

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Creem

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:

Ms. Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00901 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. Chapter 276 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended by adding, after section 87A, the following new section:

3 Section 87B.

4 (a) Upon the request of the Commonwealth, or upon the request of a victim during a victim
5 impact statement, the sentencing judge shall, in addition to any other sentence imposed, impose
6 on the defendant a term of probation for not less than the maximum sentence for the crimes the
7 defendant has pled guilty to or been convicted. The terms of probation shall include, but not be
8 limited to, a special condition that the defendant and his representatives or assignees are
9 prohibited from engaging in any activity generating any profit or financial benefit relating to the
10 publication or dissemination by any form of media of facts or circumstances relating to his
11 crime, or his experience with the criminal judicial system, and that any action taken by the

12 defendant to avoid compliance with this condition of probation will be considered a violation of
13 the defendant's probation conditions.

14 (b) Upon the request of the Commonwealth, or upon the request of a victim during a victim
15 impact statement, the sentencing judge shall, in addition to any other sentence imposed, make an
16 order for restitution to the victim for not less than the amount of any profit or financial benefit
17 relating to the publication or dissemination by any form of media of facts or circumstances
18 relating to his crime, or his experience with the criminal judicial system, that the defendant has
19 received or been promised.

20 SECTION 2. Chapter 258C of the General Laws, as appearing in the 2006 Official Edition, is
21 hereby amended by adding at the end thereof the following new section:

22 Section 14.

23 (a) Definitions. The following words as used in this section shall have the following meanings,
24 unless the context otherwise requires:

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

28 "Conviction", a finding or verdict of guilty or of not guilty by reason of insanity, a plea of guilty
29 or a finding of sufficient facts to warrant a finding of guilty whether or not final judgment or
30 sentence is imposed, or an adjudication of delinquency or of youthful offender status as defined
31 in section 52 of Chapter 119.

32 “Defendant”, a person who has been charged with or convicted of either a violation of
33 Massachusetts law punishable by imprisonment in state prison, a violation of federal law
34 committed in the Commonwealth that is punishable by death or imprisonment for a term of more
35 than one year, or any offense committed by a juvenile that would be punishable by imprisonment
36 in state prison if the juvenile were an adult.

37 “Division”, the division of victim compensation and assistance within the department of the
38 attorney general.

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

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

47 (b) Any person, firm, corporation, partnership, association or private legal entity which contracts
48 for, pays or agrees to pay a defendant or his representative consideration which it knows or
49 reasonably should know may constitute proceeds of a crime shall, within thirty days of the
50 agreement, submit to the division a copy of its contract or a summary of the terms of any oral
51 agreement.

52 (c) If the provisions of subsection (b) are violated, the division may petition the superior court
53 for an order of enforcement. Such action shall be brought in the county in which the contracting
54 party resides or has his principle place of business, or in Suffolk County if the contracting party
55 does not reside or have a principal place of business in the commonwealth. Upon a finding that a
56 contracting party has violated subsection (b) the court shall, in addition to any other relief,
57 impose on the contracting party a civil penalty of the value of the contract or agreement.

58 (d) The division, upon receipt of a contract or other agreement to pay a defendant, shall take
59 reasonable steps to notify all known victims of the crime about the existence of a contract or
60 agreement. Notifications shall be made by certified mail to the victim's last known address. The
61 division shall also provide legal notice in a newspaper of general circulation in the county in
62 which the crime was committed to publicize the existence of proceeds related to the crime as it
63 deems necessary.

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

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

70 SECTION 3. Section 2A of chapter 260 of the General Laws, as appearing in the 2006 Official
71 Edition, is hereby amended by inserting at the end thereof the following sentence:- Actions of
72 tort against a criminal defendant by the victim as defined by section 1 of chapter 258 D shall be

- 73 tolled during any period of incarceration, parole or probation of the defendant for the crime
- 74 committed against the victim.