

2018 Regular Session

HOUSE BILL NO. 742

BY REPRESENTATIVE DANAHAAY

EVIDENCE: Provides relative to the disposal of unclaimed property seized in connection with criminal investigations of municipal police departments

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 228.3(1), (2), and (5) and
3 228.4(introductory paragraph), (1), and (7) and to enact Code of Criminal Procedure
4 Article 228.5, relative to the disposal of unclaimed property; to provide for the
5 procedure by which unclaimed property seized in connection with a criminal
6 investigation under the jurisdiction of a municipal police department is disposed; to
7 provide for the distribution of proceeds realized from the disposal of property; and
8 to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Articles 228.3(1), (2), and (5) and
11 228.4(introductory paragraph), (1), and (7) are hereby amended and reenacted and Code of
12 Criminal Procedure Article 228.5 is hereby enacted to read as follows:

13 Art. 228.3. Disposal of unclaimed property seized in any criminal investigation
14 under jurisdiction of sheriff; Orleans Parish excepted

15 Any unclaimed property seized in connection with any criminal investigation
16 under the jurisdiction of any sheriff, Orleans excepted, shall, if it remains unclaimed
17 for more than one year after its use or from the time it was last used in connection
18 with any criminal proceeding, be disposed of in the following manner:

19 (1) After the lapse of one year, any sheriff may petition the court having
20 proper jurisdiction for the disposal of ~~said~~ the property in any lawful manner.

1 property of that office, ~~department~~, or agency and may be disposed of or issued in
2 any manner which that office, ~~department~~, or agency deems appropriate.

3 Art. 228.5. Disposal of unclaimed property seized in any criminal investigation
4 under jurisdiction of municipal police department

5 Any noncontraband unclaimed property seized in connection with any
6 criminal investigation under the jurisdiction of any municipal police department
7 shall, if it remains unclaimed for more than one year after its seizure and provided
8 it is not needed in connection with any criminal proceeding, be disposed of in the
9 following manner:

10 (1) After the lapse of one year, the chief of police may petition the court
11 having proper jurisdiction for the disposal of the property in any lawful manner.

12 (2) Before the chief of police petitions the court, he shall cause an
13 advertisement of his intention to seek approval of the court to be placed in the
14 newspaper designated as the official journal of the municipality one time at least ten
15 days prior to filing of the petition, and shall mail a copy of the advertisement to the
16 last known owner at his last known address, postage prepaid. In the petition for
17 disposal, the chief of police shall set forth a brief description of the items to be
18 disposed of, the court in which the proceedings will be filed, the title of the
19 proceedings, and method or methods of intended disposal.

20 (3) The petition of the chief of police shall make specific recommendations
21 as to the method of disposal for each item of unclaimed property and pray for the
22 court to order its disposal.

23 (4) The court shall order the property disposed of in the manner contained
24 in the petition filed by the chief of police or order the disposal of the property in any
25 legal manner within the sole discretion of the court.

26 (5) All items of property designated by the court for sale shall be sold either
27 by public sale, without appraisal, or by public auction conducted by a licensed
28 auctioneer, without appraisal.

1 (6) If the manner of disposal ordered by the court generates any direct
2 revenue, the proceeds shall be distributed as follows:

3 (a) For satisfaction of the costs of the proceedings to dispose of
4 noncontraband unclaimed property.

5 (b) After satisfying the requirements of Subsubparagraph (a) of this
6 Subparagraph, the remainder of the funds shall be distributed to the investigative
7 agency that stored, maintained, insured, or bore the administrative costs related to
8 maintaining the property seized in criminal investigations.

9 (7) Weapons released to the municipal police department by the court
10 pursuant to this Article shall become the property of that department and may be
11 disposed of or issued in any manner which that department deems appropriate.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 742 Original

2018 Regular Session

Danahay

Abstract: Provides for the procedure by which unclaimed property seized in connection with a criminal investigation under the jurisdiction of a municipal police department is disposed.

Present law provides for the procedure for the disposal of certain unclaimed property seized in connection with any criminal investigation under the jurisdiction of any district attorney, municipal police department, or state investigative agency.

In such cases, present law provides as follows:

- (1) After the lapse of one year from the date the property was seized, the district attorney of the parish in which the noncontraband property is located is authorized to petition any court in that parish having proper jurisdiction for the disposal of the property in any lawful manner.
- (2) Before any district attorney petitions the court, he shall cause an advertisement of his intention to seek approval of the court to be placed in the newspaper designated as the official journal of the parish one time at least ten days prior to filing of his petition, and he shall mail a copy of the advertisement to the last known owner of the property at his last known address, postage prepaid, if the owner is known.
- (3) The district attorney is required to determine if any of the property for which disposal is sought is subject to a prior recorded mortgage, lien or security interest held by a federally insured financial institution.

- (4) The petition of the district attorney shall make specific recommendations as to the manner of disposal for each item of unclaimed noncontraband property and pray for the court to order its disposal.
- (5) The court shall order the disposal of the noncontraband property according to the specific recommendations contained in the district attorney's petition or in any legal manner within the sole discretion of the court.
- (6) All items of property designated by the court for sale shall be sold either by public sale, without appraisal, or by public auction conducted by a licensed auctioneer, without appraisal.
- (7) If the manner of disposal ordered by the court generates any direct revenue, the proceeds shall be distributed in the following order of priority:
 - (a) For satisfaction of the costs of the proceedings to dispose of noncontraband unclaimed property.
 - (b) 30% to the district attorney to defer the expenses of bringing any such action before the court.
 - (c) The remaining funds to the investigative agency that stored, maintained, insured, or bore the administrative costs related to maintaining the property seized in criminal investigations.
- (8) Weapons released to the district attorney, municipal police department, or state investigative agency by the court shall become the property of that office, department, or agency and may be disposed of or issued in any manner which that office, department, or agency deems appropriate.

Proposed law removes applicability of present law for unclaimed property seized in connection with a criminal investigation of a municipal police department and enacts a separate provision of law to provide a procedure for the disposal of unclaimed property seized in connection with any criminal investigation under the jurisdiction of any municipal police department. With respect to the procedure for disposal of unclaimed property seized in connection with a criminal investigation of a municipal police department, the effect of proposed law is as follows:

- (1) Amends present law to authorize the chief of police, instead of the district attorney, to file the petition for the disposal of such property and requires the chief of police to advertise in the official journal of the municipality his intention to petition the court.
- (2) If the manner of disposal ordered by the court generates any direct revenue, amends present law to change how such proceeds are distributed as follows:
 - (a) For satisfaction of the costs of the proceedings to dispose of noncontraband unclaimed property.
 - (b) The remainder of the funds to the investigative agency that stored, maintained, insured, or bore the administrative costs related to maintaining the property seized in criminal investigations.
- (3) Otherwise retains present law.

(Amends C.Cr.P. Arts. 228.3(1), (2), and (5) and 228.4(intro. para.), (1), and (7); Adds C.Cr.P. Art. 228.5)