

HOUSE No. 1428

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

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:	DISTRICT/ADDRESS:
Viriato Manuel deMacedo	1st Plymouth
George N. Peterson, Jr.	9th Worcester
Bradley H. Jones, Jr.	20th Middlesex
Elizabeth Poirier	14th Bristol
Paul K. Frost	7th Worcester
Susan Williams Gifford	2nd Plymouth
Bradford R. Hill	4th Essex
Richard J. Ross	9th Norfolk
Todd M. Smola	1st Hampden
Robert S. Hargraves	1st Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1514 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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. The General Laws, as appearing in the 2006 Official Edition, are hereby amended
2 by inserting after chapter 258D the following new chapter:-

3 CHAPTER 258E

4 Section 1. (a) The following words as used in this section shall have the following meanings,
5 unless the context otherwise requires:

6 "Contracting party", any person, firm, corporation, partnership, association or other private
7 legal entity which contracts for, pays, or agrees to pay a defendant consideration which it knows
8 or reasonably should know may constitute proceeds from a crime.

9 "Conviction", a finding or verdict guilty or of not guilty by reason of insanity, a plea of guilty or
10 a finding of sufficient facts to warrant a finding of guilty whether or not final judgment or
11 sentence is imposed, or an adjudication of delinquency or of youthful offender status as defined
12 in section 52 of chapter 119.

13 "Crime", any violation of Massachusetts law that is punishable by imprisonment in state prison
14 and any federal offense committed in the commonwealth that is punishable by death or
15 imprisonment for a term of more than one year. Crime shall also include any offense committed
16 by a juvenile which would be a crime if the juvenile were an adult.

17 "Defendant", a person who has been charged with or convicted of a crime, or has voluntarily
18 admitted the commission of a crime.

19 "Division", the division of victim compensation and assistance within the department of the
20 attorney general.

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

26 "Victim", any natural person who suffers direct or threatened physical, emotional, or financial
27 harm as the result of the commission of a crime, or the estate, legal guardian, and other family
28 members of such person if the person is a minor, incompetent or deceased.

29 (b) Any contracting party which contracts for, pays or agrees to pay a defendant or his
30 representative consideration which it knows or reasonably should know may constitute proceeds
31 of a crime shall, within 30 days of the agreement, submit to the division a copy of its contract or
32 a summary of the terms of any oral agreement.

33 (c) Until such time as the division makes its determinations under subsection (g), the contracting
34 party shall file a bond, executed by the contracting party and by a surety company authorized to
35 do business within the commonwealth, with the division equal in amount to any proceeds of the
36 crime which by the terms of the contract would otherwise be owing to a defendant or his
37 representative. Said bond shall be payable to the commonwealth, for the benefit of any victim
38 aggrieved by the activity of the defendant or contracting party.

39 (d) If the provisions of subsections (b) or (c) are violated, the division may petition the superior
40 court for an order of enforcement. Such action shall be brought in the county in which the
41 contracting party resides or has his principle place of business, or in Suffolk county if the
42 contracting party does not reside or have a principal place of business in the
43 commonwealth. Upon a finding that a contracting party has violated either subsections (b) or (c)
44 the court shall, in addition to any other relief, impose on the contracting party a civil penalty of
45 the value of the contract or agreement. If the court finds such violation to have been knowing or
46 willful, it shall impose a civil penalty up to three, but not less than two, times the value of the
47 contract or agreement. To the extent monies or other consideration received by the division as a
48 result of such order exceed the value of the contract or agreement, they shall be deposited into
49 the victim compensation fund maintained by the treasurer in accordance with section 4(c). Any
50 remaining monies or consideration shall be held by the division pending the determinations
51 required by subsection (g).

52 (e) The division, upon receipt of a contract or other agreement to pay a defendant, shall take
53 reasonable steps to notify all known victims of the crime about the existence of a contract or
54 agreement. Notifications shall be made by certified mail to the victim's last known address. The
55 division shall also provide legal notice in a newspaper of general circulation in the county in
56 which the crime was committed to publicize the existence of proceeds related to the crime. Such
57 notice shall be made by the division once every six months for one year from the date of receipt
58 of the contract or agreement. The division may provide for such additional notice as it deems

59 necessary. Failure to notify victim shall not result in liability beyond the amount of any
60 consideration in escrow at the time any judgment arising out of such liability is executed upon.

61 (f) Notwithstanding any other provision of the General Laws with respect to the timely bringing
62 of an action, any victim shall have the right to bring a civil action to recover money damages
63 from a defendant or his legal representative within three years of the last mandatory published
64 public notice provided for in subsection (e).

65 (g) Within 30 days from the receipt of a contract or agreement, or upon its own initiative if no
66 contract or agreement is submitted, the division shall determine whether the terms of the contract
67 or agreement include proceeds as defined in subsection (a), and, if so, whether such proceeds
68 arise from activity that is substantially related to a crime. An activity is substantially related to a
69 crime if it principally derives from the unique knowledge or notoriety acquired by means and in
70 consequence of the commission of a crime for which the defendant has been charged or
71 convicted, or which the defendant has voluntarily admitted. Activity that is tangentially related
72 to a crime, or that contains only a passing reference to a crime, shall not be determined to be
73 substantially related.

74 (h) In order to make the determinations required by subsection (g) the division shall be
75 authorized to issue written civil investigative demands which may be served by certified mail,
76 and which shall be returned within 15 days from the date of service. Whenever a person fails to
77 comply with a civil investigative demand served on him pursuant to this section, the division
78 may petition the superior court for an order of enforcement. Such action shall be brought in the
79 county in which the party resides or has his principal place of business, or in Suffolk county if
80 the party does not reside or have a principal place of business in the commonwealth. Failure to
81 comply with an order entered under this section shall be punished as a contempt of court. All
82 information collected by the division pursuant to this section shall be kept in accordance with the
83 provisions of chapters 4, 66, and 66A.

84 (i) Upon making the determinations required by subsection (g), the division may continue to hold
85 the bond filed in accordance with subsection (c), or may require the contracting party to file a
86 new bond equal to the amount determined by the division to constitute proceeds arising from
87 activity that is substantially related to a crime. The bond held by the division shall be used to
88 satisfy, in part or in full, any civil judgment obtained by a victim against the defendant arising
89 from the crime.

90 (j) Within 15 days of the determination required by subsection (g), the division shall notify the
91 contracting party of its determinations by certified mail.

92 (k) Within 15 days of the date of mailing of the notice of the division's determination, a
93 contracting party aggrieved by the division's determination may appeal to the attorney general,
94 by serving on the attorney general a written notice to that effect. Thereupon the attorney general
95 shall immediately cause the division or his designee to hold a public hearing on the division's
96 action appealed from. The division shall notify the contracting party by certified mail of the
97 determination upon appeal within 10 days of the closing of the hearing. Such notice shall

98 include information regarding the contracting party's right to a petition for judicial review of the
99 determination of the division.

100 (l) Within 30 days of the date of mailing of the notice of the division's determination, the
101 contracting party may file a complaint for judicial review in the superior court in the county in
102 which the contracting party resides or has his principle place of business, or in Suffolk County if
103 the contracting party does not reside or have a principal place of business in the
104 commonwealth. Proceedings upon any such complaint shall be in accordance with chapter
105 30A. If no petition is filed within the time specified, the decision of the division shall be final.

106 (m) The bond required in subsections (c) and (i) shall not be used to satisfy any civil judgment
107 for a victim until the defendant has been fully and finally convicted of the crime for which he has
108 been charged or until the defendant has voluntarily admitted the commission of the crime.

109 (n) The division shall return to the contracting party the bond required in subsections (c) and (i)
110 if the defendant is fully and finally prosecuted and is not convicted of the crime, or has not
111 voluntarily admitted the commission of the crime.

112 (o) After all civil claims instituted by victims against the defendant have been satisfied, or if no
113 claims have been filed after three years after the last mandatory published public notice provided
114 for in subsection (e), one half of the value of the bond required in subsections (c) and (i) shall be
115 returned to the contracting party. The remaining portion of the bond shall be deposited into the
116 victim compensation fund maintained by the department of the attorney general in accordance
117 with section 4C of chapter 258C.

118 (p) The division, acting on behalf of any victim, shall have the right to apply for any and all
119 provisional remedies, available under civil practice law and rules, including, but not limited to,
120 attachment, injunction, receivership and notice of pendency.

121 (q) Any action taken by a defendant, or his representative, whether by way of execution of a
122 power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this
123 section shall be null and void.

124 SECTION 2. Section 2A of chapter 260 of the General Laws, as so appearing, is hereby
125 amended by inserting after the first sentence the following sentence:- Actions for torts against a
126 criminal defendant by the victim as defined by section 1 of chapter 258D shall be tolled during
127 any period of incarceration, parole or probation of the defendant for the crime committed against
128 the victim.