

Probable Cause & Warrants

Funded by Grants from the Texas Court of Criminal Appeals
and Texas Department of Transportation.

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What We Will Cover

Some Warrant Basics

Determining Probable Cause

Issuing Arrest Warrants

Issuing Search Warrants

- Evidentiary Search Warrants
- Blood Search Warrants
- Contraband Search Warrants

Practice!

Emergency Detention Warrants

Resources

- TJCTC Deskbooks & Forms (www.tjctc.org)
 - Magistration Deskbook
- TJCTC Recordings for Credit (<https://www.tjctc.org/tjctc-resources/Webinars.html>)
- Texas statutes (www.statutes.capitol.texas.gov)
 - Code of Criminal Procedure (CCP)
 - Penal Code
 - Health and Safety Code
 - Transportation Code
 - Alcohol and Beverage Code

Warrant Basics

Remember Your Role!

As a justice of the peace, you serve 2 distinct roles:

Judge

As a judge, you can only have trials, take pleas, or enter convictions for fine-only misdemeanor cases.

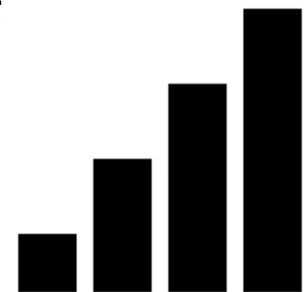
Magistrate

As a magistrate, you have authority to sign arrest warrants for all levels of criminal cases.

*You are a magistrate **even if** you don't read defendants their rights at the jail.*

Have you signed an arrest or search warrant as a JP yet?

1. Yes
2. No
3. No, but I previously worked as a law enforcement officer.
4. No, but I previously worked as a different type of judge who signed warrants.



When are warrants required?

- A law enforcement officer must get a warrant if:
 - **Arrest warrant:** the officer believes someone has committed a crime but didn't see the crime occur.
 - **Search warrant:** the officer believes a person has evidence of a crime and wants to take that evidence.
- Regardless of the offense, that officer can ask you to issue the warrant.

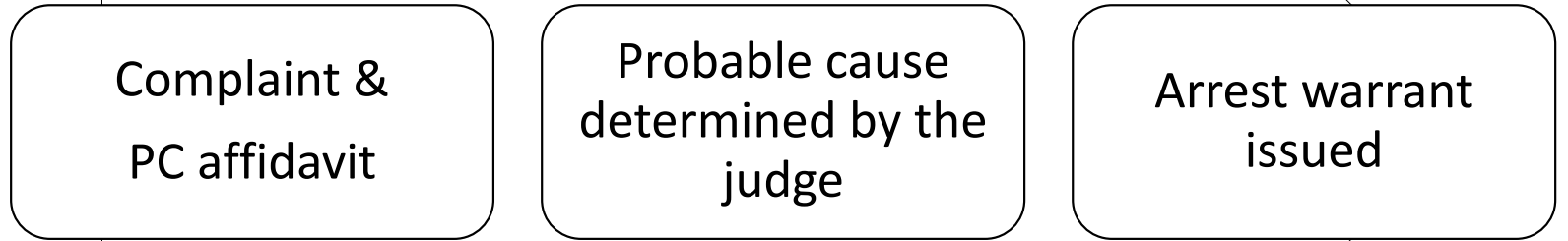
What is required of the magistrate?

- Before you can issue a warrant, you must be given facts that show that:
 - The person the officer wants to arrest committed the crime the officer wants to arrest him/her for, or
 - The person or place the officer wants to search contains the evidence the officer is looking for.
- These facts are needed to determine probable cause.
 - *Discussed in more detail later.*

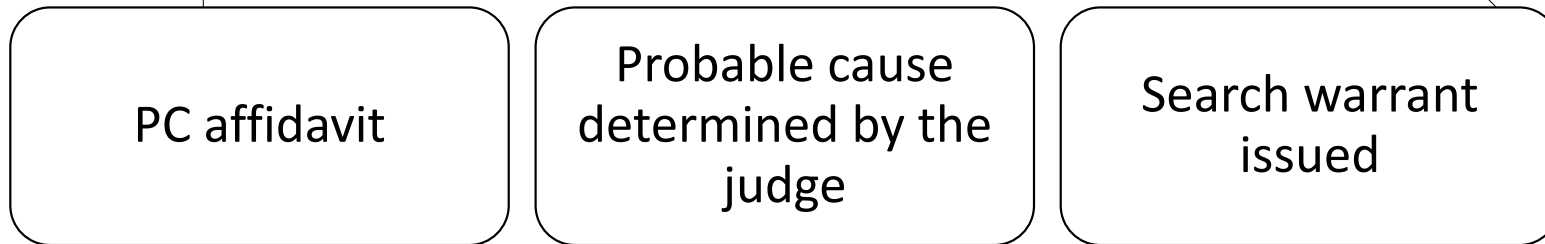
More about Probable Cause

- To prove the facts (establish probable cause), the officer is going to give you documents:
 - Charging complaint (if it's an arrest warrant), and
 - Probable cause affidavit.
- Then you issue the warrant.
 - Only issue the warrant if **YOU** determine there is probable cause.

Arrest Warrant



Search Warrant



Who Prepares The Documents?

- Law enforcement **always** prepares the charging complaint and the probable cause affidavit.
 - You **cannot** create these documents.
- You, the judge, are legally responsible for preparing the **warrant**.
 - Often, the officer has already prepared the warrant and you just need to sign it.
 - This is fine as long as you **read** the warrant and make sure there is probable cause before signing it.

Determining
Probable Cause

Why Is This So Important?

Required by:

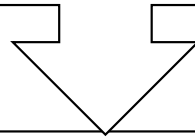
- Fourth Amendment to the Constitution of the United States
- Article 1, Sec. 9 of the Texas Constitution.

Probable Cause - Definition

- Facts and circumstances that make it **more likely than not** that:
 - A certain person has committed, or is committing, a certain crime, or
 - A certain place contains specific items connected to a certain crime.
- Probable cause exists where the police have **reasonably trustworthy information** that causes a **reasonable person** to believe a **particular person** has committed or is committing an offense.
 - *Chapnick v. State*, 25 S.W.3d 875

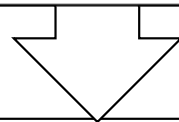
Magistrate's Determination

Probable cause is established when it is determined by a **neutral, detached, and independent** magistrate that the accused **probably** committed the offense alleged.



Is it more likely than not that the person did it?

Yes = probable cause



It is more than a mere suspicion, but less than beyond a reasonable doubt?

Yes = probable cause

Burden of Proof

Mere Suspicion

- A girl is in the makeup section of a store and looks nervous.

Probable Cause

- A manager watches the nervous girl run out of the store then immediately checks the area where the girl was and discovers makeup is missing.

Beyond a Reasonable Doubt

- Store surveillance video shows the girl putting the makeup in her purse.

It is Your Decision!

YOU make the decision on whether or not there is probable cause.

Just because an officer says there is probable cause doesn't mean there is.

Don't trust only what the officers says, **read the affidavit yourself.**

General Guidelines for Finding PC

See Handout

1. It's art, not science
2. Four corners Rule
3. A finding of PC is based on FACTS
4. Hearsay can be included in the affidavit
5. If monetary loss is involved, the affidavit **MUST** state the value of the property or damage caused
6. Confessions
7. Long narratives \neq PC
8. Totality of the circumstances
9. Reasonable inferences
10. Legal wording is not required



TEN GUIDELINES FOR FINDING PROBABLE CAUSE

1. IT'S ART, NOT SCIENCE:

PC is determined on a **case-by-case basis**, but there are rules to be followed.

2. FOUR CORNERS RULE:

If it's not in the affidavit, you don't know it.

Additional facts from the officer can't be considered.

3. THE FINDING OF PROBABLE CAUSE IS BASED ONLY ON FACTS:

Opinions and **conclusions** in the affidavit should be IGNORED.

4. HEARSAY CAN BE INCLUDED IN THE AFFIDAVIT:

Hearsay is information that comes from someone other than the person talking.

Example:

Bob assaults Mary and during the assault Bob made a threatening comment.

Mary tells the police the comment that Bob made.

What Bob said is considered hearsay when Mary repeats it to the police.

5. IF THE CRIME INVOLVES MONETARY LOSS, THE AFFIDAVIT MUST STATE THE VALUE OF THE PROPERTY STOLEN OR DAMAGE CAUSED.

Cash/property stolen: Stating the amount and how the amount was determined is good enough.

Property damage: cost of repair or fair market value (if completely destroyed) and the method for determining value must be stated.

6. CONFESSIONS

If a confession by the accused (written or oral), plus the elements of the offense are in the affidavit, probable cause is established.

7. LONG NARRATIVE DOESN'T ALWAYS = PROBABLE CAUSE

A long narrative may give lots of details but still fail to state essential information such as, how and where the information came from, and may be full of opinions and conclusions.

Look for specifics: the affidavit should give facts about the who, what, when, where, why, and how of the crime.

8. TOTALITY OF THE CIRCUMSTANCES:

Consider **all the facts** in the affidavit before making a decision.

9. REASONABLE INFERENCES:

Use common sense.

Don't be hyper-technical.

10. LEGAL WORDING IS NOT REQUIRED:

Fancy wording is not necessary.

Don't get worried about misspelled words or bad grammar.

If it makes sense and you determine PC, it's fine.

Stay Strong

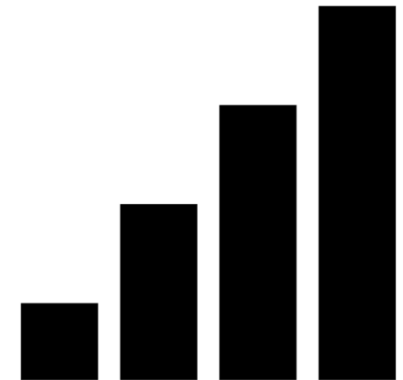
- It's your signature and it's the accused's constitutional rights. If you don't have probable cause, the arrest or search will be illegal.



What do you think?

- “On December 11, 2015, approximately 7:30 PM I, Box County Deputy Bill Russel, responded to the 213 Adobe Drive, for a domestic assault. The defender was identified as Tony Marcus DOYLE (W/M DOB: 12/21/1984). After looking at the victim’s (Sonya Lynn Doyle) injuries, I saw two puncture wounds to her left arm and her description of the incident. I good reason to believe and do believe DOYLE committed the offense of Assault Family Violence (PC 22.01).”

1. Probable Cause
2. NO Probable Cause



Example of Bad Warrant

- “On December 11, 2015 approximately 7:30 PM I, Box County Deputy Bill Russel, responded to the 213 Adobe Drive, for a domestic assault. The defender was identified as Tony Marcus DOYLE (W/M DOB: 12/21/1984). After looking at the victim’s (Sonya Lynn Doyle) injuries, I saw two puncture wounds to her left arm and her description of the incident. I good reason to believe and do believe DOYLE committed the offense of Assault Family Violence (PC 22.01).”
 - There are no facts to support that Tony Doyle committed assault family violence or how the officer came to that conclusion.
 - The complaint is conclusory. There are factual conclusions, but no "actual basis" for those conclusions.

So, what happens?

- Any search and/or confession that occurred after arrest could be ***thrown out***.
 - “No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.”
CCP Art. 38.23



Issuing Arrest Warrants

Code of Criminal Procedure Chapter 15

Documents

1) Charging Complaint – A document charging a person with the commission of an offense.

2) Probable Cause Affidavit - A document explaining the facts and circumstances leading the officer to believe a certain person has committed a certain crime and requesting issuance of an arrest warrant.

3) Arrest Warrant – An order commanding a peace officer to arrest the person named in the warrant.

6 Requirements of a Charging Complaint

1. Be in writing.

2. State the name of the accused.

- If unknown, give a description of that clearly identifies them from any other person.
- Does not have to be legally correct (nickname, aka, misspelled if sounds the same).

3. Allege the commission of an offense.

- Must state that accused committed the offense or the affiant has good reason to believe, and does believe, the accused committed the offense.
- Must have enough information to put the accused on notice of what offense was committed & how, so the accused can prepare a defense.
- Should track the language of the statute.

6 Requirements of a Charging Complaint continued

4. State the time and place where the offense was committed.

- Time = date - “on or about” is sufficient.
- Place = county where the offense occurred.

5. Signed by the affiant (person swearing to the document).

- Writing his/her name, or
- Affixing his/her mark.

6. Under oath.

- Sworn to by the affiant.
- Oaths can be taken by: District attorneys, county attorneys, their assistants, or **magistrates**

Documents

1) Charging Complaint – A document charging a person with the commission of an offense.

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Probable Cause Affidavit 101

- Does more than allege the commission of the offense, it contains ***factual statements*** which establish probable cause for the arrest of the accused.
- The affidavit must contain facts that establish ***each element of the offense***. *Carroll v. U.S.*, 267 U.S. 132



Find the offense in the Penal Code and make sure the affidavit contains all those elements.

Where can you look up the elements of a particular offense? *In the Penal Code or other statute that creates that offense.*

Texas Statutes can be accessed easily online at:
<https://statutes.capitol.texas.gov/>

Probable Cause Affidavit Requirements

- Does not need to track the statutory language defining the offense.
- Sworn to and signed by the officer before the magistrate.
 - May be in the magistrate's presence.
 - May be over the phone.

Carroll v. U.S., 267 U.S. 132

Only the Affidavit

“Four Corners” Rule

- A probable cause determination is based **ONLY** on the affidavit.
- You can't rely on information told to you by the officer.
- If it's not in the affidavit, treat the information as if it doesn't exist.

What if?

- Evidence may be thrown out if the magistrate's conduct shows that he/she did not act in a **neutral, detached manner**.
- **DO NOT:**
 - Write or edit the affidavit supporting the warrant.
 - Tell the officer how to "fix" the affidavit supporting the warrant.

Probable Cause Affidavit

- **Practice Tip:** Often the complaint and PC affidavit are combined into one document.
- This is fine; **however**, the requirements of both documents must be met, or no warrant may be issued.

Documents

- 1) Charging Complaint – A document charging a person with the commission of an offense.
- 2) Probable Cause Affidavit - A document explaining the facts and circumstances leading the officer to believe a certain person has committed a certain crime and requesting issuance of an arrest warrant.

3) Arrest Warrant – An order commanding a peace officer to arrest the person named in the warrant.

Arrest Warrant

- A written order,
- Signed by a magistrate,
- Directed to a peace officer, or some other person specifically named,
- Commanding him/her to take custody of a person accused of an offense. CCP Art. 15.01



Arrest Warrant Requirements

The warrant **MUST**:

- 1) Be issued in the name of “The State of Texas.”
- 2) Name or describe the person to be arrested.
- 3) State the offense the accused is charged with.
- 4) Be signed by a magistrate whose office is either stated in the body of the warrant or in connection with the signature.*

CCP Art. 15.02

New Requirement

- Any signed orders issued by a magistrate under the CCP or pertaining to a criminal matter and issued under another code must include with the **magistrate's signature**, the **magistrate's name** in legible handwriting, legible typewritten form, or legible stamp print.
- Failure to do this does not affect the validity of the order, but defendant in a criminal action can make a motion to have the name added if the order is relevant to the action and the def is unable to identify the magistrate who signed the order.
- The Texas Supreme Court may adopt rules to implement this article.

CCP Art. 2.101

Arrest Warrant Procedure

1. Swear in the officer:

- ✓ Have the officer face you.
- ✓ Both raise your right hands.
- ✓ Administer the oath.
- ✓ Officer signs the charging complaint, PC affidavit, and arrest warrant application

2. Review the Charging Complaint, PC Affidavit, and warrant application:

- ✓ Read each document.
- ✓ Make sure requirements are met.
- ✓ Determine whether there is PC.

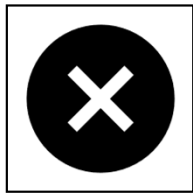
3. If Probable Cause (PC) exists:

- ✓ Sign and date the documents.
- ✓ Make sure your office is listed next to your signature (if not included in the warrant).
- ✓ Affix your official seal (if not pre-printed).

Tips

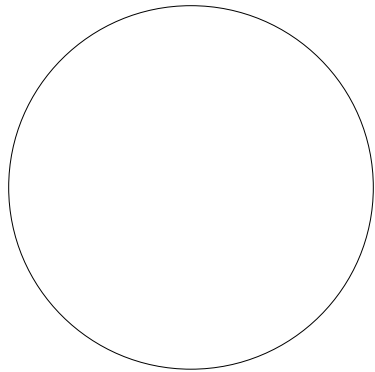


NEVER sign an arrest warrant without having first read the charging complaint and probable cause affidavit.



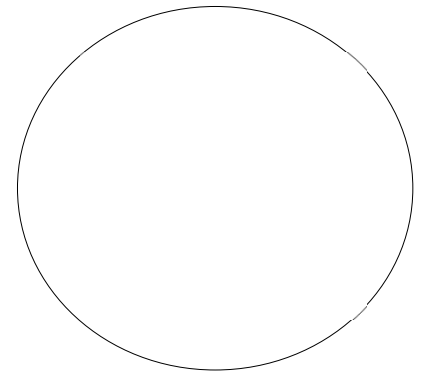
If there is any kind of problem with any of the documents, refuse to sign unless and until the problem(s) is/are resolved.

How This Works in Real Life:



What does the process really look like?

How do the documents get to the judge for his/her signature?



Probable Cause
Affidavit
Example

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS

BEFORE ME, the undersigned authority, on this the 7th day of September, 2018, personally appeared Sam Johnson who after being duly sworn, on oath deposes and says: that heretofore, to-wit on or about the 17th day of August, 2018 and before making and filing this complaint, in the County of Travis, and State of Texas:

JUAN GUZMAN (DOB 04/15/73)

Did then and there knowingly and intentionally deliver by actual transfer to a confidential informant a controlled substance, to-wit: methamphetamine in an amount by aggregate weight, including any adulterants or dilutants, of no less than 1 gram or no more than 4 grams.

THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:

On or about August 17, 2018, at approximately 2058 hrs., I, Austin Police officer Sam Johnson, conducted a control buy with a subject whom from this point forward will be referred to as Certified Informant (CI). CI has proven to be a credible informant and has knowledge of drug dealers in the City of Austin and what drugs look like. CI's information has been corroborated by other sources.

I arrived at a pre-arranged location and met with CI. CI told me CI had talked to Juan Guzman and the CI was to meet Guzman at his residence located at 1801 16th Street, Austin, Travis County, Texas to purchase some methamphetamine from him. CI stated CI was going to purchase forty dollars (\$40.00) worth of methamphetamine from Guzman.

I checked CI's person to which CI was clear of any extra money or narcotics. I handed CI \$40.00 in U.S. currency from the Austin Police narcotics funds for the purchase of methamphetamine. CI left the location and I maintained surveillance on CI as CI arrived at said location. I saw CI arrive at the location and a short time later left the residence. I followed CI back to a predetermined location and maintained surveillance on CI.

I met CI at the predetermined location. CI handed me two clear plastic bags containing a crystal like substance to wit: methamphetamine. I am familiar with the appearance and packaging of illegal narcotics to include methamphetamines through years of police work, police training, and successful investigations and arrests involving the possession and distribution of illegal narcotics. CI stated CI met with Guzman and handed Guzman the forty dollars and in return Guzman handed CI the baggies of methamphetamine.

I searched CI's person to which CI was clear. I went back to the police station and weighed the methamphetamine to which it weighed approximately 1.0 grams. Guzman was identified as Juan Guzman (DOB 04/15/73) by our in house RMS system.

Against the peace and dignity of the State

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS _____ DAY OF _____, 20____.

JUSTICE OF THE PEACE, PCT. # _____
Travis County, Texas

Arrest Warrant Example

WARRANT OF ARREST

IN THE JUSTICE COURT
COUNTY OF TRAVIS

CAUSE # _____

THE STATE OF TEXAS
VS
JUAN GUZMAN

DOB 04/15/73

TO ANY PEACE OFFICER OF THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to arrest JUAN GUZMAN if to be found in your county and bring him before me, a JUSTICE OF THE PEACE in and for PRECINCT ____, of TRAVIS COUNTY at my office in AUSTIN in said county, on the Instanter, then and there to answer the State of Texas on the offense against the laws of said State, to-wit: DELIVERY OF A CONTROLLED SUBSTANCE PG 1 (1-4 GRAMS) CJIS Number 3599002, HSC 481.112(c), Felony 2 on the 17th of August, 2018 of which he stands accused by the written complaint, under oath of JOHNSON, SAM, filed before me.

Herein fail not, but of this writ make due return, showing how you have executed the same.

Witness my official signature, this the 7th day of September, 2018.

Judge
Travis County, Texas

SHERIFF'S OR CONSTABLE'S RETURN

Came to hand the ____ day of _____, 20__ at _____ o'clock __.M., and executed on the ____ day of _____, 20__ at _____ o'clock __.M., by arresting the within named at _____ in _____ County, and *taking his bond, *placing him in jail at _____.

I actually and necessarily travelled _____ miles in the service of this writ, in addition to any other mileage I may have traveled in the service of other process in this cause during the same trip.

Sheriff, Constable

County _____
By _____ Deputy



Issuing Search Warrants

Code of Criminal Procedure Chapter 18

General Rules

The magistrate issuing a warrant must have jurisdiction over the geographical area to be searched.

- *Gilbert v. State*

This means you can only issue warrants to search in your **county**.

- You are issuing the warrant as a ***magistrate, not as a judge***, so your jurisdiction is county-wide

There are some types of search warrants that JPs can only issue in certain circumstances (*Discussed further later*)

Documents

1) Probable Cause Affidavit – A document explaining the facts and circumstances leading the officer to believe evidence of a particular crime is located at a particular location and requesting issuance of a search warrant.

2) Search Warrant – An order commanding a peace officer to search for and seize a specific item or items.

Probable Cause Affidavit

- Must contain **sufficient facts** that when coupled with inferences from those facts, establish a **fair probability** that evidence of a particular crime will likely be found at the specific location.
- A sworn affidavit is required for every search warrant requested.
- If the warrant is executed:
 - The affidavit is **public knowledge** (unless it's a *sealed* felony case).
 - Magistrate's clerk must make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

CCP Art. 18.01(b), *Illinois v. Gates*, 462 U.S. 213

Probable Cause Affidavit Requirements

The affidavit **must**:

- 1) Describe the person, place, or thing to be searched.
- 2) Name or describe the thing(s) to be seized.
- 3) Describe the location of the person, place, or thing to be searched in sufficient detail.

Ask yourself: “Could I find this person, place, or thing using the information found in the affidavit?”

- 4) Provide facts that allow the magistrate to reasonably infer that the object(s) of the warrant are present at the suspected premises at the time the warrant is issued.

Documents

1) Probable Cause Affidavit – A document explaining the facts and circumstances leading the officer to believe evidence of a particular crime is located at a particular location and requesting issuance of a search warrant.

2) Search Warrant – An order commanding a peace officer to search for and seize a specific item or items.

Search Warrant Requirements

The search warrant **MUST:**

- 1) Be issued in the name of “The State of Texas.”
- 2) Identify, with as much detail as possible, the item or items to be seized.
- 3) Name or describe, with as much detail as possible, the person, place, or thing to be searched.
- 4) Command any peace officer of the proper county to search the person, place, or thing named.
- 5) Be dated and signed by the magistrate.
- 6) Have the magistrate's name typed or be in clearly legible handwriting next to the magistrate's signature.

CCP Art. 18.04

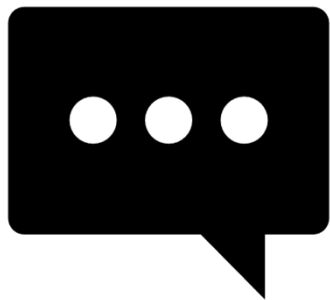
What items Can Search Warrants Be For?

- There are many categories of items that search warrants can be for listed in the Code of Criminal Procedure. Look at **“What Can a Search Warrant be Issued For?”** & **“Search Warrants – Additional Info”** at the end of your handouts for this course.

Evidentiary vs. Contraband

- **Evidentiary Search Warrants** are for property or items that constitute evidence of a crime or evidence that shows a particular person committed a crime (*wouldn't ordinarily be a crime to possess these items*)
 - **Examples:** rope, pillowcase, blood, kitchen knife
- **Contraband Search Warrants** are for property that is used in the commission of certain crimes, proceeds gained from the commission of those certain crimes, acquired with proceeds gained from the commission of those crimes, or used to facilitate the commission of certain crimes.
 - **Examples:** suspected drug dealer's vehicle or cash found at their house, credit card maker (used for credit card abuse scheme)

Which
Category
Does this
Item
fit in?



Slot machines

Cocaine

A stolen bicycle

Evidentiary & Contraband Warrants

- **If** the county does not have **any** of the following, then **any** magistrate may sign an evidentiary or contraband warrant:
 - Judge of a municipal court of record who is a Texas attorney.
 - County court judge who is a Texas attorney.
 - Statutory county court judge (County Court at Law).
- JPs who are Texas attorneys can sign blood warrants even if their county has one of the above.

See the end of your handouts for this class for the **“When a JP Can Issue a Search Warrant (Including a Blood Search Warrant) Flowchart”**.

CCP Art. 18.01(c),(h)&(i)

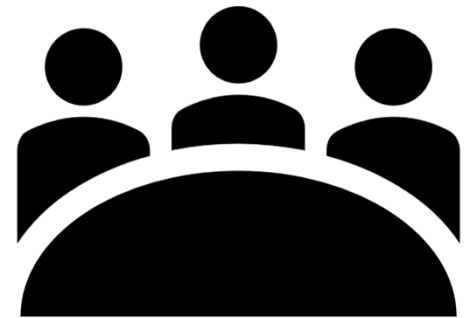
Blood Warrants

- A blood warrant is an example of an evidentiary warrant.
 - A blood warrant is a warrant requesting a blood sample from a person suspected of committing an alcohol related offense.
- Any magistrate who is a Texas attorney can always sign a blood warrant, regardless of the rule on the previous slide.

CCP Art. 18.01(j)

Can you issue a blood search warrant?

Use the “When a JP Can Issue a Search Warrant (Including a Blood Search Warrant) Flowchart?” flowchart and discuss in your breakout group.



Executed in Adjoining Counties

- Blood search warrants may be executed in any county adjacent to the county in which the warrant was issued by any law enforcement officer authorized to make an arrest in the county of execution.
- Evidence seized under a blood search warrant may be removed from the county in which it was seized and returned to the county in which the warrant was issued without a court order.

Code of Criminal Procedure Art. 18.067, 18.10

Subsequent Evidentiary Warrants

- Sometimes, a second evidentiary search warrant is needed to re-search the same person, place, or thing that was already searched.
 - A second evidentiary search warrant may only be signed by a:
 - Constitutional county court judge
 - District court judge
 - Court of appeals judge
 - Court of criminal appeals judge
 - Supreme Court of Texas justice
- CCP Art. 18.01(d)

Other Types of Search Warrants

- For more information on Evidentiary Search Warrants, Contraband Warrants, and Cell Phones & Other Devices, see the page entitled “**Warrants**” at the end of this handout.
- Note, during the 2021 legislative session, there was a new search warrant created for obtaining disclosure of location information that is held in electronic storage by an electronic communications service or a provider of a remote computing service, but they must be issued by a **district court judge**.

Search Warrant Procedure

1. Swear in the officer:

- ✓ Have the officer face you.
- ✓ Both raise your right hands.
- ✓ Administer the oath.
- ✓ Officer signs the PC affidavit and search warrant application

2. Review the PC Affidavit, and search warrant application:

- ✓ Read each document.
- ✓ Determine if there is PC to believe evidence of a particular crime is located in a particular location
- ✓ Make sure the warrant only includes search for authorized items.

3. If Probable Cause (PC) exists:

- ✓ Sign and date the documents.
- ✓ Make sure your office is listed next to your signature (if not included in the warrant).
- ✓ Affix your official seal (if not pre-printed).

Procedure: Electronic Information

- 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:
 - Send a duplicate copy of the warrant to the magistrate.
 - Read or transmit the warrant's contents verbatim to the magistrate.
- CCP Art. 18.01(b-1)

Procedure: Electronic Information *Continued*

If relying on electronically communicated information, the magistrate **MAY**:

- Question, under oath, the affiant or anyone 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 Art. 18.01(b-1)

Requirements Related to Electronic Information

If relying on electronically communicated information, 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.

Probable Cause
Affidavit
Example

Search Warrant Example

THE STATE OF TEXAS §
 §
 §
COUNTY OF POTTER §

AFFIDAVIT FOR SEARCH WARRANT

THE UNDERSIGNED AFFIANT, BEING A PEACE OFFICER PURSUANT TO THE LAWS OF THE STATE OF TEXAS, AND HAVING BEEN DULY SWORN, UPON OATH, MAKES THE FOLLOWING STATEMENTS AND ACCUSATIONS:

1. There is in Potter County, Texas a suspected party (hereafter referred to as “suspected party”) and more specifically described as: an individual named GERARDO DELAPAZ a Hispanic male, born October 24, 1994, approximately 5 ft. 4 in. in height, and 125 lbs. in weight.
2. The last known residence of said suspected party is 1013 Sycamore, Amarillo, Texas 79107.
3. It is the belief of Affiant, and Affiant hereby charges and accuses, that the said suspected party is in possession of, and is concealing the following property: bodily fluids containing DNA, specifically saliva. Said property constitutes evidence that an offense was committed, to-wit, Aggravated Robbery, and that the suspected party has committed said offense.
4. Affiant has probable cause for his belief by reason of the following facts:

Affiant SERGEANT CURT GABEL is a peace officer under the laws of the State of Texas and is currently commissioned and employed by the City of Amarillo, Amarillo Police Department. Affiant is currently assigned to the Robbery Division of the Amarillo Police Department. Affiant has learned the following information from personal investigation and from information gathered by other peace officers who have assisted in said investigation.

On February 2, 2012 at approximately 1:00 AM, a home invasion robbery was reported at 7701 Canyon Drive in Randall County. The Yarbrough Veterinary Clinic and the victims’ home are located at that address. The victims, William and Roxanne Yarbrough, reported they were asleep in the back master bedroom when the back door to that room was kicked in from the outside. The victims were ordered to the ground by multiple masked men. The victims were placed face down on the floor next to the bed and William felt what he believed to be a firearm placed against his back; thereby placing him in fear of imminent serious bodily injury or death. The Yarbroughs’ hands were secured with duct tape by men wearing black gloves, masks, and dark clothing. Neither of the victims saw the intruders’ faces. The intruders spoke English to the victims and Spanish to each other. William remained face

down in response to threats of death if he did not comply. He heard instructions for his wife to stand up.

Roxanne reported that after her hands were taped in front of her, she was forced to reveal the location of a home safe behind a hanging picture on the wall of the master bedroom. The intruders specifically asked "where's the vault." Roxanne was instructed to keep her head down and not look at the robbers. Roxanne believed approximately \$10,000.00 was contained in the strong box located in the wall behind the picture. During this process, Roxanne was able to glance at one of the intruders. The male she saw was wearing all black clothing; long sleeves and pants, black gloves, and a black ski mask. The intruder was armed with a black semi-automatic pistol. The intruders then began to ask "where's the gold?" William and Roxanne had purchased gold coins one to two years prior and initially kept the gold in their home. Approximately six months prior to the robbery, the Yarbroughs moved the gold to a bank safety deposit box which Roxanne told the intruders. Roxanne stated they purchased the gold from her cousin Justin Chapman, and only a small number of people knew about the gold or safe.

Roxanne was then forced to show the intruders other locations within the home including the gun cabinet in the pantry. One of the intruders broke the glass in the cabinet and removed several rifles. The intruders also took approximately three handguns from under the mattress in the master bedroom. Roxanne was taken upstairs where a guest bedroom and office were ransacked. She believed she was taken upstairs to be executed and she began to beg for her life. Roxanne's arms and legs were bound with electric cords and she was taken back downstairs where she remained until her husband found her several minutes later.

William remained face down on the floor of the bedroom when his wife was taken from the room by the intruders, and at some point he was "hog-tied." William could hear activity in other rooms and the sound of breaking glass and other objects crashing to the floor. William remained where he was for several minutes until there was silence in the house. William was eventually able to free himself from his restraints and then went to the living room to free Roxanne. The intruders took the Yarbroughs' car keys and cell phones and cut all the phone lines in the home. They were able to locate a set of spare keys to their jeep and fled to Roxanne's niece's house located at 5104 Black Oak to call 911.

Officers responded to both locations and contact was initially made with the victims at 5104 Black Oak and photos were taken of their injuries. The victims returned with officers to 7701 Canyon Drive where officers observed the back door had been kicked in and the house had been ransacked. A pillow case was missing from a pillow located near the door and investigators surmised that the pillow case was used to carry some of the stolen items from the scene. William reported his wallet and its contents were missing and most of Roxanne's jewelry was taken in addition to the multiple firearms. Investigators found electric cords that had been cut or pulled from appliances and used to tie up the victims. They also found the duct tape that was used to bind the victims as well as the telephones that had been disabled. CSI Officer Miller photographed and processed the scene and collected the above described evidence. Detective Higgins took statements from the victims at the scene. The

victims agreed to compile a list of persons who would have known about the strong box and the gold.

Roxanne Yarbrough stated that Catherine Pruitt could be a suspect in the robbery. Roxanne knows Pruitt because Pruitt was the live-in girlfriend of James Day for several years. Day was a close friend of William and Roxanne. Day and Pruitt were privy to conversations with the Yarbroughs about the Yarbroughs' gold. When Day was diagnosed with a terminal illness and died, Pruitt learned Roxanne was executrix of Day's estate. She also learned Day had left her nothing. Day died about one year prior to the robbery. Pruitt had gone to work as the manager of a Dairy Queen restaurant in Amarillo, but was terminated in January 2012 when it was discovered she had embezzled approximately \$2,400.00 from the store. The general manager agreed to forego prosecution if Pruitt would reimburse the store. Pruitt continued to promise she would, but failed to produce the funds. The day of the robbery, around noon, Pruitt repaid the store the exact amount stolen in cash. Pruitt eventually cooperated with law enforcement and provided the names of the other people involved in the robbery. Pruitt identified her boyfriend Julian Baez as the driver of the getaway car and Chaos, Elvis, Chico, and Josh as the men who went into the home. Law enforcement was able to identify Chaos, a street name, as Gerardo Delapaz, the suspected person. Elvis was identified as Elvis Ibrian Gonzalez. Chico, a street name, was identified as Luis Garcia. Josh was identified as Joshua Ryan Garza.

Jamie Luna, a person named by Pruitt as someone she was with the night of the robbery, was identified and interviewed in 2015. Luna was present when Pruitt met with Baez during the commission of the robbery. Luna was able to provide the names of the other men she knew were involved in the robbery as Chaos, Elvis, and Josh (identified fully above). Luna stated the men were dressed in dark clothing the night of the robbery. Luna was asked to identify the three intruders by photographs since she only knew them by first names or street names. Luna was able to identify all three men.

Irma Lucero, a friend of Pruitt, reported to officers that she heard a conversation between Pruitt and Baez in which Baez was upset with Pruitt for depositing a large sum of cash into her bank account on the day of the robbery. Irma further advised she overheard a phone conversation where Baez was telling an unknown person that no one would discover who committed the robbery since the intruders were wearing gloves and masks. Irma Lucero obtained a ski mask and toboggan from Pruitt that were possibly used in the robbery and provided said items to law enforcement.

The ski mask and toboggan were sent to the DPS lab in Lubbock on May 8, 2012 but were returned untested in October 2012 due to the lab's belief this was a burglary and therefore did not meet their priority threshold. Based upon investigation, Affiant believes the suspected party was one of the masked intruders and further believes the ski mask and/or toboggan may contain the suspected person's DNA.

Wherefore, Affiant asks for issuance of a search warrant that will authorize the search of the suspected party for the property described above, the seizure of the same, said seizure to be

accomplished by the application of a cotton swab to the inside of the suspected party's mouth, and to take custody of all seized items and safe keep such items as provided by law.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY SAID AFFIANT ON THIS THE
_____ DAY OF _____, 2015.

MAGISTRATE

Search Warrant Example

STATE OF TEXAS §
 §
 §
COUNTY OF POTTER §

SEARCH WARRANT

THE STATE OF TEXAS to the Sheriff or any Peace Officer of Potter County, Texas or any Peace Officer of the State of Texas, GREETINGS:

WHEREAS, the Affiant whose name appears on the Affidavit attached hereto is a Peace Officer under the laws of Texas and did heretofore this day subscribe and swear to said Affidavit before me, which said Affidavit is here now made part hereof for all purposes, and whereas I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expressed therein and established existence of proper grounds for issuance of the Warrant.

THEREFORE, you are commanded to seize the suspected party described in said Affidavit and take samples of the property described in Paragraph Three of the affidavit from the suspected party and bring those things before me as required by law.

IT IS ORDERED, that the property seized by the authority of this Warrant shall be, and remain, under the care, custody, and control of that peace officer or his designated party, and may be removed to any location within the State of Texas, as deemed necessary by the officer, for the purposes of safekeeping, testing, and completion of any investigation or proceedings related to the activities described in the affidavit upon which the warrant was issued.

HEREIN FAIL NOT, but have you then and there this Warrant within three days, exclusive of the day of its issuance and exclusive of the day if its execution, with your return thereon, showing how you have executed the same.

ISSUED this the _____ day of _____, at _____ M to certify which witness my hand this day.

MAGISTRATE

STATE OF TEXAS §
 §
 §
COUNTY OF POTTER §

SEARCH WARRANT RETURN

The undersigned Affiant, being a Peace Officer under the laws of Texas and being duly sworn, on oath certifies that the foregoing Warrant came to hand the day it was issued and that it was executed on the _____ day of _____, 20____ by making the search directed therein, and by seizing during such search the property described in the attached evidence log.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME by said Affiant whose name is signed above on this the _____ day of _____, 20_____.

MAGISTRATE

Tip

- **Never** go with officers to execute the warrant or help plan the execution of the warrant!!
 - You have no business out there and will be inviting trouble.

Let's
Practice!

Is There
Probable
Cause?

Compare and contrast Search Warrant #1 and Search Warrant #2.

- Do either establish probable cause?
- Identify the facts that establish probable cause.
- Identify what facts are missing that results in a finding of no probable cause.

Search Warrant #1 and #2 are the next pages in your handout.

SEARCH WARRANT – EXAMPLE 1

THE STATE OF TEXAS

COUNTY OF RANDALL

THE UNDERSIGNED AFFIANT, BEING A PEACE OFFICER UNDER THE LAWS OF TEXAS AND BEING DULY SWORN, ON OATH MAKES THE FOLLOWING STATEMENTS AND ACCUSATIONS:

1. THERE IS IN RANDALL COUNTY, TEXAS A SUSPECTED PLACE (HEREAFTER CALLED “SUSPECTED PLACE”) DESCRIBED AS FOLLOWS: A SINGLE STORY, SINGLE FAMILY, RESIDENCE LOCATED AT 5206 4TH AVE CANYON, RANDALL COUNTY TEXAS. THE SUSPECTED PLACE IS A NEW HOUSE WITH A BLACK OR BROWN COMPOSITION ROOF. THE SUSPECTED PLACE ALSO HAS A DARK BROWN FRONT DOOR. THE NUMBERS 5206 ARE ENGRAVED INTO THE MATERIAL OF THE HOUSE. THE SUSPECTED PLACE ALSO HAS A FIRE PLACE LOCATED ON THE SOUTHSIDE OF THE HOUSE. THE SUSPECTED PLACE HAS NO GRASS AND MOSTLY CONTAINS ALL DIRT IN THE FRONT YARD WITH A FEW TREES THAT HAVE RECENTLY BEEN PLANTED. THE GARAGE IS ON THE EAST SIDE OF THE HOUSE WITH A WHITE 2013 DODGE RAM PICKUP WITH TEXAS TAG #CYK4427 POSSIBLY PARKED IN THE DRIVEWAY. FOR FURTHER DESCRIPTION OF THE SUSPECTED PLACE, SEE THE PHOTOGRAPH ATTACHED AS EXHIBIT B. THE SUSPECTED PLACE INCLUDES ALL EDIFICES, VEHICLES, OUTBUILDINGS, AND THE CURTILAGE THEREOF.

2. SAID SUSPECTED PLACE IS CONTROLLED BY THE FOLLOWING SUSPECTED PARTY DESCRIBED AS FOLLOWS: A WHITE MALE, STEVEN RAY DAVIS, BORN 05-18-1950 AND FURTHER DESCRIBED AS BEING 6’2” TALL AND WEIGHING APPROXIMATELY 240 POUNDS WITH GREY HAIR AND BLUE EYES. DAVIS HOLDS TEXAS DRIVER’S LICENSE NUMBER 05663815.

3. IT IS THE BELIEF OF AFFIANT, AND AFFIANT HEREBY CHARGES AND ACCUSES, THAT SAID SUSPECTED PARTY HAS POSSESSION OF AND IS CONCEALING IN THE SAID SUSPECTED PLACE THE FOLLOWING DESCRIBED PERSONAL PROPERTY, TO WIT: 2-3 INCH SILVER IN COLOR PISTOL WITH POSSIBLE WHITE HANDLED GRIP. THE GUN SHOOTS 2 BULLETS AND BREAKS IN HALF TO RELOAD IT. IT IS THE BELIEF OF THE AFFIANT THAT THE SPECIFIC CRIMINAL OFFENSE HAS BEEN COMMITTED, TO WIT: AGRRAVATED ASSAULT WITH A DEADLY WEAPON. AFFIANT WISHES TO SEIZE SAID PERSONAL PROPERTY IN ORDER FOR THE COMPLAINING WITNESS TO IDENTIFY SAID PROPERTY IN A PHOTO LINEUP.

4. AFFIANT HAS PROBABLE CAUSE FOR THE SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO WIT: AFFIANT JAMES WILLIAMS IS A POLICE OFFICER EMPLOYED BY THE CITY OF CANYON, POLICE DEPARTMENT. AFFIANT HAS WORKED FOR THE CANYON POLICE DEPARTMENT FOR 4 MONTHS AND HAS BEEN TRAINED BY THE CANYON POLICE DEPARTMENT ON DRAFTING AND EXECUTING SEARCH WARRANTS SUCH AS THIS. AFFIANT IS CURRENTLY ASSIGNED AS A PATROL OFFICER.

ON 2-12-15 AT APPROXIMATELY 9:30AM THE AFFIANT WAS CONTACTED IN PERSON BY ANTHONY RAY MONTOYA WITH DATE OF BIRTH SEPTEMBER 20, 1964. MONTOYA SAID HE HAS BEEN WORKING FOR STEVE DAVIS (SUSPECTED PARTY) AT 5206 4TH AVE CANYON, TX 79015 (SUSPECTED PLACE). MONTOYA IS A PAINTER. ON 2-6-15 BETWEEN 9:00AM AND 10:00AM, MONTOYA WENT TO DAVIS’ HOUSE TO PAINT THE HOME AS HE WAS HIRED TO DO. WHEN MONTOYA ARRIVED, DAVIS AND AN UNKNOWN FRIEND WERE WATCHING AN UNKNOWN PERSON STEAM CLEAN THE CARPET IN THE GARAGE. MONTOYA WAS PAINTING THE WALLS IN THE GARAGE WHEN DAVIS APPROACHED HIM AND SAID “ARE YOU TRYING TO TOUCH UP THE HOLIDAYS?” MONTOYA SAID TOUCHING UP THE HOLIDAYS MEANS PAINTING SPOTS THAT DON’T MATCH. MONTOYA KNOWS THE MEANING OF THAT PHRASE BECAUSE IT IS A PHRASE COMMONLY USED IN THE PAINTING BUSINESS. MONTOYA TOLD DAVIS NOT TO WORRY ABOUT IT, THE PAINT WILL MATCH. MONTOYA THEN STARTED WATCHING THE CARPET CLEANER. DAVIS WALKED CLOSER TO MONTOYA AND SAID “WHAT THE FUCK ARE YOU DOING?” DAVIS TOLD MONTOYA THAT HE NEEDED TO FOCUS ON TOUCHING UP THE HOUSE. MONTOYA REPLIED THAT DAVIS NEEDED TO FOCUS ON GETTING HIM HIS MONEY FOR THE WORK HE

HAS PERFORMED. MONTOYA EXPLAINED DAVIS OWES HIM ABOUT \$2,500.00. MONTOYA SAID DAVIS TURNED AROUND AND GRABBED MONTOYA BY HIS RIGHT SHOULDER AND PLACED A GUN TO HIS CHEST. THE GUN IS DESCRIBED AS A 2-3 INCH SILVER IN COLOR PISTOL WITH POSSIBLE WHITE HANDLED GRIP. THE GUN SHOOTS 2 BULLETS AND BREAKS IN HALF TO RELOAD IT. MONTOYA SAID HIS BODY IMMEDIATELY TENSED UP AND HE FELT IN FEAR FOR HIS LIFE BECAUSE HE BELIEVED THE GUN WAS LOADED SINCE HE HAD SEEN DAVIS FREQUENTLY CARRYING IT ON HIS PERSON. MONTOYA SAID DAVIS' EYES AND PUPILS WERE A BRIGHT RED AS IF HE WAS ANGRY. DAVIS BACKED AWAY AND PUT THE GUN IN HIS RIGHT POCKET. MONTOYA ADDED HE HAS SEEN THIS GUN ON SEVERAL OCCASIONS BEFORE WHEN DAVIS WOULD JOKE AROUND WITH THE GUN, BUT DAVIS NEVER POINTED IT AT HIM BEFORE. MONTOYA SAID THAT DAVIS KEEPS THE GUN ON HIS PERSON FREQUENTLY. FOR FURTHER INFORMATION REFER TO EXHIBIT A, THE AFFIDAVIT FROM MONTOYA.

MONTOYA AGREED TO CALL DAVIS AND ALLOWED CANYON POLICE TO RECORD THE CONVERSATION. MONTOYA SIGNED THE RELEASE FORM ALLOWING POLICE TO DO THIS. MONTOYA ASKED NUMEROUS TIMES DURING THE PHONE CONVERSATION WHY DAVIS POINTED THE GUN AT HIM AND THAT IT WASN'T SAFE TO BE DOING THAT. DAVIS SAID HE DIDN'T PULL ANYTHING OUT ON MONTOYA AND THAT IT WAS ONLY A "TOY." WHEN MONTOYA KEPT ASKING WHY HE PULLED THE GUN OUT ON HIM, DAVIS WOULD REPLY THAT IT WAS ONLY "A TOY". DAVIS SAID MONTOYA HAS BEEN IN THE PENITENARY AND THAT HE ISN'T SCARED OF ANYTHING. DAVIS SAID THAT HIS "TOY" IS A PISTOL. DAVID STARTED TELLING MONTOYA THAT HE DIDN'T MEAN TO, BUT THEN REPHRASED AND SAID THAT HE DIDN'T DO ANYTHING TO MONTOYA. DAVIS SAID HE WASN'T THREATENING MONTOYA, HE WAS ONLY SHOWING THE PISTOL TO HIM. DAVIS TOLD MONTOYA TO JUST "LET IT GO" AND COME BACK AND FINISH THE JOB. DAVIS SAID HE DIDN'T KNOW HE DID ANYTHING THAT SCARED MONTOYA AND HE JUST THOUGHT THEY WERE CUTTING UP. DAVIS TOLD MONTOYA THAT HE DIDN'T KNOW HE DID ANYTHING TO HIM AND THAT IF HE DID, HE DIDN'T MEAN TO DO IT.

THEREFORE, AFFIANT ASKS FOR THE ISSUANCE OF A WARRANT THAT WILL AUTHORIZE THE SEARCH OF SAID SUSPECTED PLACE AND THE SUSPECTED PARTY FOR THE ITEM SPECIFIED IN PARAGRAPH THREE AND SEIZE THE SAME.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY SAID AFFIANT ON THIS THE ____ DAY OF
_____.

MAGISTRATE

STATE OF TEXAS

COUNTY OF RANDALL

THE STATE OF TEXAS to the Sheriff or any Peace Officer of Randall County, Texas or any Peace Officer of the State of Texas, GREETINGS:

WHEREAS, the Affiant whose name appears on the Affidavit attached hereto is a Peace Officer under the laws of Texas and did heretofore this day subscribe and swear to said Affidavit before me (which said Affidavit is here now made part hereof for all purposes), and whereas I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expressed therein and established existence of proper grounds for issuance of the Warrant; now, therefore, you are commanded to enter the said suspected place described in said Affidavit and to here search for the items specified in paragraph three of said Affidavit and to seize same and bring it before me.

_____ I further find that the Affiant has established reasonable suspicion to believe that to knock and announce the purpose of the officers executing this warrant would be dangerous, futile or otherwise inhibit the effective investigation of the offense(s) for which this warrant has been issued. Therefore, unless circumstances to the contrary are discovered prior to entry, you are hereby authorized to dispense with the usual requirements that you knock and announce your purpose before entering the suspected place to execute this warrant.

HEREIN FAIL NOT, but have you then and there this Warrant within three days, exclusive of the day of its issuance and exclusive of the day if its execution, with your return thereon, showing how you have executed the same.

ISSUED this the _____ day of _____, at _____ __M to certify which witness my hand this day.

Magistrate

THE STATE OF TEXAS

COUNTY OF RANDALL

The undersigned Affiant, being a Peace Officer under the laws of Texas and being duly sworn, on oath certifies that the foregoing Warrant came to hand on the day it was issued and that it was executed on the _____ day of _____ by making the search directed therein and by arresting and placing in jail the following persons, to wit:

And by seizing during such search the property described in the attached evidence log.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME by the said Affiant whose name is signed above on this the _____ day of _____.

MAGISTRATE

SEARCH WARRANT – EXAMPLE 2

THE STATE OF TEXAS

COUNTY OF RANDALL

THE UNDERSIGNED AFFIANT, BEING A PEACE OFFICER UNDER THE LAWS OF TEXAS AND BEING DULY SWORN, ON OATH MAKES THE FOLLOWING STATEMENTS AND ACCUSATIONS:

1. THERE IS IN RANDALL COUNTY, TEXAS A SUSPECTED PLACE (HEREAFTER CALLED “SUSPECTED PLACE”) DESCRIBED AS FOLLOWS: A SINGLE FAMILY, RESIDENCE LOCATED AT 5206 4TH AVE CANYON, RANDALL COUNTY TEXAS.

2. SAID SUSPECTED PLACE IS CONTROLLED BY THE FOLLOWING SUSPECTED PARTY DESCRIBED AS FOLLOWS: A WHITE MALE, STEVEN RAY DAVIS.

3. IT IS THE BELIEF OF AFFIANT, AND AFFIANT HEREBY CHARGES AND ACCUSES, THAT SAID SUSPECTED PARTY HAS POSSESSION OF AND IS CONCEALING IN THE SAID SUSPECTED PLACE THE FOLLOWING DESCRIBED PERSONAL PROPERTY, TO WIT: PISTOL WITH POSSIBLE WHITE HANDLED GRIP.

IT IS THE BELIEF OF THE AFFIANT THAT THE SPECIFIC CRIMINAL OFFENSE HAS BEEN COMMITTED, TO WIT: AGRRAVATED ASSAULT WITH A DEADLY WEAPON. AFFIANT WISHES TO SEIZE SAID PERSONAL PROPERTY IN ORDER FOR THE COMPLAINING WITNESS TO IDENTIFY SAID PROPERTY IN A PHOTO LINEUP.

4. AFFIANT HAS PROBABLE CAUSE FOR THE SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO WIT: AFFIANT JAMES WILLIAMS IS A POLICE OFFICER EMPLOYED BY THE CITY OF CANYON, POLICE DEPARTMENT. AFFIANT HAS WORKED FOR THE CANYON POLICE DEPARTMENT FOR 4 MONTHS AND HAS BEEN TRAINED BY THE CANYON POLICE DEPARTMENT ON DRAFTING AND EXECUTING SEARCH WARRANTS SUCH AS THIS. AFFIANT IS CURRENTLY ASSIGNED AS A PATROL OFFICER.

ON 2-12-15 AT APPROXIMATELY 9:30AM THE AFFIANT WAS CONTACTED IN PERSON BY ANTHONY RAY MONTOYA. MONTOYA SAID HE HAS BEEN WORKING FOR STEVE DAVIS. MONTOYA IS A PAINTER. ON 2-6-15 BETWEEN 9:00AM AND 10:00AM, MONTOYA WENT TO DAVIS’ HOUSE TO PAINT THE HOME AS HE WAS HIRED TO DO. DAVIS APPROACHED HIM AND SAID “ARE YOU TRYING TO TOUCH UP THE HOLIDAYS?” DAVIS WALKED CLOSER TO MONTOYA AND SAID “WHAT THE FUCK ARE YOU DOING?” DAVIS TOLD MONTOYA THAT HE NEEDED TO FOCUS ON TOUCHING UP THE HOUSE. MONTOYA REPLIED THAT DAVIS NEEDED TO FOCUS ON GETTING HIM HIS MONEY FOR THE WORK HE HAS PERFORMED. MONTOYA SAID DAVIS TURNED AROUND AND GRABBED MONTOYA BY HIS RIGHT SHOULDER AND PLACED A GUN TO HIS CHEST.

THEREFORE, AFFIANT ASKS FOR THE ISSUANCE OF A WARRANT THAT WILL AUTHORIZE THE SEARCH OF SAID SUSPECTED PLACE AND THE SUSPECTED PARTY FOR THE ITEM SPECIFIED IN PARAGRAPH THREE AND SEIZE THE SAME.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY SAID AFFIANT ON THIS THE ____ DAY OF

MAGISTRATE

STATE OF TEXAS

COUNTY OF RANDALL

THE STATE OF TEXAS to the Sheriff or any Peace Officer of Randall County, Texas or any Peace Officer of the State of Texas, GREETINGS:

WHEREAS, the Affiant whose name appears on the Affidavit attached hereto is a Peace Officer under the laws of Texas and did heretofore this day subscribe and swear to said Affidavit before me (which said Affidavit is here now made part hereof for all purposes), and whereas I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expressed therein and established existence of proper grounds for issuance of the Warrant; now, therefore, you are commanded to enter the said suspected place described in said Affidavit and to here search for the items specified in paragraph three of said Affidavit and to seize same and bring it before me.

_____ I further find that the Affiant has established reasonable suspicion to believe that to knock and announce the purpose of the officers executing this warrant would be dangerous, futile or otherwise inhibit the effective investigation of the offense(s) for which this warrant has been issued. Therefore, unless circumstances to the contrary are discovered prior to entry, you are hereby authorized to dispense with the usual requirements that you knock and announce your purpose before entering the suspected place to execute this warrant.

HEREIN FAIL NOT, but have you then and there this Warrant within three days, exclusive of the day of its issuance and exclusive of the day if its execution, with your return thereon, showing how you have executed the same.

ISSUED this the _____ day of _____, at _____ __M to certify which witness my hand this day.

Magistrate

THE STATE OF TEXAS

COUNTY OF RANDALL

The undersigned Affiant, being a Peace Officer under the laws of Texas and being duly sworn, on oath certifies that the foregoing Warrant came to hand on the day it was issued and that it was executed on the _____ day of _____ by making the search directed therein and by arresting and placing in jail the following persons, to wit:

And by seizing during such search the property described in the attached evidence log.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME by the said Affiant whose name is signed above on this the _____ day of _____.

MAGISTRATE

Extra Practice!

See Handout *Probable Cause or Not?!*

Probable Cause or Not?!

Burglary of a Vehicle

A.	B.
<p>I officer, Joe Johnson, came on scene at 20:15 hrs and saw a suspect with his arm reaching into what looked like a broken window on a Toyota sedan LP AB 1234. As I approached, the suspect grabbed a bag from inside the vehicle and ran down the street. I chased on foot and caught the suspect. I detained the suspect and identified him as Rob Rogers WM DOB 11/10/1995. In his possession was a black purse that's content included a driver's license for Amy Adams WF DOB 01/01/1988, \$200 cash, various credit cards with the name Amy Adams, and other miscellaneous items. I ran the license plate AB 1234, and the owner of the vehicle is listed as Amy Adams. I called and confirmed that Amy Adams owned the vehicle and had not given anyone permission to use her vehicle or purse...</p>	<p>I officer, Joe Johnson, came on scene at 20:15 hrs and saw a suspect with his arm reaching into a Toyota sedan. As I approached, the suspect grabbed a bag from inside the vehicle and left on foot. I detained the suspect and identified him as Rob Rogers WM DOB 11/10/1995.</p>

Sec. 30.04. BURGLARY OF VEHICLES. (a) **A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.**

(b) For purposes of this section, "enter" means to intrude:

- (1) any part of the body; or
- (2) any physical object connected with the body.

(c) For purposes of this section, a container or trailer carried on a rail car is a part of the rail car.

(d) An offense under this section is a Class A misdemeanor, except that:

- (1) the offense is a Class A misdemeanor with a minimum term of confinement of six months if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section;
- (2) the offense is a state jail felony if:
 - (A) it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section; or
 - (B) the vehicle or part of the vehicle broken into or entered is a rail car; and
- (3) the offense is a felony of the third degree if:
 - (A) the vehicle broken into or entered is owned or operated by a wholesale distributor of prescription drugs; and
 - (B) the actor breaks into or enters that vehicle with the intent to commit theft of a controlled substance.

(d-1) For the purposes of Subsection (d), a defendant has been previously convicted under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

(e) It is a defense to prosecution under this section that the actor entered a rail car or any part of a rail car and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

Driving While Intoxicated with Open Container

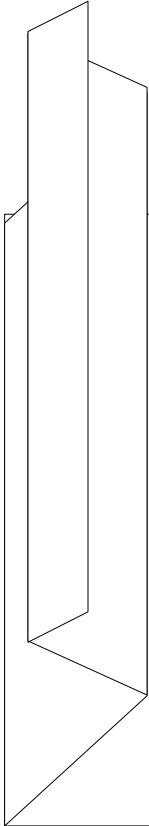
A.	B.
<p>...John Doe was operating a motor vehicle in a public place while intoxicated. To wit: John Doe was operating a 2000 Pontiac bearing the license plate SD 1234 on US HWY 281 while intoxicated. To wit: John Doe was in possession of 2 open bottles of corona beer. One bottle was located in the backseat on top of a 6 pack container, and another was located under the front passenger seat...</p>	<p>...John Doe was operating a motor vehicle in a public place while intoxicated. To wit: John Doe was John Doe was operating a 2000 Pontiac bearing the license plate SD 1234 on US HWY 281. Upon speaking with John Doe, this officer could smell the odor of metabolized alcohol. John Doe was very unstable on his feet, slurring his speech, and had red, bloodshot eyes. John Doe informed this officer that he was not on any medications. John Doe admitted to drinking 2 beers at dinner prior to getting in the car. Upon looking in his vehicle, this officer located two open bottles of corona beer. One bottle was located in the backseat on top of a 6 pack container, and another was located under the front passenger seat. John Doe refused to perform any field sobriety tests...</p>

Sec. 49.04. DRIVING WHILE INTOXICATED. **(a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.**

(b) Except as provided by Subsections (c) and (d) and Section [49.09](#), an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.

(d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.



Mental Health
Warrants /
Emergency
Detention Orders

What is an Emergency Detention or Mental Health Warrant?

- *Also called an **Emergency Detention Order (EDO)***
- Sometimes a person who has NOT been arrested is in mental health crisis and is ***not seeking treatment on their own.***
- **Any person** may file an application with a magistrate (you!) to issue a warrant to have the person arrested and taken to a mental health facility for evaluation.
 - Applications are typically filed by a family member, neighbor or physician at a hospital or ER.

Requirements for EDOs

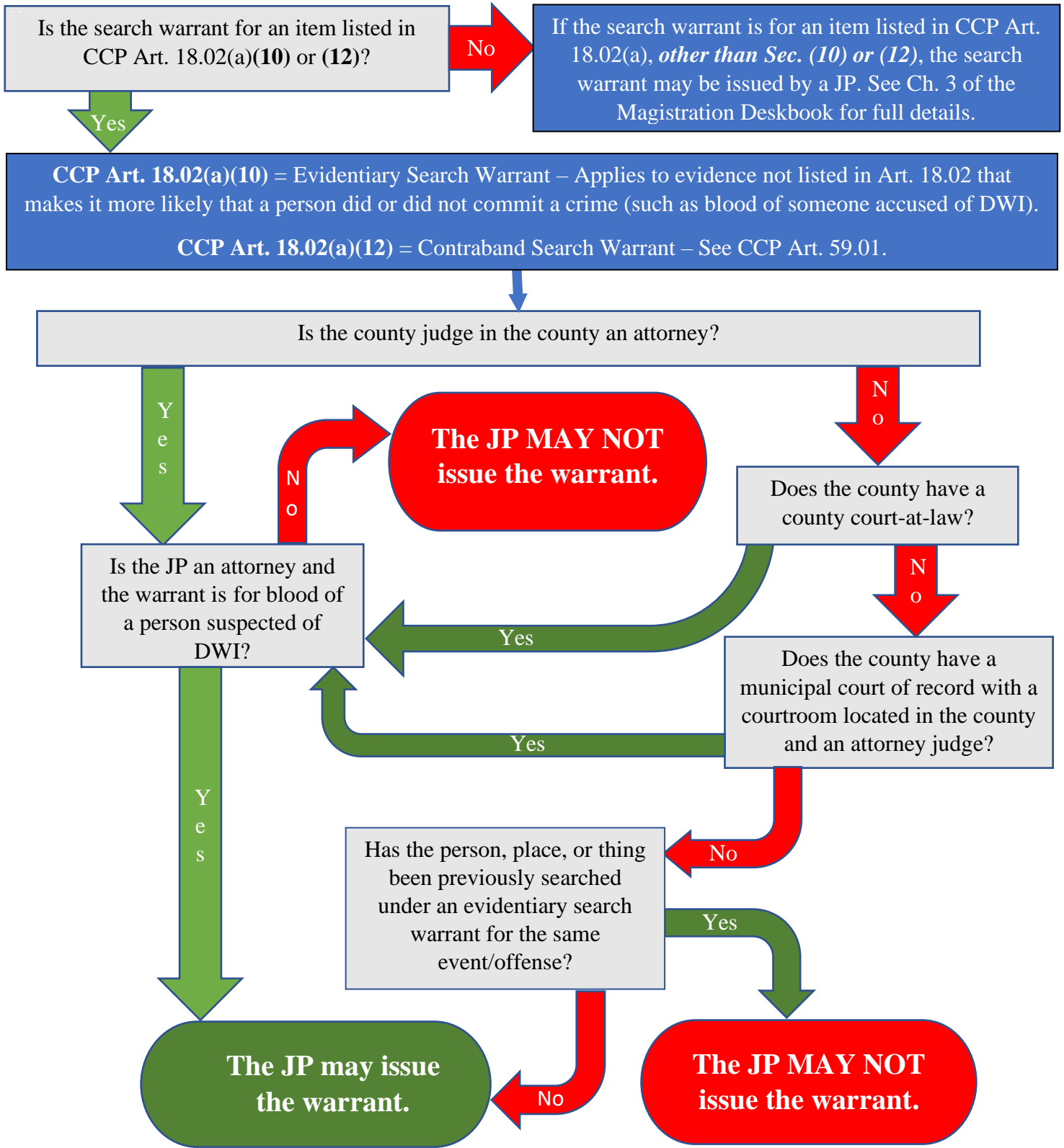
- The warrant may only be issued if there is an **imminent risk** (meaning it is about to happen) that the person will **seriously harm** themselves or someone else.
 - A peace officer may also apprehend someone in this situation on their own if the officer does not have time to get a warrant before the person is likely to hurt themselves or someone else.

Available Forms

Access forms at:

<https://www.texasjcmh.gov/technical-assistance/forms/jcmh-committee-forms-database/>

When a JP Can Issue a Search Warrant (Including a Blood Search Warrant)



SEARCH WARRANTS –

What Can a Search Warrant be Issued For?

A Search Warrant may be Issued for:

CCP Art. 18.02(a)

- 1) Property acquired by theft or in any other illegal manner.
- 2) Property designed, made, or commonly used in the commission of a crime.
- 3) Weapons kept or prepared for the purposes of insurrection or riot.
- 4) Weapons prohibited by the Penal Code.
- 5) Gambling devices, equipment, or paraphernalia.
- 6) Obscene materials kept or prepared for commercial distribution or exhibition ([subject to additional rules](#)).
- 7) A drugs or controlled substances kept, prepared, or manufactured in violation of the laws of this state.
- 8) Any property which it is illegal to possess.
- 9) Instruments or items used to commit a crime.
- 10) Property or items that constitute evidence of a crime or evidence that shows a particular person committed a crime ([Evidentiary warrant](#) – refer to the “[Search Warrants – Additional Information](#)” handout in the Legal Eagle tab for additional requirements).**
- 11) Persons ([may not be seized without an arrest warrant](#) – it is common for there to be a combination search & arrest warrant that meets the requirements for both).
- 12) Contraband subject to forfeiture under CCP Chapter 59 ([Contraband warrant](#) – refer to the “[Search Warrants – Additional Information](#)” handout in the Legal Eagle tab for additional requirements).**
- 13) Electronic customer data held in electronic storage ([subpoenaed from the data provider](#)).
- 14) A cell phone or other wireless communications device ([refer to the “Search Warrants – Additional Information” handout in the Legal Eagle tab for additional requirements](#)).

****bold** indicates that type of warrant may only be issued by JPs in special circumstances.

Special Warrants

Administrative Warrants ([See CCP Art. 18.05 for details.](#))

Warrant to Photograph a Child ([See CCP Art. 18.021 for details.](#))

SEARCH WARRANTS – ADDITIONAL INFORMATION

1. EVIDENTIARY SEARCH WARRANTS – CCP ART. 18.01(c)-(e),(h)-(j)

- The probable cause affidavit must state sufficient facts to establish probable cause that a specific offense has been committed, the specifically described property or items that
- are to be searched for or seized constitute evidence of that offense or constitute evidence that a particular person committed that offense, and the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched.
 - For items located in the office of a newspaper, news magazine, television station, or radio station, an evidentiary search warrant can only be issued for items described in subsections (1)-(9).
 - Blood warrants are classified as evidentiary warrants that can be issued if the defendant is arrested for an offense under Penal Code Section 49.04, 49.045, 49.06, 49.065, 49.07, or 49.08, and refuses to submit to a breath or blood alcohol test.
- Any magistrate, including a justice of the peace, may sign an evidentiary warrant if the county does not have a judge of a municipal court of record who is a Texas attorney, county court judge who is a Texas attorney, or a statutory county court judge (county court at law judge).
- A justice of the peace who is also a licensed attorney may sign a blood search warrant if a defendant is arrested for an offense under Penal Code Section 49.04, 49.045, 49.06,
- 49.065, 49.07, or 49.08, and refuses to submit to a breath or blood alcohol test regardless of whether the county has a judge of a municipal court of record who is a Texas attorney, county court judge who is a Texas attorney, or a statutory county court judge (county court at law judge).
 - A subsequent evidentiary search warrant issued under 18.02(a)(10) to search the same person, place, or thing subjected to a prior search may only be signed by a district court judge, court of appeals judge, court of criminal appeals judge, or a supreme court of Texas justice.

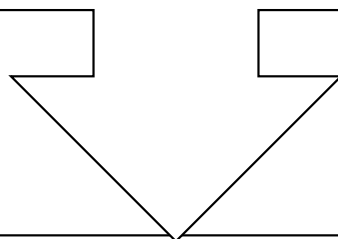
2. CONTRABAND WARRANTS – CCP ART. 18.01(g)-(j)

- The probable cause affidavit must state sufficient facts to establish [probable cause that a specific felony offense has been committed, the specifically described property or
- items that are to be searched for or seized constitute contraband as defined in CCP Article 59.01, and the property or items are located at or on the particular person, place, or thing to be searched.
- Contraband is property that is used in the commission of certain crimes, proceeds gained
- from the commission of those certain crimes, acquired with proceeds gained from the commission of those crimes, or used to facilitate the commission of certain crimes.
- Any magistrate, including a justice of the peace, may sign a contraband warrant if the
- county does not have a judge of a municipal court of record who is a Texas attorney, county court judge who is a Texas attorney, or a statutory county court judge (county court at law judge).

3. CELL PHONES & OTHER ELECTRONIC DEVICES – CCP ART. 18.0215

- The warrant must request seizure of the phone and request permission to search the contents of the phone.
 - Includes computers, iPads, etc.
- Law enforcement can't search someone's phone incident to arrest. The officer must get a
- warrant before searching the phone unless the person gives the officer consent to search the phone.
- A search warrant for a cell phone can only be issued by a judge in the same judicial district as the law enforcement agency that has possession of the phone, or where the cell phone is likely located.

TJCTC also has a new webinar that will guide you through the process for an Emergency Detention Order and any common issues that arise.



You can find the webinar by going here:
<https://www.tjctc.org/onlinelearning/Webinars.html> and clicking “Emergency Detention Orders with JCMH” under “Magistrate Duties Webinars”

More Resources

- TJCTC Mental Health Page: <http://www.tjctc.org/Mental-Health.html>
- Judicial Commission on Mental Health (JCMH)'s Website: <http://texasjcmh.gov/>
- Office of Court Administration (OCA)'s Mental Health Training Page: <http://www.txcourts.gov/publications-training/training-materials/mental-health/>