

2021 HOUSE JUDICIARY

HB 1123

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1123
1/18/2021

Relating to bail and a summons in lieu of arrest warrant.

Chairman Klemin called the hearing to order at 9:00 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Discussion Topics:

- Court summons by mail
- Time incarcerated with DUI
- Posting bail

Rep. Roers Jones: Introduced the bill. Oral testimony

Mark Friese, Attorney in Fargo: Testimony #1000 9:10

Travis Finck, Executive Director, NDCLCI: Testimony #1036 9:16

Jack Lofgren, NDACDL: Testimony #1012 9:19

Adam Martin, Executive Director of F5 Project: Oral testimony 9:27

Dane DeKrey, Director for ACLU: Testimony #1092 9:32

David Zibolske, Chief of Police of Fargo: Testimony #1028 9:40

Jesse Jahner, Cass County Sheriff: Testimony # 1164 9:50

Stephan Dassinger, The Chiefs of Police Association of ND: Testimony #1094
5006, #5007

John Ward, Lobbyist of ACLU; Testimony #1082, #1218

Chairman Klemin adjourned the meeting at 10:15.

*DeLores D. Shimek,
Committee Clerk*

January 17, 2021

The Honorable Lawrence R. Klemin
Chair, ND House Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Submitted electronically only:

Re: Testimony in Support of HB 1123

Dear Chairman Klemin, members of the House Judiciary Committee, and HB 1123 Sponsors,

I write individually in support of HB1123. I am an attorney in private practice in Fargo. I am a resident of Legislative District 45. I primarily practice in State and Federal courts in North Dakota, I am also admitted to practice in Minnesota state courts and the United States Court of Appeals for the Armed Forces. For the past 20 years, my primary practice has been criminal defense. I retired from the North Dakota Army National Guard after serving twenty four years, the last eight of which were with the Judge Advocate General Corps. Prior to law school, I served as a Bismarck Police officer for more than five years. I have had the previous privilege of working with the Chairman and members of the Assembly as a citizen member of the Interim Commission on Alternatives to Incarceration.

Even a single day in jail can be life-changing. Arrested citizens lose jobs, housing, and opportunity. Taxpayers bear the resulting costs. Add additional days and the damage compounds. HB 1123 seeks to protect citizens and taxpayers from the costs of custodial arrests and cash bail for low-level offenses for which arrested citizens could instead be summoned.

This bill addresses real problems of disparate treatment, creating a presumption that residents charged with low-level offenses will be released on a promise to appear. It further creates the presumption that judicial officers will summon residents to court for low-level offenses rather than issuing arrest warrants. The bill rightfully preserves a magistrate's authority to require posting of bail in instances where there are reasonable and probable grounds to believe the individual will not otherwise appear.

SUMMONS IN LIEU OF ARREST

There is currently a stark lack of consistency across the state and among various courts. Some courts regularly and successfully use a summons to alert citizens of a pending charge. Other courts seldom, if ever, use a summons, but instead direct the custodial arrest by warrant. This regularly happens even in cases where citizens have already been arrested, booked, jailed, and have paid bail.

I routinely represent clients arrested and charged with municipal offenses. After the case is reviewed, a municipal prosecutor may dismiss the charge and refer it to a county attorney's office for prosecution on a higher level offense. Likewise, I have regularly represented individuals who have been arrested,

The Honorable Lawrence Klemin

January 17, 2021

Page 2

charged, and have posted bail. When a charge precedes a complete investigation, a prosecutor may dismiss, reinstating prosecution months or years later—resulting in another arrest.

Opponents who claim inconvenience related to this proposal fail to recognize that unlike arrest warrants which must be served only on the arrestee and in person by a peace officer, a summons can be personally served on the person, by leaving a copy with a responsible person at the person's residence, or even by mail or other commercial delivery requiring a signed receipt. And, service of a summons need not be made by a peace officer. More simply, this proposal would actually ease the burden on law enforcement by providing a mechanism to bring low-level offenders before a court without the expense and impact of custodial arrest.

North Dakota Rule of Criminal Procedure 4(a)(2) already provides authority to issue a summons in lieu of a warrant if the magistrate has reason to believe the defendant will appear. Subsection (a)(3) of the rule provides if the defendant fails to appear when summoned, the magistrate must issue an arrest warrant. If adopted, this proposal simply creates the presumption that authorities would start with a summons in lieu of an arrest warrant.

RELEASE ON RECOGNIZANCE

Many courts use cash bail to collect fines and fees in advance of conviction. For those arrested without a warrant, most courts authorize posting of cash bail under a "bail schedule" established by the court. Disparities in cash bail for the exact same offense committed in the exact same location because of the agency making the arrest. A statutory presumption of release on a promise to appear extinguishes the disparities.

Impaired driving cases serve as a good example. For a first offense with an alcohol concentration not exceeding .16, North Dakota law requires a minimum fine of \$500. If the offense is charged under state law rather than municipal ordinance, \$225 in additional fees are required upon conviction. For good policy reason, courts develop standard sentencing practices for recurrent offenses. In Cass County, this type of offender can expect fines of \$750-\$800, and for the same offense in Fargo City Court an offender can expect \$650 in fines and costs. A West Fargo City Court offender can expect \$500 in fines and costs. The respective current bail schedules: Cass County, \$800; Fargo, \$650; and West Fargo, \$500. An accused unable to post scheduled bail (or perhaps more aptly, pay their fines and costs in advance of conviction) is held in jail until appearing before a judge.

Convenience to the court and court staff, and proactive efforts to ensure ability to enforce legislative directives on the collection of mandatory fines and fees are laudable aims. But these practices have the unintended consequence of jailing those unable to pay their fines in advance of their conviction.

There is a practical counterargument: convicted offenders who have not paid their fines and fees are regularly arrested for failing to comply with the court judgment (i.e., failing to pay fines imposed by the court). I agree current practices may actually protect offenders in the end. I also agree that if this proposal passes, perhaps more offenders will fail to appear, resulting in additional work for courts and their staffs. On balance, because even a day in jail may adversely and profoundly alter the course of a person's life, I support this proposal.

The Honorable Lawrence Klemin

January 17, 2021

Page 3

North Dakota Rule of Criminal Procedure 46 governs bail, and directs that courts must start with a presumption that a defendant should be released on recognizance. In many districts, that presumption is never applied—likely because of the practical reasons outlined above. The bail reform act—federal law governing bail in federal courts—starts with the same general presumption. In twenty years of practice in federal court, I recall only one client who was ordered to post cash bail—the rest if eligible were released on a promise to appear and conditions. Perhaps this is an unfair comparison because federal courts benefit from the use of pretrial services officers who serve, on a pretrial basis, in a capacity similar to our probation and parole officers following conviction.

During the pandemic, release on recognizance has been more common. Some might suggest increased levels of non-appearance have occurred, and may use that “evidence” to suggest cash bail is the solution. First, non-appearance is likely much more attributable to the pandemic (and gubernatorial quarantine orders) than the absence of cash bail. But more importantly, the claim that cash bail more adequately ensures appearance is proven inaccurate by federal courts—where the penalties upon conviction are almost always far more significant—which release on recognizance. While I support adoption of this bill as the best option currently available, I offer additional comment on alternatives.

ALTERNATIVES

Automated messaging and reminders are likely more effective than cash bail. Cellular telephones are ubiquitous. We regularly receive text reminders for doctor or dental appointments, blood donations, or even car repair. In lieu of forcing posting of cash bail, offenders who provide contact information and agree to text notification should be permitted to do so.

Many who are jailed and unable to post bail suffer from serious chemical use disorders. The motive of jailing offenders for their own good is pure, but providing alternative placement and treatment options is a far better solution. Of course, alternatives come with cost.

CONCLUSION

I write in support of HB1123. A presumption of summons in lieu of arrest, and a presumption of release on a promise to appear rather than posting of cash bail applied to residents accused of low-level offenses makes sense. I extend my personal appreciation to the sponsors for their efforts, and I encourage this Committee to recommend passage.

Respectfully submitted,

/s/ Mark A. Friese

Mark A. Friese

Cc: Sen. Ronald Sorvaag, rsorvaag@nd.gov
Rep. Mary Johnson, marycjohnson@nd.gov
Rep. Tom Kading, tkading@nd.gov

HB 1123
House Judiciary Committee
January 18, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the executive director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense in North Dakota. I rise today on behalf of the Commission to provide testimony in support of HB 1123.

The Constitution of the United States of America guarantees individuals charged with a crime the right to due process of law. Inherent within due process is the right be presumed innocent until proven guilty. This is a basic tenant of American Jurisprudence. The Constitution of the State of North Dakota provides that all persons shall be madeailable by sufficient surety. Further, Court rules provide a magistrate must order the person released pending trial on the person's personal recognizance or on execution of an unsecured appearance bond in an amount specified by the magistrate, unless the magistrate determines, in the exercise of the magistrate's discretion, that unconditional release will not reasonably assure the appearance of the person as required. Despite the Constitutional requirements, bail schedules have been developed and implemented across the state. The Bail schedules allow a defendant arrested of a specific charge to post the listed bail for that crime and be released from jail. If you are unable to post the bond/bail, the defendant is brought before the Court to have a bail set. In some circumstances, this current practice runs dangerously close to being afoul of the United States' Supreme Court case law holding incarceration of defendants solely because of their inability to pay for their release, whether through fines, fees or a cash bond violates the Equal Protection Clause of the 14th Amendment.

Bail should be used as a shield to ensure future appearance and protect the community not as a sword to force individuals to plead guilty. Prior to my time in administration of the indigent defense system, I served as a public defender. It is an unfortunate reality in this great state that an individual pleads guilty simply to get out of jail because they don't have money to

post a cash bail. However, I can tell you with certainty it happened many times when I was practicing in the trenches and undoubtedly continues today.

Pretrial incarceration accounts for the majority of county jail inmate populations. According to the 2018 Jail Inmates statistics released in March of 2020 by the United States Bureau of Justice Statistics, nationwide only 34% of persons who were in jail had been or were awaiting sentence. This creates a burgeoning pretrial population. This can cause extreme difficulties for counties to manage their populations. A perfect example is that of the positive reaction of jails in response to the COVID 19 pandemic. County jails, prosecutors and the courts implemented population plans to release low level offenders to keep fewer people coming in and out of the facilities. The policies that were implemented at the outset of Covid 19 and are very similar to the Legislative direction given in HB 1123.

HB 1123 is a giant step in the right direction for bail reform in North Dakota. Last session the Legislative Assembly instituted and funded a pilot program for a pre-trial release program. This bill and that program are smart steps in criminal justice and bail reform. The Commission is support of criminal justice reform that not only meets our constitutional requirements of due process, but also protects the community. It is our belief this bill achieves exactly that.

Former U. S. Supreme Court Chief Justice William Rehnquist once said “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception”. With that in mind Mr. Chairman, on behalf of the commission, we respectfully request a DO PASS recommendation.

Respectfully Submitted:



Travis W. Finck

Executive Director, NDCLCI

January 18, 2021

Testimony to the **House Judiciary Committee**

By Jackson Lofgren on behalf of the ND Association of Criminal Defense Lawyers

Testimony In Support of HB 1123

Chairman Klemin and Committee Members:

My name is Jackson Lofgren and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers who dedicate at least a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process...” and “...promote the proper and fair administration of criminal justice within the State of North Dakota. We **support** HB 1123.

Most Americans recognize our current pretrial system must change. The United States is one of the only countries with a cash bail system requiring the accused to give the government money to remain free until his or her day in court. Pretrial detainees make up more than 70% of the national jail population. This equates to approximately 536,000 people at a cost to American taxpayers of around \$14 billion each year.

North Dakota is no exception. Online records indicated on the morning of January 16, 2021, there were 253 inmates in the Burleigh-Morton Detention. More than half of these individuals appeared to be pre-trial detainees. Often it can take six months or more for a case to work its way through our court system. That can mean six months where an individual who cannot make bail is without a job, incurs mounting debt, and risks having their children placed into the foster care system. All while presumed innocent.

This will be my fifteenth year as an attorney in North Dakota. Half of that time was spent as a government lawyer and prosecutor. For the last seven years I have been in private practice focused on criminal defense. In my opinion the two biggest causes of innocent people pleading guilty in our system are cash bonds and mandatory minimum sentences. I cannot count the number of times I have seen an indigent person appear in custody for a misdemeanor, ask for a lawyer and plead not guilty, then ask to change that plea to guilty after being told they will need to post an amount they do not have to bond out of jail. How many of these people were innocent or had a defense? Unfortunately, they gave up their rights and defenses because a guilty plea was the key to the jail house door.

Unfortunately, the problems caused by cash bonds are not limited to the indigent. Cash bonds in the \$10,000-\$25,000 range are fairly common with bond amounts in some cases going into six figures. Recently, there was a \$75,000 cash bond set for a woman in her mid-fifties with no criminal history on a class C felony offense subject to presumptive probation. After obtaining an attorney she was able to get her bond lowered to an amount requiring her to post \$1,000.00. But, she sat in jail for over two weeks. What if she did not have the money for an attorney and did not qualify for court appointed counsel? Would she have pled guilty to get out of jail?

If our current cash bail system causes one innocent person to plead guilty we need to change it. For these reasons we support **HB 1123** and ask for a **DO PASS** recommendation from this Committee.

Thank You,

Jackson J. Lofgren

Jackson Lofgren

January 18, 2021

Dear Legislators,

The ACLU of North Dakota supports House Bill 1123, legislation that would make much needed changes to the cash bail system in North Dakota.

My name is Dane DeKrey and I am the chapter's Advocacy Director. In lieu of providing written testimony, I will be testifying orally by video in favor of the proposed legislation.

I am also happy to answer any questions. Thank you.

Sincerely,

/s/ Wm Dane DeKrey

Dane DeKrey
ACLU of North Dakota



P.O. Box 1190
Fargo, ND 58107
(701) 353 - 5714
www.aclund.org

Dane DeKrey
Advocacy Director

January 18, 2021

Dear Chair & members of the ND House Judiciary Committee, my name is David Zibolski, and I am the newly appointed Chief of Police in Fargo. I am 36-year law enforcement professional, having worked in both a major city (Milwaukee), the WI Department of Justice, and served as chief in two departments—Beloit, WI and now Fargo.

I testify before you today in strong opposition to House Bill 1123 as written. The words “as written” are an important distinction, as I am unaware of the problem or situation this proposed legislation seeks to address. I have reached out to the bill sponsor from Fargo (Rep. Roers-Jones), however I’m sure due to the tight time constraints, have not received a response.

My opposition is based on the adverse public safety outcomes that would accompany such a proposal as outlined below:

- 1. The bill is far-reaching in terms of the number and scope of the crimes in which a person arrested would be allowed to be immediately released from custody. Not only all misdemeanors, which includes everything from disorderly conduct to sexual assault of a 15 year old minor (§ 12.1-20-07, NDCC), but also in terms of its provision to issue a summons in lieu of an arrest warrant for Class C felonies.**

The release provision would severely hamper the ability of law enforcement to ensure the continued safety of public spaces. Those arrested for disorderly conduct or inciting a riot would, subsequent to booking, be released and placed in the position to re-engage in their illegal behavior. Certainly this would not be acceptable to the public at large.

Those who are prolific offenders (theft, criminal mischief, etc.) would be free to continue with their illegal ventures with impunity and could simply just be re-arrested for the same offenses and continue to victimize our public. Those arrested for violating conditions of bail for a misdemeanor offense would be released, invalidating the very criminal code that seeks to ensure adherence to a judge’s order relative to bail conditions. In short, there is no longer any deterrent factor or reasonable means to control their behavior.

Those arrested for driving under the influence would be free to get back behind the wheel while possibly still legally intoxicated.

While the bill creates an exception for domestic violence arrests, it does not address domestic violence and other types of restraining orders, again placing victims at grave risk and providing no sense of safety even after a person is arrested.

January 18, 2021

Issuing a summons in lieu of an arrest warrant for a Class C Felony abrogates the ability to extradite a person from another state. Regardless of the presumptive probation disposition, a person could simply cross the Red River from Fargo into Moorhead and even though charged with a Class C Felony, would never be brought before a North Dakota court unless they were unwittingly arrested in North Dakota.

2. The bill removes judicial oversight and reasonable accountability in terms of a person’s willingness to appear for court or identifying who may otherwise be a danger to the community in terms of actions or recidivism of offense.

The bill is in conflict with North Dakota Century Code related to arrest without a warrant, in which a peace officer “must” take the person before a magistrate (§ 29-06-25, NDCC).

3. The bill creates an increased financial and safety burden on our communities

Enactment of this bill will certainly increase the amount of misdemeanor warrants that by law requires law enforcement to travel to and/or transport persons either to other jurisdictions or to available magistrates. Many of these transports require more than one officer and may be of great distance increasing both personnel time, fuel, and equipment costs. As a result, agencies are forced to either backfill—via overtime pay—the loss of officers who would otherwise be patrolling in their community or chose to reduce their normal patrol presence thereby compromising public safety.

4. The bill seems to contain somewhat confusing or conflicting in language.

Section 1, Lines 11-17 appear to conflict or are incomplete. Line 11-14 indicates the person “must” be released on his or her own recognizance, while Line 14-17 contemplates a magistrate may order bail considering whether the person may disregard a written promise to appear. Under this bill when and who decides to engage the magistrate to make this determination? How will equal treatment be assured to our community members?

Under Section 2, line 9, what if the magistrate did not “specify bail and release conditions?” There is no guidance for this.

January 18, 2021

I have worked at both a state and local level on evidence-based criminal justice issues such as those contained in this bill and would be more than happy to work with legislators as part of a team to flesh out an evidence-based approach and/or address their concerns regarding bail.

I offer my testimony and insights respectfully, but also with great concern for the bills adverse affect on public safety and its reinforcement of bad behavior for those who seek to commit crimes, increase fear in our neighborhoods, and disturb our public spaces.

Thank you for the opportunity to participate in this process. Please feel free to contact me if I can be of assistance in the future.

David B. Zibolski
Chief of Police
City of Fargo
701-241-1401
dzibolski@fargond.gov

House Judiciary Committee
Jesse Jahner, Cass County Sheriff

Reference House Bill 1123

Mr. Chair, members of the House Judiciary Committee, my name is Jesse Jahner, and I am the elected Sheriff of Cass County, North Dakota. I have been a licensed Peace Officer in the State of North Dakota for 22 years. As Sheriff of Cass County, North Dakota, I oversee approximately 225 employees and a Jail with a 348 Inmate capacity. In addition, I sit on the North Dakota POST Board, Crime Victim Services Board and am Vice-Chair of the Dakota Territories Sheriff's Association. I testify before you today in opposition to House Bill 1123.

In reviewing House Bill 1123, it appears that an officer can still arrest if the misdemeanor happens in their presence, but that seems to be left open for clarification. Also, I am not sure if the committee is aware that each judiciary district sets its own bond schedule. In other words, a blanket approach to this bill does not address those instances where some misdemeanors are set as must appear. This can cause confusion amongst jurisdictions, and I feel that the bond schedule statewide would need to be addressed first. By setting a statewide bond schedule, you will be taking away judicial discretion on those specific issues that affect each community. Additionally, some misdemeanor arrests require fingerprinting, when an arrest is made and I do not see where the bill addresses that issue.

Over the past year, with the spread of COVID-19, law enforcement in Cass County has had to adjust their arrest procedures in an attempt to reduce the number of individuals who have been brought into the Cass County Jail. One adjustment that was made was in reference to misdemeanor arrest procedures. Rather than arresting those who committed a misdemeanor in an officer's presence, Individuals committing misdemeanor offenses were "cited and released on their own recognizance." Before the COVID-19 pandemic, those committing misdemeanor offenses in an officers' presence were arrested and brought to the Cass County Jail to post-bond or see a judge. COVID-19 has provided law enforcement the opportunity to evaluate whether "cite and release would be an effective alternative to arresting individuals for these misdemeanor offenses. It did not take long to realize that "cite and release on a person's own recognizance" was not working. In fact, "cite and release" has done the opposite; We have witnessed a considerable spike in the number of arrest warrants being issued on those who have failed to show up for court. In the months following the "cite and release" philosophy we have seen double the number of warrants which are coming into the Cass County Sheriff's Office. Here is an example of these numbers.

February	383
March	324
April	75
May	65
June	314
July	621
August	503

September	487
October	558
November	392
December	504

In 2020 we had 4,631 warrants that were issued; We still have 3200 outstanding misdemeanor warrants.

Based on these numbers, it is easy to see that individuals who have been "cited and released on their own recognizance" are not taking care of their warrants.

In Cass County, when individuals are arrested for misdemeanor offenses and have had to post a bond or see a Judge, 90% of them were able to make their bail. This is a very high percentage, and we do not see individuals typically sitting in jail on misdemeanor charges unless they have had prior convictions or have other pending charges. In an assessment of surrounding areas and other states, our bond schedules are in line and, on most occasions, lower. Our courts hold bond hearings regularly throughout the week in an attempt to get individuals out of jail.

In requiring individuals arrested to post bond, I believe we see more "buy-in," so to speak. By having to post bond, I believe there is a higher probability that a person will appear in court since they have a financial commitment for their offense. What prevents a person, who, for example, is disorderly or criminally trespassed and now released on their own recognizance from going back and being disorderly or trespassing again. There does not seem to be much of a deterrent for individuals who commit the same offense repeatedly. At what point do we consider our victims and that they should take priority over those Individuals who have violated other's rights. When those committing these crimes must post bail, some of that bail can be used to compensate our victims through restitution. I would respectfully ask that we start thinking of the victims in these cases, whether that be our businesses or our citizens who live out their lives every day and do not victimize others.

Lastly, House Bill 1123 is going to come with a financial Increase. As more and more individuals receive misdemeanor warrants, they will be arrested in other jurisdictions and will have to be extradited to the communities where these offenses have occurred. This can become very costly and resource-intensive to our counties. Also, in these situations, those having misdemeanor warrants will have to sit in jail longer to get their situation resolved, and this by no means is a quick process.

In closing, as Sheriff of Cass County, my primary duty is to provide public safety and keep the peace. I also feel it is a top priority to get justice for victims. House Bill 1123 provides concern for public safety, does not look out for victims' best interest, is more resource-intensive, and will increase costs to counties. I am respectfully asking the committee to oppose house bill 1123. Please do not make it harder for law enforcement to protect our citizens, businesses, and providing public safety to our communities.

January 18, 2021

House Judiciary Committee

HB 1123

Rep. Lawrence R. Klemin, Chair

For the record, I am Stephanie Dassinger. I am appearing on behalf of the Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities.

The Chiefs of Police appear today in opposition to HB 1123 because the Chiefs of Police believe the bill will have large negative impacts on the criminal justice system.

Section 1 of HB 1104 applies to all infraction and misdemeanor offenses, except for domestic violence offenses. That section requires that someone who is taken into custody for committing a misdemeanor offense, except domestic violence, be released on their own recognizance, in other words, without posting any bail.

In practice, what this means is that no one will be arrested for misdemeanor offenses, except for domestic violence offenses. Offenders will be issued a summons to appear in court for their offenses and sent on their way. This is essentially what has been happening during the COVID-19 pandemic and it has been very frustrating for the public who does not understand why offenders are not being arrested for committing offenses against them or their property, such as assaulting them, harassing them, or stealing from them. It is also very frustrating for law enforcement who are dealing with emboldened offenders, who know they will not be arrested, so they continue to commit crimes knowing they will not be taken to jail.

One such example occurred over the weekend in Jamestown. Law enforcement received two separate calls in an eight-hour period regarding an individual breaking into numerous cars and garages. Law enforcement was able to identify the subject of the calls. Upon identification, police realized this individual had been cited twice for shoplifting and had an active county warrant. Due to COVID-19 restrictions at the jail, the jail will not take the offender. That left the police and the public without a remedy to stop or slow down this person from

continuing to commit crimes. This is just one story, every police chief in the state could tell you multiple similar stories.

Another impact of COVID-19 has been that the number of individuals, who have not been required to post bail, failing to appear in court has increased dramatically. The requirement to post bail provides incentive for someone to appear in court. If someone does not appear for court, a warrant is issued for that person's arrest and law enforcement is faced with finding that person and arresting him or her. Additionally, if that person is arrested in another jurisdiction, the jurisdiction that issued the warrant must pay the costs to return the arrestee to the original jurisdiction to face charges. This increases the workload and, ultimately the costs which is born by the taxpayers in the state.

For the reasons state above, the Chiefs of Police request a Do Not Pass recommendation on HB 1123.

Thank you for your consideration.

21.0411.01002

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1123

Introduced by

Representatives Roers Jones, Becker, Hanson, M. Johnson, Klemin, Mock

Senators Bakke, Dwyer, Myrdal

1 A BILL for an Act to amend and reenact sections 29-08-02 and 29-05-12 of the North Dakota
2 Century Code, relating to bail and a summons in lieu of arrest warrant.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 29-08-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **29-08-02. Admission to bail defined - Delegation of authority by magistrate -**

7 **Exception.**

8 1. Admission to bail is the order of a competent court or magistrate that the defendant be
9 discharged from actual custody upon an undertaking with sufficient sureties for the
10 defendant's appearance.

11 2. Except as otherwise prohibited by law or in a case involving an offense under ~~section~~
12 ~~12.1-17-01.2~~ subdivisions f, g, and h of subsection 1 of section 29-06-15, a resident of
13 this state arrested with or without a warrant for a misdemeanor offense must be
14 released from custody on the individual's own recognizance and without appearing
15 before a magistrate. In a misdemeanor arrest with or without a warrant, a magistrate
16 may order the posting of bail if the magistrate has reasonable and probable grounds to
17 believe an individual will disregard a written promise to appear under this subsection
18 or the resident is subject to a pending unrelated criminal charge.

19 3. Upon posting cash bail in an amount established by a bail schedule or order of the
20 magistrate, a nonresident of this state who is arrested for a misdemeanor offense may
21 be released from custody before appearing before a magistrate.

22 4. A magistrate issuing an arrest warrant shall consider and may designate conditions
23 upon which an individual arrested with a warrant may be released from custody with
24 an order to appear before the magistrate at a designated time.

1 5. Any magistrate or municipal judge in this state may designate, authorize, and appoint
2 an additional person or persons a designee to arrange, receive, and approve forward
3 bail in cases involving traffic violations to the court.

4 **SECTION 2. AMENDMENT.** Section 29-05-12 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **29-05-12. Bail** ~~Summons in lieu of arrest warrant and bail if offense charged is a~~
7 ~~misdemeanor or, infraction, or subject to presumptive probation.~~

8 1. Except as otherwise prohibited by law, a magistrate authorizing a criminal charge for a
9 resident of this state for a misdemeanor, or infraction, or class C felony subject to
10 presumptive probation under section 12.1-32-07.4 shall issue a summons to appear. A
11 magistrate may direct the issuance of an arrest warrant for a resident involving
12 offenses designated in subsection 2 of section 29-08-02. A magistrate authorizing a
13 criminal charge for a nonresident may authorize the issuance of a summons or arrest
14 warrant.

15 2. ~~If the offense charged in a warrant of arrest is a misdemeanor or, infraction not within~~
16 ~~the jurisdiction of the magistrate who issued it to punish, and the accused is arrested~~
17 ~~in another county, the officer, upon, or class C felony subject to presumptive probation~~
18 ~~and the issuing magistrate has specified bail and release conditions, the accused who~~
19 ~~is arrested in a county not within the jurisdiction of the issuing magistrate and who is~~
20 ~~unable to post bail may request to appear before a local magistrate. Upon request of~~
21 ~~the accused, the arresting officer shall take the accused before a magistrate in the~~
22 ~~county in which the arrest is made, who and the magistrate shall admit the accused~~
23 ~~to amend the bail and take bail from of the accused accordingly. If there is no~~
24 ~~magistrate residing within the county wherein where the accused is arrested, and the~~
25 ~~accused requires it has requested to appear before a local magistrate, the officer shall~~
26 ~~take the accused before a magistrate of any other county nearer or more accessible~~
27 ~~than the magistrate issuing the warrant, and said magistrate shall admit the accused~~
28 ~~to amend the bail and take bail from of the accused accordingly. A summons under this~~
29 section must contain a conspicuous notice stating a failure to appear as designated in
30 the summons will result in the arrest of the individual and upon arrest, the individual
31 will not be released from custody unless otherwise ordered by the magistrate.

- 1 3. If an officer or other individual makes an arrest for which bail is not required, the officer
2 or individual making the arrest shall take the individual before the nearest available
3 magistrate as provided in rule 5 of the North Dakota Rules of Criminal Procedure.

21.0411.01002
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
January 26, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1123

Page 1, line 11, remove "section"

Page 1, line 12, replace "12.1-17-01.2" with "subdivisions f, g, and h of subsection 1 of section 29-06-15"

Page 1, line 14, after "arrest" insert "with or without a"

Page 1, line 17, after "subsection" insert "or the resident is subject to a pending unrelated criminal charge"

Page 1, line 18, after "3." insert "Upon posting cash bail in an amount established by a bail schedule or order of the magistrate, a nonresident of this state who is arrested for a misdemeanor offense may be released from custody before appearing before a magistrate."

4. A magistrate issuing an arrest warrant shall consider and may designate conditions upon which an individual arrested with a warrant may be released from custody with an order to appear before the magistrate at a designated time.

5."

Page 2, line 2, remove the overstrike over "~~or~~"

Page 2, line 2, remove the first underscored boldfaced comma

Page 2, line 2, remove ", or subject to presumptive probation"

Page 2, line 3, after "charge" insert "for a resident of this state"

Page 2, line 4, replace the first underscored comma with "or"

Page 2, line 4, remove ", or class C felony subject to presumptive probation under"

Page 2, line 5, remove "section 12.1-32-07.4"

Page 2, line 5, after the third underscored period insert "A magistrate may direct the issuance of an arrest warrant for a resident involving offenses designated in subsection 2 of section 29-08-02. A magistrate authorizing a criminal charge for a nonresident may authorize the issuance of a summons or arrest warrant."

Page 2, line 6, overstrike "If the offense charged in a warrant of arrest is a misdemeanor or"

Page 2, line 6, remove the underscored comma

Page 2, line 6, overstrike "infraction not within"

Page 2, overstrike line 7

Page 2, line 8, overstrike "in another county, the officer, upon"

Page 2, line 8, remove ", or class C felony subject to presumptive probation"

Page 2, remove lines 9 and 10

Page 2, line 11, remove "unable to post bail may request to appear before a local magistrate.
Upon"

Page 2, line 11, overstrike "request of"

Page 2, line 12, overstrike "the accused,"

Page 2, line 12, remove "the arresting officer"

Page 2, line 12, overstrike "shall take the accused before a magistrate in the"

Page 2, line 13, overstrike "county in which the arrest is made, who"

Page 2, line 13, remove "and the magistrate"

Page 2, line 13, overstrike "shall admit the accused"

Page 2, line 14, overstrike "to"

Page 2, line 14, remove "amend the"

Page 2, line 14, overstrike "bail and take bail from"

Page 2, line 14, remove "of"

Page 2, line 14, overstrike "the accused accordingly. If there is no"

Page 2, line 15, overstrike "magistrate residing within the county wherein"

Page 2, line 15, remove "where"

Page 2, line 15, overstrike "the accused is arrested, and the"

Page 2, line 16, overstrike "accused requires it"

Page 2, line 16, remove "has requested to appear before a local magistrate"

Page 2, line 16, overstrike ", the officer shall"

Page 2, overstrike lines 17 and 18

Page 2, line 19, overstrike "to"

Page 2, line 19, remove "amend the"

Page 2, line 19, overstrike "bail and take bail from"

Page 2, line 19, remove "of"

Page 2, line 19, overstrike "the accused accordingly." and insert immediately thereafter "A summons under this section must contain a conspicuous notice stating a failure to appear as designated in the summons will result in the arrest of the individual and upon arrest, the individual will not be released from custody unless otherwise ordered by the magistrate.

3. If an officer or other individual makes an arrest for which bail is not required, the officer or individual making the arrest shall take the individual before the nearest available magistrate as provided in rule 5 of the North Dakota Rules of Criminal Procedure.

Renumber accordingly

HB 1123

Dear Chairman Klemin and members of the House Judiciary Committee:

My name is John Ward and I am a Lobbyist for the American Civil Liberties Union (ACLU).

I have the pleasure of introducing Dane DeKrey, who will be providing testimony in support of HB 1123.

ACLU urges a DO PASS recommendation on HB 1123.

Thanks.

John E. Ward

Good Morning Chairman Klemin and members of the House Judiciary Committee:

Thank you for your time today spent on this important legislation.

Thank you to those members of the committee that have also sponsored this legislation.

As I mentioned during the open hearing, ACLU of ND supports HB 1123 and urges a DO PASS on HB 1123.

Mr. DeKrey, who provided testimony as a former federal public defender in ND and as ACLU of ND's advocacy director, has asked that we provide you with a copy of his article written for the North Dakota Law Review that provides additional information regarding this important issue of cash bail reform. You will find a link to the article here:

<https://law.und.edu/files/docs/ndlr/pdf/issues/95/2/95ndlr243.pdf>

We appreciate this Committee's continued support of criminal justice reform.

Thank you, again.



John E. Ward
Partner
Zuger Kirmis & Smith, PLLP
316 North 5th Street, 5th Fl.
P.O. Box 1695
Bismarck, ND 58502
Ph. 701-223-2711

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1123
2/2/2021

Relating to bail and a summons in lieu of arrest warrant.

Chairman Klemin called the meeting to order at 2:50 PM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Discussion Topics:

- Bail and release requirements
- One-time offense charges
- Probation

Rep. Roers Jones: Went over proposed amendment #21.0411.01002.

Motion made to adopt the amendment 21.0411.01002 by Rep. Roers Jones; Seconded by Rep. Satrom.

Voice vote carried

**Do Pass as Amended motion made by Rep. Roers Jones
Seconded by Rep. Satrom**

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	N
Rep. Cory	A
Rep T. Jones	Y
Rep Magrum	N
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	N
Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried. 10-3-1

House Judiciary
HB 1123
Jan 18, 2021
Page 2

Carrier: **Rep. T. Jones**

Chairman Klemin Adjourned at 3:10 PM

DeLores D. Shimek
Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1123

Page 1, line 11, remove "section"

Page 1, line 12, replace "12.1-17-01.2" with "subdivisions f, g, and h of subsection 1 of section 29-06-15"

Page 1, line 14, after "arrest" insert "with or without a"

Page 1, line 17, after "subsection" insert "or the resident is subject to a pending unrelated criminal charge"

Page 1, line 18, after "3." insert "Upon posting cash bail in an amount established by a bail schedule or order of the magistrate, a nonresident of this state who is arrested for a misdemeanor offense may be released from custody before appearing before a magistrate."

4. A magistrate issuing an arrest warrant shall consider and may designate conditions upon which an individual arrested with a warrant may be released from custody with an order to appear before the magistrate at a designated time.

5."

Page 2, line 2, remove the overstrike over "~~or~~"

Page 2, line 2, remove the first underscored boldfaced comma

Page 2, line 2, remove ", or subject to presumptive probation"

Page 2, line 3, after "charge" insert "for a resident of this state"

Page 2, line 4, replace the first underscored comma with "or"

Page 2, line 4, remove ", or class C felony subject to presumptive probation under"

Page 2, line 5, remove "section 12.1-32-07.4"

Page 2, line 5, after the underscored period insert "A magistrate may direct the issuance of an arrest warrant for a resident involving offenses designated in subsection 2 of section 29-08-02. A magistrate authorizing a criminal charge for a nonresident may authorize the issuance of a summons or arrest warrant."

Page 2, line 6, overstrike "If the offense charged in a warrant of arrest is a misdemeanor"

Page 2, line 6, remove the underscored comma

Page 2, line 6, overstrike "infraction"

Page 2, line 8, remove ", or class C felony subject to presumptive probation"

Page 2, remove lines 9 and 10

Page 2, line 11, remove "unable to post bail may request to appear before a local magistrate. Upon"

QA
2/2/21

Page 2, line 11, overstrike "request of"

Page 2, line 12, overstrike "the accused,"

Page 2, line 12, remove "the arresting officer"

Page 2, line 12, overstrike "shall take the accused before a magistrate in the"

Page 2, line 13, overstrike "county in which the arrest is made"

Page 2, line 13, remove "and the magistrate"

Page 2, line 13, overstrike "shall"

Page 2, line 14, remove "amend the"

Page 2, line 14, overstrike "bail"

Page 2, line 14, remove "of"

Page 2, line 14, overstrike "the accused accordingly. If there is no"

Page 2, line 15, overstrike "magistrate residing within the county"

Page 2, line 15, remove "where"

Page 2, line 15, overstrike "the accused is arrested"

Page 2, line 15, overstrike "and the"

Page 2, line 16, overstrike "accused"

Page 2, line 16, remove "has requested to appear before a local magistrate"

Page 2, line 16, overstrike ", the officer shall"

Page 2, overstrike lines 17

Page 2, line 18, overstrike "than the magistrate issuing the warrant, and said magistrate shall"

Page 2, line 19, remove "amend the"

Page 2, line 19, overstrike "bail"

Page 2, line 19, remove "of"

Page 2, line 19, overstrike "the accused accordingly." and insert immediately thereafter "A summons under this section must contain a conspicuous notice stating a failure to appear as designated in the summons will result in the arrest of the individual and upon arrest, the individual will not be released from custody unless otherwise ordered by the magistrate.

3. If an officer or other individual makes an arrest for which bail is not required, the officer or individual making the arrest shall take the individual before the nearest available magistrate as provided in rule 5 of the North Dakota Rules of Criminal Procedure.

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1123: Judiciary Committee (Rep. Klemin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1123 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "section"

Page 1, line 12, replace "12.1-17-01.2" with "subdivisions f, g, and h of subsection 1 of section 29-06-15"

Page 1, line 14, after "arrest" insert "with or without a"

Page 1, line 17, after "subsection" insert "or the resident is subject to a pending unrelated criminal charge"

Page 1, line 18, after "3." insert "Upon posting cash bail in an amount established by a bail schedule or order of the magistrate, a nonresident of this state who is arrested for a misdemeanor offense may be released from custody before appearing before a magistrate."

4. A magistrate issuing an arrest warrant shall consider and may designate conditions upon which an individual arrested with a warrant may be released from custody with an order to appear before the magistrate at a designated time.

5."

Page 2, line 2, remove the overstrike over "~~or~~"

Page 2, line 2, remove the first underscored boldfaced comma

Page 2, line 2, remove ", or subject to presumptive probation"

Page 2, line 3, after "charge" insert "for a resident of this state"

Page 2, line 4, replace the first underscored comma with "or"

Page 2, line 4, remove ", or class C felony subject to presumptive probation under"

Page 2, line 5, remove "section 12.1-32-07.4"

Page 2, line 5, after the underscored period insert "A magistrate may direct the issuance of an arrest warrant for a resident involving offenses designated in subsection 2 of section 29-08-02. A magistrate authorizing a criminal charge for a nonresident may authorize the issuance of a summons or arrest warrant."

Page 2, line 6, overstrike "If the offense charged in a warrant of arrest is a misdemeanor"

Page 2, line 6, remove the underscored comma

Page 2, line 6, overstrike "infraction"

Page 2, line 8, remove ", or class C felony subject to presumptive probation"

Page 2, remove lines 9 and 10

Page 2, line 11, remove "unable to post bail may request to appear before a local magistrate. Upon"

Page 2, line 11, overstrike "request of"

Page 2, line 12, overstrike "the accused,"

Page 2, line 12, remove "the arresting officer"

Page 2, line 12, overstrike "shall take the accused before a magistrate in the"

Page 2, line 13, overstrike "county in which the arrest is made"

Page 2, line 13, remove "and the magistrate"

Page 2, line 13, overstrike "shall"

Page 2, line 14, remove "amend the"

Page 2, line 14, overstrike "bail"

Page 2, line 14, remove "of"

Page 2, line 14, overstrike "the accused accordingly. If there is no"

Page 2, line 15, overstrike "magistrate residing within the county"

Page 2, line 15, remove "where"

Page 2, line 15, overstrike "the accused is arrested"

Page 2, line 15, overstrike "and the"

Page 2, line 16, overstrike "accused"

Page 2, line 16, remove "has requested to appear before a local magistrate"

Page 2, line 16, overstrike ", the officer shall"

Page 2, overstrike lines 17

Page 2, line 18, overstrike "than the magistrate issuing the warrant, and said magistrate shall"

Page 2, line 19, remove "amend the"

Page 2, line 19, overstrike "bail"

Page 2, line 19, remove "of"

Page 2, line 19, overstrike "the accused accordingly." and insert immediately thereafter "A summons under this section must contain a conspicuous notice stating a failure to appear as designated in the summons will result in the arrest of the individual and upon arrest, the individual will not be released from custody unless otherwise ordered by the magistrate."

3. If an officer or other individual makes an arrest for which bail is not required, the officer or individual making the arrest shall take the individual before the nearest available magistrate as provided in rule 5 of the North Dakota Rules of Criminal Procedure."

Renumber accordingly