

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 514

BY: TALIAFERRO

AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22 O.S. 1981, SECTION 1321, AS LAST AMENDED BY SECTION 18, CHAPTER 348, O.S.L. 1989 (22 O.S. SUPP. 1990, SECTION 1321), WHICH RELATES TO CUSTODY AND RETURN OF STOLEN OR EMBEZZLED PROPERTY; REQUIRING PEACE OFFICERS TO PLACE HOLD ORDERS ON CERTAIN PROPERTY UNDER CERTAIN CIRCUMSTANCES; DESCRIBING TERM OF HOLD ORDER AND INFORMATION TO BE INCLUDED IN HOLD ORDER; REQUIRING NOTIFICATION OF CERTAIN PARTIES; LIMITING RIGHT OF OWNER TO RECOVER PROPERTY; DESCRIBING INFORMATION TO BE INCLUDED IN NOTICE; SPECIFYING FORM OF NOTICE; PROHIBITING RELEASE OF CERTAIN PROPERTY EXCEPT UNDER CERTAIN CONDITIONS; REQUIRING PAWNBROKER TO ADVISE CERTAIN PEOPLE OF CERTAIN INFORMATION; RELIEVING PAWNBROKER FROM LIABILITY IN CERTAIN SITUATION; PROVIDING FOR RELEASE OF HOLD ORDER; REQUIRING CERTAIN INFORMATION BE GIVEN TO PERSONS REPORTING PROPERTY AS MISSING, STOLEN, OR EMBEZZLED; ALLOWING CERTAIN PROPERTY TO BE OBTAINED BY COURT ORDER; ALLOWING FOR EXTENSION OF HOLD ORDER; REQUIRING PAYMENT OF CERTAIN EXPENSES; REQUIRING REIMBURSEMENT OF INSURER; PROVIDING FOR VESTING OF TITLE TO PROPERTY; LIMITING LIABILITY; PROVIDING FOR

CRIMINAL PROSECUTION AND CIVIL ACTION; AND
PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 22 O.S. 1981, Section 1321, as last amended by Section 18, Chapter 348, O.S.L. 1989 (22 O.S. Supp. 1990, 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 property held in the custody of a municipality, county or the state in any criminal action or proceeding shall be returned to 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 such 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 such property, except that within fifteen (15) days of the time the owner of such property is known, the peace officer shall notify the owner of such property that the property is in the custody of the peace officer. The property shall be returned to the owner upon request.

C. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he 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 such property is known, the peace officer shall notify the owner of such property that the property is in the

custody of the peace officer. Such officer may provide a copy of a nonownership affidavit to the defendant to sign if such defendant is not claiming ownership of the money or property taken from the defendant and if such defendant has relinquished his right to remain silent. Such 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 be filed by the 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 application has been made and notice provided, the magistrate shall docket said 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 such 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 such person, unless such person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to such property. If the last person in possession of the property is unable to be served notice by said 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 such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the court has been notified that the notice has been served or published. For the sole purpose of conducting a due process hearing to establish ownership of such 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 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 such property at trial. The property shall be made available to the owner within ten (10) days of the court order for release. The magistrate may authorize ten (10) days additional time for the return of such exhibit if the district attorney shows cause that additional time is needed to photograph or mark such 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. The owner of the property or designated representative of the owner may make application to the magistrate for the return of the property. The applicant shall notify the last person in possession of such 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 such person, unless such person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to such property. If the

last person in possession of the property is unable to be served notice by said 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 such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the court has been notified that the notice has been served or published.

F. When property alleged to have been stolen comes into the custody of a peace officer and such property is deemed to be perishable said peace officer shall take such action as he deems appropriate to temporarily preserve the property. Provided, 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 all persons known to have an interest in the property of the date, time and place of such hearing.

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

H. Whenever a peace officer has probable cause to believe that property in possession of a licensed pawnbroker or other lawful possessor is stolen, embezzled, or reported missing and no exigent circumstances exist, the local law enforcement agency of the municipality or other political subdivision in which the pawnshop or other lawful possessor resides shall place a written "Hold Order" on the property stating whether the property is to be held as evidence or for protection of the rightful owner's property interest. The term of such "Hold Order" shall not exceed sixty (60) days. The "Hold Order" shall include the officer's name, title and badge number, the name and address of the agency to which the officer is

attached, the description of the property including transaction numbers, the offense number and reporting agency, expiration date of the holding period, and the name and address of the person reporting said property as missing, stolen, or embezzled, and/or persons claiming an interest in said property, including insurers. At the time a "Hold Order" is issued the peace officer shall notify the alleged rightful owner or interested party that the property has been located in the possession of a pawnbroker or other lawful possessor and that a "Hold Order" has been issued to protect his property interest. The alleged rightful owner shall have sixty (60) days to informally recover, or institute formal civil proceedings to recover his property. The notice shall include the officer's name and title, badge number, the name and address of the agency to which the officer is attached, description of the property, the name and address of the pawnbroker or other legal possessor, and the time period covered by the "Hold Order". Registered or certified mailing to addresses of record shall constitute notice to both parties.

I. While the "Hold Order" is effective, the pawnbroker or other lawful possessor shall not release or dispose of the property except pursuant to a court order or upon receipt of a written release signed by any law enforcement officer who is a member of the law enforcement agency to which the officer placing the "Hold Order" on the property is attached. In the case of a pawnbroker said release authorization shall permit release of the property to the rightful owner subject to the maturity date and grace period of an active pawn contract.

J. If a pledgor (person who has pledged goods to the pawnbroker) seeks to redeem property that is subject to a "Hold Order", the pawnbroker shall advise the pledgor of the name and badge number of the law enforcement officer who placed the hold on the property and the name of the law enforcement agency to which the officer is attached. The "Hold Order" in no way and at no time

voids the contractual obligations set forth in the pawn transaction except to relieve the pawnbroker from liability for failing to comply with paragraph 4 of subsection C of Section 1511 of Title 59 of the Oklahoma Statutes pursuant to the "Hold Order". If the property is not required to be held pursuant to a criminal prosecution or investigation, the "Hold Order" shall be released by the law enforcement agency or at the expiration of the holding period by operation of law, whereupon the pledgor may timely redeem said property pursuant to the terms of the pawn contract. The person reporting the property as missing, stolen, or embezzled shall be advised of the pledgor's name and address such that, if he chooses, he may institute appropriate proceedings to recover the property from the pledgor.

K. If the property is required as evidence in a criminal proceeding, it shall be obtained from the pawnbroker pursuant to a court order and returned in a timely manner.

L. Where an ongoing criminal investigation or judicial process approaches the limit of the holding period, the period may be extended, in writing, in successive thirty-day increments.

M. If the alleged owner desires to recover the property set forth in the "Hold Order" but for whatever reason chooses not to file a criminal complaint against an identified alleged thief, the alleged owner shall pay the pawnbroker the expenses incurred in the acquisition of the allegedly stolen or embezzled property, or forfeit his interest in the property to the pawnbroker.

N. If the alleged owner recovers insured property as set forth in the "Hold Order", he shall reimburse the insurer monies paid for the loss of the property.

O. If the pledgor fails to timely redeem the property and the alleged rightful owner has taken no action to recover the property during the holding period, title to the property shall vest in the pawnbroker pursuant to pawn contract and Section 1511 of Title 59 of

the Oklahoma Statutes. Compliance with the holding period and the statute shall be prima facie evidence that the pawnbroker has acted in good faith in protecting the alleged rightful owner's property interest including, but not limited to, subsequent sale or disposal of the property by the pawnbroker.

P. Except as set forth in this section, a pawnbroker shall not be subject to civil liability for compliance with this section. Willful noncompliance shall subject a pawnbroker to criminal prosecution or a civil action, or both.

SECTION 2. This act shall become effective September 1, 1991.

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