

INTERIM STUDY PROPOSAL 2023-081

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023

A Bill

HOUSE BILL 1693

4 By: Representatives V. Flowers, Scott
5 By: Senator L. Chesterfield

6 Filed with: Arkansas Legislative Council
7 pursuant to A.C.A. §10-3-217.

8 **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.

12 **Subtitle**

13 CONCERNING THE RELEASE FROM CUSTODY OF A
14 PERSON ON BAIL OR BY THE ISSUANCE OF A
15 CITATION.

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

17 SECTION 1. DO NOT CODIFY. Legislative findings.

18 (a)(1) The General Assembly finds that Arkansas Constitution, Article
19 2, § 8, provides that “[a]ll persons shall, before conviction, be bailable by
20 sufficient sureties, except for capital offenses, when the proof is evident
21 or the presumption great.”

22 (2) This policy enshrines and enforces the presumption of
23 innocence central to the American system of justice.

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

1 (c) The General Assembly therefore finds that the law should address
2 and adopt methods to reduce the likelihood of deprivation of the rights of a
3 person presumed to be innocent.
4

5 SECTION 2. Arkansas Code § 16-81-109 is amended to read as follows:
6 16-81-109. Release from custody – Bail or citation.

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

13 ~~(2)(A) If the offense charged is a misdemeanor, the person~~
14 ~~arrested may immediately give bail for appearing on a day to be named in the~~
15 ~~bail bond before the judge or magistrate who issued the warrant or before the~~
16 ~~court having jurisdiction to try the offense. The sheriff or other officer~~
17 ~~making the arrest may be authorized by the judge or magistrate issuing the~~
18 ~~warrant to take the bail by an endorsement made on the warrant to that effect~~
19 Except for an offense listed under subdivision (a)(4) of this section, for a
20 misdemeanor offense, the arresting officer shall issue an electronic citation
21 or prepare in duplicate a written citation to appear in court containing:

- 22 (i) The name and address of the person;
- 23 (ii) The driver's license, state identification, or
24 passport number of the person;
- 25 (iii) The offense charged; and
- 26 (iv)(a) The time and location of the person's court
27 date, including the court's contact information.

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

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

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

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

4 (D) The original of the citation shall be retained by the
5 officer or electronically transmitted to the district court, and a copy of
6 the citation shall be delivered to the person arrested.

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

9 (4) For the following misdemeanor offenses, a judicial officer
10 shall set cash or money bail only after he or she determines that no other
11 conditions will reasonably ensure the appearance of the defendant in court:

12 (A) Negligent homicide, § 5-10-105;

13 (B) Battery in the third degree, § 5-13-203;

14 (C) Sexual assault in the fourth degree, § 5-14-127;

15 (D) Domestic battering in the third degree, § 5-26-305; or

16 (E) Driving or boating while intoxicated, § 5-65-103.

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

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

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

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

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

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

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

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34 Referred by Representative V. Flowers

35 Prepared by: JMB/JMB

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