

# HB0381S01 compared with HB0381

~~text~~ shows text that was in HB0381 but was deleted in HB0381S01.

text shows text that was not in HB0381 but was inserted into HB0381S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: \_\_\_\_\_

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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:

- ▶ ~~requires that~~ sets standards for a summons ~~for citation~~ 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.

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### 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

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

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

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

(1) A magistrate may issue a ~~{citation and summons to appear or, for heightened cause as provided in this section, a }~~warrant for arrest in lieu of a summons for the appearance of the accused only upon finding:

(a) probable cause to believe that the person to be ~~{summoned or }~~arrested has committed a public offense~~};~~

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

~~—— (3) All defendants charged with public offenses of any type are presumed innocent under the United States Constitution unless and until proven guilty and at all times are entitled to full due process of law. Therefore, a citation and summons rather than an arrest warrant is the preferred and required means of initiating a prosecution and giving notice to the accused unless the heightened standard applies under Subsection (2).} [-]; and~~

(b) determining under Rule 6, Utah Rules of Criminal Procedure, and this section that a warrant is necessary to:

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

(ii) secure the appearance of the accused; or

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

(2) Administrative convenience or a preference by the ~~courts or the~~ prosecution ~~are~~ is not valid grounds for the issuance of a warrant and arrest rather than a ~~citation and~~ ~~summons~~ absent findings based upon Subsections (1)(b)(i), (ii), and (iii).

~~(4)3~~ If the offense charged is:

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

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

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

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

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

~~(2)~~ ~~(5)4~~ For the purpose of Subsection ~~(1)~~ ~~(4)~~:

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

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

~~(3)~~ ~~(6)5~~ (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(b) (i) The law enforcement agency identified by the magistrate under Subsection ~~(3)~~ ~~(6)5~~(a) is responsible for providing inter-county transportation of the defendant, if necessary, from the arresting law enforcement agency to the court site.

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

(c) (i) The law enforcement agency identified by the magistrate under Subsection ~~(3)~~ ~~(6)5~~(a) as responsible for transporting the defendant shall provide ~~(3)~~ to the court clerk of the court in which the defendant is tried, an affidavit stating that the defendant was transported, indicating the law enforcement agency responsible for the transportation, and stating the number of miles the defendant was transported.

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

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**Legislative Review Note**

**Office of Legislative Research and General Counsel†**