## **Blood Draw**

NO

NO



2. Is a Police Officer asking \_ to draw the blood?



3. Did they consent? YES



## WARRANT

4<sup>th</sup> Amendment EMT can draw if expressly stated Reasonableness 4 Corners FRANKS hearing Dates/Times/Signatures Anyone can draw? (reasonableness) State v. Johnston, 336 S.W.3d 649 (Tex. Crim. App. 2011) (Medical History) Hereford v. State, 302 S.W.3d 903 (Tex.App.-Amarillo 2009), aff'd. (Excessive Force)

Anyone can take the blood. Implied Consent doesn't apply.

Anyone can take the blood. Implied Consent applies. Tex. Transp. Code §724.019; 724.062

See Tex. Transp. Code §724.017; Cavazos v. State, 969 S.W.2d 454 (Tex.App. - Corpus Christi 1998, pet. ref'd)(prove up phlebotomist) State v. Robinson, 334 S.W.3d 776, (Tex. Crim. App. 2011)(our duty to raise violation)

Missouri v. McNeely, 569 U.S. \_\_\_\_; 133 S.Ct. 1552 (2013)

## WARRANTLESS

Governed under §724.017 No EMT allowed (9/1 HB434) Phlebotomist must be qualified Must be in a certified place Must be sanitary Jackson v. State, 2009 WL 1552890 (Tex.App –El Paso 2009) State v. Laird, 38 S.W.3d 707 (Tex.Crim.App.2000) (paramedic) Krause v. State, 368 S.W.3d 863 (Tex. App. Houston 14<sup>th</sup> Dist. 2012), rev'd, 2013 WL 1890731 (Tex. Crim App. 2013)(EMT)

## 4. What is the record?

Durrett v. State, 36 S.W.3d 205, 208 (Tex.App.-Houston [14th Dist] 2001, no pet.) (State's Case)

- GC Blood Test or Forensic  $\rightarrow$  Bullcoming v. New Mexico, 131 S.Ct. 2705 (2011) Α.
- Medical Record  $\rightarrow$  803(6) Business Record Exception Β.

902(10) Affidavit Rule or Custodian of Records