

1 SB13  
2 196734-1  
3 By Senator Melson  
4 RFD: Judiciary  
5 First Read: 05-MAR-19  
6 PFD: 01/23/2019

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

17 Amendment 621 of the Constitution of Alabama  
18 of 1901, now appearing as Section 111.05 of the  
19 Official Recompilation of the Constitution of  
20 Alabama of 1901, as amended, prohibits a general  
21 law whose purpose or effect would be to require a  
22 new or increased expenditure of local funds from  
23 becoming effective with regard to a local  
24 governmental entity without enactment by a 2/3 vote  
25 unless: it comes within one of a number of  
26 specified exceptions; it is approved by the  
27 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

3 The purpose or effect of this bill would be  
4 to require a new or increased expenditure of local  
5 funds within the meaning of the amendment. However,  
6 the bill does not require approval of a local  
7 governmental entity or enactment by a 2/3 vote to  
8 become effective because it comes within one of the  
9 specified exceptions contained in the amendment.

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT

14  
15 Relating to municipalities; to amend Section  
16 11-45-9.1, Code of Alabama 1975, to provide that a  
17 municipality may authorize a law enforcement officer to issue  
18 a summons and complaint in lieu of custodial arrest for  
19 certain criminal offenses; and in connection therewith would  
20 have as its purpose or effect the requirement of a new or  
21 increased expenditure of local funds within the meaning of  
22 Amendment 621 of the Constitution of Alabama of 1901, now  
23 appearing as Section 111.05 of the Official Recompilation of  
24 the Constitution of Alabama of 1901, as amended.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1           "§11-45-9.1.

2           "(a) (1) ~~By ordinance, Except as provided in~~  
3 subdivision (2), the governing body of any municipality ~~may,~~  
4 by ordinance, may authorize any law enforcement officer of a  
5 municipality or any law enforcement officer of the state, in  
6 lieu of placing persons under custodial arrest, to issue a  
7 summons and complaint to any person charged with violating any  
8 ~~municipal littering ordinance; municipal ordinance which~~  
9 ~~prohibits animals from running at large, which shall include~~  
10 ~~leash laws and rabies control laws;~~ or any ~~Class C misdemeanor~~  
11 ~~or violation not involving violence, threat of violence, or~~  
12 ~~alcohol or drugs~~ within the police jurisdiction of the  
13 municipality. Notwithstanding the foregoing, an ordinance  
14 authorizing a law enforcement officer to issue a summons and  
15 complaint in lieu of custodial arrest does not apply to a  
16 county law enforcement officer unless the ordinance is  
17 approved by the county commission and sheriff of the county.

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

22           "a. The person is charged with committing a crime  
23 involving violence, threat of violence, or domestic violence,  
24 as defined in Section 13A-6-139.1.

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

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

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

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

6           "(b) ~~Such~~ The summons and complaint shall be on a  
7 form approved by the governing body of the municipality and  
8 shall contain the name of the court; the name of the  
9 defendant; a description of the offense, including the  
10 municipal ordinance number; the date and time of the offense;  
11 the place of the offense; signature of the officer issuing the  
12 citation; the scheduled court date and time; an explanation to  
13 the person cited of the ways in which he or she may settle his  
14 or her case; and a signature block for the magistrate to sign  
15 upon the officer's oath and affirmation given prior to trial.

16           "(c) Whenever any person is arrested for a violation  
17 of ~~any of the enumerated offenses~~ an offense subject to the  
18 summons and complaint procedure of subdivision (1) of  
19 subsection (a), the arresting officer shall take the name and  
20 address of ~~such~~ the person and any other identifying  
21 information and issue a summons and complaint to the person  
22 charged. ~~Such~~ The officer shall release the person from  
23 custody upon his or her written promise to appear in court at  
24 the designated time and place as evidenced by his or her  
25 signature on the summons and complaint, without any condition  
26 relating to the deposit of security.

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

6           "(e) Before implementation of the summons and  
7           complaint procedure under subsection (a), the governing body  
8           of the municipality shall adopt a schedule of fines for first,  
9           second, and subsequent offenders of the alleged violation of  
10          ~~such ordinances~~ offenses subject to the summons and complaint  
11          procedure, which. The schedule of fines shall be posted in a  
12          place conspicuous to the public within the court clerk's  
13          office and the police department.

14          "(f) (1) When a person is charged with ~~one of the~~  
15          ~~enumerated ordinance violations~~ an offense subject to the  
16          summons and complaint procedure, he or she may elect to appear  
17          before the municipal court magistrate, or where the municipal  
18          court has been abolished, the district court magistrate,  
19          within the time specified in the summons and complaint, and  
20          upon entering a plea of guilty, pay the fine and court costs.  
21          A plea of guilty shall only be accepted by the magistrate  
22          after the defendant has executed a notice and waiver of rights  
23          form.

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

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

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

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

24           Section 2. Although this bill would have as its  
25 purpose or effect the requirement of a new or increased  
26 expenditure of local funds, the bill is excluded from further  
27 requirements and application under Amendment 621, now

1 appearing as Section 111.05 of the Official ReCompilation of  
2 the Constitution of Alabama of 1901, as amended, because the  
3 bill defines a new crime or amends the definition of an  
4 existing crime.

5 Section 3. This act shall become effective on the  
6 first day of the third month following its passage and  
7 approval by the Governor, or its otherwise becoming law.