

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 HOUSE BILL 1025

 By: Worthen

7 AS INTRODUCED

8 An Act relating to criminal procedure; amending 22
9 O.S. 2011, Sections 1321, 1322 and 1326, which relate
10 to the return of stolen property or money taken from
11 defendants; clarifying hearing procedures for
12 returning property to lawful owners; providing option
13 of filing affidavits with the court clerk; requiring
14 notices be sent by first-class mail; specifying when
15 hearings shall be held; requiring the filing of proof
16 of service or publication with the court clerk;
17 extending time by which property shall be made
18 available for release; directing property owners to
19 provide proof of title to property; requiring
20 claimants to sign indemnification agreement under
21 certain circumstances; requiring filing of affidavits
22 of service or publication with the court clerk;
23 extending date by which objections must be filed;
24 authorizing retention of evidence or exhibits pending
 the outcome of actions for postconviction relief;
 authorizing government entities to seek a hearing
 regarding disposition of property; establishing
 hearing requirements; providing for the destruction
 of property under certain circumstances; extending
 time limitation for making property available to
 owners; providing gender-neutral language; clarifying
 procedures for providing receipts to defendants when
 money or other property is seized; and providing an
 effective date.

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

1 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1321, is
2 amended to read as follows:

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

8 B. If the property coming into the custody of a municipal,
9 county or state peace officer is not alleged to have been stolen or
10 embezzled, the peace officer may return the property to the owner
11 upon satisfactory proof of ownership. The notice and hearing
12 provisions of this section shall not be required for return of the
13 property specified in this section if there is no dispute concerning
14 the ownership of the property. Within fifteen (15) days of the time
15 the owner of the property is known, the peace officer shall notify
16 the owner of the property that the property is in the custody of the
17 peace officer. The property shall be returned to the owner upon
18 request, unless the owner, by law, is not permitted to possess such
19 property.

20 C. Except as otherwise provided for property that is pawned,
21 when money or property alleged to have been stolen or embezzled,
22 comes into the custody of a peace officer, the peace officer shall
23 hold it subject to the order of the magistrate authorized by Section
24 1322 of this title to direct the disposal thereof. Within fifteen

1 (15) days of the time the owner of the property is known, the peace
2 officer shall notify the owner of the property that the property is
3 in the custody of the peace officer. The peace officer shall make a
4 good-faith effort to locate and notify the owner of the property.
5 If the peace officer has made a good faith effort to locate and
6 notify the owner of the property and has been unable to locate or
7 notify the owner, the peace officer shall release the property to
8 the last person in possession of the property within fifteen (15)
9 days after the peace officer determines that an owner cannot be
10 located or notified, ~~provided~~ unless there is evidence that the
11 person who last had possession of the property ~~shows proof that the~~
12 ~~person~~ is not a lawful possessor of the property. Such officer may
13 provide a copy of a nonownership affidavit to the defendant to sign
14 if the defendant is not claiming ownership of the money or property
15 taken from the defendant and if the defendant has relinquished the
16 right to remain silent. The affidavit is not admissible in any
17 proceeding to ascertain the guilt or innocence of the defendant. A
18 copy of this affidavit shall be provided to the defendant, and a
19 copy ~~shall~~ may be filed by the peace officer with the court clerk.
20 Upon request, a copy of this affidavit shall be provided to any
21 person claiming ownership of such money or property. The owner of
22 the property or designated representative of the owner may make
23 application to the magistrate for the return of the property. The
24 application shall be on a form provided by the Administrative

1 Director of the Courts and made available through the court clerk or
2 the victim-witness coordinator. The court may charge the applicant
3 a reasonable fee to defray the cost of filing and docketing the
4 application. Once an application has been made and notice provided,
5 the magistrate shall docket the application for a hearing as
6 provided in this section. Where notice by publication is
7 appropriate, the publication notice form shall be provided free of
8 charge to the applicant by the Administrative Director of the Courts
9 through the court clerk or the victim-witness coordinator with
10 instructions on how to obtain effective publication notice. The
11 applicant shall notify the last person in possession of the property
12 prior to the property being seized by the state of the hearing by
13 mailing a copy of the notice by certified mail return receipt
14 requested at the last-known address of the person, unless the person
15 has signed a nonownership affidavit pursuant to this section
16 disclaiming any ownership rights to the property. If the last
17 person in possession of the property is unable to be served notice
18 by certified mail, notice shall be provided by first-class mail and
19 one publication in a newspaper of general circulation in the county
20 where the property is held in custody. The applicant shall notify
21 the district attorney and the court when notice has been served to
22 the last person in possession of the property or published pursuant
23 to this section. The hearing shall be held not less than ~~ten (10)~~
24 ~~days or more than twenty (20)~~ fifteen (15) days after the ~~court has~~

1 ~~been notified that the~~ notice has been served or published. Proof
2 of service or publication shall be filed with the court clerk before
3 the hearing. For the sole purpose of conducting a due process
4 hearing to establish ownership of the property, "magistrate" as used
5 in this section shall mean a judge of the district court, associate
6 district judge, special judge or the judge of a municipal criminal
7 court of record when established pursuant to Section 28-101 et seq.
8 of Title 11 of the Oklahoma Statutes.

9 D. If the magistrate determines that the property is needed as
10 evidence, the magistrate shall determine ownership or right of
11 possession and determine the procedure and time frame for future
12 release. The magistrate may order the release of property needed as
13 evidence pursuant to Section 1327 of this title, provided however,
14 the order may require the owner to present the property at trial.
15 The property shall be made available to the owner within ~~ten (10)~~
16 twenty (20) days of the court order for release. The magistrate may
17 authorize ten (10) days additional time for the return of the
18 exhibit if the district attorney shows cause that additional time is
19 needed to photograph or mark the exhibit.

20 E. If the property is not needed as evidence, it may be
21 released by the magistrate to the owner or designated representative
22 of the owner upon satisfactory proof of ownership or to the person
23 last in possession prior to seizure. The owner of the property or
24 designated representative of the owner may make application to the

1 magistrate for the return of the property. The owner shall provide
2 satisfactory proof of title to the property or sign an affidavit of
3 ownership if documents of title do not exist. If an affidavit of
4 ownership or affidavit of right of possession is used to establish
5 ownership or right of possession, the claimant may also be required
6 to sign an agreement to indemnify and defend the custodians of the
7 property in the event of an adverse claim to the property. The
8 applicant shall notify the last person in possession of the property
9 prior to such property being seized by the state of the hearing by
10 mailing a copy of the notice by certified mail return receipt
11 requested at the last-known address of the person, unless the person
12 has signed a nonownership affidavit pursuant to this section
13 disclaiming any ownership rights to the property. If the last
14 person in possession of the property is unable to be served notice
15 by certified mail, notice shall be provided by one publication in a
16 newspaper of general circulation in the county where the property is
17 held in custody. The applicant shall notify the district attorney
18 and the court when notice has been served to the last person in
19 possession of the property or published pursuant to this section.
20 The hearing shall be held not less than ~~ten (10) days or more than~~
21 ~~twenty (20)~~ fifteen (15) days after the ~~court has been notified that~~
22 ~~the~~ notice has been served or published. An affidavit of service or
23 publication shall be filed with the court prior to the hearing.

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

4 1. There is no dispute concerning the ownership of the
5 property;

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

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

13 satisfactory proof of title to the property or sign an affidavit of
14 ownership or right of possession to be provided by the peace

15 officer. If an affidavit of ownership or affidavit of right of
16 possession is used to establish ownership or right of possession,

17 the claimant may also be required to sign an agreement to indemnify
18 and defend the custodians of the property in the event of an adverse

19 claim to the property. The affidavit is not admissible in any

20 proceeding to ascertain the guilt or innocence of the defendant. A

21 copy of this affidavit ~~shall~~ may be filed by the officer with the
22 court clerk. The property shall then be returned to the owner or

23 person with right of possession.
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1 G. When property alleged to have been stolen comes into the
2 custody of a peace officer and the property is deemed to be
3 perishable, the peace officer shall take such action as appropriate
4 to temporarily preserve the property. However, within seventy-two
5 (72) hours of the time the property was recovered, the receiving
6 agency shall make application for a disposition hearing before a
7 magistrate, and the receiving agency shall notify by first-class
8 mail all persons known to have an interest in the property of the
9 date, time and place of the hearing.

10 H. In any case, the magistrate may, for good cause shown, order
11 any evidence or exhibit to be retained pending the outcome of any
12 appeal or action of postconviction relief.

13 I. Any time property comes into the custody of a municipality,
14 a county, or this state as a result of any contact with any peace
15 officer, criminal investigation or other situation where the return
16 of the property is prohibited by any municipal, state or federal law
17 or when the property has disputed ownership or multiple claimants,
18 the municipality, county or state shall advise the claimant to file
19 an application with the appropriate district court. Upon filing an
20 application for a hearing, the claimant shall provide notice by
21 first-class mail to all interested persons including the government
22 entity having custody of the property. The government entity having
23 custody of the property may also seek a hearing regarding the
24 disposition of the property. The hearing shall be scheduled not

1 less than fifteen (15) days after the notice is mailed. Unless the
2 property is being held in connection with a filed criminal charge,
3 the proceeding shall be considered a civil matter and shall be filed
4 in the county where the property is being held. If a criminal
5 charge has been filed, the matter shall be heard by the judge who
6 has been assigned to the criminal case. At the hearing the court
7 shall make a judicial determination as to the proper and lawful
8 release or other disposition of the property. If the property at
9 issue is a firearm or other weapon, the court may order the property
10 destroyed if the court determines that the owner of the firearm or
11 weapon is mentally or emotionally unstable or disturbed or cannot
12 legally possess the firearm or weapon.

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

16 1. One of the persons asserting a right to the return of any
17 firearm or other weapon is or was mentally or emotionally unstable
18 or disturbed at the time the weapon was placed in custody or at the
19 time of the request for the return of the weapon;

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

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

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

7 5. The ownership of the property is unclear due to multiple
8 claimants or disputes among heirs or next of kin for the property of
9 the deceased; or

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

12 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1322, is
13 amended to read as follows:

14 Section 1322. On satisfactory proof of title to the property,
15 the magistrate before whom the information is laid, or who examines
16 the charge against the person accused of stealing or embezzling the
17 property, may order it to be delivered to the owner on his paying
18 the reasonable and necessary expenses incurred in its preservation,
19 to be certified by the magistrate. The order entitles the owner to
20 demand and receive the property. Such property shall be made
21 available to the owner within ~~ten (10)~~ twenty (20) days of the
22 issuance of the order. The court, however, may keep the property as
23 evidence or, on the issuance of an order, require the owner to
24 present such property at trial.

1 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1326, is
2 amended to read as follows:

3 Section 1326. When money or other property is taken from a
4 defendant arrested upon a charge of public offense, the officer
5 taking it must at the time give duplicate receipts therefor,
6 specifying particularly the amount of money or the kind of property
7 taken. One of which receipts ~~he~~ the officer must deliver to the
8 defendant or to the detention officer holding the personal property
9 of the detainee, and the other of which ~~he~~ the officer must file
10 with the ~~clerk of the court to which the depositions and statement~~
11 ~~must be sent, as provided in the last section of the chapter on~~
12 ~~preliminary examination, 6641~~ chief law enforcement officer or a
13 designee.

14 SECTION 4. This act shall become effective November 1, 2021.

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16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
17 02/17/2021 - DO PASS.

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