

SENATE No. 703

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. 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:

An Act relative to the profits from crime.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Cynthia S. Creem

First Middlesex and Norfolk

Benjamin B. Downing

Berkshire, Hampshire, Franklin and Hampden

SENATE No. 703

By Ms. Creem, a petition (accompanied by bill, Senate, No. 703) of Cynthia S. Creem and Benjamin B. Downing for legislation relative to the profits from crime. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 720 OF 2011-2012.]

The Commonwealth of Massachusetts

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 2008 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
5 victim impact statement, the sentencing judge shall, in addition to any other sentence imposed,
6 impose on the defendant a term of probation for not less than the maximum sentence for the
7 crimes the defendant has pled guilty to or been convicted. The terms of probation shall include,
8 but not be limited to, a special condition that the defendant and his representatives or assignees
9 are prohibited from engaging in any activity generating any profit or financial benefit relating to
10 the 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
15 victim impact statement, the sentencing judge shall, in addition to any other sentence imposed,
16 make an order for restitution to the victim for not less than the amount of any profit or financial
17 benefit relating to the publication or dissemination by any form of media of facts or

18 circumstances relating to his crime, or his experience with the criminal judicial system, that the
19 defendant has received or been promised.

20 SECTION 2. Chapter 258C of the General Laws, as appearing in the 2008 Official
21 Edition, is 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
24 meanings, unless the context otherwise requires:

25 “Contracting party”, any person, firm, corporation, partnership, association or other
26 private legal entity which contracts for, pays, or agrees to pay a defendant consideration which it
27 knows or 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
29 of guilty or a finding of sufficient facts to warrant a finding of guilty whether or not final
30 judgment or sentence is imposed, or an adjudication of delinquency or of youthful offender
31 status as defined 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
38 the attorney general.

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

44 “Victim”, any natural person who suffers direct or threatened physical, emotional, or
45 financial harm as the result of the commission of a crime, or the estate, legal guardian, and other
46 family 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
48 contracts for, pays or agrees to pay a defendant or his representative consideration which it
49 knows or reasonably should know may constitute proceeds of a crime shall, within thirty days of
50 the 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
53 court for an order of enforcement. Such action shall be brought in the county in which the
54 contracting party resides or has his principle place of business, or in Suffolk County if the
55 contracting party does not reside or have a principal place of business in the commonwealth.
56 Upon a finding that a contracting party has violated subsection (b) the court shall, in addition to
57 any other relief, impose on the contracting party a civil penalty of the value of the contract or
58 agreement.

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

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

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

71 SECTION 3. Section 2A of chapter 260 of the General Laws, as appearing in the 2008
72 Official Edition, is hereby amended by inserting at the end thereof the following sentence:-
73 Actions of tort against a criminal defendant by the victim as defined by section 1 of chapter 258
74 D shall be tolled during any period of incarceration, parole or probation of the defendant for the
75 crime committed against the victim.