

TEXAS JUSTICE COURT TRAINING CENTER

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New Justices of the Peace Stage III

IMPROVING TRAFFIC SAFETY, FROM SPEEDING TO DWI

Presented by:

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Reducing the Incidence of DWI in Your Community

Presented by Rob Daniel
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What are the chances?

You have just died in a traffic accident. What are the chances that you were killed by a drunk driver?

1. 10%
2. 25%
3. 35%

Texas DWI Statistics

- In 2011, 1,039 people were killed in alcohol related crashes in Texas. This number represents 34.5% of people killed in Texas traffic accidents in 2011.
- Alcohol-related crashes occurred in 247 of Texas' 254 counties in 2010.

Justice Courts and DWI

- In some counties, blood search warrants
- Determination of probable cause and magistrate warnings
- Setting bail and bond conditions
- Monitoring bond conditions
- Holding bond modification/revocation hearings

~~Justice Courts~~ Magistrates and DWI

- Article 2.10 of the Code of Criminal Procedure states: "It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment."

A justice of the peace may issue blood search warrants if:

1. He or she is an attorney
2. The county does not have:
 - A) a county court at law; or
 - B) a county judge or municipal court of record judge who is an attorney
3. The district judge is unavailable
4. Both 1 & 2

Blood Search Warrants

- Art. 18.01(i) of the Code of Criminal Procedure states: "(i) In a county that does not have a judge of a municipal court of record who is an attorney licensed by the state, a county court judge who is an attorney licensed by the state, or a statutory county court judge, any magistrate may issue a [warrant to search for property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense]."

Blood Search Warrants

- A justice of the peace **located in a qualifying county** may therefore issue evidentiary search warrants. Counties with a statutory county court-at-law, a county judge who is an attorney, or a municipal court of record judge who is an attorney **do not qualify**.
- Blood warrants are evidentiary search warrants.

Blood Search Warrants

- Article 18.01(j) of the Code of Criminal Procedure states: "Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(10) to collect a blood specimen from a person who:
 - (1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and
 - (2) refuses to submit to a breath or blood alcohol test."

Blood Search Warrants

- Therefore, a justice of the peace in **any** county who is a licensed attorney may issue DWI-related blood search warrants.
- However, Art. 18.01(j) does **not** authorize an attorney JP in a county that does not qualify under Art. 18.01(i) to issue non-DWI-related evidentiary search warrants. For example, an attorney JP in Harris County cannot issue a non-DWI **evidentiary** search warrant.

Can you issue DWI blood search warrants?

1. Yes, my court is in a county that qualifies under Art. 18.01(i).
2. Yes, I am an attorney.
3. Yes to 1 & 2.
4. No.
5. I'm still not sure.

Blood Search Warrants: Determining Probable Cause

- Please review the PC affidavit handed out at the beginning of class.
- Does probable cause exist to issue a search warrant?
- Do you have any concerns about this affidavit?

What should you do?

A sheriff's deputy calls your office. He says that he has just arrested someone for DWI with a child passenger, and that he heard in school that he has to get a blood warrant. He demands that you issue one immediately. Do you...

1. Issue the warrant; or
2. Tell the officer to go fly a kite

Offenses for which blood may be drawn w/o warrant, per TC 724.012

- A peace officer shall require the taking of a specimen of the person's breath or blood under any of the following circumstances if the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft and the person refuses the officer's request to submit to the taking of a specimen voluntarily:
 - (1) the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense and, at the time of the arrest, the officer reasonably believes that as a direct result of the accident:
 - (A) any individual has died or will die;
 - (B) an individual other than the person has suffered serious bodily injury; or
 - (C) an individual other than the person has suffered bodily injury and been transported to a hospital or other medical facility for medical treatment;
 - (2) the offense for which the officer arrests the person is an offense under Section 49.045, Penal Code; or
 - (3) at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person:
 - (A) has been previously convicted of or placed on community supervision for an offense under Section 49.045, 49.07, or 49.08, Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections; or
 - (B) on two or more occasions, has been previously convicted of or placed on community supervision for an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections.

Missouri v. McNeely, 133 S.Ct. 1552

- Opinion released April 17, 2013
- Holding: Natural metabolism of alcohol in the bloodstream does not present a per se exigency that justifies an exception to the Fourth Amendment's search warrant requirement for nonconsensual blood testing in all drunk-driving cases, and instead, exigency in this context must be determined case by case based on the totality of the circumstances.

Missouri v. McNeely, 133 S.Ct. 1552

- *McNeely* suggests that some warrantless blood draws authorized by Section 724.012 of the Transportation Code could be unconstitutional.
- Expect law enforcement officers to seek warrants in at least some cases in which they are authorized by statute to draw blood without one.
- Expect additional caselaw on this issue in the future.

Should a warrant issue?

A peace officer has arrested a defendant for DWI, and requests a blood warrant. It's Saturday night at 3:00 AM, so he faxes the warrant application and PC affidavit to your house. Is this proper, and can you fax a warrant back to him?

1. Yes
2. No

Article 18.01(b), CCP

- No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.

Section 312.011 (1), Govt. Code

- (1) "Affidavit" means a statement in writing of a fact or facts signed by the party making it, **sworn to before an officer authorized to administer oaths**, and officially certified to by the officer under his seal of office.

Discussion

As Texas magistrates, does reviewing applications for blood search warrants, and issuing them when probable cause exists, align with our duty to "preserve the peace" by "[issuing] all process intended to aid in preventing and suppressing crime?"

1. Yes
2. No

Magistrate's duties upon presentation of arrested defendant

- When an individual is arrested for an intoxication offense, he or she must be presented to a magistrate within 48 hours.
- Typically, the individual will be presented to a magistrate in the county where the arrest occurred. However, "If necessary to provide more expeditiously to the person arrested the warnings," the individual may be presented to a magistrate in any other Texas county.

What is the magistrate's first duty when an individual is presented?

1. Ask: "what is your plea to this charge?"
2. Set bail
3. Determine whether probable cause exists to hold the individual
4. Appoint defense counsel

Determining Probable Cause in DWI cases

- A person commits the offense of DWI if:
 - 1) the person;
 - 2) is intoxicated;
 - 3) while operating a motor vehicle;
 - 4) in a public place.

Probable Cause?

The PC affidavit states that the defendant was found passed out in the driver's seat of his car, which was parked on a public roadway. The engine was running, and a beer can was in the drink holder.

1. Yes, PC exists
2. No PC

Probable Cause?

Same facts as before, but now the affidavit contains additional facts. The defendant submitted to a breath test on a properly calibrated Intoxilyzer 5000, and the results indicate the defendant's BAC was 0.23.

- 1. Yes, PC exists
- 2. No PC

Probable Cause?

PC affidavit contains the following information: 1) defendant was stopped on I-35 for speeding; 2) officers observed signs of intoxication; 3) defendant failed SFSTs; 4) defendant refused breath test, saying "I'm too drunk."

- 1. Yes, PC exists
- 2. No PC

Probable Cause?

Same facts as the previous slide, but now the PC affidavit clearly and unambiguously indicates that the traffic stop was not supported by reasonable suspicion. Can still we find PC?

- 1. Yes
- 2. No

When intoxication is caused by a controlled substance

- How is probable cause with regard to the element of intoxication established when the intoxication is alleged to have been caused by substances other than alcohol (prescription drugs, controlled substances, other substances in combination with alcohol)?
- DRE and ARIDE training:
<http://www.cjcenter.org/idi/>

Article 15.17. Duties of Arresting Officer and Magistrate

When warning the arrested person of their rights, what shall be informed?

1. The magistrate shall inform in clear language the person arrested of the accusations against him and of any affidavit filed therewith,
2. of his right to retain counsel,

Article 15.17. Duties of Arresting Officer and Magistrate

3. of his right to remain silent,
4. of his right to have an attorney present during any interview with peace officers or attorney's representing the state,
5. of his right to terminate the interview at any time,
6. and of his right to have an examining trial (applicable only in felony cases)

Article 15.17. Duties of Arresting Officer and Magistrate

7. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. (only in cases where jail is a potential punishment for the offense)

8. The magistrate shall inform the person arrested the procedures for requesting appointment of counsel. Every county is required to have specific procedures in place for this process.

Article 15.17. Duties of Arresting Officer and Magistrate

• 9. if the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.

• (Article 38.30 deals with appointment of interpreter when the English language is not understood)

• (Article 38.31 deals with interpreters for deaf persons)

Article 15.17. Duties of Arresting Officer and Magistrate

• The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided at the same time.

Article 15.17. Duties of Arresting Officer and Magistrate

Can the magistrate administer the warnings by closed circuit television?

- 1. Yes
- 2. No

Article 15.17. Duties of Arresting Officer and Magistrate

- If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051.

Article 15.17. Duties of Arresting Officer and Magistrate

- If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel.

Article 15.17. Duties of Arresting Officer and Magistrate

- The “transmit, or cause to be transmitted” language covers the situation where you are magistrating someone on Friday night and the district judge appoints counsel in your county. The DJ will not be in the office until Monday. However, faxing the request to his office within 24 hours will satisfy the requirements of the Code.

Article 15.17. Duties of Arresting Officer and Magistrate

- The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law.

Do the warnings required by Art. 15.17 need to be recorded?

1. Yes
2. No
3. Yes, but only if a two-way electronic broadcast system is used.

Article 15.17. Duties of Arresting Officer and Magistrate

- A recording shall be made of the warnings and shall be preserved until the earlier of the following dates:
- (1) the date on which the pretrial hearings ends; or
- (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover the cost of reproduction.

Why should the accused be warned of their rights?

- The requirement of providing an accused with these warnings was mandated by the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* has since been incorporated in the statutes of every state; in Texas it is found in the Code of Criminal Procedure. (Art. 15.17, V.A.C.C.P.)

When does the "Right to Counsel" attach?

- First adversarial proceeding
- U.S. Supreme Court in *Rothgery v. Gillespie County* says must process immediately if requested during magistration process, can not wait until arraignment if defendant subsequently bonds out

Setting Bail

- *Bail* is the security given by a defendant that the defendant will appear before the court and answer the accusation brought against the defendant. {Art. 17.01}

Setting Bail

- The purpose of bail is to obtain the release of the defendant from custody and to secure the defendant's presence in court at the time of trial. {*Ex parte Milburn*, 8 S.W. 3d 422, 424 (Tex. App. – Amarillo 1999, no pet).}

Which of the following is a factor which magistrates shall take into account under Texas law when setting bail?

1. The amount listed on the county's recommended bond chart
2. The defendant's ability to make bail
3. Who the defendant's daddy is

Bail vs. Bond Conditions

- In DWI cases, is it appropriate for a magistrate to keep a defendant in jail by setting a high amount of bail?
- In DWI cases, is it appropriate for a magistrate to set a reasonable amount of bail, combined with bond conditions that will protect the safety of the community upon the defendant's release?

Which of the following bond conditions could be set for a DWI?

1. Defendant must submit to and pay for drug testing
2. Defendant must install an interlock ignition device
3. Defendant must avoid persons or places of disreputable or harmful character
4. All of the above

TJCTC Universal Bond Schematic

- Divided into three sections:
 - 1) Ignition Interlock
 - 2) Monitoring and Controlled Substance Testing
 - 3) Conditions related to the safety of the victim and/or the community

Mandatory Interlock

- If the defendant is charged with any of the following offenses: a subsequent offense under Section 49.04, Penal Code (Driving While Intoxicated), a subsequent offense under Section 49.05, Penal Code (Flying While Intoxicated), a subsequent offense under Section 49.06, Penal Code (Boating While Intoxicated), an offense under Section 49.07, Penal Code (Intoxication Assault), or an offense under Section 49.08, Penal Code (Intoxication Manslaughter); AND
- The magistrate does not find that to require the device would not be in the best interest of justice;
- The magistrate SHALL order that the defendant have interlock installed AND shall not operate any motor vehicle unless the vehicle is equipped with an ignition interlock device.

Permissive Interlock

- If the defendant is charged with any of the following offenses: any of the following offenses: an offense under Section 49.04, Penal Code (Driving While Intoxicated), an offense under Section 49.05, Penal Code (Flying While Intoxicated), an offense under Section 49.06, Penal Code (Boating While Intoxicated), or an offense under Section 49.045, Penal Code (DWI with child passenger); AND
- The magistrate determines that requiring the defendant to install an interlock ignition device is a reasonable condition of bond related to the safety of the community;
- The magistrate MAY order that the defendant have interlock installed AND shall not operate any motor vehicle unless the vehicle is equipped with an ignition interlock device.

How Does Interlock Reduce the Incidence of DWI?

- NHTSA: "Research shows that ignition interlocks are associated with substantial reductions in recidivism, ranging from 50 percent to 90 percent while the interlock is installed on the vehicle. These results come from several peer-reviewed studies and a meta-analysis examining the effectiveness of interlocks (Voas & Marquet, 2003; Willis et al., 2005; Vezina, 2002; Tippetts & Voas, 1997; Coben & Larkin, 1999)."

How Does Interlock Reduce the Incidence of DWI?

- NHTSA: "Research studies demonstrate that ignition interlocks are effective for both first-time and repeat DWI offenders. A research study in New Mexico (Voas et al., 2005) indicates that for first-time offenders with ignition interlocks, the rate of recidivism was 3.51 percent, while first-time offenders without ignition interlocks had a significantly higher re-arrest rate of 7.09 percent. "

How Does Interlock Reduce the Incidence of DWI?

- County A: Doesn't use interlock for first time DWI offenders. For every 1,000 DWI defendants, 70 will reoffend before their case is disposed. Total DWI cases: 1,070.
- County B: Uses interlock for first time DWI offenders. For every 1,000 DWI defendants, 35 will reoffend before their case is disposed. Total DWI cases: 1,035.
- Which county would you rather live/drive/work in?
- Harris County: files approx. 12,000 DWI cases/year.

Roth (New Mexico) Study Findings

- Interlocks are the most effective DWI sanction. 99.993% of Interlocked Days are No-DWI days*.
- They are the most overall cost-effective sanction. The cost is \$2.50/day paid by the offender.
- They are perceived as fair by 85% of offenders
- 70% less recidivism than license revocation
- They are paid for by offenders
- They supply 24/7 supervision

Frequent Interlock Excuses

- 1. Offenders claim they do not need an Interlock because they do not intend to drive: This is usually false. Up to 75% of drivers will drive with a suspended license.
- 2. Offenders claim they do not own a vehicle. While offenders may not own a vehicle they frequently have access to and drive a vehicle. The law does not require the offender own the vehicle, they only need access to one.

Frequent Interlock Excuses

- 3. Offenders fail to install the interlock once an order is made: This is true and an important issue for the judiciary. One study showed that as few as 22% of those offenders ordered to install an Interlock actually complied, so follow-up is critical.
- 4. Offenders fail to drive the interlock-equipped vehicle: This happens rarely, but it is important to ensure that offenders actually drive the Interlock-equipped vehicle. This can be accomplished by watching the number of engine starts or miles driven.

Interlock Monitoring

If a magistrate orders a defendant to install an interlock ignition device, the magistrate **shall** designate an agency to verify installation and monitor usage.

1. True
2. False

Art. 17.441(d), CCP

- The magistrate **may** designate an appropriate agency to verify the installation of the device and to monitor the device. If the magistrate designates an agency under this subsection, in each month during which the agency verifies the installation of the device or provides a monitoring service the defendant shall pay a fee to the designated agency in the amount set by the magistrate. The defendant shall pay the initial fee at the time the agency verifies the installation of the device. In each subsequent month during which the defendant is required to pay a fee the defendant shall pay the fee on the first occasion in that month that the agency provides a monitoring service. The magistrate shall set the fee in an amount not to exceed \$10 as determined by the county auditor, or by the commissioners court of the county if the county does not have a county auditor, to be sufficient to cover the cost incurred by the designated agency in conducting the verification or providing the monitoring service, as applicable in that county.

Which of the following are “appropriate agencies” to monitor interlock conditions?

1. Local D.A.’s office
2. County Attorney
3. Local C.S.C.D.
4. Justice Court
5. Smart Start, etc.
6. County Sheriff’s Department
7. Any of the above

Can monitoring agencies collect fees for their services?

- Yes!
- 1) Magistrate may designate a fee of up to \$10.00 per month (authorized by Art. 17.441, CCP);
- 2) C.S.C.D. may collect an administrative fee between \$25.00 and \$60.00 per month for services (authorized by Government Code § 76.011 and § 76.015).
- 3) For C.S.C.D., \$2.00 “transaction fee” for each payment (authorized by Art. 102.072, CCP).

Solutions?

- “I ordered our local C.S.C.D. to monitor interlock-related bond conditions, and they didn’t do it. Can I hold them in contempt?”
- “Our local C.S.C.D. has asked us not to designate them as a monitoring agency. What can I do?”

Sec. 521.2465, Transp. Code

- (a) On receipt of notice that a person has been restricted to the use of a motor vehicle equipped with an ignition interlock device, the department shall notify that person that the person’s driver’s license expires on the 30th day after the date of the notice. On application by the person and payment of a fee of \$10, the department shall issue a special restricted license that authorizes the person to operate only a motor vehicle equipped with an ignition interlock device.
- (b) On receipt of a copy of a court order removing the restriction, the department shall issue the person a driver’s license without the restriction.

Other Conditions

- Group discussion:
- 1. Other than interlock bond conditions, what types of conditions do you and/or other magistrates in your county place on DWI offenders?
- 2. Do you distinguish between first-time and repeat offenders when imposing non-interlock bond conditions?

Other Conditions

- Discuss, pick a spokesperson, and report back to the group
- Remember, a magistrate’s goal is to preserve the peace without using bail as an instrument of oppression.
- Compare to Universal Bond Schematic

Bond Condition Violations

You receive notice from the monitoring agency that a bond condition has been violated. What code contains the procedural rules for a bond revocation hearing?

1. CCP
2. Transp. Code
3. Penal Code
4. None of the above

Art. 17.09, Sec. 3, CCP

- Provided that whenever, during the course of the action, the judge or magistrate in whose court such action is pending finds that the bond is defective, excessive or insufficient in amount, or that the sureties, if any, are not acceptable, **or for any other good and sufficient cause**, such judge or magistrate may, either in term-time or in vacation, order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper.

Art. 17.40, CCP

- (a) To secure a defendant's attendance at trial, a magistrate may impose any reasonable condition of bond related to the safety of a victim of the alleged offense or to the safety of the community.
- (b) At a hearing limited to determining whether the defendant violated a condition of bond imposed under Subsection (a), the magistrate may revoke the defendant's bond only if the magistrate finds by a preponderance of the evidence that the violation occurred. If the magistrate finds that the violation occurred, the magistrate shall revoke the defendant's bond and order that the defendant be immediately returned to custody.

Hearing required?

Does due process require that the court hold a hearing before the defendant may be rearrested under Art. 17.09?

1. Yes
2. No

Hearing required?

Does due process require that the court hold a hearing before the defendant's bond may be revoked under Art. 17.40?

1. Yes
2. No

Initiating the hearing

- Motion from prosecutor?
- Motion from monitoring agency?
- Court's own motion?

Who should be present at the hearing?

- Prosecutor?
- Defendant?
- Monitoring agency?

True or False?

Once an information for DWI has been filed in county court, I can still modify or revoke the defendant's bond.

1. True
2. False

TJCTC Bond Schematic Program

- Funded by a grant from the Texas Department of Transportation
- TJCTC will work with you and other magistrates in your county to develop a coordinated program for setting bond conditions in DWI cases
- TJCTC will produce a schematic tailored to your county, similar to the Universal Schematic

High Risk and Repeat DWI Offenders

- Profile: high risk offenders tend to drive with high BAC levels of .15 or above.
- Repeat offenders are those who have more than one impaired driving arrest.
- They are resistant to changing their behavior despite previous sanctions, treatment or education efforts.

Another good reason for Interlock bond conditions...

- Studies have found as many as 75 percent of High Risk impaired drivers continue to drive during periods of suspension or revocation, albeit less often and more carefully.
- An observational study found that 88 percent of first-time DWI offenders whose licenses were suspended drove during their suspension period.
- Source: McCartt, Geary, and Nissen 2002 study.

	JONES AND LACEY	SIEGEL	NEW JERSEY IDRP
Mean Age	35	35.7	35
Education	High School or less	44% High School or less	55% High School or less
Occupation	Non-White Collar	57% Building Trade	N/A
Income	Low	N/A	55% less than \$50K per year
Other Offenses	Traffic and Criminal	Ave 29 arrests for any offense	N/A
Gender	Male (Over 90%)	Male (78%)	Male (78.9%)
Race	White	White	White (69.9%)
Marital Status	Unmarried	42% Separated or Divorced	51 Single; 24 Divorce/Sep.
BAC	>0.10 percent at arrest	N/A	N/A
Prior DWIs	2 to 3	7.6	1 to 3
Alcohol Problems	Alcohol Dependency Common	75% Alcohol Dependent	62% Alcohol Abuse

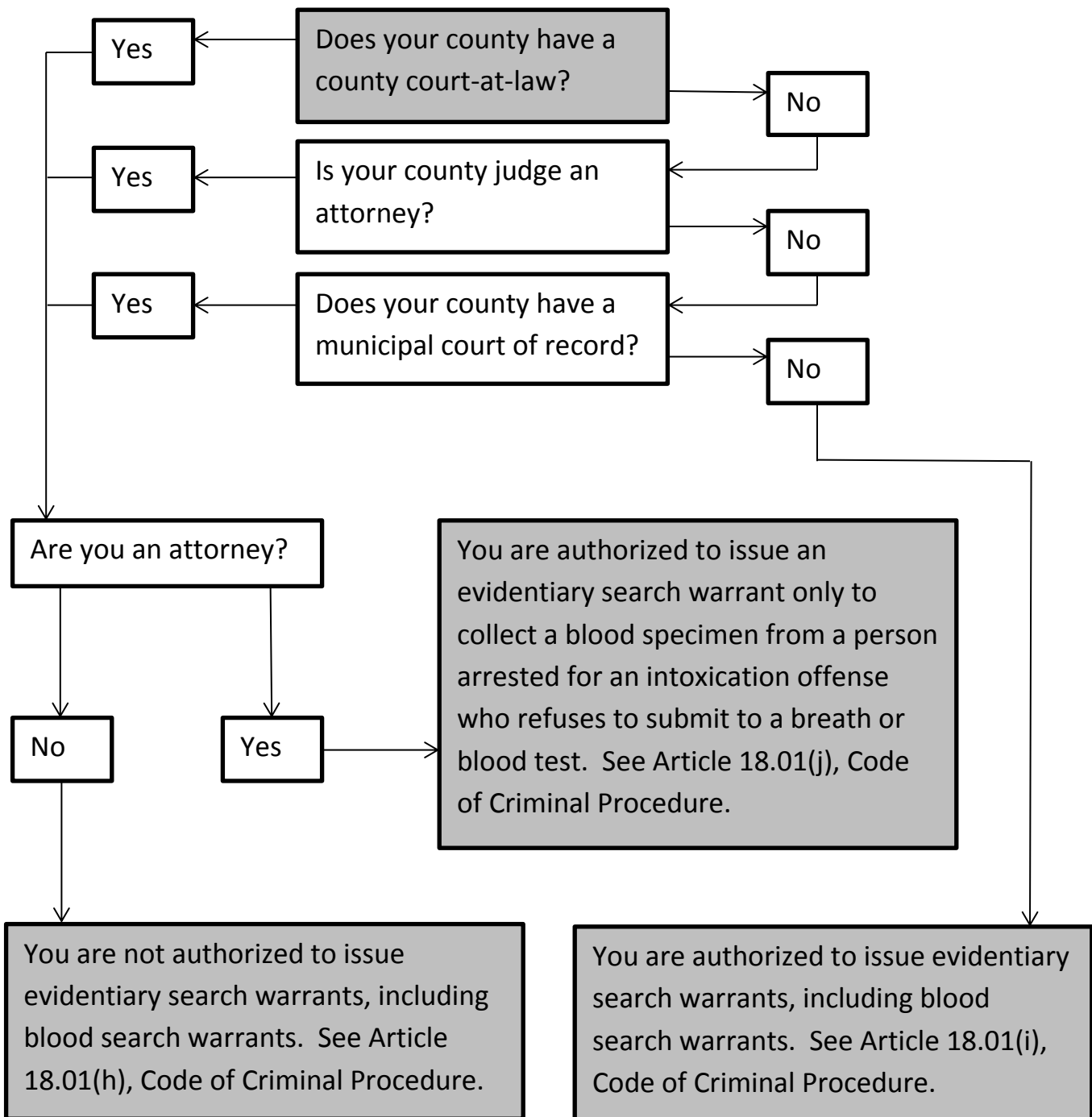
Also included on this graph, next to the Jones and Lacey data, are some of the findings of a study of 126 hardcore DWI offenders incarcerated in Ohio prisons (Siegal et al. 2000) This graph shows how two totally separate studies have remarkably similar characteristics for this population of problem drivers.

Remember

- You have the power to save lives by using your expertise and the information you have learned today.
- THANK YOU for what you do to keep your community and Texas roadways safe.

May I Issue a Blood Search Warrant? A Flowchart for Justices of the Peace

Created by the Texas Justice Court Training Center



THE STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT FOR SEARCH WARRANT

The undersigned Affiant, being a peace officer under the laws of Texas and being duly sworn, on oath makes the following statements and accusations:

My name is Sgt. K. Svitt. I am a peace officer employed by the following law enforcement agency: Austin Police Dept.. I have successfully completed the State-mandated requirements to become a peace officer.

1. There is in Travis County, Texas a suspected person ("suspect") described as follows:

Name: Jed Jordan

Race: W Sex: M DOB: 1/8/1960 DL/ID: TX 171283121

Height: 6'0" Weight: 219 lbs Hair color: Black

2. Suspect is presently in custody of a law enforcement agency here in Travis County, namely the APD, which will present the suspect to execute the warrant requested herein.

3. The suspect has possession of and is concealing human blood, which constitutes evidence that the suspect committed the offense described in paragraph 4 below.

4. The affiant has good reason to believe that on the 6 day of June, 2008, the suspect did then and there operate a motor vehicle in a public place in Travis County, Texas while intoxicated by not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the suspect's body.

5. The suspect was operating a motor vehicle in a public place in Travis County, Texas based on the following facts:

I observed the suspect doing so.
The suspect admitted to me that the suspect had been operating a motor vehicle in a public place in Travis County, Texas.

→ A witness, (name) Officers Tucker, Daniel & Whalen

conveyed information to me that he/she witnessed the suspect operating a motor vehicle in a public place in Travis County, Texas.

6. Driving behavior: Additional facts leading me to believe that the suspect was intoxicated while operating a motor vehicle in a public place include: _____

Drove wrong way on 1 way street according to my fellow officers

7. During my contact with the suspect, I made the following observations about the suspect:

Odor of alcohol

- Strong
- Moderate
- Faint
- None

Eyes

- Bloodshot
- Red/Pink
- Glassy
- Watery
- Dilated
- Normal

Speech

- Thick-tongued
- Incoherent
- Slurred
- Slow
- Mumbled
- Stuttered
- Talkative
- Rapid
- Repetitive
- Fair
- Good

Attitude/conduct

- Argumentative
- Combative
- Profane
- Sarcastic
- Insulting
- Cooperative
- Cocky
- Laughing
- Carefree
- Indifferent
- Sleepy/Drowsy
- Polite
- Silent
- Reserved
- Calm
- Talkative
- Anxious
- Excited
- Confused
- Uninhibited
- Mood swings

Appearance

- Disorderly
- Orderly
- Signs of urine
- Signs of vomit

Balance

- Falling
- Unsteady
- Swaying
- Needed support
- Fair
- Good

Walking

- Falling
- Staggering
- Swaying
- Heavy footed
- Fair
- Good

Turning

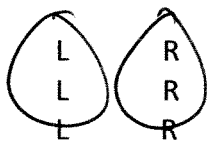
- Falling
- Staggering
- Swaying
- Hesitant
- Fair
- Good

8. During my contact with the suspect, the suspect was requested to perform field sobriety tests and I recorded my observations, signs of intoxication and the results below if the suspect complied. Field sobriety tests were conducted by:

Officer R. Daniel, a fellow peace officer, who is known by your Affiant to be certified and/or trained in the detection of impaired or intoxicated drivers through the use of three standardized field sobriety tests [SFSTs], namely: Horizontal Gaze Nystagmus [HGN], One-Leg Stand [OLS], and Walk and Turn [WAT].

Horizontal Gaze Nystagmus Test

The suspect was first qualified as a candidate by checking the suspect's eyes for equal tracking and equal pupil size. I have indicated below the clues that were present in the left eye (L) and right eye (R):



- Lack of smooth pursuit
- Distinct and sustained nystagmus at maximum deviation
- Onset of nystagmus prior to 45 degrees

Vertical nystagmus: YES NO

HGN: Total number of observed clues: 6

Refused to perform test

Other comments: _____

Walk and Turn Test

I have indicated below the clues that were present during the suspect's performance of this test:

Cannot keep balance while listening to instructions

Starts before the instructions are finished

Stops while walking

Does not touch heel to toe

Steps off the line

Uses arms to balance (raises arms over six inches)

Improper turn

Incorrect number of steps

WAT: Total number of observed clues: 6

Refused to perform test

Other comments: _____

One Leg Stand Test:

I have indicated below the clues that were present during the suspect's performance of this test:

- Sways while balancing
- Hops
- Puts foot down
- Uses arms for balance (raises arms over six inches)

OLS: Total number of observed clues: _____

Refused to perform test

Other comments: _____

I have learned through my training and experience that the National Highway Transportation Safety Administration has determined from studies that were conducted that 4 or more clues on the HGN test and 2 or more clues on the OLS test and the WAT test are reliable indicators of intoxication.

9. Other tests: If indicated below, the suspect performed additional tests for intoxication and I recorded the results as shown below.

Recite a portion of the alphabet; result: NA

Finger count: (1,2,3,4; 4,3,2,1; each finger to thumb); result: NA

Rhomberg: Close your eyes. Tilt you head back, hands at your side, stop after 30 seconds; result: NA

Hand clap: (Count to 10; front and back of palm is one #); result: NA

Nose touch: (Close eyes; arms extended out to the side; touch tip of nose with tip of index finger as instructed; call out "right" or "left"); Result: NA

Portable breath test; result: 0.14

10. Suspect's oral statements: The suspect made the following statements:

Jordan said he could not perform the OLS test because he would fall over.

11. ~~Open container evidence.~~

I did not find an open container.

I found an open container of an alcoholic beverage, namely: _____

in the following location: _____

12. Drug/Controlled substance evidence.

I did not find any evidence of possible drug/controlled substance use

I found the following drugs/drug paraphernalia: _____
_____ in the following location:

I detected the odor of marijuana

- on the suspect's person;
- inside the suspect's vehicle

Statements made by the suspect or others indicating possible drug usage:

Other: _____

13. Refusal evidence: After placing the suspect under arrest for Driving While Intoxicated, I requested a sample of the suspect's breath and/or ~~blood~~, and the suspect refused to provide a sample in violation of the Texas Implied Consent law. This is an indication to me that the suspect is attempting to hide evidence of his/her intoxication. Other relevant statements made by the suspect when refusing include: _____

14. As a peace officer I have successfully completed courses and/or training in the field of alcohol detection and intoxication-related offenses. I have seen intoxicated persons in the past and, during the course of my employment, I have observed numerous people who were under the influence of alcohol or other substances. Additionally, I have formed opinions on intoxication on many occasions and have had my suspicions confirmed by breath or blood samples that were analyzed after I performed my law enforcement duties relating to the detection of intoxicated drivers.
15. Summary: Based upon my experiences, my training in intoxication-related offenses, and my observations of the suspect and the results of the tests performed by the suspect, if any, during my contact with the suspect, I believe that the suspect is intoxicated by not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the suspect's body.
16. I know from my training and experience that alcohol and other intoxicating substances are absorbed into the bloodstream of an intoxicated person and that the blood of such person can be analyzed for the presence of alcohol and other intoxicating substances.

WHEREFORE, based upon this affidavit Affiant asks for a search warrant that will authorize Affiant or Affiant's agent to search the person of the suspect for the blood evidence described above and

seize the same as evidence that the offense described was committed and that the suspect committed the said offense.

Further Affiant asks for issuance of an order to appropriate third parties directing them to assist Affiant in the execution of said warrant.

K. Scitt
Affiant

Subscribed and sworn to before me on this 6 day of June,
2008.

Rubeta A. D...D

- Peace officer, State of Texas
- Notary Public, State of Texas
- Magistrate, ((County here)) County, Texas

UNIVERSAL TEXAS DWI BOND CONDITION SCHEMATIC

Created and Promulgated by the Texas Justice Court Training Center

SECTION I: AMOUNT OF BAIL

Every Magistrate must take the following into account when fixing the amount of bail:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken upon this point.
5. The future safety of a victim of the alleged offense and the community shall be considered.

These five factors must be carefully considered in every case.

Offense	Class
DUI Minor (1 st offense)	C
DUI Minor (2 or more previous final DUI-M dispositions)	B
DWI (1 st offense)	B
BWI (1 st offense)	B
FWI (1 st offense)	B
DWI with BAC > 0.15	A
DWI (1 previous Ch. 49 conviction)	A
BWI (1 previous Ch. 49 conviction)	A
FWI (1 previous Ch. 49 conviction)	A
DWI with Child Passenger	SJF
DWI (2 or more previous Ch. 49 convictions)	F3
BWI (2 or more previous Ch. 49 convictions)	F3
FWI (2 or more previous Ch. 49 convictions)	F3
DWI with 1 or more Sec. 49.08 convictions	F3
Intoxication Assault	F3
Intoxication Assault on peace officer, firefighter, EMS	F2
Intoxication Manslaughter	F2
Intoxication Manslaughter causing death of peace officer, firefighter, EMS	F1

SECTION II: BOND CONDITION CHECKLIST

Section A: Ignition Interlock

1. The defendant shall have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator. The defendant shall have the device installed on the appropriate motor vehicle, at the defendant's expense, before the 30th day after the date the defendant is released on bond.

Condition 1 **shall** be imposed if all the conditions listed below apply:

- The defendant is charged with any of the following offenses: a subsequent offense under Section 49.04, Penal Code (Driving While Intoxicated), a subsequent offense under Section 49.05, Penal Code (Flying While Intoxicated), a subsequent offense under Section 49.06, Penal Code (Boating While Intoxicated), an offense under Section 49.07, Penal Code (Intoxication Assault), or an offense under Section 49.08, Penal Code (Intoxication Manslaughter); AND
- The magistrate does not find that to require the device would not be in the best interest of justice.

Condition 1 **may** be imposed if all of the following conditions apply:

- The defendant is charged with any of the following offenses: any of the following offenses: an offense under Section 49.04, Penal Code (Driving While Intoxicated), an offense under Section 49.05, Penal Code (Flying While Intoxicated), an offense under Section 49.06, Penal Code (Boating While Intoxicated), or an offense under Section 49.045, Penal Code (DWI with child passenger); AND
- The magistrate determines that requiring the defendant to install an interlock ignition device is a reasonable condition of bond related to the safety of the community.

2. The defendant shall not operate any motor vehicle unless the vehicle is equipped with an ignition interlock device.

Condition 2 **shall** be imposed if the condition listed below applies:

- The defendant is charged with any of the following offenses: a subsequent offense under Section 49.04, Penal Code (Driving While Intoxicated), a subsequent offense under Section 49.05, Penal Code (Flying While Intoxicated), a subsequent offense under Section 49.06,

Penal Code (Boating While Intoxicated), an offense under Section 49.07, Penal Code (Intoxication Assault), or an offense under Section 49.08, Penal Code (Intoxication Manslaughter)

Condition 2 **may** be imposed if all of the following conditions apply:

- The defendant is charged with any of the following offenses: any of the following offenses: an offense under Section 49.04, Penal Code (Driving While Intoxicated), an offense under Section 49.05, Penal Code (Flying While Intoxicated), an offense under Section 49.06, Penal Code (Boating While Intoxicated), or an offense under Section 49.045, Penal Code (DWI with child passenger); AND
- The magistrate determines that requiring the defendant to refrain from driving any vehicle not equipped with an interlock ignition device is a reasonable condition of bond related to the safety of the community.

3. _____ [fill in any appropriate agency] is designated as the agency assigned to verify the installation of the ignition interlock device and to monitor the device. The defendant shall pay an initial fee to the monitoring agency at the time the agency verifies the installation of the ignition interlock device. Additionally, in every subsequent month for which the agency provides a monitoring service, the defendant shall pay a fee on the first occasion in that month that the agency provides a monitoring service. The amount of the initial fee and the subsequent monitoring fee shall be: _____ [fill in an amount not to exceed \$10 as determined by the county auditor, or by the commissioners court of the county if the county does not have a county auditor, to be sufficient to cover the cost incurred by the designated agency in conducting the verification or providing the monitoring service].

Condition 3 **may** be imposed if the condition listed below applies:

- The magistrate has ordered the defendant to install an ignition interlock device as a condition of bond.

Section B: Monitoring and Controlled Substance Testing

4. The defendant shall submit to home curfew and electronic monitoring under the supervision of _____ [fill in an appropriate monitoring agency]. The defendant shall be at home between the hours of _____ every day, without exception. The costs of monitoring shall: [choose one]

- Be paid directly by the defendant as a condition of bond; OR
- Be assessed as court costs.

5. *The defendant shall submit to home curfew and non-electronic monitoring under the supervision of _____ [fill in an appropriate monitoring agency]. The defendant shall be at home between the hours of _____ every day, without exception.*

Condition 5 **may** be imposed in any case if the magistrate considers it to be an appropriate condition.

6. *The defendant shall submit to home confinement and electronic monitoring under the supervision of _____ [fill in an appropriate monitoring agency]. The costs of monitoring shall: [choose one]*

- Be paid directly by the defendant as a condition of bond; OR*
- Be assessed as court costs.*

Condition 6 **may** be imposed in any case if the magistrate considers it to be an appropriate condition.

7. *The defendant shall report to _____ [fill in an appropriate monitoring agency] and submit to testing on a weekly basis for the presence of a controlled substance in the defendant's body. The costs of testing for controlled substances shall: [choose one]*

- Be paid directly by the defendant as a condition of bond; OR*
- Be assessed as court costs.*

Condition 7 **may** be imposed in any case if the magistrate considers it to be an appropriate condition.

Section C: Conditions Related to the Safety of the Community

8. *The defendant shall avoid persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang.*

Condition 8 **may** be imposed in any case if the magistrate determines that requiring the defendant to avoid disreputable persons is a reasonable condition of bond related to the safety of the community.

9. *The defendant shall attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse.*

Condition 9 **may** be imposed in any case if the magistrate determines that requiring the defendant to attend counseling sessions is a reasonable condition of bond related to the safety of the community.

10. The defendant shall not communicate directly with any victim of the alleged offense.

Condition 10 **may** be imposed in any case if the magistrate determines that prohibiting victim contact is a reasonable condition of bond related to the safety of the community.

11. The defendant shall abstain from the use of alcohol and any controlled substance, as that term is defined by Section 481.002, Health and Safety Code.

Condition 11 **may** be imposed in any case if the magistrate determines that prohibiting further alcohol/drug use is a reasonable condition of bond related to the safety of the community.