

# SENATE BILL NO. 1056

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

4484S.01I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal section 650.058, RSMo, and to enact in lieu thereof one new section relating to compensation for wrongful conviction.

*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Section A. Section 650.058, RSMo, is repealed and one new  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, 2022, 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 in  
156 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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