

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 2225

By: Moore of the House

and

Weaver of the Senate

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9 COMMITTEE SUBSTITUTE

10 An Act relating to cities and towns; amending 11 O.S.
11 2011, Section 34-104, as amended by Section 1,
12 Chapter 166, O.S.L. 2012 (11 O.S. Supp. 2020, Section
13 34-104), which relates to disposition of property or
14 money; modifying process for disposing of certain
15 property or money; specifying certain notice is
16 required; determining whether property was seized in
17 connection to criminal investigation; specifying
18 entity that shall file certain application; modifying
19 required hearing timeline; modifying certain notice
20 requirements; specifying entity to dispose of
21 property; clarifying process involving sale or
22 donation to third parties; authorizing transfer of
23 certain currency; directing certain processes for
24 disposition of property under other circumstances;
authorizing certain notice; providing notice not
required for property of certain value; providing
that notice is effective under certain circumstances;
amending 22 O.S. 2011, Sections 1321, 1322 and 1326,
which relate to the return of stolen property or
money taken from defendants; clarifying hearing
procedures for returning property to lawful owners;
providing option of filing affidavits with the court
clerk; requiring notices be sent by first-class mail;
specifying when hearings shall be held; requiring the
filing of proof of service or publication with the
court clerk; extending time by which property shall
be made available for release; directing property
owners to provide proof of title to property;

1 requiring claimants to sign indemnification agreement
2 under certain circumstances; requiring filing of
3 affidavits of service or publication with the court
4 clerk; extending date by which objections must be
5 filed; authorizing retention of evidence or exhibits
6 pending the outcome of actions for postconviction
7 relief; authorizing government entities to seek a
8 hearing regarding disposition of property;
9 establishing hearing requirements; providing for the
10 destruction of property under certain circumstances;
11 extending time limitation for making property
12 available to owners; providing gender-neutral
13 language; clarifying procedures for providing
14 receipts to defendants when money or other property
15 is seized; and providing an effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2011, Section 34-104, as
amended by Section 1, Chapter 166, O.S.L. 2012 (11 O.S. Supp. 2020,
Section 34-104), is amended to read as follows:

Section 34-104. A. Any chief of police or designee is
authorized to dispose of personal property or money or legal tender
as provided in this section or the ~~charter~~ ordinances of the
municipality, which has come into the possession of the ~~chief of~~
police ~~in any manner~~ department of the municipality if:

1. The owner of the personal property or money or legal tender
is unknown or has not claimed the property after any required
notice;

2. The property or money or legal tender has been in the
custody of the chief of police for at least ninety (90) days; and

1 3. The property or money or legal tender or any part thereof is
2 no longer needed to be held as evidence or for any other purpose in
3 connection with any litigation. In the event the property, money or
4 legal tender was seized by the police department in connection with
5 a criminal investigation or arrest, this determination shall be made
6 by the court which has jurisdiction over the criminal offense, if an
7 information or indictment is pending, pursuant to Section 1321 of
8 Title 22 of the Oklahoma Statutes, or by a prosecuting authority if
9 charges have been disposed of or have been declined.

10 B. ~~The chief of police shall~~ municipality may file an
11 application in the district court in which the situs of government
12 of the municipality is located requesting the authority of the court
13 to conduct a sale of the personal property which has a ~~fair~~ market
14 value ~~of more than its face value.~~ ~~The chief of police shall attach~~
15 ~~to the application~~ shall contain a list describing the property
16 ~~including any identifying numbers and marks,~~ the date the property
17 came into the possession of the ~~chief of police~~ municipality, and
18 the name of the owner and the person in last possession, if
19 different, and the address of the person, if known. The court shall
20 set the application for hearing not less than ~~ten (10)~~ fifteen (15)
21 ~~days nor more than twenty (20) days~~ after filing of the application.

22 C. In any instance where the property has an actual or apparent
23 value of more than Two Hundred Fifty Dollars (\$250.00), at least ~~ten~~
24 ~~(10)~~ eleven (11) days prior to the date of the hearing, written

1 notice of the hearing shall be sent by first-class mail, postage
2 prepaid, to each owner and person last in possession of the property
3 at the address as listed in the application. If the owner of any
4 property with an actual or apparent value exceeding Five Hundred
5 Dollars (\$500.00) is unable to be served written notice by first-
6 class mail, notice shall be provided by one publication at least
7 three (3) days prior to the hearing in a newspaper of general
8 circulation in the county where the property is in custody. The
9 notice shall contain ~~a brief description of the property of the~~
10 ~~owner and~~ the place and date of the hearing and a description of the
11 property, or the location of a list available for review during
12 business hours in which the property is described and any known
13 owner identified. The notice shall be posted at the assigned place
14 for the posting of municipal notices, and at two other public places
15 in the municipality.

16 D. If no owner appears and establishes ownership to the
17 property at the hearing, the court shall enter an order authorizing
18 the ~~chief of police~~ municipality to dispose of the property as
19 follows:

20 1. Donate the property having value of less than Five Hundred
21 Dollars (\$500.00) to a not-for-profit corporation as defined in
22 Title 18 of the Oklahoma Statutes for use by needy families;

23 2. Sell the personal property for cash to the highest bidder,
24 after at least five (5) days' notice of the sale has been published;

1 3. Transfer the property to a third-party agent under contract
2 with the ~~governing body of the chief of police~~ municipality for sale
3 by Internet or other electronic means, regardless of whether the
4 sale structure or distribution site is within the State of Oklahoma;
5 or

6 4. By any other means as determined appropriate by the court,
7 including but not limited to, destruction.

8 ~~Regardless of~~ If the means of disposition involve a sale or
9 donation to the third party, the chief of police or designee shall
10 make a return of the donation or sale and the order of the court
11 confirming the donation or sale shall vest title to the property in
12 the recipient or purchaser. After payment of court costs and other
13 expenses, the remainder of money received from the sale of the
14 personal property shall be deposited in the municipal general fund.

15 E. All money or legal tender which has come into the possession
16 of the ~~chief of police~~ municipality pursuant to the circumstances
17 provided for in subsection A of this section shall be transferred by
18 the chief of police or designee to the municipal clerk or municipal
19 treasurer for deposit in the municipal general fund. Prior to any
20 transfer, the ~~chief of police~~ municipality shall file an application
21 in the district court requesting the court to enter an order
22 authorizing the chief of police or designee to transfer the money
23 for deposit in the municipal general fund. The application shall
24 describe the money or legal tender, the date the same came into the

1 possession of the ~~chief of police~~ department, and the name of the
2 owner and the address of the owner, if known. Upon filing the
3 application which may be joined with an application as described in
4 subsection B of this section, a hearing shall be set not less than
5 ~~ten (10) days nor more than twenty (20)~~ fifteen (15) days from the
6 filing of the application. Notice of the hearing shall be given as
7 provided for in subsection C of this section. The notice shall
8 state that upon failure of anyone to appear to prove ownership to
9 the money or legal tender, the court shall order the same to be
10 deposited in the municipal general fund. The notice may be combined
11 with a notice to sell personal property as provided for in
12 subsection B of this section. If no one appears to claim and prove
13 ownership to the money or legal tender at the hearing, the court
14 shall order the same to be transferred to the municipal general fund
15 as provided in this subsection.

16 Notwithstanding any other provision of this section, if
17 authorized by ordinance, the municipality may transfer any currency
18 received into a depository account for the benefit of its known or
19 unknown owners prior to any court order for disposition of the money
20 or legal tender.

21 F. ~~The~~ Except as provided in this subsection, the provisions of
22 this section shall not apply to any dangerous or deadly weapons,
23 narcotic or poisonous drugs, explosives, or any property of any kind
24 or character, ~~which~~ the possession of which is prohibited by law.

1 By order of the trial court, any property filed as an exhibit or
2 held by the municipality as evidence or as contraband shall be
3 destroyed or sold or disposed of, pursuant to the conditions
4 prescribed in the order. To the extent the provisions of this
5 section do not apply, the court shall follow the procedures in
6 Section 1321 of Title 22 of the Oklahoma Statutes. No forfeiture
7 proceeding shall be necessary to authorize the destruction of
8 property that cannot be returned lawfully to its owner.

9 G. The municipality is hereby authorized to establish a
10 procedure for the registration of "lost and found" property. The
11 procedure shall give the finder of any property the option of
12 relinquishing any future claim to found property at the time its
13 possession is surrendered to the police or other agent of the
14 municipality, or of retaining possession of the property after
15 registering its description and the ~~finders~~ finder's identity with
16 the police department or other agent of the municipality. ~~Only~~ The
17 municipality may require that only property in which the finder
18 relinquishes any future claim to its ownership will be stored in
19 municipal police property rooms.

20 H. The municipality may provide by ordinance that a percentage
21 of the money or legal tender deposited in the municipal general fund
22 as provided in subsection D or E of this section may be paid as a
23 ~~finders~~ finder's fee for services rendered to any person who found
24 the unclaimed personal property or money or legal tender and

1 delivered it to, or registered it with, the chief of police or other
2 agent of the municipality.

3 I. The municipality may provide written notice at the time of
4 arrest or detention that certain property is available for return
5 within ninety (90) days, if the property was not seized as evidence.
6 If the property is or appears to be worth less than Two Hundred
7 Fifty Dollars (\$250.00), no further notice is required prior to
8 obtaining a court order for disposition of the property in
9 accordance with this section. A notice left with a detainee's
10 personal property at the detention facility shall be presumed to
11 have been returned to the detainee at the time of his or her release
12 and shall satisfy the officer's obligation to deliver a receipt to
13 the detainee in connection with an arrest for a public offense.

14 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1321, is
15 amended to read as follows:

16 Section 1321. A. It is the intent of the Legislature that any
17 stolen or embezzled money or other property held in custody of a
18 municipality, county or the state in any criminal investigation,
19 action or proceeding be returned to the proper person or its lawful
20 owner without unnecessary delay.

21 B. If the property coming into the custody of a municipal,
22 county or state peace officer is not alleged to have been stolen or
23 embezzled, the peace officer may return the property to the owner
24 upon satisfactory proof of ownership. The notice and hearing

1 provisions of this section shall not be required for return of the
2 property specified in this section if there is no dispute concerning
3 the ownership of the property. Within fifteen (15) days of the time
4 the owner of the property is known, the peace officer shall notify
5 the owner of the property that the property is in the custody of the
6 peace officer. The property shall be returned to the owner upon
7 request, unless the owner, by law, is not permitted to possess such
8 property.

9 C. Except as otherwise provided for property that is pawned,
10 when money or property alleged to have been stolen or embezzled,
11 comes into the custody of a peace officer, the peace officer shall
12 hold it subject to the order of the magistrate authorized by Section
13 1322 of this title to direct the disposal thereof. Within fifteen
14 (15) days of the time the owner of the property is known, the peace
15 officer shall notify the owner of the property that the property is
16 in the custody of the peace officer. The peace officer shall make a
17 good faith effort to locate and notify the owner of the property.
18 If the peace officer has made a good faith effort to locate and
19 notify the owner of the property and has been unable to locate or
20 notify the owner, the peace officer shall release the property to
21 the last person in possession of the property within fifteen (15)
22 days after the peace officer determines that an owner cannot be
23 located or notified, ~~provided~~ unless there is evidence that the
24 person who last had possession of the property ~~shows proof that the~~

1 ~~person~~ is not a lawful possessor of the property. Such officer may
2 provide a copy of a nonownership affidavit to the defendant to sign
3 if the defendant is not claiming ownership of the money or property
4 taken from the defendant and if the defendant has relinquished the
5 right to remain silent. The affidavit is not admissible in any
6 proceeding to ascertain the guilt or innocence of the defendant. A
7 copy of this affidavit shall be provided to the defendant, and a
8 copy ~~shall~~ may be filed by the peace officer with the court clerk.
9 Upon request, a copy of this affidavit shall be provided to any
10 person claiming ownership of such money or property. The owner of
11 the property or designated representative of the owner may make
12 application to the magistrate for the return of the property. The
13 application shall be on a form provided by the Administrative
14 Director of the Courts and made available through the court clerk or
15 the victim-witness coordinator. The court may charge the applicant
16 a reasonable fee to defray the cost of filing and docketing the
17 application. Once an application has been made and notice provided,
18 the magistrate shall docket the application for a hearing as
19 provided in this section. Where notice by publication is
20 appropriate, the publication notice form shall be provided free of
21 charge to the applicant by the Administrative Director of the Courts
22 through the court clerk or the victim-witness coordinator with
23 instructions on how to obtain effective publication notice. The
24 applicant shall notify the last person in possession of the property

1 prior to the property being seized by the state of the hearing by
2 mailing a copy of the notice by certified mail return receipt
3 requested at the last-known address of the person, unless the person
4 has signed a nonownership affidavit pursuant to this section
5 disclaiming any ownership rights to the property. If the last
6 person in possession of the property is unable to be served notice
7 by certified mail, notice shall be provided by first-class mail and
8 by one publication in a newspaper of general circulation in the
9 county where the property is held in custody. The applicant shall
10 notify the district attorney and the court when notice has been
11 served to the last person in possession of the property or published
12 pursuant to this section. The hearing shall be held not less than
13 ~~ten (10) days or more than twenty (20)~~ fifteen (15) days after the
14 ~~court has been notified that~~ the notice has been served or
15 published. Proof of service or publication shall be filed with the
16 court clerk before the hearing. For the sole purpose of conducting
17 a due process hearing to establish ownership of the property,
18 "magistrate" as used in this section shall mean a judge of the
19 district court, associate district judge, special judge or the judge
20 of a municipal criminal court of record when established pursuant to
21 Section 28-101 et seq. of Title 11 of the Oklahoma Statutes.

22 D. If the magistrate determines that the property is needed as
23 evidence, the magistrate shall determine ownership or right of
24 possession and determine the procedure and time frame for future

1 release. The magistrate may order the release of property needed as
2 evidence pursuant to Section 1327 of this title, provided however,
3 the order may require the owner to present the property at trial.
4 The property shall be made available to the owner within ~~ten (10)~~
5 twenty (20) days of the court order for release. The magistrate may
6 authorize ten (10) days additional time for the return of the
7 exhibit if the district attorney shows cause that additional time is
8 needed to photograph or mark the exhibit.

9 E. If the property is not needed as evidence, it may be
10 released by the magistrate to the owner or designated representative
11 of the owner upon satisfactory proof of ownership or to the person
12 last in possession prior to seizure. The owner of the property or
13 designated representative of the owner may make application to the
14 magistrate for the return of the property. The owner shall provide
15 satisfactory proof of title to the property or sign an affidavit of
16 ownership if documents of title do not exist. If an affidavit of
17 ownership or affidavit of right of possession is used to establish
18 ownership or right of possession, the claimant may also be required
19 to sign an agreement to indemnify and defend the custodians of the
20 property in the event of an adverse claim to the property. The
21 applicant shall notify the last person in possession of the property
22 prior to such property being seized by the state of the hearing by
23 mailing a copy of the notice by certified mail return receipt
24 requested at the last-known address of the person, unless the person

1 has signed a nonownership affidavit pursuant to this section
2 disclaiming any ownership rights to the property. If the last
3 person in possession of the property is unable to be served notice
4 by certified mail, notice shall be provided by one publication in a
5 newspaper of general circulation in the county where the property is
6 held in custody. The applicant shall notify the district attorney
7 and the court when notice has been served to the last person in
8 possession of the property or published pursuant to this section.
9 The hearing shall be held not less than ~~ten (10)~~ fifteen (15) days
10 ~~or more than twenty (20) days~~ after the court has been notified that
11 the notice has been served or published. An affidavit of service or
12 publication shall be filed with the court prior to the hearing.

13 F. The notice and hearing provisions of subsections C and E of
14 this section shall not be required for return of the property
15 specified in said subsections if:

16 1. There is no dispute concerning the ownership of the
17 property;

18 2. The property is readily identifiable by the owner; and

19 3. The defendant has entered a plea of guilty or nolo
20 contendere to the criminal charge, has executed a nonownership
21 affidavit as provided by subsection C of this section or has been
22 personally notified that the property will be returned to the owner
23 and has failed to file an objection to such return within ~~ten (10)~~
24 eleven (11) days of being notified. The owner shall provide

1 satisfactory proof of title to the property or sign an affidavit of
2 ownership or right of possession to be provided by the peace
3 officer. If an affidavit of ownership or affidavit of right of
4 possession is used to establish ownership or right of possession,
5 the claimant may also be required to sign an agreement to indemnify
6 and defend the custodians of the property in the event of an adverse
7 claim to the property. The affidavit is not admissible in any
8 proceeding to ascertain the guilt or innocence of the defendant. A
9 copy of this affidavit shall be filed by the officer with the court
10 clerk. The property shall then be returned to the owner or person
11 with right of possession.

12 G. When property alleged to have been stolen comes into the
13 custody of a peace officer and the property is deemed to be
14 perishable, the peace officer shall take such action as appropriate
15 to temporarily preserve the property. However, within seventy-two
16 (72) hours of the time the property was recovered, the receiving
17 agency shall make application for a disposition hearing before a
18 magistrate, and the receiving agency shall notify by first-class
19 mail all persons known to have an interest in the property of the
20 date, time and place of the hearing.

21 H. In any case, the magistrate may, for good cause shown, order
22 any evidence or exhibit to be retained pending the outcome of any
23 appeal or action for post-conviction relief.

24

1 I. Any time property comes into the custody of a municipality,
2 a county, or this state as a result of any contact with any peace
3 officer, criminal investigation or other situation where the return
4 of the property is prohibited by any municipal, state or federal law
5 or when the property has disputed ownership or multiple claimants,
6 the municipality, county or state shall advise the claimant to file
7 an application with the appropriate district court. Upon filing an
8 application for a hearing, the claimant shall provide notice by
9 first-class mail to all interested persons including the government
10 entity having custody of the property. The government entity having
11 custody of the property may also seek a hearing regarding the
12 disposition of the property. The hearing shall be scheduled not
13 less than fifteen (15) days after the notice is mailed. Unless the
14 property is being held in connection with a filed criminal charge,
15 the proceeding shall be considered a civil matter and shall be filed
16 in the county where the property is being held. If a criminal
17 charge has been filed, the matter shall be heard by the judge who
18 has been assigned to the criminal case. At the hearing the court
19 shall make a judicial determination as to the proper and lawful
20 release or other disposition of the property. If the property at
21 issue is a firearm or other weapon, the court may order the property
22 destroyed if the court determines that the owner of the firearm or
23 weapon is mentally or emotionally unstable or disturbed or cannot
24 legally possess the firearm or weapon.

1 J. The application, notice and hearing provisions of subsection
2 I of this section shall include, but are not limited to, all
3 situations where the peace officer has reason to believe:

4 1. One of the persons asserting a right to the return of any
5 firearm or other weapon is or was mentally or emotionally unstable
6 or disturbed at the time the weapon was placed in custody or at the
7 time of the request for the return of the weapon;

8 2. One of the persons asserting a right to the return of a
9 firearm or other weapon is subject to a victim protection order that
10 would preclude the return of any weapon as a matter of law;

11 3. One of the persons asserting a right to the return of any
12 firearm or other weapon is under indictment or has been convicted of
13 a felony;

14 4. One of the persons asserting a right to the return of any
15 firearm or other weapon has a misdemeanor conviction for domestic
16 abuse as defined by law;

17 5. The ownership of the property is unclear due to multiple
18 claimants or disputes among heirs or next of kin for the property of
19 the deceased; or

20 6. The return of the property could subject the municipality,
21 the county, or this state to potential liability for its return.

22 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1322, is
23 amended to read as follows:

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1 Section 1322. On satisfactory proof of title to the property,
2 the magistrate before whom the information is laid, or who examines
3 the charge against the person accused of stealing or embezzling the
4 property, may order it to be delivered to the owner on his paying
5 the reasonable and necessary expenses incurred in its preservation,
6 to be certified by the magistrate. The order entitles the owner to
7 demand and receive the property. Such property shall be made
8 available to the owner within ~~ten (10)~~ twenty (20) days of the
9 issuance of the order. The court, however, may keep the property as
10 evidence or on the issuance of an order, require the owner to
11 present such property at trial.

12 SECTION 4. AMENDATORY 22 O.S. 2011, Section 1326, is
13 amended to read as follows:

14 Section 1326. When money or other property is taken from a
15 defendant arrested upon a charge of public offense, the officer
16 taking it must at the time give duplicate receipts therefor,
17 specifying particularly the amount of money or the kind of property
18 taken. One of which receipts ~~he~~ the officer must deliver to the
19 defendant or to the detention officer holding the detainee's
20 personal property, and the other of which ~~he~~ the officer must file
21 with the ~~clerk of the court to which the depositions and statement~~
22 ~~must be sent, as provided in the last section of the chapter on~~
23 ~~preliminary examination, 6641~~ officer's chief law enforcement
24 officer or designee.

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SECTION 5. This act shall become effective November 1, 2021.

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