

Blood Search Warrants

© Copyright 2018. All rights reserved.
No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd, Suite 530, Austin, TX, 78744.

Rebecca Glisan
Staff Attorney
Texas Justice Court Training Center

Resources

- Statutes website:
<http://www.statutes.legis.state.tx.us/>
- TJCTC Website: <http://www.tjctc.org/>
 - Magistration Deskbook
 - DWI Magistration & Inquest Guide
 - Traffic Safety Initiative Page: <http://www.tjctc.org/tjctc-resources/traffic-safety-initiative.html>
 - Newsletters and Other Publications
 - Webinars
 - Legal Board

Abbreviations

- CCP = Code of Criminal Procedure
- PC= Penal Code
- TC = Transportation Code
- ABC = Alcoholic Beverage Code

DWI Fatalities in Texas

- In 2013, 1,089 people died in alcohol-related crashes in Texas; this represents 32.2% of all Texas traffic fatalities.
- In 2014, 1,041 people died in alcohol-related motor vehicle crashes in Texas, accounting for 29% of all Texas traffic fatalities.
- In 2015, 960 traffic deaths in Texas were alcohol related – 27% of all traffic fatalities
- In 2016, 987 traffic deaths in Texas were alcohol related – 26% of all traffic fatalities

DWI Arrest

- Most DWI arrests begin when a peace officer initiates a traffic stop.
 - Peace officer must have a reasonable suspicion that a person has committed a violation of Texas traffic laws.
- After the traffic stop, a peace officer who observes signs of driver intoxication may perform an investigation. This could include:
 - Administration of standardized field sobriety tests;
 - General observations regarding the driver (odor of alcohol, glassy eyes, slurred speech, etc.); and/or
 - Use of investigatory tools such as a breath or blood test.

Permissive Blood Draw Statute

- One or more specimens of a person's breath or blood **may** be taken if the person is arrested and at the request of a peace officer having reasonable grounds to believe the person:
 - (1) while intoxicated was operating a motor vehicle in a public place, or a watercraft; or
 - (2) was in violation of Section 106.041, Alcoholic Beverage Code.

-- TC 724.012

Mandatory Blood Draw Statute

- A peace officer shall require the taking of a specimen of the person's breath or blood if:
 - The officer arrests the person for an offense under Chapter 49, Penal Code, involving operation of a motor vehicle or watercraft;
 - The person refuses the officer's request to submit to the taking of a specimen voluntarily; AND
 - One of the circumstances listed in Section 724.012(b)(1)-(3), Transp. Code, applies.

-- TC 724.012

Section 724.012(b)(1)-(3)

- (1) There was an accident; officer reasonably believes it occurred as a result of the offense; and at the time of the arrest, officer reasonably believes that as a direct result:
 - Any individual has died or will die;
 - Another person has suffered serious bodily injury; or
 - Another person has suffered bodily injury and been transported to a hospital/medical facility for medical treatment
- (2) The offense is Driving While Intoxicated with Child Passenger (PC 49.045)

Section 724.012(b)(1)-(3), continued

- (3) At the time of the arrest, the officer possesses or receives reliable information from a credible source that the person:
 - Has been previously convicted of or placed on community supervision for an offense under PC 49.045 (DWI w/ Child Passenger), 49.07 (Intox Assault), or 49.08 (Intox Manslaughter), or a similar law of another state; or
 - Has been previously convicted/placed on community supervision two times or more for an offense under PC 49.04 (DWI), 49.05 (FlyingWI), 49.06 (BoatingWI), or 49.065 (Assembling/Operating an Amusement Ride WI), or a similar law of another state

Need a Blood Search Warrant if Person Refuses?

- Usually, yes.
 - (Unless an exception to the U.S. Constitution 4th amendment warrant requirement exists).
- Even when state law says taking blood is **allowed** (permissive blood draw statute) or **mandatory** (mandatory blood draw statute)?
 - Yes! Texas courts have held that a blood search warrant is **still required** in most cases

Note: A blood search warrant could also be requested in situations where the permissive and mandatory blood draw statutes don't apply (ex: Flying While Intoxicated)

Missouri v. McNeely, 133 S.Ct. 1552 (2013); *State v. Villareal* (Tex. Crim. App. 2014); *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016)

Who May Issue a Blood Search Warrant?

- Any magistrate who is a licensed attorney
 - (If offense is under Penal Code 49.04-49.08 & person refuses to submit to a breath or blood test)
- Any magistrate (even if not a licensed attorney) in a county that does not have:
 - A municipal court of record with a courtroom located in that county and a judge who is a licensed attorney;
 - A judge of a county court who is a licensed attorney; or
 - A statutory county court judge

-- CCP 18.01(i),(j)

Probable Cause Affidavit Required

- Sworn affidavit setting forth substantial facts must be filed and must satisfy issuing magistrate that probable cause exists for issuance of warrant.
- Must establish probable cause that a specific offense has been committed and that testing the person's blood will provide evidence of that offense

-- CCP 18.01(b),(c)

What is Probable Cause?

- Probable cause = **sufficient reason based upon known facts to believe** a crime has been committed or that certain property is connected with a crime.
- What if there is no probable cause?

Probable Cause – Elements of DWI

- So if a person is arrested for DWI under PC 49.04, the affidavit must establish probable cause that the person has committed the elements of that offense:
 - 1) intoxicated;
 - 2) while operating a motor vehicle;
 - 3) in a public place
 - (And so testing their blood will provide evidence of the intoxication element of the offense)
- PC 49.04(a)

Where Do I find the Elements for Other Offenses?

- Driving While Intoxicated with Child Passenger = [PC 49.045\(a\)](#)
- Flying While Intoxicated = [PC 49.05\(a\)](#)
- Boating While Intoxicated = [PC 49.06\(a\)](#)
- Assembling or Operating an Amusement Ride While Intoxicated = [PC 49.065\(a\)](#)
- Intoxication Assault = [PC 49.07\(a\),\(b\)](#)
- Intoxication Manslaughter = [PC 49.08\(a\)](#)
- Driving or Operating Watercraft Under the Influence of Alcohol by Minor = [ABC 106.041\(a\),\(j\)](#)

Where Can I Get More Info on Standardized Field Sobriety Tests?

- SFST Training Manuals (published by the National Highway Traffic Safety Administration) may be found at the following link:
- <http://oag.dc.gov/page/sfst-training-manuals>

Determining Intoxication Caused By Substances Other Than Alcohol

How is probable cause for intoxication element established if the intoxication is caused by substances other than alcohol (prescription drugs, controlled substances, other substances in combination with alcohol)?

- The 12-Step DRE (Drug Recognition) Protocol:
 - <http://www.decp.org/drug-recognition-experts-dre/12-step-process/>
- DRE (Drug Recognition Expert) and ARIDE (Advanced Roadside Impaired Driving and Enforcement) training:
 - <http://www.cjcenter.org/idi/>

Probable Cause that an Offense has Been Committed?

The affidavit states that the defendant was found asleep 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
2. No

Answer: No

Probable Cause that an Offense has Been Committed?

Same facts as before, but now the affidavit contains additional facts. The standard field sobriety tests were administered and the defendant failed the tests.

1. Yes
2. No

Answer: Yes

Probable Cause that an Offense has Been Committed?

The affidavit contains the following information: 1) defendant was stopped on I-35 for speeding; 2) officers observed signs of intoxication, including odor of alcohol, slurred speech, blood shot eyes, and lack of coordination. There is no indication that any standard field sobriety tests were administered.

1. Yes
2. No

Answer: Yes

Probable Cause to Issue a Warrant?

The affidavit makes it clear that there is probable cause that the person committed a DWI and that testing the person's blood will provide evidence of that offense, but the affidavit clearly and unambiguously indicates that the traffic stop was not supported by reasonable suspicion. Can you still find that there is probable cause to issue a blood search warrant?

1. Yes
2. No

Answer: Yes

Electronic Warrants

- A magistrate may grant a search warrant that is read to them over the phone, sent to them by email, or sent by other electronic means
 - Affiant doesn't have to appear in person to swear to the PC affidavit and warrant
- The affiant shall:
 - Prepare a duplicate copy of the warrant; and
 - Read or transmit the warrant's contents verbatim to the magistrate
 - If it is read, magistrate must enter contents into an original search warrant

-- CCP 18.01(b-1)

Electronic Warrants

The magistrate **SHALL**:

- 1) Write on their copy of the warrant that the affiant swore to it
- 2) If the magistrate modifies the warrant:
 - Send the modified version by reliable electronic means to the affiant to file, or
 - File the modified original and direct the affiant to modify their copy accordingly
- 3) Sign and date the warrant
 - Transmit the warrant by reliable electronic means to the affiant to file, or
 - File the warrant and direct the affiant to sign the judge's name and enter the date and time on their copy

-- CCP 18.01(b-1)

Electronic Warrants

The magistrate **MAY**:

- Question, under oath, the affiant or any one who gave statements supporting the application
- Consider additional testimony or exhibits, but the magistrate **MUST**:
 - Record the testimony (recorder, written verbatim, or court reporter)
 - Make sure any transcription is certified as accurate and is preserved
 - Sign, certify the accuracy of, and preserve any other written record
 - Ensure that the exhibits are preserved

-- CCP 18.01(b-1)

TJCTC's Traffic Safety Initiative & DWI Bond Condition Program



Traffic Safety Initiative

Working to Reduce Traffic Fatalities & Accidents

TJCTC is proud to provide education to justice courts concerning traffic safety through a grant from the Texas Department of Transportation. Our goal is to encourage justice courts to implement policies that will reduce transportation fatalities and accidents throughout Texas. We offer training related to DWI offenses via [webinars](#) and also specific traffic related courses at both our [Off-Duty Judicial Seminars & Court Personnel](#) [Out-of-State](#) [Board](#) before for more details.

For in-depth information on traffic safety, click the corresponding link below:

- [Impaired Driving and Sanction Interlock Laws Summary](#)
- [DWI Bond Schematic Program](#)
- [Impaired Driver Sanctions](#)
- [Traffic Safety Resources](#)
- [Contact Us](#)

<http://www.tjctc.org/tjctc-resources/traffic-safety-initiative.html>

DWI Bond Condition Program: Funding & Administration

The program is funded by a traffic safety grant from the Texas Department of Transportation and administered by the Texas Justice Court Training Center

DWI Bond Condition Program: What?

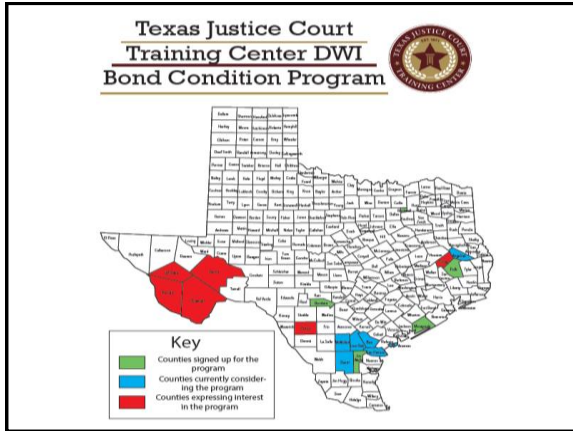
- Under this program, the county adopts a comprehensive plan for setting, monitoring, and enforcing bond conditions in DWI cases.
- Goal of the program is to get all county officials on the same page concerning:
 - Mandatory bond conditions
 - Permissive bond conditions
 - Monitoring and enforcing of bond conditions
 - Communication concerning cases and bond conditions

DWI Bond Condition Program: Why?

- Consistent and fair bond conditions and monitoring/enforcement (within counties and across the state) promote fairness, efficiency, and predictability for defendants, prosecutors, monitoring agencies, and court staff
- Bond conditions should not be identical in every DWI case, but should not differ widely from case to case either
- Frequent changes to bond conditions in a case cause confusion and logistical issues
 - It is better if magistrates and trial court judges are on the same page & can avoid unnecessary modifications

DWI Bond Condition Program: How?

- TJCTC will work with you and other magistrates in your county to develop a coordinated program
- TJCTC will produce forms to be used by county magistrates who perform Art. 15.17 hearings



DWI Bond Condition Program: More Info

- Webpage:
 - <http://www.tjctc.org/tjctc-resources/traffic-safety-initiative/bondschematic.html>
- If you are interested, contact Randy Sarosdy (rsarosdy@txstate.edu) or Rebecca Glisan (rebecca.glisan@txstate.edu) for more information.