

1 SB41
2 188687-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 09-JAN-18
6 PFD: 01/02/2018

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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 to issue a
14 summons and complaint in lieu of custodial arrest
15 for all misdemeanors and violations, with
16 exceptions.

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

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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 all
19 misdemeanors and violations, with exceptions; and in
20 connection therewith would have as its purpose or effect the
21 requirement of a new or increased expenditure of local funds
22 within the meaning of Amendment 621 of the Constitution of
23 Alabama of 1901, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of Alabama of 1901,
25 as amended.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 "§11-45-9.1.

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

15 "(2) Subdivision (1) does not apply to any
16 misdemeanor or violation that includes any of the following:

17 "a. Violence, threat of violence, or domestic
18 violence, as defined in Section 13A-6-139.1.

19 "b. The possession or use of alcohol which, in the
20 opinion of the law enforcement officer, creates a risk to
21 public safety.

22 "c. A victim who is a minor.

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

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

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

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

20 "(e) Before implementation of the summons and
21 complaint procedure, the governing body shall adopt a schedule
22 of fines for first, second, and subsequent offenders of the
23 alleged violation of ~~such~~ the ordinances, which shall be
24 posted in a place conspicuous to the public within the court
25 clerk's office and the police department.

26 "(f) (1) When a person is charged with one of the
27 enumerated ordinance violations, he or she may elect to appear

1 before the municipal court magistrate, or where the municipal
2 court has been abolished, the district court magistrate,
3 within the time specified in the summons and complaint, and
4 upon entering a plea of guilty, pay the fine and court costs.
5 A plea of guilty shall only be accepted by the magistrate
6 after the defendant has executed a notice and waiver of rights
7 form.

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

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

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

1 "(i) All fines and forfeitures collected upon a
2 conviction or upon the forfeiture of bail of any person
3 charged with a violation of ~~such~~ the ordinances, shall be
4 remitted to the general fund of the municipality; provided,
5 however, fines, forfeitures, and court costs assessed and
6 collected in district court shall be distributed as now
7 provided by law."

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.