HOUSE DOCKET, NO. 2242 FILED ON: 1/20/2011

HOUSE . . . . . No. 2206

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:

An Act relative to profits from crime.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradley H. Jones, Jr.	*20th Middlesex*
Marc T. Lombardo	*22nd Middlesex*
Donald F. Humason, Jr.	*4th Hampden*
Sheila C. Harrington	*1st Middlesex*
Angelo L. D'Emilia	*8th Plymouth*
Randy Hunt	*5th Barnstable*
F. Jay Barrows	*1st Bristol*
Shaunna O'Connell	*3rd Bristol*
Susan Williams Gifford	*2nd Plymouth*
George T. Ross	*2nd Bristol*
Todd M. Smola	*1st Hampden*
Matthew A. Beaton	*11th Worcester*
Kimberly N. Ferguson	*1st Worcester*
Steven L. Levy	*4th Middlesex*
George N. Peterson, Jr.	*9th Worcester*
Elizabeth A. Poirier	*14th Bristol*
Viriato Manuel deMacedo	*1st Plymouth*

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HOUSE . . . . . No. 2206

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 2206) of Bradley H. Jones, Jr., and others for legislation to authorize the Division of Victim Compensation and Assistance to monitor profits from criminal activities of incarcerated persons. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1428* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

SECTION 1. The General Laws, as appearing in the 2008 Official Edition, are hereby amended by inserting after chapter 258D the following new chapter:-

CHAPTER 258E

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

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

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

"Crime", any violation of Massachusetts law that is punishable by imprisonment in state prison and any federal offense committed in the commonwealth that is punishable by death or imprisonment for a term of more than one year. Crime shall also include any offense committed 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
18 voluntarily admitted the commission of a crime.

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

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

26 "Victim", any natural person who suffers direct or threatened physical, emotional, or
27 financial harm as the result of the commission of a crime, or the estate, legal guardian, and other
28 family 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
34 contracting party shall file a bond, executed by the contracting party and by a surety company
35 authorized to do business within the commonwealth, with the division equal in amount to any
36 proceeds of the crime which by the terms of the contract would otherwise be owing to a
37 defendant or his representative. Said bond shall be payable to the commonwealth, for the benefit
38 of any victim 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
40 superior court for an order of enforcement. Such action shall be brought in the county in which
41 the 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 commonwealth.
43 Upon a finding that a contracting party has violated either subsections (b) or (c) the court shall,
44 in addition to any other relief, impose on the contracting party a civil penalty of the value of the
45 contract or agreement. If the court finds such violation to have been knowing or willful, it shall
46 impose a civil penalty up to three, but not less than two, times the value of the contract or
47 agreement. To the extent monies or other consideration received by the division as a result of
48 such order exceed the value of the contract or agreement, they shall be deposited into the victim
49 compensation fund maintained by the treasurer in accordance with section 4(c). Any remaining
50 monies or consideration shall be held by the division pending the determinations required by
51 subsection (g).

52 (e) The division, upon receipt of a contract or other agreement to pay a defendant, shall
53 take 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
62 bringing of an action, any victim shall have the right to bring a civil action to recover money
63 damages from a defendant or his legal representative within three years of the last mandatory
64 published 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
66 if no contract or agreement is submitted, the division shall determine whether the terms of the
67 contract or agreement include proceeds as defined in subsection (a), and, if so, whether such
68 proceeds arise from activity that is substantially related to a crime. An activity is substantially
69 related to a crime if it principally derives from the unique knowledge or notoriety acquired by
70 means and in consequence of the commission of a crime for which the defendant has been
71 charged or convicted, or which the defendant has voluntarily admitted. Activity that is
72 tangentially related to a crime, or that contains only a passing reference to a crime, shall not be
73 determined to be 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
85 to hold the bond filed in accordance with subsection (c), or may require the contracting party to
86 file a new bond equal to the amount determined by the division to constitute proceeds arising
87 from activity that is substantially related to a crime. The bond held by the division shall be used
88 to 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
91 notify the 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 commonwealth.
104 Proceedings upon any such complaint shall be in accordance with chapter 30A. If no petition is
105 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
107 judgment for a victim until the defendant has been fully and finally convicted of the crime for
108 which he has been charged or until the defendant has voluntarily admitted the commission of the
109 crime.

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

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

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

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

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