

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1838

By: Hamilton

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; 21 O.S.
8 2001, Section 1031, as amended by Section 2, Chapter
9 120, O.S.L. 2002 (21 O.S. Supp. 2008, Section 1031),
10 which relates to penalties for prostitution offenses;
11 modifying penalties for certain crimes; amending 21
12 O.S. 2001, Section 1738, as last amended by Section
13 4, Chapter 438, O.S.L. 2008 (21 O.S. Supp 2008,
14 Section 1738), which relates to seizure and
15 forfeiture proceedings; authorizing forfeiture of
16 property for violation of certain crimes; and
17 providing an effective date.

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

19 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1031, as
20 amended by Section 2, Chapter 120, O.S.L. 2002 (21 O.S. Supp. 2008,
21 Section 1031), is amended to read as follows:

22 Section 1031. A. Except as provided in subsection B ~~or~~, C, D
23 or E of this section, any person violating any of the provisions of
24 paragraph a, b, d or g of Section 1028, or Section 1029 ~~or 1030~~ of
this title shall be guilty of a misdemeanor and, upon conviction,
shall be punished by imprisonment in the county jail for not less
than thirty (30) days nor more than one (1) year or by fines as

1 follows: a fine of not more than Two Thousand Five Hundred Dollars
2 (\$2,500.00) upon the first conviction for violation of any of such
3 provisions, a fine of not more than Five Thousand Dollars
4 (\$5,000.00) upon the second conviction for violation of any of such
5 provisions, and a fine of not more than Seven Thousand Five Hundred
6 Dollars (\$7,500.00) upon the third or subsequent convictions for
7 violation of any of such provisions, or by both such imprisonment
8 and fine. In addition, the court may require a term of community
9 service of not less than forty (40) nor more than eighty (80) hours.
10 The court in which any such conviction is had shall notify the
11 county superintendent of public health of such conviction.

12 B. Any person who engages in an act of prostitution with
13 knowledge that they are infected with the human immunodeficiency
14 virus shall be guilty of a felony punishable by imprisonment in the
15 custody of the Department of Corrections for not more than five (5)
16 years.

17 C. Any person who engages in an act of child prostitution, as
18 defined in Section 1030 of this title, shall, upon conviction, be
19 guilty of a felony punishable by imprisonment in the custody of the
20 Department of Corrections for not more than ten (10) years and by
21 fines as follows: a fine of not more than Five Thousand Dollars
22 (\$5,000.00) upon the first conviction, a fine of not more than Ten
23 Thousand Dollars (\$10,000.00) upon the second conviction, and a fine
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1 of not more than Fifteen Thousand Dollars (\$15,000.00) upon the
2 third or subsequent convictions.

3 D. Any person violating any of the provisions of paragraph a,
4 b, d or g of Section 1028, or Section 1029 or 1030 of this title
5 within one thousand (1,000) feet of a school or church shall be
6 guilty of a felony and, upon conviction, shall be punished by
7 imprisonment in the custody of the Department of Corrections for not
8 more than five (5) years or by fines as follows: a fine of not more
9 than Two Thousand Five Hundred Dollars (\$2,500.00) upon the first
10 conviction for violation of any of such provisions, a fine of not
11 more than Five Thousand Dollars (\$5,000.00) upon the second
12 conviction for violation of any of such provisions, and a fine of
13 not more than Seven Thousand Five Hundred Dollars (\$7,500.00) upon
14 the third or subsequent convictions for violation of any of such
15 provisions, or by both such imprisonment and fine. In addition, the
16 court may require a term of community service of not less than forty
17 (40) nor more than eighty (80) hours. The court in which any such
18 conviction is had shall notify the county superintendent of public
19 health of such conviction.

20 E. Any person violating any of the provisions of paragraph c, e
21 or f of Section 1028 of this title shall, upon conviction, be guilty
22 of a felony and shall be punished as follows:

23 1. For a first offense, imprisonment in the custody of the
24 Department of Corrections for a term of not less than five (5)

1 years, and a fine of not less than Five Thousand Dollars
2 (\$5,000.00);

3 2. For a second offense, imprisonment in the custody of the
4 Department of Corrections for a term of not less than seven (7)
5 years, and a fine of not less than Ten Thousand Dollars
6 (\$10,000.00); or

7 3. For a third or subsequent offense, imprisonment in the
8 custody of the Department of Corrections for a term of not less than
9 ten (10) years nor more than life, and a fine of not less than
10 Twenty Thousand Dollars (\$20,000.00).

11 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1738, as
12 last amended by Section 4, Chapter 438, O.S.L. 2008 (21 O.S. Supp.
13 2008, Section 1738), is amended to read as follows:

14 Section 1738. A. Any commissioned peace officer of this state
15 is authorized to seize any vehicle owned by or registered to the
16 defendant used in the commission of any armed robbery offense
17 defined in Section 801 of this title, or any vehicle owned by or
18 registered to the defendant when such vehicle is used to facilitate
19 the intentional discharge of any kind of firearm in violation of
20 Section 652 of this title, or any vehicle, airplane, vessel,
21 vehicles or parts of vehicles whose numbers have been removed,
22 altered or obliterated so as to prevent determination of the true
23 identity or ownership of said property and parts of vehicles which
24 probable cause indicates are stolen but whose true ownership cannot

1 be determined, or any vehicle owned by or registered to the
2 defendant used in violation of the Trademark Anti-Counterfeiting
3 Act, or any equipment owned by or registered to the defendant which
4 is used in the attempt or commission of any act of burglary in the
5 first or second degree, motor vehicle theft, unauthorized use of a
6 vehicle, obliteration of distinguishing numbers on vehicles or
7 criminal possession of vehicles with altered, removed or obliterated
8 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of
9 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma
10 Statutes, or any equipment owned by or registered to the defendant
11 used in violation of the Trademark Anti-Counterfeiting Act, or any
12 vehicle, airplane, vessel or equipment owned by or registered to the
13 defendant used in the commission of any arson offense defined in
14 Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property
15 may be held as evidence until a forfeiture has been declared or a
16 release ordered. Forfeiture actions under this section may be
17 brought by the district attorney in the proper county of venue as
18 petitioner; provided, in the event the district attorney elects not
19 to file such action, or fails to file such action within ninety (90)
20 days of the date of the seizure of such equipment, the property
21 shall be returned to the owner.

22 B. In addition to the property described in subsection A of
23 this section, the following property is also subject to forfeiture
24 pursuant to this section:

- 1 1. Property used in the commission of theft of livestock or in
2 any manner to facilitate the theft of livestock;
- 3 2. The proceeds gained from the commission of theft of
4 livestock;
- 5 3. Personal property acquired with proceeds gained from the
6 commission of theft of livestock;
- 7 4. All conveyances, including aircraft, vehicles or vessels,
8 and horses or dogs which are used to transport or in any manner to
9 facilitate the transportation for the purpose of the commission of
10 theft of livestock;
- 11 5. Any items having a counterfeit mark and all property that is
12 owned by or registered to the defendant that is employed or used in
13 connection with any violation of the Trademark Anti-Counterfeiting
14 Act;
- 15 6. Any weapon possessed, used or available for use in any
16 manner during the commission of a felony within the State of
17 Oklahoma, or any firearm that is possessed by a convicted felon;
- 18 7. Any police scanner used in violation of Section 1214 of this
19 title;
- 20 8. Any computer and its components and peripherals, including
21 but not limited to the central processing unit, monitor, keyboard,
22 printers, scanners, software, and hardware, when it is used in the
23 commission of any crime in this state;

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1 9. All property used in the commission of, or in any manner to
2 facilitate, a violation of Section ~~2~~ 1040.21a of this ~~act~~ title; and

3 10. All conveyances, including aircraft, vehicles or vessels,
4 monies, coins and currency, or other instrumentality used or
5 intended to be used, in any manner or part, to commit a violation of
6 paragraph 1 of subsection A of Section 1021 of this title, where the
7 victim of the crime is a minor child, subsection B of Section 1021
8 of this title, Section 1021.2 of this title, paragraph 1 of
9 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of
10 subsection A of Section 1123 of this title; and

11 11. All property used in the commission of, or in any manner to
12 facilitate, a violation of Section 1028 of this title.

13 C. Notice of seizure and intended forfeiture proceeding shall
14 be filed in the office of the clerk of the district court for the
15 county wherein such property is seized and shall be given all owners
16 and parties in interest.

17 D. Notice shall be given according to one of the following
18 methods:

19 1. Upon each owner or party in interest whose right, title, or
20 interest is of record in the Oklahoma Tax Commission or with the
21 county clerk for filings under the Uniform Commercial Code, served
22 in the manner of service of process in civil cases prescribed by
23 Section 2004 of Title 12 of the Oklahoma Statutes;

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1 2. Upon each owner or party in interest whose name and address
2 is known, served in the manner of service of process in civil cases
3 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

4 3. Upon all other owners, whose addresses are unknown, but who
5 are believed to have an interest in the property by one publication
6 in a newspaper of general circulation in the county where the
7 seizure was made.

8 E. Within sixty (60) days after the mailing or publication of
9 the notice, the owner of the property and any other party in
10 interest or claimant may file a verified answer and claim to the
11 property described in the notice of seizure and of the intended
12 forfeiture proceeding.

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

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

19 H. At the hearing the petitioner shall prove by clear and
20 convincing evidence that property was used in the attempt or
21 commission of an act specified in subsection A of this section or is
22 property described in subsection B of this section with knowledge by
23 the owner of the property.

1 I. The claimant of any right, title, or interest in the
2 property may prove the lien, mortgage, or conditional sales contract
3 to be bona fide and that the right, title, or interest created by
4 the document was created without any knowledge or reason to believe
5 that the property was being, or was to be, used for the purpose
6 charged.

7 J. In the event of such proof, the court may order the property
8 released to the bona fide or innocent owner, lien holder, mortgagee,
9 or vendor if the amount due such person is equal to, or in excess
10 of, the value of the property as of the date of the seizure, it
11 being the intention of this section to forfeit only the right,
12 title, or interest of the purchaser, except for items bearing a
13 counterfeit mark or used exclusively to manufacture a counterfeit
14 mark.

15 K. If the amount due to such person is less than the value of
16 the property, or if no bona fide claim is established, the property
17 may be forfeited to the state and may be sold pursuant to judgment
18 of the court, as on sale upon execution, and as provided in Section
19 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
20 provided for by law and for property bearing a counterfeit mark
21 which shall be destroyed.

22 L. Property taken or detained pursuant to this section shall
23 not be repleviable, but shall be deemed to be in the custody of the
24 petitioner or in the custody of the law enforcement agency as

1 provided in the Trademark Anti-Counterfeiting Act. Except for
2 property required to be destroyed pursuant to the Trademark Anti-
3 Counterfeiting Act, the petitioner shall release said property to
4 the owner of the property if it is determined that the owner had no
5 knowledge of the illegal use of the property or if there is
6 insufficient evidence to sustain the burden of showing illegal use
7 of such property. If the owner of the property stipulates to the
8 forfeiture and waives the hearing, the petitioner may determine if
9 the value of the property is equal to or less than the outstanding
10 lien. If such lien exceeds the value of the property, the property
11 may be released to the lien holder. Property which has not been
12 released by the petitioner shall be subject to the orders and
13 decrees of the court or the official having jurisdiction thereof.

14 M. The petitioner, or the law enforcement agency holding
15 property pursuant to the Trademark Anti-Counterfeiting Act, shall
16 not be held civilly liable for having custody of the seized property
17 or proceeding with a forfeiture action as provided for in this
18 section.

19 N. Attorney fees shall not be assessed against the state or the
20 petitioner for any actions or proceeding pursuant to Section 1701 et
21 seq. of this title.

22 O. The proceeds of the sale of any property shall be
23 distributed as follows, in the order indicated:
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- 1 1. To the bona fide or innocent purchaser, conditional sales
2 vendor, or mortgagee of the property, if any, up to the amount of
3 such person's interest in the property, when the court declaring the
4 forfeiture orders a distribution to such person;
- 5 2. To the payment of the actual reasonable expenses of
6 preserving the property;
- 7 3. To the victim of the crime to compensate said victim for any
8 loss incurred as a result of the act for which such property was
9 forfeited; and
- 10 4. The balance to a revolving fund in the office of the county
11 treasurer of the county wherein the property was seized, to be
12 distributed as follows: one-third (1/3) to the investigating law
13 enforcement agency; one-third (1/3) of said fund to be used and
14 maintained as a revolving fund by the district attorney for the
15 victim-witness fund, a reward fund or the evidence fund; and one-
16 third (1/3) to go to the jail maintenance fund, with a yearly
17 accounting to the board of county commissioners in whose county the
18 fund is established. If the petitioner is not the district
19 attorney, then the one-third (1/3) which would have been designated
20 to that office shall be distributed to the petitioner. Monies
21 distributed to the jail maintenance fund shall be used to pay costs
22 for the storage of such property if such property is ordered
23 released to a bona fide or innocent owner, lien holder, mortgagee,
24 or vendor and if such funds are available in said fund.

1 P. Monies distributed into the revolving fund in the office of
2 the county treasurer from forfeitures initiated under this section
3 by the district attorney shall be limited to One Hundred Thousand
4 Dollars (\$100,000.00) at any one time in counties with population in
5 excess of three hundred thousand (300,000) and Twenty-five Thousand
6 Dollars (\$25,000.00) at any one time in counties with population
7 less than three hundred thousand (300,000). Any amount in excess of
8 these figures shall be placed in the general fund of the county.

9 Q. If the court finds that the property was not used in the
10 attempt or commission of an act specified in subsection A of this
11 section and was not property subject to forfeiture pursuant to
12 subsection B of this section and is not property bearing a
13 counterfeit mark, the court shall order the property released to the
14 owner as the right, title, or interest appears on record in the Tax
15 Commission as of the seizure.

16 R. No vehicle, airplane, or vessel used by a person as a common
17 carrier in the transaction of business as a common carrier shall be
18 forfeited pursuant to the provisions of this section unless it shall
19 be proven that the owner or other person in charge of such
20 conveyance was a consenting party or privy to the attempt or
21 commission of an act specified in subsection A or B of this section.
22 No property shall be forfeited pursuant to the provisions of this
23 section by reason of any act or omission established by the owner
24 thereof to have been committed or omitted without the knowledge or

1 consent of such owner, and by any person other than such owner while
2 such property was unlawfully in the possession of a person other
3 than the owner in violation of the criminal laws of the United
4 States or of any state.

5 S. Whenever any property is forfeited pursuant to this section,
6 the district court having jurisdiction of the proceeding may order
7 that the forfeited property may be retained for its official use by
8 the state, county, or municipal law enforcement agency which seized
9 the property.

10 SECTION 3. This act shall become effective November 1, 2009.

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