



CARLOS O. GARCIA
DISTRICT ATTORNEY
79TH ATTORNEY'S OFFICE
JIM WELLS/BROOKS COUNTIES



Search Warrants

TxCCP Art. 18

Is the search warrant sought an evidentiary search warrant as per TxCCP Art. 18.02(10)?

TxCCP Art. 18.02 (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;

[Yes, page-2-](#)

[No, page-7-](#)



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Evidentiary Search Warrants

Does the alleged criminal offense involve any offense
found under Texas Penal Code §49 (DWI/Intoxication)?

[Yes, page-3-](#)

[**Home**](#)

[No, page-10-](#)



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Evidentiary Search Warrants

Has the *arrested* Defendant *refused* a breath or blood test?

Note: TxCCP Art. 18.01(j) requires – (1) Suspect arrested for Tex. Penal Code §49 offense **AND** (2) refuses breath or blood test(s). If facts do not fit TxCCP Art. 18.01(j), the Law Enforcement Agency may still request a general Evidentiary Search Warrant for blood sample under TxCCP Art. 18.01(c).

[Arrested, AND Defendant
refused breath/blood test,
page-4-](#)

[Home](#)

[Not arrested, OR Defendant
gave breath/blood sample,
page-9-](#)



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Where is Blood Evidence Sample to be drawn?

For a blood draw evidentiary search warrant to be valid, you must first determine where (which County) the actual blood sample is to be drawn. See [Sanchez v. State, 365 S.W.3d 681 \(Tex.Crim.App. 2012\)](#).

If the alcohol-related offense occurred in Jim Wells County, is the blood sample drawn “in county” (ex. Jim Wells County) or “out of county” (ex. Nueces County)?

[In County, page-5-](#)

[Home](#)

[Out of County, page-6-](#)



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JIM WELLS/BROOKS COUNTIES



In County Evidentiary (Blood Draw only) Search Warrant

If Art. 18.01(j) criteria are met, then contact DISPATCH and request contact information for designated magistrate (NOTE: *magistrate must be licensed attorney in Texas*). Local Texas Licensed Attorney magistrates are as follows:

- City of Alice Municipal Judge Edie Gonzalez-Lemon (Alice, Texas only)
- City of Falfurrias Municipal Judge Ricardo Soliz (Falfurrias, Texas only)
- Jim Wells County Court at Law Judge Michael V. Garcia (Jim Wells County only)
- 79th District Judge Richard C. Terrell

Note: Law Enforcement Agency should document date, time and manner when attempting to contact magistrates for warrants. If a Judge is unavailable, proceed to the next magistrate in the designated order. **If all options have been exhausted (i.e. no magistrates available), the Law Enforcement Agency may still secure a blood sample by establishing exigent circumstances.**

[Back to Previous Page-4-](#)

[Home](#)



CARLOS O. GARCIA
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79TH ATTORNEY'S OFFICE
JIM WELLS/BROOKS COUNTIES



Out of County Evidentiary Search Warrant

Contact DISPATCH and request contact information for magistrate:

1. 79th District Judge Richard C. Terrell

Note: No other magistrate (other than State District Judge) may sign/authorize an evidentiary search warrant where blood is drawn out of county. Law Enforcement Agency should document date, time and manner when attempting to contact magistrates for warrants. If a Judge is unavailable, the Law Enforcement Agency may still secure a blood sample by establishing exigent circumstances.

[Back to Previous Page-4-](#)

[Home](#)



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Non Evidentiary Search Warrants

Subject/Item	Issuance authorized by:	Code /Statute
(1) property acquired by theft or in any other manner which makes its acquisition a penal offense;	Any magistrate	Art. 18.02(a)(1)
(2) property specially designed, made, or adapted for or commonly used in the commission of an offense;	Any magistrate	Art. 18.02(a)(2)
(3) arms and munitions kept or prepared for the purposes of insurrection or riot;	Any magistrate	Art. 18.02(a)(3)
(4) weapons prohibited by the Penal Code;	Any magistrate	Art. 18.02(a)(4)
(5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;	Any magistrate	Art. 18.02(a)(5)
Home		Next page-8-



CARLOS O. GARCIA
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JIM WELLS/BROOKS COUNTIES



Subject/Item	Issuance authorized by:	Code /Statute
(6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;	Any magistrate	Art. 18.02(a)(6)
(7) a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state;	Any magistrate	Art. 18.02(a)(7)
(8) any property the possession of which is prohibited by law;	Any magistrate	Art. 18.02(a)(8)
(9) implements or instruments used in the commission of a crime;	Any magistrate	Art. 18.02(a)(9)
(11) persons;	Any magistrate	Art. 18.02(a)(11)
(12) contraband subject to forfeiture under Chapter 59 of this code; or	Municipal Judge (only if atty); County Court at Law Judge; or District Judge	Art. 18.02(a)(12); see also 18.01(i)-(j)
Home	Previous page-7-	Next page-9-



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JIM WELLS/BROOKS COUNTIES



Subject/Item	Issuance authorized by:	Code /Statute
(13) electronic customer data held in electronic storage, including the contents of and records and other information related to a wire communication or electronic communication held in electronic storage; or	Any District Judge	Art. 18.02(a)(13)
(14) a cellular telephone or other wireless communications device, subject to Article 18.0215.	79 th District Judge only	Art. 18.0215
Home	Back to page-7-	Previous page-8-



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JIM WELLS/BROOKS COUNTIES



Evidentiary Search Warrant (General)

TxCCP Art. 18.01(c) A search warrant may not be issued under [Article 18.02\(10\)](#) unless sufficient facts to establish probable cause: (1) specific offense has been committed, (2) specifically described property/items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) property/items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. ***Except as provided by Subsections (d), (i), and (j), only judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, a justice of the Supreme Court of Texas, including the chief justice, or a magistrate with jurisdiction over criminal cases serving a district court may issue warrants under Article 18.02(10).***

[Next Page-11-](#)

[Home](#)



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JIM WELLS/BROOKS COUNTIES



Evidentiary Search Warrant (cont.)

Contact Dispatch and request the following Courts of record with Texas Licensed Attorney magistrates:

- Jim Wells County Court at Law Judge Michael V. Garcia (Jim Wells County only)
- 79th District Judge Richard C. Terrell

Note: Law Enforcement Agency should document date, time and manner when attempting to contact magistrates for warrants. If a Judge is unavailable, proceed to the next magistrate in the designated order. **If all options have been exhausted (i.e. no magistrates available), the Law Enforcement Agency may still secure a blood sample by establishing exigent circumstances.**

[Back to Previous Page-10-](#)

[Home](#)