

HOUSE No.

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 passage of the accompanying bill:

An Act relative to crime restitution.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Viriato Manuel deMacedo	1st Plymouth
Bradley H. Jones, Jr.	20th Middlesex
George N. Peterson, Jr.	9th Worcester
Elizabeth Poirier	14th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1524 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 are hereby amended by inserting after chapter 258D the
2 following new chapter:-

3 CHAPTER 258E

4 Section 1. The following words as used in this chapter shall have the following meanings, unless
5 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 was
8 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 extent
13 not payable by an insurer or any public benefit program, including the value of property taken,
14 destroyed, broken or otherwise harmed, lost wages and other crime-related financial losses,
15 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 losses to a
22 victim;

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

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

32 "Restitution order", a written judgment by the court which includes a finding of the victim's total
33 financial losses and a determination of the offender's restitution payment plan. A restitution order
34 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, terms
36 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 offender's
38 criminal conduct, other than a dependent of the offender whose financial losses result directly
39 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 justice
41 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 crime
44 authorized under chapter 258C of the General Laws;

45 "Wage assignment", an automatic routine transfer of a portion of an offender's wages by an
46 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 conduct
48 shall have the right to receive restitution from the offender for the losses the victim suffers. The
49 victim compensation program shall also be eligible for restitution for victim compensation
50 payments it makes to the victim or on the victim's behalf. The court shall order the offender to
51 pay restitution in every case in which a victim suffers financial losses and seeks restitution for

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

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

59 (a) medical costs, including durable medical equipment and prosthetic or auditory devices;
60 ophthalmic care, including eyeglasses; crime-related reconstructive surgery not covered by
61 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 injured,
65 would have performed, not for income but for the benefit of the victim or a member of the
66 victim's family;

67 (c) loss of wages or income or dependent care expenses of the victim due to injury arising from
68 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 such
71 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 independently of the
76 offender's ability to pay and shall specify the type and amount of each loss and the total amount
77 of each victim's financial losses. Once the court determines the total amounts of each victim's
78 financial losses, the court shall note that amount on the record as the first part of the restitution
79 order. The court's determination of the total amount of the victim's financial losses shall
80 automatically constitute a civil judgment against the offender for the full amount of such losses
81 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 make an
83 evaluation of the offender's ability to pay restitution for the victim's financial losses. It shall be
84 assumed that any offender, including a juvenile offender, has the ability to pay the full amount of
85 the victim's financial losses upon sentencing, unless the offender is able to establish that the

86 offender is presently unable to earn the total amount of such losses or does not have sufficient
87 resources to otherwise repay such losses.

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

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

94 (b) expected proceeds from civil litigation, insurance claims or contractual obligations of the
95 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, including
100 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 method of
105 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 court by
110 means of a financial impact report. Additional information may be offered during a restitution
111 hearing if financial losses have not been fully documented or are disputed by the offender. The
112 financial impact report shall be supported by copies of appropriate receipts and the victim's
113 signature, signed and sworn under the pains and penalties of perjury. If a victim knowingly
114 makes false statements of fact on the financial impact report, the victim may be penalized by
115 rendering the victim ineligible for restitution, in addition to other remedies provided by law.

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

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

131 (b) If the offender is placed on probation, the restitution payment plan must be incorporated into
132 the probation contract and restitution shall be a condition of probation. If the offender is not
133 incarcerated or placed on probation, the restitution payment plan must provide that the obligation
134 to pay restitution begins no later than 60 days after the restitution order is issued. If the court
135 orders the offender to return or repair stolen or damaged property, the court shall specify a date
136 by which the property must be returned or repaired. If not otherwise provided by the court under
137 this section, restitution shall be made by the offender immediately upon sentencing.

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

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

155 (e) Any monies that are owed by the commonwealth to an offender who is under a restitution
156 order, including but not limited to lottery winnings and tax refunds, shall be assigned first to

157 discharge the restitution order to the full extent of the unpaid total financial losses, regardless of
158 the payment schedule in the restitution payment plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

235 (c) Correctional officials shall transmit such payments to the victim on a monthly basis and,
236 where appropriate, to the victim compensation program, pursuant to section 14 of this chapter.
237 Correctional officials may not keep a restitution payment for longer than 30 days. Correctional
238 officials shall give receipts to the offender and shall keep records of all payments made by the
239 offender and transmit such records monthly to the restitution information tracking system in the
240 administrative office of the trial court pursuant to section 12B of this chapter. When the
241 restitution payment plan has been satisfied, the correctional officer shall provide notice to the
242 clerk, to the victim, and to the restitution information tracking system.

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

249 The parole officer assigned to supervise the offender shall:

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

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

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

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

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

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

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

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

277 If the parole board or supervising parole officer is considering any request of an offender owing
278 restitution to be paroled into another state, the parole board or supervising parole officer must,
279 prior to granting permission for such transfer, make arrangements with the parole department of
280 the other state that restitution must be a condition of parole. If the offender willfully fails to pay
281 the restitution once in another state, the offender may forfeit the right of transfer and may be
282 returned to the commonwealth for a parole review hearing based on failure to pay restitution.

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

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

302 Section 13. (a) If an offender is more than 30 days late on payment of restitution or an
303 installment thereof, the offender is delinquent in payment of the restitution order. Any offender
304 who is under parole or probation supervision and is delinquent with respect to restitution shall be
305 required to participate in a review hearing conducted by the supervising parole or probation
306 officer to discuss the status of the offender's restitution payment plan. If an offender is more than
307 60 days late on payment of restitution or an installment thereof, the offender is in default of the

308 order. The court, on motion of the victim, the victim compensation program, the prosecutor, the
309 supervising probation officer or supervising parole officer, may require the offender to show
310 cause why the default should not be treated as willful and may issue a summons or a warrant of
311 arrest for the offender's appearance. Unless the offender shows that the default was not an
312 intentional refusal to obey the order of the court or a failure to make a good faith effort to make
313 the payment, the court shall find that the default was willful and shall order that the offender be
314 committed until the restitution, or a specified portion of it, is paid, or unless other arrangements
315 can be made to secure payment. If it appears that the offender's default in the payment of
316 restitution is not willful, the court may make an order allowing the offender additional time for
317 payment or otherwise modifying the restitution payment plan.

318 (b) If the offender is in default and is employed, the court may order a mandatory wage
319 assignment. Recommendation for mandatory wage assignment may be initiated by the victim,
320 the victim compensation program, or the agency responsible for monitoring the offender's
321 payments or the prosecutor if the offender is not being supervised. Upon receipt of a request
322 seeking mandatory wage assignment or on its own initiative, the court shall issue a wage
323 assignment order directing the employer to withhold a specified amount each month. Once a
324 wage assignment order is entered the amount shall be ongoing until the full restitution obligation
325 is satisfied, or the wage assignment order is modified.

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

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

338 Section 14. A restitution payment plan shall not be modified for any reason without prior
339 approval of the court following a restitution hearing. If the court holds a restitution modification
340 hearing at the request of an offender, the offender's attorney or the offender's supervising
341 probation officer, the court must notify the victim and the prosecutor at least five business days
342 before the hearing. A victim has the right to be present at the hearing and to express in writing or
343 oral statement any objection to the proposed modification. Any restitution payment plan which is
344 terminated or reduced without giving prior notice to the victim of a hearing to review the order
345 and the opportunity for the victim to be present and heard on the issue shall be void and the
346 original order shall remain in effect until a new hearing is granted and the victim has the
347 opportunity to be present and heard. If any modifications to the restitution payment plan are
348 made, the court must make written findings on the record.

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

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

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

362 (d) In the event that the court has ordered restitution to be made to a victim and that victim dies
363 prior to the completion of said restitution, the remaining payments shall be made to the estate of
364 the deceased victim. If an offender has paid restitution to the court pursuant to this chapter and
365 the victim designated to receive restitution cannot be located with reasonable effort for a period
366 of one year from the date of the last payment or has died and no one from the victim's estate
367 claims the right to restitution for a period of three years from the date of the last payment, the
368 clerk shall deposit the amount of restitution unable to be paid into the victim compensation fund
369 maintained by the attorney general pursuant to section 4C of chapter 258C of the General Laws,
370 and it shall be used to assist other crime victims.

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

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

385 Section 18. A restitution order under this chapter shall not limit or impair the right of a victim
386 to apply for financial compensation from the victim compensation program, or to receive any
387 other governmental financial assistance and services needed as a result of the crime. The

388 issuance of a financial award by the victim compensation program shall in no way limit a court's
389 determination of a victim's financial losses or of the offender's restitution payment plan.

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

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

407 If necessary, a prosecutor or victim-witness advocate shall assist the victim in preparing the
408 financial impact report. The victim shall provide the prosecutor, the court and the supervising
409 probation officer, if any, with a current address to facilitate payment to the victim and to provide
410 notice of future court events. Any victim who has applied for financial compensation from the
411 victim compensation program shall be required to provide notice to the victim compensation
412 program whenever the victim has received restitution from an offender for financial losses which
413 were the basis of a victim compensation program award.

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

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

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

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