

# SENATE BILL NO. 446

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

0269S.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Section A. Section 650.058, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 490.800 and 650.058, to read as follows: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21 concurrent sentence because his or her parole was revoked by  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32 the person's probation or parole was revoked in connection  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.**

✓