

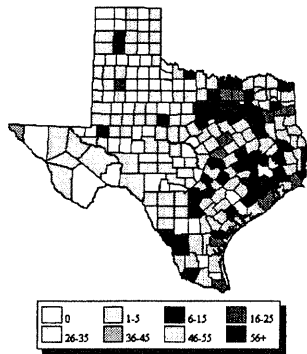
Blood Search Warrants in Texas

**W. Clay Abbott
DWI Resource Prosecutor
TDCAA**

Why should you care?

- Who is the ambassador between Police and Magistrates in your jurisdiction?
- When is the best time to make a plan?
 - 2 A.M. Saturday Morning with dead folks on the highway, or
 - Next week?
- If not you, who? If not now, when?

Alcohol-Related Fatalities, by County, Texas, 2005



The problem:

- 50% or higher refusal rate,
- Higher refusals in felonies
- Mandatory draws required serious injury
- CSI effect
- Total refusals



The Solution

- No Legislative Help
- No Federal program
- Creative Lawyers in Hereford Texas
- TDCAA Spreads Word
 - 1 Jurisdiction in 2004
 - Over 50 in 2010 (majority of Texas Pop)
 - No refusal weekends
 - 8 different 24/7/365 jurisdictions

Breath or Blood

- Who decides?
- Differences?
 - Breath Usually Lower
 - Preservation
- Anybody know how blood is tested?



The response

- BAC's average around .19
- Lowered arrest and refusals
- Press coverage
- The no refusal weekend
- Adapted BATmobiles
- Judge's Response
- Hospital Response
- Criminal Defense Response



"If it bleeds, it pleads"



When Would You Obtain a Warrant?

- Injuries
- Felonies
- Enhanced
- When drugs are suspected
 - DRE Examination



SB 328 Mandatory Blood Draws after arrest for DWI

- Old law
 - Individual Died
 - Will Die
 - SBI (not driver)
- New Law (Sept. 1)
 - Bodily injury and transported to hospital or other medical facility for medical treatment (not driver)
 - DWI W/ Child Passenger
 - Officer has reliable evidence
 - One prior Intox MS (a felony DWI), Intox Assit, DWI w/ Child
 - Two prior DWI or BWI (anywhere, ever)

TC 724.017. Blood Specimen

- Grants immunity from civil and administrative liability for:
 - the person who takes blood at the request/order of an officer under Ch. 724 or pursuant to a search warrant
 - That person's employer
 - The facility at which that person draws blood

Quick Test Question 1

- Two car collision, both drivers transported and unconscious. Car that failed to yield right of way is full of beer cans, driver when extracted smells strongly of alcohol. A second vehicle reports to officer that the impaired driver was weaving badly prior to running light.

You draw blood because:

1. Implied Consent.
2. DWI plus serious bodily injury.
3. DWI plus bodily injury and 2nd driver transported for medical treatment.
4. DWI plus a person is likely to die.

Mandatory Blood – What if D is Unconscious?

TC §724.014 - A person who is dead, unconscious, or otherwise incapable of refusal is considered not to have withdrawn consent

Quick Test Question 2

- **Single car collision. Car leaves the roadway for no apparent reason. 15 year old passenger has a bloody nose and is driven by a family member who arrives at the scene to a “24 hour emergency care” facility that is not part of a hospital.**
- **Driver has typical intoxication symptoms and refuses all SFST's and breath test after DWI arrest.**

The officer should:

- 1. Get a blood warrant if possible, or close the case if that is not possible..**
- 2. Drive the suspect home since he did not intend to harm anyone.**
- 3. Take a blood sample, bodily injury plus non-driver was transported for medical care.**
- 4. Take a blood sample for DWI with Child Passenger.**

Quick Test Question 3

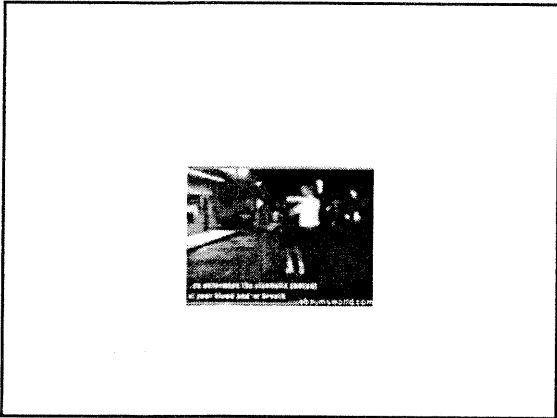
- Officer makes a probable cause DWI arrest of a defendant. TCIC shows one prior DWI arrest, but no conviction. Dispatcher finds a department record that a recent DWI with Child Passenger arrest resulted in a probation. Officer confirms with the suspect that she was on DWI with Child Passenger probation, but completed the probation. Suspect refuses a breath or blood test.

The officer should:

1. Have never asked such a question.
2. Get a blood search warrant or close the case.
3. Draw blood because he has reliable evidence of a prior DWI with Child Passenger.

Search Warrants

- Mere Evidence
 - Not all Magistrates
- Probable Cause of DWI
- Describe the Person
- Follow the Blood Draw Procedures

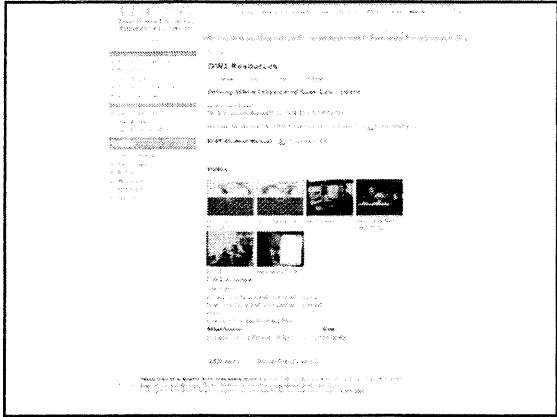


Art. 18.08 Power of officer executing warrant

- In the execution of a search warrant, the officer may call to his aid any number of citizens in this county, who shall be bound to aid in the execution of the same.

Forms

- Detail all DWI Observations
- Stop Facts
- Refusal
- Place and Description of Defendant
- Time is of the Essence



How & Where?

- **Force may be used.**
 - "shall require" - §724.012(b)
 - Burns v. State (Tex. App. Corpus Christi - 1991)
- **Recognized medical procedures.**
 - Transportation Code §724.017(b)
- **Sanitary Place**
 - Transportation Code §724.017(a)