

**HOUSE . . . . . No. 2206**

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**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 adoption of the accompanying bill:

An Act relative to profits from crime.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/20/2011</i>
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>	<i>1/27/2011</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>	<i>1/27/2011</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>1/31/2011</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>2/1/2011</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>	<i>2/2/2011</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>2/2/2011</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>	<i>2/2/2011</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>2/2/2011</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>	<i>2/3/2011</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/3/2011</i>
<i>Matthew A. Beaton</i>	<i>11th Worcester</i>	<i>2/4/2011</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>2/4/2011</i>
<i>Steven L. Levy</i>	<i>4th Middlesex</i>	<i>2/4/2011</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>	<i>2/1/2011</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/21/2011</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>	<i>2/1/2011</i>

**HOUSE . . . . . No. 2206**

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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.

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

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
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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 2008 Official Edition, are hereby  
2 amended 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  
5 meanings, unless the context otherwise requires:

6           "Contracting party", any person, firm, corporation, partnership, association or other  
7 private legal entity which contracts for, pays, or agrees to pay a defendant consideration which it  
8 knows 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  
10 guilty or a finding of sufficient facts to warrant a finding of guilty whether or not final judgment  
11 or sentence is imposed, or an adjudication of delinquency or of youthful offender status as  
12 defined in section 52 of chapter 119.

13           "Crime", any violation of Massachusetts law that is punishable by imprisonment in state  
14 prison 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  
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.