

HOUSE BILL No. 2181

By Representatives Alcalá, Bishop and Warfield

2-7

1 AN ACT concerning criminal procedure; relating to disposition of firearms
2 seized by law enforcement; amending K.S.A. 2018 Supp. 22-2512 and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 2018 Supp. 22-2512 is hereby amended to read as
7 follows: 22-2512. (a) Property seized under a search warrant or validly
8 seized without a warrant shall be safely kept by the officer seizing the
9 same unless otherwise directed by the magistrate, and shall be so kept as
10 long as necessary for the purpose of being produced as evidence on any
11 trial. The property seized may not be taken from the officer having it in
12 custody so long as it is or may be required as evidence in any trial. The
13 officer seizing the property shall give a receipt to the person detained or
14 arrested particularly describing each article of property being held and
15 shall file a copy of such receipt with the magistrate before whom the
16 person detained or arrested is taken. Where seized property is no longer
17 required as evidence in the prosecution of any indictment or information,
18 the court which has jurisdiction of such property may transfer the same to
19 the jurisdiction of any other court, including courts of another state or
20 federal courts, where it is shown to the satisfaction of the court that such
21 property is required as evidence in any prosecution in such other court.

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

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

34 (3) As used in this section, the term "hazardous materials" means any
35 substance which is capable of posing an unreasonable risk to health, safety
36 and property. It shall include any substance which by its nature is

1 explosive, flammable, corrosive, poisonous, radioactive, a biological
2 hazard or a material which may cause spontaneous combustion. It shall
3 include, but not be limited to, substances listed in the table of hazardous
4 materials contained in the code of federal regulations title 49 and national
5 fire protection association's fire protection guide on hazardous materials.

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

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

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

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

17 (3) property which is unclaimed or the ownership of which is
18 unknown shall be sold at public auction to be held by the sheriff and the
19 proceeds, less the cost of sale and any storage charges incurred in
20 preserving it, shall be paid to the state treasurer pursuant to K.S.A. 20-
21 2801, and amendments thereto;

22 (4) articles of contraband shall be destroyed, except that any such
23 articles the disposition of which is otherwise provided by law shall be
24 dealt with as so provided and any such articles the disposition of which is
25 not otherwise provided by law and which may be capable of innocent use
26 may in the discretion of the court be sold and the proceeds disposed of as
27 provided in subsection (c)(3);

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

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

35 (i) Forfeited to the law enforcement agency seizing the weapon for
36 use within such agency, for sale to a properly licensed federal firearms
37 dealer, for trading to a properly licensed federal firearms dealer for other
38 new or used firearms or accessories for use within such agency ~~or~~, for
39 trading to another law enforcement agency for that agency's use *or for*
40 *destruction by such law enforcement agency*;

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

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

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

7 (B) Except as provided in subsection (d), any weapon which cannot
8 be forfeited pursuant to subsection (c)(6)(A) due to the condition of the
9 weapon, and any weapon which was used in the commission of a felony as
10 described in K.S.A. 2018 Supp. 21-5401, 21-5402, 21-5403, 21-5404 or
11 21-5405, and amendments thereto, shall be destroyed.

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

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

18 (d) If a weapon is seized from an individual and the individual is not
19 convicted of or adjudicated as a juvenile offender for the violation for
20 which the weapon was seized, then within 30 days after the declination or
21 conclusion of prosecution of the case against the individual, including any
22 period of appeal, the law enforcement agency that seized the weapon shall
23 verify that the weapon is not stolen, and upon such verification shall notify
24 the person from whom it was seized that the weapon may be retrieved.
25 Such notification shall include the location where such weapon may be
26 retrieved.

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

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

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

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