

Blood Search Warrants in Texas

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TDCAA**

The problem:

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




The Solution

- No Legislative Help
- No Federal program
- Creative Lawyers in Hereford Texas
- TDCAA Spreads Word
 - 1 Jurisdiction in 2004
 - Over 45 in 2009 (majority of Texas Pop)
 - No refusal weekends
 - 6 different 24/7/365 jurisdictions

Breath or Blood

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



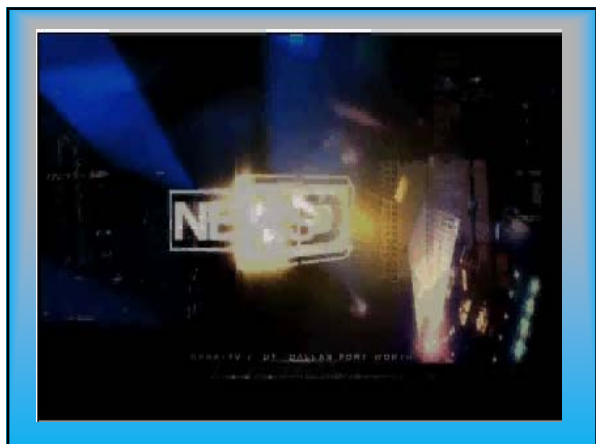
The response

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

“If it bleeds, it pleads”



2009 TDCAA Legislative Update





2009 TDCAA Legislative Update

Search Warrants

- **Mere Evidence**
 - Not all Magistrates
 - Limited to Courts of Record
 - NO JP'S, not all Municipal Judges
- **Probable Cause**
- **Describe the Person**
- **Follow the Blood Draw Procedures**

Art. 18.02 Grounds for Issuance

- A search warrant may be issued to search for and seize:
 - 10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense;
- This Includes Blood

Art. 18.08 Power of officer executing warrant

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

Forms

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

When Would You Obtain a Warrant?

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

Who?



- Qualified technician, doctor, nurse, etc...
- **If Warrantless Blood Draw: Not Emergency Medical Services Personnel.**
 - §724.017(c), Transportation Code
 - State v. Laird (Tex. App – Austin 2000)

How & Where?

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



The Future

- **Breath v. Blood**
- **The new defense**
- **Training, Training, Training**
- **Moving to simplify and take warrantless samples (We moved the legislature)**
