

EHB 1373

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THE STATE SENATE
Tuesday, April 3, 2001

ENGROSSED

House Bill No. 1373

ENGROSSED HOUSE BILL NO. 1373 - By: ASKINS, INGMIRE, NANCE, PETERS,
TIBBS and ADKINS of the House and SMITH and WILKERSON of the Senate.

An Act relating to criminal procedure; requiring preservation and retention of certain biological evidence for specified time; defining term; providing procedure for disposition of biological evidence; amending 22 O.S. 1991, Sections 1325, as last amended by Section 3, Chapter 199, O.S.L. 1996 and 1327, as amended by Section 2, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 2000, Sections 1325 and 1327), which relate to disposition of unclaimed property and exhibits; providing for disposition of biological evidence; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1372 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. A criminal justice agency having possession or custody of biological evidence from a violent felony offense, as defined by subsection F of Section 982 of Title 22 of the Oklahoma Statutes, shall retain and preserve that biological evidence for such period of time as any individual convicted of that crime remains incarcerated.

B. As used in this section:

1 1. "Biological evidence" means physical evidentiary material
2 originating from the human body from which a nuclear DNA profile or
3 mitochondrial DNA sequence can be obtained or representative or
4 derivative samples of such physical evidentiary material collected
5 by a forensic DNA laboratory; and

6 2. "DNA" means deoxyribonucleic acid.

7 C. The criminal justice agency in possession or custody of
8 biological evidence may destroy or otherwise dispose of the
9 biological evidence before the expiration of the period of time
10 described in subsection A of this section only if:

11 1. The agency notifies any person who remains incarcerated in
12 connection with the case, the Oklahoma Indigent Defense System DNA
13 Forensic Testing Program if still applicable, and any counsel of
14 record or public defender organization for the judicial district in
15 which the judgment of conviction for such person was entered, of:

16 a. the intention of the agency to destroy the evidence,
17 and

18 b. the provisions of the DNA Forensic Testing Act, if
19 still applicable;

20 2. No person submits a written objection to the destruction of
21 the biological evidence to the agency within ninety (90) days of
22 receiving notice pursuant to paragraph 1 of this subsection; and

1 3. No other provision of law requires that such biological
2 evidence be preserved.

3 SECTION 2. AMENDATORY 22 O.S. 1991, Section 1325, as
4 last amended by Section 3, Chapter 199, O.S.L. 1996 (22 O.S. Supp.
5 2000, Section 1325), is amended to read as follows:

6 Section 1325. A. Any sheriff's office or campus police agency
7 as authorized under Section 360.15 et seq. of Title 74 of the
8 Oklahoma Statutes is authorized to dispose of by public sale,
9 destruction, donation, or transfer for use to a governmental
10 subdivision personal property which has come into its possession, or
11 deposit in a special fund, as hereafter provided, all money or legal
12 tender of the United States which has come into its possession,
13 whether said property or money be stolen, embezzled, lost, abandoned
14 or otherwise, the owner of said property or money being unknown or
15 not having claimed the same, and which the sheriff or campus police
16 agency has held for at least six (6) months, and such property or
17 money, or any part thereof, being no longer needed to be held as
18 evidence or otherwise used in connection with any litigation.

19 B. Where personal property held under the circumstances
20 provided in subsection A of this section is determined by the agency
21 having custody to be unsuitable for disposition by public sale due
22 to its condition or assessed by agency personnel as having limited
23 or no resale value, it may be destroyed, discarded as solid waste or

1 donated to a charitable organization designated by the U.S. Internal
2 Revenue Service as a 501(c) (3) nonprofit organization. Where
3 disposition by destruction, discard, or donation is made of personal
4 property, a report describing the property by category and quantity,
5 and indicating what disposition was made for each item or lot, shall
6 be submitted to the presiding judge of the district court within ten
7 (10) days following the disposition.

8 C. Where disposition by public sale is appropriate, the
9 sheriff's office or campus police agency shall file an application
10 in the district court of its county requesting the authority of said
11 court to dispose of such personal property, and shall attach to his
12 application a list describing such property, including all
13 identifying numbers and marks, if any, the date said property came
14 into its possession and the name and address of the owner, if known.
15 The court shall set said application for hearing not less than ten
16 (10) days nor more than twenty (20) days after filing.

17 D. Notice shall be given by the sheriff's office or campus
18 police agency of said hearing to each and every owner known and as
19 set forth in said application by certified mail directed to their
20 last-known address at least ten (10) days prior to the date of said
21 hearing. Said notice shall contain a brief description of the
22 property of said owner and the place and date of the hearing. In
23 addition thereto notice of said hearing shall be posted in three

1 public places in the county, one being the county courthouse at the
2 regular place assigned for the posting of legal notices.

3 E. At the hearing, if no owner appears and establishes
4 ownership to said property, the court shall enter an order
5 authorizing the sheriff's office or campus police agency to donate
6 property having a value of less than Five Hundred Dollars (\$500.00)
7 to a not-for-profit corporation as defined in Title 18 of the
8 Oklahoma Statutes or to sell said personal property to the highest
9 bidder for cash, after at least five (5) days' notice has been given
10 by publication in one issue of a legal newspaper of the county. The
11 sheriff's office or campus police agency shall make a return of said
12 donation or sale and, when confirmed by said court, the order
13 confirming said donation or sale shall vest in the recipient or
14 purchaser title to said property so donated or purchased.

15 F. A sheriff's office having in its possession money or legal
16 tender under the circumstances provided in subsection A of this
17 section, prior to appropriating the same for deposit into a special
18 fund, shall file an application in the district court of its county
19 requesting the court to enter an order authorizing it to so
20 appropriate said money for deposit in said special fund. Said
21 application shall describe the money or legal tender, together with
22 serial numbers, if any, the date the same came into the possession
23 of the sheriff's office or campus police agency, and the name and

1 address of the owner, if known. Upon filing, said application,
2 which may be joined with an application as described in subsection C
3 of this section, shall be set for hearing not less than ten (10)
4 days nor more than twenty (20) days from the filing thereof, and
5 notice of said hearing shall be given as provided in subsection D of
6 this section. Such notice shall state that, upon no one appearing
7 to prove ownership to said money or legal tender, the same will be
8 ordered by the court to be deposited in the special fund by the
9 sheriff's office or campus police agency. Said notice may be
10 combined with a notice to sell personal property as set forth in
11 subsection D of this section. At the hearing, if no one appears to
12 claim and prove ownership to said money or legal tender, the court
13 shall order the same to be deposited by the sheriff's office or
14 campus police agency in the special fund, as provided in subsection
15 H of this section.

16 G. Where a sheriff's office or campus police agency has in its
17 possession under the circumstances provided in subsection A of this
18 section, personal property deemed to have potential utility to that
19 sheriff's office, campus police agency or another governmental
20 subdivision, prior to appropriating the personal property for use,
21 the sheriff's office or campus police agency shall file an
22 application in the district court requesting the court to enter an
23 order authorizing it to so appropriate or transfer the property for

1 use. The application shall describe the property, together with
2 serial numbers, if any, the date the property came into the
3 possession of the sheriff's office or campus police agency and the
4 name and address of the owner, if known. Upon filing, the
5 application, which may be joined with an application as described in
6 subsection C of this section, shall be set for hearing not less than
7 ten (10) days nor more than twenty (20) days from the filing
8 thereof. Notice of the hearing shall be given as provided in
9 subsection D of this section. The notice shall state that, upon no
10 one appearing to prove ownership to the personal property, the
11 property will be ordered by the court to be delivered for use by the
12 sheriff's office or campus police agency or its authorizing
13 institution or transferred to another governmental subdivision for
14 its use. The notice may be combined with a notice to sell personal
15 property as set forth in subsection D of this section. At the
16 hearing, if no one appears to claim and prove ownership to the
17 personal property, the court shall order the property to be
18 available for use by the sheriff's office or campus police agency or
19 delivered to an appropriate person for use by the authorizing
20 institution or another governmental subdivision.

21 H. The money received from the sale of personal property as
22 above provided, after payment of the court costs and other expenses,
23 if any, together with all money in possession of said sheriff's

1 office or campus police agency, which has been ordered by the court
2 to be deposited in the special fund, shall be deposited in such fund
3 which shall be separately maintained by said sheriff's office in a
4 special fund with the county treasurer or campus police agency to be
5 expended upon the approval of the sheriff or head of the campus
6 police agency for the purchase of equipment, materials or supplies
7 that may be used in crime prevention, education, training or
8 programming. Said fund or any portion of it may be expended in
9 paying the expenses of the sheriff or any duly authorized deputy or
10 employee of the campus police agency to attend law enforcement or
11 public safety training courses which are conducted by the Oklahoma
12 Council on Law Enforcement Education and Training (CLEET) or other
13 certified trainers, providers, or agencies.

14 I. The disposition of biological evidence, as defined by
15 Section 1 of this act, shall be governed by Section 1 of this act.

16 SECTION 3. AMENDATORY 22 O.S. 1991, Section 1327, as
17 amended by Section 2, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 2000,
18 Section 1327), is amended to read as follows:

19 Section 1327. A. All exhibits which have been introduced,
20 filed, or held in custody of the state in any criminal action or
21 proceeding may be disposed of as provided for in this section.

22 B. The court may, on application of the party entitled thereto,
23 or an agent designated in writing by the owner, order all such

1 exhibits, other than documentary exhibits, as may be released from
2 the custody of the court or the state, without prejudice to the
3 state, delivered to such party at any time after the final
4 determination of the action or proceedings; provided, however, where
5 the action or proceeding has resulted in an order granting
6 probation, such delivery may be made any time after the final
7 determination of an appeal of such order, or after the time for such
8 appeal has elapsed. Provided, further, if the owner of such exhibit
9 is the victim of the offense for which such exhibit is held, said
10 owner may make application to the court at any time prior to the
11 final disposition of the action or proceeding for the return of the
12 exhibit. The applicant shall notify the last person in possession
13 of such exhibit prior to such exhibit being seized by the state of
14 the hearing by mailing a copy of the notice by certified mail return
15 receipt requested at the last-known address of such person, unless
16 such person has signed a nonownership affidavit pursuant to Section
17 1321 of this title disclaiming any ownership rights to such exhibit.
18 If the last person in possession of the property is unable to be
19 served notice by said certified mail, notice shall be provided by
20 one publication in a newspaper of general circulation in the county
21 where the property is held in custody. The applicant shall notify
22 the district attorney and the court when notice has been served to
23 the last person in possession of such property or published pursuant

1 to this section. The hearing shall be held not less than ten (10)
2 days or more than twenty (20) days after the court has been notified
3 that the notice has been served or published. In the event the
4 court orders the release of said exhibit to the owner, the district
5 attorney shall photograph or mark said exhibit with an
6 identification number and return the exhibit to the owner within ten
7 (10) days of the court order. The court may authorize ten (10) days
8 additional time for the return of such exhibit if the district
9 attorney shows cause that additional time is needed to photograph or
10 mark such exhibit. Such photograph or marked exhibit may be
11 presented as the exhibit in any further action or proceeding. If
12 the party entitled to such exhibits is unknown, or fails to apply
13 for the return of such exhibits, the procedure for their disposition
14 shall be as follows:

15 1. After the expiration of six (6) months from the time the
16 conviction becomes final, or if the action or proceeding has not
17 resulted in a conviction, at any time after the judgment has become
18 final, the court in which the case was tried shall make an order
19 specifying what exhibits may be released from the custody of the
20 court without prejudice to the state. Upon receipt of such an
21 order, the property shall be transferred to the county sheriff or
22 other proper governmental agency for sale to the public. At least
23 ten (10) days prior to such sale, notice of the sale shall be sent

1 by certified mail return receipt requested to the last person in
2 possession of such exhibit prior to such exhibit being seized by the
3 state at the last-known address of such person. Upon satisfactory
4 proof being provided to the county sheriff or other proper
5 governmental agency holding the transferred exhibit that the last
6 person in possession of such exhibit was a lawful possessor, the
7 exhibit shall be released to the last person in possession of such
8 exhibit;

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

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

18 4. Where the exhibit consists of money or currency and is
19 unclaimed at the time of the transfer, it shall not be transferred
20 but shall be immediately deposited in the appropriate fund of the
21 governmental agency in possession of such property; and

22 5. If any property is transferred to the county sheriff or
23 other governmental agency pursuant to this section it may be sold in

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

6 C. The court may, on application of the party entitled thereto,
7 or an agent designated in writing by the owner, order such
8 documentary exhibits as may be released from the custody of the
9 court without prejudice to the state delivered to such party any
10 time after the final determination of the action or proceeding;
11 provided, however, where the action or proceeding has resulted in an
12 order granting probation, such delivery may be made any time after
13 the final determination of an appeal of such order, or after the
14 time for such appeal has elapsed. Provided, further, if the owner
15 of such exhibit is the victim of the offense for which such exhibit
16 is held, said owner may make application to the court at any time
17 prior to the final disposition of the action or proceeding for the
18 return of the exhibit. The applicant shall notify the last person
19 in possession of such exhibit prior to such exhibit being seized by
20 the state of the hearing by mailing a copy of the notice by
21 certified mail return receipt requested at the last-known address of
22 such person, unless such person has signed a nonownership affidavit
23 pursuant to Section 1321 of this title disclaiming any ownership

1 rights to such exhibit. If the last person in possession of the
2 property is unable to be served notice by said certified mail,
3 notice shall be provided by one publication in a newspaper of
4 general circulation in the county where the property is held in
5 custody. The applicant shall notify the district attorney and the
6 court when notice has been served to the last person in possession
7 of such property or published pursuant to this section. The hearing
8 shall be held not less than ten (10) days or more than twenty (20)
9 days after the court has been notified that the notice has been
10 served or published. In the event the court orders the release of
11 said exhibit to the owner, the district attorney shall photograph or
12 mark said exhibit with an identification number and return the
13 exhibit to the owner within ten (10) days of the court order. The
14 court may authorize ten (10) days additional time for the return of
15 such exhibit if the district attorney shows cause that additional
16 time is needed to photograph or mark such exhibit. Such photograph
17 or marked exhibit may be presented as the exhibit in any further
18 action or proceeding. If the party entitled to such documentary
19 exhibits is unknown, or fails to apply for the return of said
20 exhibits, the procedure for their disposition shall be as follows:

21 1. After the expiration of six (6) months from the time the
22 conviction becomes final, or if the action or proceeding has not
23 resulted in a conviction, at any time after the judgment has become

1 final, the court in which the case was tried shall make an order
2 requiring such exhibits to be destroyed; provided, that no such
3 order shall be made authorizing the destruction of any documentary
4 exhibit if the destruction of such exhibit would prejudice the
5 state;

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

12 D. The provisions of subsection B of this section shall not
13 apply to any dangerous or deadly weapons, narcotic or poisonous
14 drugs, explosives, or any property of any kind or character
15 whatsoever the possession of which is prohibited by law. Any such
16 property filed as an exhibit or held by the state shall be, by order
17 of the trial court, destroyed or sold or otherwise disposed of under
18 the conditions prescribed in such order. This act shall not be
19 interpreted to authorize the return of any property, the possession
20 of which is prohibited by law.

21 E. The disposition of biological evidence, as defined by
22 Section 1 of this act, shall be governed by Section 1 of this act.

23 SECTION 4. This act shall become effective July 1, 2001.

1 SECTION 5. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-28-01 - DO
6 PASS, As Coauthored.