

**Representative LaVar Christensen** proposes the following substitute bill:

**STANDARDS FOR ISSUANCE OF SUMMONS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: Mark B. Madsen

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**LONG TITLE**

**General Description:**

This bill requires that a summons be issued before an arrest warrant under certain circumstances.

**Highlighted Provisions:**

This bill:

- ▶ sets standards for a summons to be issued for a person accused of committing a crime instead of a warrant; and
- ▶ requires that the magistrate issue a summons if the magistrate finds that the accused is likely to appear and is not:
  - a danger to the community;
  - a flight risk; or
  - a danger to other persons or property.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26 77-7-5, as last amended by Laws of Utah 2010, Chapter 324

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28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section 77-7-5 is amended to read:

30 **77-7-5. Issuance of summons or warrant -- Time and place arrests may be made**  
 31 **-- Contents of warrant or summons -- Responsibility for transporting prisoners -- Court**  
 32 **clerk to dispense restitution for transportation.**

33 (1) A magistrate may issue a warrant for arrest in lieu of a summons for the appearance  
 34 of the accused only upon finding:

35 (a) probable cause to believe that the person to be arrested has committed a public  
 36 offense[-]; and

37 (b) ~~Ŝ→ [determining under Rule 6.]~~ under the ~~←Ŝ~~ Utah Rules of Criminal Procedure, and  
 37a this section that a  
 38 warrant is necessary to:

39 (i) prevent risk of injury to a person or property;

40 (ii) secure the appearance of the accused; or

41 (iii) protect the public safety and welfare of the community or an individual .

42 ~~Ĥ→ [(2) Administrative convenience or a preference by the prosecution is not valid grounds~~  
 43 ~~for the issuance of a warrant and arrest rather than a summons absent findings based upon~~  
 44 ~~Subsections (1)(b)(i), (ii), and (iii):~~

45 ~~———(3)] (2) ←Ĥ~~ If the offense charged is:

46 (a) a felony, the arrest upon a warrant may be made at any time of the day or night; or

47 (b) a misdemeanor, the arrest upon a warrant can be made at night only if:

48 (i) the magistrate has endorsed authorization to do so on the warrant;

49 (ii) the person to be arrested is upon a public highway, in a public place, or in a place  
 50 open to or accessible to the public; or

51 (iii) the person to be arrested is encountered by a peace officer in the regular course of  
 52 that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for  
 53 arrest.

54 [(2)] ~~Ĥ→ [(4)] (3) ←Ĥ~~ For the purpose of Subsection (1):

55 (a) daytime hours are the hours of 6 a.m. to 10 p.m.; and

56 (b) nighttime hours are the hours after 10 p.m. and before 6 a.m.

57           ~~[(3)]~~ ~~H~~→ ~~[(5)]~~ (4) ←~~H~~ (a) If the magistrate determines that the accused must appear  
57a in court, the  
58 magistrate shall include in the arrest warrant the name of the law enforcement agency in the  
59 county or municipality with jurisdiction over the offense charged.

60           (b) (i) The law enforcement agency identified by the magistrate under Subsection ~~[(3)]~~  
61 ~~H~~→ ~~[(5)(a)]~~ (4)(a) ←~~H~~ (a) is responsible for providing inter-county transportation of the  
61a defendant, if necessary,  
62 from the arresting law enforcement agency to the court site.

63           (ii) The law enforcement agency named on the warrant may contract with another law  
64 enforcement agency to have a defendant transported.

65           (c) (i) The law enforcement agency identified by the magistrate under Subsection ~~[(3)]~~  
66 ~~H~~→ ~~[(5)(a)]~~ (4)(a) ←~~H~~ as responsible for transporting the defendant shall provide to the court clerk  
66a of the court  
67 in which the defendant is tried, an affidavit stating that the defendant was transported,  
68 indicating the law enforcement agency responsible for the transportation, and stating the  
69 number of miles the defendant was transported.

70           (ii) The court clerk shall account for restitution paid under Subsection 76-3-201(5) for  
71 governmental transportation expenses and dispense restitution money collected by the court to  
72 the law enforcement agency responsible for the transportation of a convicted defendant.