

SECOND REGULAR SESSION

SENATE BILL NO. 1038

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Read 1st time February 9, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6422S.011

AN ACT

To repeal section 650.058, RSMo, and to enact in lieu thereof one new section relating to wrongful conviction compensation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 650.058, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 650.058, to read as follows:

650.058. 1. Notwithstanding the sovereign immunity of the state, any
2 individual who was found guilty of a felony in a Missouri court and was later
3 determined to be actually innocent of such crime solely as a result of DNA
4 profiling analysis may be paid restitution. The individual [may] **shall** receive an
5 amount of [fifty dollars per day for each day of postconviction incarceration for
6 the crime for which the individual is determined to be actually innocent] **one**
7 **hundred thousand dollars for each twelve-month period of**
8 **incarceration for any individual who was sentenced to death and fifty**
9 **thousand dollars for each twelve-month period of incarceration for any**
10 **other individual.** The petition for the payment of said restitution shall be filed
11 with the sentencing court. For the purposes of this section, the term "actually
12 innocent" shall mean:

13 (1) The individual was convicted of a felony for which a final order of
14 release was entered by the court;

15 (2) All appeals of the order of release have been exhausted;

16 (3) The individual was not serving any term of a sentence for any other
17 crime concurrently with the sentence for which he or she is determined to be
18 actually innocent, unless such individual was serving another concurrent
19 sentence because his or her parole was revoked by a court or the board of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 probation and parole in connection with the crime for which the person has been
21 exonerated; and

22 (4) Testing ordered under section 547.035, or testing by the order of any
23 state or federal court, if such person was exonerated on or before August 28, 2004,
24 or testing ordered under section 650.055, if such person was or is exonerated after
25 August 28, 2004, demonstrates a person's innocence of the crime for which the
26 person is in custody.

27 Any individual who receives restitution under this section shall be prohibited
28 from seeking any civil redress from the state, its departments and agencies, or
29 any employee thereof, or any political subdivision or its employees. This section
30 shall not be construed as a waiver of sovereign immunity for any purposes other
31 than the restitution provided for herein. The department of corrections shall
32 determine the aggregate amount of restitution owed during a fiscal year. If
33 insufficient moneys are appropriated each fiscal year to pay restitution to such
34 persons, the department shall pay each individual who has received an order
35 awarding restitution a pro rata share of the amount appropriated. Provided
36 sufficient moneys are appropriated to the department, the amounts owed to such
37 individual shall be paid on June thirtieth of each subsequent fiscal year, until
38 such time as the restitution to the individual has been paid in full. [However, no
39 individual awarded restitution under this subsection shall receive more than
40 thirty-six thousand five hundred dollars during each fiscal year.] No interest on
41 unpaid restitution shall be awarded to the individual. No individual who has
42 been determined by the court to be actually innocent shall be responsible for the
43 costs of care under section 217.831.

44 2. If the results of the DNA testing confirm the person's guilt, then the
45 person filing for DNA testing under section 547.035, shall:

46 (1) Be liable for any reasonable costs incurred when conducting the DNA
47 test, including but not limited to the cost of the test. Such costs shall be
48 determined by the court and shall be included in the findings of fact and
49 conclusions of law made by the court; and

50 (2) Be sanctioned under the provisions of section 217.262.

51 3. A petition for payment of restitution under this section may only be
52 filed by the individual determined to be actually innocent or the individual's legal
53 guardian. No claim or petition for restitution under this section may be filed by
54 the individual's heirs or assigns. An individual's right to receive restitution
55 under this section is not assignable or otherwise transferrable. The state's

56 obligation to pay restitution under this section shall cease upon the individual's
57 death. Any beneficiary designation that purports to bequeath, assign, or
58 otherwise convey the right to receive such restitution shall be void and
59 unenforceable.

60 4. An individual who is determined to be actually innocent of a crime
61 under this chapter shall automatically be granted an order of expungement from
62 the court in which he or she pled guilty or was sentenced to expunge from all
63 official records all recordations of his or her arrest, plea, trial or conviction. Upon
64 granting of the order of expungement, the records and files maintained in any
65 administrative or court proceeding in an associate or circuit division of the court
66 shall be confidential and only available to the parties or by order of the court for
67 good cause shown. The effect of such order shall be to restore such person to the
68 status he or she occupied prior to such arrest, plea or conviction and as if such
69 event had never taken place. No person as to whom such order has been entered
70 shall be held thereafter under any provision of any law to be guilty of perjury or
71 otherwise giving a false statement by reason of his or her failure to recite or
72 acknowledge such arrest, plea, trial, conviction or expungement in response to
73 any inquiry made of him or her for any purpose whatsoever and no such inquiry
74 shall be made for information relating to an expungement under this section.

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