

**HOUSE . . . . . No. 1256**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Cheryl A. Coakley-Rivera***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to profits from crime.

PETITION OF:

NAME:

*Cheryl A. Coakley-Rivera*

DISTRICT/ADDRESS:

*10th Hampden*

**HOUSE . . . . . No. 1256**

By Ms. Coakley-Rivera of Springfield, a petition (accompanied by bill, House, No. 1256) of Cheryl A. Coakley-Rivera relative to payment or agreement to pay to a defendant consideration which may constitute proceeds related to a crime. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

□ HOUSE  
□ , NO. 2802 OF 2011-2012.]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act relative to profits from crime.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 258C of the General Laws, as appearing in the 2010 Official  
2 Edition, is hereby amended by inserting after section 13 the following new section:-

3 Section 14. (a) The following words as used in this section shall have the following  
4 meanings, unless the context otherwise requires:

5 (1) “Contracting party”, any person, firm, corporation, partnership, association or  
6 other legal entity which contracts for, pays, or agrees to pay a defendant consideration which it  
7 knows or reasonably should know may constitute proceeds related to a crime.

8 (2) “Conviction”, whether or not a sentence is imposed, a finding or verdict of guilty  
9 or of not guilty by reason of insanity, a plea of guilty, or an adjudication of delinquency or of  
10 youthful offender status as defined in section 52 of chapter 119.

11 (3) “Crime”, any violation of Massachusetts law that is punishable by imprisonment  
12 in state prison and any federal offense committed in the commonwealth that is punishable by  
13 death or imprisonment for a term of more than 1 year. Crime shall also include any offense  
14 committed by a juvenile which would be a crime as defined herein if the juvenile were an adult.

15 (4) "Defendant", a person who is the subject of pending criminal charges or has been  
16 convicted of a crime.

17 (5) "Division", the division of victim compensation and assistance within the  
18 department of the attorney general.

19 (6) "Proceeds related to a crime", any assets, material objects, monies, and property  
20 obtained through the use of unique knowledge or notoriety acquired by means and in  
21 consequence of the commission of a crime from whatever source received by or owing to a  
22 defendant or his representative, whether earned, accrued, or paid before or after the disposition  
23 of criminal charges against the defendant.

24 (7) "Victim", any natural person who suffers physical, emotional or financial harm,  
25 or the threat of physical, emotional or financial harm as the result of the commission of a crime,  
26 and the estate, legal guardian, and other family members of such person.

27 (b) A contracting party shall, within 30 days of the agreement or 30 days before a  
28 payment, submit to the division a copy of its contract or a summary of the terms of any oral  
29 agreement or payment.

30 (c) Within 30 days from the receipt of a contract, agreement or notice of payment to  
31 a defendant or his representative, or upon its own initiative if no contract or agreement or notice  
32 is submitted, the division shall determine whether the terms of the contract or agreement or  
33 payment include proceeds related to a crime as defined in section 1, and, if so, whether such  
34 proceeds are substantially related to a crime, rather than relating only tangentially to, or  
35 containing only passing references to, a crime.

36 (d) Within 15 days of the determination required by section 3, the division shall  
37 notify the contracting party of its determinations by certified mail.

38 (e) A contracting party aggrieved by the division's determination under section 3  
39 may request reconsideration of the determination by the program director. Such request for  
40 reconsideration must be filed within 15 days of the date of mailing of the notice of the division's  
41 determination. The division shall notify the contracting party by certified mail of the  
42 determination upon reconsideration within 20 days of the request for reconsideration. Such  
43 notice shall include information regarding the contracting party's right to a petition for judicial  
44 review of the determination of the program director in accordance with section 14 of chapter  
45 30A.

46 (f) If the provisions of subsection (b) are violated, the division may petition the  
47 superior court for an order of enforcement. Such action shall be brought in the county in which  
48 the defendant resides, the county in which the crime was committed, or in Suffolk County. Upon  
49 a finding that a contracting party has violated subsection (b), the court shall, in addition to any

50 other relief, order that an appropriate amount of money or other consideration be paid to, or an  
51 appropriate bond be posted with, the division, or impose on the contracting party a civil penalty  
52 of the value of the contract or agreement. If the court finds such violation to have been knowing  
53 or willful, it shall impose a civil penalty up to 3, but not less than 2, times the value of the  
54 contract or agreement. To the extent monies or other consideration received by the division as a  
55 result of such order exceed the value of the contract or agreement, they shall be deposited into  
56 the victim compensation fund maintained by the attorney general in accordance with section 4(c)  
57 of chapter 258C.

58 (g) The division, upon receipt of a contract or other agreement to pay or notice of  
59 payment to a defendant, shall take reasonable steps to notify all known victims of the crime  
60 about the existence of a contract, agreement or notice of payment. Notifications shall be made by  
61 certified mail to the victim's last known address. The division shall also provide publication in a  
62 newspaper of general circulation in the county in which the crime was committed to publicize  
63 the existence of proceeds related to the crime. Such notice shall be made by the division once  
64 every 6 months for 1 year from the date of receipt of the contract, agreement or notice of  
65 payment. The division may provide for such additional notice as it deems necessary. Failure to  
66 notify a victim, as required herein, or failure on the part of the division to take any other action  
67 required by this section, shall not result in the imposition of liability on the division or any  
68 division employee.

69 (h) Notwithstanding any other provision of the General Laws with respect to the  
70 timely commencement of an action, including, but not limited to, section 2A of chapter 260 of  
71 the General Laws and section 2 of chapter 229 of the General Laws, any victim shall also have  
72 the right to bring a civil action to recover money damages from a defendant or his representative  
73 within 3 years of the last mandatory publication provided for in subsection (g).

74 (i) In order to make the determinations required by subsection (c) of this, or to  
75 determine whether any provision of this section is being violated or to make any other  
76 determination required by this section, the division shall be authorized to issue written civil  
77 investigative demands which may be served by certified mail, and which shall be returned within  
78 15 days from the date of service. Whenever a person fails to comply with a civil investigative  
79 demand served on him pursuant to this section, the division may petition the superior court for an  
80 order of enforcement. Such action shall be brought in the county in which the defendant resides,  
81 the county in which the crime was committed, or in Suffolk County.

82 (j) The division shall have the right to apply for any remedies available under civil  
83 practice law and rules that are appropriate to furthering the purpose of this section.

84 (k) Any action taken by a defendant, or his representative, whether by way of  
85 execution of a power of attorney, creation of corporate entities or otherwise, that results in  
86 defeating the purpose of this section shall be null and void.

87 (1) The division shall have the authority to promulgate rules and regulations pursuant  
88 to chapter 30A as may be necessary to carry out the provisions of this section.

89 SECTION 2. Section 2A of chapter 260 of the General Laws, as appearing in the 2010  
90 Official Edition, is hereby amended by inserting after the first sentence the following sentence: -

91 “Actions for torts against a criminal defendant by the victim as defined by subsection (a)  
92 of section 14 of chapter 258C shall be tolled during any period of incarceration, parole or  
93 probation of the defendant for the crime committed against the victim.”