



# HOUSE BILL 397: Clarify Protections/Exploitation of Elders

2015-2016 General Assembly

**Committee:**

**Introduced by:**

**Analysis of:** S.L. 2015-182

**Date:**

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Staff Attorney

**SUMMARY:** *S.L. 2015-182 clarifies 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. The act specifies 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.*

*This act became effective October 1, 2015, and applies to offenses committed on or after that date.*

**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:**

S.L. 2015-182 clarifies 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 act does the following:

- Specifies 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).
- Requires a record of any personal property seized to be kept and maintained, and specifies the procedures relating to removal and storage of frozen or seized property. G.S. 14-112.3(b2).
- Requires 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).
- Provides 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).
- Provides 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).

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

**Section 2** amends 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 act amends 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** amends 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 became effective October 1, 2015 and applies to offenses committed on or after that date.