



# HOUSE BILL 397: Clarify Protections/Exploitation of Elders

2015-2016 General Assembly

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<b>Committee:</b>	Senate Judiciary II	<b>Date:</b>	July 20, 2015
<b>Introduced by:</b>	Reps. Glazier, Reives, Stam, Faircloth	<b>Prepared by:</b>	Janice Paul
<b>Analysis of:</b>	PCS to Second Edition H397-CSTJ-48		Committee Counsel

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**SUMMARY:** *The PCS to House Bill 397 would clarify the procedures to be followed when a defendant is convicted for exploitation of an older adult or disabled adult and seized assets are used to satisfy the defendant's restitution obligation as ordered by the court.*

**BACKGROUND:** S.L. 2013-203 allowed the district attorney to petition the court to freeze the assets of a defendant charged with financial exploitation of an elder adult or disabled adult and established a procedure to petition the court for the freezing or seizure of the defendant's assets.

**CURRENT LAW:** G.S. 14-112.3 defines "assets" and authorizes the district attorney to freeze or seize assets when it appears a defendant is about to or intends to divest himself or herself of assets that would render the defendant insolvent for the purposes of restitution if ordered by the court. The defendant or any person claiming an interest in the assets may file a motion to release the assets.

## **BILL ANALYSIS:**

The PCS for House Bill 397 clarify the procedures for serving the order, freezing or seizing the assets, and satisfying the order of restitution if the defendant pleads guilty or no contest to the criminal charges

**Section 1** of the PCS would do the following:

- Specify what the court must include in an order to freeze or seize assets. The order must direct the appropriate law enforcement agency to serve the order as described and to follow specified procedures, depending on the nature of the assets. G.S. 14-112.3(b1).
- Require a record of any personal property seized to be kept and maintained, and specify the procedures relating to removal and storage of frozen or seized property. G.S. 14-112.3(b2).
- Require the court to deny a defendant's motion to release assets if the State proves that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for the purposes of restitution. G.S. 14-112.3(d).
- Provide that an order to freeze or seize assets must be vacated when there is a dismissal without leave or an acquittal, and that any associated costs relating to the seizure, freezing or storage of assets are to be borne by the agency incurring the costs and not by the defendant. G.S. 14-112.3(e).
- Provide the manner of satisfying the restitution obligation of a defendant who is convicted or who pleads no contest, and specifies the manner in which frozen or seized assets must be handled. This subsection also provides for the manner of the disbursement of the proceeds of any sale, transfer, or conversion of seized or frozen assets. G.S. 14-112.3(e1).
- Specify what is to occur when proceeds from the sale, transfer, or conversion of seized or frozen assets are not sufficient to cover expenses, restitution, and other costs. G.S. 14-112.3(e2) and G.S. 14-112.3(e3).

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- Address the issue of recovery of fees or expenses incurred by a State or county agency. G.S. 14-112.3(g).

**Section 2** would amend G.S. 1-116(a) to require any person desiring the benefit of constructive notice of pending litigation ("lis pendens") concerning actions for asset freezing or seizure under G.S. 14-112.3 to file a separate, independent notice.

**Section 3** of the PCS would amend G.S. 1-119 to make a notice of lis pendens filed pursuant to G.S. 1-116(a)(5) effective until the order to freeze or seize assets is terminated or an order directing the sale of real property under G.S. 14-112.3(e1)(1)c. is entered, and makes this notice of lis pendens exempt from filing fees.

**Section 3.5** would amend G.S. 7A-308 to add that recording or docketing certain fees are not to be charged when the service is performed or documents are filed under the provisions of G.S. 14-112.3.

**EFFECTIVE DATE:** This act becomes effective October 1, 2015 and applies to offenses committed on or after that date.