

**House Judiciary Engrossed Substitute for HB13**



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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

(a) (1) Except as provided in subdivision (2), the governing body of any municipality, by ordinance, may authorize any law enforcement officer of a municipality or any law enforcement officer of the state, in lieu of placing ~~persons~~ an individual under custodial arrest, to issue a summons and complaint to any ~~person~~ individual charged with violating any municipal ordinance or any misdemeanor or violation within the corporate limits or the police jurisdiction of the municipality. A county law enforcement officer who issues a summons and complaint in lieu of placing



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29 ~~a person~~ an individual under custodial arrest shall in all  
30 respects be acting as an agent of the governing body of the  
31 municipality. The governing body of the municipality shall be  
32 liable for all actions and inactions of the officer, who shall  
33 not be considered to be acting on behalf of the county  
34 commission, the sheriff of the county, or the county.

35 (2) An ordinance adopted pursuant to subdivision (1)  
36 may not authorize a law enforcement officer to issue a summons  
37 and complaint in lieu of arrest under any of the following  
38 circumstances:

39 a. The ~~person~~ individual is charged with committing a  
40 crime involving violence, threat of violence, or domestic  
41 violence, as defined under Article 7 (commencing with Section  
42 13A-6-130) of Chapter 6, Title 13A.

43 b. The ~~person~~ individual is charged with the use or  
44 possession of alcohol or a controlled substance and, in the  
45 opinion of the law enforcement officer, is a risk to public  
46 safety.

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

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

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

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

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



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57 h. The ~~person~~individual is charged with fleeing or  
58 attempting to elude a law enforcement officer under Section  
59 13A-10-52.

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

63 ~~j. The person individual is charged with a violation of~~  
64 ~~carrying a pistol without a permit, as provided under Section~~  
65 ~~13A-11-73.~~

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

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

78 (c) Whenever any ~~person~~individual is arrested for a  
79 violation of an offense subject to the summons and complaint  
80 procedure of subdivision (a) (1) ~~of subsection (a)~~, the  
81 arresting officer shall take the name and address of the  
82 ~~person~~individual and any other identifying information and  
83 issue a summons and complaint to the ~~person~~individual  
84 charged. The officer shall release the ~~person~~individual from

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85 custody upon his or her written promise to appear in court at  
86 the designated time and place as evidenced by his or her  
87 signature on the summons and complaint, without any condition  
88 relating to the deposit of security.

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

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

105 (f)(1) When ~~a person~~ an individual is charged with an  
106 offense subject to the summons and complaint procedure, he or  
107 she may elect to appear before the municipal court magistrate,  
108 or where the municipal court has been abolished, the district  
109 court magistrate, within the time specified in the summons and  
110 complaint, and upon entering a plea of guilty, pay the fine  
111 and court costs. A plea of guilty shall only be accepted by  
112 the magistrate after the defendant has executed a notice and



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113 waiver of rights form.

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

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

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

133 (i) All fines and forfeitures collected upon a  
134 conviction or upon the forfeiture of bail of any ~~person~~  
135 individual charged with a violation of the ordinances shall be  
136 remitted to the general fund of the municipality or as  
137 otherwise provided by law; provided, however, fines,  
138 forfeitures, and court costs assessed and collected in  
139 district court shall be distributed as now provided by law.

140 ~~(j) This section only applies to municipalities that do~~

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141 ~~not employ a full-time municipal judge. Notwithstanding the~~  
142 ~~foregoing, a municipality that employs a full-time municipal~~  
143 ~~judge, by local law enacted by the Legislature, may elect to~~  
144 ~~apply this section."~~

145           Section 2. This act shall become effective immediately  
146 following its passage and approval by the Governor, or its  
147 otherwise becoming law.