

ENROLLED HOUSE
BILL NO. 2115

By: Breckinridge, Dank,
Adkins, Hastings, Perry,
Thornbrugh, Weese,
Phillips, Webb, Bryant,
Vaughn, Pope (Tim) and
Settle of the House

and

Smith of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 1991, Section 701.7, which relates to murder in the first degree; modifying condition by which murder in the first degree occurs in certain circumstances; amending 22 O.S. 1991, Section 1175.4, which relates to post-examination competency hearings; modifying standard of evidence; deleting exception; permitting use of certain statements; amending 22 O.S. 1991, Section 1321, as last amended by Section 1, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 1995, Section 1321), which relates to custody and return of stolen or embezzled property; expanding conditions not requiring notice and hearings; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 701.7, is amended to read as follows:

Section 701.7 A. A person commits murder in the first degree when ~~he~~ that person unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree ~~when he takes the life of a human being~~, regardless of malice, in the when that person or any other person takes the life of a human being during, or if the death of a human being results from, the commission or attempted commission of murder of another person, shooting or discharge of a firearm or crossbow with intent to kill, forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances, or trafficking in illegal drugs.

C. A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to Section 843 of this title.

D. A person commits murder in the first degree when ~~he~~ that person unlawfully and with malice aforethought solicits another

person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the Uniform Controlled Dangerous Substances Act, unlawfully possessing with intent to distribute or dispense controlled dangerous substances, or trafficking in illegal drugs.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1175.4, is amended to read as follows:

Section 1175.4 A. After the doctor, doctors or technicians have made the determination required in Section 1175.3 of this title, a hearing on the competency of the person shall be held only upon application of the defendant or the state or upon the formal setting of a competency hearing by the court.

B. The court, at the hearing on the application, shall determine, by ~~clear and convincing~~ a preponderance of the evidence, if the person is incompetent. The person shall be presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. If the court deems it necessary, or if the person alleged to be a person requiring treatment, or any relative, friend, or any person with whom he may reside, or at whose house he may be, shall so demand, the court shall schedule the hearing on the application as a jury trial to be held within seventy-two (72) hours of the request, excluding weekends and legal holidays, or within as much additional time as is requested by the attorney of the person whose competency is in question, upon good cause shown. The jury shall be composed of six (6) persons having the qualifications required of jurors in courts of record, summoned to determine the questions of the person's competency and need for treatment. Whenever a jury is required, the court shall proceed to the selection of such jury in the manner as provided by law and such jury shall determine the questions of the competency and need for treatment of the person whose competency is in question. The jurors shall receive fees for attendance and mileage as are allowed by law.

C. The person whose competency is in question shall have the right to be present at the hearing on the petition unless it is made to appear to the court that the presence of the person makes it impossible to conduct the hearing in a reasonable manner. The court may not decide in advance of the hearing, solely on the basis of the certificate of the examining doctor or doctors, that the person whose competency is in question should not be allowed to appear. It shall be made to appear to the court based on clear and convincing evidence that alternatives to exclusion were attempted before the court renders his removal for that purpose or his appearance at such hearing improper and unsafe.

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. No statement, admission or confession made by the person whose competency is in question obtained during his examination for competency may be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form, ~~except that if such person is found to be competent at the time of his examination hearing, any such statement made by him may be used for purposes of impeachment.~~

E. If the question of competency is submitted to a jury, the court shall instruct the jury as to the law regarding competency, and the findings they are to make. If the trial of the question is to the court, the court shall make the required findings.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1321, as last amended by Section 1, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 1995, 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~~ the property, ~~except that within~~. Within fifteen (15) days of the time the owner of ~~such~~ the property is known, the peace officer shall notify the owner of ~~such~~ the 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~~ 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 ~~such~~ the property is known, the peace officer shall notify the owner of ~~such~~ 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 ~~such~~ the property and has been unable to locate or notify ~~such~~ the owner, ~~he~~ the peace officer shall release the property to the last person in possession of ~~such~~ the property within fifteen (15) days after ~~he~~ the peace officer determines that an owner cannot be located or notified, provided that the person who last had possession of the property shows proof that ~~he~~ the person is a lawful possessor of the property. Such officer may provide a copy of a nonownership affidavit to the defendant to sign if ~~such~~ the defendant is not claiming ownership of the money or property taken from the defendant and if ~~such~~ the defendant has relinquished ~~his~~ the right to remain silent. ~~Such~~ 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 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~~ 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 ~~such~~ the property prior to ~~such~~ 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 ~~such~~ the person, unless ~~such~~ the person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to ~~such~~ the 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~~ the 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~~ 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 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~~ the 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~~ the exhibit if the district attorney shows cause that additional time is needed to photograph or mark ~~such~~ 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. 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~~ 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 ~~such~~ the person, unless ~~such~~ the person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to ~~such~~ the 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~~ the 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~~:

1. There is no dispute concerning the ownership of the property and ~~the~~;
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) days of being notified. 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~~ the property is deemed to be perishable ~~said,~~ the peace officer shall take such action as he deems appropriate to temporarily preserve the property. ~~Provided,~~ ~~however~~ 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~~ 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.

SECTION 4. This act shall become effective November 1, 1996.

Passed the House of Representatives the 7th day of May, 1996.

Speaker of the House of
Representatives

Passed the Senate the 8th day of May, 1996.

President of the Senate