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COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2225

By: Moore of the House  
and  
Weaver of the Senate

SENATE FLOOR VERSION - HB2225 SFLR Page 1  
(Bold face denotes Committee Amendments)

1 affidavits of service or publication with the court  
2 clerk; extending date by which objections must be  
3 filed; authorizing retention of evidence or exhibits  
4 pending the outcome of actions for postconviction  
5 relief; authorizing government entities to seek a  
6 hearing regarding disposition of property;  
7 establishing hearing requirements; providing for the  
8 destruction of property under certain circumstances;  
9 extending time limitation for making property  
10 available to owners; providing gender-neutral  
11 language; clarifying procedures for providing  
12 receipts to defendants when money or other property  
13 is seized; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 2011, Section 34-104, as  
amended by Section 1, Chapter 166, O.S.L. 2012 (11 O.S. Supp. 2020,  
Section 34-104), is amended to read as follows:

Section 34-104. A. Any chief of police or designee is  
authorized to dispose of personal property or money or legal tender  
as provided in this section or the ~~charter~~ ordinances of the  
municipality, which has come into the possession of the ~~chief of~~  
police ~~in any manner~~ department of the municipality if:

1. The owner of the personal property or money or legal tender  
is unknown or has not claimed the property after any required  
notice;

2. The property or money or legal tender has been in the  
custody of the chief of police for at least ninety (90) days; and

1        3. The property or money or legal tender or any part thereof is  
2 no longer needed to be held as evidence or for any other purpose in  
3 connection with any litigation. In the event the property, money or  
4 legal tender was seized by the police department in connection with  
5 a criminal investigation or arrest, this determination shall be made  
6 by the court which has jurisdiction over the criminal offense, if an  
7 information or indictment is pending, pursuant to Section 1321 of  
8 Title 22 of the Oklahoma Statutes, or by a prosecuting authority if  
9 charges have been disposed of or have been declined.

10        B. ~~The chief of police shall~~ municipality may file an  
11 application in the district court in which the situs of government  
12 of the municipality is located requesting the authority of the court  
13 to conduct a sale of the personal property which has a ~~fair~~ market  
14 value ~~of more than its face value.~~ ~~The chief of police shall attach~~  
15 ~~to the application~~ shall contain a list describing the property  
16 ~~including any identifying numbers and marks,~~ the date the property  
17 came into the possession of the ~~chief of police~~ municipality, and  
18 the name of the owner and the person in last possession, if  
19 different, and the address of the person, if known. The court shall  
20 set the application for hearing not less than ~~ten (10)~~ fifteen (15)  
21 days ~~nor more than twenty (20) days~~ after filing of the application.

22        C. In any instance where the property has an actual or apparent  
23 value of more than Two Hundred Fifty Dollars (\$250.00), at least ~~ten~~  
24 ~~(10)~~ eleven (11) days prior to the date of the hearing, written

1 notice of the hearing shall be sent by first-class mail, postage  
2 prepaid, to each owner and person last in possession of the property  
3 at the address as listed in the application. If the owner of any  
4 property with an actual or apparent value exceeding Five Hundred  
5 Dollars (\$500.00) is unable to be served written notice by first-  
6 class mail, notice shall be provided by one publication at least  
7 three (3) days prior to the hearing in a newspaper of general  
8 circulation in the county where the property is in custody. The  
9 notice shall contain ~~a brief description of the property of the~~  
10 ~~owner and~~ the place and date of the hearing and a description of the  
11 property, or the location of a list available for review during  
12 business hours in which the property is described and any known  
13 owner identified. The notice shall be posted at the assigned place  
14 for the posting of municipal notices, and at two other public places  
15 in the municipality.

16 D. If no owner appears and establishes ownership to the  
17 property at the hearing, the court shall enter an order authorizing  
18 the ~~chief of police~~ municipality to dispose of the property as  
19 follows:

20 1. Donate the property having value of less than Five Hundred  
21 Dollars (\$500.00) to a not-for-profit corporation as defined in  
22 Title 18 of the Oklahoma Statutes for use by needy families;

23 2. Sell the personal property for cash to the highest bidder,  
24 after at least five (5) days' notice of the sale has been published;

1        3. Transfer the property to a third-party agent under contract  
2 with the ~~governing body of the chief of police municipality~~ municipality for sale  
3 by Internet or other electronic means, regardless of whether the  
4 sale structure or distribution site is within the State of Oklahoma;  
5 or

6        4. By any other means as determined appropriate by the court,  
7 including but not limited to, destruction.

8        ~~Regardless of~~ If the means of disposition involve a sale or  
9 donation to the third party, the chief of police or designee shall  
10 make a return of the donation or sale and the order of the court  
11 confirming the donation or sale shall vest title to the property in  
12 the recipient or purchaser. After payment of court costs and other  
13 expenses, the remainder of money received from the sale of the  
14 personal property shall be deposited in the municipal general fund.

15        E. All money or legal tender which has come into the possession  
16 of the ~~chief of police municipality~~ municipality pursuant to the circumstances  
17 provided for in subsection A of this section shall be transferred by  
18 the chief of police or designee to the municipal clerk or municipal  
19 treasurer for deposit in the municipal general fund. Prior to any  
20 transfer, the ~~chief of police municipality~~ municipality shall file an application  
21 in the district court requesting the court to enter an order  
22 authorizing the chief of police or designee to transfer the money  
23 for deposit in the municipal general fund. The application shall  
24 describe the money or legal tender, the date the same came into the

1 possession of the ~~chief of police~~ department, and the name of the  
2 owner and the address of the owner, if known. Upon filing the  
3 application which may be joined with an application as described in  
4 subsection B of this section, a hearing shall be set not less than  
5 ~~ten (10) days nor more than twenty (20)~~ fifteen (15) days from the  
6 filing of the application. Notice of the hearing shall be given as  
7 provided for in subsection C of this section. The notice shall  
8 state that upon failure of anyone to appear to prove ownership to  
9 the money or legal tender, the court shall order the same to be  
10 deposited in the municipal general fund. The notice may be combined  
11 with a notice to sell personal property as provided for in  
12 subsection B of this section. If no one appears to claim and prove  
13 ownership to the money or legal tender at the hearing, the court  
14 shall order the same to be transferred to the municipal general fund  
15 as provided in this subsection.

16 Notwithstanding any other provision of this section, if  
17 authorized by ordinance, the municipality may transfer any currency  
18 received into a depository account for the benefit of its known or  
19 unknown owners prior to any court order for disposition of the money  
20 or legal tender.

21 F. ~~The~~ Except as provided in this subsection, the provisions of  
22 this section shall not apply to any dangerous or deadly weapons,  
23 narcotic or poisonous drugs, explosives, or any property of any kind  
24 or character, ~~which~~ the possession of which is prohibited by law.

1 By order of the trial court, any property filed as an exhibit or  
2 held by the municipality as evidence or as contraband shall be  
3 destroyed or sold or disposed of, pursuant to the conditions  
4 prescribed in the order. To the extent the provisions of this  
5 section do not apply, the court shall follow the procedures in  
6 Section 1321 of Title 22 of the Oklahoma Statutes. No forfeiture  
7 proceeding shall be necessary to authorize the destruction of  
8 property that cannot be returned lawfully to its owner.

9 G. The municipality is hereby authorized to establish a  
10 procedure for the registration of "lost and found" property. The  
11 procedure shall give the finder of any property the option of  
12 relinquishing any future claim to found property at the time its  
13 possession is surrendered to the police or other agent of the  
14 municipality, or of retaining possession of the property after  
15 registering its description and the ~~finders~~ finder's identity with  
16 the police department or other agent of the municipality. ~~Only~~ The  
17 municipality may require that only property in which the finder  
18 relinquishes any future claim to its ownership will be stored in  
19 municipal police property rooms.

20 H. The municipality may provide by ordinance that a percentage  
21 of the money or legal tender deposited in the municipal general fund  
22 as provided in subsection D or E of this section may be paid as a  
23 ~~finders~~ finder's fee for services rendered to any person who found  
24 the unclaimed personal property or money or legal tender and

1 delivered it to, or registered it with, the chief of police or other  
2 agent of the municipality.

3 I. The municipality may provide written notice at the time of  
4 arrest or detention that certain property is available for return  
5 within ninety (90) days, if the property was not seized as evidence.  
6 If the property is or appears to be worth less than Two Hundred  
7 Fifty Dollars (\$250.00), no further notice is required prior to  
8 obtaining a court order for disposition of the property in  
9 accordance with this section. A notice left with a detainee's  
10 personal property at the detention facility shall be presumed to  
11 have been returned to the detainee at the time of his or her release  
12 and shall satisfy the officer's obligation to deliver a receipt to  
13 the detainee in connection with an arrest for a public offense.

14 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1321, is  
15 amended to read as follows:

16 Section 1321. A. It is the intent of the Legislature that any  
17 stolen or embezzled money or other property held in custody of a  
18 municipality, county or the state in any criminal investigation,  
19 action or proceeding be returned to the proper person or its lawful  
20 owner without unnecessary delay.

21 B. If the property coming into the custody of a municipal,  
22 county or state peace officer is not alleged to have been stolen or  
23 embezzled, the peace officer may return the property to the owner  
24 upon satisfactory proof of ownership. The notice and hearing



1 provisions of this section shall not be required for return of the  
2 property specified in this section if there is no dispute concerning  
3 the ownership of the property. Within fifteen (15) days of the time  
4 the owner of the property is known, the peace officer shall notify  
5 the owner of the property that the property is in the custody of the  
6 peace officer. The property shall be returned to the owner upon  
7 request, unless the owner, by law, is not permitted to possess such  
8 property.

9 C. Except as otherwise provided for property that is pawned,  
10 when money or property alleged to have been stolen or embezzled,  
11 comes into the custody of a peace officer, the peace officer shall  
12 hold it subject to the order of the magistrate authorized by Section  
13 1322 of this title to direct the disposal thereof. Within fifteen  
14 (15) days of the time the owner of the property is known, the peace  
15 officer shall notify the owner of the property that the property is  
16 in the custody of the peace officer. The peace officer shall make a  
17 good faith effort to locate and notify the owner of the property.  
18 If the peace officer has made a good faith effort to locate and  
19 notify the owner of the property and has been unable to locate or  
20 notify the owner, the peace officer shall release the property to  
21 the last person in possession of the property within fifteen (15)  
22 days after the peace officer determines that an owner cannot be  
23 located or notified, ~~provided~~ unless there is evidence that the  
24 person who last had possession of the property ~~shows proof that the~~

1 ~~person~~ is not a lawful possessor of the property. Such officer may  
2 provide a copy of a nonownership affidavit to the defendant to sign  
3 if the defendant is not claiming ownership of the money or property  
4 taken from the defendant and if the defendant has relinquished the  
5 right to remain silent. The affidavit is not admissible in any  
6 proceeding to ascertain the guilt or innocence of the defendant. A  
7 copy of this affidavit shall be provided to the defendant, and a  
8 copy ~~shall~~ may be filed by the peace officer with the court clerk.  
9 Upon request, a copy of this affidavit shall be provided to any  
10 person claiming ownership of such money or property. The owner of  
11 the property or designated representative of the owner may make  
12 application to the magistrate for the return of the property. The  
13 application shall be on a form provided by the Administrative  
14 Director of the Courts and made available through the court clerk or  
15 the victim-witness coordinator. The court may charge the applicant  
16 a reasonable fee to defray the cost of filing and docketing the  
17 application. Once an application has been made and notice provided,  
18 the magistrate shall docket the application for a hearing as  
19 provided in this section. Where notice by publication is  
20 appropriate, the publication notice form shall be provided free of  
21 charge to the applicant by the Administrative Director of the Courts  
22 through the court clerk or the victim-witness coordinator with  
23 instructions on how to obtain effective publication notice. The  
24 applicant shall notify the last person in possession of the property

1 prior to the property being seized by the state of the hearing by  
2 mailing a copy of the notice by certified mail return receipt  
3 requested at the last-known address of the person, unless the person  
4 has signed a nonownership affidavit pursuant to this section  
5 disclaiming any ownership rights to the property. If the last  
6 person in possession of the property is unable to be served notice  
7 by certified mail, notice shall be provided by first-class mail and  
8 by one publication in a newspaper of general circulation in the  
9 county where the property is held in custody. The applicant shall  
10 notify the district attorney and the court when notice has been  
11 served to the last person in possession of the property or published  
12 pursuant to this section. The hearing shall be held not less than  
13 ~~ten (10) days or more than twenty (20)~~ fifteen (15) days after ~~the~~  
14 ~~court has been notified that~~ the notice has been served or  
15 published. Proof of service or publication shall be filed with the  
16 court clerk before the hearing. For the sole purpose of conducting  
17 a due process hearing to establish ownership of the property,  
18 "magistrate" as used in this section shall mean a judge of the  
19 district court, associate district judge, special judge or the judge  
20 of a municipal criminal court of record when established pursuant to  
21 Section 28-101 et seq. of Title 11 of the Oklahoma Statutes.

22 D. If the magistrate determines that the property is needed as  
23 evidence, the magistrate shall determine ownership or right of  
24 possession and determine the procedure and time frame for future

1 release. The magistrate may order the release of property needed as  
2 evidence pursuant to Section 1327 of this title, provided however,  
3 the order may require the owner to present the property at trial.  
4 The property shall be made available to the owner within ~~ten (10)~~  
5 twenty (20) days of the court order for release. The magistrate may  
6 authorize ten (10) days additional time for the return of the  
7 exhibit if the district attorney shows cause that additional time is  
8 needed to photograph or mark the exhibit.

9 E. If the property is not needed as evidence, it may be  
10 released by the magistrate to the owner or designated representative  
11 of the owner upon satisfactory proof of ownership or to the person  
12 last in possession prior to seizure. The owner of the property or  
13 designated representative of the owner may make application to the  
14 magistrate for the return of the property. The owner shall provide  
15 satisfactory proof of title to the property or sign an affidavit of  
16 ownership if documents of title do not exist. If an affidavit of  
17 ownership or affidavit of right of possession is used to establish  
18 ownership or right of possession, the claimant may also be required  
19 to sign an agreement to indemnify and defend the custodians of the  
20 property in the event of an adverse claim to the property. The  
21 applicant shall notify the last person in possession of the property  
22 prior to such property being seized by the state of the hearing by  
23 mailing a copy of the notice by certified mail return receipt  
24 requested at the last-known address of the person, unless the person

1 has signed a nonownership affidavit pursuant to this section  
2 disclaiming any ownership rights to the property. If the last  
3 person in possession of the property is unable to be served notice  
4 by certified mail, notice shall be provided by one publication in a  
5 newspaper of general circulation in the county where the property is  
6 held in custody. The applicant shall notify the district attorney  
7 and the court when notice has been served to the last person in  
8 possession of the property or published pursuant to this section.  
9 The hearing shall be held not less than ~~ten (10)~~ fifteen (15) days  
10 ~~or more than twenty (20) days~~ after the court has been notified that  
11 the notice has been served or published. An affidavit of service or  
12 publication shall be filed with the court prior to the hearing.

13 F. The notice and hearing provisions of subsections C and E of  
14 this section shall not be required for return of the property  
15 specified in said subsections if:

16 1. There is no dispute concerning the ownership of the  
17 property;

18 2. The property is readily identifiable by the owner; and

19 3. The defendant has entered a plea of guilty or nolo  
20 contendere to the criminal charge, has executed a nonownership  
21 affidavit as provided by subsection C of this section or has been  
22 personally notified that the property will be returned to the owner  
23 and has failed to file an objection to such return within ~~ten (10)~~  
24 eleven (11) days of being notified. The owner shall provide

1 satisfactory proof of title to the property or sign an affidavit of  
2 ownership or right of possession to be provided by the peace  
3 officer. If an affidavit of ownership or affidavit of right of  
4 possession is used to establish ownership or right of possession,  
5 the claimant may also be required to sign an agreement to indemnify  
6 and defend the custodians of the property in the event of an adverse  
7 claim to the property. The affidavit is not admissible in any  
8 proceeding to ascertain the guilt or innocence of the defendant. A  
9 copy of this affidavit shall be filed by the officer with the court  
10 clerk. The property shall then be returned to the owner or person  
11 with right of possession.

12 G. When property alleged to have been stolen comes into the  
13 custody of a peace officer and the property is deemed to be  
14 perishable, the peace officer shall take such action as appropriate  
15 to temporarily preserve the property. However, within seventy-two  
16 (72) hours of the time the property was recovered, the receiving  
17 agency shall make application for a disposition hearing before a  
18 magistrate, and the receiving agency shall notify by first-class  
19 mail all persons known to have an interest in the property of the  
20 date, time and place of the hearing.

21 H. In any case, the magistrate may, for good cause shown, order  
22 any evidence or exhibit to be retained pending the outcome of any  
23 appeal or action for post-conviction relief.

1 I. Any time property comes into the custody of a municipality,  
2 a county, or this state as a result of any contact with any peace  
3 officer, criminal investigation or other situation where the return  
4 of the property is prohibited by any municipal, state or federal law  
5 or when the property has disputed ownership or multiple claimants,  
6 the municipality, county or state shall advise the claimant to file  
7 an application with the appropriate district court. Upon filing an  
8 application for a hearing, the claimant shall provide notice by  
9 first-class mail to all interested persons including the government  
10 entity having custody of the property. The government entity having  
11 custody of the property may also seek a hearing regarding the  
12 disposition of the property. The hearing shall be scheduled not  
13 less than fifteen (15) days after the notice is mailed. Unless the  
14 property is being held in connection with a filed criminal charge,  
15 the proceeding shall be considered a civil matter and shall be filed  
16 in the county where the property is being held. If a criminal  
17 charge has been filed, the matter shall be heard by the judge who  
18 has been assigned to the criminal case. At the hearing the court  
19 shall make a judicial determination as to the proper and lawful  
20 release or other disposition of the property. If the property at  
21 issue is a firearm or other weapon, the court may order the property  
22 destroyed if the court determines that the owner of the firearm or  
23 weapon is mentally or emotionally unstable or disturbed or cannot  
24 legally possess the firearm or weapon.

1 J. The application, notice and hearing provisions of subsection  
2 I of this section shall include, but are not limited to, all  
3 situations where the peace officer has reason to believe:

4 1. One of the persons asserting a right to the return of any  
5 firearm or other weapon is or was mentally or emotionally unstable  
6 or disturbed at the time the weapon was placed in custody or at the  
7 time of the request for the return of the weapon;

8 2. One of the persons asserting a right to the return of a  
9 firearm or other weapon is subject to a victim protection order that  
10 would preclude the return of any weapon as a matter of law;

11 3. One of the persons asserting a right to the return of any  
12 firearm or other weapon is under indictment or has been convicted of  
13 a felony;

14 4. One of the persons asserting a right to the return of any  
15 firearm or other weapon has a misdemeanor conviction for domestic  
16 abuse as defined by law;

17 5. The ownership of the property is unclear due to multiple  
18 claimants or disputes among heirs or next of kin for the property of  
19 the deceased; or

20 6. The return of the property could subject the municipality,  
21 the county, or this state to potential liability for its return.

22 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1322, is  
23 amended to read as follows:  
24



1       Section 1322. On satisfactory proof of title to the property,  
2 the magistrate before whom the information is laid, or who examines  
3 the charge against the person accused of stealing or embezzling the  
4 property, may order it to be delivered to the owner on his paying  
5 the reasonable and necessary expenses incurred in its preservation,  
6 to be certified by the magistrate. The order entitles the owner to  
7 demand and receive the property. Such property shall be made  
8 available to the owner within ~~ten (10)~~ twenty (20) days of the  
9 issuance of the order. The court, however, may keep the property as  
10 evidence or on the issuance of an order, require the owner to  
11 present such property at trial.

12       SECTION 4.       AMENDATORY       22 O.S. 2011, Section 1326, is  
13 amended to read as follows:

14       Section 1326. When money or other property is taken from a  
15 defendant arrested upon a charge of public offense, the officer  
16 taking it must at the time give duplicate receipts therefor,  
17 specifying particularly the amount of money or the kind of property  
18 taken. One of which receipts ~~he~~ the officer must deliver to the  
19 defendant or to the detention officer holding the detainee's  
20 personal property, and the other of which ~~he~~ the officer must file  
21 with the ~~clerk of the court to which the depositions and statement~~  
22 ~~must be sent, as provided in the last section of the chapter on~~  
23 ~~preliminary examination, 6641~~ officer's chief law enforcement  
24 officer or designee.

SECTION 5. This act shall become effective November 1, 2021.

COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
March 31, 2021 - DO PASS AS AMENDED