

Arrest Warrants

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3.1 Overview

A. Purpose

The purpose of an arrest warrant is to bring the defendant to appear before the court on an accusation charged in a complaint. A **complaint** is the charging instrument which, once accepted by the court, formally sets forth the charge against the defendant and constitutes the basis for all further action to be taken by the court in the case. The complaint recites the substance of the accusation against the accused and may contain factual allegations establishing reasonable cause. (MCL 764.1d)

An **arrest warrant** is the order by the court to arrest a defendant and bring him or her before the court to answer to the charge alleged in the complaint and to be further dealt with according to law. (MCL 764.1b) An **arrest warrant is required** to arrest a person for a misdemeanor committed outside the presence of an officer, except for misdemeanors such as operating a vehicle, snowmobile, or ORV while under intoxicating liquor or a controlled substance, and domestic assault. (MCL 764.15[1][h]-[j], MCL 764.15a)

1. Except as otherwise indicated in statute, a police officer may issue a citation or an appearance ticket (Uniform Law Citation, UC-01a) to a person who is arrested without a warrant for a misdemeanor or ordinance violation for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both. (MCL 257.728[1], MCL 764.9c)
2. An arrest warrant is not needed for a felony committed in the officer's presence or when the officer has reasonable cause to believe a felony was committed and reasonable cause to believe that the defendant committed the offense. (MCL 764.15[1][a])
3. An arrest warrant is not required if the accused has already been arrested without a warrant (for a felony or misdemeanor). The complaint shall constitute both the complaint and warrant when the magistrate endorses upon the complaint a finding of probable cause and a direction to take the accused before a magistrate of the judicial district in which the offense is charged to have been committed. (MCL 764.1c) For more information, see Section 3.2.2, C.3, page 12.

B. Authority and Definitions

The code of criminal procedure states that magistrates may issue arrest warrants. (MCL 764.1) **Magistrate** is defined to include "district court judges, municipal court judges" (MCL 761.1[f]) This definition does not limit the power of "... judges of courts of record having jurisdiction of criminal cases under the code of criminal procedure to exercise in their discretion the authority of magistrates."

The definition of magistrate in MCL 761.1(f) does not include district court magistrates. However, district court magistrates are given authority to issue arrest warrants by the Revised Judicature Act. (MCL 600.8511[e])

The court has the power to issue a warrant only if presented with a proper complaint. (MCR 6.102[A])

1. Issuance of Arrest Warrant Upon Prosecutor Authorization

A district court magistrate has the statutory authority to issue warrants for the arrest of a person upon written authority of the prosecuting or municipal attorney. (MCL 600.8511[e]) A magistrate may not issue warrants for the arrest of persons charged with a felony, misdemeanor or ordinance violation other than a minor offense until receiving an order in writing authorizing issuance of the warrant which is signed by the prosecuting attorney and filed with the magistrate, or unless security for costs is filed with the magistrate, or unless the offense is one referred to in MCL 764.1(2)(a) and (b) (see item 2. below). (MCR 6.101[C], MCL 764.1[1], [2]) **Minor offense** is a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$1,000.00. (MCL 761.1[k])

The Supreme Court held that the requirement that the prosecuting attorney sign an order authorizing issuance of a warrant or that security for costs be filed should be strictly followed. (*People v Holbrook*, 373 Mich 94; 128 NW2d 484 [1964])

SCAO-Approved form DC 225, Complaint and Warrant, Misdemeanor, contains a small box in the lower left portion of the complaint for the prosecuting official's signature. If the prosecutor's signature does not appear in this box, the court, except in very limited circumstances, has no authority to issue the warrant and should refer the complaining witness back to the prosecuting official to procure the required signature. (MCL 764.1[1], [2]) The Court of Appeals has affirmed that the magistrate's power to issue an arrest warrant is expressly dependent on the written authorization of the prosecuting attorney or the municipal attorney. (*People v White*, 167 Mich App 461, 465; 423 NW2d 255 [1988])

2. Issuance of Arrest Warrant Without Prosecutor Authorization

The magistrate has authority to issue a warrant without prosecutor authorization if a police officer issued a citation pursuant to MCL 257.728 (traffic misdemeanor) and the defendant failed to appear for that citation. (MCL 600.8511[e]) A citation is considered a complaint as defined by MCL 257.727c. See also MCL 257.728e.

The magistrate also has authority to issue a warrant without prosecutor authorization when a warrant for a minor offense is requested by: (1) agents of the Department of Transportation, a county road commission, or Public Service Commission for violations of the Motor Carrier Act; or (2) DNR conservation officers for violation of a law which provides for the protection of wild game and fish. (MCL 764.1[2][b])

3. Arrest of Juvenile for Specified Juvenile Violation

An arrest warrant may be issued for a juvenile through district court if the juvenile is 14-16 years old and the prosecuting attorney has reason to believe that the juvenile committed a “specified juvenile violation.” A “specified juvenile violation” is defined in MCL 764.1f. The list includes life offenses and other crimes if the juvenile was armed with a dangerous weapon, escape from a specific juvenile facility, etc. (MCL 764.1f)

4. Bench Warrant

A **bench warrant** is issued by a judge when a defendant fails to comply with a court order. It is directed to a police officer commanding the police officer to immediately arrest the defendant. The purpose of the bench warrant is to bring the defendant before the court to answer to a charge of contempt of court. A bench warrant should not be used to bring a defendant before the court for an appearance on a complaint where the defendant has not yet appeared. Examples of contempt of court are: (1) defendant failed to pay fines and costs as ordered for a misdemeanor offense, (2) defendant failed to appear for a court date that the court ordered (not the court date indicated on the interim bond form), and (3) defendant failed to complete alcohol classes, etc.

5. Probable or Reasonable Cause

Probable or reasonable cause is when the facts (not conclusions, but operative facts and circumstances) are sufficient to cause a fair-minded person of average intelligence to believe that the defendant committed the crime alleged.

3.2 Minimum Standards

3.2.1 Complaint

The complaint is a necessary prerequisite to a criminal prosecution, except where an indictment has been returned by a grand jury or by a judicial officer acting in the capacity of a grand juror pursuant to statute. (MCL 764.1d, *People v O'Hara*, 278 Mich 281, 293; 270 NW 298 [1936])

A. Contents

1. Pleading Statute or Ordinance

- a. A complaint pursuant to a statute must state all of the facts and circumstances which constitute the statutory offense. (*People v Frederighi*, 192 Mich 165; 158 NW 177 [1916]) However, it is not necessary to use the exact language of the statute as long as words of equivalent import are used. (*People v Husted*, 52 Mich 624; 18 NW 388 [1884], *People v Perez*, 22 Mich App 469; 177 NW2d 22 [1970])
- b. When the statute or ordinance fixes a classification and creates an offense which can only be committed by persons within the class, it is necessary to allege that the accused is a member of that class. See *People v Meisner*, 178 Mich 115; 144 NW 490 (1913), where the Supreme Court dismissed the charges against a defendant charged with violating a statute regulating auctioneers, because the complaint did not allege nor did the state prove that the defendant was an auctioneer.
- c. For violations of a village or city ordinance, it is not necessary to set forth the ordinance or any of its provisions. It is sufficient if the complaint recites the title or subject of the ordinance, the section number of the ordinance, and the effective date. (MCL 66.9, MCL 90.10)
- d. When the facts in a complaint sufficiently set forth an offense under a particular section of the statute, it is immaterial that the complaint erroneously states the wrong section. Further, the facts contained in the complaint, not the belief of the person drawing it, control the particular section of law on which the charge should be predicated. (*People v Wolfe*, 338 Mich 525; 61 NW2d 767 [1953])

2. Allegations of Time and Place

- a. Generally, a complaint is not invalid because the complainant is unable to ascertain the exact date of the alleged violation. (*Hamilton v People*, 46 Mich 186; 79 NW 247 [1881]) However, when time is an element of the offense charged, it should be set forth in the complaint.

When time is not an element, a variance is permissible, but the court on motion may require the prosecution to state the time or identify the occasion as nearly as possible to enable the accused to meet the charge. See MCL 767.51 for requirements for alleging time of offense in circuit court information.

- b. In *People v Naugle*, 152 Mich App 227, 231-234; 393 NW2d 592 (1986), which addressed the time specification requirement for a circuit court information, the Court of Appeals established several factors a trial court should consider in determining when and to what extent specificity of the time of the offense should be required. The factors include:
- the nature of the crime charged,
 - the victim's ability to specify a date,
 - the prosecutor's efforts to specify a date, and
 - the prejudice to the defendant in preparing a defense.

These factors should also be used when deciding the extent of the specificity required in a complaint.

- c. The complaint should state the place where the offense is alleged to have been committed although it is sufficient if the complaint describes the offense as having been committed in an incorporated village of the county even though the name of the county is not mentioned. (*People v Telford*, 56 Mich 541 [1885], *People v Gregory*, 30 Mich 370 [1874])

3. Name of the Accused

- a. If known, the name of the accused should be stated in the complaint. (MCR 6.101[A], MCL 764.1a[1]) It is sufficient to use the defendant's nickname, a fictitious name, or a description of a person whose name is unknown. In the case of a corporation, the corporate name or any designation by which it is known may be used. For unincorporated groups, it is enough to state the proper name of the group or any name used by the group. See MCL 767.49 for requirements for stating name of accused in circuit court information.
- b. When the defendant's name is unknown, the usual practice is to describe him or her in the complaint as "John (or Mary) Doe, whose real name is unknown," and to include a physical description of the defendant in the complaint. If, during the course of the trial, the person's real name becomes known, an amendment is proper to set forth the correct name. (MCL 767.49)

B. Signature Requirements

The complaining witness must swear that the information in the complaint is true and accurate to the best of his or her knowledge, information and belief. If the magistrate is taking the testimony, the complaining witness must sign the complaint in his or her presence. The magistrate must date the complaint and sign his or her name. (MCL 600.8511[e])

C. Probable Cause

Probable cause for an arrest exists when the facts are sufficient to cause a fair-minded man (or woman) of average intelligence to believe that the defendant committed the crime alleged. (*People v Ward*, 226 Mich 45; 196 NW 971 [1924])

A probable cause determination is predicated upon the court receiving a proper complaint, as articulated in MCL 764.1a and MCR 6.101. After-hours and weekend procedures by local prosecutors may result in a complaint that is in a format other than the SCAO-Approved felony or misdemeanor complaint, and may be handwritten. Regardless of format, a complaint meeting the statutory and court rule requirements should be considered the official complaint. Neither statute nor court rule authorize the use of “pre-complaints,” “interim complaints,” “temporary complaints,” or any document entitled with similar language that suggests the future filing of another complaint for the same defendant and same offense(s) arising out of the same incident. If a subsequent complaint for the same defendant and same offense(s) arising out of the same incident is later filed in a more “formal” manner as a courtesy copy, such as the SCAO-Approved form, the magistrate may not sign that copy, but may place it in the court file for reference.

1. Finding of Probable Cause

- a. Pursuant to MCL 764.1a(2), the court may make a finding of probable cause to issue a warrant based on hearsay evidence and the factual allegations contained in:
 - the complaint,
 - the affidavits from the complainant or others,
 - the testimony of a sworn witness, adequately preserved to permit review, or
 - any combination of these sources.

- b. The taking of the complaint and the examination of the complaining witness (and other persons, if necessary) is usually combined in one operation by the magistrate. Typically, the examination itself is oral and informal, and amounts to little more than information under oath and, on the record, that the complaining witness believes an offense has been committed, together with the factual basis for that belief.

The factual basis is supplied by the facts relied on by the complaining witness and not merely by his or her conclusions. It must appear that the affiant spoke with personal knowledge, or else the sources for the witness's belief must be disclosed. When the belief is based on information from other persons, informant credibility must be shown. (*People v Hill*, 44 Mich App 308; 205 NW2d 267 [1973])

- c. Generally, criminal complaints contain few, if any, factual allegations and merely state the conclusive allegation that the defendant committed the offense charged, reciting more or less the statutory language. However, in some courts, affidavits are submitted in support of complaints.

A police report, if used for the purpose of providing factual allegations in support of the complaint, must conform to the requirements of an affidavit and must have been sworn to before a person authorized by law to take an oath. Documents in court files containing this type of information create a burden on court staff to protect the information from being disseminated to the public. For example, a police report may contain nonpublic information that must be protected, such as victim work and home addresses and phone number, social security number, and information obtained from LEIN. For this reason, the SCAO recommends that police reports and criminal history and driving records not be made part of the official documentation in a court file. If a police report is used as an affidavit in support of the complaint, it must remain in the court file as part of the complaint, while nonpublic information contained therein must be protected.

- d. A finding of probable cause as required by court rule and statute is usually based on the sworn testimony, taken ex parte by the court, of:
- the complainant (i.e., the victim of the crime),
 - the complaining witness (i.e., a person other than the actual victim who is signing the complaint, typically a police officer), or
 - some other person(s) presented by the complainant or required by the magistrate.
- e. Testimony that supports a finding of probable cause need not be taken in conformity with the Michigan Rules of Evidence and "may be based upon personal knowledge, information and belief (i.e., hearsay), or both." (MCL 764.1a[3])

2. Record of Testimony

Sworn testimony relied on in making the probable cause determination should be adequately preserved to permit review. (MCR 6.102[B]) Physical evidence seized from a defendant incident to an arrest on a warrant must be suppressed unless it can be demonstrated that the taking of the complaint and issuance of the warrant were supported by an adequate finding of reasonable cause by a neutral magistrate. (*Whiteley v Warden of Wyoming State Penitentiary*, 401 US 560; 91 SCt 1031; 28 LEd2d 306 [1971], *People v Burrill*, 391 Mich 124; 214 NW2d 823 [1974]) In the absence of a record, this would be virtually impossible.

A record of testimony need not be recorded by a person certified to record proceedings. (MCR 8.108[G][1][b])

A record of testimony may be necessary to support a charge of perjury against a complaining witness who knowingly makes a false statement that forms the basis for a person's arrest. (*People v Kennedy*, 9 Mich App 346; 155 NW2d 855 [1968])

D. Filing of Complaint by Private Citizen

A private citizen may file a complaint for a felony or a misdemeanor charge when a prosecutor has not authorized the complaint and when security for costs is filed with the magistrate. (MCL 764.1[1], [2], MCR 6.101[C]) The amount of security should accurately reflect the likely expenses of the prosecution, rather than a minimal amount that merely placates the statutory requirement.

3.2.2 Warrant

A. Contents

1. With the exception of subsection (D), MCR 6.102 applies only to felony cases. However, absent a similar rule for misdemeanor cases, it provides guidance regarding the contents of a misdemeanor warrant. MCR 6.102(C) provides that the warrant must:
 - a. contain the name of the accused, if known, or an identifying name or description,
 - b. describe the offense charged in the complaint,
 - c. command a peace officer or other person authorized by law to arrest and bring the accused before a judicial officer of the judicial district in which the offense allegedly was committed or some other designated court, and
 - d. be signed by the court.
2. For warrants on misdemeanor charges, MCL 764.1b requires that the warrant:
 - a. be directed to a peace officer,
 - b. should order the officer to immediately arrest the accused and take the person, without unnecessary delay, before a magistrate of the judicial district in which the offense is charged to have been committed, and
 - c. direct that the warrant, along with a proper return noted on the warrant, be delivered to the magistrate before whom the arrested person is taken.
3. MCR 6.102(D) authorizes a court to specify on the warrant the interim bail an accused may post. For further discussion of interim bail, see Section 3.2.3.

B. Executing Complaint and Warrant

MCL 764.1(3) and (4) allow a criminal complaint to be made by any electronic or electromagnetic means of communication, but requires the recipient of an electronically or electromagnetically issued arrest warrant to receive proof that a **judge** signed the warrant before it is executed. A district court magistrate may not issue an arrest warrant that will be transmitted as an electronic or electromagnetic facsimile.

The original complaint and a copy of the arrest warrant should be returned to the court clerk for filing and the warrant should be given to an executing officer, usually the complaining witness, for service. Only a peace officer or other person authorized by law may execute an

arrest warrant. If a circuit court judge, acting as a magistrate pursuant to MCL 764.1 (not as a district court magistrate), issues an arrest warrant, both the complaint and warrant should be filed in the district court clerk's office.

For a corporation, the warrant is executed by the issuance of a corporate summons served on the resident agent or an officer of the corporation just as in a civil matter. The individual cannot be arrested for the corporation. Further, the punishment for the corporation can only be the fine.

C. Return on Arrest Warrant

1. Responsibility of Executing Officer

The return on an arrest warrant is a certificate of the executing officer which states the manner in which it was executed. On execution or attempted execution of the warrant, the executing officer must sign the return and give it to the issuing magistrate after making the arrest and presenting the defendant to the court.

For out-of-district arrests, the court policy may vary. Usually, the arresting agency will notify the agency holding the warrant to have it removed from LEIN. The court will then followup on the warrant from the issuing agency if the warrant has not been returned to the court.

2. Recall of Warrant

When the defendant appears before the court, the court shall issue a Recall of Warrant/Order to Apprehend (SCAO-Approved form MC 220) and advise the responsible police agency by phone of the recall. The warrant, along with the proper return noted on it, should be delivered to the magistrate before whom the arrested person is taken. (MCL 764.1b)

3. Warrantless Arrest

When arresting a person, without a warrant, the officer making the arrest must inform the person arrested of his authority and the cause of the arrest, except when the person arrested is engaged in the commission of a criminal offense or if the person flees or forcibly resists arrest before the officer has time to inform him. The return should be completed after the fact and endorsed that the defendant is in custody. This endorsed warrant is prima facie evidence of the legality of the arrest and the officer's compliance with statutory requirements. (MCL 764.19) The original arrest warrant must be signed by the officer even though the person is already in custody. Otherwise, the arrest warrant should not be issued.

3.2.3 Interim Bail

A. Misdemeanor Cases

1. Authority

Statute provides for the release of misdemeanor prisoners by giving bond to the arresting officer and others in certain circumstances not inconsistent with public safety. Interim bail may be given in any misdemeanor arrest, whether the arrest was with or without a warrant. The statute applies to misdemeanor or ordinance violations which are punishable by imprisonment for not more than one year, or by a fine, or both. (MCL 780.581[1]) It does not apply to reckless driving when it constitutes a public menace pursuant to MCL 257.626, misdemeanors pursuant to MCL 257.625, and failure to render aid at personal injury accident pursuant to MCL 257.619. (MCL 257.727, MCL 257.728)

2. Conditions to Deny Interim Bail

There are four instances when a defendant arrested for a misdemeanor charge may be temporarily denied the right to post interim bail:

- a. if the defendant is under the influence of intoxicating liquors or a controlled substance or any combination of the two,
- b. if the defendant is unable to establish or demonstrate his or her identity,
- c. if the defendant is wanted by authorities to answer to another charge, or
- d. if it is otherwise unsafe to release the defendant.

There must be reasonable and articulable grounds for forming the belief that one of the above conditions exists to deny a defendant's statutory right to post interim bail. (*People v Coburn*, 140 Mich App 793, 789 [1985])

For more information, see Section 4.2.1, pages 5 and 6.

3. Amount Required

- a. The minimum amount of bail (cash only) can be no less than 20 percent of the minimum possible fine. The maximum amount of bail can be no more than the amount of the maximum possible fine. (MCL 780.581[2])

- b. A district court judge or magistrate may set the amount of interim bail by endorsing the amount on the warrant. The amount so endorsed need not be within the limits applicable where the interim bail is set by a police officer pursuant to MCL 780.581(2). (MCL 780.585)
- c. If a district court judge or magistrate has set the amount of bail, an arresting officer may not change it. (MCL 780.68)

4. Domestic Assault Cases

A person shall not be released until he or she can be arraigned or have interim bond set by a judge or district court magistrate if the person was arrested without a warrant pursuant to MCL 764.15a or a substantially corresponding local ordinance, or if the person was arrested with a warrant for a violation of 750.81 or 750.81a or a substantially corresponding local ordinance, and the person is a spouse or former spouse of the victim, has or has had a dating relationship with the victim, has had a child in common with the victim, or resides or has resided in the same household as the victim. (MCL 764.15a, MCL 780.582a)

5. Holding Defendant

The defendant may be held only until he or she is in proper condition to be released, or until the next session of court. (MCL 780.581[3]) If held, the defendant must be placed in a holding cell or lockup, if available. (MCL 780.581[4])

B. Felony Cases

1. Authority

The court has the option of specifying on the warrant the bail an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur on or before a specified date or within a specified period of time after issuance of the warrant. (MCR 6.102[D])

Interim bail is only available in felony cases where the arrest was with a warrant which contains a magistrate's specification for interim bail.

2. Conditions for Release in Felony Cases

If an accused has been arrested pursuant to a warrant that includes an interim bail provision, the accused must either be arraigned promptly or released pursuant to the interim bail provision. (MCR 6.102[F])

The accused may obtain release by posting bail on the warrant and by submitting a recognizance to appear before a specified court at a specified date and time, provided that:

- a. the accused is arrested prior to the expiration date, if any, of the bail provision,
- b. the accused is arrested in the county in which the warrant was issued, or in which the accused resides or is employed, and the accused is not wanted on another charge,
- c. the accused is not under the influence of liquor or controlled substance, and
- d. the condition of the accused or the circumstances at the time of the arrest do not otherwise suggest a need for judicial review of the original bail specification.

(MCR 6.102[F][1]-[4])

The staff comment following MCR 6.102(F) states that the purpose of the language requiring that the accused be arrested in the county where the defendant resides or works is to preclude the availability of interim bail to a person who may be avoiding arrest. In addition, the staff comment states that implicit in subrule (F) is the condition that the accused must be satisfactorily identified.

3.2.4 Warrantless Arrest

A. Authority

An arrest warrant is not needed if an appearance ticket is issued for a misdemeanor or ordinance violation for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, except for a person who is “arrested for a violation of MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to MCL 750.81, if the victim of the assault is the offender’s spouse, former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender.” (MCL 764.9c) Examples of minor offenses for which an appearance ticket can be issued are disturbing the peace, disorderly conduct, and fishing without a license. In addition, an arrest warrant is not needed for misdemeanor traffic citations, except as otherwise indicated by the Michigan Vehicle Code. (MCL 257.728[1])

A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe the person has violated a condition of probation imposed by a court. (MCL 764.15[1][g])

B. Finding of Reasonable Cause

If a defendant is in custody following a warrantless arrest, the complaint can serve as both the complaint and warrant when reasonable cause is found. The officer is directed to bring the accused before the magistrate or judge for arraignment in the district where the offense allegedly was committed. (MCL 764.1c [misdemeanor], MCR 6.104[D] [felony])

C. Plan for Judicial Availability

In each county, the circuit court shall adopt a plan for felony cases which ensures that a judicial officer is available each day of the year for arraignments or for setting bail, when the officer is presented with a proper complaint and makes a finding of probable cause and the officer has available information to set bail. The plan shall also provide that the judicial officer shall order the arresting officials to arrange prompt transportation of any accused unable to post bond to the judicial district of the offense for arraignment not later than the next regular business day. (MCR 6.104[G][1],[2])

3.2.5 Alternatives to Arrest Warrant

The prosecutor may request that a summons be issued instead of an arrest warrant. The summons directs the defendant to appear in court at a specified time. If the defendant fails to appear, then an arrest warrant is issued.

A. Felony Summons

1. Contents

The summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place. (MCR 6.103[B])

2. Service of Summons

The summons may be served by delivering a copy to the named individual, leaving a copy with a person of suitable age and discretion at the individual's home or usual place or abode, or mailing a copy to the individual's last-known address. Service should be prompt to give the accused adequate notice of the appearance date. The person serving the summons must make a return to the court before which the person is summoned to appear. (MCR 6.103[C][1]-[3])

B. Misdemeanor Summons

A summons to appear is usually used in misdemeanor cases that involve corporate defendants. MCL 764.9a provides that the prosecuting attorney may issue a written order for a summons to a defendant as an alternative to filing an order for a warrant when the arrest is for a minor offense.

1. Contents

The summons shall direct the defendant to appear before a magistrate of the judicial district in which the offense is charged to have been committed at a designated future time for proceedings. (MCL 764.9a)

The summons shall designate the name of the issuing court, the offense charged in the underlying complaint, and the name of the defendant to whom it is addressed, and shall be subscribed by the issuing magistrate. (MCL 764.9a[2])

2. Service of Summons

A summons may be served in the same manner as a warrant. (MCL 764.9a[3])

3.2.6 Bench Warrant

A. Purpose and Authority to Issue

The bench warrant is used for initiating a proceeding for a contempt committed outside the immediate view and presence of the court on a proper showing on ex parte motion supported by affidavits. (MCR 3.606 [A])

The bench warrant is not an alternative to an arrest warrant as defined in Section 3.2.5. The minimum standards for a bench warrant are included here for purposes of comparison. The bench warrant is a remedy the court may pursue for contempt of court and is discussed in other sections as appropriate. A bench warrant may issue for both criminal and civil cases. **A magistrate does not have the authority to issue a bench warrant**, but the magistrate may be the petitioner.

B. Moving for Bench Warrant

When a defendant fails to comply with a court order, then a contempt of court charge is authorized. A motion and affidavit for a bench warrant is completed by either the magistrate or the clerk alleging the violation of the court order. (MCR 3.606[A])

C. Contents of Bench Warrant

A bench warrant cannot be issued by the magistrate, but the magistrate or clerk can be the complaining witness. As with an arrest warrant, a bench warrant must contain the following:

1. the name of the defendant,
2. the original charge,
3. the nature of the contempt of court (what did the defendant do or not do in violation of the court order),
4. a command to the police officer to arrest and bring the defendant before the court,
5. whether interim bail may be posted, and
6. the signature of the issuing judge.

3.3 Procedures

3.3.1 Generally

A. Prepare and Authorize Complaint

Upon review of a police report, the complaint and warrant is drafted by either the prosecuting attorney (in cases of alleged violations of state statutes) or the city, township or village attorney (in cases of alleged violations of local ordinances). See SCAO-Approved form MC 200 for felony cases and SCAO-Approved form DC 225 for misdemeanor cases. If the charge requires prosecutor authorization, the prosecutor must authorize the complaint or a security for costs must be filed. (MCR 6.101) Authorization is not required when:

- a citation is issued pursuant to MCL 257.728 (MCL 600.8511).
- a complaint is brought by a county road commission (MCL 764.1[2][a]).
- a complaint is brought by the Department of Natural Resources (MCL 324.1602, MCL 764.1[2][b]).
- a complaint is brought for a violation of the Motor Carrier Act by the Department of Transportation, a county road commission, or the Motor Carrier Division of the Michigan State Police (MCL 764.1[2][a]).

B. Determine Probable Cause

If the complaint is for a charge that is not a minor offense, probable (or reasonable) cause must be determined as required by the minimum standards. See Section 3.2.1, page 7, for details. If the magistrate determines probable cause exists, the complaint is signed by the complaining witness and the magistrate.

C. Prepare Court File

The complaint is filed with the court and a file is established. The process of establishing a file varies among courts. At a minimum, the file must be assigned a case number and contain the complaint and warrant.

D. Issue Warrant

The warrant is issued and signed by the magistrate according to the criteria in Section 3.2.2, page 11. The court must notify the Department of Corrections if the law enforcement agency informs the court that the defendant is a parolee and the court enters its arrest warrants into LEIN. (MCL 764.1g) See the Checklists on the following pages.

3.3.2 Checklist for Misdemeanor Complaint and Warrant

This checklist applies to cases involving offenses that are not punishable by imprisonment in the state prison.

- Make sure the complaint is in proper form and, when required, includes an authorization by the prosecutor.
- Review the complaint to make sure it includes the following.
 - ✓ Name of the defendant or description of the person alleged to have committed the offense.
 - ✓ The commission of an offense.
 - ✓ The time and date of the offense.
 - ✓ The location where the offense was alleged to have occurred.
 - ✓ The name of the offense, the statutory citation of the offense, and the penalties (suggested, but not required).
- Swear-in the complaining witness, and as deemed appropriate, examine the complaining witness to determine reasonable cause.
- Have the complaining witness sign the complaint.
- Set an interim bond, if appropriate.
- Sign and date the complaint and warrant.
- Return the court file to the clerk and, if the defendant is not in custody, give the warrant to the officer to execute. It is a good practice to have the officer sign and date the file when he or she takes a warrant.
- If the defendant has not been arrested, make sure the clerk has prepared the file with the complaint and warrant and has assigned a case number. If the defendant is in custody on an arrest without a warrant, the magistrate may either issue a warrant, or may endorse on the complaint a finding of probable cause. If the warrant is signed, the custodial officer should sign the return portion of the warrant, demonstrating it has been executed.

3.3.3 Checklist for Felony Complaint and Warrant

This checklist applies to cases involving offenses that may be punishable by imprisonment in the state prison.

- Make sure the complaint is in proper form and includes authorization by the prosecutor.
- Review the complaint to make sure it includes the following.
 - ✓ Name of the defendant or description of the person alleged to have committed the offense.
 - ✓ The commission of an offense.
 - ✓ The time and date of the offense.
 - ✓ The location where the offense was alleged to have occurred.
 - ✓ The name of the offense and the statutory citation of the offense.
 - ✓ The penalty of the offense (suggested, but not required).
- Swear-in and examine the complaining witness, making a record of any testimony used in the probable cause determination.
- Determine there is probable (or reasonable) cause the person accused committed the offense.
- Have the complaining witness sign the complaint.
- If desired, specify the bail that the accused may post to obtain release before arraignment.
- Sign and date both the complaint and the warrant.
- Return the court file to the clerk and, if the defendant is not in custody, give the warrant to the officer to execute. It is a good practice to have the officer sign and date the file when he or she takes a warrant.
- If the defendant has not been arrested, make sure the clerk has prepared the file with the complaint and warrant and has assigned a case number. If the defendant is in custody on an arrest without a warrant, the magistrate may either issue a warrant, or may endorse on the complaint a finding of probable cause. If the warrant is signed, the custodial officer should sign the return portion of the warrant, demonstrating it has been executed.

3.4 Forms

Below is a list of the SCAO-Approved forms used in issuing arrest warrants.

- 1) DC 225 - Complaint and Warrant, Misdemeanor.
- 2) DC 226 - Warrant, Misdemeanor (Traffic/Nontraffic).
- 3) MC 200 - Felony Set, Complaint and Warrant.
- 4) MC 220 - Recall of Warrant/Order to Apprehend.