

SENATE BILL NO. 886

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

3605S.01I

KRISTINA MARTIN, Secretary

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.

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Section A. Section 650.058, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 490.800 and 650.058, to read as follows: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

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

19 sentence for which he or she is determined to be actually
20 innocent, unless such individual was serving another
21 concurrent sentence because his or her parole was revoked by
22 a court or the parole board in connection with the offense
23 for which the person has been exonerated. Regardless of
24 whether any other basis may exist for the revocation of the
25 person's probation or parole at the time of conviction for
26 the offense for which the person is later determined to be
27 actually innocent, when the court's or the parole board's
28 sole stated reason for the revocation in its order is the
29 conviction for the offense for which the person is later
30 determined to be actually innocent, such order shall, for
31 purposes of this section only, be conclusive evidence that
32 the person's probation or parole was revoked in connection
33 with the offense for which the person has been exonerated;
34 and

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

37 Any individual who receives restitution under this section
38 shall not also receive restitution under section 650.058 for
39 the same offense the person was determined to be actually
40 innocent and shall be prohibited from seeking any civil
41 redress from the state, its departments and agencies, or any
42 employee thereof, or any political subdivision or its
43 employees. This section shall not be construed as a waiver
44 of sovereign immunity for any purposes other than the
45 restitution provided for herein. The department of
46 corrections shall determine the aggregate amount of
47 restitution owed during a fiscal year. If insufficient
48 moneys are appropriated each fiscal year to pay restitution
49 to such persons, the department shall pay each individual

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

62 2. A petition for payment of restitution under this
63 section may be filed only by the individual determined to be
64 actually innocent or the individual's legal guardian. No
65 claim or petition for restitution under this section may be
66 filed by the individual's heirs or assigns. An individual's
67 right to receive restitution under this section is not
68 assignable or otherwise transferrable. The state's
69 obligation to pay restitution under this section shall cease
70 upon the individual's death. Any beneficiary designation
71 that purports to bequeath, assign, or otherwise convey the
72 right to receive such restitution shall be void and
73 unenforceable.

74 3. An individual who is determined to be actually
75 innocent of an offense under this section shall
76 automatically be granted an order of expungement from the
77 court in which he or she pled guilty or was sentenced to
78 expunge from all official records all recordations of his or
79 her arrest, plea, trial, or conviction. Upon the court's
80 granting the order of expungement, the records and files
81 maintained in any administrative or court proceeding in an

82 associate or circuit division of the court shall be
83 confidential and available only to the parties or by order
84 of the court for good cause shown. The effect of such order
85 shall be to restore such person to the status he or she
86 occupied prior to such arrest, plea, or conviction as if
87 such event had never taken place. No person as to whom such
88 order has been entered shall be held thereafter under any
89 provision of any law to be guilty of perjury or otherwise
90 giving a false statement by reason of his or her failure to
91 recite or acknowledge such arrest, plea, trial, conviction,
92 or expungement in response to any inquiry made of him or her
93 for any purpose whatsoever, and no such inquiry shall be
94 made for information relating to an expungement under this
95 section.

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

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

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

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] the person's**
31 probation or parole was revoked in connection with the crime
32 for which the 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 **only** by the individual
74 determined to be actually innocent or the individual's legal
75 guardian. No claim or petition for restitution under this
76 section may be filed by the individual's heirs or assigns.
77 An individual's right to receive restitution under this
78 section is not assignable or otherwise transferrable. The
79 state's obligation to pay restitution under this section
80 shall cease upon the individual's death. Any beneficiary
81 designation that purports to bequeath, assign, or otherwise

82 convey the right to receive such restitution shall be void
83 and 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 **the court's** granting of the
90 order of expungement, the records and files maintained in
91 any administrative or court proceeding in an associate or
92 circuit division of the court shall be confidential and
93 [only] available **only** to the parties or by order of the
94 court for good cause shown. The effect of such order shall
95 be to restore such person to the status he or she occupied
96 prior to such arrest, plea or conviction and as if such
97 event had never taken place. No person as to whom such
98 order has been entered shall be held thereafter under any
99 provision of any law to be guilty of perjury or otherwise
100 giving a false statement by reason of his or her failure to
101 recite or acknowledge such arrest, plea, trial, conviction
102 or expungement in response to any inquiry made of him or her
103 for any purpose whatsoever, and no such inquiry shall be
104 made for information relating to an expungement under this
105 section.

106 5. **Any individual who receives restitution under**
107 **section 490.800 shall not also receive restitution under**
108 **this section for the same offense the individual was**
109 **determined to be found actually innocent.**

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