

HB13 ENROLLED



1 XD6KZ7-3
2 By Representative England
3 RFD: Conference Committee on HB13
4 First Read: 07-Mar-23
5 2023 Regular Session



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1 Enrolled, An Act,

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4 Relating to municipalities; to amend Section 11-45-9.1,
5 Code of Alabama 1975, to provide that all municipalities may
6 authorize a law enforcement officer to issue a summons and
7 complaint in lieu of a custodial arrest for certain criminal
8 offenses.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 11-45-9.1, Code of Alabama 1975, is
11 amended to read as follows:

12 "§11-45-9.1

13 (a) (1) Except as provided in subdivision (2), the
14 governing body of any municipality, by ordinance, may
15 authorize any law enforcement officer of a municipality or any
16 law enforcement officer of the state, in lieu of placing
17 ~~persons~~ an individual under custodial arrest, to issue a
18 summons and complaint to any ~~person~~ individual charged with
19 violating any municipal ordinance or any misdemeanor or
20 violation within the corporate limits or the police
21 jurisdiction of the municipality. A county law enforcement
22 officer who issues a summons and complaint in lieu of placing
23 ~~a person~~ an individual under custodial arrest shall in all
24 respects be acting as an agent of the governing body of the
25 municipality. The governing body of the municipality shall be
26 liable for all actions and inactions of the officer, who shall
27 not be considered to be acting on behalf of the county
28 commission, the sheriff of the county, or the county.



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29 (2) An ordinance adopted pursuant to subdivision (1)
30 may not authorize a law enforcement officer to issue a summons
31 and complaint in lieu of arrest under any of the following
32 circumstances:

33 a. The ~~person~~ individual is charged with committing a
34 crime involving violence, threat of violence, or domestic
35 violence, as defined under Article 7 (commencing with Section
36 13A-6-130) of Chapter 6, Title 13A.

37 b. 1. (i) The ~~person~~ individual is charged with the use
38 or possession of alcohol ~~or a controlled substance~~ and, in the
39 opinion of the law enforcement officer, is a risk to public
40 safety.

41 (ii) The individual is charged with the use or
42 possession of a controlled substance.

43 2. (i) This paragraph does not apply in any municipality
44 who has an ordinance that was in effect on May 1, 2022, that
45 allowed a citation in lieu of arrest for the use or possession
46 of alcohol or a controlled substance.

47 (ii) On or after the effective date of this act, a
48 municipality may allow a citation in lieu of arrest for the
49 use or possession of alcohol or a controlled substance by
50 local law.

51 c. A victim of the crime is a minor.

52 d. The ~~person~~ individual is charged with a violation of
53 Section 32-5A-191.

54 e. The ~~person~~ individual is charged with a crime that
55 would require restitution to the victim.

56 f. The ~~person~~ individual is charged with identity



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57 theft, as provided under Section 13A-8-192.

58 g. The ~~person~~ individual is charged with the crime of
59 theft of property in the fourth degree, as defined under
60 Section 13A-8-5.

61 h. The ~~person~~ individual is charged with fleeing or
62 attempting to elude a law enforcement officer under Section
63 13A-10-52.

64 i. The ~~person~~ individual is charged with a crime
65 involving cruelty to or abuse of an animal, including a
66 violation of Section 13A-11-241.

67 ~~j. The person individual is charged with a violation of~~
68 ~~carrying a pistol without a permit, as provided under Section~~
69 ~~13A-11-73.~~

70 ~~k.~~ j. The ~~person~~ individual is charged with a crime that
71 is sexual in nature.

72 (b) The summons and complaint shall be on a form
73 approved by the governing body of the municipality and shall
74 contain the name of the court; the name of the defendant; a
75 description of the offense, including the municipal ordinance
76 number; the date and time of the offense; the place of the
77 offense; signature of the officer issuing the citation; the
78 scheduled court date and time; an explanation to the ~~person~~
79 individual cited of the ways in which he or she may settle his
80 or her case; and a signature block for the magistrate to sign
81 upon the officer's oath and affirmation given prior to trial.

82 (c) Whenever any ~~person~~ individual is arrested for a
83 violation of an offense subject to the summons and complaint
84 procedure of subdivision (a) (1) ~~of subsection (a)~~, the



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85 arresting officer shall take the name and address of the
86 ~~person~~-individual and any other identifying information and
87 issue a summons and complaint to the ~~person~~-individual
88 charged. The officer shall release the ~~person~~-individual from
89 custody upon his or her written promise to appear in court at
90 the designated time and place as evidenced by his or her
91 signature on the summons and complaint, without any condition
92 relating to the deposit of security.

93 (d) If any ~~person~~-individual refuses to give a written
94 recognizance to appear by placing his or her signature on the
95 summons and complaint, the officer shall take that ~~person~~
96 individual into custody and bring him or her before any
97 officer or official who is authorized to approve bond.

98 (e) Before implementation of the summons and complaint
99 procedure under subsection (a), the governing body of the
100 municipality shall adopt a schedule of fines for first,
101 second, and subsequent offenders of the alleged violation of
102 offenses subject to the summons and complaint procedure. The
103 schedule of fines shall be posted in a place conspicuous to
104 the public within the court clerk's office and the police
105 department. The filing fee provided in Section
106 12-19-311(a)(1)a. shall apply to each summons and complaint
107 issued under this section, and the filing fee shall be
108 distributed as provided by Section 12-19-311.

109 (f) (1) When ~~a person~~-an individual is charged with an
110 offense subject to the summons and complaint procedure, he or
111 she may elect to appear before the municipal court magistrate,
112 or where the municipal court has been abolished, the district



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113 court magistrate, within the time specified in the summons and
114 complaint, and upon entering a plea of guilty, pay the fine
115 and court costs. A plea of guilty shall only be accepted by
116 the magistrate after the defendant has executed a notice and
117 waiver of rights form.

118 (2) In the alternative, the defendant shall have the
119 option of depositing the required bail, and upon a plea of not
120 guilty, shall be entitled to a trial as authorized by law.

121 (g) The court clerk or magistrate shall receive and
122 issue receipts for cash bail from ~~persons~~ individuals who wish
123 to be heard in court; enter the time of their appearance on
124 the court docket; and notify the arresting officer and
125 witnesses, if any, to be present.

126 (h) If the defendant fails to appear as specified in
127 the summons and complaint, the judge or magistrate having
128 jurisdiction of the offense may issue a warrant for his or her
129 arrest commanding that he or she be brought before the court
130 to answer the charge contained on the summons and complaint.
131 In addition, any ~~person~~ individual who willfully violates his
132 or her written promise or bond to appear, given in accordance
133 with this section, shall be guilty of the separate offense of
134 failing to appear, a misdemeanor, regardless of the
135 disposition of the charge upon which he or she was originally
136 arrested.

137 (i) All fines and forfeitures collected upon a
138 conviction or upon the forfeiture of bail of any ~~person~~
139 individual charged with a violation of the ordinances shall be
140 remitted to the general fund of the municipality or as



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141 otherwise provided by law; provided, however, fines,
142 forfeitures, and court costs assessed and collected in
143 district court shall be distributed as now provided by law.

144 ~~(j) This section only applies to municipalities that do~~
145 ~~not employ a full-time municipal judge. Notwithstanding the~~
146 ~~foregoing, a municipality that employs a full-time municipal~~
147 ~~judge, by local law enacted by the Legislature, may elect to~~
148 ~~apply this section."~~

149 Section 2. This act shall become effective immediately
150 following its passage and approval by the Governor, or its
151 otherwise becoming law.



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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 18-Apr-23, as amended.

John Treadwell
Clerk

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| Senate | <u>11-May-23</u> | Amended and Passed |
| House | <u>01-Jun-23</u> | Passed, as amended by Conference Committee |
| Senate | <u>01-Jun-23</u> | Passed, as amended by Conference Committee |