



MICHIGAN STATE POLICE LEGAL UPDATE

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CRIMINAL LAW AND PROCEDURE MANUAL

The fourth edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is available for purchase in print and eBook formats.

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STATUTES

The Code of Criminal Procedure amended to require persons arrested for certain misdemeanor and ordinance violations not exceeding 1-year in jail to be released from custody upon issuance and service of an appearance ticket

Public Act 393 of 2020, effective April 1, 2021, amended MCL 764.9c to require persons arrested for certain misdemeanors and ordinance violations having a maximum penalty not exceeding 1-year in jail to be issued and served an appearance ticket and be released from custody.

A police officer must issue and serve an appearance ticket on the arrested person and release the person from custody unless (1) issuance of an appearance ticket is expressly prohibited as described below, or (2) the officer is able to articulate the presence of one of the allowable circumstances authorizing the officer to take the arrested person before a magistrate and promptly file a complaint. [MCL 764.9c\(4\)](#).

Prohibited Appearance Tickets

Appearance tickets must not be issued to any of the following:

- A person arrested for domestic violence in violation of [MCL 750.81](#), [MCL 750.81a](#), or an "offense involving domestic violence" as defined in [MCL 400.1501](#). [MCL 764.9c\(3\)\(a\)](#).
- A person subject to detention for violating a personal protection order. [MCL 764.9c\(3\)\(b\)](#).
- A person subject to a mandatory period of confinement, condition of bond, or other condition of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release. [MCL 764.9c\(3\)\(c\)](#).
- A person arrested for a "serious misdemeanor." [MCL 764.9c\(3\)\(d\)](#).

- A person arrested for any other "assaultive crime." [MCL 764.9c\(3\)\(e\)](#).

Exceptions to Issuing Required Appearance Tickets

An officer otherwise required to issue and serve an appearance ticket and release the arrested person under [MCL 764.9c\(4\)\(1\)](#) may instead take the arrested person before a magistrate and promptly file a complaint as provided in [MCL 764.13](#) if one of the following circumstances exist:

- The arrested person refuses to follow the police officer's reasonable instructions. [MCL 764.9c\(5\)\(a\)](#).
- The arrested person will not offer satisfactory evidence of identification. [MCL 764.9c\(5\)\(b\)](#).
- There is a reasonable likelihood that the offense would continue or resume, or that another person or property would be endangered if the arrested person is released from custody. [MCL 764.9c\(5\)\(c\)](#).
- The arrested person presents an immediate danger to himself or herself or requires immediate medical examination or medical care. [MCL 764.9c\(5\)\(d\)](#).
- The arrested person requests to be taken immediately before a magistrate. [MCL 764.9c\(5\)\(e\)](#).
- Any other reason that the police officer may deem reasonable to arrest the person which must be articulated in the arrest report. [MCL 764.9c\(5\)\(f\)](#).

Reporting Requirements

If a police officer determines that one of the allowable circumstances exist to take an arrested person before a magistrate and promptly file a complaint instead of issuing an appearance ticket, the officer must specify the reason for not issuing a citation in the arrest report or other documentation and must forward the arrest report or other documentation to the appropriate prosecuting authority for review without delay. [MCL 764.9c\(6\)](#).

Required Release for Failing to Timely Charge

An arrested person who is taken into custody under [MCL 764.9c\(6\)](#) instead of being issued an appearance ticket must be charged by the appropriate prosecuting authority or released from custody not later than 3 p.m. the immediately following day during which arraignments may be performed. [MCL 764.9c\(7\)](#).

No Right to Issuance of Appearance Ticket

[MCL 764.9c](#) does not create a right to the issuance of an appearance ticket in lieu of an arrest. An arrested person

may appeal the legality of his or her arrest as provided by law. However, an arrested person does not have a claim for damages against a police officer or law enforcement agency because he or she was arrested rather than issued an appearance ticket. [MCL 764.9c\(8\)](#).

Definitions

“Offense involving domestic violence” means any of the following acts, not done in self-defense, when done against a “family or household member” as described [MCL 400.1501\(d\)](#):

- Causing or attempting to cause physical or mental harm.
- Placing in fear of physical or mental harm.
- Causing or attempting to cause involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

“Family or household member” means any of the following as described in [MCL 400.1501\(e\)](#):

- A spouse or former spouse.
- An individual with whom the person resides or has resided.
- An individual with whom the person has or has had a dating relationship.
- An individual with whom the person is or has engaged in a sexual relationship.
- An individual to whom the person is related or was formerly related by marriage.
- An individual with whom the person has a child in common.
- The minor child of an individual described above.

“Serious misdemeanor” means any of the following as defined in [MCL 780.811](#):

- Assault and battery / domestic violence. [MCL 750.81](#).
- Aggravated assault / aggravated domestic violence. [MCL 750.81a](#).
- Breaking and entering / illegal entry. [MCL 750.115](#).
- 4th degree child abuse. [MCL 750.136b](#).
- Contributing to the delinquency of a minor. [MCL 750.145](#).
- Use of a computer to commit certain crimes. [MCL 750.145d](#).
- Intentionally aiming a firearm without malice. [MCL 750.233](#).
- Discharge of a firearm intentionally aimed at a person without malice. [MCL 750.234](#).

- Discharge of an intentionally aimed firearm resulting in injury. [MCL 750.235](#).
- Indecent exposure. [MCL 750.335a](#).
- Stalking. [MCL 750.411h](#).
- Injuring a worker in a work zone. [MCL 257.601b](#).
- Leaving the scene of a personal injury accident. [MCL 257.617a](#).
- Operating while intoxicated/impaired resulting in property damage, physical injury, or death. [MCL 257.625](#).
- Selling/furnishing alcohol to a minor resulting in physical injury or death. [MCL 436.1701](#)
- Operating a motorboat while intoxicated/impaired resulting in property damage, physical injury, or death. [MCL 324.80176](#).

“Assaultive crime” for purposes of determining if issuance of an appearance ticket is prohibited, means the following as defined in [MCL 770.9a\(3\)](#):

- Communicating a threat to MDHHS employee. [MCL 750.81c](#).
- Intentional conduct against pregnant individual resulting in physical injury to embryo or fetus. [MCL 750.90b](#).
- Improperly marked explosives. [MCL 750.212](#).
- Stalking. [MCL 750.411h](#).
- Handling explosives while under the influence of alcoholic liquor or controlled substance. [MCL 750.204c](#).

VEHICLE CODE

The Michigan Vehicle Code amended to eliminate the requirement to provide an audible signal when overtaking another vehicle

Public Act 263 of 2020, effective March 29, 2021, amended [MCL 257.636](#) of the Michigan Vehicle Code to require that except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

Previously, the driver of the overtaken vehicle was not required to give way to the right in favor of the overtaking vehicle unless the overtaking vehicle gave an “audible signal” to the overtaken vehicle.