STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 727 By: Wilkerson

AS INTRODUCED

An Act relating to biological evidence; amending 22 O.S. 1991, Section 1325, as last amended by Section 3, Chapter 199, O.S.L. 1996 (22 O.S. Supp. 2000, Section 1325), which relates to disposition of unclaimed property procedure; providing procedure for disposition of biological evidence; amending 22 O.S. 1991, Section 1327, as amended by Section 2, Chapter 280, O.S.L. 1992 (22 O.S. Supp. 2000, Section 1327), which relates to disposition of exhibits; providing procedure for disposition of biological evidence; requiring preservation of certain biological evidence for certain time period; defining term; allowing for certain types of biological material to be retained for certain time period; authorizing destruction or disposal of biological evidence under certain circumstance; providing procedure for notification and authorized destruction or disposal of biological evidence; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1325, as last amended by Section 3, Chapter 199, O.S.L. 1996 (22 O.S. Supp. 2000, Section 1325), is amended to read as follows:

Section 1325. A. Any sheriff's office or campus police agency as authorized under Section 360.15 et seq. of Title 74 of the Oklahoma Statutes is authorized to dispose of by public sale, destruction, donation, or transfer for use to a governmental subdivision personal property which has come into its possession, or deposit in a special fund, as hereafter provided, all money or legal tender of the United States which has come into its 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 or campus police

agency 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. Where personal property held under the circumstances provided in subsection A of this section is determined by the agency having custody to be unsuitable for disposition by public sale due to its condition or assessed by agency personnel as having limited or no resale value, it may be destroyed, discarded as solid waste or donated to a charitable organization designated by the U.S. Internal Revenue Service as a 501(c)(3) nonprofit organization. Where disposition by destruction, discard, or donation is made of personal property, a report describing the property by category and quantity, and indicating what disposition was made for each item or lot, shall be submitted to the presiding judge of the district court within ten (10) days following the disposition.

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

D. Notice shall be given by the sheriff's office or campus police agency of ~~said~~ the hearing to each and every owner known and as set forth in ~~said~~ the application by certified mail directed to their last-known address at least ten (10) days prior to the date of ~~said~~ the hearing. ~~Said~~ The notice shall contain a brief description of the property of ~~said~~ the owner and the place and date of the hearing. In addition thereto notice of ~~said~~ the hearing shall be posted in three public places in the county, one being the county

courthouse at the regular place assigned for the posting of legal notices.

E. At the hearing, if no owner appears and establishes ownership to ~~said~~ the property, the court shall enter an order authorizing the sheriff's office or campus police agency to donate property having a value of less than Five Hundred Dollars ($500.00) to a not-for-profit corporation as defined in Title 18 of the Oklahoma Statutes or to sell ~~said~~ the 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's office or campus police agency shall make a return of ~~said~~ the donation or sale and, when confirmed ~~said~~ the court, the order confirming ~~said~~ the donation or sale shall vest in the recipient or purchaser title to ~~said~~ the property so donated or purchased.

F. A sheriff's office having in its possession money or legal tender under the circumstances provided in subsection A of this section, prior to appropriating the same for deposit into a special fund, shall file an application in the district court of its county requesting the court to enter an order authorizing it to so appropriate ~~said~~ the money for deposit in ~~said~~ a special fund. ~~Said~~ The application shall describe the money or legal tender, together with serial numbers, if any, the date the same came into the possession of the sheriff's office or campus police agency, and the name and address of the owner, if known. Upon filing, ~~said~~ an application, which may be joined with an application as described in subsection C 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~~ the hearing shall be given as provided in subsection D of this section. Such notice shall state that, upon no one appearing to prove ownership to ~~said~~ the money or legal tender, the same will be ordered by the court to be deposited in the

special fund by the sheriff's office or campus police agency. ~~Said~~ The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to ~~said~~ the money or legal tender, the court shall order the same to be deposited by the sheriff's office or campus police agency in the special fund, as provided in subsection H of this section.

G. Where a sheriff's office or campus police agency has in its possession under the circumstances provided in subsection A of this section, personal property deemed to have potential utility to that sheriff's office, campus police agency or another governmental subdivision, prior to appropriating the personal property for use, the sheriff's office or campus police agency shall file an application in the district court requesting the court to enter an order authorizing it to so appropriate or transfer the property for use. The application shall describe the property, together with serial numbers, if any, the date the property came into the possession of the sheriff's office or campus police agency and the name and address of the owner, if known. Upon filing, the application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof. Notice of the hearing shall be given as provided in subsection D of this section. The notice shall state that, upon no one appearing to prove ownership to the personal property, the property will be ordered by the court to be delivered for use by the sheriff's office or campus police agency or its authorizing institution or transferred to another governmental subdivision for its use. The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to the personal property, the court shall order the property to be

available for use by the sheriff's office or campus police agency or delivered to an appropriate person for use by the authorizing institution or another governmental subdivision.

H. The money received from the sale of personal property as above provided, after payment of the court costs and other expenses, if any, together with all money in possession of said sheriff's office or campus police agency, which has been ordered by the court to be deposited in the special fund, shall be deposited in such fund which shall be separately maintained by said sheriff's office in a special fund with the county treasurer or campus police agency to be expended upon the approval of the sheriff or head of the campus police agency for the purchase of equipment, materials or supplies that may be used in crime prevention, education, training or programming. Said fund or any portion of it may be expended in paying the expenses of the sheriff or any duly authorized deputy or employee of the campus police agency to attend law enforcement or public safety training courses which are conducted by the Oklahoma Council on Law Enforcement Education and Training (CLEET) or other certified trainers, providers, or agencies.

I. The disposition of biological evidence, as defined by Section 3 of this act, shall be governed by said section.

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

Section 1327. A. 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~~ the exhibits to the owner or person entitled to possession;

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 to be 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;

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.

E. The disposition of biological evidence, as defined by Section 3 of this act, shall be governed by said section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1371.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The law enforcement agency having possession, custody or control of biological evidence secured in connection with a criminal case shall preserve the biological evidence for such period of time as the person remains incarcerated in connection with that criminal case.

B. "Biological evidence" is defined as biological material from which nuclear profiles or mitochondrial deoxyribonucleic acid (DNA) sequences could be obtained, including physical evidence containing biological material. Biological evidence, as defined in this subsection, may include a representative or derivative sample taken in accordance with the law enforcement agency's forensic deoxyribonucleic acid testing (DNA) laboratory protocol.

C. The law enforcement agency in possession, custody or control of biological evidence may destroy or otherwise dispose of the biological evidence before the expiration of the period of time described in subsection A of this section only if:

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

of the agency to destroy the evidence. The notice shall reference the provisions of the DNA Forensic Testing Program that provides for forensic testing of evidence to establish factual innocence;

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

3. No other provision of law requires that the biological evidence be preserved.

SECTION 4. 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.

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