HOUSE DOCKET, NO. 69 FILED ON: 1/6/2011

HOUSE . . . . . No. 457

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian

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:
Peter J. Koutoujian	*10th Middlesex*

HOUSE DOCKET, NO. 69 FILED ON: 1/6/2011

HOUSE . . . . . No. 457

By Mr. Koutoujian of Waltham, a petition (accompanied by bill, House, No. 457) of Peter J. Koutoujian relative to contracts for payments to defendants pertaining to crimes. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1495* 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:

SECTION 1. The General Laws, as appearing in the 2004 Official Edition, are hereby amended by inserting after chapter 258C the following new chapter as chapter 258D:-

CHAPTER 258D.

An Act Relative to Profits from Crime.

Section 1. 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 legal entity which contracts for, pays, or agrees to pay a defendant consideration which it knows or reasonably should know may

10 constitute proceeds related to a crime.

11 "Conviction", whether or not a sentence is imposed, a finding or verdict of guilty or
12 of not guilty by reason of insanity, a plea of guilty, or an adjudication of delinquency or of
13 youthful offender status as defined in

14 section 52 of chapter 119.

15 "Crime", any violation of Massachusetts law that is punishable by imprisonment in
16 state prison and any federal offense committed in the commonwealth that is punishable by death
17 or imprisonment for a term of more than 1 year. Crime shall also include any offense committed
18 by a juvenile which would be a crime as defined herein if the juvenile were an adult.

19 "Defendant", a person who is the subject of pending criminal charges or has been
20 convicted of a crime

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

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

28 the defendant.

29 "Victim", any natural person who suffers physical, emotional or financial harm, or the
30 threat of physical, emotional or financial harm as the result of the commission of a crime, and the
31 estate, legal guardian, and other

32 family members of such person.

33 Section 2. A contracting party shall, within 30 days of the agreement or 30 days
34 before a payment, submit to the division a copy of its contract or a summary of the terms of any
35 oral agreement or payment.

36 Section 3. Within 30 days from the receipt of a contract, agreement or notice of
37 payment to a defendant or his representative, or upon its own initiative if no contract or
38 agreement or notice is submitted, the division

39 shall determine whether the terms of the contract or agreement or payment include
40 proceeds related to a crime as defined in section 1, and, if so, whether such proceeds are
41 substantially related to a crime, rather than relating only tangentially to, or containing only
42 passing references to, a crime.

43 Section 4. Within 15 days of the determination required by section 3, the division
44 shall notify the contracting party of its determinations by

45 certified mail.

46 Section 5. A contracting party aggrieved by the division's determination under section
47 3 may request reconsideration of the determination by the program director. Such request for
48 reconsideration must be filed within 15 days of the date of mailing of the notice of the division's

49 determination. The division shall notify the contracting party by certified mail of the
50 determination upon reconsideration within 20 days of the

51 request for reconsideration. Such notice shall include information regarding the
52 contracting party's right to a petition for judicial review of the determination of the program
53 director in accordance with section 14 of chapter

54 30A.

55 Section 6. If the provisions of section 2 are violated, the division may petition the
56 superior court for an order of enforcement. Such action shall be brought in the county in which
57 the defendant resides, the county in which the crime was committed, or in Suffolk County. Upon
58 a finding that a contracting party has violated either sections 2 the court shall, in addition to any
59 other relief, order that an appropriate amount of money or

60 other consideration be paid to, or an appropriate bond be posted with, the division, or
61 impose on the contracting party a civil penalty of the value of the contract or agreement. If the
62 court finds such violation to have been

63 knowing or willful, it shall impose a civil penalty up to 3, but not less than 2, times the
64 value of the contract or agreement. To the extent monies

65 or other consideration received by the division as a result of such order exceed the value
66 of the contract or agreement, they shall be deposited into the

67 victim compensation fund maintained by the attorney general in accordance with section
68 4(c) of chapter 258C.

69 Section 7. The division, upon receipt of a contract or other agreement to pay or notice
70 of payment to a defendant, shall take reasonable steps to notify all known victims of the crime
71 about the existence of a contract, agreement or notice of payment. Notifications shall be made by
72 certified mail to the victim's last known address. The division shall also provide publication in a
73 newspaper of general circulation in the county in which the crime was committed to publicize
74 the existence of proceeds related to the crime. Such notice shall be made by the division once
75 every 6 months for 1 year from the date of receipt of the contract, agreement or notice of
76 payment.

77 The division may provide for such additional notice as it deems necessary. Failure to
78 notify a victim, as required herein, or failure on the part of the division to take any other action
79 required by this chapter, shall not result in the imposition of liability on the division or any
80 division employee.

81 Section 8. Notwithstanding any other provision of the General Laws with respect to
82 the timely commencement of an action, including, but not limited to, section 2A of chapter 260
83 of the General Laws and section 2 of chapter 229 of the General Laws, any victim shall also have
84 the right to bring a civil action to recover money damages from a defendant or his representative
85 within 3 years of the last mandatory publication provided for in section 7.

86 Section 9. In order to make the determinations required by section 3,or to determine
87 whether any provision of this chapter is being violated or to make any other determination
88 required by this chapter, the division shall be authorized to issue written civil investigative
89 demands which may be served by certified mail, and which shall be returned within 15 days
90 from the date of service. Whenever a person fails to comply with a civil investigative demand

91 served on him pursuant to this section, the division may petition the superior court for an order of
92 enforcement. Such action shall be brought in the county in which the defendant resides, the
93 county in which the crime was committed, or in Suffolk County.

94 Section 10. The division shall have the right to apply for any remedies available
95 under civil practice law and rules that are appropriate to furthering the purpose of this chapter.

96 Section 11. Any action taken by a defendant, or his representative, whether by way of
97 execution of a power of attorney, creation of corporate entities or otherwise, that results in
98 defeating the purpose of this chapter shall be null and void.

99 Section 12. The division shall have the authority to promulgate rules and regulations
100 pursuant to chapter 30A as may be necessary to carry out the provisions of this chapter.

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