

2023 Kansas Statutes

22-2512. Custody and disposition of seized property. (a) Property seized under a search warrant or validly seized without a warrant shall be safely kept by the agency seizing the property unless otherwise directed by the magistrate, and shall be so kept as long as necessary for the purpose of being produced as evidence on any trial. If no criminal charges are filed or prosecution is declined, the property shall be returned to its rightful owner or disposed of in accordance with this section. The property seized may not be taken from the agency having it in custody so long as it is or may be required as evidence in any trial. The officer seizing the property shall give a receipt to the person detained or arrested particularly describing each article of property being held. When property is seized under a search warrant, the officer seizing the property shall file a copy of such receipt with the magistrate who issued the search warrant. Such copy may be filed electronically in a manner and form prescribed by the court. When seized property is no longer required as evidence in the prosecution of any indictment or information, the court that has jurisdiction of such property may transfer the property to the jurisdiction of any other court, including courts of another state or federal courts, if it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

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

(2) In any prosecution, representative samples of dangerous drugs or hazardous materials accompanied by photographs, videotapes, laboratory analysis reports or other means used to verify and document the identity and quantity of the drugs or materials shall be deemed competent evidence of such drugs or materials and shall be admissible in any proceeding, hearing or trial as if such drugs or materials had been introduced as evidence.

(3) As used in this section:

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

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

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

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

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

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

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

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

(4) articles of contraband shall be destroyed, except that any such articles the disposition of which is otherwise provided by law shall be dealt with as so provided

and any such articles the disposition of which is not otherwise provided by law and which may be capable of innocent use may in the discretion of the court be sold and the proceeds disposed of as provided in subsection (c)(3);

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

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

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

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

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

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

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

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

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

(d) (1) If a weapon is seized from an individual and the individual is not convicted of the violation for which the weapon was seized, then within 30 days after the declination or conclusion of prosecution of the case against the individual, including any period of appeal, the law enforcement agency that seized the weapon shall verify whether the weapon is stolen. If the weapon is stolen or was seized from an individual whom the agency knows is not the owner of the weapon, the law enforcement agency shall notify the owner of the weapon that such weapon may be retrieved. If the weapon was seized from a juvenile, the agency shall notify the parent or legal guardian of the juvenile that such weapon may be retrieved by the parent or legal guardian. If the agency determines there is no other more appropriate person described in this paragraph to retrieve the weapon, the agency shall notify the person from whom the weapon was seized that such weapon may be retrieved. Such notification shall include the location where such weapon may be retrieved.

(2) If the law enforcement agency determines that the individual authorized to retrieve a weapon pursuant to paragraph (1) is prohibited by state or federal law from possessing the seized weapon, the agency shall notify the individual that the weapon will not be returned due to the disqualifying law, which shall be described in the notice. The law enforcement agency shall not dispose of such weapon for 60 days after the notice was given to provide a period for the individual to bring an action in an appropriate court challenging the agency's determination. The law enforcement agency may dispose of the weapon as provided by law 60 days after the notice described in paragraph (1) is given unless otherwise directed by the court. An owner of a weapon who is prohibited by law from possessing the weapon may either: (A) Request the law enforcement agency to transfer the weapon to a properly licensed federal firearms dealer designated by the owner; or (B) bring an action in an appropriate court to request a court order to transfer the weapon as allowed by law.

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

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

History: L. 1970, ch. 129, § 22-2512; L. 1973, ch. 106, § 15; L. 1978, ch. 105, § 7; L. 1987, ch.

114, § 1; L. 1994, ch. 348, § 6; L. 1996, ch. 247, § 1; L. 1999, ch. 170, § 2; L. 2009, ch. 32, § 40; L. 2011, ch. 30, § 116; L. 2014, ch. 97, § 13; L. 2022, ch. 23, § 1; July 1.