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**Neutral Testimony to the House Federal and State Affairs Committee
On HB2681
March 8, 2022**

Chairman Barker and Committee Members:

The purpose of our testimony is only to point out a concern with a potential conflict created by the bill.

Section 1 of the bill, on page 2 line 6 and 7, directs a firearm must be “disposed of in accordance with” KSA 22-2512. But KSA 22-2512 subsection (d) directs the firearm must be returned to the person we seized it from if it is not stolen. This would mean we have to return it to the person who the court has made judgement against under the nuisance abatement statutes in KSA Chapter 22, Article 39. We believe the proponents intent is probably that the firearm be disposed of by sale of the firearm and not destruction. If that is accurate, then we believe this conflict can be corrected by simply adding the applicable subsection of KSA 22-2512. For example, KSA 22-2512 subsection (c)(6).

We believe the same problem exists in section 3, page 4, lines 26-27 of the bill. That section is about firearms seized under the asset forfeiture laws and the reference simply to KSA 22-2512 would have us returning it to the person we seized it from. We believe the same fix of adding “subsection (c)(6) would cure this conflict as well.

We did not evaluate the same new statute reference in section 2 of the bill.

We ask the committee to have the revisor review our assessment of the statutes as described above and for the bill to be amended to remove any of the discrepancies if they agree they exist.

For the Committee’s convenience I have included a copy of KSA 22-2512 on the back of this testimony.

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22-2512. Custody and disposition of property seized.

(a) 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.

(b) (1) Notwithstanding the provisions of subsection (a) 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.

(2) 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.

(3) 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.

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

(c) When property seized 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 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;

(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, 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;

(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, parks and tourism 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 which cannot be forfeited pursuant to subsection (c)(6)(A) due to the condition of the weapon, and any weapon which was used in the commission of a felony as described in K.S.A. 2021 Supp. [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. 2021 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;

(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) If a weapon is seized from an individual and the individual is not convicted of or adjudicated as a juvenile offender for 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 that the weapon is not stolen, and upon such verification shall notify the person from whom it was seized that the weapon may be retrieved. Such notification shall include the location where such weapon may be retrieved.

(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. 2021 Supp. [21-6301](#), and amendments thereto.