Slide 1	CONSTABLE CARLOS LOPEZ, TRAVIS COUNTY, PRECINCT S BRONSON TUCKER, DIRECTOR OF CURRICULUM, TJCTC	
Slide 2	Resources	
	Chapter 24A, Property Code	
	• <u>www.tjctc.org</u> • Webinar Archive	
	Veolinar Archive Legal Question Board Forms Newsletter Archive	
	* July 2015, February 2016	
Slide 3	Order of Retrieval	
	HB 2486, passed in 2015, authorizes justice courts to issue an order of retrieval	
	 Person who is not being permitted into their residence but needs their or their dependent's belongings may petition 	
	any justice court to allow a peace officer to accompany them ○ No jurisdictional or venue limitation – any JP court may issue	
	o Order is for specific items of personal property	

Slide 4	Order of Retrieval	
	Order of Redreval	
	 In this code, "peace officer" means sheriffs, their deputies, constables, deputy constables, and those reserve deputy 	
	sheriffs and constables who hold a permanent peace officer	
	license issued under Chapter 1701, Occupations Code	
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Slide 5	Order of Retrieval	
	Basic components of an order of retrieval case:	
	01. Person seeking to retrieve property files an application	
	 2. Justice court provides notice to the occupant and holds a hearing 3. Justice court issues an order of retrieval (or denies issuance) 	
	 4. Applicant provides a bond to protect the occupant if order issued 5. Peace officer assists applicant in retrieval of property 	
	o 6. Peace officer inventories property	
	 7. Occupant may request a hearing if property is wrongfully taken from the residence. 	
Slide 6	Order of Retrieval: Fees	
	 When an application for an order of retrieval is filed with a justice court, should a filing fee be charged? 	
	Cases which are not criminal in nature are either civil in nature or	
	administrative in nature.	
	Whether order of retrieval cases are civil in nature is a question that has not yet been examined by Texas courts of appeal or the Attorney	
	General of Texas.	
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Slide 7	Order of Retrieval: Fees		
	TJCTC's position (shared by the Office of Court Administration): Order		
	of Retrieval cases are civil in nature, and civil filing fees should be collected upon the filing of an application.		
	confected upon the ming of an application.		
	• Rule 502.3 of the Texas Rules of Civil Procedure allows a plaintiff who		
	is unable to afford to pay the filing fees to file a sworn statement of inability to pay costs in lieu of the filing fees.		
	 New Supreme Court order mandates that courts provide this statement for 		
	litigants without charge or request		
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Shac o	Order of Retrieval: Fees		
	 An order of retrieval may not be issued until "after sufficient notice to the current occupant and an opportunity to be heard." 		
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	Service of the hearing notice may generate additional fees, which may		
	vary between counties.		
	• TJCTC's position: Standard fee for serving civil papers likely applies.		
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Slide 9	Order of Retrieval: Fees		
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	If the justice court issues an order, a peace officer "shall accompany and in the profile of the partial action and action action and action action and action action and action a		
	assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application."		
	 May a sheriff or constable's office charge a fee for providing this service? 		
	Service:		
	What if the sheriff or constable's office currently collects a fee for		
	serving "other writs?"		
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Slide 10	Sec. 118.131, Local Government Code (a) The commissioners court of a county may set reasonable fees to be charged for services by the offices of the sheriff and constables. (b) The commissioners court may not set fees higher than is necessary to pay the expenses of providing the services. (c) The commissioners court may not set fees under this section more than once during any one-year period. (d) The commissioners court must set the fees before October 1 of each year to be effective January 1 of the following year.	
Slide 11	Order of Retrieval: Fees (e) A notice setting out the fees shall be posted in the same manner in which notices are posted under Section 81.007 and shall be posted in the offices of the county officials who are authorized to charge the fees. (f) On or before October 15 of the year in which the fees are initially set, the commissioners court shall provide written notice of the amounts of the fees to the comptroller. If the commissioners court shall provide to the comptroller, on or before October 15 of the year in which the amount is changed, a written notice of the change in the amount of the fee.	
Slide 12	An application must: Certify that the current occupant has denied entry to the applicant; Certify no court order prohibiting contact with the current occupant of the residence exists; Describe with specificity the items to retrieve; Claim the applicant will suffer personal harm if the items are not obtained promptly; and Include a lease or "other documentary evidence" that shows the applicant is/was authorized to occupy the residence.	

Sec. 24A.002(b), Property Code

Slide 13	Order of Retrieval		
	Allege that the items are only of the following types:		
	(A) medical records;		
	o (B) medicine and medical supplies;		
	o (C) clothing;		
	o (D) child-care items;		
	(E) legal or financial documents;		
	O(F) checks or bank or credit cards in the name of the applicant; O(C) contains the contains the cards in the name of the applicant;		
	 (G) employment records; or (H) personal identification documents; 		
	Sec. 24A.002(b)(3), Property Code.		
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Silue 14	Order of Retrieval		
	Before a justice of the peace may issue an order of retrieval,		
	the applicant must file a bond with the justice court, and the		
	justice of the peace must approve the bond. The bond must:		
	Have two or more good and sufficient non-corporate sureties or one corporate		
	surety;		
	 Be payable to the occupant of the residence; Be in "an amount required by the justice;" and 		
	Be conditioned on the applicant paying all damages and costs adjudged		
	against the applicant for wrongful property retrieval.		
	Sec. 24A.002(c), Property Code		
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Slide 15	Order of Retrieval		
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	"Sufficient notice" AND "an opportunity to be heard" must		
	be provided to the current occupant.		
	Notice and hearing must occur PRIOR to issuing the order		
	No specific guidance as to time required between service of the notice and		
	holding a hearing.		
	 TJCTC's position: 24 hours between notice and hearing seems reasonable based on the circumstances and purpose of the statute 		
	o TJCTC's position: notice may be served in person or by posting the notice on		
	the front door of the premises.		
	Sec. 24A.002(e), Property Code		
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Slide 16	Order of Retrieval A justice court may not issue an order of retrieval unless: 1) The applicant establishes "sufficient evidence of urgency and potential harm to health and safety of any person;" and 2) The court finds that: Applicant has been denied entry No EPO or other order prohibiting contact exists Applicant is/was authorized to occupy premises Notice and ability to contest was provided to the current occupant Sec. 24A.002(e), Property Code	
Slide 17	Order of Retrieval If the court grants the application and issues an order, a peace officer shall accompany the applicant to premises. If the current occupant is present, the officer shall provide him or her with a copy of the order. All property must be inventoried by the officer before removal, and the officer must: 1) Provide an inventory list to the occupant (but if the occupant is not present, the officer may leave the list in a conspicuous place); and 2) File the inventory list with the court Sec. 24A.003(a)-(c). Property Code	
Slide 18	Order of Retrieval • A peace officer may use "reasonable force" in providing assistance to the applicant.	

 Peace officers are not liable civilly or criminally for acts which occur which providing assistance to the applicant if acting in good faith and with reasonable diligence.

• Landlords and their agents are also not liable for allowing access to the premises to facilitate the Court's order.

Sec. 24A.003(d), (e), & 24A.004, Property Code

Slide 19	Order of Retrieval	
	Order of Redreval	
	 It is a Class B Misdemeanor to interfere with retrieval of personal property under the order. 	
	 It is a defense to prosecution that the actor did not receive a copy of the court order or other notice that the entry or retrieval 	
	of property was authorized.	
	Nothing prohibits this offense from also being committed by	
	the applicant, although less likely (e.g. disruptive behavior) Sec. 24A.005, Property Code	
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Slide 20	Order of Retrieval]
	Order of Redreval	
	The occupant has 10 days after the "date of authorized entry" to file a complaint in the court that issued the order of retrieval alleging that the	
	applicant has taken property which does not belong to the applicant.	
	If a complaint is filed, the court shall "promptly" hold a hearing and rule	
	on ownership of the property.	
	 The occupant may also choose to file a small claims lawsuit or use other legal remedies to reclaim wrongfully appropriated property. 	
	Sec. 24A.006, Property Code	
Slide 21	Scenarios	
	Scenarios	
	 Applicant comes into Cameron County Precinct 12 Justice of the Peace office. They seek an Order of Retrieval. The applicant resides in 	
	Cameron County Pct. 8, and the property is in Hidalgo County.	
	• Can the Cameron County Pct. 12 Justice of the Peace issue the order?	
	What if the applicant lives in Brooks County instead?	
	what it the applicant lives in blooks county histeau:	

Slide 22	Scenarios - Applicant was over at their in-laws' for Thanksgiving dinner. At dinner, an argument broke out over politics and the in-laws kicked applicant out of their home. There are clothes and baby formula still at the in-laws' house. - Can the applicant get an order of retrieval to get these items?	
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Slide 23	Scenarios - Applicant works as a mechanic. The occupant has excluded them and refuses to allow them to get the tools of their trade. Can the applicant get an order of retrieval?	
Slide 24	Scenarios No constable or sheriffs deputy is available to accompany the applicant to execute the order. May a municipal peace officer accompany the applicant?	

Slide 25	Scenarios	
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	The applicant begins collecting items not specifically listed in the order during the application. What should the peace officer do in that	
	situation?	
Slide 26	Scenarios	
	 Applicant seeks to retrieve their selection of Guns N' Roses concert T- shirts from the occupant. Can they accomplish this with an order of retrieval? 	
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Slide 27	Scenarios	
	Applicant states that they cannot afford a bond. Can the judge waive the bond?	
	 Different applicant posts \$200 cash bond. When/how should that bond be released? 	
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Slide 28	Scenarios • Applicant states that they cannot afford a bond. Can the judge waive the bond? • Different applicant posts \$200 cash bond. When/how should that bond be released?	
Slide 29	Scenarios • Applicant states that her boyfriend kicked her out and has financial documents she needs. She doesn't have a lease and didn't receive bills at that address. How could she prove that she had a residence there? • Occupant shows up at the hearing and says he never excluded her from the residence. Applicant shows text message from occupant saying "Show your face around here and I'm not responsible for what happens". Issue the order?	