

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

1 SB59

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4 ENROLLED, An Act,

5 Relating to municipalities; to amend Section
6 11-45-9.1, Code of Alabama 1975, to provide that a
7 municipality may authorize a law enforcement officer to issue
8 a summons and complaint in lieu of custodial arrest for
9 certain criminal offenses; and in connection therewith would
10 have as its purpose or effect the requirement of a new or
11 increased expenditure of local funds within the meaning of
12 Amendment 621 of the Constitution of Alabama of 1901, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§11-45-9.1.

19 "(a) (1) By ordinance, Except as provided in
20 subdivision (2), the governing body of any municipality ~~may,~~
21 by ordinance, may authorize any law enforcement officer of a
22 municipality or any law enforcement officer of the state, in
23 lieu of placing persons under custodial arrest, to issue a
24 summons and complaint to any person charged with violating any
25 municipal ~~littering ordinance; municipal ordinance which~~

1 ~~prohibits animals from running at large, which shall include~~
2 ~~leash laws and rabies control laws; or any Class C misdemeanor~~
3 ~~or violation not involving violence, threat of violence, or~~
4 ~~alcohol or drugs~~ within the corporate limits or the police
5 jurisdiction of the municipality.

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

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.

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

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

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

7 "g. The person is charged with the crime of theft of
8 property in the fourth degree, as defined under Section
9 13A-8-5.

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

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

15 "j. The person is charged with a violation of
16 carrying a pistol without a permit, as provided under Section
17 13A-11-73.

18 "k. The person is charged with a crime that is
19 sexual in nature.

20 "(b) ~~Such~~ The summons and complaint shall be on a
21 form approved by the governing body of the municipality and
22 shall contain the name of the court; the name of the
23 defendant; a description of the offense, including the
24 municipal ordinance number; the date and time of the offense;
25 the place of the offense; signature of the officer issuing the

1 citation; the scheduled court date and time; an explanation to
2 the person cited of the ways in which he or she may settle his
3 or her case; and a signature block for the magistrate to sign
4 upon the officer's oath and affirmation given prior to trial.

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

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

21 "(e) Before implementation of the summons and
22 complaint procedure under subsection (a), the governing body
23 of the municipality shall adopt a schedule of fines for first,
24 second, and subsequent offenders of the alleged violation of
25 ~~such ordinances~~ offenses subject to the summons and complaint

1 procedure, which. The schedule of fines shall be posted in a
2 place conspicuous to the public within the court clerk's
3 office and the police department. The filing fee provided in
4 Section 12-19-311(a)(1)a. shall apply to each summons and
5 complaint issued under this section, and the filing fee shall
6 be distributed as provided by Section 12-19-311.

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

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

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

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

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

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

24 Section 2. Although this bill would have as its
25 purpose or effect the requirement of a new or increased

1 expenditure of local funds, the bill is excluded from further
2 requirements and application under Amendment 621, now
3 appearing as Section 111.05 of the Official Recompilation of
4 the Constitution of Alabama of 1901, as amended, because the
5 bill defines a new crime or amends the definition of an
6 existing crime.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB59

Senate 08-APR-21

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 29-APR-21

Senate concurred in House amendment 17-MAY-21

By: Senator Melson