

HOUSE No.

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 passage of the accompanying bill:

An Act relative to the profits from crime.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Peter J. Koutoujian	10th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 169 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

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. The General Laws, as appearing in the 2004 Official Edition, are hereby amended by
2 inserting after chapter 258C the following new chapter as chapter 258D:-
3

4 CHAPTER 258D.

5 An Act Relative to Profits from Crime.

6

7 Section 1. The following words as used in this section shall have the following meanings, unless the context
8 otherwise requires:
9

10 "Contracting party", any person, firm, corporation, partnership, association or other legal entity which contracts
11 for, pays, or agrees to pay a defendant consideration which it knows or reasonably should know may
12 constitute proceeds related to a crime.
13

14 "Conviction", whether or not a sentence is imposed, a finding or verdict of guilty or of not guilty by reason of
15 insanity, a plea of guilty, or an adjudication of delinquency or of youthful offender status as defined in
16 section 52 of chapter 119.
17

18 "Crime", any violation of Massachusetts law that is punishable by imprisonment in state prison and any federal
19 offense committed in the commonwealth that is punishable by death or imprisonment for a term of more than 1 year.
20 Crime shall also include any offense committed by a juvenile which would be a crime as defined herein if the
21 juvenile were an adult.
22

23 "Defendant", a person who is the subject of pending criminal charges or has been convicted of a crime
24

25 "Division", the division of victim compensation and assistance within the department of the attorney general.
26

27 "Proceeds related to a crime", any assets, material objects, monies, and property obtained through the use of
28 unique knowledge or notoriety acquired by means and in consequence of the commission of a crime from whatever

29 source received by or owing to a defendant or his representative, whether earned, accrued, or paid before or after the
30 disposition of criminal charges against
31 the defendant.
32

33 "Victim", any natural person who suffers physical, emotional or financial harm, or the threat of physical,
34 emotional or financial harm as the result of the commission of a crime, and the estate, legal guardian, and other
35 family members of such person.
36

37 **Section 2.** A contracting party shall, within 30 days of the agreement or 30 days before a payment, submit to the
38 division a copy of its contract or a summary of the terms of any oral agreement or payment.
39

40 **Section 3.** Within 30 days from the receipt of a contract, agreement or notice of payment to a defendant or his
41 representative, or upon its own initiative if no contract or agreement or notice is submitted, the division
42 shall determine whether the terms of the contract or agreement or payment include proceeds related to a crime as
43 defined in section 1, and, if so, whether such proceeds are substantially related to a crime, rather than relating only
44 tangentially to, or containing only passing references to, a crime.
45

46 **Section 4.** Within 15 days of the determination required by section 3, the division shall notify the contracting
47 party of its determinations by
48 certified mail.
49

50 **Section 5.** A contracting party aggrieved by the division's determination under section 3 may request
51 reconsideration of the determination by the program director. Such request for reconsideration must be filed within
52 15 days of the date of mailing of the notice of the division's determination. The division shall notify the contracting
53 party by certified mail of the determination upon reconsideration within 20 days of the
54 request for reconsideration. Such notice shall include information regarding the contracting party's right to a petition
55 for judicial review of the determination of the program director in accordance with section 14 of chapter
56 30A.
57

58 **Section 6.** If the provisions of section 2 are violated, the division may petition the superior court for an order of
59 enforcement. Such action shall be brought in the county in which the defendant resides, the county in which the
60 crime was committed, or in Suffolk County. Upon a finding that a contracting party has violated either sections 2 the
61 court shall, in addition to any other relief, order that an appropriate amount of money or
62 other consideration be paid to, or an appropriate bond be posted with, the division, or impose on the contracting
63 party a civil penalty of the value of the contract or agreement. If the court finds such violation to have been
64 knowing or willful, it shall impose a civil penalty up to 3, but not less than 2, times the value of the contract or
65 agreement. To the extent monies
66 or other consideration received by the division as a result of such order exceed the value of the contract or
67 agreement, they shall be deposited into the
68 victim compensation fund maintained by the attorney general in accordance with section 4(c) of chapter 258C.
69

70 **Section 7.** The division, upon receipt of a contract or other agreement to pay or notice of payment to a
71 defendant, shall take reasonable steps to notify all known victims of the crime about the existence of a contract,
72 agreement or notice of payment. Notifications shall be made by certified mail to the victim's last known address.
73 The division shall also provide publication in a newspaper of general circulation in the county in which the crime
74 was committed to publicize the existence of proceeds related to the crime. Such notice shall be made by the division
75 once every 6 months for 1 year from the date of receipt of the contract, agreement or notice of payment.
76 The division may provide for such additional notice as it deems necessary. Failure to notify a victim, as required
77 herein, or failure on the part of the division to take any other action required by this chapter, shall not result in the
78 imposition of liability on the division or any division employee.
79

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

85 **Section 9.** In order to make the determinations required by section 3, or to determine whether any provision of
86 this chapter is being violated or to make any other determination required by this chapter, the division shall be
87 authorized to issue written civil investigative demands which may be served by certified mail, and which shall be
88 returned within 15 days from the date of service. Whenever a person fails to comply with a civil investigative
89 demand served on him pursuant to this section, the division may petition the superior court for an order of
90 enforcement. Such action shall be brought in the county in which the defendant resides, the county in which the
91 crime was committed, or in Suffolk County.

92
93 **Section 10.** The division shall have the right to apply for any remedies available under civil practice law and
94 rules that are appropriate to furthering the purpose of this chapter.

95
96 **Section 11.** Any action taken by a defendant, or his representative, whether by way of execution of a power of
97 attorney, creation of corporate entities or otherwise, that results in defeating the purpose of this chapter shall be null
98 and void.

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

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