

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.