

CHAPTER 43

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

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

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

C.2A:162-19 Pretrial detention for certain eligible defendants requested by prosecutor.

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); 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) the eligible defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure or intimidate, a prospective witness or juror.

b. 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 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.

g. When a motion for pretrial detention is filed pursuant to subsection a. of this section, a pretrial recommendation of no release pursuant to subsection f. of section 6 of P.L.2014, c.31 (C.2A:162-20) may constitute prima facie evidence to overcome the presumption of release as set forth in subsection b. of section 4 of P.L.2014, c.31 (C.2A:162-18), if the court finds probable cause that the eligible defendant committed any crime for which the eligible defendant would be

subject to a mandatory term of imprisonment pursuant to subsection c. of N.J.S.2C:43-6 for a crime involving the use or possession of a firearm other than a violation of:

- (1) subsection a. or d. of N.J.S.2C:39-3;
- (2) paragraph (1) or (2) of subsection a. of N.J.S.2C:39-4;
- (3) subsection a. of section 1 of P.L. 1998, c.26 (C.2C:39-4.1); or
- (4) paragraph (1) of subsection b. or paragraph (1) or (2) of subsection c. of N.J.S.2C:39-5.

2. Section 6 of P.L.2014, c.31 (C.2A:162-20) is amended to read as follows:

C.2A:162-20 Information considered in determination of pretrial detention.

6. In determining in a pretrial detention hearing 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 take into account information concerning:

- a. The nature and circumstances of the offense charged;
- b. The weight of the evidence against the eligible defendant, except that the court may consider the admissibility of any evidence sought to be excluded;
- c. The history and characteristics of the eligible defendant, including:
 - (1) the eligible defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings, except with respect to these factors, the court shall not consider manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or possession of marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10; and
 - (2) whether, at the time of the current offense or arrest, the eligible defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state;
- d. The nature and seriousness of the danger to any other person or the community that would be posed by the eligible defendant's release, if applicable;
- e. The nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the eligible defendant's release, if applicable; and
- f. The release recommendation of the pretrial services program obtained using a risk assessment instrument under section 11 of P.L.2014, c.31 (C.2A:162-25). Pretrial services shall recommend no release when a defendant has been charged with any crime for which the eligible defendant would be subject to a mandatory term of imprisonment pursuant to subsection c. of N.J.S.2C:43-6 for a crime involving the use or possession of a firearm other than a violation of:
 - (1) subsection a. or d. of N.J.S.2C:39-3;
 - (2) paragraph (1) or (2) of subsection a. of N.J.S.2C:39-4;
 - (3) subsection a. of section 1 of P.L. 1998, c.26 (C.2C:39-4.1); or
 - (4) paragraph (1) of subsection b. or paragraph (1) or (2) of subsection c. of N.J.S.2C:39-5.

3. This act shall take effect immediately.

Approved June 30, 2022.