

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 27

By: Leftwich and Helton of
the Senate

and

Paulk of the House

COMMITTEE SUBSTITUTE

An Act relating to firearms; amending 21 O.S. 1991, Sections 1272, 1273 and 1276, which relate to carrying weapons, selling weapons to minors and punishments, and 22 O.S. 1991, Sections 1321, as last amended by Section 1, Chapter 280, O.S.L. 1992, 1325 and 1327, as amended by Section 2, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 1992, Sections 1321 and 1327), which relate to return of stolen or embezzled property, unclaimed property and disposition of exhibits; clarifying language; modifying statutory references; directing law enforcement officers to confiscate certain weapons and firearms; directing forfeiture of certain weapons and firearms to the confiscating authority; providing exception to forfeiture; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1272,
is amended to read as follows:

Section 1272. It shall be unlawful for any person to carry upon or about his person, or in his portfolio or purse, any pistol, revolver, dagger, bowie knife, dirk knife, switchblade knife, spring-type knife, sword cane, knife having a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife, blackjack, loaded cane, billy, hand chain, metal knuckles, or any other offensive weapon, except as ~~in this article~~ otherwise provided by law.

~~Provided further, that this~~ This section shall not prohibit the proper use of guns and knives for hunting, fishing or recreational purposes, nor shall this section be construed to prohibit any use

of weapons in a manner otherwise permitted by statute. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor punishable as provided in Section 1276 of this title.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1273, is amended to read as follows:

Section 1273. It shall be unlawful for any person within this state, to sell or give to any ~~minor~~ person under eighteen (18) years of age any of the ~~arms~~ firearms or weapons designated ~~in the two preceding sections~~ Section 1272 of this title. Any person violating this section shall, upon conviction, be punishable as provided in Section 1276 of this title.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1276, is amended to read as follows:

Section 1276. Any person violating the provisions of ~~any one of the foregoing sections,~~ Section 1272 or 1273 of this title shall on the first conviction be adjudged guilty of a misdemeanor ~~and be punished~~ punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Fifty Dollars (\$50.00), or by imprisonment in the county jail not to exceed thirty (30) days or by both such fine and imprisonment at the discretion of the court. On the second and every subsequent conviction, the party offending shall on conviction be fined not less than Fifty Dollars (\$50.00) nor more than Two Hundred Fifty Dollars (\$250.00) or be imprisoned in the county jail not less than thirty (30) days nor more than three (3) months or by both, such fine and imprisonment at the discretion of the court.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1321, as last amended by Section 1, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 1992, 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~~ Except as provided in Section 7 of this act, 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.

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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. 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. 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.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1325, is amended to read as follows:

Section 1325. A. ~~Any~~ Except as provided in Section 7 of this act, any sheriff is authorized to sell personal property which has come into his possession, or deposit in the Sheriff's Training Fund, as hereafter provided, all money or legal tender of the United States which has come into his possession, whether said property or money be stolen, embezzled, lost, abandoned or otherwise, the owner of said property or money being unknown or not having claimed the same, and which the sheriff has held for at least six (6) months, and such property or money, or any part thereof, being no longer needed to be held as evidence or otherwise used in connection with any litigation.

B. The sheriff shall file an application in the district court of his county requesting the authority of said court to conduct a sale of such personal property, and shall attach to his application a list describing such property, including all

identifying numbers and marks, if any, the date said property came into his possession and the name of the owner and his address, if known. The court shall set said application for hearing not less than ten (10) days nor more than twenty (20) days after filing.

C. Notice shall be given of said hearing to each and every owner known and as set forth in said application by certified mail directed to his last-known address at least ten (10) days prior to the date of said hearing. Said notice shall contain a brief description of the property of said owner and the place and date of the hearing. In addition thereto notice of said hearing shall be posted in three public places in the county, one being the district courthouse at the regular place assigned for the posting of legal notices.

D. At the hearing, if no owner appears and establishes ownership to said property, the court shall enter an order authorizing the sheriff to sell said personal property to the highest bidder for cash, after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The sheriff shall make a return of said sale and, when confirmed by said court, the order confirming said sale shall vest in the purchaser title to said property so purchased.

E. A sheriff, having in his possession money or legal tender under the circumstances provided in subsection A ~~above~~ of this section, prior to appropriating the same for deposit into the Sheriff's Training Fund, shall file an application in the district court of his county requesting the court to enter an order authorizing him to so appropriate said money for deposit in said Sheriff's Training Fund. Said application shall describe the money or legal tender, together with serial numbers, if any, the date the same came into his possession, and the name of the owner and his address, if known. Upon filing, said application, which may be joined with an application as described in subsection B ~~above~~ of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof, and notice of said hearing shall be given as provided in subsection C ~~above~~ of this section. Such notice shall state that,

upon no one appearing to prove ownership to said money or legal tender, the same will be ordered by the court to be deposited in the Sheriff's Training Fund by the sheriff. Said notice may be combined with a notice to sell personal property as set forth in subsection C ~~above~~ of this section. At the hearing, if no one appears to claim and prove ownership to said money or legal tender, the court shall order the same to be deposited by the sheriff in the Sheriff's Training Fund, as provided ~~hereafter~~ in subsection F of this section.

F. The money received from the sale of personal property as ~~above~~ provided in subsection D of this section, after payment of the court costs and other expenses, if any, together with all money in possession of said sheriff, which has been ordered by the court to be deposited in the Sheriff's Training Fund, shall be deposited in such fund which shall be a special fund with the county treasurer and may be expended upon the approval of the sheriff for the purchase of uniforms for the sheriff or his duly authorized deputies or for the purchase of equipment that may be used in crime prevention and detection. Said fund or any portion of it may be expended in providing expenses of the sheriff or any duly authorized deputy in attending official training courses at the Southwest Center for Law Enforcement Education, located on the campus of the University of Oklahoma. It is further provided that expenditure of an amount not to exceed fifty percent (50%) of the amount in said fund in any given fiscal year may be made by the sheriff to provide for the expenses of the sheriff or any duly authorized deputy in attending any police science courses held outside of the State of Oklahoma; and provided further that if said fund has an amount in excess of needs for the ~~above~~ purposes stated in this subsection, any such excess may be transferred by the sheriff to the general fund of the county upon the written order of said sheriff.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1327, as amended by Section 2, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 1992, Section 1327), is amended to read as follows:

Section 1327. A. ~~All~~ Except as provided in Section 7 of this act, all exhibits which have been introduced, filed, or held in custody of the state in any criminal action or proceeding may be disposed of as provided for in this section.

B. The court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order all such exhibits, other than documentary exhibits, as may be released from the custody of the court or the state, without prejudice to the state, delivered to such party at any time after the final determination of the action or proceedings; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit 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 Section 1321 of this title disclaiming any ownership rights to such exhibit. 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. In the event the court orders the release of said exhibit to the owner, the district attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner

within ten (10) days of the court order. The court 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. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such exhibits is unknown, or fails to apply for the return of such exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at any time after the judgment has become final, the court in which the case was tried shall make an order specifying what exhibits may be released from the custody of the court without prejudice to the state. Upon receipt of such an order, the property shall be transferred to the county sheriff or other proper governmental agency for sale to the public. At least ten (10) days prior to such sale, notice of the sale shall be sent by certified mail return receipt requested to the last person in possession of such exhibit prior to such exhibit being seized by the state at the last-known address of such person. Upon satisfactory proof being provided to the county sheriff or other proper governmental agency holding the transferred exhibit that the last person in possession of such exhibit was a lawful possessor, the exhibit shall be released to the last person in possession of such exhibit;

2. At any time prior to the time fixed for the transfer, the owner or any person entitled to the possession of any of such exhibits may obtain from the court an order returning them to him;

3. Articles not returned to their owners or to persons entitled to their possession at or prior to the time set for the transfer shall be sold by the proper receiving agency for cash. The articles shall be sold singly or in combinations. The money received from such sales shall be placed in the appropriate fund of the governmental agency responsible for the sale;

4. Where the exhibit consists of money or currency and is unclaimed at the time of the transfer, it shall not be transferred

but shall be immediately deposited in the appropriate fund of the governmental agency in possession of such property; and

5. If any property is transferred to the county sheriff or other governmental agency pursuant to this section it may be sold in the manner provided by law for the sale of surplus personal property. If the county sheriff or other proper governmental agency determines that any such property transferred to it for sale is needed for a public use, such property may be retained by the agency and need not be sold.

C. The court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order such documentary exhibits as may be released from the custody of the court without prejudice to the state delivered to such party any time after the final determination of the action or proceeding; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit 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 Section 1321 of this title disclaiming any ownership rights to such exhibit. 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. In the event the court orders the release of said exhibit to the owner, the district attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The court 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. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such documentary exhibits is unknown, or fails to apply for the return of said exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at any time after the judgment has become final, the court in which the case was tried shall make an order requiring such exhibits to be destroyed; provided, that no such order shall be made authorizing the destruction of any documentary exhibit if the destruction of such exhibit would prejudice the state; and

2. No exhibit shall be destroyed or otherwise disposed of until sixty (60) days after the clerk of the court has posted a notice conspicuously in three public places in the county, referring to the order for the disposition, describing briefly the exhibit, and indicating the date after which the exhibit will be destroyed or otherwise disposed of.

D. The provisions of subsection B 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 whatsoever the possession of which is prohibited by law. Any such property filed as an exhibit or held by the state shall be, by order of the trial court, destroyed or sold or otherwise disposed of under the conditions prescribed in such order. This act shall not be interpreted to authorize the return of any property, the possession of which is prohibited by law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1271.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

Whenever a person under eighteen (18) years of age is detained or arrested by a law enforcement officer and is carrying any weapon or firearm prohibited by Section 1272 of Title 21 of the Oklahoma Statutes, every prohibited weapon and firearm shall be confiscated, and within sixty (60) days from the date of conviction forfeited to the confiscating authority. However, when a weapon or firearm confiscated pursuant to the provisions of this section has been stolen or embezzled, the weapon or firearm shall be returned to the owner pursuant to Section 1321 of Title 22 of the Oklahoma Statutes, provided the possession of such weapon or firearm is not otherwise prohibited by law.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-6829

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