

## **CHAPTER 29-05 THE COMPLAINT AND WARRANT OF ARREST**

**29-05-01. What complaint must state.** A complaint must state:

1. The name of the person accused, if known, or if not known and it is so stated, that person may be designated by any other name;
2. The county in which the offense was committed;
3. The general name of the crime or public offense committed;
4. The acts or omissions complained of as constituting the crime or public offense named;
5. The person against whom, or against whose property, the offense was committed, if known; and
6. If the offense is against the property of any person, a general description of such property.

The complaint must be subscribed and sworn to by the complainant.

**29-05-02. Who must make complaint.** Superseded by N.D.R.Crim.P., Rule 3.

**29-05-03. Magistrate may examine complainant.** Superseded by N.D.R.Crim.P., Rule 3.

**29-05-04. Accused arrested without warrant.** Superseded by N.D.R.Crim.P., Rule 5.

**29-05-05. Witnesses other than complainant.** Every person making complaint charging the commission of a crime or public offense shall inform the magistrate of all persons whom the person believes to have any knowledge of its commission, and the magistrate, at the time of issuing the warrant, may issue subpoenas for such persons, requiring them to attend at a specified time and place as witnesses.

**29-05-06. When a warrant of arrest to be issued.** Superseded by N.D.R.Crim.P., Rule 4.

**29-05-07. Warrant defined - Form.** Superseded by N.D.R.Crim.P., Rules 4, 58.

**29-05-08. Requisites of warrant - Contents.** Superseded by N.D.R.Crim.P., Rule 4.

**29-05-09. Direction and execution of warrant.** Superseded by N.D.R.Crim.P., Rule 4.

**29-05-10. Peace officer defined.** A peace officer is a sheriff of a county or the sheriff's deputy, or a coroner, marshal, or policeman of a township or city, or any state or federal law enforcement officer.

**29-05-11. Duty of officer if offense charged is felony.** Superseded by N.D.R.Crim.P., Rule 5.

**29-05-11.1. Duty of peace officer to enter warrant.** A peace officer who receives a warrant for the arrest of a fugitive and does not execute the warrant shall enter the warrant in the central warrant information system. A warrant of arrest for the failure to pay a fine or fee may be entered at the discretion of the peace officer. A criminal justice agency may specify whether the agency will extradite from outside the county or state and the county or state from which the agency will extradite.

**29-05-12. Bail if offense charged is a misdemeanor or infraction.** If the offense charged in a warrant of arrest is a misdemeanor or infraction not within the jurisdiction of the magistrate who issued it to punish, and the accused is arrested in another county, the officer, upon request of the accused, shall take the accused before a magistrate in the county in which the arrest is made, who shall admit the accused to bail and take bail from the accused accordingly. If there is no magistrate residing within the county wherein the accused is arrested, and the accused requires it, the officer shall take the accused before a magistrate of any other county nearer or more accessible than the magistrate issuing the warrant, and said magistrate shall admit the accused to bail and take bail from the accused accordingly.

**29-05-13. Procedure when bail taken.** On taking bail, as is provided in section 29-05-12, the magistrate shall certify that fact on the warrant and deliver the warrant and undertaking of bail to the officer having charge of the accused. The officer then shall discharge the accused from arrest and without delay shall deliver the warrant and undertaking to the clerk of the court at which the accused is required to appear.

**29-05-14. When bail is not given.** If, on the admission of an accused to bail, the bail is not given forthwith, the officer shall take the accused before the magistrate who issued the warrant, or, in case of that magistrate's absence or inability to act, before the nearest or most accessible magistrate in the same county, and at the same time shall deliver to the magistrate the warrant with the officer's return endorsed thereon and subscribed by the officer.

**29-05-15. Misdemeanor within magistrate's jurisdiction - Procedure.** If the offense charged in a warrant of arrest is within the jurisdiction of the magistrate to try and punish upon conviction, the accused, if arrested in another county, must be taken before the magistrate who issued the warrant, or, if that magistrate is absent, then before some other magistrate, as is provided in section 29-05-14.

**29-05-16. When complaint sent to magistrate not issuing warrant.** If, after an arrest, the accused is taken before a magistrate other than the one who issued the warrant, the complaint on which the warrant was granted must be sent to that magistrate, or if it cannot be procured, the prosecutor and the prosecutor's witnesses must be summoned to give their testimony anew.

**29-05-17. Requirements of warrant for accused from other county - Complaint to accompany.** Superseded by N.D.R.Crim.P., Rule 5.

**29-05-18. Accused taken to proper county - Delivery of complaint with the accused - Depositions.** The officer who executes a warrant for an offense triable in another county shall take the accused before the nearest or most accessible magistrate of the county in which the offense is triable and shall deliver to the magistrate the complaint and the depositions, if any, and the warrant, with the officer's return endorsed thereon, and the magistrate then shall proceed in the same manner as upon a warrant issued by that magistrate.

**29-05-19. Procedure if offense is misdemeanor.** Superseded by N.D.R.Crim.P., Rule 5.

**29-05-20. Unnecessary delay after arrest prohibited - Attorney visitation.** The accused in all cases must be taken before a magistrate without unnecessary delay, and any attorney at law entitled to practice in the courts of record of this state, at the attorney's request, may visit such person after that person's arrest.

**29-05-21. Officer not liable to arrest while in charge of a person arrested.** While having in charge any person arrested in a criminal action or proceeding, neither the officer, nor any of the officer's assistants, is liable to arrest on civil process, and such officer is authorized to require any citizen to aid in securing the accused and to retake the accused, if the accused escapes, in any part of the state, as if the officer were within the officer's own county. A refusal or neglect to render such aid is an offense in the same manner as if the arresting officer were an officer of the county where such aid is required.

**29-05-22. Giving bail deemed waiver of examination.** Repealed by S.L. 1973, ch. 252, § 1.

**29-05-23. Warrant transmitted by telegraph.** Whenever a warrant for the arrest of a person accused of a crime or public offense is issued by a magistrate, the delivery of the warrant by telegraph may be authorized by a judge of the supreme or district court by an endorsement authorizing telegraphic delivery, at any place within this state, upon the warrant of arrest under the hand of the judge, directed generally to any peace officer in the state. After endorsement, a copy of the warrant may be sent by telegraph to any peace officer within the state, and the copy is as effectual in the hands of any peace officer, who shall serve the same and in all regards proceed thereunder, as though the peace officer held an original warrant issued by the magistrate making the endorsement thereon.

**29-05-24. Duty of officer transmitting warrant.** Every officer causing telegraphic copies of a warrant to be sent shall certify as correct, and file in the telegraph office from which such copies are sent, a copy of the warrant and the endorsement thereon, and shall return the original with a statement of the officer's action thereunder signed by the officer.

**29-05-25. Warrant returnable in county where issued - Telegraphic copy deemed original - Misdemeanor or infraction.** Every person arrested by warrant for any offense, when no other provision is made for that person's examination, must be taken before some magistrate of the county in which the warrant was issued, and the warrant with the proper return thereon, signed by the person who made the arrest, must be delivered to such magistrate. Any telegraphic copy of a warrant under which an officer has acted in making an arrest must be deemed the original warrant. If the offense charged in the warrant is a misdemeanor or infraction within the jurisdiction of a magistrate to try and upon conviction to punish, a trial must be had as is provided by law.

**29-05-26. Arrest directed by telegraph.** In all cases in which by law a peace officer of this state may arrest a person without a warrant, or having a warrant for the arrest of a person accused of a crime or public offense when the person otherwise may escape from this state, the peace officer may direct any other peace officer in this state, by telegraph, to arrest the person, who must be designated by name or description or both.

**29-05-27. How an order by wire executed - Procedure.** An order by a police officer directing other peace officers in the state to make an arrest may be directed generally to any of such officers and executed by the officer receiving it. The officer executing any such order shall take into the officer's custody the person designated therein and shall detain that person upon such order for such length of time as is necessary for the officer directing the arrest to reach the place of detention by the ordinary course and means of travel, or until sooner demanded by an officer having a warrant for the arrest of such person.

**29-05-28. Summons against corporation.** Superseded by N.D.R.Crim.P., Rule 4.

**29-05-29. Form of summons.** Superseded by N.D.R.Crim.P., Rules 4, 58.

**29-05-30. Service of summons against corporation.** Superseded by N.D.R.Crim.P., Rule 4.

**29-05-31. (Effective through December 31, 2009) Uniform traffic complaint and summons.** There is hereby established a uniform complaint and summons that may be used in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles. Whenever the complaint and summons established by this section is used, the provisions of rule 5 of the North Dakota Rules of Criminal Procedure relating to arrests without warrants do not apply, and magistrates or state's attorneys are not required to make another complaint of the offense charged in the uniform complaint and summons. The uniform complaint and summons must be in substantially the following form:

State of North Dakota                    )                    In \_\_\_\_\_ Court,  
  ) ss.

County of \_\_\_\_\_ ) Before Hon. \_\_\_\_\_;  
The undersigned, being sworn, says that, on \_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_  
First Name Middle Name Last Name Street City State  
did unlawfully operate a motor vehicle upon a public highway, namely  
\_\_\_\_\_, \_\_\_\_\_ N E S W of \_\_\_\_\_ and did then and there commit  
Location \_\_\_\_\_ City \_\_\_\_\_  
the following offense: \_\_\_\_\_  
MPH in \_\_\_\_\_  
MPH Zone \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All in violation of N. D. Century Code Sec. \_\_\_\_\_ and against the peace and dignity  
of the state of N. D.

Officer \_\_\_\_\_ LET A WARRANT ISSUE HEREIN Sworn to and subscribed  
before me on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge \_\_\_\_\_ State's Attorney \_\_\_\_\_

DESCRIPTION OF DEFENDANT AND VEHICLE  
Mo. \_\_\_\_\_ Day \_\_\_\_\_ Yr. \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Wt. \_\_\_\_\_ Ht. \_\_\_\_\_  
Birth date \_\_\_\_\_  
Hair \_\_\_\_\_ Dr. Lic: State \_\_\_\_\_ No. \_\_\_\_\_ Motor Vehicle: \_\_\_\_\_  
PSC \_\_\_\_\_

Make \_\_\_\_\_ Reg. No. \_\_\_\_\_ State \_\_\_\_\_ Year \_\_\_\_\_ ICC No. \_\_\_\_\_

CLAIMED CONDITIONS OF THE VIOLATION

SLIPPERY SURFACE

\_\_\_\_\_ Rain \_\_\_\_\_ Snow \_\_\_\_\_ Ice \_\_\_\_\_

DARKNESS

\_\_\_\_\_ Night \_\_\_\_\_ Fog \_\_\_\_\_ Snow \_\_\_\_\_

OTHER TRAFFIC PRESENT

\_\_\_\_\_ Cross \_\_\_\_\_ Oncoming \_\_\_\_\_ Pedestrian \_\_\_\_\_ Same direction \_\_\_\_\_

IN ACCIDENT

\_\_\_\_\_ Ped. \_\_\_\_\_ Vehicle \_\_\_\_\_ Intersection \_\_\_\_\_

\_\_\_\_\_ Right angle \_\_\_\_\_ Head on \_\_\_\_\_ Rear end \_\_\_\_\_

\_\_\_\_\_ Ran off road \_\_\_\_\_ Other \_\_\_\_\_

Area: \_\_\_\_\_ School \_\_\_\_\_ Rural \_\_\_\_\_ Business \_\_\_\_\_

\_\_\_\_\_ Industrial \_\_\_\_\_ Residential \_\_\_\_\_

Highway: \_\_\_\_\_ 2 Lane \_\_\_\_\_ 4 Lane \_\_\_\_\_ 4 Lane Divided \_\_\_\_\_

Type: \_\_\_\_\_

\_\_\_\_\_ Gravel \_\_\_\_\_ Dirt \_\_\_\_\_

OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT  
(CITY ORDINANCE OR STATE CRIMINAL TRAFFIC VIOLATION)

You are summoned to appear at the time and place designated below to answer to the  
charge made against you.

\_\_\_\_\_  
Appearance

Before: Municipal Judge District Ct. \_\_\_\_\_ A.M./P.M.

Location Month Day Year Time

Dated \_\_\_\_\_, \_\_\_\_\_

Officer \_\_\_\_\_

PROMISE TO APPEAR

I consent and promise to appear at the time and place specified in the above summons, the receipt of a copy of which is acknowledged, and I expressly waive earlier hearing.

Dated \_\_\_\_\_, \_\_\_\_\_

Defendant \_\_\_\_\_

(STATE NONCRIMINAL TRAFFIC VIOLATION)

You are notified of your right to request, within fourteen days of the date of this citation, a hearing concerning the alleged traffic violation. If you do not request a hearing, the bond is deemed forfeited and the violation admitted. If you are requesting a hearing, date and sign the following portion of this citation AND INCLUDE THE BOND NOTED ON THIS CITATION for the alleged violation. Failure to do so may result in the suspension of your operator's license. You will be notified of the hearing date by the court for the county in which this citation was issued.

REQUEST FOR HEARING

I submit the designated bond and request a hearing on the alleged traffic violation and promise to appear at the time and date specified in the summons issued by the court for the county in which the citation was issued.

Dated \_\_\_\_\_, \_\_\_\_\_

Defendant \_\_\_\_\_

**(Effective after December 31, 2009) Uniform traffic complaint and summons.** There is established a uniform complaint and summons that may be used in cases involving violations of statutes or ordinances. The use of a uniform complaint and summons must comply with the North Dakota Rules of Criminal Procedure and be in substantially the following form:

State of North Dakota ) In \_\_\_\_\_ Court,  
 ) ss.  
County of \_\_\_\_\_ ) Before Hon. \_\_\_\_\_;  
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\_\_\_\_\_  
First Name Middle Name Last Name Street City State  
did unlawfully operate a motor vehicle upon a public highway, namely  
\_\_\_\_\_, \_\_\_\_\_ N E S W of \_\_\_\_\_ and did then and there commit  
Location City  
the following offense: \_\_\_\_\_  
MPH in \_\_\_\_\_  
MPH Zone \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All in violation of N. D. Century Code Sec. \_\_\_\_\_ and against the peace and dignity of the state of N. D.

Officer \_\_\_\_\_ LET A WARRANT ISSUE HEREIN Sworn to and subscribed before me on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge State's Attorney

DESCRIPTION OF DEFENDANT AND VEHICLE

Mo. \_\_\_\_\_ Day \_\_\_\_\_ Yr. \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Wt. \_\_\_\_\_ Ht. \_\_\_\_\_

Birth date

Hair \_\_\_\_\_ Dr. Lic: State \_\_\_\_\_ No. \_\_\_\_\_ Motor Vehicle:

PSC

Make \_\_\_\_\_ Reg. No. \_\_\_\_\_ State \_\_\_\_\_ Year \_\_\_\_\_ ICC No. \_\_\_\_\_

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OTHER TRAFFIC PRESENT

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IN ACCIDENT

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\_\_\_\_\_ Right angle \_\_\_\_\_ Head on \_\_\_\_\_ Rear end  
\_\_\_\_\_ Ran off road \_\_\_\_\_ Other

Area: \_\_\_\_\_ School \_\_\_\_\_ Rural \_\_\_\_\_ Business  
\_\_\_\_\_ Industrial \_\_\_\_\_ Residential  
Highway: \_\_\_\_\_ 2 Lane \_\_\_\_\_ 4 Lane \_\_\_\_\_ 4 Lane Divided  
Type: \_\_\_\_\_ Gravel \_\_\_\_\_ Dirt

OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT

\_\_\_\_\_ Yes \_\_\_\_\_ No

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Appearance

Before: Municipal Judge District Ct. \_\_\_\_\_ A.M./P.M.

Location      Month      Day      Year      Time

Dated \_\_\_\_\_, \_\_\_\_\_  
Officer \_\_\_\_\_

PROMISE TO APPEAR

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REQUEST FOR HEARING

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Dated \_\_\_\_\_, \_\_\_\_\_  
Defendant \_\_\_\_\_

**29-05-32. Release of information contained in complaint or warrant.** The magistrate who issues a warrant for arrest shall order the information in the complaint and warrant confidential, if the law enforcement officer articulates a reason for the confidentiality that convinces the issuing magistrate that limited confidentiality is necessary for the safety of the law enforcement officer or to enable the warrant to be properly served. The magistrate shall limit the duration of the order to the time of the arrest of the accused and shall exempt law enforcement officers in the performance of official duties.