

**STANDARDS FOR ISSUANCE OF SUMMONS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ requires that a summons or citation be issued for a person accused of committing a crime; 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:

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

---

---



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 citation and summons to appear or, for heightened cause  
34 as provided in this section, a warrant for arrest upon finding probable cause to believe that the  
35 person to be summoned or arrested has committed a public offense.

36 (2) If the magistrate determines that there is probable cause to believe that a public  
37 offense has been committed, the magistrate shall issue a citation and summons to the accused.  
38 A warrant for arrest may not be issued instead of a citation and summons unless the magistrate  
39 determines there is a substantial risk of a breach of the peace, injury to persons or property,  
40 flight to avoid prosecution, or danger to the community. The citation and summons shall  
41 include the same information required under Subsection 77-7-20(2).

42 (3) All defendants charged with public offenses of any type are presumed innocent  
43 under the United States Constitution unless and until proven guilty and at all times are entitled  
44 to full due process of law. Therefore, a citation and summons rather than an arrest warrant is  
45 the preferred and required means of initiating a prosecution and giving notice to the accused  
46 unless the heightened standard applies under Subsection (2). Administrative convenience or  
47 preference by the courts or the prosecution are not valid grounds for issuance of a warrant and  
48 arrest rather than a citation and summons.

49 (4) If the offense charged is:

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

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

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

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

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

58 [~~(2)~~] (5) For the purpose of Subsection [~~(4)~~] (4):

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

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

61 ~~[(3)]~~ (6) (a) If the magistrate determines that the accused must appear in court, the  
62 magistrate shall include in the arrest warrant the name of the law enforcement agency in the  
63 county or municipality with jurisdiction over the offense charged.

64 (b) (i) The law enforcement agency identified by the magistrate under Subsection ~~[(3)]~~  
65 (6)(a) is responsible for providing inter-county transportation of the defendant, if necessary,  
66 from the arresting law enforcement agency to the court site.

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

69 (c) (i) The law enforcement agency identified by the magistrate under Subsection ~~[(3)]~~  
70 (6)(a) as responsible for transporting the defendant shall provide, to the court clerk of the court  
71 in which the defendant is tried, an affidavit stating that the defendant was transported,  
72 indicating the law enforcement agency responsible for the transportation, and stating the  
73 number of miles the defendant was transported.

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