

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.

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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.

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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.

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