

HB332 INTRODUCED



1 HB332
2 AJPL7SS-1
3 By Representatives Treadaway, Pettus
4 RFD: Public Safety and Homeland Security
5 First Read: 19-Mar-24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SYNOPSIS:

Under existing law, the governing body of any municipality, by ordinance, may authorize law enforcement officers to issue citations for certain violations in lieu of performing a custodial arrest.

This bill would authorize a warrant for such a violation to be sworn and issued by a judge or magistrate remotely, digitally, via video link, or by telephone and would specify that the physical presence of the affiant before the judge or magistrate is not required.

A BILL
TO BE ENTITLED
AN ACT

Relating to municipalities; to amend Section 11-45-9.1, Code of Alabama 1975, to authorize the use of certain digital, electronic, or telephonic means to obtain a warrant for certain violations subject to citation in lieu of arrest procedures; and to provide that the physical presence of the affiant in such circumstances is not required.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 11-45-9.1, Code of Alabama 1975, is



HB332 INTRODUCED

29 amended to read as follows:

30 "§11-45-9.1

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

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

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

55 b.1.(i) The individual is charged with the use or
56 possession of alcohol and, in the opinion of the law



HB332 INTRODUCED

57 enforcement officer, is a risk to public safety.

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

60 2.(i) This paragraph does not apply in any municipality
61 that had an ordinance in effect on May 1, 2022, which allowed
62 a citation in lieu of arrest for the use or possession of
63 alcohol or a controlled substance.

64 (ii) On or after June 15, 2023, a municipality, by
65 local law, may allow a citation in lieu of arrest for the use
66 or possession of alcohol or a controlled substance.

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

68 d. The individual is charged with a violation of
69 Section 32-5A-191.

70 e. The individual is charged with a crime that would
71 require restitution to the victim.

72 f. The individual is charged with identity theft, as
73 provided under Section 13A-8-192.

74 g. The individual is charged with the crime of theft of
75 property in the fourth degree, as defined under Section
76 13A-8-5.

77 h. The individual is charged with fleeing or attempting
78 to elude a law enforcement officer under Section 13A-10-52.

79 i. The individual is charged with a crime involving
80 cruelty to or abuse of an animal, including a violation of
81 Section 13A-11-241.

82 j. The individual is charged with a crime that is
83 sexual in nature.

84 (b) The summons and complaint shall be on a form



HB332 INTRODUCED

85 approved by the governing body of the municipality and shall
86 contain the name of the court; the name of the defendant; a
87 description of the offense, including the municipal ordinance
88 number; the date and time of the offense; the place of the
89 offense; signature of the officer issuing the citation; the
90 scheduled court date and time; an explanation to the
91 individual cited of the ways in which he or she may settle his
92 or her case; and a signature block for the magistrate to sign
93 upon the officer's oath and affirmation given prior to trial.

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

104 (d) If any individual refuses to give a written
105 recognizance to appear by placing his or her signature on the
106 summons and complaint, the officer shall take that individual
107 into custody and bring him or her before any officer or
108 official who is authorized to approve bond.

109 (e) A warrant for a violation of an offense subject to
110 the summons and complaint procedure of subdivision (a)(1) may
111 be sworn and issued by a judge or magistrate remotely,
112 digitally, via video link, or by telephone. The physical



HB332 INTRODUCED

113 presence of the affiant before the judge or magistrate is not
114 required. Other methods of technology not specifically
115 described in this subsection may be used to facilitate the
116 oath and issuance of a criminal warrant pursuant to this
117 subsection upon approval of the technology by the presiding
118 judge and district attorney of the judicial circuit.

119 ~~(e)~~ (f) Before implementation of the summons and
120 complaint procedure under subsection (a), the governing body
121 of the municipality shall adopt a schedule of fines for first,
122 second, and subsequent offenders of the alleged violation of
123 offenses subject to the summons and complaint procedure. The
124 schedule of fines shall be posted in a place conspicuous to
125 the public within the court clerk's office and the police
126 department. The filing fee provided in Section
127 12-19-311(a)(1)a. shall apply to each summons and complaint
128 issued under this section, and the filing fee shall be
129 distributed as provided by Section 12-19-311.

130 ~~(f)~~ (g) (1) When an individual is charged with an offense
131 subject to the summons and complaint procedure, he or she may
132 elect to appear before the municipal court magistrate, or
133 where the municipal court has been abolished, the district
134 court magistrate, within the time specified in the summons and
135 complaint, and upon entering a plea of guilty, pay the fine
136 and court costs. A plea of guilty shall only be accepted by
137 the magistrate after the defendant has executed a notice and
138 waiver of rights form.

139 (2) In the alternative, the defendant shall have the
140 option of depositing the required bail, and upon a plea of not



HB332 INTRODUCED

141 guilty, shall be entitled to a trial as authorized by law.

142 ~~(g)~~ (h) The court clerk or magistrate shall receive and
143 issue receipts for cash bail from individuals who wish to be
144 heard in court; enter the time of their appearance on the
145 court docket; and notify the arresting officer and witnesses,
146 if any, to be present.

147 ~~(h)~~ (i) If the defendant fails to appear as specified in
148 the summons and complaint, the judge or magistrate having
149 jurisdiction of the offense may issue a warrant for his or her
150 arrest commanding that he or she be brought before the court
151 to answer the charge contained on the summons and complaint.
152 In addition, any individual who willfully violates his or her
153 written promise or bond to appear, given in accordance with
154 this section, shall be guilty of the separate offense of
155 failing to appear, a misdemeanor, regardless of the
156 disposition of the charge upon which he or she was originally
157 arrested.

158 ~~(i)~~ (j) All fines and forfeitures collected upon a
159 conviction or upon the forfeiture of bail of any individual
160 charged with a violation of the ordinances shall be remitted
161 to the general fund of the municipality or as otherwise
162 provided by law; provided, however, fines, forfeitures, and
163 court costs assessed and collected in district court shall be
164 distributed as now provided by law."

165 Section 2. This act shall become effective on October
166 1, 2024.