

SECOND REGULAR SESSION

# HOUSE BILL NO. 1783

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PERKINS.

4202H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 547.031, RSMo, and to enact in lieu thereof two new sections relating to information of innocence of a convicted person.

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

Section A. Section 547.031, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 547.031 and 547.034, to read as follows:

547.031. 1. A prosecuting or circuit attorney, in the jurisdiction in which ~~a person was convicted of an offense~~ **charges were filed**, may file a motion to vacate or set aside the judgment at any time if he or she has information that the convicted person may be innocent or may have been erroneously convicted. The circuit court in which the person was convicted shall have jurisdiction and authority to consider, hear, and decide the motion.

2. Upon the filing of a motion to vacate or set aside the judgment, the court shall order a hearing and shall issue findings of fact and conclusions of law on all issues presented. The attorney general shall be given notice of hearing of such a motion by the circuit clerk and shall be permitted to appear, question witnesses, and make arguments in a hearing of such a motion.

3. The court shall grant the motion of the prosecuting or circuit attorney to vacate or set aside the judgment where the court finds that there is clear and convincing evidence of actual innocence or constitutional error at the original trial or plea that undermines the confidence in the judgment. In considering the motion, the court shall take into consideration the evidence presented at the original trial or plea; the evidence presented at any direct appeal or post-conviction proceedings, including state or federal habeas actions; and the information and evidence presented at the hearing on the motion.

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           4. The prosecuting attorney or circuit attorney shall have the authority and right to file  
19 and maintain an appeal of the denial or disposal of such a motion. The attorney general may  
20 file a motion to intervene and, in addition to such motion, file a motion to dismiss the motion  
21 to vacate or to set aside the judgment in any appeal filed by the prosecuting or circuit attorney.

**547.034. 1. A person in the custody or supervision of the department of  
2 corrections may raise, and a court may decide, a freestanding claim of actual innocence  
3 in any postconviction action or proceeding challenging the validity of the judgment.**

**4           2. The court shall vacate or set aside the judgment if the court finds there is clear  
5 and convincing evidence that undermines the confidence of the judgment. In  
6 considering the claim, the court shall consider information and evidence not  
7 presented to the original trier of fact, the evidence presented at the original trial or  
8 plea, and any information or evidence presented at any direct appeal or postconviction  
9 proceeding, including state or federal habeas actions.**

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