

Reducing DWI: The Magistrate's Role

**Judge Nick Chu
Probate Court No. 2
Travis County**

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A life is not important except in the impact it has on other lives.

~Jackie Robinson

As a magistrate, you can make a huge impact, including potentially saving lives!

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Class Agenda

- Statistical Showdown
- Proper Procedure
- Fact-Pattern Practice throughout

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Resources:

- **www.tjctc.org**

- The Docket—our blog!
- Deskbooks, Forms, Charts, and Checklists
- Legal Question Board and Legal Calls
- Recordings and Self-Pace Modules

- **www.sll.texas.gov/legal-help**

- Has Texas Laws and Court Rules

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Funded By A Grant From The Texas Court Of Criminal Appeals

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Fact Pattern Rules

- You will discuss the question on the slide at your table
- Feel free to use www.tjctc.org as a resource
- Nominate table spokesperson who will share your answer



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Statistical Showdown

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In 2022, JP's Gave How Many Magistrate Warnings?

- 28,900
- 106,583
- 123,229
- 258,712

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In 2022, How Many DUI Fatalities in Texas?

- 163
- 463
- 1163
- 1363

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DUI Fatalities Were What Percentage Of
The Total Number Of People Killed On Texas
Roadways?



- 15.95%
- 25.95%
- 35.95%

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Percentage Of DUI Drivers Aged 25 Or Younger In Fatal Crashes?

- 8.3%
- 19.3%
- 27.3%

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The Most Dangerous States For Drunk Driving—where Does Texas Rank?

- 3rd most dangerous in the nation
- 17th most dangerous in the nation
- 22nd most dangerous in the nation

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In 2022, How Many Deathless Days on Texas Roadways?

- 38
- 0
- 18
- 10

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Estimated Economic Loss Of All Motor Vehicle Crashes In Texas In 2022?

- 20.7 billion
- 38.1 billion
- 55.9 billion

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Story In The Statistics

Important story when we look at Ignition Interlock Devices.

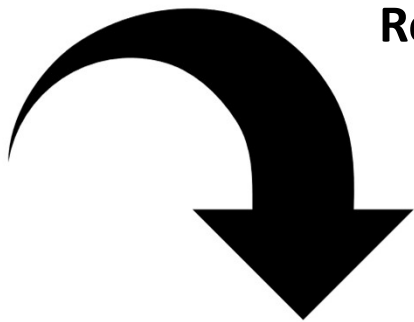
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Ignition Interlock Device

- One of the most frequently imposed bond conditions is requiring a defendant to install an **ignition interlock device (IID)** on their car and not drive any car that does not have an IID installed.

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Ignition Interlock Impact



Recidivism Rates Reduction:

- 60-80% reduction with IID were installed

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Ups and Downs

2020:

DWI Charges Reported:
• 60,906

Ignition Interlock Devices
ordered by JP's and
Municipal Judges:
• 8,665

2021:

DWI Charges Reported:
• 89,457

Ignition Interlock Devices
ordered by JP's and
Municipal Judges:
• 5,194

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Proper Procedure

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All Magistrate Orders

- Must include magistrate's signature and:
 - magistrate's name in legible handwriting,
 - legible typewritten form, or
 - legible stamp print.
- A defendant in a criminal action can make a motion to have the name added if the order is relevant to the action and the defendant is unable to identify the magistrate who signed the order.

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Alcohol Related Cases—Follow Normal Procedure

1. **Determine Probable Cause (if necessary)**
2. Inform the Accused of Rights
3. Appointment of Counsel (if required)
- 4. **Set Bail and Bond Conditions**
- 5. Release of the Accused

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Determination of Probable Cause (Only Necessary For Warrantless Arrests)

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Warrantless Arrests & Probable Cause

- The first step if someone is brought to jail on a **warrantless arrest** is for a neutral magistrate to determine if **probable cause** existed for the arrest.
 - Mandated by the U.S. Supreme Court in *County of Riverside v. McLaughlin*.
- A **warrantless arrest** is one where an officer makes an arrest because they witness a crime occurring, rather than because of an arrest warrant. (DWI is a very common example.)

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Determining Probable Cause for Arrest

- Probable cause means: Reasonably trustworthy information that would lead a reasonable person to believe the person has committed the offense.
- Remember that probable cause does **not** necessarily mean that there is enough evidence to convict the person at trial.
 - Different standard of proof at trial.
 - Some evidence you use to determine probable cause might not come in at trial.

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Elements of the Offense

- The probable cause affidavit is insufficient if it fails to establish any evidence of **one or more of the elements** of the criminal offense:
 - Example:
 - Public Intoxication requires that the person was a danger to themselves or others (in addition to being intoxicated and in public).
 - An affidavit simply showing a person was drunk while in a public place is **not enough** to establish probable cause for that offense.

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Elements of DWI(1st)

- On or about a date;
- The person is intoxicated;
- While operating a motor vehicle;
- In a public place; and
- [your county] County, Texas

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Scenario 1

- Mark Twain was found sleeping in parked running vehicle in the middle of bumper-to-bumper school pick-up line at 3:15 p.m. School was about to be dismissed. Another parent banged on the door and window and Twain did not respond. The police were called, and by the time they arrived, Twain woke up and said he had not been drinking and was on his way to work, but his speech was slurred. He smelled of alcohol and had glassy eyes. No witness was able to say they saw Twain operate his vehicle. The keys were in the ignition. After refusing to submit to any alcohol testing or answer any further questions, he is arrested for DWI. Was there probable cause to make the arrest? Explain why or why not. What facts would make it more or less likely to have probable cause for DWI?

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Scenario 2

- Nicolas Cage was driving a U-Haul in the middle of a three-lane highway at 1:19 a.m. A peace officer pulled him over for “failing to maintain a single marked lane of traffic” when he observed the right rear tire of the rented U-Haul touch and drive on the striped line marking the right side of the center lane shortly after rounding a curve. The truck moved slowly back towards the opposite lane divider while remaining in its lane. Cage did not veer or dash toward the other lane. Cage was not driving erratically, nor was he speeding. When he drifted, he did not hit anything or even come close to hitting anything. However, when he was pulled over, Cage’s eyes were bloodshot, he smelled of alcohol, and when tested, had a BAC of 0.11. Cage was ultimately arrested for DWI. Was there probable cause for the DWI charge? Was there reasonable suspicion to pull him over for the failing to maintain

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Scenario 3

- Julie Andrews was stopped due to several instances of weaving into another lane of traffic. Ms. Andrews did not signal a lane change, nor did she remain in the other lane for more than a few seconds each time. The officer turned on his dash camera after the first incident of weaving and the camera showed three additional incidents of the Ms. Andrews vehicle weaving into the adjacent lane in the next three minutes. There was no other traffic in her immediate vicinity. The officer pulled her over and ultimately arrested her for “failing to maintain a single marked lane of traffic”. Can the officer arrest her for a fine-only misdemeanor? Was there probable cause for the offense considering Texas TX Sec. 545.060(a) and *State v. Hardin*?

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Bond Conditions

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Bond Condition Basics

- In addition to (or instead of) setting a dollar amount on the defendant's bond, the magistrate can order the defendant to follow certain **conditions** in order to remain out of custody while awaiting trial.

-- Art. 17.40, Code of Criminal Procedure; see Magistration Bench Card No. 8

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Mandatory and Discretionary Bond Conditions

- Magistration Bench Card 8 gives a list of bond conditions that **may**, and in some cases **must**, be imposed in specific circumstances or on specific offenses.
 - This information is also provided in **Public Safety Reports** in the PSRS.
- TJCTC has bond condition forms online, including forms that provide for the conditions listed in the chart. Make sure that all of the bond conditions are given to the defendant **in writing**.
- *Art. 17.51, CCP*

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Common Bond Conditions

- Common bond conditions include:
 - Commit no additional offenses while on bond.
 - Report to the **probation department** for monitoring.
 - Probation department is often called **CSCD** for Community Supervision and Corrections Department.
 - CSCD may impose a fee of **\$25-60 per month** for monitoring.

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Broad Discretion

- The magistrate has broad discretion to impose conditions, not limited just to those listed in the bench card.
 - Discretion is **not** unlimited! Do not violate the rights of the defendant by ordering things like “You must donate blood” or “You must attend church” or “You must enlist in the Marines.”

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Ignition Interlock Device - Mandatory

- This bond condition is **mandatory** if the defendant was arrested for:
 - Intoxication Assault,
 - Intoxication Manslaughter,
 - DWI with Child Passenger, or
 - 2nd or greater offense of: Driving While Intoxicated, Flying While Intoxicated, Boating While Intoxicated, or Boating While Intoxicated With Child Passenger.
- The magistrate can waive the imposition of this condition if it is “in the interest of justice.”

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IID Best Interest Example

- If you are imposing a condition that the defendant not consume alcohol and must wear a device that constantly monitors the defendant for alcohol in their system (called a **SCRAM device**).
 - Since any alcohol consumption is already a violation of their bond conditions, the IID is less necessary.

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IID But No Car?

- What if the defendant says they do not have a car to install an IID on?
- In this situation, you should still order the defendant not to drive any car that does not have an IID installed.

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Permissible IID

- A magistrate **may** also impose an IID in situations where it is not mandatory, as long as it is reasonably related to the safety of the victim or the community.
 - For example, some counties have a policy of requiring an IID on a first offense DWI if the defendant's BAC is over 0.15.

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How Long To Give To Install IID?

- CCP Art. 17.441 (c) requires the defendant to have IID installed before the 30th day after the date the defendant is release on bond.
- You should make sure you have an additional condition with your IID order of: no operating a motor vehicle that does not have IID installed.
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Scenario 4

- Oprah is arrested for DWI and her BAC was 0.15. She has no prior related offenses. She says she does not normally drive, but her driver was on vacation and Gail had an emergency.
- What bond conditions would you require?
- How do you make sure she will comply with the bond conditions you impose?
- What should you do if you are notified that there has been a motion to revoke the bond?

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Scenario 5

- Tom Hanks was arrested for his first offense of intoxication assault.
 - Is IID permissible or mandatory here?
 - What bond conditions do you require?
- If you do require IID and Mr. Hanks refuses to sign for the IID stating, “Gump don’t go for that”:
 - Does he get to bond out after refusing to sign?
 - Does his refusal invalidate the court order?

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Scenario 6

- After smoking marijuana on a public golf course in Greenacre, Texas, Gigi Hadid decided to drive a golf cart home because she did not own a car and has never had a driver’s license. There was, however, a local ordinance prohibiting golf cart operation on Greenacre’s public roads. Gigi was thus stopped by law enforcement, who immediately detected the odor of marijuana. Gigi was ultimately charged with Driving While Intoxicated (DWI) and Driving Without a License. Gigi argues that both charges should be dismissed because (1) the golf cart was not authorized to be on the road at all, thus it was not a “motor vehicle” for the purposes of DWI; and (2) driver’s licenses are not needed to operate golf carts on Texas roads. Is Gigi right on (1) or (2)? Why?

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In Conclusion

- Use the Resources Available to You.
- Follow Proper Procedure.
- Remember the Positive Impact You Can Have!

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Questions?

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