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Bill Presentation and Testimony in Support of HB 1453

By Representative Mary Schneider

Senate Judiciary Committee, Diane Larson, Chair

Wednesday, March 8, 2023

Chairman Larson and Members of the Judiciary Committee:

This bill would create a uniform bail schedule initiative with a goal of achieving substantial uniformity of bail amounts that apply when individuals have been taken into custody but have not yet appeared before a judge in the various district courts throughout the state.

Since we are presumed innocent until proven guilty in our criminal justice system, bail is the process that allows an arrested person to be released rather than held in jail by providing security, usually money, to assure that he or she will appear in court.

The concept of bail actually predates the founding of our country with roots in the English Bill of Rights Act bail clause. In 1776, after the Declaration of Independence, those states that hadn't already done so, enacted their own versions of a bail law. In 1789, Congress passed the Judiciary Act that specified which types of crimes wereailable, and set limits on a judge's discretion in setting bail. In 1791, bail was ratified as part of the Eighth Amendment's prohibition in its first clause where it says simply "Excessive bail shall not be required."

The problem this bill is specifically trying to address is the differences in the amount of bail for the same offense in various parts of the state. There currently is

no requirement of consistency, uniformity, constancy, or regularity from one jurisdiction to another.

In Williams, Divide and McKenzie Counties, a class B misdemeanor will cost you \$750 in cash or corporate surety. In Southeast Judicial District it's \$500, \$300 in Southwest Judicial District, \$250 or possibly personal recognizance sometimes, elsewhere.

So what? Well, because. Principles and perceptions of fairness throughout our justice system are grounded in equal treatment and equality under the law. We expect articulated reasons in law for circumstances justifying unequal treatment. When you hear a protest of "That's not fair!" from a two-year-old, twenty-two-year-old, or 62-year-old, it's usually because of unequal treatment. Uniformity is helpful in eliminating that problem, lending credibility to actions, and establishing systemic trust. It's one of the reasons we adopt model laws and create written schedules of prices, policies, and regulations.

Not all states have uniform bail schedules, but many do, with various forms and features. Some span the whole state, some certain courts, or counties. Among them are Wyoming, Oregon, Alabama, Colorado, Wisconsin, Iowa, California, Indiana, Florida, and Kentucky.

With this bill our Supreme Court will work cooperatively with the district courts and likely others in standardizing pre-appearance bail. Some of the factors they may want to consider are listed, and they may have others to add. And kudos to the court—they have already begun this journey, demonstrating a willingness and commitment to this effort. They've had a couple of committees examine the issue and have a 2021 Court Rule 46 on "Release from Custody," so the timeline may not cause concern.

When finished with the project, this bill would require a report to the legislative management regarding implementation of the uniform bail schedule before September 1, 2024.

A representative of our Supreme Court follows me with more information and the history of its work in this area, but I'll answer any questions that I can.

