

SECOND REGULAR SESSION

# HOUSE BILL NO. 1569

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SHARP (36).

3430H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 650.058, RSMo, and to enact in lieu thereof two new sections relating to restitution for individuals who are actually innocent.

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

Section A. Section 650.058, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 490.800 and 650.058, to read as follows:

**490.800. 1. Notwithstanding the sovereign immunity of the state, any individual who was found guilty of a felony in a Missouri court and was later determined to be actually innocent of such offense as a result of any evidentiary method except DNA profiling analysis may be paid restitution. The individual may receive an amount of one hundred dollars per day for each day of postconviction incarceration for the offense for which the individual is determined to be actually innocent. The petition for the payment of such restitution shall be filed with the sentencing court. For the purposes of this section, the term "actually innocent" shall mean:**

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

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

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to be actually innocent, unless such individual was serving another concurrent sentence because his or her parole was revoked by a court or the parole board in connection with the offense for which the person has been exonerated.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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

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

24 (4) The evidentiary method demonstrates the person's innocence of the offense  
25 for which the person is in custody.

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27 Any individual who receives restitution under this section shall not also receive  
28 restitution under section 650.058 and shall be prohibited from seeking any civil redress  
29 from the state, its departments and agencies, or any employee thereof, or any political  
30 subdivision or its employees. This section shall not be construed as a waiver of  
31 sovereign immunity for any purposes other than the restitution provided for herein.  
32 The department of corrections shall determine the aggregate amount of restitution owed  
33 during a fiscal year. If insufficient moneys are appropriated each fiscal year to pay  
34 restitution to such persons, the department shall pay each individual who has received  
35 an order 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 such time  
38 as the restitution to the individual has been paid in full. No individual awarded  
39 restitution under this subsection shall receive more than thirty-six thousand five  
40 hundred dollars during each fiscal year. No interest on unpaid restitution shall be  
41 awarded to the individual. No individual who has been determined by the court to be  
42 actually innocent shall be responsible for the costs of care under section 217.831.

43 2. A petition for payment of restitution under this section may be filed only by  
44 the individual determined to be actually innocent or the individual's legal guardian. No  
45 claim or petition for restitution under this section may be filed by the individual's heirs  
46 or assigns. An individual's right to receive restitution under this section is not  
47 assignable or otherwise transferrable. The state's obligation to pay restitution under  
48 this section shall cease upon the individual's death. Any beneficiary designation that  
49 purports to bequeath, assign, or otherwise convey the right to receive such restitution  
50 shall be void and unenforceable.

51 3. An individual who is determined to be actually innocent of an offense under  
52 this section shall automatically be granted an order of expungement from the court in  
53 which he or she pled guilty or was sentenced to expunge from all official records all  
54 recordations of his or her arrest, plea, trial, or conviction. Upon the court's granting the

55 **order of expungement, the records and files maintained in any administrative or court**  
56 **proceeding in an associate or circuit division of the court shall be confidential and**  
57 **available only to the parties or by order of the court for good cause shown. The effect of**  
58 **such order shall be to restore such person to the status he or she occupied prior to such**  
59 **arrest, plea, or conviction and as if such event had never taken place. No person as to**  
60 **whom such order has been entered shall be held thereafter under any provision of any**  
61 **law to be guilty of perjury or otherwise giving a false statement by reason of his or her**  
62 **failure to recite or acknowledge such arrest, plea, trial, conviction, or expungement in**  
63 **response to any inquiry made of him or her for any purpose whatsoever, and no such**  
64 **inquiry shall be made for information relating to an expungement under this section.**

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

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

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

11 (3) The individual was not serving any term of a sentence for any other crime  
12 concurrently with the sentence for which he or she is determined to be actually innocent,  
13 unless such individual was serving another concurrent sentence because his or her parole was  
14 revoked by a court or the parole board in connection with the crime for which the person has  
15 been exonerated. Regardless of whether any other basis may exist for the revocation of the  
16 person's probation or parole at the time of conviction for the crime for which the person is  
17 later determined to be actually innocent, when the court's or the parole board's sole stated  
18 reason for the revocation in its order is the conviction for the crime for which the person is  
19 later determined to be actually innocent, such order shall, for purposes of this section only, be  
20 conclusive evidence that ~~their~~ **the person's** probation or parole was revoked in connection  
21 with the crime for which the person has been exonerated; and

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

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

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

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

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

48 3. A petition for payment of restitution under this section may ~~only~~ be filed **only** by  
49 the individual determined to be actually innocent or the individual's legal guardian. No claim  
50 or petition for restitution under this section may be filed by the individual's heirs or assigns.  
51 An individual's right to receive restitution under this section is not assignable or otherwise  
52 transferrable. The state's obligation to pay restitution under this section shall cease upon the  
53 individual's death. Any beneficiary designation that purports to bequeath, assign, or  
54 otherwise convey the right to receive such restitution shall be void and unenforceable.

55 4. An individual who is determined to be actually innocent of a crime under this  
56 chapter shall automatically be granted an order of expungement from the court in which he or  
57 she pled guilty or was sentenced to expunge from all official records all recordations of his or  
58 her arrest, plea, trial or conviction. Upon **the court's** granting of the order of expungement,  
59 the records and files maintained in any administrative or court proceeding in an associate or  
60 circuit division of the court shall be confidential and ~~only~~ available **only** to the parties or by  
61 order of the court for good cause shown. The effect of such order shall be to restore such  
62 person to the status he or she occupied prior to such arrest, plea or conviction and as if such  
63 event had never taken place. No person as to whom such order has been entered shall be held

64 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false  
65 statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial,  
66 conviction or expungement in response to any inquiry made of him or her for any purpose  
67 whatsoever, and no such inquiry shall be made for information relating to an expungement  
68 under this section.

69 **5. Any individual who receives restitution under section 490.800 shall not also**  
70 **receive restitution under this section.**

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