

FIRST REGULAR SESSION

HOUSE BILL NO. 723

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PETERS.

1869H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 217.825, 217.827, 217.829, 217.831, 217.833, 217.835, 217.837, 217.839, 217.841, and 650.058, RSMo, and to enact in lieu thereof one new section relating to the Missouri incarceration reimbursement act.

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

Section A. Sections 217.825, 217.827, 217.829, 217.831, 217.833, 217.835, 217.837,
2 217.839, 217.841, and 650.058, RSMo, are repealed and one new section enacted in lieu
3 thereof, to be known as section 650.058, to read as follows:

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

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.

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 probation or parole was revoked in connection with the crime
21 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.

26

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 by the
49 individual determined to be actually innocent or the individual's legal guardian. No claim or
50 petition for restitution under this section may be filed by the individual's heirs or assigns. An
51 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 granting of the order of expungement, the records
59 and files maintained in any administrative or court proceeding in an associate or circuit
60 division of the court shall be confidential and only available to the parties or by order of the
61 court for good cause shown. The effect of such order shall be to restore such person to the
62 status he or she occupied prior to such arrest, plea or conviction and as if such event had never
63 taken place. No person as to whom such order has been entered shall be held thereafter under
64 any provision of any law to be guilty of perjury or otherwise giving a false statement by
65 reason of his or her failure to recite or acknowledge such arrest, plea, trial, conviction or
66 expungement in response to any inquiry made of him or her for any purpose whatsoever and
67 no such inquiry shall be made for information relating to an expungement under this section.

2 ~~[217.825. Sections 217.825 to 217.841 shall be known and may be
cited as the "Missouri Incarceration Reimbursement Act".]~~

2 ~~[217.827. As used in sections 217.825 to 217.841, the following terms
shall mean:~~

3 ~~(1) (a) "Assets", property, tangible or intangible, real or personal,
4 belonging to or due an offender or a former offender, including income or
5 payments to such offender from Social Security, workers' compensation,
6 veterans' compensation, pension benefits, previously earned salary or wages,
7 bonuses, annuities, retirement benefits, or from any other source whatsoever,
8 including any of the following:~~

9 ~~a. Money or other tangible assets received by the offender as a result
10 of a settlement of a claim against the state, any agency thereof, or any claim
11 against an employee or independent contractor arising from and in the scope of
12 said employee's or contractor's official duties on behalf of the state or any
13 agency thereof;~~

14 ~~b. A money judgment received by the offender from the state as a
15 result of a civil action in which the state, an agency thereof or any state
16 employee or independent contractor where such judgment arose from a claim
17 arising from the conduct of official duties on behalf of the state by said
18 employee or subcontractor or for any agency of the state;~~

19 ~~e. A current stream of income from any source whatsoever, including a
20 salary, wages, disability, retirement, pension, insurance or annuity benefits or
21 similar payments;~~

22 ~~(b) "Assets" shall not include:~~

23 ~~a. The homestead of the offender up to fifty thousand dollars in value;~~

24 b. ~~Money saved by the offender from wages and bonuses up to two~~
 25 ~~thousand five hundred dollars paid the offender while he or she was confined~~
 26 ~~to a state correctional center;~~
 27 (2) ~~"Cost of care", the cost to the department of corrections for~~
 28 ~~providing transportation, room, board, clothing, security, medical, and other~~
 29 ~~normal living expenses of offenders under the jurisdiction of the department,~~
 30 ~~as determined by the director of the department;~~
 31 (3) ~~"Department", the department of corrections of this state;~~
 32 (4) ~~"Director", the director of the department;~~
 33 (5) ~~"Offender", any person who is under the jurisdiction of the~~
 34 ~~department and is confined in any state correctional center or is under the~~
 35 ~~continuing jurisdiction of the department;~~
 36 (6) ~~"State correctional center", a facility or institution which houses an~~
 37 ~~offender population under the jurisdiction of the department. State~~
 38 ~~correctional center includes a correctional camp, community correction~~
 39 ~~center, honor center, or state prison.]~~

2 ~~[217.829. 1. The department shall develop a form which shall be used~~
 3 ~~by the department to obtain information from all offenders regarding their~~
 4 ~~assets.~~
 5 ~~2. The form shall be submitted to each offender as of the date the form~~
 6 ~~is developed and to every offender who thereafter is sentenced to~~
 7 ~~imprisonment under the jurisdiction of the department. The form may be~~
 8 ~~resubmitted to an offender by the department for purposes of obtaining current~~
 9 ~~information regarding assets of the offender.~~
 10 ~~3. Every offender shall complete the form or provide for completion of~~
 11 ~~the form and the offender shall swear or affirm under oath that to the best of~~
 12 ~~his or her knowledge the information provided is complete and accurate. Any~~
 13 ~~person who shall knowingly provide false information on said form to state~~
 14 ~~officials or employees shall be guilty of the crime of making a false affidavit~~
 15 ~~as provided by section 575.050.~~
 16 ~~4. Failure by an offender to fully, adequately and correctly complete~~
 17 ~~the form may be considered by the parole board for purposes of a parole~~
 18 ~~determination, and in determining an offender's parole release date or~~
 19 ~~eligibility and shall constitute sufficient grounds for denial of parole.~~
 20 ~~5. Prior to release of any offender from imprisonment, and again prior~~
 21 ~~to release from the jurisdiction of the department, the department shall request~~
 22 ~~from the offender an assignment of ten percent of any wages, salary, benefits~~
 23 ~~or payments from any source. Such an assignment shall be valid for the longer~~
 24 ~~period of five years from the date of its execution, or five years from the date~~
 25 ~~that the offender is released from the jurisdiction of the department or any of~~
 26 ~~its divisions or agencies. The assignment shall secure payment of the total cost~~
 27 ~~of care of the offender executing the assignment. The restrictions on the~~
 28 ~~maximum amount of earnings subject to garnishment contained in section~~
 29 ~~525.030 shall apply to earnings subject to assignments executed pursuant to~~
 this subsection.]

2 ~~[217.831. 1. The director shall forward to the attorney general a report~~
3 ~~on each offender containing a completed form pursuant to the provisions of~~
4 ~~section 217.829 together with all other information available on the assets of~~
5 ~~the offender and an estimate of the total cost of care for that offender.~~

6 ~~2. The attorney general may investigate or cause to be investigated all~~
7 ~~reports furnished pursuant to the provisions of subsection 1 of this section.~~
8 ~~This investigation may include seeking information from any source that may~~
9 ~~have relevant information concerning an offender's assets. The director shall~~
10 ~~provide all information possessed by the department and its divisions and~~
11 ~~agencies, upon request of the attorney general, in order to assist the attorney~~
12 ~~general in completing his duties pursuant to sections 217.825 to 217.841.~~

13 ~~3. If the attorney general upon completing the investigation under~~
14 ~~subsection 2 of this section has good cause to believe that an offender or~~
15 ~~former offender has sufficient assets to recover not less than ten percent of the~~
16 ~~estimated cost of care of the offender or ten percent of the estimated cost of~~
17 ~~care of the offender for two years, whichever is less, or has a stream of income~~
18 ~~sufficient to pay such amounts within a five-year period, the attorney general~~
19 ~~may seek to secure reimbursement for the expense of the state of Missouri for~~
20 ~~the cost of care of such offender or former offender.~~

21 ~~4. The attorney general, or any prosecuting attorney on behalf of the~~
22 ~~attorney general, shall not bring an action pursuant to this section against an~~
23 ~~offender or former offender after the expiration of five years after his release~~
~~from the jurisdiction of the department.]~~

2 ~~[217.833. 1. Not more than ninety percent of the value of the assets of~~
3 ~~the offender may be used for purposes of securing costs and reimbursement~~
4 ~~pursuant to the provisions of sections 217.825 to 217.841.~~

5 ~~2. The amount of reimbursement sought from an offender shall not be~~
6 ~~in excess of the per capita cost for care for maintaining offenders in the state~~
7 ~~correctional center in which the offender is housed for the period or periods~~
~~such offender is an offender in a state correctional center.]~~

2 ~~[217.835. 1. The circuit court shall have exclusive jurisdiction over all~~
3 ~~proceedings seeking reimbursement from offenders pursuant to the provisions~~
4 ~~of sections 217.825 to 217.841. The attorney general may file a complaint in~~
5 ~~the circuit court for the county or city from which a prisoner was sentenced or~~
6 ~~in the circuit court in the county or city of the office of the director of the~~
7 ~~department, against any person under the jurisdiction of the department stating~~
8 ~~that the person is or has been an offender in a state correctional center, that~~
9 ~~there is good cause to believe that the person has assets, and praying that the~~
10 ~~assets be used to reimburse the state for the expenses incurred or to be~~
11 ~~incurred, or both, by the state for the cost of care of the person as an offender.~~

12 ~~2. Upon the filing of the complaint under subsection 1 of this section,~~
13 ~~the court shall issue an order to show cause why the prayer of the complainant~~
14 ~~should not be granted. The complaint and order shall be served upon the~~
15 ~~person personally, or, if the person is confined in a state correctional center, by~~
~~registered mail addressed to the person in care of the chief administrator of the~~

16 ~~state correctional center where the person is housed, at least thirty days before~~
 17 ~~the date of hearing on the complaint and order.~~

18 ~~3. At the time of the hearing on the complaint and order, if it appears~~
 19 ~~that the person has any assets which ought to be subjected to the claim of the~~
 20 ~~state pursuant to the provisions of sections 217.825 to 217.841, the court shall~~
 21 ~~issue an order requiring any person, corporation, or other legal entity~~
 22 ~~possessed or having custody of such assets, to appropriate and apply such~~
 23 ~~assets or a portion thereof to satisfy such claim.~~

24 ~~4. At the hearing on the complaint and order and before entering any~~
 25 ~~order on behalf of the state against the defendant, the court shall take into~~
 26 ~~consideration any legal obligation of the defendant to support a spouse, minor~~
 27 ~~children, or other dependents and any moral obligation to support dependents~~
 28 ~~to whom the defendant is providing or has in fact provided support.~~

29 ~~5. If the person, corporation, or other legal entity shall neglect or~~
 30 ~~refuse to comply with an order issued pursuant to subsection 3 of this section,~~
 31 ~~the court shall order the person, corporation, or other legal entity to appear~~
 32 ~~before the court at such time as the court may direct and to show cause why the~~
 33 ~~person, corporation, or other legal entity should not be considered in contempt~~
 34 ~~of court.~~

35 ~~6. If, in the opinion of the court, the assets of the prisoner are sufficient~~
 36 ~~to pay the cost of the proceedings undertaken pursuant to the provisions of~~
 37 ~~sections 217.825 to 217.841, the prisoner shall be liable for those costs upon~~
 38 ~~order of the court.]~~

2 ~~[217.837. 1. Except as provided in subsection 3 of this section, the~~
 3 ~~attorney general may use any remedy, interim order, or enforcement procedure~~
 4 ~~allowed by law or court rule including an ex parte restraining order to restrain~~
 5 ~~the prisoner or any other person or legal entity in possession or having custody~~
 6 ~~of the estate of the prisoner from disposing of certain property in avoidance of~~
 7 ~~an order issued pursuant to the provisions of section 217.835.~~

8 ~~2. To protect and maintain assets pending resolution of proceedings~~
 9 ~~initiated pursuant to the provisions of section 217.835, the court, upon request,~~
 10 ~~may appoint a receiver.~~

11 ~~3. The attorney general or a prosecuting attorney shall not enforce any~~
 12 ~~judgment obtained pursuant to the provisions of section 217.835 by means of~~
 13 ~~execution against the homestead of the prisoner.~~

14 ~~4. The state's right to recover the cost of incarceration pursuant to an~~
 15 ~~order issued pursuant to the provisions of section 217.835 shall have priority~~
 16 ~~over all other liens, debts, or other incumbrances against real property or any~~
 17 ~~other assets which are part of a prisoner's estate.]~~

2 ~~[217.839. 1. The attorney general of this state shall enforce the~~
 3 ~~provisions of sections 217.825 to 217.841, except that the attorney general~~
 4 ~~may request the prosecuting attorney of the county or city in which the~~
 5 ~~offender was sentenced or the prosecuting attorney of the county or city in~~
 6 ~~which any asset of an offender is located to make an investigation or assist in~~
 7 ~~legal proceedings undertaken pursuant to the provisions of sections 217.825 to~~
 8 ~~217.841.~~

8 2. ~~The sentencing judge, the sheriff, the county or city, the chief~~
9 ~~administrator of the state correctional center, and the state treasurer shall~~
10 ~~furnish to the attorney general or prosecuting attorney all information and~~
11 ~~assistance possible to enable the attorney general or prosecuting attorney to~~
12 ~~secure reimbursement for the state pursuant to the provisions of sections~~
13 ~~217.825 to 217.841.~~

14 3. ~~Notwithstanding the provisions of any other law protecting the~~
15 ~~confidentiality of any information possessed by the state, its officials and~~
16 ~~agencies, the secretary of state, the director of the department of revenue, the~~
17 ~~director of the department of social services, the director of the department of~~
18 ~~corrections, the director of the department of labor and industrial relations, the~~
19 ~~director of the department of public safety, and the commissioner of~~
20 ~~administration, and each division or agency within or assigned to such~~
21 ~~departments, shall provide the attorney general or prosecuting attorney with all~~
22 ~~information requested pursuant to the provisions of sections 217.825 to~~
23 ~~217.841.~~

24 4. ~~Any county or municipal official having custody of records of the~~
25 ~~estate or real property of any offender or former offender shall surrender said~~
26 ~~records or certified copies thereof without fee to the attorney general or~~
27 ~~prosecuting attorney who request such records pursuant to the provisions of~~
28 ~~sections 217.825 to 217.841.]~~

2 ~~[217.841. 1. The costs of any investigations shall be paid from the~~
3 ~~reimbursements secured pursuant to the provisions of sections 217.825 to~~
4 ~~217.841. The investigative costs shall be presumed to be twenty percent of the~~
5 ~~reimbursements recovered, unless the attorney general shall demonstrate to the~~
6 ~~court otherwise. All reimbursements collected shall be paid to the "Inmate~~
7 ~~Incarceration Reimbursement Act Revolving Fund", which is hereby~~
8 ~~established in the state treasury. Moneys in the inmate incarceration~~
9 ~~reimbursement act revolving fund shall be appropriated to the attorney general~~
10 ~~in order to defray the costs of the attorney general in connection with his duties~~
11 ~~provided by sections 217.825 to 217.841; and all remaining balances shall be~~
12 ~~appropriated to the department for purposes of construction and operation of~~
13 ~~state correctional facilities. The provisions of section 33.080 notwithstanding,~~
14 ~~moneys in the inmate incarceration reimbursement act revolving fund shall not~~
15 ~~lapse, be transferred or appropriated to or placed to the credit of the general~~
16 ~~revenue fund or any other fund of the state.~~

17 ~~2. The state treasurer may determine the amount due the state for the~~
18 ~~cost of care of an offender and render statements thereof and such sworn~~
~~statements shall be considered prima facie evidence of the amount due.]~~

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