

1 SB23  
2 214679-2  
3 By Senator Melson  
4 RFD: Judiciary  
5 First Read: 11-JAN-22  
6 PFD: 01/05/2022

8 SYNOPSIS: Under existing law, a municipality may  
9 authorize a law enforcement officer to issue a  
10 summons and complaint in lieu of custodial arrest  
11 for certain criminal offenses.

12 When a person is charged with an offense  
13 subject to the summons and complaint procedure and  
14 receives a summons and complaint, he or she may  
15 elect to appear before the court within the time  
16 specified in the summons and complaint and, upon  
17 entering a plea of guilty, pay the fine and  
18 associated court costs. In the alternative, the  
19 person may deposit the required bail, if any, enter  
20 a plea of not guilty, and be entitled to a trial.

21 This bill would provide that when a person  
22 is required to post bail upon pleading not guilty,  
23 the bail may be any one of the four kinds approved  
24 in this state.

25 Also under existing law, when a defendant  
26 fails to appear as specified in a summons and

1 complaint, the court may issue a warrant for the  
2 defendant's arrest.

3 This bill would provide a court may not  
4 order cash only bail for a defendant's initial  
5 failure to appear on the summons and complaint.

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to summons and complaint in lieu of arrest;  
12 to amend Section 11-45-9.1, Code of Alabama 1975, as last  
13 amended by Act 2021-495 (2021 Regular Session), to further  
14 provide for the types of bail that may be posted.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Section 11-45-9.1, Code of Alabama 1975,  
17 as last amended by Act 2021-495 (2021 Regular Session), is  
18 amended to read as follows:

19 "§11-45-9.1.

20 "(a) (1) Except as provided in subdivision (2), the  
21 governing body of any municipality, by ordinance, may  
22 authorize any law enforcement officer of ~~a~~ the municipality or  
23 any law enforcement officer of the state, in lieu of placing  
24 persons under custodial arrest, to issue a summons and  
25 complaint to any person charged with violating any municipal  
26 ordinance or any misdemeanor or violation within the corporate  
27 limits or the police jurisdiction of the municipality. A

1 county law enforcement officer who issues a summons and  
2 complaint in lieu of placing a person under custodial arrest  
3 shall in all respects be acting as an agent of the governing  
4 body of the municipality. The governing body of the  
5 municipality shall be liable for all actions and inactions of  
6 the officer, who shall not be considered to be acting on  
7 behalf of the county commission, the sheriff of the county, or  
8 the county.

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

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

17 "b. The person is charged with the use or possession  
18 of alcohol or a controlled substance and, in the opinion of  
19 the law enforcement officer, is a risk to public safety.

20 "c. A victim of the crime is a minor.

21 "d. The person is charged with a violation of  
22 Section 32-5A-191.

23 "e. The person is charged with a crime that would  
24 require restitution to the victim.

25 "f. The person is charged with identity theft, as  
26 provided under Section 13A-8-192.

1           "g. The person is charged with the crime of theft of  
2 property in the fourth degree, as defined under Section  
3 13A-8-5.

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

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

9           "j. The person is charged with a violation of  
10 carrying a pistol without a permit, as provided under Section  
11 13A-11-73.

12           "k. The person is charged with a crime that is  
13 sexual in nature.

14           "l. The person is charged with criminal trespassing  
15 and the business designee or property owner requests that the  
16 person be placed into custody.

17           "m. The person is charged with possession of an  
18 illegal prescription, as provided in Section 34-23-7.

19           "(b) The summons and complaint shall be on a form  
20 approved by the governing body of the municipality and shall  
21 contain the name of the court; the name of the defendant; a  
22 description of the offense, including the municipal ordinance  
23 number; the date and time of the offense; the place of the  
24 offense; the signature of the officer issuing the citation;  
25 the scheduled court date and time; an explanation to the  
26 person cited of the ways in which he or she may settle his or

1 her case; and a signature block for the magistrate to sign  
2 upon the officer's oath and affirmation given prior to trial.

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

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

18 "(e) Before implementation of the summons and  
19 complaint procedure under subsection (a), the governing body  
20 of the municipality shall adopt a schedule of fines for first,  
21 second, and subsequent offenders of the alleged violation of  
22 offenses subject to the summons and complaint procedure. The  
23 schedule of fines shall be posted in a place conspicuous to  
24 the public within the court clerk's office and the police  
25 department. The filing fee provided in Section  
26 12-19-311(a)(1)a. shall apply to each summons and complaint

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

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

12 "(2) In the alternative, the defendant shall have  
13 the option of posting any one of the types of bail approved in  
14 this state and depositing the required bail, and upon a plea  
15 of not guilty, shall be entitled to a trial as authorized by  
16 law.

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

22 "(h) (1) If the defendant fails to appear as  
23 specified in the summons and complaint, the judge or  
24 magistrate having jurisdiction of the offense may issue a  
25 warrant for his or her arrest commanding that he or she be  
26 brought before the court to answer the charge contained on the  
27 summons and complaint. The judge or magistrate may not order

1 cash only bail for a defendant's initial failure to appear on  
2 the summons and complaint.

3           "(2) In addition, any person who willfully violates  
4 his or her written promise or bond to appear, given in  
5 accordance with this section, shall be guilty of the separate  
6 offense of failing to appear, a misdemeanor, regardless of the  
7 disposition of the charge upon which he or she was originally  
8 arrested.

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

16           "(j) This section only applies to municipalities  
17 that do not employ a full-time municipal judge.  
18 Notwithstanding the foregoing, a municipality that employs a  
19 full-time municipal judge, by local law enacted by the  
20 Legislature, may elect to apply this section."

21           Section 2. This act shall become effective on the  
22 first day of the third month following its passage and  
23 approval by the Governor, or its otherwise becoming law.