

2.22 COMPLAINT AND REQUEST FOR A WARRANT

Comes now, the (Circuit Attorney) (Prosecuting Attorney) of the (City) (County) of _____, State of Missouri, being duly sworn upon oath and upon information and belief, and states that there is probable cause to believe that (on) (on or about) [date], the accused committed the following crimes: [*Insert language to identify the crime or crimes using the pattern of MACH-CR.*]

The facts that form the basis for this information and belief are contained in the attached statement(s) of facts concerning this matter, which statement(s) are made a part hereof and are submitted herewith as a basis upon which this court may find the existence of probable cause for the issuance of the warrant.

Wherefore, the (Circuit Attorney) (Prosecuting Attorney) prays that an arrest warrant be issued as provided by law.

(Circuit Attorney) (Prosecuting Attorney)
County of [*Insert name of county.*]
State of Missouri

Subscribed and sworn to before me this ____ day of _____,
20__.

Judge/Clerk (Other official authorized to
administer oaths.)

Notes on Use

1. This is new.
2. In order for an arrest warrant to issue, a complaint must be

filed. See Rule 22.03 and 21.05. This form includes a request for a warrant.

3. The complaint must be verified and the facts must be under oath or affirmation.

4. In order to provide the "facts" necessary to establish a probable cause finding justifying the issuance of an arrest warrant, the following statement of facts is suggested as a form to be attached to the complaint by the circuit attorney or prosecuting attorney.

PROBABLE CAUSE STATEMENT

Date:

I, _____,
[Name and identify law enforcement officer, or person having information as to probable cause.]
upon my oath, and under penalties of perjury, state as follows:

1. I have probable cause to believe that _____
[Insert name of offender(s) and description of
identity.]
_____ committed one or more criminal offense(s).

2. The facts supporting this belief are as follows: _____

[Insert facts including time and date.]

3. [For the issuance of a warrant in a misdemeanor case, also complete the following, if appropriate. Omit brackets and letter.]

(a) I believe that the defendant will not appear in court in response to a criminal summons because _____

—

[Insert facts to show that defendant will not appear, e.g. there is an outstanding warrant for failure to appear.]

(b) I believe that defendant poses [Insert one or all of the following.]

(1) a danger to a crime victim because _____

[Insert facts showing that defendant is a danger to the crime victim, e.g. "he is cursing the victim, has hit the victim, and is threatening the victim."]

(2) a danger to the community or to any other person because

[Insert facts showing that defendant poses a danger, e.g. he is intoxicated to a level that is unsafe because [Insert evidence of intoxication, such as "failure to perform satisfactorily on a field sobriety test."].]

[Print Name] _____ [Signature] _____

This factual statement will be made under "oath or affirmation."
Section 492.060, RSMo 1994. For a discussion of the necessary factual support for the issuance of an arrest warrant, see Kalina v. Fletcher, 522 U.S. 118, 118 S.Ct. 502 (1997) and State v. Adams, 791 S.W. 2d 873 (Mo.App. W.D. 1990).

4. If the complaint will be filed in a felony case only on the basis of the prosecutor's information and belief, without an attached statement of facts, delete the paragraphs setting forth the facts and requesting a warrant because only a summons will issue.

5. If the court finds that probable cause exists to believe that a crime has been committed and, in misdemeanor cases, that the issuance of a summons is not sufficient, then a warrant may be issued by a judge.
This arrest form will be as follows:

WARRANT FOR ARREST

State of Missouri
County of _____
In the _____ Court within and for said County:

THE STATE OF MISSOURI TO ANY PEACE OFFICER IN THE
STATE OF MISSOURI: The court having found probable cause
hereby commands you to arrest [*name of accused*], who is charged
with [*Insert name of crime or crimes.*], alleged to have been

committed within the jurisdiction of this court and in violation of the laws of the State of Missouri, and to bring him forthwith before this court to be here dealt with in accordance with law; [*because the court further finds reasonable grounds to believe that defendant will not appear upon summons or that the defendant is a danger to the crime victim, the community, or any other person*]; and you, the officer serving this warrant, shall forthwith make return hereof to this court.

Witness the Honorable _____, Judge of the said court and the seal thereof, issued in the county and state aforesaid on this ____ day of _____, 20__.

Judge

Served the within warrant in my County of _____ and in the State of Missouri on this ____ day of _____, 20__, by arresting the within named _____ and producing him/her before the said court on ____ day of _____, 20__.

6. See Form No. 22 of the Missouri Supreme Court Rules for a general form for a summons in a criminal case. Rule 21.08 specifies service for misdemeanors and Rule 22.05 specifies service for felonies. For discussion of charging requirements, see Supplemental Notes on Use to MACH-CR 2.00.

**SUPPLEMENTAL NOTES ON USE TO THE
MACH-CR 2.00 SERIES**

I. MISDEMEANORS

A. Without an Arrest Warrant

For many years, Missouri law has provided that "all misdemeanors shall be prosecuted by indictment or information."

Rule 21.03. See MACH-CR 2.20 for the general form for an information. Few misdemeanor prosecutions commence with the return of an indictment. See MACH-CR 2.10 for the general form for the indictment. Consult Chapter 540, RSMo on grand jury proceedings.

In 2000, the information form was revised to delete the verification clause. This is no longer necessary. Rule 23.01 and State ex. rel. Westfall v. Clifford, 617 S.W. 2d 102 (Mo. App. E.D. 1981).

Upon the filing of an information, a summons will issue. After the summons issues, the defendant's failure to appear in court may result in the issuance of a warrant. Rule 21.08.

B. With an Arrest Warrant

Upon the filing of an information, a summons shall be issued unless the prosecuting attorney convinces the court that a warrant for an arrest should issue. The court will not authorize the issuance of an arrest warrant unless the following conditions are met:

- A. An information must be filed within 20 hours of the arrest. See Rule 21.05. See also Section 544.170, RSMo 1994, on the "20 hour detention rule."
- B. A complaint must be filed supporting a finding that probable cause exists to believe that sufficient facts have been stated that a misdemeanor has been committed. See MACH-CR 2.22 for the general forms for a complaint and Rules 21.03, 21.04 and 21.05.
- C. Sufficient facts must exist to cause the court to believe that one of two conditions are met:
 - (1) There are reasonable grounds to believe that the defendant will not appear upon the summons. Rule 21.03. (Compare Rule 21.05 stating that the court must believe that the defendant will leave the state);
 - (2) There are reasonable grounds to believe that defendant poses a danger to a crime victim, the community, or any other person.

MACH-CR 2.22 is the general form for complaints. This form includes a request for a warrant in addition to the requirements of a complaint as stated in Rule 21.04. Modify this form if no warrant is requested. The filing of a complaint is not necessary in a misdemeanor case unless the prosecuting attorney wants to ask the court for a warrant rather than a summons.

Under Rule 21.04, a complaint must "state the facts constituting the misdemeanor." The conclusionary language of an information is not sufficient to issue a warrant. Kalina v. Fletcher,

522 U.S. 118, 118 S.Ct. 502 (1997) and State v. Adams, 791 S.W. 2d 873 (Mo. App. W.D. 1990).

The averment of facts is accomplished in the general form by incorporating by reference a probable cause statement that is attached. See Notes on Use 4 to MACH-CR 2.22. This practice is similar to the procedure for obtaining a search warrant. In some instances, the statement of facts will be completed by a law enforcement officer. In some instances, the probable cause statement may be completed by a citizen. Rule 21.02. In some instances, the statement of facts may be supplied by the prosecuting attorney. Cf. Kalina v. Fletcher, *supra*. discussing absolute versus qualified immunity for the prosecutor, and certain ethical considerations.

The complaint will be verified as required by the rules. Section 492.010, RSMo 1994, discusses who may administer an oath under Missouri law. See also, Section 575.010, RSMo 1994, defining "affidavit". This verified complaint should be supported by a probable cause statement attached to the complaint and incorporated into the document. The statement of facts should be sworn to by the person alleging the facts and should be made under "penalties of perjury or law"; but, it need not be "verified" or "notarized." See Section 492.060, RSMo 1994, defining an "oath" for purposes of Missouri law. A person who swears falsely on a probable cause statement is subject to criminal penalty under Section 575.060, RSMo 1994. Compare Section 575.050, RSMo 1994, establishing criminal penalties for swearing falsely before a person authorized to administer the oath.

Under the requirements of the fourth amendment, the person signing the probable cause statement must swear to the facts supporting the evidentiary finding of probable cause. See also, Mo. Const. Art I, Sec. 15 (1945). In Kalina v. Fletcher, 522 U.S. 118, 118 S.Ct. 502 (1997) this requirement was satisfied by the filing of an affidavit or sworn testimony under penalties of perjury.

If the evidentiary support for a finding of probable cause is established, then a warrant may issue in a misdemeanor case upon a showing of either of two (2) additional facts:

1. The defendant will not respond to a summons, or
2. The defendant poses a danger to a crime victim, the community or any other person.

These additional findings for the issuance of a warrant must be found by the court issuing the warrant. In the general complaint forms these allegations will be contained in the probable cause statement. See Notes on Use 4 to MACH-CR 2.22.

If the court finds that there are reasonable grounds to support either of these additional findings for the issuance of a warrant in a misdemeanor case, it will be noted in the warrant signed by the judge.

A sample warrant containing these additional findings is included in the Notes on Use 6 to MACH-CR 2.22.

II. FELONIES

Under Rule 22.01 felony proceedings may be initiated by complaint, filed in any court having original jurisdiction to try misdemeanors or by indictment. See Section 544.170, RSMo 1994, on the "20 hour detention rule." An arrest warrant may issue if the facts constituting the felony are verified by oath or affirmation of the complaining witness. If the complaint is filed only on the information and belief of the prosecuting attorney, then only a summons may issue. Rule 22.02. Compare Rule 22.03.

The requirements for a felony complaint under Rule 22.02 are identical to the requirements for a misdemeanor complaint under Rule 21.04. Therefore, only one form is included for prosecution of both crimes. In a felony prosecution, however, there will be no information filed prior to preliminary hearing or waiver thereof. For a felony prosecution, only the following forms are required:

1. A complaint with a statement of facts to support the probable cause determination and a request for a warrant.
2. A warrant for arrest.

Since there will be no information filed, the description of the felony in the complaint will follow the form for an information. See the requirements of Rule 22.04 and Rule 21.07.