



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

2 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1321, is  
3 amended to read as follows:

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

9 B. If the property coming into the custody of a municipal,  
10 county or state peace officer is not alleged to have been stolen or  
11 embezzled, the peace officer may return the property to the owner  
12 upon satisfactory proof of ownership. The notice and hearing  
13 provisions of this section shall not be required for return of the  
14 property specified in this section if there is no dispute concerning  
15 the ownership of the property. Within fifteen (15) days of the time  
16 the owner of the property is known, the peace officer shall notify  
17 the owner of the property that the property is in the custody of the  
18 peace officer. The property shall be returned to the owner upon  
19 request, unless the owner, by law, is not permitted to possess such  
20 property.

21 C. Except as otherwise provided for property that is pawned,  
22 when money or property alleged to have been stolen or embezzled,  
23 comes into the custody of a peace officer, the peace officer shall  
24 hold it subject to the order of the magistrate authorized by Section

1 1322 of this title to direct the disposal thereof. Within fifteen  
2 (15) days of the time the owner of the property is known, the peace  
3 officer shall notify the owner of the property that the property is  
4 in the custody of the peace officer. The peace officer shall make a  
5 good faith effort to locate and notify the owner of the property.  
6 If the peace officer has made a good faith effort to locate and  
7 notify the owner of the property and has been unable to locate or  
8 notify the owner, the peace officer shall release the property to  
9 the last person in possession of the property within fifteen (15)  
10 days after the peace officer determines that an owner cannot be  
11 located or notified, ~~provided~~ unless there is evidence that the  
12 person who last had possession of the property ~~shows proof that the~~  
13 ~~person~~ is not a lawful possessor of the property. Such officer may  
14 provide a copy of a nonownership affidavit to the defendant to sign  
15 if the defendant is not claiming ownership of the money or property  
16 taken from the defendant and if the defendant has relinquished the  
17 right to remain silent. The affidavit is not admissible in any  
18 proceeding to ascertain the guilt or innocence of the defendant. A  
19 copy of this affidavit shall be provided to the defendant, and a  
20 copy ~~shall~~ may be filed by the peace officer with the court clerk.  
21 Upon request, a copy of this affidavit shall be provided to any  
22 person claiming ownership of such money or property. The owner of  
23 the property or designated representative of the owner may make  
24 application to the magistrate for the return of the property. The

1 application shall be on a form provided by the Administrative  
2 Director of the Courts and made available through the court clerk or  
3 the victim-witness coordinator. The court may charge the applicant  
4 a reasonable fee to defray the cost of filing and docketing the  
5 application. Once an application has been made and notice provided,  
6 the magistrate shall docket the application for a hearing as  
7 provided in this section. Where notice by publication is  
8 appropriate, the publication notice form shall be provided free of  
9 charge to the applicant by the Administrative Director of the Courts  
10 through the court clerk or the victim-witness coordinator with  
11 instructions on how to obtain effective publication notice. The  
12 applicant shall notify the last person in possession of the property  
13 prior to the property being seized by the state of the hearing by  
14 mailing a copy of the notice by certified mail return receipt  
15 requested at the last-known address of the person, unless the person  
16 has signed a nonownership affidavit pursuant to this section  
17 disclaiming any ownership rights to the property. If the last  
18 person in possession of the property is unable to be served notice  
19 by certified mail, notice shall be provided by first-class mail and  
20 one publication in a newspaper of general circulation in the county  
21 where the property is held in custody. The applicant shall notify  
22 the district attorney and the court when notice has been served to  
23 the last person in possession of the property or published pursuant  
24 to this section. The hearing shall be held not less than ~~ten (10)~~

1 ~~days or more than twenty (20)~~ fifteen (15) days after ~~the court has~~  
2 ~~been notified that~~ the notice has been served or published. Proof  
3 of service or publication shall be filed with the court clerk before  
4 the hearing. For the sole purpose of conducting a due process  
5 hearing to establish ownership of the property, "magistrate" as used  
6 in this section shall mean a judge of the district court, associate  
7 district judge, special judge or the judge of a municipal criminal  
8 court of record when established pursuant to Section 28-101 et seq.  
9 of Title 11 of the Oklahoma Statutes.

10 D. If the magistrate determines that the property is needed as  
11 evidence, the magistrate shall determine ownership or right of  
12 possession and determine the procedure and time frame for future  
13 release. The magistrate may order the release of property needed as  
14 evidence pursuant to Section 1327 of this title, provided however,  
15 the order may require the owner to present the property at trial.  
16 The property shall be made available to the owner within ~~ten (10)~~  
17 twenty (20) days of the court order for release. The magistrate may  
18 authorize ten (10) days additional time for the return of the  
19 exhibit if the district attorney shows cause that additional time is  
20 needed to photograph or mark the exhibit.

21 E. If the property is not needed as evidence, it may be  
22 released by the magistrate to the owner or designated representative  
23 of the owner upon satisfactory proof of ownership or to the person  
24 last in possession prior to seizure. The owner of the property or

1 designated representative of the owner may make application to the  
2 magistrate for the return of the property. The owner shall provide  
3 satisfactory proof of title to the property or sign an affidavit of  
4 ownership if documents of title do not exist. If an affidavit of  
5 ownership or affidavit of right of possession is used to establish  
6 ownership or right of possession, the claimant may also be required  
7 to sign an agreement to indemnify and defend the custodians of the  
8 property in the event of an adverse claim to the property. The  
9 applicant shall notify the last person in possession of the property  
10 prior to such property being seized by the state of the hearing by  
11 mailing a copy of the notice by certified mail return receipt  
12 requested at the last-known address of the person, unless the person  
13 has signed a nonownership affidavit pursuant to this section  
14 disclaiming any ownership rights to the property. If the last  
15 person in possession of the property is unable to be served notice  
16 by certified mail, notice shall be provided by one publication in a  
17 newspaper of general circulation in the county where the property is  
18 held in custody. The applicant shall notify the district attorney  
19 and the court when notice has been served to the last person in  
20 possession of the property or published pursuant to this section.  
21 The hearing shall be held not less than ~~ten (10) days or more than~~  
22 ~~twenty (20)~~ fifteen (15) days after ~~the court has been notified that~~  
23 the notice has been served or published. An affidavit of service or  
24 publication shall be filed with the court prior to the hearing.

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

4 1. There is no dispute concerning the ownership of the  
5 property;

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

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

13 satisfactory proof of title to the property or sign an affidavit of  
14 ownership or right of possession to be provided by the peace

15 officer. If an affidavit of ownership or affidavit of right of

16 possession is used to establish ownership or right of possession,

17 the claimant may also be required to sign an agreement to indemnify

18 and defend the custodians of the property in the event of an adverse

19 claim to the property. The affidavit is not admissible in any

20 proceeding to ascertain the guilt or innocence of the defendant. A

21 copy of this affidavit ~~shall~~ may be filed by the officer with the

22 court clerk. The property shall then be returned to the owner or

23 person with right of possession.  
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1 G. When property alleged to have been stolen comes into the  
2 custody of a peace officer and the property is deemed to be  
3 perishable, the peace officer shall take such action as appropriate  
4 to temporarily preserve the property. However, within seventy-two  
5 (72) hours of the time the property was recovered, the receiving  
6 agency shall make application for a disposition hearing before a  
7 magistrate, and the receiving agency shall notify by first-class  
8 mail all persons known to have an interest in the property of the  
9 date, time and place of the hearing.

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

13 I. Any time property comes into the custody of a municipality,  
14 a county, or this state as a result of any contact with any peace  
15 officer, criminal investigation or other situation where the return  
16 of the property is prohibited by any municipal, state or federal law  
17 or when the property has disputed ownership or multiple claimants,  
18 the municipality, county or state shall advise the claimant to file  
19 an application with the appropriate district court. Upon filing an  
20 application for a hearing, the claimant shall provide notice by  
21 first-class mail to all interested persons including the government  
22 entity having custody of the property. The government entity having  
23 custody of the property may also seek a hearing regarding the  
24 disposition of the property. The hearing shall be scheduled not



1 less than fifteen (15) days after the notice is mailed. Unless the  
2 property is being held in connection with a filed criminal charge,  
3 the proceeding shall be considered a civil matter and shall be filed  
4 in the county where the property is being held. If a criminal  
5 charge has been filed, the matter shall be heard by the judge who  
6 has been assigned to the criminal case. At the hearing the court  
7 shall make a judicial determination as to the proper and lawful  
8 release or other disposition of the property. If the property at  
9 issue is a firearm or other weapon, the court may order the property  
10 destroyed if the court determines that the owner is mentally or  
11 emotionally unstable or disturbed or cannot legally possess the  
12 firearm or other weapon.

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

16 1. One of the persons asserting a right to the return of any  
17 firearm or other weapon is or was mentally or emotionally unstable  
18 or disturbed at the time the weapon was placed in custody or at the  
19 time of the request for the return of the weapon;

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

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

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

7 5. The ownership of the property is unclear due to multiple  
8 claimants or disputes among heirs or next of kin for the property of  
9 the deceased; or

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

12 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1322, is  
13 amended to read as follows:

14 Section 1322. On satisfactory proof of title to the property,  
15 the magistrate before whom the information is laid, or who examines  
16 the charge against the person accused of stealing or embezzling the  
17 property, may order it to be delivered to the owner on his paying  
18 the reasonable and necessary expenses incurred in its preservation,  
19 to be certified by the magistrate. The order entitles the owner to  
20 demand and receive the property. Such property shall be made  
21 available to the owner within ~~ten (10)~~ twenty (20) days of the  
22 issuance of the order. The court, however, may keep the property as  
23 evidence or, on the issuance of an order, require the owner to  
24 present such property at trial.

1 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1326, is  
2 amended to read as follows:

3 Section 1326. When money or other property is taken from a  
4 defendant arrested upon a charge of public offense, the officer  
5 taking it must at the time give duplicate receipts therefor,  
6 specifying particularly the amount of money or the kind of property  
7 taken. One of which receipts ~~he~~ the officer must deliver to the  
8 defendant or to the detention officer holding the personal property  
9 of the detainee, and the other of which ~~he~~ the officer must file  
10 with the ~~clerk of the court to which the depositions and statement~~  
11 ~~must be sent, as provided in the last section of the chapter on~~  
12 ~~preliminary examinations, [6641]~~ chief law enforcement officer of  
13 the officer or designee.

14 SECTION 4. This act shall become effective November 1, 2020.

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16 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/27/2020 - DO PASS,  
17 As Coauthored.

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