HOUSE DOCKET, NO. 3031 FILED ON: 1/21/2011

HOUSE . . . . . No. 2802

The Commonwealth of Massachusetts

PRESENTED BY:

Cheryl A. Coakley-Rivera

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:

An Act relative to profits from crime.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cheryl A. Coakley-Rivera	*10th Hampden*

HOUSE DOCKET, NO. 3031 FILED ON: 1/21/2011

HOUSE . . . . . No. 2802

By Ms. Coakley-Rivera of Springfield, a petition (accompanied by bill, House, No. 2802) of Cheryl A. Coakley-Rivera relative to payment or agreement to pay to a defendant consideration which it knows or reasonably should know may constitute proceeds related to a crime. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1326* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

SECTION 1. Chapter 258C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 13 the following new section:-

Section 14. (a) The following words as used in this section shall have the following meanings, unless the context otherwise requires:

(1) "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 constitute proceeds related to a crime.

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

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

15 (4) “Defendant”, a person who is the subject of pending criminal charges or has been
16 convicted of a crime.

17 (5) “Division”, the division of victim compensation and assistance within the
18 department of the attorney general.

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

24 (7) “Victim”, any natural person who suffers physical, emotional or financial harm,
25 or the threat of physical, emotional or financial harm as the result of the commission of a crime,
26 and the estate, legal guardian, and other family members of such person.

27 (b) A contracting party shall, within 30 days of the agreement or 30 days before a
28 payment, submit to the division a copy of its contract or a summary of the terms of any oral
29 agreement or payment.

30 (c) Within 30 days from the receipt of a contract, agreement or notice of payment to
31 a defendant or his representative, or upon its own initiative if no contract or agreement or notice
32 is submitted, the division shall determine whether the terms of the contract or agreement or
33 payment include proceeds related to a crime as defined in section 1, and, if so, whether such
34 proceeds are substantially related to a crime, rather than relating only tangentially to, or
35 containing only passing references to, a crime.

36 (d) Within 15 days of the determination required by section 3, the division shall
37 notify the contracting party of its determinations by certified mail.

38 (e) A contracting party aggrieved by the division's determination under section 3
39 may request reconsideration of the determination by the program director. Such request for
40 reconsideration must be filed within 15 days of the date of mailing of the notice of the division's
41 determination. The division shall notify the contracting party by certified mail of the
42 determination upon reconsideration within 20 days of the request for reconsideration. Such
43 notice shall include information regarding the contracting party's right to a petition for judicial
44 review of the determination of the program director in accordance with section 14 of chapter
45 30A.

46 (f) If the provisions of subsection (b) are violated, the division may petition the
47 superior court for an order of enforcement. Such action shall be brought in the county in which
48 the defendant resides, the county in which the crime was committed, or in Suffolk County. Upon
49 a finding that a contracting party has violated subsection (b), the court shall, in addition to any

50 other relief, order that an appropriate amount of money or other consideration be paid to, or an
51 appropriate bond be posted with, the division, or impose on the contracting party a civil penalty
52 of the value of the contract or agreement. If the court finds such violation to have been knowing
53 or willful, it shall impose a civil penalty up to 3, but not less than 2, times the value of the
54 contract or agreement. To the extent monies or other consideration received by the division as a
55 result of such order exceed the value of the contract or agreement, they shall be deposited into
56 the victim compensation fund maintained by the attorney general in accordance with section 4(c)
57 of chapter 258C.

58 (g) The division, upon receipt of a contract or other agreement to pay or notice of
59 payment to a defendant, shall take reasonable steps to notify all known victims of the crime
60 about the existence of a contract, agreement or notice of payment. Notifications shall be made by
61 certified mail to the victim's last known address. The division shall also provide publication in a
62 newspaper of general circulation in the county in which the crime was committed to publicize
63 the existence of proceeds related to the crime. Such notice shall be made by the division once
64 every 6 months for 1 year from the date of receipt of the contract, agreement or notice of
65 payment. The division may provide for such additional notice as it deems necessary. Failure to
66 notify a victim, as required herein, or failure on the part of the division to take any other action
67 required by this section, shall not result in the imposition of liability on the division or any
68 division employee.

69 (h) Notwithstanding any other provision of the General Laws with respect to the
70 timely commencement of an action, including, but not limited to, section 2A of chapter 260 of
71 the General Laws and section 2 of chapter 229 of the General Laws, any victim shall also have
72 the right to bring a civil action to recover money damages from a defendant or his representative
73 within 3 years of the last mandatory publication provided for in subsection (g).

74 (i) In order to make the determinations required by subsection (c) of this, or to
75 determine whether any provision of this section is being violated or to make any other
76 determination required by this section, the division shall be authorized to issue written civil
77 investigative demands which may be served by certified mail, and which shall be returned within
78 15 days from the date of service. Whenever a person fails to comply with a civil investigative
79 demand served on him pursuant to this section, the division may petition the superior court for an
80 order of enforcement. Such action shall be brought in the county in which the defendant resides,
81 the county in which the crime was committed, or in Suffolk County.

82 (j) The division shall have the right to apply for any remedies available under civil
83 practice law and rules that are appropriate to furthering the purpose of this section.

84 (k) Any action taken by a defendant, or his representative, whether by way of
85 execution of a power of attorney, creation of corporate entities or otherwise, that results in
86 defeating the purpose of this section shall be null and void.

87 (l) The division shall have the authority to promulgate rules and regulations pursuant
88 to chapter 30A as may be necessary to carry out the provisions of this section.

89 SECTION 2. Section 2A of chapter 260 of the General Laws is hereby amended by
90 inserting after the first sentence the following sentence: -

91 "Actions for torts against a criminal defendant by the victim as defined by subsection (a)
92 of section 14 of chapter 258C shall be tolled during any period of incarceration, parole or
93 probation of the defendant for the crime committed against the victim."