

**SENATE BILL No. 133**

By Committee on Judiciary

2-8

Proposed Amendments to Senate Bill No. 133  
Senate Judiciary Committee  
February 25, 2019  
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Office of Revisor of Statutes

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 request the law enforcement agency to transfer the weapon to a ~~licensed~~  
20 dealer designated by the owner.

strike in lines 10-11

either: (A)

properly licensed federal firearms

; or (B) bring an action in an appropriate court to request a court order to transfer the weapon as allowed by law

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

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

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 K.S.A. 2018 Supp. 22-2512 is hereby repealed.

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