

House Bill 1453
House Judiciary Committee
Testimony Presented by Sara Behrens
January 31, 2023

Good afternoon Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in a neutral position on House Bill 1453 at the request of Representative Schneider to provide some background on the Court's efforts to address pre-appearance release.

In 2018, then Chief Justice Gerald VandeWalle created a workgroup to examine pretrial reform in the courts. The workgroup was comprised of district court judges, defense attorneys, state's attorneys, court administration, and representation from the DOCR. The workgroup held its first meeting in December of 2018. Originally, the workgroup looked at the issue of pre-trial release as a whole. The members discussed recent court decisions from other jurisdictions disapproving of cash bail and noted that some states are moving away from cash bail entirely. During the 2019 Legislative Session, a pretrial pilot project was approved to work on pre-trial assessments and services. Due to the pilot project, the workgroup decided to focus on the pre-appearance (between the time an individual is taken into custody until appearance in front of a judge) release of defendants instead of the broader topic of pre-trial release. It's my understanding that this bill covers only that window of time between custody and appearance in front of a judge for an individualized bond order at the initial appearance.

Rule 46 of the North Dakota Rules of Criminal Procedure governs release between the initial appearance and trial. The presumption is release on the individual's own recognizance or on an unsecured bond unless factors are present which would lead the court, in its discretion, to require

payment of a bond. Rule 46 is not applicable to the time period between being taken into custody and the initial appearance.

This bill would deal with a relatively small subset of individuals, mostly those arrested on a weekend where they may have to sit in jail for 48 hours. The bond schedule provides those instances where the individual can be released without posting a bond or with posting a certain bond. The individual is seen by the court within 48 hours and the court takes into consideration the specific circumstances to set an appropriate bail amount.

There are various bond schedules being used throughout the state, copies of which I have provided to Rep. Schneider. These schedules are put into place by judicial districts to cover the counties within that district. They are not uniform. The members of the workgroup reviewed these bond schedules and were in agreement that uniformity would be a positive step.

The workgroup met periodically during 2019 and 2020. In 2021, House Bill 1123 was introduced relating to bail. House Bill 1123 was very specific as to which crimes would be released without posting bail and which would need to be held. It did not solve the issue of non-uniformity in the bond schedules. House Bill 1123 was ultimately defeated.

The workgroup continued to meet and consider the issue of pre-appearance release in 2021 and 2022. The workgroup has not yet reached a consensus on how to handle pre-appearance release and will determine next steps depending on the outcome of this bill.