

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR HOUSE BILL NO. 2308

By: Bryant (John)

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 1321, as last amended by Section 1, Chapter 280, O.S.L. 1992, and 1322 (22 O.S. Supp. 1993, Section 1321), which relate to stolen property; modifying fee and notice procedures for the return of stolen property; modifying procedure for returning stolen property; requiring the office of the court clerk and the office of the district attorney to have certain formal agreements; providing for costs of certain notice; prohibiting certain referrals; creating the Stolen Property Notice Fund, and procedures related thereto; eliminating certain payments required of property owner; modifying the availability of such property; providing for the photographing of such property for certain purposes; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1321, as last amended by Section 1, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 1993, 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 custody of a municipality, county or the state in any criminal action or proceeding 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. 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 such property and has been unable to locate or notify such owner, he shall release the property to the last person in possession of such property within fifteen (15) days after he determines that an owner cannot be located or notified, provided that the person who last had possession of the property shows proof that he is a lawful possessor of the property. 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~~ designated support staff. The court may charge the applicant a ~~reasonable~~ fee, not to exceed Ten Dollars (\$10.00), 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 court clerk or district attorney 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, through the office of the court clerk or the office of the district attorney, by one publication in a newspaper of general circulation in the county where the property is held in custody. The ~~applicant~~ court clerk or the district attorney shall notify ~~the district attorney and the court~~ and either the court clerk or district attorney, whichever is appropriate, 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

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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~~ court clerk or district attorney 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, through the office of the court clerk or the office of the district attorney, by one publication in a newspaper of general circulation in the county where the property is held in custody. The ~~applicant~~ court clerk or district attorney shall notify ~~the district attorney and the court~~ and either the court clerk or district attorney, whichever is appropriate, 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. 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 there is no dispute concerning the ownership of the property and the property is readily identifiable by the owner. The owner shall provide satisfactory

proof of title to the property or sign an affidavit of ownership to be provided by the peace officer. 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.

G. 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.

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.

I. On or before January 1, 1995, the office of the court clerk and the office of the district attorney shall enter into a formal agreement concerning the responsibility of the notice required by this section and costs associated with such notice. The agreement shall be in writing and may allow for the alternating of the responsibility on a year-to-year basis. The designated office shall be responsible for the costs required by this section and, unless otherwise agreed to, neither office shall have the authority to refer the applicant to the other office. If no agreement can be reached then the notice shall be the responsibility of the office of the court clerk.

J. There is hereby created in the office of the county treasurer the "Stolen Property Notice Fund". A fee as determined by the court shall be assessed on each convicted felon in the state convicted of any offense relating to stolen property. Such fee shall be deposited in the fund. The court clerk's office and the district attorney's office may apply for and receive

reimbursement from such fund for any costs associated with the notice as provided for in this section.

SECTION 2. AMENDATORY 22 O.S. 1991, 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 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) 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~~ If the property is not contraband and is owned by a victim of a crime being investigated, the property shall be photographed by the appropriate law enforcement personnel and returned to the victim of the crime within thirty (30) days of completion of forensic analysis unless the prosecuting attorney deems it essential to the prosecution of the case to retain the evidence. The photographs shall accurately and correctly represent the property.

SECTION 3. This act shall become effective January 1, 1995.

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