

# HB13 INTRODUCED



1 XD6KZ7-1  
2 By Representative England  
3 RFD: Judiciary  
4 First Read: 07-Mar-23  
5 PFD: 08-Feb-23



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SYNOPSIS:

Under existing law, municipalities may authorize a law enforcement officer to issue a summons and complaint in lieu of a custodial arrest for certain criminal offenses if that municipality does not employ a full-time municipal judge.

This bill would provide that any municipality may authorize a law enforcement officer to issue a summons and complaint in lieu of a custodial arrest for certain criminal offenses.

A BILL  
TO BE ENTITLED  
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§11-45-9.1



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29           (a) (1) Except as provided in subdivision (2), the  
30 governing body of any municipality, by ordinance, may  
31 authorize any law enforcement officer of a municipality or any  
32 law enforcement officer of the state, in lieu of placing  
33 ~~persons~~ an individual under custodial arrest, to issue a  
34 summons and complaint to any ~~person~~ individual charged with  
35 violating any municipal ordinance or any misdemeanor or  
36 violation within the corporate limits or the police  
37 jurisdiction of the municipality. A county law enforcement  
38 officer who issues a summons and complaint in lieu of placing  
39 ~~a person~~ an individual under custodial arrest shall in all  
40 respects be acting as an agent of the governing body of the  
41 municipality. The governing body of the municipality shall be  
42 liable for all actions and inactions of the officer, who shall  
43 not be considered to be acting on behalf of the county  
44 commission, the sheriff of the county, or the county.

45           (2) An ordinance adopted pursuant to subdivision (1)  
46 may not authorize a law enforcement officer to issue a summons  
47 and complaint in lieu of arrest under any of the following  
48 circumstances:

49           a. The ~~person~~ individual is charged with committing a  
50 crime involving violence, threat of violence, or domestic  
51 violence, as defined under Article 7 (commencing with Section  
52 13A-6-130) of Chapter 6, Title 13A.

53           b. The ~~person~~ individual is charged with the use or  
54 possession of alcohol or a controlled substance and, in the  
55 opinion of the law enforcement officer, is a risk to public  
56 safety.



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

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

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

62 f. The ~~person~~ individual is charged with identity  
63 theft, as provided under Section 13A-8-192.

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

67 h. The ~~person~~ individual is charged with fleeing or  
68 attempting to elude a law enforcement officer under Section  
69 13A-10-52.

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

73 j. The ~~person~~ individual is charged with a violation of  
74 carrying a pistol without a permit, as provided under Section  
75 13A-11-73.

76 k. The ~~person~~ individual is charged with a crime that  
77 is sexual in nature.

78 (b) The summons and complaint shall be on a form  
79 approved by the governing body of the municipality and shall  
80 contain the name of the court; the name of the defendant; a  
81 description of the offense, including the municipal ordinance  
82 number; the date and time of the offense; the place of the  
83 offense; signature of the officer issuing the citation; the  
84 scheduled court date and time; an explanation to the ~~person~~



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85 individual cited of the ways in which he or she may settle his  
86 or her case; and a signature block for the magistrate to sign  
87 upon the officer's oath and affirmation given prior to trial.

88 (c) Whenever any ~~person~~ individual is arrested for a  
89 violation of an offense subject to the summons and complaint  
90 procedure of subdivision (a) (1) ~~of subsection (a)~~, the  
91 arresting officer shall take the name and address of the  
92 ~~person~~ individual and any other identifying information and  
93 issue a summons and complaint to the ~~person~~ individual  
94 charged. The officer shall release the ~~person~~ individual from  
95 custody upon his or her written promise to appear in court at  
96 the designated time and place as evidenced by his or her  
97 signature on the summons and complaint, without any condition  
98 relating to the deposit of security.

99 (d) If any ~~person~~ individual refuses to give a written  
100 recognizance to appear by placing his or her signature on the  
101 summons and complaint, the officer shall take that ~~person~~  
102 individual into custody and bring him or her before any  
103 officer or official who is authorized to approve bond.

104 (e) Before implementation of the summons and complaint  
105 procedure under subsection (a), the governing body of the  
106 municipality shall adopt a schedule of fines for first,  
107 second, and subsequent offenders of the alleged violation of  
108 offenses subject to the summons and complaint procedure. The  
109 schedule of fines shall be posted in a place conspicuous to  
110 the public within the court clerk's office and the police  
111 department. The filing fee provided in Section  
112 12-19-311(a) (1)a. shall apply to each summons and complaint



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113 issued under this section, and the filing fee shall be  
114 distributed as provided by Section 12-19-311.

115 (f) (1) When ~~a person~~ an individual is charged with an  
116 offense subject to the summons and complaint procedure, he or  
117 she may elect to appear before the municipal court magistrate,  
118 or where the municipal court has been abolished, the district  
119 court magistrate, within the time specified in the summons and  
120 complaint, and upon entering a plea of guilty, pay the fine  
121 and court costs. A plea of guilty shall only be accepted by  
122 the magistrate after the defendant has executed a notice and  
123 waiver of rights form.

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

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

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



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141 disposition of the charge upon which he or she was originally  
142 arrested.

143 (i) All fines and forfeitures collected upon a  
144 conviction or upon the forfeiture of bail of any ~~person~~  
145 individual charged with a violation of the ordinances shall be  
146 remitted to the general fund of the municipality or as  
147 otherwise provided by law; provided, however, fines,  
148 forfeitures, and court costs assessed and collected in  
149 district court shall be distributed as now provided by law.

150 ~~(j) This section only applies to municipalities that do~~  
151 ~~not employ a full-time municipal judge. Notwithstanding the~~  
152 ~~foregoing, a municipality that employs a full-time municipal~~  
153 ~~judge, by local law enacted by the Legislature, may elect to~~  
154 ~~apply this section."~~

155 Section 2. This act shall become effective immediately  
156 following its passage and approval by the Governor, or its  
157 otherwise becoming law.