

### Understanding Blood Search Warrants **MAGISTRATE'S DECISION**

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### **LEARNING OBJECTIVES**

#### Each judge will know:

1. When a blood search warrant (BSW) is needed
2. Who can sign a BSW
3. How to evaluate an affidavit for a BSW
4. How to identify related BSW documents

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### **SEARCH WARRANTS**

A search warrant is a written order issued by a magistrate commanding a peace officer to search for and seize any property or thing, and bring said items to the magistrate.

A sworn affidavit establishing probable cause shall be filed for every search warrant.

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**NO WARRANT REQUIRED****Consent**

- Voluntarily supplies a sample

**Mandatory**

- Refusal AND
- Certain accidents, child passengers, & convictions

**Medical**

- Draw for medical purpose

**Exigent**

- To prevent loss of evidence

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**NO WARRANT REQUIRED****Consent**

Suspect voluntarily gives a blood sample




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**NO WARRANT REQUIRED**

- Implied Consent

- Suspect does something so law enforcement can infer consent

- Actual Consent

- Suspect voluntarily agrees to give blood (recommend getting in writing)

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**NO WARRANT REQUIRED:  
MANDATORY**

DWI Refusal AND

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Death or belief of likely death	Serious bodily injury	Bodily injury & taken to medical facility (NEW)	Child under 15 in S's car (NEW)

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**NO WARRANT REQUIRED:  
MANDATORY**

DWI Refusal AND

1 Prior conviction for:

- DWI w/child passenger
- Intoxication assault/ manslaughter  
(NEW)

2+ prior convictions for:

- DWI, FWI, BWI, or  
AOARWI  
(NEW)

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**AOARWI**

Assembling or Operating an  
Amusement Ride While Intoxicated




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**NO WARRANT REQUIRED:  
MANDATORY**

DWI Refusal  
AND

Death or belief of  
likely death

Serious bodily injury

Bodily injury & taken  
to medical facility

Passenger under 15

Prior convictions

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**NO WARRANT REQUIRED**

**Medically Necessary Draw**

- Blood draw for medical treatment
- Subpoena required to obtain results




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**NO WARRANT REQUIRED**

**Exigent Circumstances**

"...the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence' ..."

*Schmerberv. California, 384 U.S. 757, 770 (1966)*

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### Exigent Circumstances



If the mouse is evidence...

these are exigent circumstances.

***NO WARRANT REQUIRED***

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### WHEN IS A BLOOD SEARCH WARRANT NECESSARY?



General Rule: Always

Except when:

- Consent
- Mandatory
- Medically Necessary
- Exigent Circumstances

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### WHO CAN SIGN?

Blood Search Warrants

If

• Suspect refuses to give a sample

And

• Is charged with DWI, DWI with child, FWI, BWI, AOARWI, or intoxication assault / manslaughter

Any

• Licensed Texas attorney magistrate & Art. 18.01(i) exception

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### WHO CAN SIGN?

#### Evidentiary Search Warrants

A judge who is:

1. TX licensed attorney in a municipal court of record,
2. TX licensed attorney in a county court,
3. county court judge,
4. district court judge,
5. a judge of the court of criminal appeals ,
6. a justice of the Supreme Court of Texas,
7. in counties with no Texas licensed attorney in a municipal court of record or county court, or a statutory county court judge, any magistrate.

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### WHO CAN SIGN?

Any Magistrate

If the only attorney judges in a county are district judges, then, ANY MAGISTRATE may issue evidentiary search warrants including BSW. (Art. 18.01(i))

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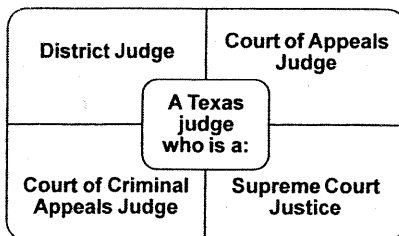
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### WHO CAN SIGN?

#### Subsequent Art. 18.02(10) Search Warrants



Art. 18.01(d)

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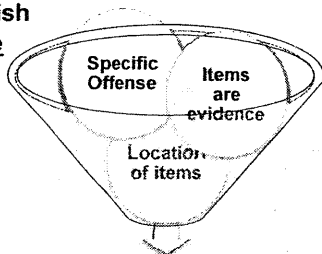
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**EVALUATING AN AFFIDAVIT**

Facts to establish  
probable cause  
that ...



... to issue Art. 18.02(10) BSW

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**PROBABLE CAUSE**

Probable cause exists when the  
facts & circumstances present  
would convince a reasonably  
prudent person that

there is reasonable suspicion a  
crime has occurred.

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**PROBABLE CAUSE**

Assume a legal stop & search and that  
all elements of a DWI offense are present

Is there probable cause to arrest, issue a  
BSW and hold for trial?

**YES**

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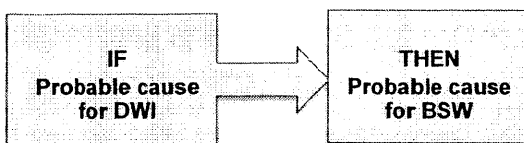
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**PROBABLE CAUSE**

### Remember this ...



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**PC AFFIDAVIT**

**See handout**

[illegible]

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**EVALUATION:**  
**SPECIFIC OFFENSE**

***What facts indicate a specific offense occurred?***

Page 1-2, Paragraph 1

**Suspect was arrested for DWI because:**

- **S was speeding, 43 mph in a 30 mph zone**
- **Observations: strong odor of alcohol, slurred/confused speech, swaying, uncooperative, lying, staggering**

**uncooperative, lying, staggering**

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**EVALUATION:  
SPECIFIC OFFENSE**

What facts indicate a specific offense occurred?

Page 2, Paragraph I

- Refused all FSTs
- Other signs: S took 4 blocks to stop car
- Pre-arrest admissions: S said he had 2-3 beers
- Possession of alcohol: S had ½ can Budweiser




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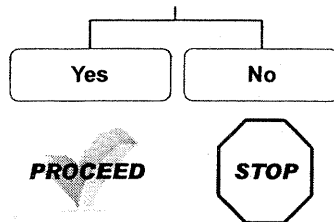
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**EVALUATION:  
SPECIFIC OFFENSE**

Enough probable cause  
that a DWI occurred?




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**EVALUATION:  
ITEMS ARE EVIDENCE**

Why is the object of the search evidence?

Page 3, Paragraph IV.

"... the evidence [blood] will constitute evidence ... of an offense ... namely DWI, or ... that Suspect committed ... DWI ..."




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### **EVALUATION: ITEMS LOCATED**



*What facts indicate where  
the evidence can be located?*

Page 3, Paragraph III

"... blood from the ... Suspect ...  
are ... on and within the body of  
said Suspect ..."

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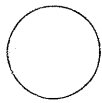
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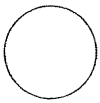
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### **EVALUATING AN AFFIDAVIT**

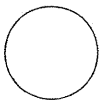
If there is probable cause of each



Specific  
offense



Items are  
evidence



Location  
of items

then issue BSW

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### **DOCUMENTS**

Affidavit for Search Warrant

Search Warrant

Blood Withdrawal Procedure Form

Order for Assistance in  
Execution of Search Warrant

Affidavit of Person  
Who Withdrew Blood

Return &  
Inventory

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### **OTHER CONSIDERATIONS**

- Suspect should not be threatened with a warrant to gain "consent"
- Use of reasonable force okay with warrant
- Medical personnel using accepted procedures can draw blood
  - Texas prohibits EMTs, Feds do not
  - Refusal to assist may be contempt of court



***Its 3:00 am  
and your  
children are  
safe and  
asleep***



***But there's a phone  
in your house***



**Police have arrested  
someone for DWI**



**Now they want a blood search  
warrant to prove intoxication**

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**You will decide**



**Deny a search  
warrant  
or draw blood**



**There are  
consequences  
either way**

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**New Weapons**



**Police Chief in Hot Seat Du**

**Blood**

**How are you going to  
answer that call?**



**Challenge Forced Blood  
Texas DWI**

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***"...the importance of informed, detached and deliberate determinations of the issue whether or not to invade another's body in search of evidence of guilt is indisputable and great ..."***

*Schmerber v. California, 384 U.S. 757, 770*

**QUESTIONS?**

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