

# HOUSE BILL 1371

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By: **Delegates Arora, Barkley, Clippinger, Cluster, Conaway, Frick, Glass, Hough, K. Kelly, Lee, McDermott, Parrott, Valderrama, and Waldstreicher**

Introduced and read first time: February 10, 2014

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Financial Crimes Against Vulnerable and Elder Adults**  
3 **– Petition to Freeze Assets**

4 FOR the purpose of authorizing a State’s Attorney to file a petition to freeze assets of a  
5 defendant charged with a certain financial crime involving a vulnerable or elder  
6 adult under certain circumstances; requiring that a petition to freeze assets be  
7 served in accordance with the Maryland Rules and include certain information;  
8 requiring that a petition to freeze assets be mailed to certain lienholders and  
9 certain financial institutions; authorizing a court to grant a petition to freeze  
10 assets and issue an order to freeze assets under certain circumstances;  
11 requiring that an order to freeze assets remain in effect for a certain period of  
12 time; authorizing the court to modify an order to freeze assets under certain  
13 circumstances; specifying that a certain lienholder is not prohibited from  
14 exercising certain rights if a default occurs in the obligation giving rise to the  
15 lien; specifying that a certain financial institution is not prohibited from  
16 exercising certain rights; defining certain terms; and generally relating to  
17 petitions to freeze assets.

18 BY adding to

19 Article – Criminal Procedure  
20 Section 4–206  
21 Annotated Code of Maryland  
22 (2008 Replacement Volume and 2013 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Criminal Procedure**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 4-206.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
3 MEANINGS INDICATED.

4 (2) "FINAL DISPOSITION" MEANS A DISMISSAL, AN ENTRY OF A  
5 NOLLE PROSEQUI, THE MARKING OF A CRIMINAL CHARGE "STET" ON THE  
6 DOCKET, AN ENTRY OF A NOT GUILTY VERDICT, THE PRONOUNCEMENT OF A  
7 SENTENCE, OR THE IMPOSITION OF PROBATION UNDER § 6-220 OF THIS  
8 ARTICLE.

9 (3) "FINANCIAL INSTITUTION" HAS THE MEANING STATED IN §  
10 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

11 (4) "FREEZE ASSETS" MEANS TO PROHIBIT A PERSON FROM  
12 TRANSFERRING THE PERSON'S MONEY OR PERSONAL OR REAL PROPERTY BY  
13 PLACING THE PROPERTY UNDER SEAL OR REMOVING THE PROPERTY TO A  
14 PLACE DESIGNATED BY A COURT.

15 (5) "LIENHOLDER" MEANS A PERSON WHO HAS A LIEN OR A  
16 SECURED INTEREST ON PERSONAL OR REAL PROPERTY.

17 (B) A STATE'S ATTORNEY MAY FILE A PETITION TO FREEZE ASSETS OF  
18 A DEFENDANT CHARGED WITH VIOLATING § 8-801 OF THE CRIMINAL LAW  
19 ARTICLE WITH THE CIRCUIT COURT OF THE COUNTY IN WHICH THE DEFENDANT  
20 WAS CHARGED IF:

21 (1) THE PETITION IS FILED WITHIN 60 DAYS OF THE DEFENDANT  
22 BEING CHARGED WITH A VIOLATION OF § 8-801 OF THE CRIMINAL LAW  
23 ARTICLE;

24 (2) THE ALLEGED VALUE OF LOST OR STOLEN PROPERTY IN THE  
25 CRIMINAL CHARGE GIVING RISE TO THE PETITION IS \$10,000 OR MORE;

26 (3) THE AMOUNT OF MONEY OR PROPERTY SUBJECT TO THE  
27 PETITION DOES NOT EXCEED THE ALLEGED VALUE OF LOST OR STOLEN  
28 PROPERTY IN THE CRIMINAL CHARGE GIVING RISE TO THE PETITION; AND

29 (4) THE STATE'S ATTORNEY SENDS A NOTICE OF INTENT TO FILE  
30 A PETITION TO EACH:

31 (I) LIENHOLDER OF PROPERTY SUBJECT TO THE PETITION;  
32 AND

1                   **(II) FINANCIAL INSTITUTION IN POSSESSION OF PROPERTY**  
2 **SUBJECT TO THE PETITION.**

3           **(C) (1) A PETITION TO FREEZE ASSETS SHALL BE SERVED IN**  
4 **ACCORDANCE WITH THE MARYLAND RULES AND INCLUDE:**

5                   **(I) THE NAME OF THE DEFENDANT;**

6                   **(II) THE CASE NUMBER OF THE CHARGE GIVING RISE TO**  
7 **THE PETITION;**

8                   **(III) A DESCRIPTION OF THE MONEY OR PROPERTY THAT IS**  
9 **SUBJECT TO THE PETITION;**

10                   **(IV) THE NAME OF EACH LIENHOLDER ON ANY OF THE**  
11 **PROPERTY IF KNOWN OR REASONABLY SUBJECT TO DISCOVERY;**

12                   **(V) THE NAME OF EACH FINANCIAL INSTITUTION IN**  
13 **POSSESSION OF ANY OF THE PROPERTY IF KNOWN OR REASONABLY SUBJECT TO**  
14 **DISCOVERY; AND**

15                   **(VI) AN OATH OR AFFIRMATION THAT THE CONTENTS OF**  
16 **THE PETITION ARE TRUE TO THE BEST OF THE STATE'S ATTORNEY'S**  
17 **KNOWLEDGE, INFORMATION, AND BELIEF.**

18                   **(2) A PETITION TO FREEZE ASSETS SHALL BE MAILED TO EACH:**

19                   **(I) LIENHOLDER OF PROPERTY SUBJECT TO THE PETITION;**  
20 **AND**

21                   **(II) FINANCIAL INSTITUTION IN POSSESSION OF PROPERTY**  
22 **SUBJECT TO THE PETITION.**

23           **(D) A COURT MAY GRANT A PETITION TO FREEZE ASSETS AND ISSUE AN**  
24 **ORDER TO FREEZE ASSETS IF THE STATE'S ATTORNEY PROVES BY A**  
25 **PREPONDERANCE OF THE EVIDENCE THAT:**

26                   **(1) THE DEFENDANT HAS A LEGAL, EQUITABLE, OR POSSESSORY**  
27 **INTEREST IN THE MONEY OR PROPERTY LISTED IN THE PETITION; AND**

1           **(2) THE MONEY OR PROPERTY LISTED IN THE PETITION IS NOT**  
2 **JOINTLY HELD UNLESS THE STATE’S ATTORNEY ALSO PROVES BY A**  
3 **PREPONDERANCE OF THE EVIDENCE THAT:**

4                   **(I) THE DEFENDANT TRANSFERRED THE DEFENDANT’S**  
5 **MONEY OR PROPERTY TO AVOID BEING SUBJECT TO AN ORDER TO FREEZE**  
6 **ASSETS; OR**

7                   **(II) THE MONEY OR PROPERTY LISTED IN THE PETITION**  
8 **WAS USED IN CONNECTION WITH A VIOLATION OF § 8-801 OF THE CRIMINAL**  
9 **LAW ARTICLE.**

10           **(E) AN ORDER TO FREEZE ASSETS SHALL REMAIN IN EFFECT UNTIL THE**  
11 **EARLIER OF:**

12                   **(1) A DISMISSAL, AN ENTRY OF A NOLLE PROSEQUI, OR AN ENTRY**  
13 **OF A NOT GUILTY VERDICT FOR THE CRIMINAL CHARGE FOR THE VIOLATION**  
14 **GIVING RISE TO THE ORDER;**

15                   **(2) THE MARKING OF THE CHARGE “STET” ON THE DOCKET, THE**  
16 **PRONOUNCEMENT OF A SENTENCE, OR THE IMPOSITION OF PROBATION UNDER**  
17 **§ 6-220 OF THIS ARTICLE FOR THE CRIMINAL CHARGE GIVING RISE TO THE**  
18 **ORDER, PROVIDED THAT THE DEFENDANT HAS MADE FULL RESTITUTION IF**  
19 **ORDERED BY THE COURT; OR**

20                   **(3) 1 YEAR AFTER THE FINAL DISPOSITION OF THE CRIMINAL**  
21 **CHARGE FOR THE VIOLATION GIVING RISE TO THE ORDER.**

22           **(F) ON MOTION, THE COURT MAY MODIFY AN ORDER TO FREEZE ASSETS**  
23 **TO ALLOW THE DEFENDANT TO MAKE RESTITUTION, TO ALLOW THE VICTIM TO**  
24 **COLLECT RESTITUTION, OR FOR GOOD CAUSE.**

25           **(G) THIS SECTION DOES NOT PROHIBIT:**

26                   **(1) A LIENHOLDER FROM EXERCISING RIGHTS UNDER**  
27 **APPLICABLE LAW, INCLUDING THE RIGHT TO SELL PROPERTY THAT HAS BEEN**  
28 **SUBJECT TO AN ORDER TO FREEZE ASSETS UNDER THIS SECTION, IF A DEFAULT**  
29 **OCCURS IN THE OBLIGATION GIVING RISE TO THE LIEN; OR**

30                   **(2) A FINANCIAL INSTITUTION FROM EXERCISING RIGHTS UNDER**  
31 **APPLICABLE LAW, INCLUDING THE RIGHT TO SET-OFF MUTUAL DEBTS UNDER**  
32 **COMMON LAW.**

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2    October 1, 2014.