

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 25: Miscellaneous Provisions

§ 1321. Custody and return of stolen or embezzled property

Cite as: 22 CNCA § 1321

A. It is the intent of the Council that any stolen or embezzled money or property held in custody of the Nation, state or subdivision in any criminal action or proceeding be returned to its lawful owner without unnecessary delay.

B. If the property coming into the custody of a Nation, state, municipal, county or state peace officer is not alleged to have been stolen or embezzled, the peace officer may return such property to the owner upon satisfactory proof of ownership. The notice and hearing provisions of this section shall not be required for return of the property specified in this section if there is no dispute concerning the ownership of such property, except that within fifteen (15) days of the time the owner of such property is known, the peace officer shall notify the owner of such property that the property is in the custody of the peace officer. The property shall be returned to the owner upon request.

C. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the order of the Magistrate authorized by 22 CNCA § 1322 to direct the disposal thereof. Within fifteen (15) days of the time the owner of such property is known, the peace officer shall notify the owner of such property that the property is in the custody of the peace officer. Such officer may provide a copy of a nonownership affidavit to the defendant to sign if such defendant is not claiming ownership of the money or property taken from the defendant and if such defendant has relinquished his right to remain silent. Such affidavit is not admissible in any proceeding to ascertain the guilt or innocence of the defendant. A copy of this affidavit shall be provided to the defendant and a copy shall be filed by the officer with the Court Clerk. Upon request, a copy of this affidavit shall be provided to any person claiming ownership of such money or property. The owner of the property or designated representative of the owner may make application to the Magistrate for the return of the property. The application shall be on a form provided by the Administrative Director of the Courts and made available through the Court Clerk. The Court may charge the applicant a reasonable fee to defray the cost of filing and docketing the application. Once application has been made and notice provided, the magistrate shall docket said application for a hearing as provided in this section. Where notice by publication is appropriate, the publication notice form shall be provided free of charge to the applicant by the Administrative Director of the Courts through the Court Clerk with instructions on how to obtain effective publication notice. The applicant shall notify

the last person in possession of such property prior to such property being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to such property. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published.

D. If the Magistrate determines that the property is needed as evidence the Magistrate shall determine ownership and determine the procedure and time frame for future release. The Magistrate may order the release of property needed as evidence pursuant to 22 CNCA § 1327, provided however, the order may require the owner to present such property at trial. The property shall be made available to the owner within ten (10) days of the court order for release. The Magistrate may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit.

E. If the property is not needed as evidence, it may be released by the Magistrate to the owner or designated representative of the owner upon satisfactory proof of ownership. The owner of the property or designated representative of the owner may make application to the magistrate for the return of the property. The applicant shall notify the last person in possession of such property prior to such property being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to such property. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published.

F. When property alleged to have been stolen comes into the custody of a peace officer and such property is deemed to be perishable said peace officer shall take such action as he

deems appropriate to temporarily preserve the property. Provided, however, within seventy-two (72) hours of the time the property was recovered, the receiving agency shall make application for a disposition hearing before a Magistrate and the receiving agency shall notify all persons known to have an interest in the property of the date, time and place of such hearing.

G. In any case, the Magistrate may, for good cause shown, order any evidence or exhibit to be retained pending the outcome of any appeal.

Historical Data

LA 10–90, eff. November 13, 1990.