

**HOUSE . . . . . No.**

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**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 profits from crime.

PETITION OF:

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

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1514 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
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### 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:*

1 SECTION 1. The General Laws, as appearing in the 2006 Official Edition, are hereby amended  
2 by inserting after chapter 258D the following new chapter:-

3 CHAPTER 258E

4 Section 1. (a) The following words as used in this section shall have the following meanings,  
5 unless the context otherwise requires:

6 "Contracting party", any person, firm, corporation, partnership, association or other private  
7 legal entity which contracts for, pays, or agrees to pay a defendant consideration which it knows  
8 or reasonably should know may constitute proceeds from a crime.

9 "Conviction", a finding or verdict guilty or of not guilty by reason of insanity, a plea of guilty or  
10 a finding of sufficient facts to warrant a finding of guilty whether or not final judgment or  
11 sentence is imposed, or an adjudication of delinquency or of youthful offender status as defined  
12 in section 52 of chapter 119.

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

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

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

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

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

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

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

39 (d) If the provisions of subsections (b) or (c) are violated, the division may petition the superior  
40 court for an order of enforcement. Such action shall be brought in the county in which the  
41 contracting party resides or has his principle place of business, or in Suffolk county if the  
42 contracting party does not reside or have a principal place of business in the commonwealth.  
43 Upon a finding that a contracting party has violated either subsections (b) or (c) the court shall,  
44 in addition to any other relief, impose on the contracting party a civil penalty of the value of the  
45 contract or agreement. If the court finds such violation to have been knowing or willful, it shall  
46 impose a civil penalty up to three, but not less than two, times the value of the contract or  
47 agreement. To the extent monies or other consideration received by the division as a result of  
48 such order exceed the value of the contract or agreement, they shall be deposited into the victim  
49 compensation fund maintained by the treasurer in accordance with section 4(c). Any remaining  
50 monies or consideration shall be held by the division pending the determinations required by  
51 subsection (g).

52 (e) The division, upon receipt of a contract or other agreement to pay a defendant, shall take  
53 reasonable steps to notify all known victims of the crime about the existence of a contract or  
54 agreement. Notifications shall be made by certified mail to the victim's last known address. The  
55 division shall also provide legal notice in a newspaper of general circulation in the county in

56 which the crime was committed to publicize the existence of proceeds related to the crime. Such  
57 notice shall be made by the division once every six months for one year from the date of receipt  
58 of the contract or agreement. The division may provide for such additional notice as it deems  
59 necessary. Failure to notify victim shall not result in liability beyond the amount of any  
60 consideration in escrow at the time any judgment arising out of such liability is executed upon.

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

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

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

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

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

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

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

100 (l) Within 30 days of the date of mailing of the notice of the division's determination, the  
101 contracting party may file a complaint for judicial review in the superior court in the county in  
102 which the contracting party resides or has his principle place of business, or in Suffolk County if  
103 the contracting party does not reside or have a principal place of business in the commonwealth.  
104 Proceedings upon any such complaint shall be in accordance with chapter 30A. If no petition is  
105 filed within the time specified, the decision of the division shall be final.

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

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

112 (o) After all civil claims instituted by victims against the defendant have been satisfied, or if no  
113 claims have been filed after three years after the last mandatory published public notice provided  
114 for in subsection (e), one half of the value of the bond required in subsections (c) and (i) shall be  
115 returned to the contracting party. The remaining portion of the bond shall be deposited into the  
116 victim compensation fund maintained by the department of the attorney general in accordance  
117 with section 4C of chapter 258C.

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

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

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

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