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SENATE BILL DRS15151-MS-85A (03/07)

Short Title: Citizen's Warrants.

(Public)

Sponsors: Senators J. Jackson, Britt, and Tucker (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A PRIVATE CITIZEN'S SHOWING OF PROBABLE
3 CAUSE TO THE MAGISTRATE SHALL INCLUDE SUFFICIENT INFORMATION
4 SUPPORTED BY OATH OR AFFIRMATION THAT A CRIME HAS OCCURRED AND
5 SHALL ISSUE AS A SUMMONS UNLESS A SUBSTANTIAL LIKELIHOOD EXISTS
6 THAT THE DEFENDANT WILL NOT RESPOND TO A SUMMONS.

7 The General Assembly of North Carolina enacts:

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

9 "§ 15A-304. Warrant for arrest.

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

14 (1) Warrant for arrest. — A warrant for arrest consists of a statement of the crime
15 of which the person to be arrested is accused and an order directing that the
16 person so accused be arrested and held to answer to the charges made
17 against that person. It is based upon a showing of probable cause supported
18 by oath or affirmation.

19 (2) Citizen's warrant. — A citizen's warrant is a warrant for arrest issued by a
20 magistrate or a clerk based upon a showing of probable cause supported
21 solely by information presented by a private person.

22 (b) When Issued. — A warrant for arrest may be issued, instead of or subsequent to a
23 criminal summons, when it appears to the judicial official that the person named should be
24 taken into custody. Circumstances to be considered in determining whether the person should
25 be taken into custody may include, but are not limited to, failure to appear when previously
26 summoned, facts making it apparent that a person summoned will fail to appear, danger that the
27 person accused will escape, danger that there may be injury to person or property, or the
28 seriousness of the offense.

29 (c) Statement of the Crime. — ~~The~~Both a warrant for arrest and a citizen's warrant must
30 contain a statement of the crime of which the person to be arrested is accused. ~~No warrant for~~
31 ~~arrest, warrant,~~ nor any arrest made pursuant thereto, is invalid because of any technicality of
32 pleading if the statement is sufficient to identify the crime.

33 (d) Showing of Probable ~~Cause.~~Cause for a Warrant for Arrest. — A judicial official
34 may issue a warrant for arrest only when ~~he~~the official is supplied with sufficient information,
35 supported by oath or affirmation, to make an independent judgment that there is probable cause



1 to believe that a crime has been committed and that the person to be arrested committed it. The
2 information must be shown by one or more of the following:

- 3 (1) Affidavit;
- 4 (2) Oral testimony under oath or affirmation before the issuing official; or
- 5 (3) Oral testimony under oath or affirmation presented by a sworn law
6 enforcement officer to the issuing official by means of an audio and video
7 transmission in which both parties can see and hear each other. Prior to the
8 use of audio and video transmission pursuant to this subdivision, the
9 procedures and type of equipment for audio and video transmission shall be
10 submitted to the Administrative Office of the Courts by the senior regular
11 resident superior court judge and the chief district court judge for a judicial
12 district or set of districts and approved by the Administrative Office of the
13 Courts.

14 If the information is insufficient to show probable cause, the warrant may not be issued. A
15 judicial official shall not refuse to issue a warrant for the arrest of a person solely because a
16 prior warrant has been issued for the arrest of another person involved in the same matter.

17 (d1) Showing of Probable Cause for a Citizen's Warrant. – A magistrate may issue a
18 warrant or criminal summons only when the magistrate is supplied with sufficient information,
19 provided by a private person, supported by oath or affirmation, to make an independent
20 judgment that there is probable cause to believe that a crime has been committed and that the
21 person to be arrested committed it. The information shall be shown by one or more of the
22 methods listed in subdivisions (1) through (3) of subsection (d) of this section. A summons
23 rather than a warrant shall be issued unless:

- 24 (1) The accused has a history of failure to appear before the court as required;
- 25 (2) There is evidence that the accused is likely to escape or otherwise flee the
26 State in order to avoid prosecution for the offense alleged;
- 27 (3) There is evidence of imminent danger of harm to persons or property if the
28 accused is not taken into custody;
- 29 (4) The location of the accused is not readily discoverable, such that a criminal
30 summons would be unlikely to be served before any court date assigned at
31 the time of issue;
- 32 (5) A relevant statute provides that arrest is mandatory for an offense charged;
33 or
- 34 (6) The seriousness of the offense constitutes grounds for a warrant.

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

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

- 40 (1) A Justice of the Supreme Court.
- 41 (2) A judge of the Court of Appeals.
- 42 (3) A judge of the superior court.
- 43 (4) A judge of the district court, as provided in G.S. 7A-291.
- 44 (5) A clerk, as provided in G.S. 7A-180 and 7A-181.
- 45 (6) A magistrate, as provided in G.S. 7A-273."

46 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
47 warrants issued on or after that date.