HOUSE DOCKET, NO. 1978 FILED ON: 1/19/2023

HOUSE . . . . . No. 1575

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:
Bradley H. Jones, Jr.	*20th Middlesex*	*1/19/2023*
Nicholas A. Boldyga	*3rd Hampden*	*1/26/2023*
F. Jay Barrows	*1st Bristol*	*1/26/2023*
Angelo L. D'Emilia	*8th Plymouth*	*1/29/2023*
Paul K. Frost	*7th Worcester*	*1/31/2023*
Kimberly N. Ferguson	*1st Worcester*	*1/31/2023*

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HOUSE . . . . . No. 1575

By Representative Jones of North Reading, a petition (accompanied by bill, House, No. 1575) 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. *1686* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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 2020 Official Edition, are hereby amended by inserting after chapter 258E the following new chapter:-

“CHAPTER 258F

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.

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

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

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

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

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

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

(d) If the provisions of subsections (b) or (c) 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 either subsections (b) or (c) 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. If the court finds such violation to have been knowing or willful, it shall impose a civil penalty up to three, but not less than two, times the value of the contract or agreement. To the extent monies or other consideration received by the division as a result of such order exceed the value of the contract or agreement, they shall be deposited into the victim compensation fund maintained by the treasurer in accordance with section 4(c). Any remaining monies or consideration shall be held by the division pending the determinations required by subsection (g).

(e) 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. Such notice shall be made by the division once every six months for one year from the date of receipt of the contract or agreement. The division may provide for such additional notice as it deems necessary. Failure to notify the victim shall not result in liability beyond the amount of any consideration in escrow at the time any judgment arising out of such liability is executed upon.

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

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

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

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

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

(k) Within 15 days of the date of mailing of the notice of the division's determination, a contracting party aggrieved by the division's determination may appeal to the attorney general, by serving on the attorney general a written notice to that effect. Thereupon the attorney general shall immediately cause the division or his designee to hold a public hearing on the division's

action appealed from. The division shall notify the contracting party by certified mail of the determination upon appeal within 10 days of the closing of the hearing. Such notice shall include information regarding the contracting party's right to a petition for judicial review of the determination of the division.

(l) Within 30 days of the date of mailing of the notice of the division's determination, the contracting party may file a complaint for judicial review in the superior court 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. Proceedings upon any such complaint shall be in accordance with chapter 30A. If no petition is filed within the time specified, the decision of the division shall be final.

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

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

(o) After all civil claims instituted by victims against the defendant have been satisfied, or if no claims have been filed after three years after the last mandatory published public notice provided for in subsection (e), one half of the value of the bond required in subsections (c) and (i) shall be returned to the contracting party. The remaining portion of the bond shall be

deposited into the victim compensation fund maintained by the department of the attorney general in accordance with section 4C of chapter 258C.

(p) 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.

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