

March 2020

## Can You Ever Break the Chain: A Conceptual Framework for Factual Innocence Under Minnesota's Imprisonment and Exoneration Remedies Act

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### Recommended Citation

Zachary J. Freese, *Can You Ever Break the Chain: A Conceptual Framework for Factual Innocence Under Minnesota's Imprisonment and Exoneration Remedies Act*, 16 U. ST. THOMAS L.J. 423 (2020).  
Available at: <https://ir.stthomas.edu/ustlj/vol16/iss3/6>

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NOTE

**CAN YOU EVER BREAK THE CHAIN:  
A CONCEPTUAL FRAMEWORK FOR  
FACTUAL INNOCENCE UNDER  
MINNESOTA’S IMPRISONMENT AND  
EXONERATION REMEDIES ACT**

ZACHARY J. FREESE\*

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I. INTRODUCTION

In 2014, the Minnesota Legislature enacted the Imprisonment and Exoneration Remedies Act (“IERA”), which provides compensation to individuals who have served a sentence for a crime they did not commit.<sup>1</sup>

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\* JD, 2020, University of St. Thomas School of Law. I would like to thank fellow University of St. Thomas School of Law students Charles R. Rooney, William Florek, and Joe Strand for their keen eyes and sharp minds.

1. Minnesota’s Imprisonment and Exoneration Remedies Act incorporates a tort-based system for compensating those who served a sentence for a crime they did not commit. In order to be compensated, however, a person must be declared eligible under Minn. Stat. § 590.11 (2019). If eligible, an exoneree is entitled to reimbursement for “all restitution, assessments, fees, court

Section 590.11 of IERA serves a gatekeeping function that ensures exoneration compensation is awarded only to those petitioners who satisfy all three of its requirements.<sup>2</sup> The threshold issue among those requirements is whether a person is “exonerated” under section 590.11, subdivision 1.<sup>3</sup> Importantly, petitioners do not prove their innocence at this stage, rather the district court determines whether the petitioner is “exonerated” under IERA. Petitioners are considered “exonerated” when their conviction was overturned “on grounds consistent with innocence.”<sup>4</sup> If the district court determines the petitioner’s conviction was not overturned “on grounds consistent with innocence,” the petitioner is not eligible for IERA relief because they are not “exonerated.” When the petitioner is not “exonerated” under subdivision 1, no further inquiry is required under section 590.11

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costs, and other sums paid by the claimant as required by the judgment and sentence” and is entitled to monetary damages of \$50,000 to \$100,000 for each year of incarceration, and \$25,000 to \$50,000 for each year served on supervised release or as a registered predatory offender. MINN. STAT. § 611.365, subd. 2(a) (2019). Further, in determining damages the compensation panel “shall consider”: (1) any economic damages, including reasonable attorneys’ fees, lost wages, and reimbursement for the exoneree’s criminal defense; (2) reimbursement for medical or dental expenses incurred or expected as a result of incarceration; (3) noneconomic damages for personal physical and nonphysical injuries or sicknesses as a result of incarceration; (4) reimbursement for any tuition and fees for each semester successfully completed by the exoneree in an educational program or for employment skills and reasonable payment for future unpaid costs for education and training not in excess of anticipated costs of a four-year public university; (5) reimbursement for paid or unpaid child support owed that became due during incarceration; and (6) reasonable reimbursement for paid or unpaid reintegrative expenses secured by exoneree upon exoneration and release, including housing, transportation and subsistence, reintegrative services, and medical and dental health care. *Id.* subd. 2(a)(1)–(6). Importantly, although additional civil awards against the state or political subdivision of the state will be offset by IERA compensation, an award of damages under IERA does not preclude the exoneree from bringing a civil action against the state or political subdivision. *Id.* subd. 5.

2. Section 590.11 establishes three requirements persons must satisfy, in turn, to receive an order for compensation by a district court. The initial threshold matter, and the focus of this note, is that a petitioner must be “exonerated.” MINN. STAT. § 590.11, subd. 1(b)(1)–(3) (2019). A person is “exonerated” under IERA when a Minnesota court:

- (i) vacated, reversed, or set aside a judgment of conviction on grounds consistent with innocence and there are no remaining felony charges in effect against the petitioner from the same behavioral incident, or if there are remaining felony charges against the petitioner from the same behavioral incident, the prosecutor dismisses those remaining felony charges; or
- (ii) ordered a new trial on grounds consistent with innocence and the prosecutor dismissed all felony charges against the petitioner arising from the same behavioral incident or the petitioner was found not guilty of all felony charges arising from the same behavioral incident at the new trial.

*Id.* subd. 1(b)(1)(i)–(ii). Whether a person is “exonerated” is a legal determination made by the district court. If a petitioner fails to satisfy the statutory definition, his or her conviction was found not to have been reversed, set aside, or vacated, or if he or she was granted a new trial on grounds consistent with innocence, no further inquiry is necessary under the remaining requirements in section 590.11 because this is a dispositive issue.

3. *Id.* subd. 1(b)(1)–(3). The statute uses the term “exonerated.” For the purposes of flow and grammar, however, “exonerated” and “exoneration” are used interchangeably to refer to “exonerated” under the Minnesota IERA.

4. *Id.* subd. 1(b)(1)(i)–(ii).

because only those who are “exonerated” are entitled to proceed—at which point the district court considers the merits of a petitioner’s claim.<sup>5</sup>

Understanding IERA’s statutory eligibility scheme underscores the importance of the threshold issue of whether a petitioner is “exonerated.” The original IERA defined “exonerated” to mean a Minnesota court either “vacated or reversed a judgment of conviction on grounds consistent with innocence and the prosecutor dismissed the charges,” or “order[ed] a new trial on grounds consistent with innocence and the prosecutor dismissed the charges or the petitioner was found not guilty at the new trial.”<sup>6</sup> But the phrase “on grounds consistent with innocence” was undefined and soon became the subject of litigation.<sup>7</sup> In 2017, the Minnesota Supreme Court

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5. If a petitioner is determined to be “exonerated,” then they must prove their factual innocence under section 590.11, subdivision 3. A petitioner can become conclusively eligible for IERA compensation if the prosecutor joins the petition and agrees to compensation. *Id.* subd. 3(a). If, however, the prosecution challenges a person’s IERA petition, the petitioner must prove by a preponderance of the evidence that a crime did not occur, or that they did not commit the crime. *Id.* subd. 3(b); MINN. STAT. § 590.04, subd. 3 (2019). Whether a petitioner satisfies his or her evidentiary burden is a question of fact made by the district court. The third and final requirement for IERA eligibility concerns additional elements listed under subdivision 5.

If the petition, files, and records conclusively show a petitioner is not eligible because they did not satisfy subdivision 1, 3, or 5, the district court may deny their claim without holding an evidentiary hearing. MINN. STAT. § 590.11, subd. 6. But, if the record and files are unclear as to a petitioner’s eligibility, the district court must have an evidentiary hearing to determine whether the petitioner satisfied his or her evidentiary burden under subdivisions 3 and 5. *Id.* During the evidentiary hearing, a petitioner and the state may produce evidence and testimony in addition to the trial records. *Id.* subd. 4. Further, the district court may consider the petitioner’s conduct during the behavioral incident including any acts that may have contributed to bringing about his or her conviction. *Id.* Finally, the state is entitled to produce victim testimony as well as the victim’s recommendation as to whether the district court should grant the petitioner IERA eligibility. *Id.* The practical implication of subdivision 6 is that only the state may move for summary judgment denying a petitioner IERA eligibility because the evidentiary burden rests solely on IERA petitioners under subdivision 3 and 5 and the state is entitled to bring forth victim testimony.

Thus, if, and only if, petitioners satisfy subdivisions 1, 3, and 5 in turn under section 590.11 are they eligible for IERA compensation. Upon satisfying all three requirements, the district court shall grant an order for exoneration compensation eligibility. *Id.* subd. 7.

6. MINN. STAT. § 590.11, subd. 1(1)(i)–(ii) (2014).

7. The primary controversy was whether the phrase meant “does not contradict innocence” or “agrees with innocence.” The Minnesota Court of Appeals developed case law that espoused the idea that vacations and new trials due to violation of procedural safeguards were not consistent with innocence. In *Greene*, the court held that a vacation and new trial based on insufficiency of evidence to support an essential element of an alleged crime was not “on grounds consistent with innocence” under IERA. *Greene v. State*, A15-0351, 2015 WL 6113505, at \*1–3 (Minn. Ct. App. Oct. 19, 2015). Similarly, the court in *Pendleton* ordered a vacation and new trial because the trial court issued an improper defense-of-dwelling jury instruction that was not “on grounds consistent with innocence” because the success of the defense depended on the jury believing Pendleton’s testimony and not on lacking criminal liability. *Pendleton v. State*, A1-0203, 2016 WL 6826255, at \*2–4 (Minn. Ct. App. Nov. 21, 2016). Finally, the court in *Buhl* determined that a vacation and new trial on grounds of erroneously introduced *Spreigl* evidence was not “consistent with innocence” under IERA because *Spreigl* is a procedural safeguard ensuring defendants receive a fair trial and has no bearing on a defendant’s guilt. *Buhl v. State*, 922 N.W.2d 435, 440 (Minn. Ct. App. 2019). The court in *Buhl* also determined that the phrase “on grounds consistent with innocence” meant “agrees with innocence.” *Id.* at 439–40. But, as explained above, the new statutory definition of the phrase “on grounds consistent with innocence” diminishes the dispositional effect

found a key provision of IERA unconstitutional, giving the state legislature an opportunity to revisit the phrase “on grounds consistent with innocence.”<sup>8</sup> On May 25, 2019, the state legislature redefined “on grounds consistent with innocence” to mean a person was exonerated “through a pardon or sentence commutation, based on factual innocence,” or “because a judgment of conviction was vacated or reversed, or a new trial was ordered, and there is any evidence of factual innocence whether it be available at the time of investigation or trial or is newly discovered evidence.”<sup>9</sup>

The new definition, however, does little to clarify what constitutes “exoneration” under section 590.11 of IERA. Whether a petitioner is “exonerated” depends on his or her conviction being overturned “on grounds consistent with innocence” based on “any evidence of factual innocence.”<sup>10</sup> Therefore, the district court is instructed to determine whether the petitioner’s conviction was reversed because there existed evidence of factual innocence. The term “factual innocence,” however, is left undefined.<sup>11</sup> This

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of the holding in *Buhl*. More importantly, however, whether a conviction was overturned on grounds that “agrees with innocence” still requires a factual determination of what factual innocence means.

8. The original IERA defined one class of exonerated persons to mean a Minnesota court “vacated or reversed a judgment of conviction on grounds consistent with innocence *and* the prosecutor dismissed the charges.” MINN. STAT. § 590.11, subd. 1(1)(i) (2014) (emphasis added). The Minnesota Supreme Court held that section 590.11, subdivision 1(1)(i), was unconstitutional because it violated the equal protection clause of the Fourteenth Amendment by requiring prosecutorial dismissal of the charges. *Back v. State*, 902 N.W.2d 23, 29–30 (Minn. 2017). The court explained that the requirement created an impossible sequence—if a person’s charges were vacated or reversed there was nothing left for the prosecutor to dismiss or if the prosecutor dismissed the charges there was nothing left for the court to reverse or vacate—therefore it was legally impossible for a person to be exonerated under IERA when his or her conviction was reversed or vacated. *Id.* at 28, 29–30. The court then struck section 590.11, subdivision 1(1)(i), from IERA in its entirety. *Id.* at 31. Thus, following this decision, only persons who were granted a new trial on grounds consistent with innocence and the prosecutor dismissed the charges or they were found not guilty at the new trial could be eligible for IERA relief.

9. MINN. STAT. § 590.11, subd. 1(c)(1)–(2) (2019). The amendments were signed by Governor Tim Walz on May 30, 2019 and took effect on July 1, 2019. *See* Act of May 25, 2019, ch. 5, art. 2, §§ 13–16. Importantly, the amendments re-defined “exonerated” under section 590.11, subdivision 1 to mean a court

vacated, reversed, or set aside a judgment of convictions on grounds consistent with innocence and there are no remaining felony charges in effect against the petitioner from the same behavioral incident, or if there are remaining felony charges against the petitioner from the same behavioral incident, the prosecutor dismisses those remaining felony charges.

MINN. STAT. § 590.11, subd. 1(b)(1)(i) (2019). The new IERA also redefined the second means of exoneration to mean a court “ordered a new trial on grounds consistent with innocence and the prosecutor dismissed all felony charges against the petitioner arising from the same behavioral incident or the petitioner was found not guilty of all felony charges arising from the same behavioral incident at the new trial.” *Id.* subd. 1(b)(1)(ii).

10. MINN. STAT. § 590.11, subd. 1(b)–(c) (2019).

11. Dictionary definitions are often used to determine undefined key words or phrases. *See* *State v. Washington*, 908 N.W.2d 601, 607–08 (Minn. 2018). But the Minnesota Supreme Court has warned that dictionaries are not “foolproof or failsafe” and are of little use when the understanding of key words or phrases can only occur in the context of the statute within which they are used. *State v. Scovel*, 916 N.W.2d 550, 555 (Minn. 2018). The phrase “factual innocence” does

is significant for two related reasons. First, the phrase “any evidence” is extremely broad and there is no indication as to what the state legislature meant in the statute. Second, and more importantly, if a petitioner’s conviction was overturned based on some evidence of factual innocence, it might reduce the petitioner’s burden of proof under subdivision 3 (where the petitioner proves his or her innocence by a preponderance of evidence) because evidence of factual innocence already exists.<sup>12</sup> Therefore, the threshold legal determination of “exonerated” will prove, at least in part, whether a petitioner is innocent under subdivision 3. Thus, whether a petitioner is “exonerated” is the most important element for establishing IERA relief.

Understanding the term “factual innocence” is thus critical for determining IERA eligibility. Much has been written about what constitutes innocence.<sup>13</sup> The purpose here, however, is not to define the theoretical contours of innocence, but rather to establish a conceptual framework for evaluating “factual innocence,” and by extension “on grounds consistent with innocence,” under IERA. The circumstances that inspired IERA and its legislative history illustrate that the fundamental purpose of IERA is to provide monetary relief for only those individuals who are innocent as a matter of fact. Evidence of “factual innocence” under IERA should then constitute causal information that tends to show the petitioner’s guilty conduct did not occur at all or tends to sever the causal connection between a petitioner’s conduct from the behavioral incident and the commission of a crime. Fundamentally, both aspects of this causal framework allow district

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not reside in isolation but is contextually surrounded in section 590.11, subdivision 1(c) and appears in the context of other provisions of section 590.11, including an explicit reference in subdivision 3 (a person’s evidentiary burden in proving his or her innocence) and an implicit reference in subdivision 4 (the evidence a district court may consider in evaluating whether a person satisfied his or her burden of proof). More than this, the phrase “on grounds consistent with innocence” in section 590.11, subdivision 1 appears in the context of same “behavioral incident,” a phrase that also appears in subdivision 4. More than this, the definitions of “factual” and “innocence” do little to clarify what the phrase “factual innocence” means under IERA. Merriam-Webster defines “factual” as “relating to facts,” and “innocence” as “freedom from legal guilt of a particular crime or offense.” *Factual*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/factual> (last visited Dec. 22, 2019); *Innocence*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/innocence> (last visited Dec. 22, 2019). Black’s Law Dictionary mirrors Merriam-Webster, defining “innocence” as “freedom from guilt for a particular offense;” and “actual innocence” as “the absence of facts that are prerequisites for the sentence given to the defendant.” *Innocence*, BLACK’S LAW DICTIONARY (11th ed. 2019); *Actual Innocence*, BLACK’S LAW DICTIONARY (11th ed. 2019). Thus, dictionary definitions are of little aid as they are simply another expression of the statutory language and do not complete the meaning of “factual innocence” under IERA. This is a long way of asserting that a smashing together of the dictionary definitions of “factual” and “innocence” will not suffice and the phrase “factual innocence” can only be understood within the context of section 590.11 and the legislative history of IERA.

12. *Supra* note 5 and accompanying text.

13. The following offer thoughtful discussions. *See, e.g.*, William S. Laufer, *The Rhetoric of Innocence*, 70 WASH. L. REV. 329, 331 (1995); Margaret Raymond, *The Problem with Innocence*, 49 CLEV. ST. L. REV. 449, 456 (2001); Cathleen Burnett, *Constructions of Innocence*, 70 UMKC L. REV. 971, 975–76 (2002); Keith A. Findley, *Defining Innocence*, 74 ALB. L. REV. 1157, 1187–1207 (2010–11).

courts to evaluate whether a petitioner was “exonerated” under section 590.11, subdivision 1, by uncovering whether the petitioner’s actual conduct caused the commission of a crime.

Under this causal framework, courts will look for evidence of causal information that interrupts conduct during the behavioral incident and the commission of a crime. Importantly, causal information might also include facts that tend to show the guilty conduct did not occur at all. At the same time, this causal framework also provides courts flexibility because factual evidence of causation can manifest in many different ways. But, most fundamentally, a causal framework centered on evidence of causal interruption between a petitioner’s actual conduct and the commission of a crime severs the *mens rea* and *actus reus* of criminality. Thus, this fact-intensive, bright-line test best effectuates the intent of the legislature by ensuring only those who are innocent as a matter of fact are eligible for IERA relief.

## II. *STATE V. BACK*

Before examining the phrases “on grounds consistent with innocence” and “factual innocence,” it is important to recognize the difficulty those concepts present in the context of exoneration compensation. The saga of *State v. Back*, the case that has been at the center of IERA since its enactment, illustrates the complication.

Danna Back and Daniel Holliday had a contentious on and off relationship.<sup>14</sup> Nevertheless, they began living together in 2003,<sup>15</sup> but by the summer of 2006, Back moved out and began dating Nicholas Super.<sup>16</sup> Back knew there was significant tension between Super and Holliday. For example, during the summer months of 2006, Back, while dating Super, slept at Holliday’s house and sometime during the night, both Back and Holliday were awakened when Super drove by the house while firing his gun at Holliday’s house, hitting the garage twice.<sup>17</sup>

On January 1, 2007, Holliday celebrated the coming New Year with friends.<sup>18</sup> In the early morning hours, sometime around 3:00 a.m., Back called Holliday.<sup>19</sup> During their conversation, Holliday told Back to come over, but Back became angered when she heard women in the background.<sup>20</sup> Back called several friends for a ride to Holliday’s, to no avail.<sup>21</sup> Back then called Super who agreed to give her a ride to Holliday’s house.<sup>22</sup>

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14. *State v. Back*, 775 N.W.2d 866, 867 (Minn. 2009).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Back*, 775 N.W.2d at 867.

21. *Id.*

22. *Id.*

When Super picked up Back, she was “angry” and wanted to fight the girls she heard at Holliday’s house.<sup>23</sup> When they arrived, Super parked in the alley behind Holliday’s house and warned Back that she and Holliday “better not start arguing.”<sup>24</sup> Back then barged into Holliday’s house in a fit of rage. Back grabbed a bottle and threw it down the basement stairwell and yelled: “[W]here [are] all the women [at] . . . that [I] heard in the background when [I] called?”<sup>25</sup> She then walked over to Holliday’s roommate, who was sleeping on the couch and hit him the in the face.<sup>26</sup>

Holliday corralled Back, and they began a heated argument.<sup>27</sup> Throughout the altercation, Holliday repeatedly asked Back to leave, but she refused.<sup>28</sup> Eventually, their argument moved onto the rear exterior porch after which Holliday spotted Super sitting in the alleyway and yelled: “[C]ome take your girlfriend. Why did you bring her over here? It’s not my girlfriend.”<sup>29</sup> In response, Super got out of his car and walked up to Holliday’s porch, but Holliday extended his arm in an attempt to push Super off the porch.<sup>30</sup> Super then pulled out his gun and shot Holliday.<sup>31</sup> Super fled the scene, while Back stayed to perform CPR.<sup>32</sup> Holliday, however, died.<sup>33</sup>

Subsequent investigation revealed that a neighbor heard a woman scream: “Stop, Nicky, stop.”<sup>34</sup> Further, during a police interview, Back stated she did not know Super stayed in the alleyway, nor did she know he had his gun with him that night.<sup>35</sup> Back explained, however, that she knew Super usually carried a gun, was quick to anger, and was known to pull his gun out on others. Back described at least one instance where Super fired his gun after an individual hit him at a bar.<sup>36</sup>

Back was charged with multiple crimes relating to Holliday’s murder.<sup>37</sup> But, following a series of dismissals and amendments, she was convicted by a jury of second-degree manslaughter under the theory of culpable negligence.<sup>38</sup> Back appealed and, after the court of appeals affirmed,<sup>39</sup> the

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23. *Id.* at 868.

24. *Id.*

25. Trial Transcript Volume II at 193, *State v. Back*, No. 27-CR-07-005374 (Hennepin Cty. Dist. Ct. Mar. 31, 2008).

26. *Back*, 775 N.W.2d at 868.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Back*, 775 N.W.2d at 868.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 868–69.

38. *Back*, 775 N.W.2d at 869.

39. The Minnesota Court of Appeals affirmed Back’s conviction because a reasonable jury could have concluded that Back acted with gross negligence and that Back could have reasonably



Minnesota Supreme Court reversed her conviction because she did not have a special relationship with Holliday or Super—Back did not have a duty to protect Holliday from harm nor did she have a duty to stop Super from harming Holliday.<sup>40</sup> Therefore, Back could not be held criminally responsible for the actions of Super as a matter of law.<sup>41</sup>

On July 30, 2019, Back re-filed her petition for exoneration compensation under IERA.<sup>42</sup> The reversal of her conviction on grounds as a matter of law—that she had no legal duty to Holliday or Super—illustrates a critical question under IERA: to what extent does a judgment as a matter of law demonstrate evidence of factual innocence for the purposes of being “exonerated” under IERA?

Whether a judgment as a matter of law constitutes evidence of factual innocence under IERA is not solely limited to the scenario in *State v. Back*. In 2016, the Minnesota Supreme Court held in *State v. Haywood* that a BB gun no longer constitutes a firearm for the crime of a felon in possession of a firearm.<sup>43</sup> Does the decriminalization of a BB gun now exonerate those who were convicted of being a felon in possession under IERA? Additionally, on October 9, 2019, the Minnesota Supreme Court heard oral arguments regarding the word “to” for supporting a conviction of simple robbery under Minn. Stat. § 609.24.<sup>44</sup> The statute makes it unlawful for a person to take personal property from another or in the presence of another and “use[ ] or threaten[ ] the imminent use of force against any person to overcome the person’s resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away” of property.<sup>45</sup>

The Minnesota Supreme Court will determine whether “to” means use of threat or force with the purpose of overcoming resistance or the use of threat or force to successfully overcome resistance.<sup>46</sup> In other words, is a

anticipated that Holliday could have been harmed by Super, even though she may not have foreseen Super killing Holliday. *State v. Back*, A08-0017, 2009 WL 910756, at \*3–5 (Minn. Ct. App. Apr. 7, 2009). The court of appeals reasoned that (1) Back had intimate relationships with Super and Holliday, (2) Back knew that Super was prone to firing his gun and that he had fired his gun into Holliday’s garage on at least one occasion, (3) Back knew there was significant tension between Super and Holliday, and (4) Back knew Super usually carried his gun. *Id.* at \*3, 5.

40. *Back*, 775 N.W.2d at 871–72.

41. *Id.* at 872.

42. Petition for Order Declaring Eligibility for Compensation Based on Exoneration, *State v. Back*, Case No. 27-CR-07-005374 (Hennepin Cty. Dist. Ct. July 30, 2019). Back originally filed for IERA relief in 2014, but the Minnesota Supreme Court found the earlier provision unconstitutional. *Supra* note 8 and accompanying text.

43. *State v. Haywood*, 886 N.W.2d 485, 487 (Minn. 2016).

44. *State v. Townsend*, A18-0792 (Minn. 2019). The Minnesota Supreme Court has not issued its opinion at the time of this publication.

45. MINN. STAT. § 609.24 (2018). The court of appeals affirmed without deciding the meaning of the word “to” because it determined the State sufficiently established he carried away the property. *State v. Townsend*, 925 N.W.2d 280, 284–86 (Minn. Ct. App. 2019).

46. Brief of Appellant, *State v. Townsend*, A18-0792 (Minn. July 5, 2019); Brief of Respondent, *State v. Townsend*, A18-0792 (Minn. Aug. 1, 2019).

person guilty of simple robbery when they use threat or force with the intent to overcome resistance (*mens rea*) or when they use threat or force to literally overcome resistance (*actus reus*). Minnesota's simple robbery statute had been enforced with the understanding that "to overcome" meant the use of threat or force with the intent to overcome resistance (*mens rea*). If, however, the Minnesota Supreme Court determines that simple robbery requires the use of threat or force to literally overcome resistance (*actus reus*), it will establish a new element to simple robbery, and many individuals could have their convictions reversed because their criminal conduct will no longer rise to criminal liability under the statute.<sup>47</sup> Are these individuals "exonerated" under IERA?

By focusing on causation, Minnesota courts can determine "evidence of factual innocence" for being "exonerated" under IERA in a consistent manner. Under this causal framework, Minnesota courts would look to the record to determine whether the petitioner's conduct during the behavioral incident caused the commission of a crime. Therefore, the proposed framework requires Minnesota courts to evaluate whether there exists evidence that severs the causal nexus between the petitioner's conduct and commission of a crime. By incorporating the proposed causal framework, Minnesota courts can effectuate the intent of the legislature ensuring only those who are innocent as a matter of fact obtain IERA relief.

Under this framework, Back would likely be found ineligible because the record of her conviction and subsequent reversal would not satisfy the "on grounds consistent with innocence" requirement for being "exonerated" under section 590.11, subdivision 1. Back was the primary cause of Holliday's murder because she asked Super for a ride to Holliday's, intending to start a fight and knowing that there was significant tension between Super and Holliday, that Super usually carried his gun, and that Super had fired his gun into Holliday's garage.<sup>48</sup> Further, when Back arrived, she started a fight despite Super's warning to the contrary, and the result was Holliday's murder by Super's hands.<sup>49</sup> Thus, Back's involvement prevents her from being causally separated from the commission of the crime.<sup>50</sup>

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47. The elements of simple robbery are: (1) the defendant took property from a person in the presence of the person or another; (2) the defendant knew he or she was not entitled to the property; (3) the defendant used force or threat of imminent force against the person to overcome resistance or overcome the power of resistance or compel the taking or carrying off of the property. The term "threat of imminent force" means the intentional creation in the person's mind of an understanding that if the person resisted or refused to cooperate, force would immediately be used against that person; and (4) proper jurisdiction. MINN. STAT. § 609.24; Steven M. Klein, MINN. PRAC. SERIES JURY INSTRUCTION GUIDE § 14.02, *Simple Robbery Elements*, (6th ed. Oct. 2019).

48. *Back*, 775 N.W.2d at 867–68.

49. *Id.* at 868.

50. This analysis was based on evidence only available through the trial and court proceedings. Thus, Back might still be able to show her conviction was overturned "on grounds consistent with innocence" through new evidence pursuant to Minn. Stat. § 590.11, subd. 1(c) (2019). Such

III. ON GROUNDS CONSISTENT WITH INNOCENCE BASED ON EVIDENCE  
OF FACTUAL INNOCENCE AND THE INTENDED  
RECIPIENT OF IERA RELIEF

The proposal and initial enactment of Minnesota's IERA is best understood by the circumstances that prompted its legislative consideration. DNA exonerations provided the national impetus for state exoneration compensation statutes, but the inspiration for Minnesota's IERA was also informed by the conviction and release of Michael Hansen and Koua Fong Lee.<sup>51</sup> These cases, like DNA exoneration, involved evidence, unavailable or unknown at trial, showing that both Hansen and Lee were innocent—that their actions from the behavioral conduct did not cause the commission of a crime. The significance of Hansen and Lee for Minnesota's IERA is underscored in the legislative record.<sup>52</sup> Nearly all of the case illustrations during senate floor hearings centered on Hansen and Lee and the role new evidence played in the eventual reversal of their conviction and release.<sup>53</sup> This history demonstrates that the intended recipients of IERA relief were only those individuals who were innocent as a matter of fact, which was understood as a matter of causation.

A. *The Circumstances for IERA.*

The cases of Michael Hansen and Koua Fong Lee provided the impetus for the consideration and enactment of IERA in 2014.<sup>54</sup> Both cases involved harrowing details of accidental death. But more importantly, the reversal of Hansen and Lee's convictions were due to the finding of new evidence that severed the causal connection between their actions and the commission of a crime.

1. *Michael Hansen*

On May 2, 2004, Michael Hansen fell asleep while at home with his three-and-a-half-month-old daughter, Avryonna, and her older sister.<sup>55</sup> When he awoke, Avryonna was unresponsive, and Hansen immediately called the paramedics after he was unable to wake her.<sup>56</sup> An autopsy performed by a Ramsey County medical examiner discovered a skull fracture

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evidence might be a showing that Super dropped her off and left but made an independent decision to return and kill Holliday.

51. Senate Finance Committee Hearing, Apr. 10, 2014, [https://www.leg.state.mn.us/audio/senate/2014/cmte\\_fin\\_041014.MP3](https://www.leg.state.mn.us/audio/senate/2014/cmte_fin_041014.MP3) (last retrieved Sept. 9, 2019).

52. *See id.*

53. *See id.*

54. *See id.*

55. Maurice Possley, *Michael Hansen*, THE NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3885> (last updated Oct. 31, 2017).

56. *Id.*; INNOCENCE PROJECT OF MINN., *Our Cases*, <https://www.ipmn.org/our-cases> (last visited Sept. 13, 2019).

on Avryonna's head that occurred prior to her death.<sup>57</sup> At trial, the medical examiner testified that the skull fracture was likely caused by blunt force trauma and classified the death as a homicide despite not finding any signs of intercranial bleeding, swelling, or a meaningful brain injury.<sup>58</sup> It was also well documented during Hansen's trial that Avryonna fell from a shopping cart hitting her head on the parking lot pavement approximately one week before her death.<sup>59</sup> Nevertheless, the jury found Hansen guilty of second-degree murder and sentenced him to fourteen and a half years in prison.<sup>60</sup> In 2011, the Innocence Project of Minnesota filed a petition for a state writ of habeas corpus, and a hearing was granted.<sup>61</sup> At Hansen's habeas hearing, numerous doctors testified that Avryonna's skull fracture did not cause her death because skull fractures were only dangerous if the brain bled and swelled but neither occurred in this case.<sup>62</sup> Further, the doctors testified that Avryonna's skull showed signs of healing at the time of her death.<sup>63</sup> They concluded that Avryonna likely died from accidental suffocation in her sleep.<sup>64</sup> It was also uncovered that an initial autopsy conducted by a Douglas County medical examiner had forensically compromised Avryonna's body prior to the Ramsey County medical examiner's examination and subsequent determination of homicidal death.<sup>65</sup> Hansen's sentence was vacated, and he was released from prison.<sup>66</sup>

## 2. Koua Fong Lee

On June 10, 2006, Koua Fong Lee was driving his family home from church in his 1996 Toyota Camry.<sup>67</sup> When Lee exited Interstate 94 onto an

57. *Exonerated After 6 Years in Prison, Man Wants Life Back*, CBS MINN. (Sept. 17, 2011, 11:24 PM), <https://minnesota.cbslocal.com/2011/09/17/exonerated-after-6-years-in-prison-mn-man-wants-normal-life>.

58. *Id.*; Possley, *Hansen*, *supra* note 55; INNOCENCE PROJECT OF MINN., *supra* note 56.

59. Madeleine Baran, *Michael Hansen 'Ecstatic' After Murder Charges Cleared*, MPR NEWS (Sept. 17, 2011, 4:21 PM), <https://www.mprnews.org/story/2011/09/17/michael-hansen-press-conference>; Possley, *Hansen*, *supra* note 55; INNOCENCE PROJECT OF MINN., *supra* note 56.

60. INNOCENCE PROJECT OF MINN., *supra* note 56.

61. *Id.*; Possley, *Hansen*, *supra* note 55.

62. INNOCENCE PROJECT OF MINN., *supra* note 56; Possley, *Hansen*, *supra*, note 56.

63. Possley, *Hansen*, *supra* note 55.

64. INNOCENCE PROJECT OF MINN., *supra* note 56.

65. *See* Baran, *supra* note 59.

66. Possley, *Hansen*, *supra* note 55.

67. The odyssey of Koua Fong Lee is well documented. *See, e.g.*, Tim Nelson & Madeleine Baran, *Koua Fong Lee, Convicted in Toyota Crash, Free After Judge Grants New Trial*, MPR NEWS (Aug. 5, 2010, 5:41 PM), <https://www.mprnews.org/story/2010/08/05/koua-fong-lee-ruling>; Martiga Lohn, *Man Convicted in Fatal Toyota Crash Goes Free: Minnesota Case Reopened After Widely Publicized Problems in Cars*, NBC NEWS, (Aug. 5, 2010, 10:53 PM), [http://www.nbcnews.com/id/38583622/ns/us\\_news-crime\\_and\\_courts/t/man-convicted-fatal-toyota-crash-goes-free](http://www.nbcnews.com/id/38583622/ns/us_news-crime_and_courts/t/man-convicted-fatal-toyota-crash-goes-free); Emily Gurmon, *Koua Fong Lee: A Free Man After 2.5 years in Prison for Fatal Toyota*, PIONEER PRESS (Aug. 5, 2010, 11:01 PM), <http://www.twincities.com/2010/08/05/koua-fong-lee-a-free-man-after-2-5-years-in-prison-for-fatal-toyota-crash-w-video>; Randy Furst, *8th Circuit Upholds Verdict, \$11M award for Koua Fong Lee and Victims in Toyota Camry Crash*, STAR TRIB. (June

off-ramp at Snelling Avenue, his vehicle failed to slow, and he rammed into the back of an Oldsmobile stopped at the red light.<sup>68</sup> The police investigation revealed that Lee's Camry was traveling between seventy and ninety miles per hour when it hit the Oldsmobile.<sup>69</sup> Jarvis Adams and his son Jarvis Adams Jr. died, and Devyn Bolton, Adams' niece, was left paralyzed and died shortly thereafter.<sup>70</sup> The other two passengers were badly injured.<sup>71</sup> No tire marks were found by police at the scene.<sup>72</sup> Ramsey County charged Lee with two counts of criminal vehicular homicide and three counts of criminal vehicular injury.<sup>73</sup> Throughout his trial, Lee maintained that he tried stopping the car, but the jury convicted Lee on October 12, 2007, and he was later sentenced to eight years in prison.<sup>74</sup> In 2009, with the help of the Innocence Project of Minnesota, a Ramsey County judge ordered Lee's release from prison and granted a new trial based on the new evidence of Toyota drivers complaining about sudden acceleration and Toyota's recall of millions of cars due to those complaints.<sup>75</sup> An hour later, the Ramsey County prosecutor announced the county would not seek a new trial.<sup>76</sup>

Michael Hansen and Koua Fong Lee were exonerated from their convictions because new evidence severed the causal connection between their conduct and the commission of a crime.<sup>77</sup> These cases provided the backdrop for IERA. More importantly, however, both Michael Hansen and Koua Fong Lee were of central concern in IERA's legislative record which sheds light on the intended recipient of IERA relief.

### B. IERA's Legislative History

When IERA was first introduced by the Minnesota Senate and House, both versions of the bill defined the phrase on grounds consistent with innocence as exoneration through "pardon or sentence commutation, based on innocence" or "because the judgment of conviction was vacated or reversed, based on new evidence of actual innocence."<sup>78</sup> Notably, this definition framed the reversal or vacation of a conviction on new evidence. Although the language of IERA as enacted in 2014 did not include this

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9, 2017, 7:47 PM), <http://www.startribune.com/8th-circuit-upholds-verdict-11m-award-for-koua-fong-lee-and-victims-in-toyota-camry-crash/427483223>.

68. Lohn, *supra* note 67; Nelson & Baran, *supra* note 67.

69. Lohn, *supra* note 67; Nelson & Baran, *supra* note 67.

70. Nelson & Baran, *supra* note 67; Maurice Possley, *Koua Fong Lee*, THE NAT'L REGISTRY OF EXONERATIONS (last updated Apr. 22, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3376> [hereinafter, Possley, *Lee*].

71. Nelson & Baran, *supra* note 67; Possley, *Lee*, *supra* note 70.

72. Possley, *Lee*, *supra* note 70.

73. *Id.*

74. *Id.*; Nelson & Baran, *supra* note 67.

75. Gurnon, *supra* note 67; Nelson & Baran, *supra* note 67; Possley, *Lee*, *supra* note 70.

76. Nelson & Baran, *supra* note 67.

77. See Senate Finance Committee, *supra* note 51.

78. S.F. No. 2480, 88th Sess. (Minn. 2014); H.F. No. 2925, 88th Sess. (Minn. 2014).

particular definition for “on grounds consistent with innocence,” it provided the backdrop for the legislative debate over the intended recipient of IERA relief.<sup>79</sup> Further, that the floor debates centered on Koau Fong Lee and Michael Hansen demonstrate that evidence of factual innocence entails factual information showing the alleged guilty conduct did not occur or severed the causal connection between a petitioner’s conduct and the commission of a crime.

The primary sponsors of the original IERA had a very specific recipient of exoneration compensation in mind: exonerees who did not commit a crime and played no role in causing the commission of a crime. During a Senate Judiciary Committee hearing held on March 13, 2014, Senator Ron Latz, the primary sponsor of IERA, stated that the bill would serve the “purpose of . . . providing for compensation for those persons who have been convicted of a crime, served a prison sentence, and are later, based upon evidence of innocence, determine[d] essentially not to have committed the crime.”<sup>80</sup> He later explained that IERA compensation was not for “those cases where there are legal issues or legal technicalities or even constitutional questions that resulted in reversals of convictions.”<sup>81</sup> During that same hearing, Julie Jonas of the Minnesota Innocence Project echoed this sentiment stating that exonerations based on innocence were “very rare occurrences,” and “the statute would be narrowly tailored to those rare occurrences” because “this sort of compensation would not be provided to someone who was released from prison on a so-called technicality.”<sup>82</sup>

Although the testimony during the Senate Judiciary Committee hearing called for a narrowly tailored statute, Senator Latz explicitly explained the intended IERA recipient during a senate finance committee hearing on April 10, 2014:

[T]he most classic example nationally would be DNA exoneration, where someone spends 20 years in prison and they find out somewhere down the road they’ve got new scientific techniques to evaluate evidence, and they go back to the old evidence and they find out that there is no way possible that the person that’s been in prison could have committed the crime that that person was convicted of.<sup>83</sup>

Importantly, Senator Latz observed that Minnesota had not had a DNA exoneration case and went on to explain the cases of Koua Fong Lee and Michael Hansen:

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79. See MINN. STAT. § 590.11, subd. 1 (2014).

80. Senate Judiciary Committee Hearing Testimony, Part 2, Mar. 13, 2014, at 1:27:33, [https://www.leg.state.mn.us/audio/senate/2014/cmte\\_jud\\_031314b.MP3](https://www.leg.state.mn.us/audio/senate/2014/cmte_jud_031314b.MP3) (last retrieved Sept. 9, 2019).

81. *Id.* at 2:34:30.

82. *Id.* at 1:35:10.

83. Senate Finance Committee Hearing, *supra* note 51, at 1:41:06.

[Minnesota has] had two more recent incidents, in the last several years, of exoneration. One . . . had to do with the Toyota acceleration pedal recall, where [Koua Fong Lee] was convicted of having accelerated on a highway off-ramp and rear-ended another vehicle killing some people, and it was later determined that that person should have [his] conviction overturned because it turns out Toyota, unknown at the time of the conviction, Toyota was having mechanical problems with its accelerator. Another instance had to do with [Michael Hansen] [who] was convicted of killing his young infant, and as it turned out about seven years after he started serving his prison sentence that the overwhelming medical evidence brought to the conclusion that the injuries from which the infant died had been sustained several days before. The occurrence that led to the conviction of [Michael Hansen was] . . . overturned.<sup>84</sup>

Senator Latz's use of DNA exoneration, Michael Hansen, and Koua Fong Lee as examples of the intended IERA recipients is important for understanding the meaning of "factual innocence" because it shows that eligible persons are those who had no causal role in the commission of a crime from the behavioral incident that resulted in their conviction. DNA exoneration is perhaps the most obvious example of such information. In many situations, new DNA evidence destroys any causal inference between a person's conduct and the commission of a crime by showing that the exoneree could not have possibly committed the crime. Notably, however, both *Lee* and *Hansen* included new evidence of causal information severing the causal sequence between conduct and crime. In Hansen's case, later evidence revealed that he could not have inflicted the injuries that caused the death of Avryonna because the accidental suffocation that brought about her death occurred after he was alleged to have inflicted the injuries. Therefore, the newly uncovered medical evidence severed the causal connection between Michael Hansen and the death of his child because it showed the alleged criminal conduct did not occur.

Koua Fong Lee's case, however, is the best example for understanding that factual innocence for exoneration under IERA constitutes severed causation between conduct and crime. Unlike DNA exoneration or a faulty medical examination, Lee's case involved causal information that drastically changed the interpretation of events. As explained above, Lee was charged with negligent vehicular homicide and negligent vehicular injury when his car exited Interstate 94 and struck another vehicle at seventy to ninety miles per hour.<sup>85</sup> The evidence of Lee's conduct appeared as if he was grossly negligent because no prudent driver would accelerate to that speed while exiting a freeway. But after it was uncovered Toyota had a

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84. *Id.* at 1:41:40.

85. *See supra* Part II.

serious flaw which caused the accelerator to stick and prevented drivers from slowing their vehicles, Lee's conduct no longer appeared reckless or negligent. Rather, his actions now seemed to be a reaction to the sudden and unexpected loss of control, caused by the new piece of causal information—a mechanical failure that occurred through no fault of his own. Therefore, Toyota's mechanical flaw became the piece of causal information that severed the causal sequence of events from Lee's conduct at the behavioral incident and his crime; Lee did not cause the acceleration of his vehicle and subsequent rear-ending of the victims' vehicle. As Julie Jonas explained, had this evidence "been available to prosecutors at the time the charging decision was made, . . . Koua . . . would have [never] been charged."<sup>86</sup>

In 2017, Minnesota legislature revisited the phrase "on grounds consistent with innocence."<sup>87</sup> During a Senate Judiciary Committee hearing on March 12, 2018, Robert Small, executive director of the Minnesota County Attorney's Association, expressed that it was time for the legislature to provide a definition for the phrase "consistent with innocence" in light of the *Haywood* decision, and stated he supported the definition "that was in the first and second bills that were introduced in both the house and senate."<sup>88</sup> Importantly, as described above, the original versions of IERA to which Small referred defined the phrase "on grounds consistent with innocence" as exoneration through "pardon or sentence commutation, based on innocence," or "because the judgment of conviction was vacated or reversed, based on new evidence of actual innocence . . . ."<sup>89</sup> The current definition of "on grounds consistent with innocence," as signed into law on May 30, 2019, is substantially similar to the previous definition: "a pardon or sentence commutation, based on factual innocence," or "exonerated because the judgment of conviction was vacated or reversed, or a new trial was ordered, and there is any evidence of factual innocence whether it was available at the time of investigation or trial or is newly discovered evidence."<sup>90</sup>

The legislative history demonstrates that Koua Fong Lee and Michael Hansen played an enormous role in the enactment of IERA. The legislative

86. *Supra* note 80, at 1:34:51.

87. *See* *Back v. State*, 902 N.W.2d 23 (Minn. 2017).

88. *Hearing on S.F. 2778 Before the S. Comm. on Judiciary and Pub. Safety Fin. and Policy*, at 1:07:00 (Minn. 2018), [http://mnstate.granicus.com/ViewPublisher.php?view\\_id=2](http://mnstate.granicus.com/ViewPublisher.php?view_id=2) (last retrieved Sept. 9, 2019). Referring to *Haywood*, 886 N.W.2d 485, in which the Minnesota Supreme Court held that a BB gun was no longer a firearm under Minn. Stat. § 609.165 subd. 1b (felon in possession of a firearm), Mr. Small stated:

[I]n that case the *Haywood* decision, despite forty years of precedent, held that a BB gun was not a firearm. And there were many people who [were] convicted of being a felon in possession of a firearm when the firearm was a BB gun. And so, those decisions, those convictions were vacated. There were over eighty of those. And under this bill if that is considered "consistent with innocence" that's twelve million dollars.

*Id.* at 1:06:15.

89. S.F. No. 2480, 88th Sess. (Minn. 2014); H.F. No. 2925, 88th Sess. (Minn. 2014).

90. MINN. STAT. § 590.11, subd. 1(c) (2019).



record, centered on *Lee* and *Hansen*, shows that the intended recipients of IERA relief were persons who were innocent as both a matter of law and as a matter of fact. This clarifies the current definition of “on grounds consistent with innocence” because the phrase “factual innocence” is meant, as shown by both *Lee* and *Hansen*, to be a piece of factual information that severs the causal connection between a petitioner’s conduct and commission of a crime.

IV. OTHER STATES FRAME THE PRIMA FACIE SHOWING OF FACTUAL INNOCENCE TO MEAN CAUSAL INFORMATION SEVERING THE CAUSAL CONNECTION BETWEEN A PERSON’S CONDUCT FROM THE BEHAVIORAL INCIDENT AND THE BRINGING ABOUT OF THE COMMISSION OF A CRIME.

Thirty-five states have enacted exoneration compensation statutes.<sup>91</sup> These states provide differing schemes for establishing the prima facie showing of eligibility,<sup>92</sup> but the purpose remains the same: to ensure those who served a sentence for a crime for which they were innocent as a matter

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91. *Compensating the Wrongly Convicted*, INNOCENCE PROJECT, <https://www.innocenceproject.org/compensating-wrongly-convicted/> (last visited Sept. 10, 2019). Cf. Jeffrey S. Gutman, *An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted*, 82 MO. L. REV. 369, 370 (2017) (reporting thirty-two states with no-fault compensation laws).

92. Some jurisdictions reserve exoneration compensation only for those who have been pardoned or were exonerated by the state’s executive. *See, e.g.*, ME. STAT. tit. 14 § 8241(2)(C) (2019) (“[T]he person received a full and free pardon pursuant to the Constitution of Maine, Article V, Part First, Section 11, which is accompanied by a written finding by the Governor who grants the pardon that the person is innocent of the crime for which that person was convicted[.]”); MD. CODE ANN., STATE FIN. & PROC. § 10-501(b)(1)–(2) (West 2019) (“[T]he individual has received from the Governor a full pardon stating that the individual’s conviction has been shown conclusively to be in error; or . . . the State’s Attorney certifies that the individual’s conviction was in error under § 8-301 of the Criminal Procedure Article.”); TENN. CODE ANN. § 9-8-108(a)(7) (2019) (“The board of claims . . . [s]hall hear claims for compensation by persons wrongfully imprisoned and granted exoneration [by governor] pursuant to § 40-27-109.”).

Other states provide exoneration relief only to those exonerated by DNA evidence. *See, e.g.*, MO. REV. STAT. § 650.058.1 (2019) (“[A]ny 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.”); MONT. CODE ANN. § 53-1-214(1) (2019) (“[A] person who was convicted in this state of a felony offense, who was incarcerated in a state prison for any period of time, and whose judgment of conviction was overturned by a court based on the results of postconviction forensic DNA testing that exonerates the person of the crime for which the person was convicted is entitled to receive educational aid at the state’s expense.”). Yet other states only at the prima facie stage require reversal or vacation of the conviction, or new trial with subsequent finding of not guilty, and rely on the claimant proving his or her innocence by an evidentiary burden of proof. *See, e.g.*, IOWA CODE § 663A.1.2(a) (2019) (“Upon receipt of an order vacating, dismissing, or reversing the conviction and sentence in a case for which no further proceedings can be or will be held against an individual on any facts and circumstances alleged in the proceedings which resulted in the conviction, the district court shall make a determination whether there is clear and convincing evidence to establish . . . [t]hat the offence . . . was not committed by the individual.”); NEB. REV. STAT. § 29-4603(3) (2019) (“[T]he claimant shall prove each of the following by clear and convincing evidence . . . [t]hat he or she was innocent of the crime or crimes under subdivision (1) of this section[.]”); VT. STAT. ANN. tit. 13 § 5574(a)(3) (2019) (“A claimant shall be entitled to judgment . . . if the claimant established . . . by clear and

of fact obtain monetary relief.<sup>93</sup> Recent and developing case law from other jurisdictions that employ a similar statutory scheme to Minnesota's IERA support the proposed causal framework for evaluating "factual innocence."

The clearest statement of this concept of innocence comes from the narrowest exoneration compensation statutes providing compensation eligibility to only those exonerated by DNA evidence.<sup>94</sup> DNA exonerations completely sever any causal connection between a person's actual conduct and the commission of a crime.<sup>95</sup> DNA exonerations have played a leading role in the enactment of exoneration compensation statutes and, as demonstrated by the legislative history of IERA as well as in other state exoneration compensation statutes, the importance of such exonerations is not lost on courts.<sup>96</sup>

Even states that allow a wider path to exoneration compensation, however, have the underlying purpose of compensating those who were innocent as a matter of fact. New York's Unjust Conviction and Imprisonment Act ("UCIA"), for example, provides compensation for unjust imprisonment for those who have been

pardoned upon the ground of innocence . . . or . . . his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed[.]<sup>97</sup>

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convincing evidence . . . [t]he complainant is actually innocent of the felony or felonies that are the basis for the claim.").

93. Some states, like New York, *see infra* Part IV, also have the requirement that claimants have not caused or contributed to their conviction. Daniel S. Kahn, *Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes*, 44 U. MICH. J.L. REFORM 123, 140–42 (2010). This type of statutory causal or contributory disqualifications focuses on procedural bars to recovery such as pleading guilty, suborning perjury, fabricating evidence, or making false statements. *Id.* at 140. Section 590.11 of the Minnesota IERA has a similar statutory bar—a petitioner must not have "commit[ted] or induce[d] another person to commit perjury or fabricate evidence to cause or bring about the conviction[.]" MINN. STAT. § 590.11, subd. 5(a)(3). Importantly, under the Minnesota IERA, this procedural bar occurs after the court examines whether there is evidence of factual innocence for "exoneration" under subdivision 1 and after the petitioner proves his or her innocence under subdivision 3. *See supra* note 5 (detailing three step process of obtaining IERA relief). The purpose here, however, is to evaluate "any evidence of factual innocence" based on a theory of causation for the initial determination as to whether petitioners are "exonerated" under subdivision 1 by focusing on petitioners' conduct during the *behavioral incident* that caused or did not cause the commission of a crime and their subsequent conviction.

94. *See, e.g.*, MO. REV. STAT. § 650.058.1 (2019); MONT. CODE ANN. § 53-1-214(1) (2019). *See also* Kahn, *supra* note 93, at 137–38.

95. *See* Kahn, *supra* note 93, at 138 (noting that DNA evidence ensures that petitioners are actually innocent, but also limits redress).

96. Scholars have referred to this as the "innocence movement" in which the emergence of DNA evidence and exonerations destroyed the perception of infallibility in the criminal justice system. *See, e.g.*, Findley, *supra* note 13, at 1164.

97. N.Y. CT. CL. ACT § 8-b(3)(b)(i)–(ii) (McKinney 2019).

But, a claimant must file a claim establishing a prima facie showing of innocence; namely, that they did not commit the acts charged and did not cause or bring about the conviction.<sup>98</sup> New York courts have emphasized that “the ‘linchpin’ of the statute is innocence[.]”<sup>99</sup> Trial courts designated to handle these claims have looked to the legislative history and held that “the policy underlying this statute adheres to the principle that ‘[t]he mere statement that one’s conviction has been reversed or vacated will not establish a prima facie case.”<sup>100</sup> Thus, a claimant must also state facts that establish innocence. Failure to do so will result in the dismissal of his or her complaint.<sup>101</sup>

*Mike v. State* provides an illustration of New York’s UCIA in action. Mike “approached two off-duty police officers and [asked] whether they were interested in [buying] . . . unspecified . . . drugs.”<sup>102</sup> One of the officers asked if Mike had a “dime bag,” but Mike responded that he only had “twenties.”<sup>103</sup> Mike got into the police vehicle, and they drove to the driveway of a building. Mike then told the officers to give him the money and he would go into the building to get the drugs.<sup>104</sup> The officer who made the offer did not want to part with his money, believing Mike would take the money and leave.<sup>105</sup> Thus, the transaction ended, and the officers placed Mike under arrest, but they were unable to find money or drugs in Mike’s possession following their search.<sup>106</sup> Later, Mike gave an oral statement that he intended to sell the officers cocaine, but he made no reference to the source of the drugs being in the building. More importantly, there was no evidence that there were drugs in the building at the time of arrest or that the building was known as a drug house.<sup>107</sup> Mike was charged and convicted of sale of a controlled substance, but the New York Court of Appeals reversed, holding that there was no evidence that Mike was able to make the sale.<sup>108</sup>

Mike filed for unjust imprisonment compensation, but the Court of Claims dismissed his complaint for failing to state facts tending to establish his innocence.<sup>109</sup> The court concluded that, although Mike’s conviction was reversed for the state’s failure to prove key elements, he nevertheless approached the officers, discussed dime and twenty bags, discussed making

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98. *Id.* § 8-b(4).

99. *See, e.g., Ivey v. State of New York*, 606 N.E.2d 1360, 1363 (N.Y. 1992) (citing Report of N.Y. Law Rev. Comm’n., 1984 N.Y. Sess. Laws 2930 (McKinney)).

100. *Mike v. State*, 808 N.Y.S.2d 537, 541 (N.Y. Ct. Cl. 2005).

101. *Id.*

102. *People v. Mike*, 706 N.E.2d 1189, 1190 (N.Y. 1998).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Mike*, 706 N.E.2d at 1191.

109. *Mike*, 808 N.Y.S.2d at 543–44.

change for a hundred dollar bill, directed the officers to the building, and offered his wallet as collateral. These facts did not show actual innocence. Instead, they served to bring about his own conviction.<sup>110</sup> In essence, the court's determination in *Mike* was that the facts failed to show causal severance from his conduct and commission of a crime.

Similarly, Florida's Victims of Wrongful Incarceration Compensation Act ("VWICA") provides compensation to a "wrongfully incarcerated person."<sup>111</sup> Florida's "wrongfully incarcerated person" is the threshold legal determination made by the district court declaring a person eligible for exoneration compensation under Florida's VWICA.<sup>112</sup> To be a "wrongfully incarcerated person," one must establish that his or her conviction and sentence were vacated "based upon exonerating evidence" and put forth "verifiable and substantial evidence of actual innocence."<sup>113</sup>

The Florida District Court of Appeals had opportunity to determine the scope of "exonerated evidence" and "evidence of actual innocence" under the VWICA in *Fessenden v. State*.<sup>114</sup> Fessenden was a workers' compensation insurance agent in the 1980s.<sup>115</sup> He and his employer, Charles Amos, engaged in a scheme to assist their clients by submitting false estimates of workers' compensation premium liability at the beginning of a policy year.<sup>116</sup> The process to determine workers' compensation rates "considers the job categories to be insured and the insured's experience."<sup>117</sup> With these criteria, an employer estimates its premium liability for the upcoming twelve-month period. This estimate, in turn, is based on the anticipated payroll by job category and is subject to later adjustments.<sup>118</sup> Every job category has a rate per one hundred dollars of anticipated payroll, which varies by degree of risk associated with the job category.<sup>119</sup> Then the employer multiplies the anticipated payroll for each job category by the rate for each category.<sup>120</sup> But, since this determination is based on estimated payroll, employers are subject to year-end audits by the insurance carrier to determine the precise premium based on actual payroll figures which can result in

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110. *Id.* at 542–44.

111. FLA. STAT. §§ 961.01–961.07 (2017).

112. *Id.* § 961.02(4) ("Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03 finding that the person did not commit the act or offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.").

113. *Id.* § 961.03(1)(a).

114. *Fessenden v. State (Fessenden II)*, 52 So.3d 1, 2–7 (Fla. Dist. Ct. App. 2010).

115. *Id.* at 2.

116. *Id.*

117. *Amos v. State*, 711 So.2d 1197, 1197 (Fla. Dist. Ct. App. 1998).

118. *Id.*

119. *Id.* at 1198.

120. *Id.*

premium increase or decrease.<sup>121</sup> Fessenden, at the end of the policy year, would help provide inaccurate payroll information to the insurance auditor to help his clients avoid the increased premium.<sup>122</sup> Fessenden was charged and convicted of grand theft and of violating Florida's Racketeer Influenced and Corrupt Organizations Act ("RICO").<sup>123</sup> The Florida District Court of Appeals, however, reversed his conviction and sentence because the offenses occurred while the insurance carrier issued and committed to a policy based on the estimated premiums.<sup>124</sup> Furthermore, at that time, nothing existed for the purposes of establishing a claim of theft except for estimated premiums, which had no value because they were subject to later recalculation.<sup>125</sup> Therefore, Fessenden's conduct did not rise to criminal culpability under the charged crimes.<sup>126</sup> Thus, Fessenden's conviction was reversed based on his legal innocence.

Fessenden petitioned for compensation under Florida's VWICA.<sup>127</sup> The Florida District Court of Appeals affirmed the district court's denial of Fessenden's petition.<sup>128</sup> The court reasoned that one of the ways a Florida court can reverse a conviction was the state's proof, as a matter of law, did not constitute a crime.<sup>129</sup> The court admitted that a legal determination of this sort comes close to being evidence of actual innocence.<sup>130</sup> The court then concluded that the legislative record showed that DNA exoneration prompted the enactment of the VWICA, which demonstrated that the Florida legislature was concerned about those individuals who "were actually innocent, but not necessarily about paying people who had been found not guilty."<sup>131</sup> But, the error in Fessenden's conviction, according to the court, was not one of fact but of law.<sup>132</sup> Thus, after strictly construing the statute, the court held that the vacation of Fessenden's conviction as a matter of law (that his actions did not rise to criminal culpability under the charged crimes) was not an order based on exonerating evidence of actual innocence under Florida's VWICA.<sup>133</sup> The court in *Fessenden* noted that public policy might support compensating individuals like Fessenden, but it nevertheless concluded that the language contained in Florida's VWICA did not entail such consideration.<sup>134</sup>

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121. *Id.*

122. *Fessenden II*, 52 So.3d at 2-3 (Fla. Dist. Ct. App. 2010).

123. *Id.* at 3.

124. *Amos*, 711 So.2d at 1201.

125. *Id.*

126. *Fessenden II*, 52 So.3d at 3; *State v. Fessenden*, 734 So.2d 1038 (Fla. 1999).

127. *Fessenden II*, 52 So.3d at 4.

128. *Id.* at 7.

129. *Id.* at 5.

130. *Id.*

131. *Id.* at 6.

132. *Id.*

133. *Fessenden II*, 52 So.3d at 7.

134. *Id.*

Massachusetts' Erroneous Convictions Law (the "ECL"), like Minnesota's IERA, provides an explicit eligibility provision to "those who have been granted judicial relief by a state court of competent jurisdiction, on grounds which tend to establish the innocence of the individual[.]"<sup>135</sup> The Massachusetts Supreme Court determined that this phrase was meant to be read narrowly and directly implicated the actual innocence of an individual.<sup>136</sup> But, the court clarified that while claimants do not need to show their conviction was reversed on "compelling or overwhelming exculpatory evidence," they must put forth facts that are probative of innocence.<sup>137</sup>

Massachusetts ECL case law began its development with *Guzman v. Commonwealth*<sup>138</sup> and *Drumgold v. Commonwealth*.<sup>139</sup> *Guzman* was convicted of trafficking, distribution, and conspiracy to distribute controlled substances.<sup>140</sup> The state's theory of guilt was based on constructive possession, but *Guzman's* defense was that he was mistaken for his cousin.<sup>141</sup> *Guzman's* attorney, however, failed to call two key witnesses who could have rebutted the state's theory that *Guzman* and his alleged cousin were the same individual.<sup>142</sup> *Guzman's* attorney did not call the witnesses because he wanted to avoid the appearance of a conflict of interest.<sup>143</sup> The postconviction judge granted a new trial and concluded that *Guzman's* attorney provided ineffective assistance of counsel for causing the exclusion of evidence critical to *Guzman's* defense of mistaken identity.<sup>144</sup> Later, *Guzman* pursued a claim for erroneous conviction compensation. The Massachusetts Supreme Court declared him eligible despite the grant of new trial being on a procedural and constitutional basis. This is so because the exculpatory testimony was critical to *Guzman's* defense of mistaken identity which tended to establish his innocence.<sup>145</sup>

On the same day as *Guzman*, the Massachusetts Supreme Court considered the eligibility of another claimant in *Drumgold*.<sup>146</sup> *Drumgold* was convicted of first degree murder of a young girl who was killed by several masked men who approached a group of people and began shooting.<sup>147</sup> The state argued that the intended victim (who was not the actual decedent) was

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135. MASS. GEN. LAWS ch. 258D, § 1(B)(ii) (2018). Like Minnesota's IERA, the Massachusetts Erroneous Conviction Law also has a burden of proof requirement following the threshold showing of eligibility. *Id.*

136. *Guzman v. Commonwealth*, 937 N.E.2d 441, 444 (Mass. 2010).

137. *Id.* at 445–46.

138. *Id.* at 442.

139. *Drumgold v. Commonwealth*, 937 N.E.2d 450, 450 (Mass. 2010).

140. *Guzman*, 937 N.E.2d at 442.

141. *Id.* at 448.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 450.

146. *Drumgold*, 937 N.E.2d at 450.

147. *Id.* at 453.

targeted as revenge for a prior killing, and Drumgold was one of the shooters.<sup>148</sup> During the trial, the state did not disclose that key witnesses—who testified that Drumgold and another individual were two blocks from the scene, carrying guns and asked for the location of the intended target—were offered promises and inducements to testify against Drumgold.<sup>149</sup> Moreover, it was later discovered during a post-trial hearing that another key witness, who testified that she saw Drumgold fleeing less than a block from the scene immediately after gunshots, was suffering from terminal brain cancer and that the injury blurred her vision at the time she allegedly identified Drumgold.<sup>150</sup> The Massachusetts Supreme Court declared Drumgold eligible for erroneous conviction relief because, while not directly exculpatory, the omitted evidence tended to support Drumgold’s mistaken identification defense and was probative to show his innocence.<sup>151</sup>

Three years later, in *Irwin v. Commonwealth*, the Massachusetts Supreme Court determined that the improper use of Irwin’s pre-arrest silence as inculpatory evidence did not constitute facts tending to show innocence. This is so because it was neither probative nor relevant toward guilt or innocence and should not have been admitted.<sup>152</sup> More significantly, however, the court noted that the inclusion of improper inculpatory evidence, like deliberate perjurious testimony of an arresting officer, could be grounds for establishing innocence for ECL eligibility.<sup>153</sup> The court further explained that, under its case law, the deliberate omission of exculpatory alibi evidence might also be grounds for pursuing ECL eligibility.<sup>154</sup> In coming to these conclusions, the court emphasized how mistaken identity is often grounds that establish factual innocence for ECL relief.<sup>155</sup> Importantly, the Massachusetts Supreme Court’s focus on identity demonstrates the significance of the causal connection between conduct and crime. As with DNA exoneration, evidence of mistaken identity severs any causal connection between conduct and crime because the apprehended individual did not commit the guilty conduct.<sup>156</sup>

Then, in 2016, the Massachusetts Court of Appeals determined the eligibility of Omar Santana.<sup>157</sup> Santana and a codefendant were charged as youthful offenders of aggravated rape by joint venture and intent to commit rape.<sup>158</sup> Although he never committed the rape, Santana sat on the victim’s

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148. *Id.*

149. *Id.* at 455–56.

150. *Id.* at 455.

151. *Id.* at 458–59.

152. *Irwin v. Commonwealth*, 992 N.E.2d 275, 290–91 (Mass. 2013).

153. *Id.* at 287–88.

154. *Id.* at 288.

155. *Id.* at 285–88.

156. *See Kahn, supra* note 92, at 137–38.

157. *Santana v. Commonwealth*, 59 N.E.3d 430, 430 (Mass. App. Ct. 2016).

158. *Id.* at 431.

chest while the codefendant committed sexual penetration.<sup>159</sup> The jury convicted Santana of the lesser offense of rape but found him not guilty of aggravated rape.<sup>160</sup> Santana's conviction was reversed, however, after a panel of the Massachusetts Court of Appeals determined that "no rational view of the evidence" could support the verdict that Santana was guilty of rape but not aggravated rape.<sup>161</sup> Santana then filed a claim for erroneous conviction compensation.<sup>162</sup> The majority held Santana's reversal was due to improper jury instruction, and therefore he was not eligible for erroneous conviction compensation because this did not tend to establish his innocence.<sup>163</sup> In the concurring opinion, Justice Trainor explained that the reversal of Santana's conviction specifically described "that it was *legally* impossible for Santana to be guilty of rape with the codefendant's penis" and that "[t]his is certainly not a fact that tends to establish innocence."<sup>164</sup> Thus, the legal reversal of Santana's conviction would only assist in an acquittal.<sup>165</sup> In essence, Justice Trainor argued that a legal determination, without more, does not tend to establish factual innocence for ECL eligibility.

This case law demonstrates that courts evaluate the *prima facie* showing of factual innocence through the lens of causation by determining whether a petitioner has sufficiently demonstrated factual information that tends to sever the causal connection between the conduct during the behavioral incident and the bringing about of the conviction or commission of a crime. Importantly, this initial stage is not a factual determination of innocence by the fact finder, but a legal determination by the court based on a showing of evidence that tends to establish factual innocence. Further, the reversal or vacation of a conviction as a matter of law is not by itself evidence that tends to establish a petitioner's factual innocence at the *prima facie* stage. Therefore, by using this causal framework for determining "evidence of factual innocence," Minnesota courts would be evaluating its *prima facie* showing consistent with other jurisdictions employing a similar statutory framework.

## V. CONCLUSION

When Minnesota courts evaluate "evidence of factual innocence" in making the determination whether a petitioner's conviction was reversed, set aside, vacated, or was granted a new trial "on grounds consistent with innocence," they should look for pieces of factual information that tend to sever

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159. *Id.* at 431–33.

160. *Id.* at 432–33.

161. *Id.* at 432.

162. *Id.* at 431.

163. *Santana*, 59 N.E.3d at 434.

164. *Id.* at 436 (Trainor, J., concurring).

165. *Id.*



the petitioner's actual conduct from the behavioral incident and the commission of a crime. This framework is supported by the legislative history of IERA, the circumstances that brought about its original enactment, and is consistent with other jurisdictions that use a similar standard for their prima facie requirements.

Under this causal framework, the reversal of *Back's* conviction or those convicted of being a felon-in-possession of a BB gun prior to the *Haywood* decision—reversals or vacations as a matter of law—will not by themselves satisfy “evidence of factual innocence.” Yet, neither *Back's* reversal nor the *Haywood* reversals would necessarily be precluded from IERA relief so long as they could also show factual information that severs the causal connection between their conduct during the behavioral incident and the commission of a crime. Therefore, it also provides district courts the flexibility to determine factual innocence under IERA in all circumstances in which a conviction can be reversed, set aside, vacated, or a new trial granted.

Although this causal framework provides a bright-line test, it requires a fact-intensive investigation in making the legal determination for only the first requirement for IERA eligibility under section 590.11, which must be evaluated on a case-by-case basis. It is critical to undertake this rigorous evaluation because IERA relief should go only to those individuals the legislature intended—persons who are innocent as a matter of fact.