

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

764.1a Complaint; allegations; swearing before magistrate or clerk; issuance of summons; finding of reasonable cause; testimony; supplemental affidavits; basis of factual obligations; complaint alleging violation of MCL 750.81 or 750.81a or corresponding ordinance; refusal to accept complaint prohibited; compliance with MCL 764.1; definitions.

Sec. 1a. (1) A magistrate shall issue a warrant or summons upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint must be sworn to before a magistrate or clerk.

(2) Except in cases in which any of the following circumstances apply, the magistrate or clerk must issue a summons rather than a warrant:

(a) The complaint is for an assaultive crime or an offense involving domestic violence.

(b) The clerk or magistrate has reason to believe from the presentation of the complaint that the person against whom the complaint was made will not appear upon a summons.

(c) The issuance of summons poses a risk to public safety.

(d) The prosecutor has requested a warrant.

(3) A summons must be in the same form as a warrant except that it must summon the defendant to appear before a court at a stated date and time. The summons must be served upon a defendant by delivering a copy to the defendant personally, by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion residing at that place, or by mailing it to the defendant's last known address. If a defendant fails to appear in response to the summons, a warrant may be issued.

(4) The finding of reasonable cause by the magistrate may be based upon 1 or more of the following:

(a) Factual allegations of the complainant contained in the complaint.

(b) The complainant's sworn testimony.

(c) The complainant's affidavit.

(d) Any supplemental sworn testimony or affidavits of other individuals presented by the complainant or required by the magistrate.

(5) The magistrate may require sworn testimony of the complainant or other individuals. Supplemental affidavits may be sworn to before an individual authorized by law to administer oaths. The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both.

(6) The magistrate shall not refuse to accept a complaint alleging a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a violation of a local ordinance substantially corresponding to section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81, by the spouse of the victim, a former spouse of the victim, an individual with whom the victim has had a child in common, an individual with whom the victim has or has had a dating relationship, or an individual residing or having resided in the same household as the victim on grounds that the complaint is signed upon information and belief by an individual other than the victim.

(7) The magistrate shall not refuse to accept a complaint alleging that a crime was committed in which the victim is a vulnerable adult on the grounds that the complaint is signed upon information and belief by an individual other than the victim.

(8) A warrant or summons may be issued under this section only upon compliance with the requirements of section 1 of this chapter.

(9) As used in this section:

(a) "Assaultive crime" includes any of the following:

(i) A violation described in section 9a of chapter X.

(ii) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90g, not otherwise included in subparagraph (i).

(iii) A violation of section 110a, 136b, 234a, 234b, 234c, 349b, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, and 750.411h, or any other violent felony.

(iv) A violation of a law of another state or of a political subdivision of this state or of another state that substantially corresponds to a violation described in subparagraph (i), (ii), or (iii).

(b) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(c) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(d) "Violent felony" means that term as defined in section 36 of the corrections code of 1953, 1953 PA 232, MCL 791.236.

(e) "Vulnerable adult" means that term as defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

History: Add. 1980, Act 506, Imd. Eff. Jan. 22, 1981;—Am. 1994, Act 70, Eff. July 1, 1994;—Am. 2005, Act 106, Imd. Eff. Sept. 14, 2005;—Am. 2012, Act 177, Imd. Eff. June 19, 2012;—Am. 2020, Act 394, Eff. Apr. 1, 2021;—Am. 2023, Act 208, Eff. Feb. 13, 2024.