximum term of incarceration or term of
5 probation supervision for the offense or offenses charged.
6 (cf: P.L.2014, c.31, s.2)

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

10 3. Except as otherwise provided under sections 4 and 5 of
11 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) concerning a
12 hearing on pretrial detention, whenever an eligible defendant is
13 found by a court not to be immediately bailable pursuant to
14 subsection a. of section 2 of P.L.2014, c.31 (C.2A:162-16), or is
15 immediately bailable pursuant to that subsection but unable to post
16 bail, a court shall make, pursuant to this section, a pretrial release
17 decision for an eligible defendant without unnecessary delay~~], but~~
18 ~~in but in no case]~~ . A pretrial release determination shall not be
19 made later than 48 hours after the eligible defendant's commitment
20 to jail.

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

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

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

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

44 (c) the eligible defendant shall avoid all contact with all
45 witnesses who may testify concerning the offense that are named in
46 the document authorizing the eligible defendant's release or in a
47 subsequent court order; and

- 1 (d) any one or more non-monetary conditions as set forth in
2 paragraph (2) of this subsection.
- 3 (2) The non-monetary condition or conditions of a pretrial
4 release ordered by the court pursuant to this paragraph shall be the
5 least restrictive condition, or combination of conditions, that the
6 court determines will reasonably assure the eligible defendant's
7 appearance in court when required, the protection of the safety of
8 any other person or the community, and that the eligible defendant
9 will not obstruct or attempt to obstruct the criminal justice process,
10 which may include that the eligible defendant:
- 11 (a) remain in the custody of a designated person, who agrees to
12 assume supervision and to report any violation of a release
13 condition to the court, if the designated person is able to reasonably
14 assure the court that the eligible defendant will appear in court
15 when required, will not pose a danger to the safety of any other
16 person or the community, and will not obstruct or attempt to
17 obstruct the criminal justice process;
- 18 (b) maintain employment, or, if unemployed, actively seek
19 employment;
- 20 (c) maintain or commence an educational program;
- 21 (d) abide by specified restrictions on personal associations,
22 place of abode, or travel;
- 23 (e) report on a regular basis to a designated law enforcement
24 agency, or other agency, or pretrial services program;
- 25 (f) comply with a specified curfew;
- 26 (g) refrain from possessing a firearm, destructive device, or
27 other dangerous weapon;
- 28 (h) refrain from excessive use of alcohol, or any use of a
29 narcotic drug or other controlled substance without a prescription
30 by a licensed medical practitioner;
- 31 (i) undergo available medical, psychological, or psychiatric
32 treatment, including treatment for drug or alcohol dependency, and
33 remain in a specified institution if required for that purpose;
- 34 (j) return to custody for specified hours following release for
35 employment, schooling, or other limited purposes;
- 36 (k) be placed in a pretrial home supervision capacity with or
37 without the use of an approved electronic monitoring device. The
38 court may order the eligible defendant to pay all or a portion of the
39 costs of the electronic monitoring, but the court may waive the
40 payment for an eligible defendant who is indigent and who has
41 demonstrated to the court an inability to pay all or a portion of the
42 costs; or
- 43 (l) satisfy any other condition that is necessary to reasonably
44 assure the eligible defendant's appearance in court when required,
45 the protection of the safety of any other person or the community,
46 and that the eligible defendant will not obstruct or attempt to
47 obstruct the criminal justice process.

1 c. (1) ~~【If the court does not find, after consideration, that the~~
2 ~~release described in subsection a. or b. of this section will~~
3 ~~reasonably assure the eligible defendant's appearance in court when~~
4 ~~required, the】~~ The court may order the pretrial release of the
5 eligible defendant on monetary bail, other than an unsecured
6 appearance bond or modified monetary bail if bail was previously
7 set pursuant to subsection a. of section 2 of P.L.2014, c.31
8 (C.2A:162-16). The court may only impose or modify monetary
9 bail pursuant to this subsection to reasonably assure the eligible
10 defendant's appearance. The court shall not impose or modify the
11 monetary bail to reasonably assure the protection of the safety of
12 any other person or the community or that the eligible defendant
13 will not obstruct or attempt to obstruct the criminal justice process,
14 or for the purpose of preventing the release of the eligible
15 defendant. Nothing in this section shall prohibit a court from
16 imposing monetary bail to assure an eligible defendant's appearance
17 in addition to non-monetary conditions if, in the court's discretion,
18 a combination of monetary bail and conditions is necessary to
19 facilitate the immediate and safe release of the defendant.

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

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

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

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

46 f. If a court orders a non-monetary condition as set forth in
47 subsection b. of this section and monetary bail as set forth in
48 subsection c. of this section, and the eligible defendant breaches

1 only a non-monetary condition, a bail agent or agency as defined in
2 section 1 of P.L.2003, c.202 (C.17:31-10) shall not be liable for the
3 forfeiture of a bail bond. This subsection shall not be construed to
4 relieve a bail agent or agency from liability for the forfeiture of a
5 bail bond when an eligible defendant willfully fails to appear in
6 court when required.

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

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

14
15 8. Section 4 of P.L.2014, c.31 (C.2A:162-18) is amended to
16 read as follows:

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

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

1 monetary conditions, reasonably assure the eligible defendant's
2 appearance in court when required.

3 b. Regarding the pretrial detention hearing moved for by the
4 prosecutor, except for when an eligible defendant is charged with a
5 crime set forth under paragraph (1) or (2) of subsection b. of section
6 5 of P.L.2014, c.31 (C.2A:162-19), there shall be a rebuttable
7 presumption that some amount of monetary bail, non-monetary
8 conditions of pretrial release or combination of monetary bail and
9 conditions would reasonably assure the eligible defendant's
10 appearance in court when required, the protection of the safety of
11 any other person or the community, and that the eligible defendant
12 will not obstruct or attempt to obstruct the criminal justice process.

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

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

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

23

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

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

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

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

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

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

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

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

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

46 **[(7)]** (2) any other crime for which the prosecutor believes there
47 is a serious risk that:

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

- 1 (b) the eligible defendant will pose a danger to any other person
2 or the community; or
- 3 (c) the eligible defendant will obstruct or attempt to obstruct
4 justice, or threaten, injure, or intimidate, or attempt to threaten,
5 injure or intimidate, a prospective witness or juror.
- 6 b. When a motion for pretrial detention is filed pursuant to
7 subsection a. of this section, there shall be a rebuttable presumption
8 that the eligible defendant shall be detained pending trial because
9 no amount of monetary bail, non-monetary condition or
10 combination of monetary bail and conditions would reasonably
11 assure the eligible defendant's appearance in court when required,
12 the protection of the safety of any other person or the community,
13 and that the eligible defendant will not obstruct or attempt to
14 obstruct the criminal justice process, if the court finds probable
15 cause that the eligible defendant:
- 16 (1) committed murder pursuant to N.J.S.2C:11-3; or
17 (2) committed any crime of the first degree for which the
18 eligible defendant would be subject to an ordinary or extended term
19 of life imprisonment.
- 20 c. A court shall hold a hearing to determine whether any
21 amount of monetary bail or non-monetary conditions or
22 combination of monetary bail and conditions, including those set
23 forth under subsection b. of section 3 of P.L.2014, c.31 (C.2A:162-
24 17) will reasonably assure the eligible defendant's appearance in
25 court when required, the protection of the safety of any other person
26 or the community, and that the eligible defendant will not obstruct
27 or attempt to obstruct the criminal justice process.
- 28 d. (1) Except as otherwise provided in this subsection, the
29 pretrial detention hearing shall be held no later than the eligible
30 defendant's first appearance unless the eligible defendant, or the
31 prosecutor, seeks a continuance. If a prosecutor files a motion for
32 pretrial detention after the eligible defendant's first appearance has
33 taken place or if no first appearance is required, the court shall
34 schedule the pretrial detention hearing to take place within three
35 working days of the date on which the prosecutor's motion was
36 filed, unless the prosecutor or the eligible defendant seeks a
37 continuance. Except for good cause, a continuance on motion of the
38 eligible defendant may not exceed five days, not including any
39 intermediate Saturday, Sunday, or legal holiday. Except for good
40 cause, a continuance on motion of the prosecutor may not exceed
41 three days, not including any intermediate Saturday, Sunday, or
42 legal holiday.
- 43 (2) Upon the filing of a motion by the prosecutor seeking the
44 pretrial detention of the eligible defendant and during any
45 continuance that may be granted by the court, the eligible defendant
46 shall be detained in jail, unless the eligible defendant was
47 previously released from custody before trial, in which case the
48 court shall issue a notice to appear to compel the appearance of the

1 eligible defendant at the detention hearing. The court, on motion of
2 the prosecutor or sua sponte, may order that, while in custody, an
3 eligible defendant who appears to be a drug dependent person
4 receive an assessment to determine whether that eligible defendant
5 is drug dependent.

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

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

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

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

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

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

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

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

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

46 (2) (a) An eligible defendant who has been indicted for a crime
47 of the first degree or any other crime involving certain risks as set
48 forth in paragraph (2) of subsection a. section 5 of P.L.2014, c.31

1 (C.2A:162-19) shall not remain detained in jail for more than 180
2 days on that charge following the return or unsealing of the
3 indictment, whichever is later, not counting excludable time for
4 reasonable delays as set forth in subsection b. of this section, before
5 commencement of the trial. If the trial does not commence within
6 that period of time, the eligible defendant shall be released from jail
7 unless, on motion of the prosecutor, the court finds that a
8 substantial and unjustifiable risk to the safety of any other person or
9 the community or the obstruction of the criminal justice process
10 would result from the eligible defendant's release from custody, so
11 that no appropriate conditions for the eligible defendant's release
12 could reasonably address that risk, and also finds that the failure to
13 commence trial in accordance with the time requirement set forth in
14 this subparagraph was not due to unreasonable delay by the
15 prosecutor. If the court finds that a substantial and unjustifiable
16 risk to the safety of any other person or the community or the
17 obstruction of the criminal justice process would result, and also
18 finds that the failure to commence trial in accordance with the time
19 requirement set forth in this subparagraph was not due to
20 unreasonable delay by the prosecutor, the court may allocate an
21 additional period of time in which the eligible defendant's trial shall
22 commence. Notwithstanding the court's previous findings for
23 ordering the eligible defendant's pretrial detention, or if the court
24 currently does not find a substantial and unjustifiable risk or finds
25 unreasonable delay by the prosecutor as described in this
26 subparagraph, the court shall order the release of the eligible
27 defendant pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).
28 Notwithstanding any other provision of this section, an eligible
29 defendant shall be released from jail pursuant to section 3 of
30 P.L.2014, c.31 (C.2A:162-17) after a release hearing if, two years
31 after the court's issuance of the pretrial detention order for the
32 eligible defendant, excluding any delays attributable to the eligible
33 defendant, the prosecutor is not ready to proceed to voir dire or to
34 opening argument, or to the hearing of any motions that had been
35 reserved for the time of trial.

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

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

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

47 (iv) A trial ordered after a mistrial or upon a motion for a new
48 trial shall commence within 120 days of the entry of the order of the

- 1 court. A trial ordered upon the reversal of a judgment by any
2 appellate court shall commence within 120 days of the service of
3 that court's trial mandate.
- 4 (c) If the eligible defendant is indicted for a first degree crime
5 or any other crime involving certain risks as set forth in paragraph
6 (2) of subsection a. section 5 of P.L.2014, c.31 (C.2A:162-19) on
7 another matter resulting in the eligible defendant's pretrial
8 detention, the time calculations set forth in this paragraph for each
9 matter shall run independently.
- 10 b. (1) The following periods shall be excluded in computing the
11 time in which a case shall be indicted or tried:
- 12 (a) The time resulting from an examination and hearing on
13 competency and the period during which the eligible defendant is
14 incompetent to stand trial or incapacitated;
- 15 (b) The time from the filing to the disposition of an eligible
16 defendant's application for supervisory treatment pursuant to
17 N.J.S.2C:36A-1 or N.J.S.2C:43-12 et seq., special probation
18 pursuant to N.J.S.2C:35-14, drug or alcohol treatment as a condition
19 of probation pursuant to N.J.S.2C:45-1, or other pretrial treatment
20 or supervisory program;
- 21 (c) The time from the filing to the final disposition of a motion
22 made before trial by the prosecutor or the eligible defendant;
- 23 (d) The time resulting from a continuance granted, in the court's
24 discretion, at the eligible defendant's request or at the request of
25 both the eligible defendant and the prosecutor;
- 26 (e) The time resulting from the detention of an eligible
27 defendant in another jurisdiction provided the prosecutor has been
28 diligent and has made reasonable efforts to obtain the eligible
29 defendant's presence;
- 30 (f) The time resulting from exceptional circumstances
31 including, but not limited to, a natural disaster, the unavoidable
32 unavailability of an eligible defendant, material witness or other
33 evidence, when there is a reasonable expectation that the eligible
34 defendant, witness or evidence will become available in the near
35 future;
- 36 (g) On motion of the prosecutor, the delay resulting when the
37 court finds that the case is complex due to the number of defendants
38 or the nature of the prosecution;
- 39 (h) The time resulting from a severance of codefendants when
40 that severance permits only one trial to commence within the time
41 period for trial set forth in this section;
- 42 (i) The time resulting from an eligible defendant's failure to
43 appear for a court proceeding;
- 44 (j) The time resulting from a disqualification or recusal of a
45 judge;
- 46 (k) The time resulting from a failure by the eligible defendant to
47 provide timely and complete discovery;

1 (l) The time for other periods of delay not specifically
2 enumerated if the court finds good cause for the delay; and

3 (m) Any other time otherwise required by statute.

4 (2) The failure by the prosecutor to provide timely and complete
5 discovery shall not be considered excludable time unless the
6 discovery only became available after the time set for discovery.

7 (cf: P.L.2014, c.31, s.8)

8

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

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

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

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

43 (1) The approved risk assessment instrument shall be objective,
44 standardized, and developed based on analysis of empirical data and
45 risk factors relevant to **【**the**】** an eligible defendant's risk of failure
46 to appear in court when required and the eligible defendant's danger
47 to the community while on pretrial release. The risk assessment
48 instrument shall not be required to include factors specifically

1 pertaining to the risk for obstructing or attempting to obstruct the
2 criminal justice process.

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

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

12 (cf: P.L.2014, c.31, s.11)

13

14 12. Sections 1 through 4 of this act shall take effect on the first
15 day of the 10th month following the date of enactment, and sections
16 5 through 12 shall take effect on December 30, 2016, but the
17 Attorney General, Commissioner of Banking and Insurance, and
18 Administrative Director of the Courts may take any anticipatory
19 administrative action in advance of those dates as shall be necessary
20 for the implementation of this act.