

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

2
3
4 ENGROSSED

5
6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to municipalities; to amend Section
12 11-45-9.1, Code of Alabama 1975, to provide that a
13 municipality may authorize a law enforcement officer to issue
14 a summons and complaint in lieu of custodial arrest for
15 certain criminal offenses; and in connection therewith would
16 have as its purpose or effect the requirement of a new or
17 increased expenditure of local funds within the meaning of
18 Amendment 621 of the Constitution of Alabama of 1901, now
19 appearing as Section 111.05 of the Official Recompilation of
20 the Constitution of Alabama of 1901, as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 "§11-45-9.1.

25 "(a) (1) By ordinance, Except as provided in
26 subdivision (2), the governing body of any municipality ~~may,~~
27 by ordinance, may authorize any law enforcement officer of a

1 municipality or any law enforcement officer of the state, in
2 lieu of placing persons under custodial arrest, to issue a
3 summons and complaint to any person charged with violating any
4 ~~municipal littering ordinance; municipal ordinance which~~
5 ~~prohibits animals from running at large, which shall include~~
6 ~~leash laws and rabies control laws;~~ or any ~~Class C~~ misdemeanor
7 or violation ~~not involving violence, threat of violence, or~~
8 ~~alcohol or drugs~~ within the corporate limits or the police
9 jurisdiction of the municipality.

10 "A county law enforcement officer who issues a
11 summons and complaint in lieu of placing a person under
12 custodial arrest shall in all respects be acting as an agent
13 of the governing body of the municipality. The governing body
14 of the municipality shall be liable for all actions and
15 inactions of the officer, who shall not be considered to be
16 acting on behalf of the county commission, the sheriff of the
17 county, or 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 under Article 7 (commencing with Section 13A-6-130)
25 of Chapter 6, Title 13A.

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

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

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

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

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

11 "f. The person is charged with the crime of theft of
12 property in the fourth degree, as defined under Section
13 13A-8-5.

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

24 "(c) Whenever any person is arrested for a violation
25 of ~~any of the enumerated offenses~~ an offense subject to the
26 summons and complaint procedure of subdivision (1) of
27 subsection (a), the arresting officer shall take the name and

1 address of ~~such~~ the person and any other identifying
2 information and issue a summons and complaint to the person
3 charged. ~~Such~~ The officer shall release the person from
4 custody upon his or her written promise to appear in court at
5 the designated time and place as evidenced by his or her
6 signature on the summons and complaint, without any condition
7 relating to the deposit of security.

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

13 "(e) Before implementation of the summons and
14 complaint procedure under subsection (a), the governing body
15 of the municipality shall adopt a schedule of fines for first,
16 second, and subsequent offenders of the alleged violation of
17 ~~such ordinances~~ offenses subject to the summons and complaint
18 procedure, which. The schedule of fines shall be posted in a
19 place conspicuous to the public within the court clerk's
20 office and the police department.

21 "(f) (1) When a person is charged with ~~one of the~~
22 ~~enumerated ordinance violations~~ an offense subject to the
23 summons and complaint procedure, he or she may elect to appear
24 before the municipal court magistrate, or where the municipal
25 court has been abolished, the district court magistrate,
26 within the time specified in the summons and complaint, and
27 upon entering a plea of guilty, pay the fine and court costs.

1 A plea of guilty shall only be accepted by the magistrate
2 after the defendant has executed a notice and waiver of rights
3 form.

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

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

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

23 "(i) All fines and forfeitures collected upon a
24 conviction or upon the forfeiture of bail of any person
25 charged with a violation of ~~such~~ the ordinances, shall be
26 remitted to the general fund of the municipality or as
27 otherwise provided by law; provided, however, fines,

1 forfeitures, and court costs assessed and collected in
2 district court shall be distributed as now provided by law.

3 "(j) This section only applies to municipalities
4 that do not employ a full-time municipal judge.
5 Notwithstanding the foregoing, a municipality that employs a
6 full-time municipal judge, by local law enacted by the
7 Legislature, may elect to apply this section."

8 Section 2. Although this bill would have as its
9 purpose or effect the requirement of a new or increased
10 expenditure of local funds, the bill is excluded from further
11 requirements and application under Amendment 621, now
12 appearing as Section 111.05 of the Official Recompilation of
13 the Constitution of Alabama of 1901, as amended, because the
14 bill defines a new crime or amends the definition of an
15 existing crime.

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

1
2
3
4
5
6
7
8
9
10

11
12
13
14
15
16
17

Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 02-FEB-21

Read for the second time and placed on the calen-
dar 1 amendment..... 24-FEB-21

Read for the third time and passed as amended 08-APR-21

Yeas 32
Nays 0

Patrick Harris,
Secretary.