

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 891  
Committee Substitute Favorable 5/14/13

Short Title: Exploitation of Srs/Freeze Defendant's Assets.

(Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW 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 TO  
ESTABLISH A PROCEDURE TO PETITION FOR THE FREEZING OR SEIZURE OF  
THE DEFENDANT'S ASSETS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-112.2 is amended by adding a new subsection to read:

"(f) If a person is charged with a violation of this section that involves funds, assets, or property valued at more than five thousand dollars (\$5,000), the district attorney may file a petition in the pending criminal proceeding before the court with jurisdiction over the pending charges to freeze the funds, assets, or property of the defendant in an amount up to one hundred fifty percent (150%) of the alleged value of funds, assets, or property in the defendant's pending criminal proceeding for purposes of restitution to the victim. The standard of proof required to freeze the defendant's funds, assets, or property shall be by clear and convincing evidence. The procedure for petitioning the court under this subsection shall be governed by G.S. 14-112.3."

**SECTION 2.** Article 19 of Chapter 14 of the General Statutes is amended by adding the following new section to read:

**"§ 14-112.3. Asset freeze or seizure; proceeding.**

(a) For purposes of this section, the term "assets" includes funds and property as well as other assets that may be involved in a violation of G.S. 14-112.2.

(b) Whenever it appears by clear and convincing evidence that any defendant is about to or intends to divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the district attorney may make an application to the court with jurisdiction over the pending charges to freeze or seize the assets of the defendant. Upon a showing by clear and convincing evidence in the hearing, the court shall issue an order to freeze or seize the assets of the defendant in the amount calculated pursuant to G.S. 14-112.2(f). The procedure for petitioning the court under this section shall be governed by G.S. 1A-1, Rule 65, except as otherwise provided in this section.

(c) At any time after service of the order to freeze or seize assets, the defendant or any person claiming an interest in the assets may file a motion to release the assets.

(d) In any proceeding to release assets, the burden of proof shall be by clear and convincing evidence and shall be on the State to show 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 purposes of restitution. If the court finds 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



1 purposes of restitution, the court shall order the assets frozen or held until further order of the  
2 court. The rules of evidence that apply to this proceeding are the rules that would apply in a  
3 proceeding pursuant to G.S. 1A-1, Rule 65.

4 (e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary  
5 dismissal by the State or if a judgment of acquittal is entered, the court shall vacate the order to  
6 freeze or seize the assets.

7 (f) Any person holding any interest in the frozen or seized assets may commence a  
8 separate civil proceeding in the manner provided by law."

9 **SECTION 3.** This act becomes effective October 1, 2013, and applies to offenses  
10 committed on or after that date.