

HOUSE No. 2215

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 crime restitution.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/20/2011</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>	<i>1/27/2011</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>2/2/2011</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/3/2011</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/3/2011</i>
<i>Paul K. Frost</i>	<i>7th Worcester</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. 2215

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 2215) of Bradley H. Jones, Jr., and others relative to establishing crime victim restitution. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1432 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to crime restitution.

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. The following words as used in this chapter shall have the following
5 meanings, unless the context otherwise requires:-

6 "Clerk", the clerk of the court in which the restitution order was entered;

7 "Criminal conduct", any conduct for which a person pleaded guilty or nolo contendere or
8 was found or adjudicated guilty or delinquent by a court of competent jurisdiction, or for which a
9 judge made a finding of sufficient facts to support a finding of guilty or delinquency, whether or

10 not the person was placed on probation without sentence or under a suspended sentence or the
11 case was placed on file;

12 "Financial losses", actual monetary or property losses or liability for such losses, to the
13 extent not payable by an insurer or any public benefit program, including the value of property
14 taken, destroyed, broken or otherwise harmed, lost wages and other crime-related financial
15 losses, including medical and counseling expenses, but not including punitive damages, pain and
16 suffering, or loss of consortium;

17 "Financial impact report", a standardized form provided to the victim by the prosecutor or
18 victim-witness advocate, with supporting documentation, which describes the amount of each
19 item or element of the victim's financial losses and is used by the court in determining
20 restitution;

21 "Offender", a person who has engaged in criminal conduct which results in financial
22 losses to a victim;

23 "Prosecutor", the attorney general, assistant attorneys general, district attorney, assistant
24 district attorneys, other attorneys specially appointed to aid in the prosecution of a case, law
25 students approved for practice pursuant to and acting as authorized by the rules of the supreme
26 judicial court, or any other person acting on their behalf, including victim-witness advocates and
27 police prosecutors;

28 "Restitution", payment of financial losses to a victim in an amount and in the manner
29 provided by the offender's restitution payment plan. Restitution shall also include the
30 reimbursement of the victim compensation program for payments made to a victim as a result of
31 the offender's criminal conduct;

32 "Restitution order", a written judgment by the court which includes a finding of the
33 victim's total financial losses and a determination of the offender's restitution payment plan. A
34 restitution order issued pursuant to this chapter shall also be enforceable as a civil judgment;

35 "Restitution payment plan", a schedule or plan of payments which specifies the amount,
36 terms and dates of a court's determination for payment of restitution by an offender;

37 "Victim", any natural person who suffers financial losses as a direct result of the
38 offender's criminal conduct, other than a dependent of the offender whose financial losses result
39 directly from the punishment imposed upon the offender by the court for such criminal conduct;

40 "Victim-witness advocate", a person employed by a prosecutor's office or other criminal
41 justice agency to assist victims and witnesses, including, but not limited to, assisting victims in
42 obtaining the rights enumerated under this chapter;

43 "Victim compensation program", the commonwealth's program of payments to victims of
44 crime authorized under chapter 258C of the General Laws;

45 "Wage assignment", an automatic routine transfer of a portion of an offender's wages by
46 an employer to a court to satisfy a restitution order.

47 Section 2. Any victim who suffers financial losses as a result of an offender's criminal
48 conduct shall have the right to receive restitution from the offender for the losses the victim
49 suffers. The victim compensation program shall also be eligible for restitution for victim
50 compensation payments it makes to the victim or on the victim's behalf. The court shall order the
51 offender to pay restitution in every case in which a victim suffers financial losses and seeks

52 restitution for such losses. This statute shall not bar persons otherwise eligible for restitution
53 under other statutes from seeking or receiving restitution.

54 Section 3. Restitution ordered pursuant to this chapter shall, to the greatest extent
55 possible, be of a dollar amount that is sufficient to fully reimburse the victim for crime-related
56 losses the victim has sustained. In determining the amount of financial losses suffered by the
57 victim by the offender's criminal conduct, the court shall consider the following items to be
58 reasonable expenses:

59 (a) medical costs, including durable medical equipment and prosthetic or auditory
60 devices; ophthalmic care, including eyeglasses; crime-related reconstructive surgery not covered
61 by insurance; dental care, including orthodontia or other therapeutic devices; individual, couple,
62 family or group counseling that is crime-related; physical and occupational therapy or other
63 rehabilitation services or equipment;

64 (b) expenses incurred in obtaining ordinary and necessary services that the victim, if not
65 injured, would have performed, not for income but for the benefit of the victim or a member of
66 the victim's family;

67 (c) loss of wages or income or dependent care expenses of the victim due to injury arising
68 from the offender's criminal conduct;

69 (d) reasonable expenses related to funeral and burial or crematory services;

70 (e) the actual replacement value of stolen or damaged property or the cost of repairing
71 such property, whichever is less;

72 (f) travel or moving expenses;

- 73 (g) insurance deductibles and co-payments;
- 74 (h) other reasonable out-of-pocket expenses arising from the offender's criminal conduct.

75 The determination of the victim's financial losses shall be made by the court
76 independently of the offender's ability to pay and shall specify the type and amount of each loss
77 and the total amount of each victim's financial losses. Once the court determines the total
78 amounts of each victim's financial losses, the court shall note that amount on the record as the
79 first part of the restitution order. The court's determination of the total amount of the victim's
80 financial losses shall automatically constitute a civil judgment against the offender for the full
81 amount of such losses and shall have force and effect for a period not longer than 20 years.

82 Section 4. Once the court has determined the victim's financial losses, the court shall
83 make an evaluation of the offender's ability to pay restitution for the victim's financial losses. It
84 shall be assumed that any offender, including a juvenile offender, has the ability to pay the full
85 amount of the victim's financial losses upon sentencing, unless the offender is able to establish
86 that the offender is presently unable to earn the total amount of such losses or does not have
87 sufficient resources to otherwise repay such losses.

88 If the offender cannot pay the full amount of the victim's financial losses
89 immediately, the court shall establish a restitution payment plan as part of the restitution order.
90 In determining the terms and schedule of an offender's restitution payment plan, the court shall
91 consider the following:

- 92 (a) the actual or potential financial resources of the offender on a monthly basis,
93 including any governmental assistance or prison earnings;

- 94 (b) expected proceeds from civil litigation, insurance claims or contractual obligations of
95 the offender;
- 96 (c) any assets of the offender;
- 97 (d) any cash bail that has been posted by the offender;
- 98 (e) the financial needs of the offender and the offender's dependents on a monthly basis;
- 99 (f) the total amount of the offender's court-ordered financial obligations and penalties,
100 including other outstanding restitution orders or civil judgments against the offender;
- 101 (g) the offender's work history;
- 102 (h) the offender's age and level of education;
- 103 (i) the restitution payment history of the offender, if any;
- 104 (j) the rehabilitative effect of paying restitution on the offender and the effect of the
105 method of payment;
- 106 (k) the possibility of repairing or returning the victim's damaged or stolen property;
- 107 (l) the full amount of the victim's financial loss;
- 108 (m) such other factors as the court deems appropriate.

109 Section 5. Evidence of financial loss sustained by the victim shall be submitted to the
110 court by means of a financial impact report. Additional information may be offered during a
111 restitution hearing if financial losses have not been fully documented or are disputed by the
112 offender. The financial impact report shall be supported by copies of appropriate receipts and the

113 victim's signature, signed and sworn under the pains and penalties of perjury. If a victim
114 knowingly makes false statements of fact on the financial impact report, the victim may be
115 penalized by rendering the victim ineligible for restitution, in addition to other remedies provided
116 by law.

117 Each party shall have the right to present such evidence as may be relevant to the issue of
118 restitution. The amount of restitution ordered shall be determined by the court according to a
119 preponderance of the evidence. The burden of demonstrating the amount of financial losses
120 sustained by a victim as a result of the offense shall be on the prosecution. The burden of
121 rebutting the presumption of the offender's ability to pay restitution shall be on the offender.

122 Section 6. (a) If at time of sentencing, the court finds that a victim has suffered
123 financial losses, the court shall order restitution to each victim and, where appropriate, to the
124 victim compensation program, as a separate written order in addition to any other penalty or
125 assessment imposed on the offender. The restitution order shall consist of two parts. First, the
126 court shall note the full amount of each victim's financial losses and specify the amount and type
127 of each element comprising the loss. Second, the court shall establish a restitution payment plan
128 based on the offender's ability to pay. As part of such plan, the court shall establish a priority for
129 payments of restitution, if necessary, and any other special conditions as the court deems
130 appropriate. If the offender is sentenced to a period of incarceration, the restitution payment plan
131 must be incorporated into the mittimus.

132 (b) If the offender is placed on probation, the restitution payment plan must be
133 incorporated into the probation contract and restitution shall be a condition of probation. If the
134 offender is not incarcerated or placed on probation, the restitution payment plan must provide

135 that the obligation to pay restitution begins no later than 60 days after the restitution order is
136 issued. If the court orders the offender to return or repair stolen or damaged property, the court
137 shall specify a date by which the property must be returned or repaired. If not otherwise provided
138 by the court under this section, restitution shall be made by the offender immediately upon
139 sentencing.

140 (c) A restitution order issued pursuant to this chapter constitutes a judgment and lien on
141 behalf of the victim against all property of a liable offender for the full amount of the victim's
142 financial losses as determined by the court pursuant to section 4 of this chapter, and on behalf of
143 the victim compensation program for the full amount of compensation that has been paid to or on
144 behalf of the victim. A judgment of restitution may be enforced by the commonwealth, a victim,
145 a deceased victim's estate or any other beneficiary of the judgment in the same manner as a civil
146 judgment. Upon the entry of an order of restitution, or at any other time deemed necessary, the
147 court may, in order to secure satisfaction of a restitution order, issue an attachment order
148 directing a financial institution to freeze some or all of the funds or assets deposited with or held
149 by the financial institution by or on behalf of an account holder who is an offender.

150 (d) The court may also enter a separate order for wage assignment directing a payor to
151 deduct from all income due and payable to the offender the amount required by the court to meet
152 all or part of the offender's restitution payment plan. The wage assignment order shall be
153 effective so long as the restitution order upon which it is based remains unsatisfied or until
154 further order of the court. Such enforcement provisions may be made at the time of sentencing or
155 at any later date while the restitution or any part thereof remains unpaid. A recommendation to
156 the court for such assignment may be initiated by the victim or the commonwealth.

157 (e) Any monies that are owed by the commonwealth to an offender who is under a
158 restitution order, including but not limited to lottery winnings and tax refunds, shall be assigned
159 first to discharge the restitution order to the full extent of the unpaid total financial losses,
160 regardless of the payment schedule in the restitution payment plan.

161 (f) Any monies from a damage award won by an offender who is under a restitution
162 order shall first be used to satisfy the restitution order.

163 Section 7. (a) The prosecutor or victim-witness advocate upon first contact with the
164 victim shall inform the victim of the right to receive restitution for financial losses caused by the
165 offender's criminal conduct and of the victim's rights of enforcement under this chapter in the
166 event the offender does not comply with the order. The prosecutor shall obtain from the victim a
167 financial impact report and any other records documenting the victim's losses, submit such report
168 and records to the court, and recommend an amount of restitution and a restitution payment plan
169 to be made by the offender. For cases in which a plea agreement with the offender is to be
170 recommended to the court, and the victim has suffered financial losses and requests restitution,
171 the prosecutor shall include payment of restitution to the victim as part of any plea agreement. If
172 there is no request for restitution by the victim or the victim compensation program, the
173 prosecutor shall inform the court that there is no request and state the grounds therefore on the
174 record. The prosecutor or victim-witness advocate shall inform the victim and the victim
175 compensation program of the amount and terms of restitution ordered by the court, and shall
176 provide a copy of the restitution order to the victim and to the victim compensation program.

177 (b) If a victim has conferred with the prosecutor about restitution but a specific amount
178 of restitution cannot be conclusively determined as part of the plea agreement or prior to

179 sentencing, the offender shall be advised by the prosecutor of the general range of financial
180 losses, with maximum and minimum amounts, that may be owed to the victim in restitution as
181 part of the plea agreement. The offender shall either stipulate to such range as part of the plea
182 agreement, or sentencing shall be deferred until a fixed amount of restitution can be determined
183 by the court through a restitution hearing. If a victim has not conferred with the prosecutor about
184 restitution and a specific amount of restitution cannot be conclusively determined as part of a
185 plea agreement, the court may order the offender to pay restitution in an amount to be
186 determined at a later date, but no later than 30 days from the date of sentencing.

187 Section 8. For any order of restitution made pursuant to this chapter, the offender shall
188 have the right to a hearing before a judge to determine the amount of restitution, if the offender
189 objects to the imposition, terms, amount or distribution of the restitution recommended by the
190 prosecutor.

191 A restitution hearing must occur within 30 days of the date of sentencing. If the court
192 holds a restitution hearing, the court must notify the offender, the offender's attorney, the victim,
193 and the prosecutor at least five business days before the hearing.

194 A victim has the right to be present and heard at the hearing. If the victim is not present
195 when the hearing is scheduled, but has communicated any request for restitution or other
196 concerns to the prosecutor, the prosecutor shall make them known to the court. Any dispute as to
197 the proper amount or type of restitution or the portion of the restitution suspended or not
198 suspended shall be resolved by the court.

199 Section 9. If an offender is placed on probation, and the court orders the offender to pay
200 restitution, restitution shall be a condition of probation. The probation officer assigned to
201 supervise the offender shall:

202 (a) monitor and enforce the offender's compliance with the restitution order;

203 (b) advise the offender on obtaining employment, if the offender is unemployed;

204 (c) advise the offender of the importance of making restitution to the victim and the
205 consequences of non-payment;

206 (d) attempt to determine whether the offender has any hidden assets or income;

207 (e) confer with and provide information to victims regarding the offender's restitution
208 obligation to them;

209 (f) maintain records of the offender's restitution account.

210 If the offender fails to comply with the restitution order, the court may revoke probation.
211 In determining whether to revoke probation, the court shall consider the willfulness of the
212 offender's failure to pay restitution and any other special circumstances that may have a bearing
213 on the offender's ability to pay. If the court determines that the offender's failure to comply with
214 the restitution order is willful, the court shall revoke probation. If the court determines that the
215 offender's failure to comply was not willful, the court may extend the period of probation until
216 the restitution payment plan is satisfied or may modify the terms of the restitution payment plan
217 pursuant to 12B of this chapter.

218 An offender who is on probation shall make payments to his supervising probation
219 officer. Probation officers shall give receipts to the offender and shall keep records of all

220 payments made by the offender and transmit such records monthly to the restitution information
221 tracking system in the administrative office of the trial court pursuant to 12B of this chapter.
222 Probation officers shall transfer all payments made to them by offenders on a monthly basis to
223 the victim and, where appropriate, to the victim compensation program, pursuant to section 14 of
224 this chapter. Probation officers may not keep a restitution payment for longer than 30 days.
225 When the restitution payment plan has been satisfied, the probation officer shall provide notice
226 to the clerk, to the victim, and to the restitution information tracking system. A victim has the
227 right to ask the offender's probation officer to request a probation review hearing if the offender
228 fails to pay restitution as required in the restitution payment plan.

229 Section 10. (a) If an offender is sentenced to a period of incarceration and the court
230 orders the offender to pay restitution, the court may require the offender to make payment of
231 restitution during the period of incarceration or once the offender is released. If an offender is
232 placed on work release through a program under control of the department of correction, a
233 county sheriff or the department of youth services, restitution payments shall be a condition of
234 work release.

235 (b) An order for restitution shall be enforced by any correctional or detention facility by
236 withholding up to 50 per cent of the offender's prison earnings or other monies maintained by the
237 facility on a monthly basis, provided that payment of the victim witness assessment ordered
238 pursuant to section eight of chapter 258B shall be made first.

239 (c) Correctional officials shall transmit such payments to the victim on a monthly basis
240 and, where appropriate, to the victim compensation program, pursuant to section 14 of this
241 chapter. Correctional officials may not keep a restitution payment for longer than 30 days.

242 Correctional officials shall give receipts to the offender and shall keep records of all payments
243 made by the offender and transmit such records monthly to the restitution information tracking
244 system in the administrative office of the trial court pursuant to section 12B of this chapter.
245 When the restitution payment plan has been satisfied, the correctional officer shall provide notice
246 to the clerk, to the victim, and to the restitution information tracking system.

247 Section 11. When the parole board considers the release on parole of an inmate who has
248 an outstanding restitution order, the parole board shall review the status of the offender's
249 restitution payment. The parole board shall make fulfillment of the restitution payment plan a
250 condition of parole for any offender to be paroled still owing restitution. If necessary, the parole
251 board may ask the court to modify the existing restitution payment plan and shall provide a copy
252 of such modified restitution payment plan to the victim and to the victim compensation program.

253 The parole officer assigned to supervise the offender shall:

- 254 (a) monitor and enforce the offender's compliance with the restitution order;
- 255 (b) advise the offender on obtaining employment, if the offender is unemployed;
- 256 (c) advise the offender of the importance of making restitution to the victim and the
257 consequences of non-payment;
- 258 (d) attempt to determine whether the offender has any hidden assets or income;
- 259 (e) confer with and provide information to victims regarding the offender's restitution
260 obligation to them;
- 261 (f) maintain records of the offender's restitution account.

262 Failure of the offender on parole to comply with the terms of the restitution payment plan
263 shall constitute a violation of a condition of parole and the parole board may revoke parole. In
264 determining whether to revoke parole, the parole board shall consider the willfulness of the
265 offender's failure to pay and any other special circumstances that may have a bearing on the
266 offender's ability to pay. If the parole board determines that offender's failure to comply with the
267 restitution payment plan is willful, the parole board shall revoke parole. If the parole board
268 determines that the offender's failure to comply was not willful, the parole board may seek to
269 modify the terms of the restitution order pursuant to section 12B of this chapter.

270 An offender who is on parole shall make payments to his supervising parole officer.
271 Parole officers shall give receipts to the offender and shall keep records of all payments made by
272 the offender and transmit such records monthly to the restitution information tracking system in
273 the administrative office of the trial court pursuant to section 12B of this chapter. Parole officers
274 shall transfer all payments made to them by offenders on a monthly basis to the victim and,
275 where appropriate, to the victim compensation program, pursuant to section 14 of this chapter.
276 Parole officers may not keep a restitution payment for longer than 30 days. When the restitution
277 payment plan has been satisfied, the parole officer shall provide notice to the clerk, to the victim,
278 and to the restitution information tracking system. A victim has the right to ask the offender's
279 parole officer to request a parole review hearing if the offender fails to pay restitution as required
280 in the restitution payment plan.

281 If the parole board or supervising parole officer is considering any request of an offender
282 owing restitution to be paroled into another state, the parole board or supervising parole officer
283 must, prior to granting permission for such transfer, make arrangements with the parole
284 department of the other state that restitution must be a condition of parole. If the offender

285 willfully fails to pay the restitution once in another state, the offender may forfeit the right of
286 transfer and may be returned to the commonwealth for a parole review hearing based on failure
287 to pay restitution.

288 Section 12. (a) An offender who is not incarcerated or on probation or parole shall make
289 payments to the clerk. The clerk shall give receipts to the offender and shall keep records of all
290 payments made by the offender and transmit such records monthly to the restitution information
291 tracking system in the administrative office of the trial court pursuant to section 12B of this
292 chapter. The clerk shall transfer all payments made to them by offenders on a monthly basis to
293 the victim and, where appropriate, to the victim compensation program, pursuant to section 14 of
294 this chapter. The clerk may not keep a restitution payment for longer than 30 days. When the
295 restitution payment plan has been satisfied, the clerk shall provide notice to the victim and to the
296 restitution information tracking system.

297 (b) There shall be established a restitution information tracking system within the
298 administrative office of the trial court to receive monthly reports of records of all payments made
299 by offenders to probation officers, parole officers, correctional officials and clerks regarding
300 restitution payments. The restitution information tracking system shall be a computerized
301 database including information on the imposition and collection of all victim restitution orders.
302 Upon request, the restitution information tracking system shall make available to the victim or
303 the offender a status report noting payments received, payments disbursed, and the outstanding
304 balance, if any, owed to the victim or victim compensation program. The restitution information
305 tracking system shall compile data regarding restitution orders on a regular basis and make it
306 available to criminal justice agencies upon request and to the General Court once a year.

307 Section 13. (a) If an offender is more than 30 days late on payment of restitution or an
308 installment thereof, the offender is delinquent in payment of the restitution order. Any offender
309 who is under parole or probation supervision and is delinquent with respect to restitution shall be
310 required to participate in a review hearing conducted by the supervising parole or probation
311 officer to discuss the status of the offender's restitution payment plan. If an offender is more than
312 60 days late on payment of restitution or an installment thereof, the offender is in default of the
313 order. The court, on motion of the victim, the victim compensation program, the prosecutor, the
314 supervising probation officer or supervising parole officer, may require the offender to show
315 cause why the default should not be treated as willful and may issue a summons or a warrant of
316 arrest for the offender's appearance. Unless the offender shows that the default was not an
317 intentional refusal to obey the order of the court or a failure to make a good faith effort to make
318 the payment, the court shall find that the default was willful and shall order that the offender be
319 committed until the restitution, or a specified portion of it, is paid, or unless other arrangements
320 can be made to secure payment. If it appears that the offender's default in the payment of
321 restitution is not willful, the court may make an order allowing the offender additional time for
322 payment or otherwise modifying the restitution payment plan.

323 (b) If the offender is in default and is employed, the court may order a mandatory wage
324 assignment. Recommendation for mandatory wage assignment may be initiated by the victim,
325 the victim compensation program, or the agency responsible for monitoring the offender's
326 payments or the prosecutor if the offender is not being supervised. Upon receipt of a request
327 seeking mandatory wage assignment or on its own initiative, the court shall issue a wage
328 assignment order directing the employer to withhold a specified amount each month. Once a

329 wage assignment order is entered the amount shall be ongoing until the full restitution obligation
330 is satisfied, or the wage assignment order is modified.

331 (c) When an offender who is on probation or parole is in default, the supervising
332 probation or parole officer shall provide notice of the default to the clerk. The offender shall be
333 informed of the consequences of default and additional measures that may be taken for the
334 collection of restitution or the unpaid balance thereof, including but not limited to the assessment
335 of further financial penalties, wage assignment, contempt proceedings, revocation proceedings,
336 imprisonment, suspension or non-renewal of a motor vehicle operating license, interception of
337 tax returns, and interception of any lottery proceeds. The court shall have the discretion to order
338 payment of an interest penalty of at least five per cent per annum on the total unpaid portion of
339 any restitution order that is in default.

340 (d) If an offender sells, conveys, assigns or conceals property with the intent to lessen or
341 impair the offender's ability to pay restitution, the offender may be subject to the sanctions stated
342 in section 30 of chapter 266, or any successor thereto.

343 Section 14. A restitution payment plan shall not be modified for any reason without
344 prior approval of the court following a restitution hearing. If the court holds a restitution
345 modification hearing at the request of an offender, the offender's attorney or the offender's
346 supervising probation officer, the court must notify the victim and the prosecutor at least five
347 business days before the hearing. A victim has the right to be present at the hearing and to
348 express in writing or oral statement any objection to the proposed modification. Any restitution
349 payment plan which is terminated or reduced without giving prior notice to the victim of a
350 hearing to review the order and the opportunity for the victim to be present and heard on the

351 issue shall be void and the original order shall remain in effect until a new hearing is granted and
352 the victim has the opportunity to be present and heard. If any modifications to the restitution
353 payment plan are made, the court must make written findings on the record.

354 Section 15. (a) When the criminal conduct of an offender causes financial losses to
355 multiple victims, the court shall determine priority in receipt of payments among victims on the
356 basis of the seriousness of the harm each suffered and other factors deemed appropriate by the
357 court. The court may order payments to be made on a pro-rated basis among the victims, or in
358 any other manner the court deems appropriate.

359 (b) When the court orders restitution payments to both the victim and to the victim
360 compensation program, there shall be full payment to the victim for all financial losses before the
361 victim compensation program is reimbursed.

362 (c) When a determination of the order of priority for payments required of an offender
363 must be made by the court or other criminal justice system personnel required to assess and
364 collect court-ordered fines, assessments and restitution, the victim witness assessment mandated
365 pursuant to section 8 of chapter 258B of the General Laws shall be the offender's first obligation
366 and restitution shall be the offender's second obligation.

367 (d) In the event that the court has ordered restitution to be made to a victim and that
368 victim dies prior to the completion of said restitution, the remaining payments shall be made to
369 the estate of the deceased victim. If an offender has paid restitution to the court pursuant to this
370 chapter and the victim designated to receive restitution cannot be located with reasonable effort
371 for a period of one year from the date of the last payment or has died and no one from the
372 victim's estate claims the right to restitution for a period of three years from the date of the last

373 payment, the clerk shall deposit the amount of restitution unable to be paid into the victim
374 compensation fund maintained by the attorney general pursuant to section 4C of chapter 258C of
375 the General Laws, and it shall be used to assist other crime victims.

376 Section 16. In determining restitution, where it appears that more than one offender is
377 responsible for the criminal conduct that resulted in financial losses for a victim, the court shall
378 require each offender to be jointly and severally liable for the full amount of the financial losses
379 to the victim, unless the court determines otherwise. In cases where there are more than one
380 offender, the victim shall not recover financial losses in excess of the amount of financial losses
381 ordered by the court.

382 Section 17. An order of restitution awarded under this chapter shall not limit or impair
383 the right of a victim to file a further civil action against the offender or a third party or to recover
384 civil damages arising from the same facts or events as the criminal case against the offender.
385 However, any civil damages awarded to the victim from the offender shall be reduced by the
386 amount of restitution already paid to the victim for those financial losses that are specified in the
387 restitution order against the offender and are included in the civil damage award. The entry of a
388 restitution order shall toll the applicable statute of limitations for a civil action for damages
389 arising out of the same facts.

390 Section 18. A restitution order under this chapter shall not limit or impair the right of a
391 victim to apply for financial compensation from the victim compensation program, or to receive
392 any other governmental financial assistance and services needed as a result of the crime. The
393 issuance of a financial award by the victim compensation program shall in no way limit a court's
394 determination of a victim's financial losses or of the offender's restitution payment plan.

395 To the extent that financial compensation has been awarded, or may be awarded, to a
396 victim by the victim compensation program, the restitution order shall provide that payment first
397 be made to the victim to the extent of financial losses that are not covered by the victim
398 compensation program, exceed the program's statutory or regulatory limits or are additional
399 expenses not covered by the victim's original or supplemental applications for compensation.
400 The restitution order shall further provide that, once the victim has been reimbursed for the full
401 amount of the victim's financial losses, all subsequent payments of the offender shall be made
402 directly to the victim compensation program to the extent of compensation actually paid by the
403 victim compensation program, and shall be deposited to the victim compensation fund
404 maintained by the attorney general pursuant to section 4C of chapter 258C of the General Laws.

405 Section 19. In order to facilitate the process for determining restitution and providing
406 payments to victims who suffer financial losses, each victim who suffers financial losses shall be
407 required, prior to sentencing, to complete a separate financial impact report, to provide the
408 prosecutor with all bills, receipts and other information verifying the victim's financial losses,
409 and to provide a copy of any application for financial compensation made to the victim
410 compensation program. A victim's failure to provide such information to the prosecutor in a
411 timely manner may render the victim ineligible for restitution under this chapter.

412 If necessary, a prosecutor or victim-witness advocate shall assist the victim in preparing
413 the financial impact report. The victim shall provide the prosecutor, the court and the supervising
414 probation officer, if any, with a current address to facilitate payment to the victim and to provide
415 notice of future court events. Any victim who has applied for financial compensation from the
416 victim compensation program shall be required to provide notice to the victim compensation

417 program whenever the victim has received restitution from an offender for financial losses which
418 were the basis of a victim compensation program award.

419 Section 20. When the court orders an offender to pay restitution, the court shall, at the
420 disposition of the case against the offender, inquire whether any monies were posted by the
421 offender for the purposes of bail. Whenever cash bail has been posted by the offender as the
422 principal and is not forfeited or assigned, the court shall order that the bail be used to offset the
423 offender's restitution obligations to the victim.

424 Section 21. Pursuant to section 4 of chapter 258B of the General Laws, the victim and
425 witness assistance board shall hold periodic training sessions and provide written materials to
426 law enforcement and other criminal justice personnel on the subject of victim restitution and
427 victim rights under this chapter.

428 SECTION 2. Section 92 of chapter 276 of the General Laws is hereby repealed.