

DWI Bond Conditions

TJCTC Webinar

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Scope of the Problem

- 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

Justice Courts and DWI

Justices of the Peace may:

- Issue blood search warrants (in certain counties)
- Determine whether probable cause exists
- Set bail and bond conditions
- Monitor bond conditions
- Hold bond modification or revocation hearings
- Review ODL petitions

Anatomy of a DWI Arrest

- Most DWI arrests begin when a peace officer initiates a traffic stop. In order to initiate a traffic stop, a 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. A roadside DWI investigation may include:
 - Administration of standardized field sobriety tests;
 - General observations regarding the driver (odor of alcohol, glassy eyes, slurred speech, etc.); or
 - Use of investigatory tools such as a portable breath test.

Anatomy of a DWI Arrest

- If the peace officer determines, as a result of the roadside investigation, that probable cause exists to believe that the driver of the vehicle committed the offense of DWI, the officer shall arrest the driver.
- Texas implied consent laws require the arresting officer to request that the person arrested provide a breath sample or a blood sample (arresting officer's choice).

Anatomy of a DWI Arrest

- After a peace officer arrests a person for DWI, the peace officer must take the defendant before a magistrate.
- When an individual is arrested for any offense, he or she must be presented to a magistrate "without unreasonable delay," but within 48 hours at the latest.

• -- Art. 15.17, CCP

Determination of Probable Cause

- The United States Constitution requires that “persons arrested without a warrant must promptly be brought before a neutral magistrate for a judicial determination of probable cause.” *County of Riverside v. McLaughlin*, 500 U.S. 44, 56, 111 S.Ct. 1661, 114 (1991).
- The first step a magistrate must take when a person is presented following a warrantless arrest is to determine whether probable cause exists to believe the accused committed the offense.

Does Probable Cause Exist?

- Probable cause = sufficient reason based upon known facts to believe a crime has been committed
- What if there is no probable cause?
- If a magistrate finds probable cause, then the next step is to administer the warnings in Article 15.17

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 for DWI?

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 for DWI?

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

Article 15.17 Warnings

- Accusations and any affidavit
- Right to retain counsel
- Right to remain silent
- Right to have an attorney present during interview
- Right to terminate the interview
- Right to an examining trial (in felony case)
- Right to request appointment of counsel if indigent
- Procedures for requesting appointment of counsel
- Must be in language accused understands
- Recording must be made and preserved until earlier of date pretrial hearing ends or 91 days for misdemeanor or 120 days for felony
- Ensure reasonable assistance in completing forms for requesting counsel

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, CCP

- Bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with
- Bail is not to be an instrument of oppression
- Nature of the offense and circumstances under which it was committed are to be considered
- Ability to make bail (and proof may be taken)
- Future safety of a victim or the alleged offense and the community shall be considered.

-- Art. 17.15, Code of Criminal Procedure

Importance of Bond Conditions

- Delays in getting drug test results back have led to delays in getting to trial
- Bond conditions are critical in protecting public safety during that interim
- 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.”

• Art. 17.40

Mandatory Interlock

- If the defendant is charged with any of the following offenses:
 - A **subsequent** offense of:
 - Driving While Intoxicated (Penal Code § 49.04)
 - Driving While Intoxicated with Child Passenger (Penal Code § 49.045)
 - Flying While Intoxicated (Penal Code § 49.05)
 - Boating While Intoxicated (Penal Code § 49.06)
 - Or an offense of:
 - Intoxication Assault (Penal Code § 49.07)
 - Intoxication Manslaughter (Penal Code § 49.08)
- The magistrate **SHALL** order the defendant to have an interlock installed **AND** not to operate any motor vehicle unless the vehicle is equipped with an ignition interlock device.
- **Unless** the magistrate finds that it would **not** be in the best interest of justice to require the device.
-- Art. 17.441, CCP

Permissive Interlock

- If the defendant is charged with any of the following offenses:
 - An offense of:
 - Driving While Intoxicated (Penal Code § 49.04)
 - Driving While Intoxicated with Child Passenger (Penal Code § 49.045)
 - Flying While Intoxicated (Penal Code § 49.05)
 - Boating While Intoxicated (Penal Code § 49.06)
- And the magistrate finds that requiring the defendant to install an ignition interlock device is a reasonable bond condition related to the safety of the community; then
- The magistrate **MAY** order the defendant to have an interlock installed **AND** not to operate any motor vehicle unless the vehicle is equipped with an ignition interlock device.
-- Art. 17.441, CCP

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.”
 - Voas & Marques, 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 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. ”

Roth (New Mexico) Study Findings

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

What About License Suspension?

- ALR hearing
 - Officer may not attend
- Even if the officer attends the hearing and the license suspension is upheld, statistics show that up to 75% of drivers will continue to drive on a suspended license.
- A person whose license was suspended may also obtain an ODL.
- So license suspension alone is ineffective in reducing the incidence of DWI offenses.

Interlock Monitoring

- The magistrate **may** designate an appropriate agency to verify the installation of the device and to monitor the device.
 - Defendant must pay a fee to the agency
 - The magistrate shall set the fee in an amount not to exceed \$10 as determined by the county auditor or by the commissioners court
 - Art. 17.441(d), Code of Criminal Procedure

Monitoring Agencies

- Probation department (C.S.C.D.)
- County Attorney's Office
- District Attorney's Office
- County Sheriff's Office
- Court before which the prosecution is pending

- A C.S.C.D. may collect an administrative fee of between \$25 and \$60 per month for providing monitoring services

Monitoring Agencies

- Interlock providers (SmartStart, Guardian, LifeSafer) are not monitoring agencies but provide reports to the monitoring agencies
- In order to be effective bond conditions set by a magistrate must be monitored

Monitoring Other Bond Conditions

- Other bond conditions which a magistrate/court may wish to monitor include:
 - Attending alcohol/drug counseling or substance abuse treatment;
 - Abstention from alcohol and controlled substances;
 - Home curfew;
 - Alcohol/controlled substance testing;

Responsibility for monitoring or modifying bond conditions

- When formal charges are filed in a trial court, responsibility for monitoring bond conditions shifts from the magistrate who originally set the conditions to the judge of the trial court.
- Example: a justice of the peace requires the defendant to install an ignition interlock device within 30 days. Formal charges are filed in a county court 20 days later. It is the county court's responsibility to monitor/enforce this bond condition.

Responsibility for monitoring or modifying bond conditions

- A trial court judge may also alter the bond conditions originally set by a magistrate.
- Example: a magistrate does not require the defendant to install an ignition interlock device as a condition of bond following an arrest for felony DWI. After an indictment is returned in district court, the district judge may add this bond condition.

Responsibility for monitoring or altering bond conditions

- This shift in responsibility makes it important for county magistrates to be on the same page when it comes to setting and monitoring bond conditions.
- Frequent changes to bond conditions result in an uncertain and unpredictable system for defendants, prosecutors, and court staff.

Violation of Bond Conditions

- What happens if you learn from a monitoring agency that a bond condition has been violated?
- Bond revocation hearing may be held if the judge or magistrate in whose court such action is pending finds that the bond is defective, excessive or insufficient in amount . . . **or for any other good and sufficient cause**
- The judge or magistrate may . . . order the accused to be re-arrested and require the accused to give another bond in such amount as the judge or magistrate may deem proper.
-- Art. 17.09, Sec. 3, CCP

Hearing required before bond revoked?

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

1. Yes
2. No

Bond Revocation: Is a Hearing Required?

- TJCTC's Position: The magistrate or trial court with jurisdiction over the criminal prosecution should always provide notice to all parties and hold a hearing before issuing an order revoking the defendant's bond.

Bond Revocation Hearing

- Who holds the bond revocation hearing?
- If a formal charging instrument has not yet been filed in a trial court, then the magistrate who set the bond conditions has jurisdiction over the case for purposes of the bond revocation hearing
- Once a formal charging instrument has been filed, the court in which the case will be tried must preside over the bond revocation hearing

Bond Revocation Hearing

- Motion from prosecutor?
- Motion from monitoring agency?
- Court's own motion?
- TJCTC's Position: Any of these methods is sufficient to initiate bond revocation proceedings.

Bond Revocation: who should be present at the hearing?

- Prosecutor?
- Defendant?
- Monitoring agency?
- TJCTC's Position: An attorney representing the state, the defendant, and the defendant's attorney should all be present at the hearing. The monitoring agency's presence is not required, but it will likely serve as a witness for the state.

Bond Revocation Hearing: Rules of Evidence

- "These rules...do not apply to...bail proceedings other than hearings to deny, revoke, or increase bail."

-- Rule 101, Texas Rules of Evidence

Consistency in Bond Conditions

- Bond conditions are perceived as fair when there is some consistency in the bond conditions set by various county magistrates, and those conditions are monitored/enforced consistently and fairly.
- Bond conditions should not be identical in every DWI case, but bond conditions should not differ widely from case to case either.

Consistency in Bond Conditions

- Consistent bond conditions promote fairness, efficiency, and predictability for:
 - Defendants
 - Prosecutors
 - Monitoring Agencies
 - Court staff

DWI Bond Schematic Program

- Under this program, the county adopts a comprehensive plan for setting, monitoring, and enforcing bond conditions in DWI cases.
- 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 Schematic Program

- Goal of the program is to get all county officials on the same page concerning:
 - Mandatory bond conditions
 - Permissive bond conditions
 - Monitoring of bond conditions
 - Communication concerning bond conditions
- Benefits and challenges in adopting the program

Who May Issue a Blood Search Warrant?

- Any magistrate who is a licensed attorney
- Any magistrate (even if not a licensed attorney) in a county that does not have:
 - A judge of a municipal court of record who is a licensed attorney;
 - A judge of a county court who is a licensed attorney; or
 - A statutory county court judge
-- Art. 18.01(i) and (j), CCP

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 he has to provide a PC affidavit first

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...**

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.

State v. Villareal (CCA opinion, November 26, 2014)

- “We hold that a nonconsensual search of a DWI suspect’s blood conducted pursuant to the mandatory-blood-draw and implied-consent provisions in the Transportation Code, when undertaken in the absence of a warrant or any applicable exception to the warrant requirement, violates the Fourth Amendment. We affirm the judgment of the court of appeals suppressing the blood-test results on the basis of a Fourth Amendment violation.”

Should a warrant issue?

A peace officer has arrested a defendant for DWI, and requests a blood warrant. It’s Saturday morning 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.

Clay v. State, 391 S.W.3d 94
(Tex. Crim. App. 2013)

- Majority opinion (Price): “Because [affiant] Ortega and Judge Harris recognized one another's voices on the telephone at the time Ortega swore out his warrant affidavit, it was properly solemnized. And because Ortega reduced the affidavit to writing and faxed it to Judge Harris for filing, the basis for probable cause was properly memorialized. Under these circumstances, we hold that Article 18.01(b)'s requirement of a ‘sworn affidavit’ was satisfied.”

HB 326, 84th (2015)
Legislative Session

- Adds subsection (b-1) to Article 18.01 of the Code of Criminal Procedure
- Creates new rules for both search warrant applicants and magistrates regarding “electronic search warrants.”

HB 326, 84th (2015) Legislative Session

- New rules for search warrant applicants:

- 1) An applicant may transmit information to a magistrate “by telephone or other reliable electronic means.”
- 2) An applicant shall prepare a “proposed duplicate original” copy of the warrant and must read or transmit its contents verbatim to the magistrate.

HB 326, 84th (2015) Legislative Session

- New rules for magistrates:

- 1) A magistrate may consider information communicated “by telephone or other reliable electronic means” to support a search warrant.
- 2) A magistrate may examine the applicant or any other person on whose testimony the application is based, but only after placing the person under oath.
- 3) A magistrate shall acknowledge the applicant’s attestation to the contents of the search warrant by writing on the affidavit.

HB 326, 84th (2015)
Legislative Session

• New rules for magistrates, continued:

- 4) If the magistrate considers “additional testimony or exhibits,” the magistrate shall:
 - A) ensure that the testimony is recorded verbatim by an electronic recording device, by a court reporter, or in writing;
 - B) ensure that any recording or reporter's notes are transcribed and that the transcription is certified as accurate and is preserved;
 - C) sign, certify the accuracy of, and preserve any other written record; and
 - D) ensure that the exhibits are preserved.

HB 326, 84th (2015)
Legislative Session

• New rules for magistrates, continued:

- 5) A magistrate shall enter the “contents of the proposed duplicate original” copy of the search warrant provided by the applicant into the magistrate’s original search warrant. If the magistrate makes modifications to the “proposed duplicate original”, the magistrate shall:
 - A) transmit the modified version to the applicant by reliable electronic means; or
 - B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

HB 326, 84th (2015)
Legislative Session

- New rules for magistrates, continued:
- 6) A magistrate who issues a search warrant after receiving information by telephone or other electronic means shall:
 - A) Sign all original documents;
 - B) Enter the date and time of issuance on the warrant; and
 - C) Transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original copy of the search warrant.