

# An Act

ENROLLED HOUSE  
BILL NO. 2225

By: Moore of the House

and

Weaver of the Senate

An Act relating to cities and towns; amending 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), which relates to disposition of property or money; modifying process for disposing of certain property or money; specifying certain notice is required; determining whether property was seized in connection to criminal investigation; specifying entity that shall file certain application; modifying required hearing timeline; modifying certain notice requirements; specifying entity to dispose of property; clarifying process involving sale or donation to third parties; authorizing transfer of certain currency; directing certain processes for 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; requiring claimants to sign indemnification agreement under certain circumstances; requiring filing of affidavits of service or publication with the court clerk; extending date by which objections must be

filed; 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.

SUBJECT: Cities and towns

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

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

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

C. In any instance where the property has an actual or apparent value of more than Two Hundred Fifty Dollars (\$250.00), at least ~~ten (10)~~ eleven (11) days prior to the date of the hearing, written notice of the hearing shall be sent by first-class mail, postage prepaid, to each owner and person last in possession of the property at the address as listed in the application. If the owner of any property with an actual or apparent value exceeding Five Hundred Dollars (\$500.00) is unable to be served written notice by first-class mail, notice shall be provided by one publication at least three (3) days prior to the hearing in a newspaper of general circulation in the county where the property is in custody. The notice shall contain ~~a brief description of the property of the owner and~~ the place and date of the hearing and a description of the property, or the location of a list available for review during business hours in which the property is described and any known owner identified. The notice shall be posted at the assigned place for the posting of municipal notices, and at two other public places in the municipality.

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

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

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

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

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

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

E. All money or legal tender which has come into the possession of the ~~chief of police municipality~~ pursuant to the circumstances provided for in subsection A of this section shall be transferred by the chief of police or designee to the municipal clerk or municipal treasurer for deposit in the municipal general fund. Prior to any transfer, the ~~chief of police municipality~~ shall file an application in the district court requesting the court to enter an order authorizing the chief of police or designee to transfer the money for deposit in the municipal general fund. The application shall describe the money or legal tender, the date the same came into the possession of the ~~chief of police department,~~ and the name of the owner and the address of the owner, if known. Upon filing the application which may be joined with an application as described in subsection B of this section, a hearing shall be set not less than ~~ten (10) days nor more than twenty (20)~~ fifteen (15) days from the filing of the application. Notice of the hearing shall be given as provided for in subsection C of this section. The notice shall state that upon failure of anyone to appear to prove ownership to the money or legal tender, the court shall order the same to be deposited in the municipal general fund. The notice may be combined with a notice to sell personal property as provided for in subsection B of this section. If no one appears to claim and prove ownership to the money or legal tender at the hearing, the court shall order the same to be transferred to the municipal general fund as provided in this subsection.

Notwithstanding any other provision of this section, if authorized by ordinance, the municipality may transfer any currency

received into a depository account for the benefit of its known or unknown owners prior to any court order for disposition of the money or legal tender.

F. ~~The~~ Except as provided in this subsection, the provisions of this section shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character, which the possession of which is prohibited by law. By order of the trial court, any property filed as an exhibit or held by the municipality as evidence or as contraband shall be destroyed or sold or disposed of, pursuant to the conditions prescribed in the order. To the extent the provisions of this section do not apply, the court shall follow the procedures in Section 1321 of Title 22 of the Oklahoma Statutes. No forfeiture proceeding shall be necessary to authorize the destruction of property that cannot be returned lawfully to its owner.

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

H. The municipality may provide by ordinance that a percentage of the money or legal tender deposited in the municipal general fund as provided in subsection D or E of this section may be paid as a ~~finders~~ finder's fee for services rendered to any person who found the unclaimed personal property or money or legal tender and delivered it to, or registered it with, the chief of police or other agent of the municipality.

I. The municipality may provide written notice at the time of arrest or detention that certain property is available for return within ninety (90) days, if the property was not seized as evidence. If the property is or appears to be worth less than Two Hundred Fifty Dollars (\$250.00), no further notice is required prior to obtaining a court order for disposition of the property in accordance with this section. A notice left with a detainee's personal property at the detention facility shall be presumed to

have been returned to the detainee at the time of his or her release and shall satisfy the officer's obligation to deliver a receipt to the detainee in connection with an arrest for a public offense.

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

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

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

C. Except as otherwise provided for property that is pawned, when money or property alleged to have been stolen or embezzled, comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by Section 1322 of this title to direct the disposal thereof. Within fifteen (15) days of the time the owner of the property is known, the peace officer shall notify the owner of the property that the property is in the custody of the peace officer. The peace officer shall make a good-faith effort to locate and notify the owner of the property. If the peace officer has made a good-faith effort to locate and notify the owner of the property and has been unable to locate or notify the owner, the peace officer shall release the property to the last person in possession of the property within fifteen (15) days after the peace officer determines that an owner cannot be located or notified, ~~provided~~ unless there is evidence that the person who last had possession of the property ~~shows proof that the person~~ is not a lawful possessor of the property. Such officer may provide a copy of a nonownership affidavit to the defendant to sign if the defendant is not claiming ownership of the money or property

taken from the defendant and if the defendant has relinquished the right to remain silent. The affidavit is not admissible in any proceeding to ascertain the guilt or innocence of the defendant. A copy of this affidavit shall be provided to the defendant, and a copy ~~shall~~ may be filed by the peace officer with the court clerk. Upon request, a copy of this affidavit shall be provided to any person claiming ownership of such money or property. The owner of the property or designated representative of the owner may make application to the magistrate for the return of the property. The application shall be on a form provided by the Administrative Director of the Courts and made available through the court clerk or the victim-witness coordinator. The court may charge the applicant a reasonable fee to defray the cost of filing and docketing the application. Once an application has been made and notice provided, the magistrate shall docket the application for a hearing as provided in this section. Where notice by publication is appropriate, the publication notice form shall be provided free of charge to the applicant by the Administrative Director of the Courts through the court clerk or the victim-witness coordinator with instructions on how to obtain effective publication notice. The applicant shall notify the last person in possession of the property prior to the property being seized by the state of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of the person, unless the person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to the property. If the last person in possession of the property is unable to be served notice by certified mail, notice shall be provided by first-class mail and by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the district attorney and the court when notice has been served to the last person in possession of the property or published pursuant to this section. The hearing shall be held not less than ~~ten (10) days or more than twenty (20)~~ fifteen (15) days after ~~the court has been notified that~~ the notice has been served or published. Proof of service or publication shall be filed with the court clerk before the hearing. For the sole purpose of conducting a due process hearing to establish ownership of the property, "magistrate" as used in this section shall mean a judge of the district court, associate district judge, special judge or the judge of a municipal criminal court of record when established pursuant to Section 28-101 et seq. of Title 11 of the Oklahoma Statutes.

D. If the magistrate determines that the property is needed as evidence, the magistrate shall determine ownership or right of

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

E. If the property is not needed as evidence, it may be released by the magistrate to the owner or designated representative of the owner upon satisfactory proof of ownership or to the person last in possession prior to seizure. The owner of the property or designated representative of the owner may make application to the magistrate for the return of the property. The owner shall provide satisfactory proof of title to the property or sign an affidavit of ownership if documents of title do not exist. If an affidavit of ownership or affidavit of right of possession is used to establish ownership or right of possession, the claimant may also be required to sign an agreement to indemnify and defend the custodians of the property in the event of an adverse claim to the property. The applicant shall notify the last person in possession of the property prior to such property being seized by the state of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of the person, unless the person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to the property. If the last person in possession of the property is unable to be served notice by certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the district attorney and the court when notice has been served to the last person in possession of the property or published pursuant to this section. The hearing shall be held not less than ~~ten (10)~~ fifteen (15) days ~~or more than twenty (20) days~~ after the court has been notified that the notice has been served or published. An affidavit of service or publication shall be filed with the court prior to the hearing.

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

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

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

3. The defendant has entered a plea of guilty or nolo contendere to the criminal charge, has executed a nonownership affidavit as provided by subsection C of this section or has been personally notified that the property will be returned to the owner and has failed to file an objection to such return within ~~ten (10)~~ eleven (11) days of being notified. The owner shall provide satisfactory proof of title to the property or sign an affidavit of ownership or right of possession to be provided by the peace officer. If an affidavit of ownership or affidavit of right of possession is used to establish ownership or right of possession, the claimant may also be required to sign an agreement to indemnify and defend the custodians of the property in the event of an adverse claim to the property. The affidavit is not admissible in any proceeding to ascertain the guilt or innocence of the defendant. A copy of this affidavit shall be filed by the officer with the court clerk. The property shall then be returned to the owner or person with right of possession.

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

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

I. Any time property comes into the custody of a municipality, a county, or this state as a result of any contact with any peace officer, criminal investigation or other situation where the return of the property is prohibited by any municipal, state or federal law or when the property has disputed ownership or multiple claimants, the municipality, county or state shall advise the claimant to file an application with the appropriate district court. Upon filing an application for a hearing, the claimant shall provide notice by first-class mail to all interested persons including the government entity having custody of the property. The government entity having

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed the House of Representatives the 4th day of May, 2021.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

Passed the Senate the 21st day of April, 2021.

\_\_\_\_\_  
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_