STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1489 By: Wilkerson

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1991, Section 1040.54, which relates to seizure and forfeiture of equipment used in relation to obscene material; authorizing the district attorney to file certain forfeiture proceedings within certain period; authorizing entity seizing certain equipment to file forfeiture proceeding under certain circumstance; clarifying responsibility for notice of forfeiture proceeding; allowing property to remain in custody of seizing entity; directing distribution of proceeds from forfeiture proceeding; clarifying reference; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1040.54, is amended to read as follows:

Section 1040.54 A. Any peace officer of this state is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material as defined in paragraph 1 and subparagraph a of paragraph 2 of Section 1024.1 of ~~Title 21 of the Oklahoma Statutes~~ this title. Said equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and

2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

C. Within sixty (60) days after the mailing or publication of the notice, the owner of the equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

D. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the state, if such fact is proven.

E. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

F. At the hearing the ~~state~~ party seeking the forfeiture shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material as defined in paragraph 1 and subparagraph a of paragraph 2 of Section 1024.1 of ~~Title 21 of the Oklahoma Statutes~~ this title with knowledge by the owner of the equipment.

G. The owner or party in interest may prove that ~~his~~ the right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

H. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due ~~him~~ the person is equal to, or in excess of, the value of the equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to the state and shall be sold pursuant to the judgment of the court.

J. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county where the equipment was seized or in the custody of the party seeking the forfeiture. The district attorney or the party seeking the equipment may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the equipment. Equipment which has not been released by the district attorney or the party seizing the equipment shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

K. The district attorney or the party seizing such equipment shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any equipment not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of ~~his~~ the person's interest in the equipment, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the equipment;

3. The balance to a revolving fund in the office of the county treasurer of the county where the equipment was seized, said fund to be used and maintained as a revolving fund for any purpose by the department that made the seizure with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in said fund.

M. The proceeds of the sale of any equipment seized, taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the equipment; and

3. The balance to a revolving fund of the agency seizing said equipment to be used and maintained as a revolving fund for law enforcement purposes by the agency seizing said equipment. Monies from said fund may be used to pay costs for the storage of such

equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor.

N. When any equipment is forfeited pursuant to this section, the district court of jurisdiction may order that the equipment seized may be retained by the state, county, or municipal law enforcement agency which seized the equipment for its official use.

~~N.~~ O. If the court finds that the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material as defined in paragraph 1 and subparagraph a of paragraph 2 of Section 1024.1 of ~~Title 21 of the Oklahoma Statutes~~ this title, the court shall order the equipment released to the owner.

~~O.~~ P. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

SECTION 2. This act shall become effective November 1, 2000.

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