

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 891

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

Sponsors: Representatives Glazier, McGrady, Insko, and Baskerville (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee B.

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
ASSETS THAT MAY BE INVOLVED IN THE VIOLATION.

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 superior court of the county in which the defendant has been charged to freeze the funds, assets, or property of the defendant in an amount equal to but not greater than the alleged value of funds, assets, or property in the defendant's pending criminal proceeding for purposes of restitution to the victim. The burden of proof required to freeze the defendant's funds, assets, or property shall be by a preponderance of the 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; ex parte proceeding.

(a) For purposes of this subsection, 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 that there is probable cause to believe that any defendant used, is using, is about to use, or is intending to use assets in any way that constitutes or would constitute an offense under G.S. 14-112.2, the district attorney may make an ex parte application to the superior court with jurisdiction over the pending charges to freeze or seize assets in an amount to be determined as provided in G.S. 14-112.2(f). Upon a showing of probable cause in the ex parte hearing, the superior 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). A copy of the freeze or seize order shall be served upon the defendant whose assets have been frozen or seized.

(c) At any time within 30 days 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. The court shall hold a hearing on the motion no later than 10 days from the date the motion is filed.



1 (d) In any proceeding to release assets, the burden of proof shall be by a preponderance
2 of evidence and shall be on the State to show that the defendant used, was using, is about to
3 use, or is intending to use any assets in any way that constitutes or would constitute an offense
4 under G.S. 14-112.2. If the court finds that any assets were being used, are about to be used, or
5 are intended to be used in any way that constitutes or would constitute an offense under
6 G.S. 14-112.2, the court shall order the assets frozen or held until further order of the court.

7 (e) If the prosecution of the charge under G.S. 14-112.2 is permanently terminated or
8 indefinitely discontinued without any judgment of conviction, or if a judgment of acquittal is
9 entered, the court shall vacate the order to freeze or seize the assets.

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

12 **SECTION 3.** This act becomes effective December 1, 2013, and applies to
13 criminal proceedings filed in court on or after that date.