FIRST ENGROSSMENT

Sixty-seventh Legislative Assembly of North Dakota

ENGROSSED 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 amended and reenacted as follows:
- 6 29-08-02. Admission to bail defined Delegation of authority by magistrate -

7 Exception.

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- 1. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon an undertaking with sufficient sureties for the defendant's appearance.
- Except as otherwise prohibited by law or in a case involving an offense under
 subdivisions f, g, and h of subsection 1 of section 29-06-15, a resident of this state
 arrested with or without a warrant for a misdemeanor offense must be released from
 custody on the individual's own recognizance and without appearing before a
 magistrate. In a misdemeanor arrest with or without a warrant, a magistrate may order
 the posting of bail if the magistrate has reasonable and probable grounds to believe an
- 17 <u>individual will disregard a written promise to appear under this subsection or the</u>
- 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.
- 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.

- Any magistrate or municipal judge in this state may designate, authorize, and appoint an additional person or personsa designee to arrange, receive, and approveforward bail in cases involving traffic violations to the court.
- **SECTION 2. AMENDMENT.** Section 29-05-12 of the North Dakota Century Code is amended and reenacted as follows:

29-05-12. BailSummons in lieu of arrest warrant and bail if offense charged is a misdemeanor or infraction.

- 1. Except as otherwise prohibited by law, a magistrate authorizing a criminal charge for a resident of this state for a misdemeanor or infraction shall issue a summons to appear. 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.
- 2. If the offense charged in a warrant of arrest is a misdemeanor or infraction not within the jurisdiction of the magistrate who issued it to punish, and the accused is arrested in another county, the officer, upon request of the accused, shall take the accused before a magistrate in the county in which the arrest is made, who shall admit the accused to bail and take bail from the accused accordingly. If there is no magistrate residing within the county wherein the accused is arrested, and the accused requires it, the officer shall take the accused before a magistrate of any other county nearer or more accessible than the magistrate issuing the warrant, and said magistrate shall admit the accused to bail and take bail from the accused accordingly. 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.