

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS35260-MS-144 (03/21)

Short Title: Summons for Private Warrants. (Public)

Sponsors: Senator D. Davis (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THAT WHEN PROBABLE CAUSE IS FOUND FROM AN
3 AFFIDAVIT OR TESTIMONY BY A PRIVATE CITIZEN, THE JUDICIAL OFFICIAL
4 SHALL ISSUE A SUMMONS AND NOT A WARRANT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 15A-304 reads as rewritten:

7 "§ 15A-304. Warrant for arrest.

8 (a) Definition. – A warrant for arrest consists of a statement of the crime of which the
9 person to be arrested is accused, and an order directing that the person so accused be arrested
10 and held to answer to the charges made against him. It is based upon a showing of probable
11 cause supported by oath or affirmation.

12 (b) When Issued. – A warrant for arrest may be issued, instead of or subsequent to a
13 criminal summons, when it appears to the judicial official that the person named should be
14 taken into custody. Circumstances to be considered in determining whether the person should
15 be taken into custody may include, but are not limited to, failure to appear when previously
16 summoned, facts making it apparent that a person summoned will fail to appear, danger that the
17 person accused will escape, danger that there may be injury to person or property, or the
18 seriousness of the offense.

19 (c) Statement of the Crime. – The warrant must contain a statement of the crime of
20 which the person to be arrested is accused. No warrant for arrest, nor any arrest made pursuant
21 thereto, is invalid because of any technicality of pleading if the statement is sufficient to
22 identify the crime.

23 (d) Showing of Probable Cause. – A judicial official may issue a warrant for arrest only
24 when he is supplied with sufficient information, supported by oath or affirmation, to make an
25 independent judgment that there is probable cause to believe that a crime has been committed
26 and that the person to be arrested committed it. The information must be shown by one or more
27 of the following:

- 28 (1) Affidavit;
29 (2) Oral testimony under oath or affirmation before the issuing official; or
30 (3) Oral testimony under oath or affirmation presented by a sworn law
31 enforcement officer to the issuing official by means of an audio and video
32 transmission in which both parties can see and hear each other. Prior to the
33 use of audio and video transmission pursuant to this subdivision, the
34 procedures and type of equipment for audio and video transmission shall be
35 submitted to the Administrative Office of the Courts by the senior regular
36 resident superior court judge and the chief district court judge for a judicial



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1 district or set of districts and approved by the Administrative Office of the
2 Courts.

3 When a judicial official finds probable cause under subdivision (1) or (2) of this subsection
4 based on sufficient information from a private citizen, the judicial official shall issue a criminal
5 summons under G.S. 15A-303 and not a warrant for arrest. If the information is insufficient to
6 show probable cause, the warrant or summons may not be issued. A judicial official shall not
7 refuse to issue a warrant for the arrest of a person solely because a prior warrant has been
8 issued for the arrest of another person involved in the same matter.

9 (e) Order for Arrest. – The order for arrest must direct that a law-enforcement officer
10 take the defendant into custody and bring him without unnecessary delay before a judicial
11 official to answer to the charges made against him.

12 (f) Who May Issue. – A warrant for arrest, valid throughout the State, may be issued
13 by:

- 14 (1) A Justice of the Supreme Court.
- 15 (2) A judge of the Court of Appeals.
- 16 (3) A judge of the superior court.
- 17 (4) A judge of the district court, as provided in G.S. 7A-291.
- 18 (5) A clerk, as provided in G.S. 7A-180 and 7A-181.
- 19 (6) A magistrate, as provided in G.S. 7A-273."

20 **SECTION 3.** This act becomes effective December 1, 2017, and applies to
21 offenses committed on or after that date.