

1 SB59
2 196734-2
3 By Senator Melson
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 01/21/2021

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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.

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

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

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

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

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

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

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

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

24 "(d) If any person refuses to give a written
25 recognizance to appear by placing his or her signature on the
26 summons and complaint, the officer shall take that person into

1 custody and bring him or her before any officer or official
2 who is authorized to approve bond.

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

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

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

24 "(g) The court clerk or magistrate shall receive and
25 issue receipts for cash bail from persons who wish to be heard
26 in court; enter the time of their appearance on the court

1 docket; and notify the arresting officer and witnesses, if
2 any, to be present.

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

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

21 Section 2. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

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