

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2116

By: Breckinridge

AS INTRODUCED

An Act relating to criminal procedure; 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; clarifying language; 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. 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~~ the 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 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 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 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 who last had possession of the property is a lawful possessor of the property. ~~Such~~ The 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~~ the 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~~ 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 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~~ 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.

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~~ the 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~~ 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 2. This act shall become effective November 1, 1996.

45-2-8479

LAC