

SENATE BILL No. 133

By Committee on Judiciary

2-8

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to property seized by law enforcement; receipt; return of weapons;
3 amending K.S.A. 2018 Supp. 22-2512 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 22-2512 is hereby amended to read as
8 follows: 22-2512. (a) Property seized under a search warrant or validly
9 seized without a warrant shall be safely kept by the ~~officer~~ agency seizing
10 the ~~same~~ property unless otherwise directed by the magistrate, and shall be
11 so kept as long as necessary for the purpose of being produced as evidence
12 on any trial. *If no criminal charges are filed or prosecution is declined, the*
13 *property shall be returned to its rightful owner or disposed of in*
14 *accordance with this section.* The property seized may not be taken from
15 the ~~officer~~ agency having it in custody so long as it is or may be required
16 as evidence in any trial. The officer seizing the property shall give a
17 receipt to the person detained or arrested particularly describing each
18 article of property being held ~~and~~. *When property is seized under a search*
19 *warrant, the officer seizing the property shall file a copy of such receipt*
20 *with the magistrate before whom the person detained or arrested is taken*
21 *who issued the search warrant. Such copy may be filed electronically in a*
22 *manner and form prescribed by the court.* ~~Where~~ *When* seized property is
23 no longer required as evidence in the prosecution of any indictment or
24 information, the court ~~which~~ *that* has jurisdiction of such property may
25 transfer the ~~same~~ property to the jurisdiction of any other court, including
26 courts of another state or federal courts, ~~where~~ *if* it is shown to the
27 satisfaction of the court that such property is required as evidence in any
28 prosecution in such other court.

29 (b) (1) Notwithstanding the provisions of subsection (a) and with the
30 approval of the affected court, any law enforcement officer who seizes
31 *dangerous drugs or hazardous materials* as evidence related to a criminal
32 investigation may collect representative samples of such *dangerous drugs*
33 *or hazardous materials*, and lawfully destroy or dispose of, or direct
34 another person to lawfully destroy or dispose of, the remaining quantity of
35 such *dangerous drugs or hazardous materials*.

36 (2) In any prosecution, representative samples of *dangerous drugs or*

1 hazardous materials accompanied by photographs, videotapes, laboratory
2 analysis reports or other means used to verify and document the identity
3 and quantity of the ~~material~~ *drugs or materials* shall be deemed competent
4 evidence of such ~~hazardous~~ *drugs or materials* and shall be admissible in
5 any proceeding, hearing or trial as if such *drugs or materials* had been
6 introduced as evidence.

7 (3) As used in this section, ~~the term~~:

8 (A) "*Dangerous drugs*" means any drug, substance or immediate
9 precursor included in any of the schedules designated in K.S.A. 65-4105,
10 65-4107, 65-4109 and 65-4111, and amendments thereto;

11 (B) "hazardous materials" means any substance ~~which~~ *that* is capable
12 of posing an unreasonable risk to health, safety and property. It shall
13 include any substance ~~which~~ *that* by its nature is explosive, flammable,
14 corrosive, poisonous, radioactive, a biological hazard or a material ~~which~~
15 *that* may cause spontaneous combustion. It shall include, but not be
16 limited to, substances listed in the table of hazardous materials contained
17 in the code of federal regulations title 49 and national fire protection
18 association's fire protection guide on hazardous materials; *and*

19 (C) "*representative sample*" means an amount large enough to
20 contain a testable amount of a substance without destroying the sample
21 completely.

22 (4) The provisions of this subsection shall not apply to ammunition
23 and components thereof.

24 (c) When ~~property~~ seized *property* is no longer required as evidence,
25 it shall be disposed of as follows:

26 (1) Property stolen, embezzled, obtained by false pretenses, or
27 otherwise obtained unlawfully from the rightful owner thereof shall be
28 restored to the owner;

29 (2) money shall be restored to the owner unless it was contained in a
30 slot machine or otherwise used in unlawful gambling or lotteries, in which
31 case it shall be forfeited; and shall be paid to the state treasurer pursuant to
32 K.S.A. 20-2801, and amendments thereto;

33 (3) property ~~which~~ *that* is unclaimed or the ownership of which is
34 unknown shall be sold at public auction to be held by the sheriff, *or the*
35 *sheriff's designee*, and the proceeds, less the cost of sale and any storage
36 charges incurred in preserving it, shall be paid to the state treasurer
37 pursuant to K.S.A. 20-2801, and amendments thereto;

38 (4) articles of contraband shall be destroyed, except that any such
39 articles the disposition of which is otherwise provided by law shall be
40 dealt with as so provided and any such articles the disposition of which is
41 not otherwise provided by law and which may be capable of innocent use
42 may in the discretion of the court be sold and the proceeds disposed of as
43 provided in subsection (c)(3);

1 (5) explosives, bombs and like devices, ~~which~~ *that* have been used in
2 the commission of crime, may be returned to the rightful owner, or in the
3 discretion of the court having jurisdiction of the property, destroyed or
4 forfeited to the Kansas bureau of investigation;

5 (6) (A) except as provided in subsections (c)(6)(B) and (d), any
6 weapon or ammunition, in the discretion of the court having jurisdiction of
7 the property, shall be:

8 (i) Forfeited to the law enforcement agency seizing the weapon for
9 use within such agency, for sale to a properly licensed federal firearms
10 dealer, for trading to a properly licensed federal firearms dealer for other
11 new or used firearms or accessories for use within such agency or for
12 trading to another law enforcement agency for that agency's use;

13 (ii) forfeited to the Kansas bureau of investigation for law
14 enforcement, testing or comparison by the Kansas bureau of investigation
15 forensic laboratory;

16 (iii) forfeited to a county regional forensic science center, or other
17 county forensic laboratory for testing, comparison or other forensic
18 science purposes; or

19 (iv) forfeited to the Kansas department of wildlife, parks and tourism
20 for use pursuant to the conditions set forth in K.S.A. 32-1047, and
21 amendments thereto.

22 (B) Except as provided in subsection (d), any weapon ~~which~~ *that*
23 cannot be forfeited pursuant to subsection (c)(6)(A) due to the condition of
24 the weapon, and any weapon ~~which~~ *that* was used in the commission of a
25 felony as described in K.S.A. 2018 Supp. 21-5401, 21-5402, 21-5403, 21-
26 5404 or 21-5405, and amendments thereto, shall be destroyed.

27 (7) controlled substances forfeited for violations of K.S.A. 2018
28 Supp. 21-5701 through 21-5717, and amendments thereto, shall be dealt
29 with as provided under K.S.A. 60-4101 through 60-4126, and amendments
30 thereto;

31 (8) unless otherwise provided by law, all other property shall be
32 disposed of in such manner as the court in its sound discretion shall direct.

33 (d) (1) If a weapon is seized from an individual and the individual is
34 not convicted of ~~or adjudicated as a juvenile offender~~ for the violation for
35 which the weapon was seized, then within 30 days after the declination or
36 conclusion of prosecution of the case against the individual, including any
37 period of appeal, the law enforcement agency that seized the weapon shall
38 verify ~~that whether~~ the weapon is ~~not stolen, and upon such verification~~
39 ~~shall notify the person from whom it was seized that the weapon may be~~
40 ~~retrieved. If the weapon is stolen or was seized from an individual whom~~
41 ~~the agency knows is not the owner of the weapon, the law enforcement~~
42 ~~agency shall notify the owner of the weapon that such weapon may be~~
43 ~~retrieved. If the weapon was seized from a juvenile, the agency shall notify~~

1 *the parent or legal guardian of the juvenile that such weapon may be*
2 *retrieved by the parent or legal guardian. If the agency determines there is*
3 *no other more appropriate person described in this paragraph to retrieve*
4 *the weapon, the agency shall notify the person from whom the weapon was*
5 *seized that such weapon may be retrieved. Such notification shall include*
6 *the location where such weapon may be retrieved.*

7 *(2) If the law enforcement agency determines that the individual*
8 *authorized to retrieve a weapon pursuant to paragraph (1) is prohibited*
9 *by state or federal law from possessing the seized weapon, the agency*
10 *shall notify the individual that the weapon is no longer needed for the case*
11 *but will not be returned due to the disqualifying law, which shall be*
12 *described in the notice. The law enforcement agency shall not dispose of*
13 *such weapon for 60 days after the notice was given to provide a period for*
14 *the individual to bring an action in an appropriate court challenging the*
15 *agency's determination. The law enforcement agency may dispose of the*
16 *weapon as provided by law 60 days after the notice described in*
17 *paragraph (1) is given unless otherwise directed by the court. An owner of*
18 *a weapon who is prohibited by law from possessing the weapon may*
19 ***either: (A) Request the law enforcement agency to transfer the weapon to***
20 ***a licensed properly licensed federal firearms dealer designated by the***
21 ***owner; or (B) bring an action in an appropriate court to request a court***
22 ***order to transfer the weapon as allowed by law.***

23 (e) If weapons are sold as authorized by subsection (c)(6)(A), the
24 proceeds of the sale shall be credited to the asset seizure and forfeiture
25 fund of the seizing agency.

26 (f) For purposes of this section, the term "weapon" means a weapon
27 described in K.S.A. 2018 Supp. 21-6301, and amendments thereto.

28 Sec. 2. K.S.A. 2018 Supp. 22-2512 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the statute book.