

FIRST REGULAR SESSION

SENATE BILL NO. 488

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIZZO.

Read 1st time February 28, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2376S.011

AN ACT

To repeal section 650.058, RSMo, and to enact in lieu thereof one new section relating to consideration to exonerated individuals.

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Section A. Section 650.058, RSMo, is repealed and one new section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 receive an amount
5 of fifty dollars per day for each day of postconviction incarceration for the crime
6 for which the individual is determined to be actually innocent. The petition for
7 the payment of said restitution shall be filed with the sentencing court. For the
8 purposes of this [section] **subsection**, the term "actually innocent" shall mean:

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

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

12 (3) The individual was not serving any term of a sentence for any other
13 crime concurrently with the sentence for which he or she is determined to be
14 actually innocent, unless such individual was serving another concurrent
15 sentence because his or her parole was revoked by a court or the board of
16 probation and parole in connection with the crime for which the person has been
17 exonerated. Regardless of whether any other basis may exist for the revocation
18 of the person's probation or parole at the time of conviction for the crime for
19 which the person is later determined to be actually innocent, when the court's or

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

20 the board of probation and parole's sole stated reason for the revocation in its
21 order is the conviction for the crime for which the person is later determined to
22 be actually innocent, such order shall, for purposes of this section only, be
23 conclusive evidence that their probation or parole was revoked in connection with
24 the crime for which the person has been exonerated; and

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

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

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

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

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

54 3. A petition for payment of restitution under this section may only be
55 filed by the individual determined to be actually innocent or the individual's legal

56 guardian. No claim or petition for restitution under this section may be filed by
57 the individual's heirs or assigns. An individual's right to receive restitution
58 under this section is not assignable or otherwise transferrable. The state's
59 obligation to pay restitution under this section shall cease upon the individual's
60 death. Any beneficiary designation that purports to bequeath, assign, or
61 otherwise convey the right to receive such restitution shall be void and
62 unenforceable.

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

78 **5. Notwithstanding the sovereign immunity of the state, any**
79 **individual who was found guilty of a felony in a Missouri court and was**
80 **later determined to be actually innocent of such crime solely as a result**
81 **of a court order or a jury verdict may be paid restitution. The**
82 **individual may receive an amount of fifty dollars per day for each day**
83 **of postconviction incarceration for the crime for which the individual**
84 **is determined to be actually innocent. The petition for the payment of**
85 **said restitution shall be filed with the sentencing court. For purposes**
86 **of this subsection, the term "actually innocent" shall mean:**

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

89 (2) **The individual was not serving any term of a sentence for any**
90 **other crime concurrently with the sentence for which he or she is**
91 **determined to be actually innocent, unless such individual was serving**

92 another concurrent sentence because his or her parole was revoked by
93 a court or the board of probation and parole in connection with the
94 crime for which the person has been exonerated. Regardless of
95 whether any other basis may exist for the revocation of the person's
96 probation or parole at the time of conviction for the crime for which
97 the person is later determined to be actually innocent, when the court's
98 or the board of probation and parole's sole stated reason for the
99 revocation in its order is the conviction for the crime for which the
100 person is later determined to be actually innocent, such order shall, for
101 purposes of this section only, be conclusive evidence that their
102 probation or parole was revoked in connection with the crime for
103 which the person has been exonerated; and

104 (3) The individual has been found innocent or has otherwise
105 been exonerated of the felony conviction in subdivision one of this
106 subsection by a court of competent jurisdiction.

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Bill

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