

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2016 Regular Session**

Part I: Measure Information

Bill Request #: 1797

Bill #: HB 607 HCS

Bill Subject/Title: AN ACT relating to criminal asset forfeiture.

Sponsor: Representative Johnny W. Bell

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local
Government

Office(s) Impacted: Local law enforcement agencies.

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

As introduced, HB 607 provides that the forfeiture provisions of KRS 218A.410(1) shall not apply to misdemeanor offenses or violations, but shall only apply regarding **personal** and real property used to facilitate **felony** offenses.

HB 607 provides that moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances are **NOT** presumed to be forfeitable. HB 607 transfers the burden of proof from the claimants of the personal property to law enforcement regarding whether or not personal and real property is forfeitable based on *clear and convincing evidence*.

HB 607 provides that personal property may not be seized by law enforcement based on law enforcement having probable cause to believe that the property is subject to seizure.

HB 607 provides that seized property shall **NOT** be provisionally restored to their owner pending the outcome of an action, but shall remain in the custody of the law enforcement agency subject to the orders of the court having jurisdiction over the seized property or the criminal proceeding triggering the seizure. The law enforcement agency that seized

the property shall include a detailed list of all seized items in the charging documents of the underlying offense triggering forfeiture.

HB 607 provides that any party whose property has been seized may move the court to hold a seizure confirmation hearing within 7 days of the motion filing. The Commonwealth must prove by *clear and convincing evidence* that a felony conviction is likely to be secured. If the Commonwealth meets the burden of proof, a portion of the seized money or property may be released to pay for the defendant’s legal expense. If the Commonwealth does not meet the burden of proof, the property shall be return to the party who challenged the seizure.

HB 607 **removes language** that evidence at the seizure hearing may not be suppressed on the ground that its acquisition by search and seizure violated constitutional protections in criminal cases relating to unreasonable searches or seizures.

As introduced, HB 607 changes the distribution of seized property as follows:

Current Distribution Percentages	Proposed Distribution Percentages	Recipient
85%	20%	Agency that seized the property
15%	20%	Office of Attorney General or the Prosecutors Advisory Council
0%	60%	General Fund

HB 607 requires each law enforcement agency authorized to seize money or property to file an annual accounting statement with the Auditor of Public Accounts and with the Secretary of the Justice and Public Safety Cabinet even if the agency did not seize or forfeit property.

HB 607 HCS retains the major provisions of the measure as introduced. It restores, however, the original percentages in KRS 218A.420 for the distribution of proceeds from seized assets.

The percentages shall remain 85% to the law enforcement agency or agencies which seized the property and 15% to the Office of Attorney General or the Prosecutors Advisory Council.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The impact of HB 607 HCS on local governments is indeterminable due to the current lax reporting standards.

The number of seizures may decrease due to the following provisions of HB 607:

- Language NOT allowing for seizures has been expanded to apply to **any misdemeanor offenses**, not only those relating to marijuana or salvia.
- Probable cause to believe that the property is subject to seizure is no longer a valid reason for law enforcement to seize property.
- The Commonwealth must present clear and convincing evidence to seize the property, and clear and convincing evidence a felony conviction will result in order that the property not be returned (except for a portion made available for the defendant's legal fees).

Failure to remit a seizure report by an agency is not necessarily reflective of a lack of seizures and forfeitures by that agency. Given the low reporting numbers, it is possible that seizures and forfeitures are occurring, but the agencies are failing to report the seizures as required by KRS 218A.440. Given that possibility, there may be an indeterminable negative impact on agencies currently seizing but not reporting. Filing lends itself to oversight ensuring that, going forward 15% of the seized property or proceeds shall be remitted to the Office of Attorney General or the Prosecutors Advisory Council. The amounts required to be remitted under current statute may not be properly remitted due to lack of oversight.

Only 63 agencies reported their seizures in 2014, and only 66 in 2013. This is out of approximately 400 law enforcement agencies.¹

Data Source(s): 1. WLEX 18 Investigates: Police Ignoring Asset Forfeiture Reporting Law, February 27, 2015; LRC Staff

Preparer: Wendell F. Butler **Reviewer:** JWN **Date:** 3/18/16