

SENATE, No. 1977

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS

Establishes rebuttable presumption of pretrial detention for child sexual abuse.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pretrial detention and amending P.L.2014, c.31.

2

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

5

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

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

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

40 b. Regarding the pretrial detention hearing moved for by the
41 prosecutor, except for when an eligible defendant is charged with a
42 crime set forth under paragraph (1) **【or】**, (2), or (3) of subsection b.
43 of section 5 of P.L.2014, c.31 (C.2A:162-19), there shall be a
44 rebuttable presumption that some amount of monetary bail, non-
45 monetary conditions of pretrial release or combination of monetary

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

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

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

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

15
16 2. Section 5 of P.L.2014, c.31 (C.2A:162-19) is amended to
17 read as follows:

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

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

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

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

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

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

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

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

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

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

44 (c) the eligible defendant will obstruct or attempt to obstruct
45 justice, or threaten, injure, or intimidate, or attempt to threaten,
46 injure or intimidate, a prospective witness or juror.

47 b. When a motion for pretrial detention is filed pursuant to
48 subsection a. of this section, there shall be a rebuttable presumption

1 that the eligible defendant shall be detained pending trial because
2 no amount of monetary bail, non-monetary condition or
3 combination of monetary bail and conditions would reasonably
4 assure the eligible defendant's appearance in court when required,
5 the protection of the safety of any other person or the community,
6 and that the eligible defendant will not obstruct or attempt to
7 obstruct the criminal justice process, if the court finds probable
8 cause that the eligible defendant:

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

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

13 **[(2)](3)** committed any crime for which the eligible defendant
14 would be subject to an ordinary or extended term of life
15 imprisonment.

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

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

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

1 receive an assessment to determine whether that eligible defendant
2 is drug dependent.

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

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

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

35 f. The hearing may be reopened, before or after a
36 determination by the court, at any time before trial, if the court
37 finds that information exists that was not known to the prosecutor
38 or the eligible defendant at the time of the hearing and that has a
39 material bearing on the issue of whether there are conditions of
40 release that will reasonably assure the eligible defendant's
41 appearance in court when required, the protection of the safety of
42 any other person or the community, or that the eligible defendant
43 will not obstruct or attempt to obstruct the criminal justice process.
44 (cf: P.L.2014, c.31, s.5)

45

46 3. This act shall take effect immediately.

STATEMENT

This bill establishes a rebuttable presumption of pretrial detention for a defendant charged with sexual assault or criminal sexual contact when the victim is a minor.

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

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

This bill provides that the rebuttable presumption of pretrial detention also applies to defendants charged with sexual assault pursuant to N.J.S.2C:14-2 or criminal sexual contact pursuant to N.J.S.2C:14-3 when the victim is a minor.