



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.

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.

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

**The impact of HB 590 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).

- Significantly lower distribution percentages for those agencies currently reporting; and for those agencies not currently reporting seized property, a mandate that only 20% of the seized property may be retained.

Regarding those agencies currently seizing property and correctly reporting the seizure to the Auditor of Public Accounts and to the Secretary of the Justice and Public Safety Cabinet, the forfeited amount retained by them shall decreased from 85% to 20%.

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, 20% of the seized property or proceeds shall be remitted to the Office of Attorney General or the Prosecutors Advisory Council and 60% shall be paid to the General Fund. 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.<sup>1</sup>

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

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