STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1189 By: Loveless

AS INTRODUCED

An Act relating to asset forfeiture; creating the Personal Asset Protection Act; providing short title; amending 12 O.S. 2011, Section 66, which relates to state as a party; modifying certain exception; amending 51 O.S. 2011, Section 24A.8, as last amended by Section 2, Chapter 370, O.S.L. 2015 (51 O.S. Supp. 2015, Section 24A.8), which relates to law enforcement records; requiring certain reports to be available for public inspection; amending 63 O.S. 2011, Sections 2-503, as amended by Section 5, Chapter 154, O.S.L. 2014, 2-506, as amended by Section 1, Chapter 284, O.S.L. 2014 and 2-508, as last amended by Section 2, Chapter 284, O.S.L. 2014 (63 O.S. Supp. 2015, Sections 2-503, 2-506 and 2-508), which relate to property subject to forfeiture, seizure of property and disposition of seized property; modifying certain burdens of proof; requiring conviction for certain property forfeiture; providing exceptions; providing for jury trial in certain actions; establishing requirements for certain actions; modifying Fund for deposit of certain monies; making language gender neutral; requiring return of seized property within specified time period under certain circumstances; providing exception; requiring award of certain costs and fees under certain circumstances; deleting definition; requiring submission of certain report; requiring certain reports be available to the public; prohibiting certain transfer; creating the Forfeited Assets Distribution Revolving Fund; stating purpose of Fund; requiring grants to be awarded by certain Board; authorizing certain agreements; requiring adoption of certain guidelines; authorizing certain mediation; requiring maintenance of certain records; creating the Forfeited Assets Distribution and

Oversight Board; stating duties of Board; specifying makeup of Board; establishing terms; providing for exception; authorizing reappointment; allowing removal under certain circumstances; specifying appointment authority for certain membership; providing for administration of Board; requiring certain assistance to Board; providing for certain reimbursement; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Personal Asset Protection Act".

SECTION 2. AMENDATORY 12 O.S. 2011, Section 66, is amended to read as follows:

Section 66. A. Whenever an action is filed in any of the courts of this state where the State of Oklahoma or any of its departments or agencies, as defined in Section 152 of Title 51 of the Oklahoma Statutes, is a party, no bonds or other obligation of security shall be required from the state or from any party acting under the direction of the state, either to prosecute, answer, or appeal the action. The execution of a judgment or final order of any judicial tribunal against the state or any of its departments or agencies is automatically stayed without the execution of a

supersedeas bond until any appeal of such judgment or final order has finally been determined.

In case of an adverse decision, such costs as by law are taxable against the state, or against the party acting by its direction, shall be paid out of the funds of the department under whose direction the proceedings were instituted or defended.

B. Costs shall be paid to the court fund of the district court in which an action is filed from the first funds collected in satisfaction of any judgment obtained by this state or any party acting under the direction of this state, except when the funds are collected pursuant to a child support order~~,~~ or judgment~~, or pursuant to any civil forfeiture action~~. No action filed by this state or by any party acting under the direction of this state shall be dismissed with unpaid costs of the action without the prior notification of the district court clerk of the county in which the action was filed.

SECTION 3. AMENDATORY 51 O.S. 2011, Section 24A.8, as last amended by Section 2, Chapter 370, O.S.L. 2015 (51 O.S. Supp. 2015, Section 24A.8), is amended to read as follows:

Section 24A.8. A. Law enforcement agencies shall make available for public inspection and copying, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;

2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;

3. A chronological list of all incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred;

4. Radio logs, including a chronological listing of the calls dispatched;

5. Conviction information, including the name of any person convicted of a criminal offense;

6. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;

7. A crime summary, including an agency summary of crimes reported and public calls for service by classification or nature and number;

8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner;

9. Annual reports submitted pursuant to subsection S of Section 2-506 of Title 63 of the Oklahoma Statutes;

10. Audio and video recordings from recording equipment attached to law enforcement vehicles or associated audio recordings from recording equipment on the person of a law enforcement officer; provided, the law enforcement agency may, before releasing any audio or video recording provided for in this paragraph, redact or obscure specific portions of the recording which:

a. depict the death of a person or a dead body, unless the death was effected by a law enforcement officer,

b. depict nudity,

c. would identify minors under the age of sixteen (16) years or would undermine any requirement to keep certain juvenile records confidential as provided for in Title 10A of the Oklahoma Statutes,

d. depict acts of severe violence resulting in great bodily injury, as defined in Section 11-904 of Title 47 of the Oklahoma Statutes, against persons that are clearly visible, unless the act of severe violence was effected by a law enforcement officer,

e. depict great bodily injury, as defined in Section 11-904 of Title 47 of the Oklahoma Statutes, unless the great bodily injury was effected by a law enforcement officer,

f. include personal medical information that is not already public,

g. would undermine the assertion of a privilege provided in Section 1-109 or Section 3-428 of Title 43A of the Oklahoma Statutes for detention or transportation for mental health evaluation or treatment or drug or alcohol detoxification purposes,

h. include personal information other than the name or license plate number of a person not arrested, cited, charged or issued a written warning. Such personal information shall include any government-issued identification number, date of birth, address or financial information, or

i. reveal the identity of law enforcement officers who have become subject to internal investigation by the law enforcement agency as a result of an event depicted in the recording. The option to protect the identity of a law enforcement officer shall not be available to the law enforcement agency after the law enforcement agency has concluded the investigation and rendered a decision as to final disciplinary action. At such time when an investigation has concluded and the law enforcement agency has rendered its decision as to final disciplinary action, the portions of the

recordings previously withheld as provided for in this subparagraph shall be available for public inspection and copying. The audio and video recordings withheld as provided for in this subparagraph shall be available for public inspection and copying before the conclusion of the investigation if the investigation lasts for an unreasonable amount of time; and

~~10.~~

11. a. Audio and video recordings from recording equipment attached to the person of a law enforcement officer that depict:

(1) the use of any physical force or violence by a law enforcement officer,

(2) pursuits of any kind,

(3) traffic stops,

(4) any person being arrested, cited, charged or issued a written warning,

(5) events that directly led to any person being arrested, cited, charged or receiving a written warning,

(6) detentions of any length for the purpose of investigation,

(7) any exercise of authority by a law enforcement officer that deprives a citizen of his or her liberty,

(8) actions by a law enforcement officer that have become the cause of an investigation or charges being filed,

(9) recordings in the public interest that may materially aid a determination of whether law enforcement officers are appropriately performing their duties as public servants, or

(10) any contextual events occurring before or after the events depicted in divisions (1) through (9) of this subparagraph.

b. Notwithstanding the provisions of subparagraph a of this paragraph, the law enforcement agency may, before releasing any audio or video recording provided for in this paragraph, redact or obscure specific portions of the recording that:

(1) depict the death of a person or a dead body, unless the death was effected by a law enforcement officer,

(2) depict nudity,

(3) would identify minors under the age of sixteen (16) years or would undermine any requirement to

keep certain juvenile records confidential as provided for in Title 10A of the Oklahoma Statutes,

(4) depict acts of severe violence resulting in great bodily injury, as defined in Section 11-904 of Title 47 of the Oklahoma Statutes, against persons that are clearly visible, unless the act of severe violence was effected by a law enforcement officer,

(5) depict great bodily injury, as defined in Section 11-904 of Title 47 of the Oklahoma Statutes, unless the great bodily injury was effected by a law enforcement officer,

(6) include personal medical information that is not already public,

(7) undermine the assertion of a privilege as provided in Section 1-109 or Section 3-428 of Title 43A of the Oklahoma Statutes for detention or transportation for mental health evaluation or treatment or drug or alcohol detoxification purposes,

(8) identify alleged victims of sex crimes or domestic violence,

(9) identify any person who provides information to law enforcement or the information provided by that person when that person requests anonymity or where disclosure of the identity of the person or the information provided could reasonably be expected to threaten or endanger the physical safety or property of the person or the physical safety or property of others,

(10) undermine the assertion of a privilege to keep the identity of an informer confidential as provided for in Section 2510 of Title 12 of the Oklahoma Statutes,

(11) include personal information other than the name or license plate number of a person not officially arrested, cited, charged or issued a written warning. Such personal information shall include any government-issued identification number, date of birth, address or financial information,

(12) include information that would materially compromise an ongoing criminal investigation or ongoing criminal prosecution, provided that:

(a) ten (10) days following the formal arraignment or initial appearance, whichever

occurs first, of a person charged in the case in question, the recording shall be made available for public inspection and copying with no redaction of the portions that were temporarily withheld by reliance on this division. Provided, before potential release of a recording as provided for in this subdivision, the prosecutor or legal representative of the person charged may request from the appropriate district court an extension of time during which the recording may be withheld under the provisions of this division. When a request for an extension of time has been filed with the court, the recording in question may be withheld until the court has issued a ruling. Such requests for an extension of the time during which the recording may be withheld may be made on the grounds that release of the recording will materially compromise an ongoing criminal investigation or criminal prosecution or on the grounds that release of the recording will materially compromise the right of an

accused to a fair trial that has yet to begin. Courts considering such requests shall conduct a hearing and consider whether the interests of the public outweigh the interests asserted by the parties. In response to such requests, the court shall order that the recording be made available for public inspection and copying with no redaction of the portions that were temporarily withheld by reliance on this division or order an extension of time during which the recording may be withheld under the provisions of this division. Provided further, each such time extension shall only be ordered by the court for an additional six-month period of time or less and cumulative time extensions shall not add up to more than eighteen (18) months, or

(b) in the event that one hundred twenty (120) days expire from the date of the events depicted in the recording without any person being criminally charged in the case in question and release of a recording or portions of a recording have been denied on

the grounds provided for in this division, an appeal of such denial may be made to the appropriate district court. In situations where one hundred twenty (120) days have expired since the creation of the recording, criminal charges have not been filed against a person and the recording is being withheld on the grounds provided for in this division, courts considering appeals to the use of the provisions of this division for temporarily withholding a recording shall conduct a hearing and consider whether the interests of the public outweigh the interests of the parties protected by this division. In response to such appeals, the district court shall order that the recording be made available for public inspection and copying with no redaction of the portions that were temporarily withheld by reliance on this division or order an extension of time during which the recording may be withheld under the provisions of this division. An order granting an extension of time shall be applicable to the recording

against all appellants for the duration of the extension. Provided, each such time extension shall only be ordered by the district court for an additional twelve-month period of time or less and cumulative time extensions shall not add up to more than three (3) years. Provided, charges being filed against a person in the case in question automatically cancels any extension of time. A new request for an extension of time following an arraignment or initial appearance may be requested by the parties on the grounds and under the terms provided for in subdivision (a) of this division.

The options presented in this division to potentially withhold a recording or portions of a recording on the grounds provided for in this division shall expire in totality four (4) years after the recording was made at which time all recordings previously withheld on the grounds provided for in this division shall be made available for public inspection and copying, or

(13) reveal the identity of law enforcement officers who have become subject to internal investigation

by the law enforcement agency as a result of an event depicted in the recording. The option to protect the identity of a law enforcement officer shall not be available to the law enforcement agency after the law enforcement agency has concluded the investigation and rendered a decision as to final disciplinary action. At such time when an investigation has concluded and the law enforcement agency has rendered its decision as to final disciplinary action, the portions of the recordings previously withheld as provided for in this division shall be available for public inspection and copying. The audio and video recordings withheld on the grounds provided for in this division shall be available for public inspection and copying before the conclusion of the investigation if the investigation lasts for an unreasonable amount of time.

B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial. The provisions of

this section shall not operate to deny access to law enforcement records if such records have been previously made available to the public as provided in the Oklahoma Open Records Act or as otherwise provided by law.

C. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall be made available for public inspection in a manner to be determined by the Department.

E. The Council on Law Enforcement Education and Training (C.L.E.E.T.) shall keep confidential all records it maintains pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and deny release of records relating to any employed or certified full-time officer, reserve officer, retired officer or other person; teacher lesson plans, tests and other teaching materials; and personal communications concerning individual students except under the following circumstances:

1. To verify the current certification status of any peace officer;

2. As may be required to perform the duties imposed by Section 3311 of Title 70 of the Oklahoma Statutes;

3. To provide to any peace officer copies of the records of that peace officer upon submitting a written request;

4. To provide, upon written request, to any law enforcement agency conducting an official investigation, copies of the records of any peace officer who is the subject of such investigation;

5. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and

6. Pursuant to an order of the district court of the State of Oklahoma.

F. The Department of Public Safety shall keep confidential:

1. All records it maintains pursuant to its authority under Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway Patrol Division, the Communications Division, and other divisions of the Department relating to:

a. training, lesson plans, teaching materials, tests, and test results,

b. policies, procedures, and operations, any of which are of a tactical nature, and

c. the following information from radio logs:

(1) telephone numbers,

(2) addresses other than the location of incidents to which officers are dispatched, and

(3) personal information which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725; and

2. For the purpose of preventing identity theft and invasion of law enforcement computer systems, except as provided in Title 47 of the Oklahoma Statutes, all driving records.

SECTION 4. AMENDATORY 63 O.S. 2011, Section 2-503, as amended by Section 5, Chapter 154, O.S.L. 2014 (63 O.S. Supp. 2015, Section 2-503), is amended to read as follows:

Section 2-503. A. ~~The~~ Except for the conditions described in paragraph 10 of this subsection, the following property of a person who has been convicted for a violation of the Uniform Controlled Dangerous Substances Act shall be subject to forfeiture:

1. All controlled dangerous substances and synthetic controlled substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act;

2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance or synthetic

controlled substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act;

3. All property which is used, or intended for use, as a container for property described in paragraphs 1, 2, 5 and 6 of this subsection;

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in the Uniform Controlled Dangerous Substances Act, or which are used in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when the property described in paragraphs 1 or 2 of this subsection is unlawfully possessed by an occupant thereof, except that:

a. no conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act, and

b. no conveyance shall be forfeited under 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, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance 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;

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act;

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;

7. All monies, coin and currency found in close proximity to any amount of forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances~~, which are rebuttably presumed to be forfeitable under the Uniform Controlled Dangerous Substances Act. The burden of proof is upon claimants of the property to rebut this presumption~~;

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner; and

9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act.

10. A conviction shall not be required for forfeiture of a person's property pursuant to this section if:

a. the person dies,

b. the person is deported by the federal government,

c. the person is unavailable after being arrested, charged with a crime for which forfeiture applies and released on bail,

d. the person is granted immunity in exchange for providing testimony or other assistance to a law enforcement investigation or prosecution;

e. the property is abandoned personal property left by an owner who intentionally relinquishes all rights to its control, or

f. the property is valued in excess of Fifty Thousand Dollars ($50,000.00).

B. Any property or thing of value of a person is subject to forfeiture if it is established by ~~a preponderance of the~~ clear and convincing evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act. A party to forfeiture action under this section shall be entitled to a trial by jury. A trial related to a forfeiture action shall be held in a single proceeding with the trial of the related alleged crime unless the court grants the defendant's motion for a separate trial on the forfeiture issue.

C. Any property or thing of value of a person is subject to forfeiture if it is established by ~~a preponderance of the~~ clear and convincing evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of Section 2-415 of this title.

D. All items forfeited in this section shall be forfeited under the procedures established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this section except for items confiscated 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, the district court of the district shall order that such item, money, or monies derived from the sale of such item be deposited by the state, county or city law enforcement agency which seized the item in the ~~revolving fund provided for in Section 2-506 of this title; provided, such item, money or monies derived from the sale of such item forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title~~ Forfeited Assets Distribution Fund created pursuant to Section 7 of this act. Items, money or monies seized pursuant to subsections A and B of this section shall not be applied or considered toward satisfaction of the fine imposed by Section 2-415 of this title. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of Section 2-505 of this title.

E. All property taken or detained under this section 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 not be repleviable, but shall remain in the custody of the Bureaus, Departments, Commission, or Office, respectively, subject only to the orders and decrees of a court of competent jurisdiction. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Commissioner of Public Safety, the Director of the Oklahoma State Bureau of Investigation, the Director of the Alcoholic Beverage Laws Enforcement Commission, the Director of the Department of Corrections, and the Attorney General shall follow the procedures outlined in Section 2-506 of this title dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all property included in this section detained by 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. Property 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 disposed of or sold pursuant to the provisions of Section 2-508 of this title. Any money, coins, and currency, taken or detained pursuant to this section ~~may~~ shall be deposited in ~~an interest bearing account by or at the direction of the State Treasurer~~ the Forfeited Assets Distribution Fund created pursuant to Section 7 of this act if the seizing agency determines the currency is not to be held as evidence. All interest earned on such monies shall be returned to the claimant or forfeited with the money, coins, and currency which was taken or detained as provided by law.

F. The proceeds of any forfeiture of items seized by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be distributed as follows:

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

2. The balance to the ~~Bureau of Narcotics Revolving Fund established pursuant to Section 2-107 of this title, provided the Bureau may enter into agreements with municipal, tribal, county, state or federal law enforcement agencies, or other state agencies with CLEET-certified law enforcement officers, assisting in the forfeiture or underlying criminal investigation, to return to such~~

~~an agency a percentage of said proceeds~~ Forfeited Assets Distribution Fund created pursuant to Section 7 of this act.

G. Any agency that acquires seized or forfeited property or money shall maintain a true and accurate inventory and record of all such property seized pursuant to this section.

SECTION 5. AMENDATORY 63 O.S. 2011, Section 2-506, as amended by Section 1, Chapter 284, O.S.L. 2014 (63 O.S. Supp. 2015, Section 2-506), is amended to read as follows:

Section 2-506. A. Any peace officer of this state shall seize the following property:

1. Any property described in subsection A of Section 2-503 of this title. Such property shall be held as evidence until a forfeiture has been declared or release ordered, except for property described in paragraphs 1, 2 and 3 of subsection A of Section 2-503 of this title, or in the case of money, coins, and currency, deposited as provided in subsection E of Section 2-503 of this title; provided, any money, coins and currency taken or detained pursuant to this section may be deposited in an interest-bearing account by or at the direction of the district attorney in the office of the county treasurer if the district attorney determines the currency is not to be held as evidence. All interest earned on such monies shall be returned to the claimant or forfeited with the money, coins and currency which was taken or detained as provided by law;

2. Any property described in subsection B of Section 2-503 of this title; or

3. Any property described in subsection C of Section 2-503 of this title.

B. All property taken or detained pursuant to this section shall be returned to the claimant if no charges are filed within thirty (30) days of the seizure; provided, however, the property may be held an additional thirty (30) days if the seizing authority can show good cause for the property to remain in its custody. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein such property is seized and shall be given all owners and parties in interest. ~~Notwithstanding any other provision of law, no filing fees shall be assessed by the court clerk for the filing of any forfeiture action.~~

C. Notice shall be given by the agency seeking forfeiture according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record in the Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the attorney in the office of the agency prosecuting the

action to recover unpaid fines, by mailing a copy of the notice by registered mail to the last-known address; or

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

D. Within forty-five (45) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of forty-five (45) 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 shall order the property forfeited to the state, if such fact is proved. Except as otherwise provided for in Section 2-503 of this title, any such property shall be forfeited to the state and sold under judgment of the court pursuant to the provisions of Section 2-508 of this title.

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

G. At a hearing in a proceeding against property described in paragraphs 3 through 9 of subsection A or subsections B and C of Section 2-503 of this title, the requirements set forth in said

paragraph or subsection, respectively, shall be satisfied by the state by ~~a preponderance of the~~ clear and convincing evidence.

H. The claimant of any right, title, or interest in the property may prove a lien, mortgage, or conditional sales contract to be a bona fide or innocent ownership interest and that such right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court shall order the property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser. The court shall also award court costs and attorney fees to such owner, lien holder, mortgagee or vendor.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the state and sold under judgment of the court, as provided for in Section 2-508 of this title, except as otherwise provided for in Section 2-503 of this title.

K. Property taken or detained under 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 wherein the property was

seized, subject only to the orders and decrees of the court or the official having jurisdiction thereof; said official shall maintain a true and accurate inventory and record of all such property seized under the provisions of this section. The provisions of this subsection shall not apply to property 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. Property 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 subject to the provisions of subsections E and F of Section 2-503 of this title.

L. The proceeds of the sale of any property 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, conditional sales vendor or mortgagee of the property, if any, up to the amount of his

or her interest in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the property and legitimate costs related to the civil forfeiture proceedings~~. For purposes of this paragraph, the term "legitimate costs" shall not include court costs associated with any civil forfeiture proceeding~~; and

3. The balance to ~~a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse education, and maintained by the district attorney in his or her discretion for those purposes with a yearly accounting to the board of county commissioners in whose county the fund is established and to the District Attorneys Council; provided, one hundred percent (100%) of the balance of the proceeds of such sale of property forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title. The revolving fund shall be audited by the State Auditor and Inspector at least every two (2) years in the manner provided in Section 171 of Title 19 of the Oklahoma Statutes. Said audit shall include, but not be limited to, a compliance audit. A district attorney may enter into agreements with municipal, tribal, county or state agencies to return to such~~

~~an agency a percentage of proceeds of the sale of any property seized by the agency and forfeited under the provisions of this section. The District Attorneys Council shall adopt guidelines which ensure that such agencies receive a reasonable percentage of such proceeds, considering the relative contribution of each agency to the drug enforcement and prosecution operations relating to the seizure. In formulating said guidelines, the District Attorneys Council shall examine federal guidelines on asset distribution and use said guidelines as a basis for establishing guidelines for this state. The Attorney General is hereby authorized to mediate disputes between district attorneys and such agencies concerning the application of said guidelines in particular instances. Any agency that receives proceeds from an asset distribution shall maintain a true and accurate record of all such assets~~ the Forfeited Assets Distribution Fund created pursuant to Section 7 of this act.

M. Whenever any vehicle, airplane or vessel is forfeited under the Uniform Controlled Dangerous Substances Act, the district court of jurisdiction may order that the vehicle, airplane or vessel seized may be ~~retained by the state, county or city law enforcement agency which seized the vehicle, airplane or vessel for its official use~~ transferred to the custody of the Forfeited Assets Distribution Fund.

N. If the court finds that the state failed to satisfy the required showing provided for in subsection G of this section, the court shall order the property released to the owner or owners.

O. Except as provided for in subsection Q of this section, a bona fide or innocent owner, lien holder, mortgagee or vendor that recovers property pursuant to this section shall not be liable for storage fees.

P. Except as provided for in subsection Q of this section, storage fees shall be paid by the agency which is processing the seizure and forfeiture from funds generated by seizure and forfeiture actions.

Q. The bona fide or innocent owner, lien holder, mortgagee or vendor shall reclaim subject seized property within thirty (30) days of written notice from the seizing agency. If such person fails to reclaim the property within the thirty-day time period, then storage fees may be assessed against their secured interest.

R. 1. At any hearing held relevant to this section, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the accused by the office of the district attorney or other party to the forfeiture at least five (5) days prior to the hearing, with reference to all or part of

the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by the forfeiture applicant or the respondent, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders such person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the OSBI for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory except to the criminal justice agency originally submitting the substance to the OSBI for analysis, absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

3. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report. The hearing

shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

4. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

S. Any law enforcement agency seizing property pursuant to this section shall submit an annual report identifying the property seized and the disposition of such property to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Office of the State Auditor and Inspector. All reports submitted pursuant to this subsection shall be made available to the public.

SECTION 6. AMENDATORY 63 O.S. 2011, Section 2-508, as last amended by Section 2, Chapter 284, O.S.L. 2014 (63 O.S. Supp. 2015, Section 2-508), is amended to read as follows:

Section 2-508. A. Except as otherwise provided, all property described in paragraphs 1 and 2 of subsection A of Section 2-503 of this title which is seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act shall be destroyed. The destruction shall be done by or at the direction of

the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OSBNDD), who shall have the discretion prior to destruction to preserve samples of the substance for testing. In any county with a population of four hundred thousand (400,000) or more according to the latest Federal Decennial Census, there shall be a located site, approved by the OSBNDD, for the destruction of the property. Any such property submitted to the OSBNDD which it deems to be of use for investigative training, educational, or analytical purposes may be retained by the OSBNDD in lieu of destruction.

B. 1. With respect to controlled dangerous substances seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, municipal police departments, sheriffs, the Oklahoma Bureau of Narcotics and Dangerous Drugs Control Commission, the Oklahoma Highway Patrol, and the Oklahoma State Bureau of Investigation shall have the authority to destroy seized controlled dangerous substances when the amount seized in a single incident exceeds ten (10) pounds. The destroying agency shall:

a. photograph the seized substance with identifying case numbers or other means of identification,

b. prepare a report describing the seized substance prior to the destruction,

c. retain at least one (1) pound of the substance randomly selected from the seized substance for the purpose of evidence, and

d. obtain and retain samples of the substance from enough containers, bales, bricks, or other units of substance seized to establish the presence of a weight of the substance necessary to establish a violation of the Trafficking in Illegal Drugs Act pursuant to subsection C of Section 2-415 of this title, if such a weight is present. If such weight is not present, samples of the substance from each container, bale, brick or other unit of substance seized shall be taken. Each sample taken pursuant to this section shall be large enough for the destroying agency and the defendant or suspect to have an independent test performed on the substance for purposes of identification.

2. If a defendant or suspect is known to the destroying agency, the destroying agency shall give at least seven (7) days' written notice to the defendant, suspect or counsel for the defendant or suspect of:

a. the date, the time, and the place where the photographing will take place and notice of the right to attend the photographing, and

b. the right to obtain samples of the controlled dangerous substance for independent testing and use as evidence.

3. The written notice shall also inform the defendant, suspect or counsel for the defendant or suspect that the destroying agency must be notified in writing within seven (7) days from receipt of the notice of the intent of the suspect or defendant to obtain random samples and make arrangements for the taking of samples. The samples for the defendant or suspect must be taken by a person licensed by the Drug Enforcement Administration. If the defendant or counsel for the defendant fails to notify the destroying agency in writing of an intent to obtain samples and fails to make arrangements for the taking of samples, a sample taken pursuant to subparagraph d of paragraph 1 of this subsection shall be made available upon request of the defendant or suspect.

The representative samples, the photographs, the reports, and the records made under this section and properly identified shall be admissible in any court or administrative proceeding for any purposes for which the seized substance itself would have been admissible.

C. All other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of 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, the Office of the Attorney General, or a district attorney may be disposed of by order

of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the agency or district attorney, the agency or district attorney shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court except for laboratory equipment which may be forfeited when no longer needed in connection with litigation, unless the property is perishable. The Director or Commissioner of the agency, the Attorney General, or district attorney shall file a petition in the district court of Oklahoma County or in the case of a district attorney, the petition shall be filed in a county within the jurisdiction of the district attorney requesting the authority to:

1. Conduct a sale of the property at a public auction or use an Internet auction, which may include online bidding; or

2. Convert title of the property to 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, the Office of the Attorney General, or to the district attorney's office for the purposes provided for in subsection J, K or L of this section.

The Director, Commissioner, Attorney General or district attorney shall attach to the petition:

a. a list describing the property, including all identifying numbers and marks, if any,

b. the date the property came into the possession of the agency or district attorney, and

c. the name and address of the owner, if known.

For any item having an apparent value in excess of One Hundred Dollars ($100.00), but less than Five Hundred Dollars ($500.00), the notice of the hearing of the petition for the sale of the property, except laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, shall be given to every known owner, as set forth in the petition, by first-class mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. An affidavit of notice being sent shall be filed with the court by a representative of the agency, the Director or Commissioner of the agency, the Attorney General or district attorney. For items in excess of Five Hundred Dollars ($500.00), a notice of the hearing of the petition for the sale of said property shall be delivered to every known owner as set forth in the petition by certified mail. Notice of a hearing on a petition for forfeiture or sale of laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the Uniform Controlled Dangerous Substances Act shall not be required.

The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Director, Commissioner, Attorney General, or district attorney to donate the property pursuant to subsection J, K or L of this section, to sell the property at a public auction, including an Internet auction, which may include online bidding, to the highest bidder, or to convert title of the property to 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 for the purposes provided for in subsection J, K or L of this section after at least ten (10) days of notice has been given by publication in one issue of a legal newspaper of the county. If the property is offered for sale at public auction, including an Internet auction, and no bid is received that exceeds fifty percent (50%) of the value of the property, such value to be announced prior to the sale, the Director, Commissioner, Attorney General, or district attorney may refuse to sell the item pursuant to any bid received. The Director, Commissioner, Attorney General,

or district attorney shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased.

D. The money received from the sale of property by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be used for general drug enforcement purposes. These funds shall be transferred to the ~~Bureau of Narcotics Revolving Fund established pursuant to Section 2-107 of this title or in the case of a district attorney, the revolving fund provided for in paragraph 3 of subsection L of Section 2-506 of this title~~ Forfeited Assets Distribution Fund created pursuant to Section 7 of this act.

E. At the request of the Department of Public Safety, the district attorney or a designee of the district attorney may conduct any forfeiture proceedings as described in Section 2-503 of this title on any property subject to forfeiture as described in subsection A, B or C of Section 2-503 of this title. The money received from the sale of property by the Department of Public Safety shall be deposited in the ~~Department of Public Safety Restricted Revolving Fund and shall be expended for law enforcement purposes~~ Forfeited Assets Distribution Fund created pursuant to Section 7 of this act.

F. The money received from the sale of property by the Alcoholic Beverage Laws Enforcement Commission shall be deposited in

the ~~General Revenue Fund of the state~~ Forfeited Assets Distribution Fund created pursuant to Section 7 of this act.

G. The money received from the sale of property from the Oklahoma State Bureau of Investigation shall be deposited in the ~~OSBI Revolving Fund and shall be expended for law enforcement purposes~~ Forfeited Assets Distribution Fund created pursuant to Section 7 of this act.

H. The Director of the Department of Corrections shall make a return of the sale and when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. ~~Twenty-five percent (25%) of the~~ The money received from the sale shall be disbursed to ~~a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse education. The remaining seventy-five percent (75%) shall be deposited in the Department of Corrections Revolving Fund to be expended for equipment for probation and parole officers and correctional officers~~ the Forfeited Assets Distribution Fund created pursuant to Section 7 of this act.

I. The money received from the sale of property from the Office of the Attorney General shall be deposited in the ~~Attorney General Law Enforcement Revolving Fund and shall be expended for law enforcement purposes. The Office of the Attorney General may enter~~

~~into agreements with municipal, county or state agencies to return to such an agency a percentage of proceeds of the sale of any property seized by the agency and forfeited under the provisions of this section~~ Forfeited Assets Distribution Fund created pursuant to Section 7 of this act.

J. Any property, including but not limited to uncontaminated laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, upon a court order, may be donated for classroom or laboratory use by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, Department of Public Safety, district attorney, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, or the Office of the Attorney General to any public secondary school or technology center school in this state or any institution of higher education within The Oklahoma State System of Higher Education.

K. Any vehicle or firearm which has come into the possession and title vested in the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Office of the Attorney General or a district attorney, ~~may~~ shall be transferred~~, donated or offered for lease to any sheriff's office, tribal law enforcement agency, campus police department pursuant to the provisions of the~~

~~Oklahoma Campus Security Act, or police department in this state on an annual basis to assist with the enforcement of the provisions of the Uniform Controlled Dangerous Substances Act. Each agency shall promulgate rules, regulations and procedures for leasing vehicles and firearms. No fully automatic weapons will be subject to the leasing agreement. All firearms leased may be utilized only by C.L.E.E.T.-certified officers who have received training in the type and class of weapon leased. Every lessee shall be required to submit an annual report to the leasing agency stating the condition of all leased property. A lease agreement may be renewed annually at the option of the leasing agency. Upon termination of a lease agreement, the property shall be returned to the leasing agency for sale or other disposition. All funds derived from lease agreements or other disposition of property no longer useful to law enforcement shall be deposited in the agency's revolving fund, or in the case of the Department of Public Safety, the Department of Public Safety Restricted Revolving Fund, and shall be expended for law enforcement purposes~~ to the custody of the Forfeited Assets Distribution Fund.

L. Before disposing of any property pursuant to subsections C through I of this section, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Alcoholic Beverage Laws Enforcement Commission, the Oklahoma State Bureau of Investigation, the Department of Corrections, the Office of the Attorney General, or a district attorney may transfer or

donate the property to another state agency, tribal law enforcement agency, or school district for use upon request. In addition to the provisions of this section, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control may transfer or donate property for any purpose pursuant to Section 2-106.2 of this title. The agencies and any district attorney that are parties to any transfer of property pursuant to this subsection shall enter into written agreements to carry out any such transfer of property. Any such agreement may also provide for the granting of title to any property being transferred as the parties deem appropriate. If the transfer of property is to a school district, a written agreement shall be entered into with the superintendent of the school district. No weapons may be transferred to a school district except as provided for in subsection K of this section.

M. No property seized pursuant to the provisions of the Uniform Dangerous Controlled Substances Act or money received from the sale of such property shall be transferred directly or indirectly to any federal law enforcement authority or other federal agency unless the property seized includes cash of Fifty Thousand Dollars ($50,000.00) or more.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-508A of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund to be known as the Forfeited Assets Distribution Revolving Fund. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies appropriated or transferred to the fund and any monies contributed to the fund from any other source. All monies accruing to the credit of such fund are hereby appropriated and may be budgeted and expended for the purpose of providing grants to law enforcement agencies or drug treatment facilities to be used for eradication of illegal drugs, drug interdiction and drug treatment. Grants shall be awarded by the Forfeited Assets Distribution and Oversight Board created pursuant to subsection B of this section. The Attorney General is hereby authorized to mediate disputes between the Board and such agencies concerning the application of said guidelines in particular instances. Any agency that receives proceeds from an asset distribution shall maintain a true and accurate record of all such assets.

B. There is hereby created the Forfeited Assets Distribution and Oversight Board to administer and manage the Forfeited Assets Distribution Revolving Fund created pursuant to subsection A of this section. Such board shall be nonpartisan and shall consist of fifteen (15) members, eight of whom shall be lay people and seven of whom shall be representatives of law enforcement. Members shall be appointed for six-year terms, except for the initial appointments,

which shall be staggered terms as agreed to by the appointing authorities. Terms of office shall expire on June 30. Members may be reappointed as deemed appropriate by the appointing authority. Members may be removed by the appointing authority for incompetence, willful neglect of duty, corruption in office or malfeasance in office. Vacancies shall be filled in the same manner as the original appointment. The members shall be appointed as follows:

1. The Governor shall appoint five members, four of whom shall be lay members and one of whom shall be appointed from a list of recommendations provided by the District Attorneys' Council;

2. The President Pro Tempore of the Senate shall appoint five members, two of whom shall be lay members, two of whom shall be appointed from a list of recommendations provided by the Oklahoma Association of Chiefs of Police and one of whom shall be appointed from a list of recommendations provided by the Oklahoma State Fraternal Order of Police; and

3. The Speaker of the House of Representatives shall appoint five members, two of whom shall be lay members, two of whom shall be appointed from a list of recommendations provided by the Oklahoma Sheriffs' Association and one of whom shall be appointed from a list of recommendations provided by the Oklahoma State Fraternal Order of Police.

C. The members of the Board shall elect from their membership a chair and vice-chair to serve for one two-year term. A majority of

the members shall constitute a quorum for the purpose of conducting business of the Board. The Board shall meet at least quarterly and at the call of the chair. The Board shall comply with the Oklahoma Open Meeting Act, the Oklahoma Open Records Act and the Oklahoma Administrative Procedures Act.

D. The Office of the Attorney General shall provide office supplies and personnel to assist the Board in the performance of its duties until the fund has adequate resources to assume such expenses. Members of the Board shall serve without compensation but shall be reimbursed by the Office of the Attorney General for expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act.

SECTION 8. This act shall become effective November 1, 2016.

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