

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H3/17/21 H3/18/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1618

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5 By: Representative Richardson

6 By: Senator L. Chesterfield

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For An Act To Be Entitled

9 AN ACT CONCERNING THE RELEASE FROM CUSTODY OF A
10 PERSON ON BAIL OR BY THE ISSUANCE OF A CITATION; AND
11 FOR OTHER PURPOSES.

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Subtitle

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CONCERNING THE RELEASE FROM CUSTODY OF A
16 PERSON ON BAIL OR BY THE ISSUANCE OF A
17 CITATION.

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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22 *SECTION 1. DO NOT CODIFY. Legislative findings.*

23 *(a)(1) The General Assembly finds that Arkansas Constitution, Article*
24 *2, § 8, provides that “[a]ll persons shall, before conviction, be bailable by*
25 *sufficient sureties, except for capital offenses, when the proof is evident*
26 *or the presumption great.”*

27 *(2) This policy enshrines and enforces the presumption of*
28 *innocence central to the American system of justice.*

29 *(b) However, the General Assembly also finds that imposition of a*
30 *requirement that a person who is presumed innocent pay for his or her freedom*
31 *before adjudication is in tension with this provision and has the potential*
32 *for abuse.*

33 *(c) The General Assembly therefore finds that the law should address*
34 *and adopt methods to reduce the likelihood of deprivation of the rights of a*
35 *person presumed to be innocent.*

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1 SECTION 2. Arkansas Code § 16-81-109 is amended to read as follows:

2 16-81-109. Release from custody – Bail or citation.

3 (a)(1) ~~When any sheriff or other law enforcement officer makes an~~
4 ~~arrest, he or she is authorized to take and to approve bail in the manner~~
5 ~~provided by law wherever he or she makes the arrest~~ For a felony offense, a
6 judicial officer shall set cash or money bail only after he or she determines
7 that no other conditions will reasonably ensure the appearance of the
8 defendant in court.

9 (2)(A) ~~If the offense charged is a misdemeanor, the person~~
10 ~~arrested may immediately give bail for appearing on a day to be named in the~~
11 ~~bail bond before the judge or magistrate who issued the warrant or before the~~
12 ~~court having jurisdiction to try the offense. The sheriff or other officer~~
13 ~~making the arrest may be authorized by the judge or magistrate issuing the~~
14 ~~warrant to take the bail by an endorsement made on the warrant to that effect~~
15 For a misdemeanor offense, there shall be a rebuttable presumption that the
16 arresting officer shall issue an electronic citation or prepare in duplicate
17 a written citation to appear in court containing:

18 (i) The name and address of the person;

19 (ii) The driver's license, state identification, or
20 passport number of the person;

21 (iii) The offense charged; and

22 (iv)(a) The time and location of the person's court
23 date, including the court's contact information.

24 (b) The time specified to appear shall be at
25 least five (5) days after the issuance of the citation.

26 (c) The location specified to appear shall be
27 before a district court judge with jurisdiction within the county in which
28 the offense charged is alleged to have been committed.

29 (B) If issued a written citation, the arrested person
30 shall give his or her written promise to appear in court by signing in
31 duplicate the written citation prepared by the arresting officer.

32 (C) If issued an electronic citation, the arrested person
33 shall acknowledge receipt of the electronic citation and give his or her
34 promise to appear in court by acceptance of the electronic citation.

35 (D) The original of the citation shall be retained by the
36 officer or electronically transmitted to the district court, and a copy of

1 the citation shall be delivered to the person arrested.

2 (3) For a misdemeanor offense, the rebuttable presumption may be
3 overcome by clear and convincing evidence, duly documented and recorded by
4 law enforcement, that the defendant has a history of willful and intentional
5 failure to appear for the purpose of absconding from the jurisdiction of the
6 court within the last two (2) years, or that he or she presents an imminent
7 and identifiable threat to a specific person or persons.

8 (4) Cash or money bail in any form for ordinance violations is
9 prohibited.

10 (b) Cash or money bail in any form is considered only a last resort
11 and shall be used only to assure the defendant's appearance.

12 ~~(b)(1)(c)(1)~~ If the defendant gives bail for his or her appearance
13 before the judge or magistrate for an examination of the charge, ~~as provided~~
14 ~~in subsection (a) of this section,~~ the county sheriff or officer taking the
15 bail shall fix the day of the defendant's appearance.

16 (2) A deviation from the provisions of subdivision ~~(b)(1)(c)(1)~~
17 of this section shall not, however, render the bail bond invalid.

18 (d) As used this section, "compelling circumstances" means that:

19 (1) Within the previous two (2) years, the person has a
20 documented history of willfully or intentionally failing to appear in court;

21 (2) The person at any time previously absconded from the
22 jurisdiction of the court; or

23 (3) The person presents an imminent, identifiable threat to a
24 specific person or persons if he or she remains out of custody.

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26 /s/Richardson
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