

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 589

By: Sparks

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5  
6 AS INTRODUCED

7 An Act relating to child support arrearages; amending  
8 63 O.S. 2011, Section 2-506, as last amended by  
9 Section 1, Chapter 225, O.S.L. 2016 (63 O.S. Supp.  
10 2016, Section 2-506), which relates to seizure of  
property; directing distribution of proceeds from  
certain forfeited property; and providing an  
effective date.

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

14 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-506, as  
15 last amended by Section 1, Chapter 225, O.S.L. 2016 (63 O.S. Supp.  
16 2016, Section 2-506), is amended to read as follows:

17 Section 2-506. §63-2-506. Seizure of property - Notice of  
18 seizure and intended forfeiture proceeding - Verified answer and  
19 claim to property - Hearing - Evidence and proof - Proceeds of sale

20 A. Any peace officer of this state shall seize the following  
21 property:

22 1. Any property described in subsection A of Section 2-503 of  
23 this title. Such property shall be held as evidence until a  
24 forfeiture has been declared or release ordered, except for property

1 described in paragraphs 1, 2 and 3 of subsection A of Section 2-503  
2 of this title, or in the case of money, coins, and currency,  
3 deposited as provided in subsection E of Section 2-503 of this  
4 title; provided, any money, coins and currency taken or detained  
5 pursuant to this section may be deposited in an interest-bearing  
6 account by or at the direction of the district attorney in the  
7 office of the county treasurer if the district attorney determines  
8 the currency is not to be held as evidence. All interest earned on  
9 such monies shall be returned to the claimant or forfeited with the  
10 money, coins and currency which was taken or detained as provided by  
11 law;

12 2. Any property described in subsection B of Section 2-503 of  
13 this title; or

14 3. Any property described in subsection C of Section 2-503 of  
15 this title.

16 B. Notice of seizure and intended forfeiture proceeding shall  
17 be filed in the office of the clerk of the district court for the  
18 county wherein such property is seized and shall be given all owners  
19 and parties in interest. Notwithstanding any other provision of  
20 law, no filing fees shall be assessed by the court clerk for the  
21 filing of any forfeiture action.

22 C. Notice shall be given by the agency seeking forfeiture  
23 according to one of the following methods:

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1        1. Upon each owner or party in interest whose right, title or  
2 interest is of record in the Tax Commission, by mailing a copy of  
3 the notice by certified mail to the address as given upon the  
4 records of the Tax Commission;

5        2. Upon each owner or party in interest whose name and address  
6 is known to the attorney in the office of the agency prosecuting the  
7 action to recover unpaid fines, by mailing a copy of the notice by  
8 registered mail to the last-known address; or

9        3. Upon all other owners or interested parties, whose addresses  
10 are unknown, but who are believed to have an interest in the  
11 property, by one publication in a newspaper of general circulation  
12 in the county where the seizure was made.

13        D. Within forty-five (45) days after the mailing or publication  
14 of the notice, the owner of the property and any other party in  
15 interest or claimant may file a verified answer and claim to the  
16 property described in the notice of seizure and of the intended  
17 forfeiture proceeding.

18        E. If at the end of forty-five (45) days after the notice has  
19 been mailed or published there is no verified answer on file, the  
20 court shall hear evidence upon the fact of the unlawful use and  
21 shall order the property forfeited to the state, if such fact is  
22 proved. Except as otherwise provided for in Section 2-503 of this  
23 title, any such property shall be forfeited to the state and sold

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1 under judgment of the court pursuant to the provisions of Section 2-  
2 508 of this title.

3 F. If a verified answer is filed, the forfeiture proceeding  
4 shall be set for hearing.

5 G. At a hearing in a proceeding against property described in  
6 paragraphs 3 through 9 of subsection A or subsections B and C of  
7 Section 2-503 of this title, the requirements set forth in said  
8 paragraph or subsection, respectively, shall be satisfied by the  
9 state by a preponderance of the evidence.

10 H. The claimant of any right, title, or interest in the  
11 property may prove a lien, mortgage, or conditional sales contract  
12 to be a bona fide or innocent ownership interest and that such  
13 right, title, or interest was created without any knowledge or  
14 reason to believe that the property was being, or was to be, used  
15 for the purpose charged.

16 I. In the event of such proof, the court shall order the  
17 property released to the bona fide or innocent owner, lien holder,  
18 mortgagee or vendor if the amount due him is equal to, or in excess  
19 of, the value of the property as of the date of the seizure, it  
20 being the intention of this section to forfeit only the right, title  
21 or interest of the purchaser.

22 J. If the amount due to such person is less than the value of  
23 the property, or if no bona fide claim is established, the property  
24 shall be forfeited to the state and sold under judgment of the

1 court, as provided for in Section 2-508 of this title, except as  
2 otherwise provided for in Section 2-503 of this title.

3 K. Property taken or detained under this section shall not be  
4 repleviable, but shall be deemed to be in the custody of the office  
5 of the district attorney of the county wherein the property was  
6 seized, subject only to the orders and decrees of the court or the  
7 official having jurisdiction thereof; said official shall maintain a  
8 true and accurate inventory and record of all such property seized  
9 under the provisions of this section. The provisions of this  
10 subsection shall not apply to property taken or detained by the  
11 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the  
12 Department of Public Safety, the Oklahoma State Bureau of  
13 Investigation, the Alcoholic Beverage Laws Enforcement Commission,  
14 the Department of Corrections or the Office of the Attorney General.  
15 Property taken or detained by the Oklahoma State Bureau of Narcotics  
16 and Dangerous Drugs Control, the Department of Public Safety, the  
17 Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws  
18 Enforcement Commission, the Department of Corrections or the Office  
19 of the Attorney General shall be subject to the provisions of  
20 subsections E and F of Section 2-503 of this title.

21 L. The proceeds of the sale of any property not taken or  
22 detained by the Oklahoma State Bureau of Narcotics and Dangerous  
23 Drugs Control, the Department of Public Safety, the Oklahoma State  
24 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement

1 Commission, the Department of Corrections or the Office of the  
2 Attorney General shall be distributed as follows, in the order  
3 indicated:

4 1. To the Child Support Division of the Department of Human  
5 Services for any arrearage on a child support order of the person  
6 from whom the property was seized;

7 2. To the bona fide or innocent purchaser, conditional sales  
8 vendor or mortgagee of the property, if any, up to the amount of his  
9 or her interest in the property, when the court declaring the  
10 forfeiture orders a distribution to such person;

11 ~~2.~~ 3. To the payment of the actual expenses of preserving the  
12 property and legitimate costs related to the civil forfeiture  
13 proceedings. For purposes of this paragraph, the term "legitimate  
14 costs" shall not include court costs associated with any civil  
15 forfeiture proceeding; and

16 ~~3.~~ 4. The balance to a revolving fund in the office of the  
17 county treasurer of the county wherein the property was seized, said  
18 fund to be used as a revolving fund solely for enforcement of  
19 controlled dangerous substances laws, drug abuse prevention and drug  
20 abuse education, and maintained by the district attorney in his or  
21 her discretion for those purposes with a yearly accounting to the  
22 board of county commissioners in whose county the fund is  
23 established and to the District Attorneys Council; provided, one  
24 hundred percent (100%) of the balance of the proceeds of such sale

1 of property forfeited due to nonpayment of a fine imposed pursuant  
2 to the provisions of Section 2-415 of this title shall be  
3 apportioned as provided in Section 2-416 of this title. The  
4 revolving fund shall be audited by the State Auditor and Inspector  
5 at least every two (2) years in the manner provided in Section 171  
6 of Title 19 of the Oklahoma Statutes. Said audit shall include, but  
7 not be limited to, a compliance audit. A district attorney may  
8 enter into agreements with municipal, tribal, county or state  
9 agencies to return to such an agency a percentage of proceeds of the  
10 sale of any property seized by the agency and forfeited under the  
11 provisions of this section. The District Attorneys Council shall  
12 adopt guidelines which ensure that such agencies receive a  
13 reasonable percentage of such proceeds, considering the relative  
14 contribution of each agency to the drug enforcement and prosecution  
15 operations relating to the seizure. In formulating said guidelines,  
16 the District Attorneys Council shall examine federal guidelines on  
17 asset distribution and use said guidelines as a basis for  
18 establishing guidelines for this state. The Attorney General is  
19 hereby authorized to mediate disputes between district attorneys and  
20 such agencies concerning the application of said guidelines in  
21 particular instances. Any agency that receives proceeds from an  
22 asset distribution shall maintain a true and accurate record of all  
23 such assets.

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1 M. Whenever any vehicle, airplane or vessel is forfeited under  
2 the Uniform Controlled Dangerous Substances Act, the district court  
3 of jurisdiction may order that the vehicle, airplane or vessel  
4 seized may be retained by the state, county or city law enforcement  
5 agency which seized the vehicle, airplane or vessel for its official  
6 use.

7 N. If the court finds that the state failed to satisfy the  
8 required showing provided for in subsection G of this section, the  
9 court shall order the property released to the owner or owners.

10 O. Except as provided for in subsection Q of this section, a  
11 bona fide or innocent owner, lien holder, mortgagee or vendor that  
12 recovers property pursuant to this section shall not be liable for  
13 storage fees.

14 P. Except as provided for in subsection Q of this section,  
15 storage fees shall be paid by the agency which is processing the  
16 seizure and forfeiture from funds generated by seizure and  
17 forfeiture actions.

18 Q. The bona fide or innocent owner, lien holder, mortgagee or  
19 vendor shall reclaim subject seized property within thirty (30) days  
20 of written notice from the seizing agency. If such person fails to  
21 reclaim the property within the thirty-day time period, then storage  
22 fees may be assessed against their secured interest.

23 R. 1. At any hearing held relevant to this section, a report  
24 of the findings of the laboratory of the Oklahoma State Bureau of



1 Investigation, the medical examiner's report of investigation or  
2 autopsy report, or a laboratory report from a forensic laboratory  
3 operated by the State of Oklahoma or any political subdivision  
4 thereof, which has been made available to the accused by the office  
5 of the district attorney or other party to the forfeiture at least  
6 five (5) days prior to the hearing, with reference to all or part of  
7 the evidence submitted, when certified as correct by the persons  
8 making the report shall be received as evidence of the facts and  
9 findings stated, if relevant and otherwise admissible in evidence.  
10 If such report is deemed relevant by the forfeiture applicant or the  
11 respondent, the court shall admit such report without the testimony  
12 of the person making the report, unless the court, pursuant to this  
13 subsection, orders such person to appear.

14 2. When any alleged controlled dangerous substance has been  
15 submitted to the laboratory of the OSBI for analysis, and such  
16 analysis shows that the submitted material is a controlled dangerous  
17 substance, the distribution of which constitutes a felony under the  
18 laws of this state, no portion of such substance shall be released  
19 to any other person or laboratory except to the criminal justice  
20 agency originally submitting the substance to the OSBI for analysis,  
21 absent an order of a district court. The defendant shall  
22 additionally be required to submit to the court a procedure for  
23 transfer and analysis of the subject material to ensure the  
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1 integrity of the sample and to prevent the material from being used  
2 in any illegal manner.

3 3. The court, upon motion of either party, shall order the  
4 attendance of any person preparing a report submitted as evidence in  
5 the hearing when it appears there is a substantial likelihood that  
6 material evidence not contained in said report may be produced by  
7 the testimony of any person having prepared a report. The hearing  
8 shall be held and, if sustained, an order issued not less than five  
9 (5) days prior to the time when the testimony shall be required.

10 4. If within five (5) days prior to the hearing or during a  
11 hearing, a motion is made pursuant to this section requiring a  
12 person having prepared a report to testify, the court may hear a  
13 report or other evidence but shall continue the hearing until such  
14 time notice of the motion and hearing is given to the person making  
15 the report, the motion is heard, and, if sustained, the testimony  
16 ordered can be given.

17 S. In any forfeiture proceeding under this chapter in which the  
18 defendant or claimant prevails, the court may order the plaintiff  
19 processing the seizure and forfeiture to pay from funds generated by  
20 seizure and forfeiture actions:

21 1. Reasonable attorney fees and other litigation costs  
22 reasonably incurred by the defendant or claimant directly related to  
23 the claim on which the defendant or claimant prevailed;

24 2. Postjudgment interest; and

1 3. In cases involving currency or other negotiable instruments:

2 a. interest actually paid to the state from the date of  
3 seizure or arrest of the property that resulted from  
4 the investment of the property in an interest-bearing  
5 account or instrument, and

6 b. an imputed amount of interest that such currency,  
7 instruments, or proceeds would have earned at the rate  
8 applicable to the thirty-day Treasury Bill, for any  
9 period during which no interest was paid, not  
10 including any period when the property reasonably was  
11 in use as evidence in an official proceeding or in  
12 conducting scientific tests for the purpose of  
13 collecting evidence, commencing fifteen (15) days  
14 after the property was seized by a law enforcement  
15 agency or was turned over to a law enforcement agency  
16 by a federal law enforcement authority.

17 SECTION 2. This act shall become effective November 1, 2017.

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