

SENATE BILL NO. 253

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

0395S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 650.058, RSMo, and to enact in lieu thereof one new section relating to civil actions awarding damages for wrongful convictions.

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Section A. Section 650.058, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 506.400,
3 to read as follows:

506.400. 1. As used in this section, "claimant" means
2 a person convicted and subsequently imprisoned for one or
3 more offenses that such person did not commit.

4 2. Notwithstanding any other provision of law to the
5 contrary, a claimant may bring an action in the circuit
6 court seeking damages from the state under this section.

7 3. (1) The claimant shall establish the following by
8 a preponderance of evidence:

9 (a) The claimant was convicted of a felony offense and
10 subsequently imprisoned;

11 (b) The claimant's judgment of conviction was reversed
12 or vacated and either the charges were dismissed or on
13 retrial the claimant was found to be not guilty;

14 (c) The claimant did not commit the offense or
15 offenses for which the claimant was convicted and was not an
16 accessory or accomplice to the acts that were the basis of
17 the conviction; and

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

18 (d) The claimant did not commit or suborn perjury,
19 fabricate evidence, or by the claimant's own conduct cause
20 or bring about the conviction. Neither a confession or
21 admission later found to be false nor a guilty plea shall
22 constitute committing or suborning perjury, fabricating
23 evidence, or causing or bringing about the conviction under
24 this subsection.

25 (2) The court, in exercising its discretion as
26 permitted by law regarding the weight and admissibility of
27 evidence submitted under this section, may, in the interest
28 of justice, give due consideration to difficulties of proof
29 caused by the passage of time, the death or unavailability
30 of witnesses, the destruction of evidence, or other factors
31 not caused by such persons or those acting on their behalf.

32 4. (1) The suit, accompanied by a statement of the
33 facts concerning the claim for damages, verified in the
34 manner provided for the verification of complaints in the
35 rules of civil procedure, shall be brought by the claimant
36 within a period of two years after the:

37 (a) Dismissal of the criminal charges against the
38 claimant or finding of not guilty on retrial; or

39 (b) Grant of a pardon to the claimant.

40 (2) A claimant convicted, imprisoned, and released
41 from custody before August 28, 2023, shall commence an
42 action under this section no later than August 28, 2024.

43 (3) All pleadings shall be captioned "In the matter of
44 the wrongful conviction of".

45 (4) Any claim filed under this section shall be served
46 on the attorney general.

47 (5) The suit for a claim filed under this section
48 shall be tried by the court, and no request for a jury trial
49 shall be made.

50 5. (1) Damages awarded under this section shall be:

51 (a) Except as provided in subdivision (2) of this
52 subsection, one hundred seventy-nine dollars per day for
53 each day of imprisonment but no more than sixty-five
54 thousand dollars per fiscal year; and

55 (b) Not less than twenty-five thousand dollars for
56 each additional year served on parole or post-release
57 supervision or each additional year the claimant was
58 required to register as a sexual offender under sections
59 589.400 to 589.425, whichever is greater.

60 (2) A claimant shall not receive compensation for any
61 period of incarceration during which the claimant was
62 concurrently serving a sentence for a conviction of another
63 crime for which such claimant was lawfully incarcerated.

64 (3) (a) Except as provided in paragraph (b) of this
65 subdivision, the court shall order that the award be paid as
66 a combination of an initial payment not to exceed one
67 hundred thousand dollars or twenty-five percent of the
68 award, whichever is greater, and the remainder as an annuity
69 not to exceed eighty thousand dollars per year. The
70 claimant shall designate a beneficiary or beneficiaries for
71 the annuity by filing such designation with the court.

72 (b) The court may order that the award be paid in one
73 lump sum if the court finds that it is in the best interests
74 of the claimant.

75 (4) In addition to the damages awarded under
76 subdivision (1) of this subsection, the claimant:

77 (a) Shall be entitled to receive reasonable attorney's
78 fees and costs incurred in the action brought under this
79 section not to exceed a total of twenty-five thousand
80 dollars, unless a greater reasonable total is authorized by
81 the court upon a finding of good cause shown; and

82 (b) May also be awarded other nonmonetary relief as
83 sought in the complaint including, but not limited to,
84 counseling, housing assistance, and personal financial
85 literacy assistance, as appropriate.

86 6. (1) If, at the time of the judgment entry referred
87 to in subsection 5 of this section, the claimant has won a
88 monetary award against the state or any political
89 subdivision thereof in a civil action related to the same
90 subject, or has entered into a settlement agreement with the
91 state or any political subdivision thereof related to the
92 same subject, the amount of the award in the action or the
93 amount received in the settlement agreement, less any sums
94 paid to attorneys or for costs in litigating the other civil
95 action or obtaining the settlement agreement, shall be
96 deducted from the sum of moneys to which the claimant is
97 entitled under this section. The court shall include in the
98 judgment entry an award to the state of any amount deducted
99 under this subsection.

100 (2) If subdivision (1) of this subsection does not
101 apply and if, after the time of the judgment entry referred
102 to in subsection 5 of this section, the claimant wins a
103 monetary award against the state or any political
104 subdivision thereof in a civil action related to the same
105 subject, or enters into a settlement agreement with the
106 state or any political subdivision thereof related to the
107 same subject, the claimant shall reimburse the state for the
108 sum of moneys paid under the judgment entry referred to in
109 subsection 5 of this section, less any sums paid to
110 attorneys or for costs in litigating the other civil action
111 or obtaining the settlement agreement. A reimbursement
112 required under this subsection shall not exceed the amount
113 of the monetary award the claimant wins for damages in the

114 other civil action or the amount received in the settlement
115 agreement.

116 7. If the court finds that the claimant is entitled to
117 a judgment, it shall enter a certificate of innocence
118 finding that the claimant was innocent of all offenses for
119 which the claimant was mistakenly convicted. The clerk of
120 the court shall send a certified copy of the certificate of
121 innocence and the judgment entry to the attorney general for
122 payment under section 105.711.

123 8. Upon entry of a certificate of innocence, the
124 claimant shall automatically be granted an order of
125 expungement from the court for the felony offense in which
126 he or she pled guilty or was sentenced to and such offense
127 shall be expunged from all official records or recordations
128 of his or her arrest, plea, trial, or conviction. Upon
129 granting of the order of expungement, the records and files
130 maintained in any administrative or court proceeding in an
131 associate or circuit division of the court shall be
132 confidential and only available to the parties or by order
133 of the court for good cause shown. The effect of such order
134 shall be to restore such person to the status he or she
135 occupied prior to such arrest, plea, or conviction and as if
136 such event had never taken place. No person as to whom such
137 order has been entered shall be held thereafter under any
138 provision of any law to be guilty of perjury or otherwise
139 giving a false statement by reason of his or her failure to
140 recite or acknowledge such arrest, plea, trial, conviction,
141 or expungement in response to any inquiry made of him or her
142 for any purpose whatsoever, and no such inquiry shall be
143 made for information relating to an expungement under this
144 subsection.

145 9. Upon entry of a certificate of innocence, the court
146 shall order the expungement and destruction of the
147 associated biological samples authorized by and given to the
148 Missouri state highway patrol. The order shall state the
149 information required to be stated in a petition to expunge
150 and destroy the samples and profile record and shall direct
151 the Missouri state highway patrol to expunge and destroy
152 such samples and profile record. The clerk of the court
153 shall send a certified copy of the order to the Missouri
154 state highway patrol, which shall carry out the order and
155 provide confirmation of such action to the court. Nothing
156 in this subsection shall require the Missouri state highway
157 patrol to expunge and destroy any sample or profile record
158 associated with the claimant that was related to any offense
159 other than the offense for which the court has entered a
160 certificate of innocence.

161 10. The decision to grant or deny a certificate of
162 innocence shall not have a res judicata effect on any other
163 proceedings.

164 11. Nothing in this section shall preclude the
165 department of corrections from providing reentry services to
166 a claimant that are provided to other persons including, but
167 not limited to, financial assistance, housing assistance,
168 mentoring, and counseling. Such services shall be provided
169 while an action under this section is pending and after any
170 judgment is entered, as appropriate for such claimant.

171 12. A decision under this section may be appealed to
172 the supreme court.

2 [650.058. 1. Notwithstanding the
3 sovereign immunity of the state, any individual
4 who was found guilty of a felony in a Missouri
5 court and was later determined to be actually
6 innocent of such crime solely as a result of DNA
profiling analysis may be paid restitution. The

7 individual may receive an amount of one hundred
8 dollars per day for each day of postconviction
9 incarceration for the crime for which the
10 individual is determined to be actually
11 innocent. The petition for the payment of said
12 restitution shall be filed with the sentencing
13 court. For the purposes of this section, the
14 term "actually innocent" shall mean:

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

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

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

41 (4) Testing ordered under section 547.035,
42 or testing by the order of any state or federal
43 court, if such person was exonerated on or
44 before August 28, 2004, or testing ordered under
45 section 650.055, if such person was or is
46 exonerated after August 28, 2004, demonstrates a
47 person's innocence of the crime for which the
48 person is in custody.

49 Any individual who receives restitution under
50 this section shall be prohibited from seeking
51 any civil redress from the state, its
52 departments and agencies, or any employee
53 thereof, or any political subdivision or its
54 employees. This section shall not be construed
55 as a waiver of sovereign immunity for any
56 purposes other than the restitution provided for
57 herein. The department of corrections shall
58 determine the aggregate amount of restitution
59 owed during a fiscal year. If insufficient
60 moneys are appropriated each fiscal year to pay
61 restitution to such persons, the department
62 shall pay each individual who has received an
63 order awarding restitution a pro rata share of

64 the amount appropriated. Provided sufficient
65 moneys are appropriated to the department, the
66 amounts owed to such individual shall be paid on
67 June thirtieth of each subsequent fiscal year,
68 until such time as the restitution to the
69 individual has been paid in full. However, no
70 individual awarded restitution under this
71 subsection shall receive more than thirty-six
72 thousand five hundred dollars during each fiscal
73 year. No interest on unpaid restitution shall
74 be awarded to the individual. No individual who
75 has been determined by the court to be actually
76 innocent shall be responsible for the costs of
77 care under section 217.831.

78 2. If the results of the DNA testing
79 confirm the person's guilt, then the person
80 filing for DNA testing under section 547.035,
81 shall:

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

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

90 3. A petition for payment of restitution
91 under this section may only be filed by the
92 individual determined to be actually innocent or
93 the individual's legal guardian. No claim or
94 petition for restitution under this section may
95 be filed by the individual's heirs or assigns.
96 An individual's right to receive restitution
97 under this section is not assignable or
98 otherwise transferrable. The state's obligation
99 to pay restitution under this section shall
100 cease upon the individual's death. Any
101 beneficiary designation that purports to
102 bequeath, assign, or otherwise convey the right
103 to receive such restitution shall be void and
104 unenforceable.

105 4. An individual who is determined to be
106 actually innocent of a crime under this chapter
107 shall automatically be granted an order of
108 expungement from the court in which he or she
109 pled guilty or was sentenced to expunge from all
110 official records all recordations of his or her
111 arrest, plea, trial or conviction. Upon
112 granting of the order of expungement, the
113 records and files maintained in any
114 administrative or court proceeding in an
115 associate or circuit division of the court shall
116 be confidential and only available to the
117 parties or by order of the court for good cause
118 shown. The effect of such order shall be to
119 restore such person to the status he or she
120 occupied prior to such arrest, plea or

121 conviction and as if such event had never taken
122 place. No person as to whom such order has been
123 entered shall be held thereafter under any
124 provision of any law to be guilty of perjury or
125 otherwise giving a false statement by reason of
126 his or her failure to recite or acknowledge such
127 arrest, plea, trial, conviction or expungement
128 in response to any inquiry made of him or her
129 for any purpose whatsoever and no such inquiry
130 shall be made for information relating to an
131 expungement under this section.]

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