

SENATE No. 720

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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 the profits from crime.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Cynthia S. Creem

Benjamin B. Downing

*Berkshire, Hampshire, Franklin and
Hampden*

SENATE No. 720

By Ms. Creem, a petition (accompanied by bill, Senate, No. 720) of Cynthia S. Creem and Benjamin B. Downing for legislation relative to the profits from crime. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1660 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the 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 276 of the General Laws, as appearing in the 2008 Official Edition,
2 is hereby amended by adding, after section 87A, the following new section:

3 Section 87B.

4 (a) Upon the request of the Commonwealth, or upon the request of a victim
5 during a victim impact statement, the sentencing judge shall, in addition to any other sentence
6 imposed, impose on the defendant a term of probation for not less than the maximum sentence
7 for the crimes the defendant has pled guilty to or been convicted. The terms of probation shall
8 include, but not be limited to, a special condition that the defendant and his representatives or
9 assignees are prohibited from engaging in any activity generating any profit or financial benefit
10 relating to the publication or dissemination by any form of media of facts or circumstances

relating to his crime, or his experience with the criminal judicial system, and that any action taken by the defendant to avoid compliance with this condition of probation will be considered a violation of the defendant's probation conditions.

(b) Upon the request of the Commonwealth, or upon the request of a victim during a victim impact statement, the sentencing judge shall, in addition to any other sentence imposed, make an order for restitution to the victim for not less than the amount of any profit or financial benefit relating to the publication or dissemination by any form of media of facts or circumstances relating to his crime, or his experience with the criminal judicial system, that the defendant has received or been promised.

SECTION 2. Chapter 258C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding at the end thereof the following new section:

Section 14.

(a) Definitions. 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 of 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.

32 “Defendant”, a person who has been charged with or convicted of either a
33 violation of Massachusetts law punishable by imprisonment in state prison, a violation of federal
34 law committed in the Commonwealth that is punishable by death or imprisonment for a term of
35 more than one year, or any offense committed by a juvenile that would be punishable by
36 imprisonment in state prison if the juvenile were an adult.

37 “Division”, the division of victim compensation and assistance within the
38 department of the attorney general.

39 “Proceeds of the crime”, any assets, material objects, monies, and property
40 obtained through the use of unique knowledge or notoriety acquired by means and in
41 consequence of the commission of a crime from whatever source received by or owing to a
42 defendant or his representative, whether earned, accrued, or paid before or after the disposition
43 of criminal charges against the defendant.

44 “Victim”, any natural person who suffers direct or threatened physical,
45 emotional, or financial harm as the result of the commission of a crime, or the estate, legal
46 guardian, and other family members of such person if the person is a minor, incompetent or
47 deceased.

48 (b) Any person, firm, corporation, partnership, association or private legal
49 entity which contracts for, pays or agrees to pay a defendant or his representative consideration
50 which it knows or reasonably should know may constitute proceeds of a crime shall, within thirty
51 days of the agreement, submit to the division a copy of its contract or a summary of the terms of
52 any oral agreement.

(c) If the provisions of subsection (b) are violated, the division may petition the superior court for an order of enforcement. Such action shall be brought in the county in which the contracting party resides or has his principle place of business, or in Suffolk County if the contracting party does not reside or have a principal place of business in the commonwealth. Upon a finding that a contracting party has violated subsection (b) the court shall, in addition to any other relief, impose on the contracting party a civil penalty of the value of the contract or agreement.

(d) The division, upon receipt of a contract or other agreement to pay a defendant, shall take reasonable steps to notify all known victims of the crime about the existence of a contract or agreement. Notifications shall be made by certified mail to the victim's last known address. The division shall also provide legal notice in a newspaper of general circulation in the county in which the crime was committed to publicize the existence of proceeds related to the crime as it deems necessary.

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

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

SECTION 3. Section 2A of chapter 260 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting at the end thereof the following sentence:- Actions of tort against a criminal defendant by the victim as defined by section 1 of

75 chapter 258 D shall be tolled during any period of incarceration, parole or probation of the
76 defendant for the crime committed against the victim.