

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

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4 SYNOPSIS:

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

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

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17 A BILL
18 TO BE ENTITLED
19 AN ACT
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21 Relating to municipalities; to amend Section 11-45-9.1,
22 Code of Alabama 1975, to authorize the use of certain digital,
23 electronic, or telephonic means to obtain a warrant for
24 certain violations subject to citation in lieu of arrest
25 procedures; and to provide that the physical presence of the
26 affiant in such circumstances is not required.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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



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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 an individual under custodial arrest, to issue a summons and complaint to any 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 an individual under custodial arrest shall in all respects be acting as an agent of the governing body of the municipality. The governing body of the municipality shall be liable for all actions and inactions of the officer, who shall not be considered to be acting on behalf of the county commission, the sheriff of the county, or the county.

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

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

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



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enforcement officer, is a risk to public safety.

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

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

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

c. A victim of the crime is a minor.

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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