

# SENATE BILL NO. 617

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WEBBER.

2366S.011

KRISTINA MARTIN, Secretary

## 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 reimbursement by offenders for care provided by the department of corrections.

*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A. Sections 217.825, 217.827, 217.829, 217.831, 217.833, 217.835, 217.837, 217.839, 217.841, and 650.058, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 650.058, to read as follows: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 individual who was found guilty of a felony in a Missouri court and was later determined to be actually innocent of such crime solely as a result of 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 crime for which the individual is determined to be actually innocent. The petition for the payment of said 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;

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

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20 sentence because his or her parole was revoked by a court or  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31 was revoked in connection with the crime for which the  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

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

39 Any individual who receives restitution under this section  
40 shall be prohibited from seeking any civil redress from the  
41 state, its departments and agencies, or any employee  
42 thereof, or any political subdivision or its employees.  
43 This section shall not be construed as a waiver of sovereign  
44 immunity for any purposes other than the restitution  
45 provided for herein. The department of corrections shall  
46 determine the aggregate amount of restitution owed during a

47 fiscal year. If insufficient moneys are appropriated each  
48 fiscal year to pay restitution to such persons, the  
49 department shall pay each individual who has received an  
50 order awarding restitution a pro rata share of the amount  
51 appropriated. Provided sufficient moneys are appropriated  
52 to the department, the amounts owed to such individual shall  
53 be paid on June thirtieth of each subsequent fiscal year,  
54 until such time as the restitution to the individual has  
55 been paid in full. However, no individual awarded  
56 restitution under this subsection shall receive more than  
57 thirty-six thousand five hundred dollars during each fiscal  
58 year. No interest on unpaid restitution shall be awarded to  
59 the individual. [No individual who has been determined by  
60 the court to be actually innocent shall be responsible for  
61 the costs of care under section 217.831.]

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

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

70 (2) Be sanctioned under the provisions of section  
71 217.262.

72 3. A petition for payment of restitution under this  
73 section may only be filed by the individual determined to be  
74 actually innocent or the individual's legal guardian. No  
75 claim or petition for restitution under this section may be  
76 filed by the individual's heirs or assigns. An individual's  
77 right to receive restitution under this section is not  
78 assignable or otherwise transferrable. The state's

79 obligation to pay restitution under this section shall cease  
80 upon the individual's death. Any beneficiary designation  
81 that purports to bequeath, assign, or otherwise convey the  
82 right to receive such restitution shall be void and  
83 unenforceable.

84 4. An individual who is determined to be actually  
85 innocent of a crime under this chapter shall automatically  
86 be granted an order of expungement from the court in which  
87 he or she pled guilty or was sentenced to expunge from all  
88 official records all recordations of his or her arrest,  
89 plea, trial or conviction. Upon granting of the order of  
90 expungement, the records and files maintained in any  
91 administrative or court proceeding in an associate or  
92 circuit division of the court shall be confidential and only  
93 available to the parties or by order of the court for good  
94 cause shown. The effect of such order shall be to restore  
95 such person to the status he or she occupied prior to such  
96 arrest, plea or conviction and as if such event had never  
97 taken place. No person as to whom such order has been  
98 entered shall be held thereafter under any provision of any  
99 law to be guilty of perjury or otherwise giving a false  
100 statement by reason of his or her failure to recite or  
101 acknowledge such arrest, plea, trial, conviction or  
102 expungement in response to any inquiry made of him or her  
103 for any purpose whatsoever and no such inquiry shall be made  
104 for information relating to an expungement under this  
105 section.

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

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

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

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

19 b. A money judgment received by the  
20 offender from the state as a result of a civil  
21 action in which the state, an agency thereof or  
22 any state employee or independent contractor  
23 where such judgment arose from a claim arising  
24 from the conduct of official duties on behalf of  
25 the state by said employee or subcontractor or  
26 for any agency of the state;

27 c. A current stream of income from any  
28 source whatsoever, including a salary, wages,  
29 disability, retirement, pension, insurance or  
30 annuity benefits or similar payments;

31 (b) "Assets" shall not include:

32 a. The homestead of the offender up to  
33 fifty thousand dollars in value;

34 b. Money saved by the offender from wages  
35 and bonuses up to two thousand five hundred  
36 dollars paid the offender while he or she was  
37 confined to a state correctional center;

38 (2) "Cost of care", the cost to the  
39 department of corrections for providing  
40 transportation, room, board, clothing, security,  
41 medical, and other normal living expenses of  
42 offenders under the jurisdiction of the  
43 department, as determined by the director of the  
44 department;

45 (3) "Department", the department of  
46 corrections of this state;

- 47 (4) "Director", the director of the  
48 department;
- 49 (5) "Offender", any person who is under  
50 the jurisdiction of the department and is  
51 confined in any state correctional center or is  
52 under the continuing jurisdiction of the  
53 department;
- 54 (6) "State correctional center", a  
55 facility or institution which houses an offender  
56 population under the jurisdiction of the  
57 department. State correctional center includes  
58 a correctional camp, community correction  
59 center, honor center, or state prison.]

[217.829. 1. The department shall develop  
2 a form which shall be used by the department to  
3 obtain information from all offenders regarding  
4 their assets.

5 2. The form shall be submitted to each  
6 offender as of the date the form is developed  
7 and to every offender who thereafter is  
8 sentenced to imprisonment under the jurisdiction  
9 of the department. The form may be resubmitted  
10 to an offender by the department for purposes of  
11 obtaining current information regarding assets  
12 of the offender.

13 3. Every offender shall complete the form  
14 or provide for completion of the form and the  
15 offender shall swear or affirm under oath that  
16 to the best of his or her knowledge the  
17 information provided is complete and accurate.  
18 Any person who shall knowingly provide false  
19 information on said form to state officials or  
20 employees shall be guilty of the crime of making  
21 a false affidavit as provided by section 575.050.

22 4. Failure by an offender to fully,  
23 adequately and correctly complete the form may  
24 be considered by the parole board for purposes  
25 of a parole determination, and in determining an  
26 offender's parole release date or eligibility  
27 and shall constitute sufficient grounds for  
28 denial of parole.

29 5. Prior to release of any offender from  
30 imprisonment, and again prior to release from

31 the jurisdiction of the department, the  
32 department shall request from the offender an  
33 assignment of ten percent of any wages, salary,  
34 benefits or payments from any source. Such an  
35 assignment shall be valid for the longer period  
36 of five years from the date of its execution, or  
37 five years from the date that the offender is  
38 released from the jurisdiction of the department  
39 or any of its divisions or agencies. The  
40 assignment shall secure payment of the total  
41 cost of care of the offender executing the  
42 assignment. The restrictions on the maximum  
43 amount of earnings subject to garnishment  
44 contained in section 525.030 shall apply to  
45 earnings subject to assignments executed  
46 pursuant to this subsection.]

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

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

21 3. If the attorney general upon completing  
22 the investigation under subsection 2 of this  
23 section has good cause to believe that an  
24 offender or former offender has sufficient  
25 assets to recover not less than ten percent of  
26 the estimated cost of care of the offender or  
27 ten percent of the estimated cost of care of the  
offender for two years, whichever is less, or

28 has a stream of income sufficient to pay such  
29 amounts within a five-year period, the attorney  
30 general may seek to secure reimbursement for the  
31 expense of the state of Missouri for the cost of  
32 care of such offender or former offender.

33 4. The attorney general, or any  
34 prosecuting attorney on behalf of the attorney  
35 general, shall not bring an action pursuant to  
36 this section against an offender or former  
37 offender after the expiration of five years  
38 after his release from the jurisdiction of the  
39 department.]

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

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

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

18 2. Upon the filing of the complaint under  
19 subsection 1 of this section, the court shall



20 issue an order to show cause why the prayer of  
21 the complainant should not be granted. The  
22 complaint and order shall be served upon the  
23 person personally, or, if the person is confined  
24 in a state correctional center, by registered  
25 mail addressed to the person in care of the  
26 chief administrator of the state correctional  
27 center where the person is housed, at least  
28 thirty days before the date of hearing on the  
29 complaint and order.

30 3. At the time of the hearing on the  
31 complaint and order, if it appears that the  
32 person has any assets which ought to be  
33 subjected to the claim of the state pursuant to  
34 the provisions of sections 217.825 to 217.841,  
35 the court shall issue an order requiring any  
36 person, corporation, or other legal entity  
37 possessed or having custody of such assets, to  
38 appropriate and apply such assets or a portion  
39 thereof to satisfy such claim.

40 4. At the hearing on the complaint and  
41 order and before entering any order on behalf of  
42 the state against the defendant, the court shall  
43 take into consideration any legal obligation of  
44 the defendant to support a spouse, minor  
45 children, or other dependents and any moral  
46 obligation to support dependents to whom the  
47 defendant is providing or has in fact provided  
48 support.

49 5. If the person, corporation, or other  
50 legal entity shall neglect or refuse to comply  
51 with an order issued pursuant to subsection 3 of  
52 this section, the court shall order the person,  
53 corporation, or other legal entity to appear  
54 before the court at such time as the court may  
55 direct and to show cause why the person,  
56 corporation, or other legal entity should not be  
57 considered in contempt of court.

58 6. If, in the opinion of the court, the  
59 assets of the prisoner are sufficient to pay the  
60 cost of the proceedings undertaken pursuant to  
61 the provisions of sections 217.825 to 217.841,  
62 the prisoner shall be liable for those costs  
63 upon order of the court.]

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

12 2. To protect and maintain assets pending  
13 resolution of proceedings initiated pursuant to  
14 the provisions of section 217.835, the court,  
15 upon request, may appoint a receiver.

16 3. The attorney general or a prosecuting  
17 attorney shall not enforce any judgment obtained  
18 pursuant to the provisions of section 217.835 by  
19 means of execution against the homestead of the  
20 prisoner.

21 4. The state's right to recover the cost  
22 of incarceration pursuant to an order issued  
23 pursuant to the provisions of section 217.835  
24 shall have priority over all other liens, debts,  
25 or other incumbrances against real property or  
26 any other assets which are part of a prisoner's  
estate.]

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

12 2. The sentencing judge, the sheriff, the  
13 county or city, the chief administrator of the  
14 state correctional center, and the state  
15 treasurer shall furnish to the attorney general  
16 or prosecuting attorney all information and  
17 assistance possible to enable the attorney  
general or prosecuting attorney to secure

18 reimbursement for the state pursuant to the  
19 provisions of sections 217.825 to 217.841.

20 3. Notwithstanding the provisions of any  
21 other law protecting the confidentiality of any  
22 information possessed by the state, its  
23 officials and agencies, the secretary of state,  
24 the director of the department of revenue, the  
25 director of the department of social services,  
26 the director of the department of corrections,  
27 the director of the department of labor and  
28 industrial relations, the director of the  
29 department of public safety, and the  
30 commissioner of administration, and each  
31 division or agency within or assigned to such  
32 departments, shall provide the attorney general  
33 or prosecuting attorney with all information  
34 requested pursuant to the provisions of sections  
35 217.825 to 217.841.

36 4. Any county or municipal official having  
37 custody of records of the estate or real  
38 property of any offender or former offender  
39 shall surrender said records or certified copies  
40 thereof without fee to the attorney general or  
41 prosecuting attorney who request such records  
42 pursuant to the provisions of sections 217.825  
43 to 217.841.]

[217.841. 1. The costs of any  
2 investigations shall be paid from the  
3 reimbursements secured pursuant to the  
4 provisions of sections 217.825 to 217.841. The  
5 investigative costs shall be presumed to be  
6 twenty percent of the reimbursements recovered,  
7 unless the attorney general shall demonstrate to  
8 the court otherwise. All reimbursements  
9 collected shall be paid to the "Inmate  
10 Incarceration Reimbursement Act Revolving Fund",  
11 which is hereby established in the state  
12 treasury. Moneys in the inmate incarceration  
13 reimbursement act revolving fund shall be  
14 appropriated to the attorney general in order to  
15 defray the costs of the attorney general in  
16 connection with his duties provided by sections  
17 217.825 to 217.841; and all remaining balances

18 shall be appropriated to the department for  
19 purposes of construction and operation of state  
20 correctional facilities. The provisions of  
21 section 33.080 notwithstanding, moneys in the  
22 inmate incarceration reimbursement act revolving  
23 fund shall not lapse, be transferred or  
24 appropriated to or placed to the credit of the  
25 general revenue fund or any other fund of the  
26 state.

27 2. The state treasurer may determine the  
28 amount due the state for the cost of care of an  
29 offender and render statements thereof and such  
30 sworn statements shall be considered prima facie  
31 evidence of the amount due.]

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