

2012 Kansas Statutes

22-2512. Custody and disposition of property seized. (1) Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same 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. The property seized may not be taken from the officer 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 and shall file a copy of such receipt with the magistrate before whom the person detained or arrested is taken. Where seized property is no longer required as evidence in the prosecution of any indictment or information, the court which has jurisdiction of such property may transfer the same to the jurisdiction of any other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

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

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

(c) As used in this section, the term "hazardous materials" means any substance which is capable of posing an unreasonable risk to health, safety and property. It shall include any substance which by its nature is explosive, flammable, corrosive, poisonous, radioactive, a biological hazard or a material which 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.

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

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

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

(b) 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;

(c) property which is unclaimed or the ownership of which is unknown shall be sold at public auction to be held by the sheriff 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;

(d) 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 (2)(b);

(e) firearms, ammunition, explosives, bombs and like devices, which 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 as provided in K.S.A. 2012 Supp. 21-6307, and amendments thereto;

(f) controlled substances forfeited for violations of K.S.A. 2012 Supp. 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;

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

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; July 1.