

SENATE No. 00656

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen M. Brewer

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 prohibiting criminals to profit from their personal belongings..

PETITION OF:

NAME:

Stephen M. Brewer

DISTRICT/ADDRESS:

Worcester, Hampden, Hampshire, Franklin

SENATE No. 00656

By Mr. Brewer, petition (accompanied by bill, Senate, No. 656) of Brewer for legislation to prohibit criminals to profit from their personal belongings [Joint Committee on the Judiciary].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 1579 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act prohibiting criminals to profit from their personal belongings..

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 258C of the General Laws is hereby amended by adding at the end
2 thereof the following new section:

3 Section 14. (a)- For the purposes of this section, the following words shall have the
4 following meanings, unless the context clearly otherwise requires:

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

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

12 "Defendant", a person who has been convicted of either a violation of Massachusetts law
13 punishable by imprisonment in state prison, a violation of federal law committed in the
14 commonwealth that is punishable by death or imprisonment for a term of more than 1 year, or
15 any offense committed by a juvenile that would be punishable by imprisonment in state prison if
16 the juvenile were an adult.

17 "Division", the division of victim compensation and assistance within the department of
18 the attorney general.

19 "Proceeds of the crime", any assets, material objects, monies, and property obtained
20 through the to the lease, sale or other transfer of any assets, tangible items or other property, the
21 value of which is greater because of the defendant's commission of his crime or his experience
22 with the criminal judicial system or due to any notoriety attached to either from whatever source
23 received by or owing to a defendant or his representative, whether earned, accrued, or paid
24 before or after the disposition of criminal charges against the defendant.

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

28 (b)- Any person, firm, corporation, partnership, association or private legal entity which
29 contracts for, pays or agrees to pay a defendant or his representative consideration which it

30 knows or reasonably should know may constitute proceeds of a crime shall, within 30 days of the
31 agreement, submit to the division a copy of its contract or a summary of the terms of any oral
32 agreement.

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

40 (d)- The division, upon receipt of a contract or other agreement to pay a defendant, shall
41 take reasonable steps to notify all known victims of the crime about the existence of the contract
42 or agreement. Notification shall be made by certified mail to the victim's last known address. The
43 division shall also provide legal notice in a newspaper of general circulation in the county in
44 which the crime was committed to publicize the existence of proceeds related to the crime as it
45 deems necessary.

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

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

52 SECTION 2.- Section 2A of chapter 260 of the General Laws, as appearing in the 2004
53 Official Edition, is hereby amended by inserting after the first sentence the following sentence:-
54 An action in tort under section 14 of chapter 258C against a criminal defendant?by a victim shall
55 be tolled during any period of incarceration, parole or probation of a defendant for the crime
56 committed against the victim of such crime.

57 SECTION 3. Chapter 276 of the General Laws is hereby amended by inserting after
58 section 87A the following section:-

59 Section 87B.- (a) Upon the request of the commonwealth or a victim, in connection with a victim
60 impact statement, the sentencing judge shall, in addition to any other sentence imposed, impose
61 on the defendant a term of probation for not less than the maximum sentence for the crimes the
62 defendant has pled guilty to or been convicted. The terms of probation shall include, but not be
63 limited to, a special condition that the defendant and his representatives or assignees are
64 prohibited from earning a profit or otherwise benefiting financially relating to the lease, sale or
65 other transfer of any assets, tangible items or other property, the value of which is greater
66 because of the defendant's commission of his crime or his experience with the criminal judicial
67 system or due to any notoriety attached to either, and that any action taken by the defendant to
68 avoid compliance with this condition of probation shall be considered a violation of the
69 defendant's probation conditions.

70 (b) Upon the request of the commonwealth or a victim in connection with a victim impact
71 statement, the sentencing judge shall, in addition to any other sentence imposed, make an order
72 for restitution to a victim for not less than the amount of any profit or financial benefit relating to
73 the lease, sale or other transfer of any assets, tangible items or other property, the value of which

74 is greater because of the defendant's commission of his crime or his experience with the criminal
75 judicial system or due to any notoriety attached to either.