

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1025

By: Worthen

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5  
6 AS INTRODUCED

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

21  
22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

1 the hearing. For the sole purpose of conducting a due process  
2 hearing to establish ownership of the property, "magistrate" as used  
3 in this section shall mean a judge of the district court, associate  
4 district judge, special judge or the judge of a municipal criminal  
5 court of record when established pursuant to Section 28-101 et seq.  
6 of Title 11 of the Oklahoma Statutes.

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

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

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

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

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

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

4 3. The defendant has entered a plea of guilty or nolo  
5 contendere to the criminal charge, has executed a nonownership  
6 affidavit as provided by subsection C of this section or has been  
7 personally notified that the property will be returned to the owner  
8 and has failed to file an objection to such return within ~~ten (10)~~  
9 eleven (11) days of being notified. The owner shall provide  
10 satisfactory proof of title to the property or sign an affidavit of  
11 ownership or right of possession to be provided by the peace  
12 officer. If an affidavit of ownership or affidavit of right of  
13 possession is used to establish ownership or right of possession,  
14 the claimant may also be required to sign an agreement to indemnify  
15 and defend the custodians of the property in the event of an adverse  
16 claim to the property. 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~~ may be filed by the officer with the  
19 court clerk. The property shall then be returned to the owner or  
20 person with right of possession.

21 G. When property alleged to have been stolen comes into the  
22 custody of a peace officer and the property is deemed to be  
23 perishable, the peace officer shall take such action as appropriate  
24 to temporarily preserve the property. However, within seventy-two

1 (72) hours of the time the property was recovered, the receiving  
2 agency shall make application for a disposition hearing before a  
3 magistrate, and the receiving agency shall notify by first-class  
4 mail all persons known to have an interest in the property of the  
5 date, time and place of the hearing.

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

9 I. Any time property comes into the custody of a municipality,  
10 a county, or this state as a result of any contact with any peace  
11 officer, criminal investigation or other situation where the return  
12 of the property is prohibited by any municipal, state or federal law  
13 or when the property has disputed ownership or multiple claimants,  
14 the municipality, county or state shall advise the claimant to file  
15 an application with the appropriate district court. Upon filing an  
16 application for a hearing, the claimant shall provide notice by  
17 first-class mail to all interested persons including the government  
18 entity having custody of the property. The government entity having  
19 custody of the property may also seek a hearing regarding the  
20 disposition of the property. The hearing shall be scheduled not  
21 less than fifteen (15) days after the notice is mailed. Unless the  
22 property is being held in connection with a filed criminal charge,  
23 the proceeding shall be considered a civil matter and shall be filed  
24 in the county where the property is being held. If a criminal



1 charge has been filed, the matter shall be heard by the judge who  
2 has been assigned to the criminal case. At the hearing the court  
3 shall make a judicial determination as to the proper and lawful  
4 release or other disposition of the property. If the property at  
5 issue is a firearm or other weapon, the court may order the property  
6 destroyed if the court determines that the owner of the firearm or  
7 weapon is mentally or emotionally unstable or disturbed or cannot  
8 legally possess the firearm or weapon.

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

12 1. One of the persons asserting a right to the return of any  
13 firearm or other weapon is or was mentally or emotionally unstable  
14 or disturbed at the time the weapon was placed in custody or at the  
15 time of the request for the return of the weapon;

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

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

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

1        5. The ownership of the property is unclear due to multiple  
2 claimants or disputes among heirs or next of kin for the property of  
3 the deceased; or

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

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

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

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

21        Section 1326. When money or other property is taken from a  
22 defendant arrested upon a charge of public offense, the officer  
23 taking it must at the time give duplicate receipts therefor,  
24 specifying particularly the amount of money or the kind of property

1 taken. One of which receipts ~~he~~ the officer must deliver to the  
2 defendant or to the detention officer holding the personal property  
3 of the detainee, and the other of which ~~he~~ the officer must file  
4 with the ~~clerk of the court to which the depositions and statement~~  
5 ~~must be sent, as provided in the last section of the chapter on~~  
6 ~~preliminary examination, 6641~~ chief law enforcement officer or a  
7 designee.

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

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10 58-1-5942 GRS 12/17/20

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