

Bail Reform Statute

This section is current through New Jersey 217th First Annual Session, L. 2016, c. 23, and J.R. 1

N.J.S.A. § 2A:162-15. Liberal construction [Effective January 1, 2017].

The provisions of sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.) shall be liberally construed to effectuate the purpose of primarily relying upon pretrial release by non-monetary means to reasonably assure an eligible defendant's appearance in court when required, the protection of the safety of 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, 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.).

§ 2A:162-16. Detaining eligible defendant during preparation of risk assessment prior to trial [Effective January 1, 2017].

- a. An eligible defendant, following the issuance of a complaint-warrant pursuant to the conditions set forth under subsection c. of this section, 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.
 - (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 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, 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.

§ 2A:162-17. Consideration for pretrial release [Effective January 1, 2017].

Except as otherwise provided under sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) concerning a hearing on pretrial detention, a court shall make, pursuant to this section, a pretrial release decision for an eligible defendant without unnecessary delay, but in no case 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 PL.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 court may order the pretrial release of the eligible defendant on monetary bail, other than an unsecured appearance bond. The court may only impose monetary bail pursuant to this subsection to reasonably assure the eligible defendant's appearance. The court shall not impose 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.
- (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.

§ 2A:162-18. Pretrial detention for certain eligible defendants ordered by court; appeal [Effective January 1, 2017].

a.

- (1) The court may order, before trial, the detention of an eligible defendant charged with any crime, 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), 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).

§ 2A:162-19. Pretrial detention for certain eligible defendants requested by prosecutor [Effective January 1, 2017].

- 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.

§ 2A:162-20. Information considered in determination of pretrial detention [Effective January 1, 2017].

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 appearance at court proceedings; 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).

§ 2A:162-21. Contents of pretrial detention order; temporary release [Effective January 1, 2017].

- a. In a pretrial detention order issued pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19), the court shall:
 - (1) include written findings of fact and a written statement of the reasons for the detention; and
 - (2) direct that the eligible defendant be afforded reasonable opportunity for private consultation with counsel.
- b. The court may, by subsequent order, permit the temporary release of the eligible defendant subject to appropriate restrictive conditions, which may include but shall not be limited to pretrial supervision, to the extent that the court determines the release to be necessary for preparation of the eligible defendant's defense or for another compelling reason.

§ 2A:162-22. Eligible defendant subject to pretrial detention, release; conditions
[Effective January 1, 2017].

- a. Concerning an eligible defendant subject to pretrial detention as 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 or indicted 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 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 court. 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 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;
 - (l) 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.

§ 2A:162-23. Notification to eligible defendant by court, conditions of release
[Effective January 1, 2017].

a.

- (1) If an eligible defendant is released from jail pursuant to section 3 or 8 of P.L.2014, c.31 (C.2A:162-17 or C.2A:162-22), the court shall, in the document authorizing the eligible defendant's release, notify the eligible defendant of:
 - (a) all the conditions, if any, to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the eligible defendant's conduct; and
 - (b) the penalties for and other consequences of violating a condition of release, which may include the immediate issuance of a warrant for the eligible defendant's arrest.

The failure of the court to notify the eligible defendant of any penalty or consequence for violating a condition of release as required by this subparagraph shall not preclude any remedy authorized under the law for any violation committed by the eligible defendant.

- (2) If the court enters an order that is contrary to a recommendation made in a risk assessment when determining a method of release or setting release conditions, the court shall provide an explanation in the document that authorizes the eligible defendant's release.

- b. Notwithstanding any law to the contrary, an eligible defendant who is released from jail on personal recognizance or subject only to non-monetary conditions pursuant to section 3 or 8 of

P.L.2014, c.31 (C.2A:162-17 or C.2A:162-22) shall not be assessed any fee or other monetary assessment related to processing the eligible defendant's release.

§ 2A:162-24. Violation of condition of release, motion by prosecutor [Effective January 1, 2017].

Upon motion of a prosecutor, when an eligible defendant is released from custody before trial pursuant to section 3 or 8 of P.L.2014, c.31 (C.2A:162-17 or C.2A:162-22), the court, upon a finding that the eligible defendant while on release has violated a restraining order or condition of release, or upon a finding of probable cause to believe that the eligible defendant has committed a new crime while on release, may not revoke the eligible defendant's release and order that the eligible defendant be detained pending trial unless the court, after considering all relevant circumstances including but not limited to the nature and seriousness of the violation or criminal act committed, finds clear and convincing evidence that no monetary bail, non-monetary conditions of 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, or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

§ 2A:162-25. Statewide Pretrial Services Program; risk assessment instrument [Effective January 1, 2017].

- 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, 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 bail, 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 the risk of failure to appear

in court when required and the danger to the community while on pretrial release. The risk assessment instrument shall not be required to include factors specifically pertaining to the risk for obstructing or attempting to obstruct the criminal justice process.

- (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.
- 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.

§ 2A:162-26. Pretrial Services Program Review Commission [Effective January 1, 2017].

- a. There is hereby created, in but not of the Department of Law and Public Safety, a commission to be known as the Pretrial Services Program Review Commission, consisting of 17 members as follows: the Attorney General, or his designee; two members of the Senate, who shall each be of different political parties, appointed by the Senate President; two members of the General Assembly, who shall each be of different political parties, appointed by the Speaker of the General Assembly; the Administrative Director of the Courts, or his designee; two county prosecutors, appointed by the Governor based upon the recommendation of the County Prosecutors Association of the State of New Jersey; the Public Defender, or his designee; the following ex-officio public members: the President of the New Jersey State Conference of the National Association for the Advancement of Colored People, the President of the Latino Action Network, the Executive Director of the American Civil Liberties Union of New Jersey, the New Jersey State Director of the Drug Policy Alliance, and the President and Chief Executive Officer of the New Jersey Institute for Social Justice; and the following appointed public members: a county or municipal law enforcement officer appointed by the Governor, and two additional members having experience with, possessing a background in, or demonstrating a specialized knowledge of, the legal, policy, or social aspects of criminal justice pretrial release and detention programs, one appointed by the Governor upon the recommendation of the President of the Senate, and one appointed by the Governor upon the recommendation of the Speaker of the General Assembly.
- b.
 - (1) The members' terms shall be as follows:
 - (a) The State and county ex-officio members shall serve during their elective or appointed term of office;
 - (b) The ex-officio public members shall serve during their term of office; and
 - (c)
 - (i) The appointed public members shall each be appointed for a term of three years, except that of the two members with experience, background, or specialized knowledge of criminal justice pretrial release and detention programs first appointed, the member appointed by the Governor upon the recommendation of the Speaker of the General Assembly shall serve for a term of two years, and the

member appointed by the Governor upon the recommendation of the Senate President shall serve for a term of three years.

(ii) Each member appointed shall hold office for the term of appointment and until a successor shall have been appointed and qualified.

(iii) Any vacancy in the appointed membership of the commission shall be filled by appointment in the same manner as the original appointment was made.

c.

(1) The commission shall organize as soon as may be practicable upon the ex-officio designation and appointment of a majority of its authorized membership. The members shall elect one of the members to serve as chair, and one to serve as vice-chair, and the chair may appoint a secretary, who need not be a member of the commission.

(2) The commission shall meet at the call of the chair, or when requested by a majority of its members, at those times and places within the State of New Jersey as the chair shall determine. A majority of the commission's authorized membership shall constitute a quorum for the transaction of any business, including the adoption of any commission recommendations.

d. The members of the commission shall serve without compensation, but shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available to the commission for its purposes.

e. The Division of Criminal Justice in the Department of Law and Public Safety shall, at the direction of the Attorney General, provide legal, stenographic, technical, clerical, and other staff and resource assistance to the commission, and additionally the commission may incur expenses as may be necessary in order to perform its duties within the limits of funds appropriated or otherwise made available to it for its purposes.

f. It shall be the duty of the commission to:

(1) Review the annual report of the Administrative Director of the Courts concerning the development and administration of the Statewide Pretrial Services Program that is submitted to the commission pursuant to subsection b. of section 17 of P.L.2014, c.31 (C.2B:1-11);

(2) Examine the existing law concerning pretrial release and detention established by sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.);

(3) Research criminal justice pretrial release and detention programs from other states and jurisdictions; and

(4) Make recommendations for legislation related to paragraphs (1) through (3) of this subsection.

g. The commission shall report annually to the Governor, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the Supreme Court, its activities, as well as its findings and recommendations, if any, for legislation.

History

L. 2014, c. 31, § 1, effective Jan. 1, 2017.

Section 21 of L. 2014, c. 31 provides: "a. Sections 1 through 11 and section 20 [2A:162-15 through 2A:162-26] of this act shall take effect on the same day that a constitutional amendment to Article I, paragraph 11 of the New Jersey Constitution authorizing the courts to deny pretrial release of certain defendants takes effect; and sections 12 through 19 of this act shall take effect immediately. b. Sections 1 through 11 of this act shall apply to any eligible defendant who is arrested on or after the effective date of those sections, regardless of whether the crime or offense related to the arrest was allegedly committed before, on, or after the effective date of those sections. c. With respect to any delay to the effective date of sections 1 through 11 of this act based on the requirement to amend Article I, paragraph 11 of the New Jersey Constitution as set forth in subsection a. of this section, nothing shall be construed to affect the court's existing authority to revoke pretrial release prior to the effective date of those sections. d. The Supreme Court may adopt Rules of Court and take any administrative action necessary to implement the provisions of this act, including the adoption of rules or anticipatory administrative action in advance of the effective date of sections 1 through 11 of this act as set forth in subsection a. of this section." Chapter 31, L. 2014, was approved on Aug. 11, 2014.

The amendment to N.J. Const., Art. I, Para. 11 was approved by the voters on November 4, 2014, to be effective Jan. 1, 2017.