

# An Overview of Oklahoma's Forfeiture Laws

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## I. Common Questions and Issues

**A. Why does the law allow for forfeiture of property?**-Oklahoma's forfeiture statutes are grounded in exercise of state's police power and are primarily remedial in nature as opposed to federal forfeiture statutes which are primarily penal in nature. *State ex rel. Wood v. Gold/Blue 1988 Chevrolet Blazer bearing Kansas Tag IDL865, VIN 1GNCT18Z9J0176308*, 924 P.2d 792 (1996)

## B. What type of proceeding is a forfeiture case?

1. Forfeiture proceedings under Uniform Controlled Dangerous Substances Act (UCDSA) are in rem and civil in nature. *State ex rel. Campbell v. Eighteen Thousand and Two Hundred Thirty-Five Dollars in U.S. Currency*, Okla., 184 P.3d 1078 (2008).

2. Forfeiture proceedings with respect to property that is not **contraband per se** are **quasi in rem** because they determine the rights to the property between or among competing interests, which interests include: (1) the right of the State to confiscate the property if it was used in a crime; (2) the right of the criminal defendant to claim the property was not used to commit a crime; and (3) the right of the owner or interest holder to claim the property because it was used in the criminal activity without permission or knowledge. *State ex rel. Dugger v. Twelve Thousand Dollars (\$12,000.00)*, Okla.Civ.App. Div. 2, 155 P.3d 858 (2007).

**a. In Rem**-is a technical term used to designate proceedings or actions instituted *against the thing*, in contradistinction to personal actions, which are said to be *in personam*.

**b. In Personam**-means against the person. Action seeking judgment against a person involving his personal rights and based on jurisdiction of his person, as distinguished from a judgment against property (*i.e.*, in rem. Type of jurisdiction or power which a court may acquire over the defendant himself in contrast to jurisdiction over his property.)

**3. What Procedure applies, criminal or civil?**-Actions for forfeiture of property seized under Uniform Controlled Dangerous Substances Act are civil in nature and remedial in character. *State v. Eleven Thousand Five Hundred Sixty-Six (\$11,566.00) Dollars*, 919 P.2d 34 (Okla.Civ.App. 1996)

**4. Is a claimant a party to the proceeding?**-“It is clear the Legislature, through Section 2-506 intended to afford Claimant the status of party to the forfeiture proceedings.” *STATE, ex rel., DREW EDMONDSON, v. TWO HUNDRED THOUSAND FOUR HUNDRED NINETY AND NO/100THS DOLLARS (\$200,490.00) IN U.S. CURRENCY, et al.*, 39 P.3d 160 (Okla.Civ.App. 2001)

## **II. Title 63 O.S. Section 2-503, 63 O.S. Section 2-506-Property Subject to Seizure under the Uniform Controlled Dangerous Substances Act**

### **A. The Statutes**

**1. 63 O.S. Section 2-503-Describes Different Classes of Property and Burden(s) of proof**-Provisions of Title 63’s forfeiture statute each describe distinct and separate classes of forfeitable property requiring different proof dependent upon class of property sought to be forfeited. *State v. Eleven Thousand Five Hundred Sixty-Six (\$11,566.00) Dollars*, 919 P.2d 34 (Okla.Civ.App. 1996) Subsection (A) of 63 O.S. § 2-503 describes property that is “presumptively forfeitable.” Subsection (B) property is forfeitable upon the State’s proof that the property is more likely than not the fruit of illegal drug trade. Subsection (C) property is forfeitable upon the State’s proof

that Defendant has failed to pay the fine assessed against him under Section 2-415 for trafficking in illegal drugs.

**a. Subsection A property includes**

1. All controlled dangerous substances, synthetic controlled dangerous substances, raw materials, paraphernalia and virtually any kind of equipment, apparatus or device that is used to manufacture, distribute, dispense, or introduce any CDS or synthetic CDS into the human body. If you think of the various statutes in the UCDS Act, we are essentially talking about all those items that might be used to manufacture, distribute, or possess a CDS or synthetic CDS.

2. In addition, under 63 O.S. Subsection (A)(4) any conveyance, such as aircraft, vehicles, vessels, or farm implements which are used to transport or cultivate for the purpose of distributing or manufacturing a CDS or synthetic CDS is also subject to forfeiture.

**a. The Statute has an “Innocent Owner Provision”-**

An “Innocent Owner” is one who neither consents to the unlawful use of the property, and further does not have actual knowledge or reason to know of the improper use of the property. *State ex rel. McGehee v. 1987 Oldsmobile Cutlass, VIN: 1G3NF11U9HM234685, Tag: BYX 624, 867 P.2d 1354 (Okla.App. 2015)*

**b. Can you forfeit a vehicle where an occupant is only in possession of a controlled drug-**Language

added to forfeiture statute was reference to and related back to transport, concealment, and cultivation of controlled substances for distribution and applied only to penalty portion of matters involving distribution; language in statute did not apply to matters involving only simple possession. *State v. 1983 Toyota Corolla, 1992 License No. ZXK-*

**b. Other Subsection A property which is presumed forfeitable**

1. Includes anything of value furnished, or intended to be furnished, in exchange for a CDS, and 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 UCDSA;
2. All monies 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 UCDSA. The burden of proof is upon claimants of the property to rebut this presumption;
3. 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
4. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act.

**c. Subsection B property includes-**Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that

such property or thing of value was **acquired** by such person **during the period of the violation** of the UCDSA 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 UCDSA.

d. **Subsection C property includes**-Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the 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.

b. **Section 2-503(D)**-Provides that all items forfeited in this section shall be forfeited under the procedures established in Section 2-506 as well as how forfeited property is to be distributed.

3. 63 O.S. Section 2-503(E)-States that property taken or detained under 63 O.S. Section 2-503 is not 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.

2. **63 O.S. Section 2-506**-This statute provides for the procedure to be followed with respect to the different classes of property specified in Section 2-503.

a. Subsection (A) mandates that a peace officer seize all property described in subsection A of Section 2-503. Such property must 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;

b. Subsection (B) mandates that the filing agency such as the DA's Office file notice of seizure and intended forfeiture proceeding 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.

c. Subsection (C) specifies how notice must be given by the agency seeking forfeiture according to one of the following methods: 1) If the person's right, title or interest is of record in the Tax Commission, we have to mail notice by certified mail to the address as given on the Tax Commission records; 2) or if the owner or party in interest is known to the prosecuting agency, to the last known address; or by publication.

d. Subsection (D) provides that a claimant may file a verified answer and claim to the property described in the notice of seizure and intended forfeiture proceeding which must be filed within forty-five (45) days after the mailing or publication of the notice.

e. Subsection (E) specifies that if there is no verified answer on file at the end of the forty-five (45) day period, the Court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the State upon such a showing.

f. Subsection (F) provides that if a verified answer is filed, the forfeiture proceeding shall be set for hearing. Subsection (G) provides for the standard of proof that applies and Subsection (H) allows any claimant to offer evidence of innocent ownership. If a claim of innocent ownership is proven, under Subsection (I), the Court is mandated to release the property to the innocent owner or lien holder, mortgagee, etc., if the amount due to them is equal to or in excess of the value of the property as of the date of seizure. 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 pursuant to Subsection (J).

g. Under Subsection (K), there is the provision specifying that property seized under 2-506 is not repleviable.

h. Subsection (L) provides for the distribution of the proceeds of the

sale of property by the District Attorney. First, any innocent owner or lien holder must be paid, then payment for actual expenses in preserving the property and costs related to the forfeiture proceedings, with the balance going 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 except that 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.

i. If the court finds that the state failed to satisfy the required showing provided for in subsection G, the court has to order the property released to the owner or owners.

j. An innocent owner, lien holder, mortgagee or vendor that recovers property pursuant to this section is not liable for storage fees. Storage fees shall be paid by the agency which is processing the seizure and forfeiture from funds generated by seizure and forfeiture actions when said property is being retained by an innocent owner, lien holder, mortgagee or vendor, provided that such owner reclaim the 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.

k. Admissibility of Lab Reports-Pursuant to Subsection (R)(1) at any hearing held relevant to 63 O.S. § 2-506, a report of the findings of the laboratory of the OSBI, 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. However, upon motion of either party, the Court 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.

I. Pursuant to Subsection (S), in any forfeiture proceeding under this chapter (only applies to Title 63 forfeitures) where the defendant or claimant prevails, the court **may** order the plaintiff processing the seizure and forfeiture to pay from funds generated by seizure and forfeiture actions:

1. Reasonable attorney fees and other litigation costs reasonably incurred by the defendant or claimant ***directly related to the claim*** on which the defendant or claimant *prevailed*;
2. Postjudgment interest; and
3. In cases involving currency or other negotiable instruments:
  - a. interest actually paid to the state from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument, and
  - b. an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate applicable to the thirty-day Treasury Bill, for any period during which no interest was paid, not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence, commencing fifteen (15) days after the property was seized by a law enforcement agency or was turned over to a law enforcement agency by a federal law

enforcement authority.

### III. Other Forfeiture Provisions

**A. 21 O.S. Section 1738**-Provides for the seizure and forfeiture of property which is used on specific offenses such as **Robbery, Burglary, Use of a Vehicle to Discharge a Firearm, Trademark Counterfeiting, Arson, Human Trafficking, Prostitution, Aggravated Possession of Child Pornography, Indecent Exposure where the Victim is a Minor Child, Indecent or Lewd Proposal to a Minor Child, Pandering, Cattle Thievery**

1. With respect to conveyances such as vehicles, etc., the statute provides for an innocent owner provision.

2. In addition to the property subject to forfeiture in paragraph (A), the following are also subject to forfeiture:

a. Any weapon possessed, used or available for use in any manner during the commission of a felony within the State of Oklahoma, or any firearm that is possessed by a convicted felon;

b. Any police scanner used in violation of Section 1214 of this title;

c. Any computer and its components and peripherals, including but not limited to the central processing unit, monitor, keyboard, printers, scanners, software, and hardware, when it is used in the commission of any crime in this state;

3. **Process**-Action brought pursuant to 21 O.S. Section 1738 have to be brought by the District Attorney within ninety (90) days of the seizure of the property. Claimants have sixty (60) days after the mailing or publication of the notice to file a verified answer and

claim to the property, otherwise if there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the state, if such fact is proven.

**B. Obscene Materials and Child Pornography-21 O.S. § 1040.54-Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography**

**C. Juveniles in Possession of Firearms**

**21 O.S. § 1271.1-Detention or arrest of person under 18 years--Confiscation and forfeiture of prohibited weapons and firearms--Disposition of forfeited weapons and firearms**

**D. Motor Vehicles Related to Driving Under the Influence Violations**

**47 O.S. § 11-902b-Forfeiture of Motor Vehicle**