

FIRST REGULAR SESSION

# HOUSE BILL NO. 463

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

1122H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To amend chapter 546, RSMo, by adding thereto thirteen new sections relating to the Missouri innocence inquiry commission.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 546, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 546.1000, 546.1003, 546.1006, 546.1009, 546.1012, 546.1015, 546.1018, 546.1021, 546.1024, 546.1027, 546.1030, 546.1033, and 546.1036, to read as follows:

**546.1000. As used in sections 546.1000 to 546.1036, the following terms mean:**

- (1) "Claim of factual innocence", a claim, on behalf of a living person convicted of a felony offense within the state of Missouri, asserting the innocence of any criminal responsibility for the felony offense for which the person was convicted and for any other reduced level of criminal responsibility relating to the offense, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief;**
- (2) "Claimant", a person asserting that he or she is innocent of any criminal responsibility for a felony offense for which the person was convicted and for any other reduced level of criminal responsibility relating to the offense;**
- (3) "Commission", the Missouri innocence inquiry commission established in sections 546.1000 to 546.1036;**
- (4) "Director", the director of the commission;**
- (5) "Formal inquiry", the stage of an investigation in which the commission has entered into a signed agreement with the original claimant and the commission has made efforts to notify the victim;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (6) "Victim", the victim of the offense or, if the victim of the offense is deceased, the  
18 next of kin of the victim.

19 546.1003. 1. There is hereby established the "Missouri Innocence Inquiry  
20 Commission". The commission shall be an independent commission under the office of  
21 state courts administrator for administrative purposes.

22 2. The office of state courts administrator shall provide administrative support to  
23 the commission as needed. The office of state courts administrator shall not reduce or  
24 modify the budget of the commission or use funds appropriated to the commission without  
25 the approval of the commission. The office of state courts administrator shall conduct an  
26 annual audit of the commission.

546.1006. 1. The commission shall consist of eight voting members as follows:

(1) One shall be a circuit court judge;

(2) One shall be a prosecuting attorney;

(3) One shall be a victim advocate;

(4) One shall be engaged in the practice of criminal defense law;

(5) One shall be a person who is not an attorney and who is not an officer or  
employee of the judicial branch;

(6) One shall be a sheriff holding office at the time of his or her appointment; and

(7) The vocations of the two remaining appointed voting members shall be at the  
discretion of the chief justice of the Missouri supreme court.

The chief justice of the Missouri supreme court shall make all initial appointments for  
members identified in this subsection.

2. The appointing authority shall also appoint alternate commission members for  
the commission members he or she has appointed to serve, in the event of scheduling  
conflicts, conflicts of interest, disability, or other disqualification arising in a particular  
case. The alternate members shall have the same qualifications for appointment as the  
original members. In making the appointments, the appointing authority shall make a good  
faith effort to appoint members with different perspectives of the justice system. The  
appointing authority shall also consider geographical location, gender, and racial diversity  
in making the appointments.

3. The circuit court judge who is appointed as a member under subsection 1 of this  
section shall serve as chair of the commission. The commission shall have its initial meeting  
before January 31, 2022, at the call of the chair. The commission shall meet a minimum  
of once every six months but may meet more often at the call of the chair. The commission  
shall meet at such time and place as designated by the chair. Notice of the meetings shall

27 be given at such time and manner as provided by the rules of the commission. A majority  
28 of the members shall constitute a quorum. All commission votes shall be by majority vote.

546.1009. 1. (1) As determined by the chief justice of the Missouri supreme court,  
2 of the initial members, two appointments shall be for one-year terms, three appointments  
3 shall be for two-year terms, and three appointments shall be for three-year terms.  
4 Thereafter, all terms shall be for three years. Members of the commission shall serve no  
5 more than two consecutive three-year terms plus any initial term of less than three years.  
6 Unless provided otherwise by sections 546.1000 to 546.1036, all terms of members shall  
7 begin on January first and end on December thirty-first.

8 (2) Members serving by virtue of elective or appointive office, except for the sheriff,  
9 may serve only so long as the officeholders hold those respective offices. The chief justice  
10 may remove members with cause. Vacancies occurring before the expiration of a term  
11 shall be filled in the manner provided for the members first appointed.

12 2. The commission members shall receive no salary for serving. All commission  
13 members shall receive necessary subsistence and travel expenses if acting officially as  
14 members of the commission.

546.1012. 1. The commission shall employ a director. The director shall report to  
2 the office of state courts administrator, who shall consult with the commission chair. The  
3 director shall be an attorney licensed to practice in Missouri at the time of appointment  
4 and at all times during service as director. The director shall assist the commission in  
5 developing rules and standards for cases accepted for review, coordinate investigation of  
6 cases accepted for review, maintain records for all case investigations, prepare reports  
7 outlining commission investigations and recommendations to the trial court, and apply for  
8 and accept on behalf of the commission any moneys that may become available from  
9 government grants, private gifts, donations, or devises from any source.

10 2. Subject to the approval of the chair, the director shall employ such other staff  
11 and shall contract for services as is necessary to assist the commission in the performance  
12 of its duties and as moneys permit.

13 3. The commission may, with the approval of the general assembly, meet in the state  
14 capitol building or in an area provided by the office of state courts administrator. The  
15 office of state courts administrator shall provide office space for the commission and the  
16 commission staff.

546.1015. The commission shall have the following duties and powers:

2 (1) To establish the criteria and screening process to be used to determine which  
3 cases shall be accepted for review;

- 4           (2) To conduct inquiries into claims of factual innocence, with priority to be given  
5 to those cases in which the convicted person is currently incarcerated solely for the offense  
6 for which he or she claims factual innocence;
- 7           (3) To coordinate the investigation of cases accepted for review;
- 8           (4) To maintain records for all case investigations;
- 9           (5) To prepare written reports outlining commission investigations and  
10 recommendations to the trial court at the completion of each inquiry; and
- 11          (6) To apply for and accept any moneys that may become available for the  
12 commission's work from government grants, private gifts, donations, or devises from any  
13 source.

**546.1018. 1.** A claim of factual innocence for any conviction may be referred to the  
2 commission by any court, a state or local agency, or a claimant's counsel. A claim of  
3 factual innocence for convictions of first degree murder under section 565.020; second  
4 degree murder under section 565.021; voluntary manslaughter under section 565.023;  
5 involuntary manslaughter in the first degree under section 565.024; involuntary  
6 manslaughter in the second degree under section 565.027; robbery in the first degree under  
7 section 570.023; robbery in the second degree under section 570.025; any offense under  
8 chapter 566 requiring registration under sections 589.400 to 589.425; and any class A, class  
9 B, class C, class D, or class E felony may be made directly by the claimant. The  
10 commission shall not consider a claim of factual innocence if the convicted person is  
11 deceased. A claimant who received notice under subdivision (2) of subsection 3 of this  
12 section and did not make a claim of factual innocence shall be barred from investigation  
13 of a claim of factual innocence by the commission absent a showing of good cause and  
14 approval by the commission chair. The determination of whether to grant a formal inquiry  
15 regarding any other claim of factual innocence is in the discretion of the commission. The  
16 commission may informally screen and dismiss a case summarily at its discretion.

**2. (1)** No formal inquiry into a claim of factual innocence shall be made by the  
18 commission unless the director or the director's designee first obtains a signed agreement  
19 from the convicted person in which the convicted person waives his or her procedural  
20 safeguards and privileges, agrees to cooperate with the commission, and agrees to provide  
21 full disclosure regarding all inquiry requirements of the commission. The waiver under  
22 this subdivision shall not apply to matters unrelated to a convicted person's claim of factual  
23 innocence. The convicted person shall have the right to advice of counsel prior to the  
24 execution of the agreement and, if a formal inquiry is granted, throughout the formal  
25 inquiry. If counsel represents the convicted person, the convicted person's counsel shall  
26 be present at the signing of the agreement. If counsel does not represent the convicted

27 person, the commission chair shall determine the convicted person's indigency status and,  
28 if appropriate, enter an order for the appointment of counsel.

29 (2) Forensic testing and claimant interviews shall not be conducted by the  
30 commission prior to obtaining a signed agreement from the convicted person.

31 3. (1) If a formal inquiry regarding a claim of factual innocence is granted, the  
32 director shall use all due diligence to notify the victim in the case and explain the inquiry  
33 process. The commission shall give the victim notice that the victim has the right to present  
34 his or her views and concerns throughout the commission's investigation.

35 (2) Absent a showing of good cause and approval by the commission chair, if a  
36 formal inquiry regarding a claim of factual innocence is granted, the commission shall use  
37 all due diligence to notify each codefendant of the claim that an investigation will be  
38 conducted and that if the codefendant wishes to also file a claim, the codefendant shall do  
39 so within sixty days from receipt of the notice or the claim may be barred from future  
40 investigation by the commission.

41 (3) If a formal inquiry regarding a claim of factual innocence is granted, the  
42 director shall provide a confidential case status update for each case in formal inquiry to  
43 the prosecuting attorney and the convicted person, or the convicted person's counsel, if  
44 any, at least once every six months. If there is no defense counsel, the update shall be  
45 provided to the prosecuting attorney, the convicted person, and referring counsel, if any.  
46 The case status update shall include a summary of the actions taken since the last update  
47 and the results of any forensic testing that has been conducted.

48 4. The commission may use any measure provided by statute or the rules of civil  
49 procedure to obtain information necessary to its inquiry. The commission may also do any  
50 of the following:

51 (1) Issue process to compel the attendance of witnesses and the production of  
52 evidence;

53 (2) Administer oaths;

54 (3) Petition the circuit court of Cole County or the court having original  
55 jurisdiction for enforcement of process or for other relief; and

56 (4) Prescribe its own rules of procedure.

57

58 All challenges with regard to the commission's authority or the commission's access to  
59 evidence shall be heard by the commission chair in the chair's judicial capacity, including  
60 any in-camera review.

61 5. While performing duties for the commission, the director or the director's  
62 designee may serve subpoenas or other process issued by the commission throughout the

63 state in the same manner and with the same effect as an officer authorized to serve process  
64 as provided by law.

65         6. All state discovery and disclosure statutes in effect at the time of formal inquiry  
66 shall be enforceable as if the convicted person was currently being tried for the charge for  
67 which the convicted person is claiming innocence.

68         7. If, at any point during an inquiry, the convicted person refuses to comply with  
69 requests of the commission or is otherwise deemed to be uncooperative by the commission,  
70 the commission shall discontinue the inquiry.

546.1021. 1. (1) At the completion of a formal inquiry, all relevant evidence shall  
2 be presented to the full commission in a public hearing. Any public hearing held in  
3 accordance with this section shall be subject to the commission's rules of operation. The  
4 commission's rules of operation shall not exclude the prosecuting attorney or defense  
5 counsel from any portion of the hearing.

6         (2) The commission may compel the testimony of any witness. If a witness asserts  
7 his or her privilege against self-incrimination in a proceeding under this section, the  
8 commission chair, in the chair's judicial capacity, may order the witness to testify or  
9 produce other information if the chair first determines that the witness's testimony will  
10 likely be material to the investigation and necessary to reach a correct factual  
11 determination in the case at hand. However, the commission chair shall not order the  
12 witness to testify or produce other information that would incriminate the witness in the  
13 prosecution of any offense other than an offense for which the witness is granted immunity  
14 under this subdivision. The order shall prevent a prosecutor from using the compelled  
15 testimony, or evidence derived therefrom, to prosecute the witness for previous false  
16 statements made under oath by the witness in prior proceedings. The prosecutor has a  
17 right to be heard by the commission chair prior to the chair issuing the order. Once  
18 granted, the immunity shall apply throughout all proceedings conducted under this section.  
19 The limited immunity granted under this section shall not prohibit prosecution of  
20 statements made under oath that are unrelated to the commission's formal inquiry, false  
21 statements made under oath during proceedings under this section, or prosecution for any  
22 other offenses.

23         (3) The commission shall include, as part of its rules of operation, the holding of a  
24 prehearing conference to be held at least ten days prior to any proceedings of the full  
25 commission. Only the following persons shall be notified and authorized to attend the  
26 prehearing conference:

27         (a) The prosecuting attorney or the prosecuting attorney's designee where the  
28 claimant was convicted of the felony upon which the claim of factual innocence is based;

- 29           **(b) The claimant's counsel, if any;**  
30           **(c) The chair of the commission;**  
31           **(d) The director of the commission; and**  
32           **(e) Any commission staff designated by the director.**

33

34 **The prosecuting attorney or the prosecuting attorney's designee shall be provided an**  
35 **opportunity to inspect any evidence that may be presented to the commission that has not**  
36 **previously been presented to any judicial officer or body and any information that the**  
37 **prosecuting attorney or the prosecuting attorney's designee deems relevant to the**  
38 **proceedings. At least seventy-two hours prior to any commission proceeding, the**  
39 **prosecuting attorney or the prosecuting attorney's designee is authorized to provide the**  
40 **commission with a written statement, which shall be part of the record.**

41           **2. The director shall use all due diligence to notify the victim at least thirty days**  
42 **prior to any proceedings of the full commission held in regard to the victim's case. The**  
43 **commission shall notify the victim that the victim is permitted to attend proceedings**  
44 **otherwise closed to the public, subject to any limitations imposed under sections 546.1000**  
45 **to 546.1036. If the victim plans to attend proceedings otherwise closed to the public, the**  
46 **victim shall notify the commission at least ten days in advance of the proceedings of the**  
47 **victim's intent to attend.**

48           **3. (1) After hearing the evidence, the full commission shall vote to establish further**  
49 **case disposition as provided by this subsection. All eight voting members of the**  
50 **commission shall participate in such vote.**

51           **(2) Except in cases in which the convicted person entered and was convicted on a**  
52 **plea of guilty, if five or more of the eight voting members of the commission conclude there**  
53 **is sufficient evidence of factual innocence to merit judicial review, the case shall be referred**  
54 **to the court having original jurisdiction by filing with the clerk of that court the opinion**  
55 **of the commission with supporting findings of fact, as well as the record in support of such**  
56 **opinion, with service on the convicted person or the convicted person's counsel, if any, and**  
57 **the prosecuting attorney in noncapital cases or service on both the prosecuting attorney**  
58 **and attorney general in capital cases. In cases in which the convicted person entered and**  
59 **was convicted on a plea of guilty, if all eight voting members of the commission conclude**  
60 **there is sufficient evidence of factual innocence to merit judicial review, the case shall be**  
61 **referred to the court having original jurisdiction.**

62           **(3) If fewer than five of the eight voting members of the commission, or fewer than**  
63 **all eight voting members of the commission if the convicted person entered and was**  
64 **convicted on a guilty plea, conclude there is sufficient evidence of factual innocence to**

65 merit judicial review, the commission shall conclude there is insufficient evidence of factual  
66 innocence to merit judicial review. The commission shall document such opinion, along  
67 with supporting findings of fact, and file those documents and supporting materials with  
68 the clerk of the court having original jurisdiction, with a copy to the convicted person or  
69 the convicted person's counsel, if any, the prosecuting attorney, and the court having  
70 original jurisdiction.

71 (4) The director of the commission shall use all due diligence to immediately notify  
72 the victim of the commission's conclusion in a case.

73 4. Evidence of criminal acts, professional misconduct, or other wrongdoing  
74 disclosed through formal inquiry or commission proceedings shall be referred to the  
75 appropriate authority. Evidence favorable to the convicted person disclosed through  
76 formal inquiry or commission proceedings shall be disclosed to the convicted person and  
77 the convicted person's counsel, if any.

78 5. All proceedings of the commission shall be recorded and transcribed as part of  
79 the record. All commission member votes shall be recorded in the record. The supporting  
80 records for the commission's conclusion that there is sufficient evidence of factual  
81 innocence to merit judicial review, including all files and materials considered by the  
82 commission and a full transcript of the hearing before the commission, shall become public  
83 when filed as required under subsection 3 of this section. Commission records for  
84 conclusions of insufficient evidence of factual innocence to merit judicial review shall  
85 remain confidential, except as provided in subsection 4 of this section.

86 6. At any point in the formal inquiry regarding a claim of factual innocence, the  
87 prosecuting attorney and the convicted person or the convicted person's counsel may agree  
88 that there is sufficient evidence of factual innocence to merit judicial review by the  
89 three-judge panel and bypass the eight-member panel. The director and the chair of the  
90 commission shall be notified in writing of any such agreement.

91 7. Except as otherwise provided in this section, all files and records not filed with  
92 the clerk of the circuit court or presented at the commission hearings are confidential and  
93 exempt from the public record. If the commission concludes there is sufficient evidence of  
94 factual innocence to merit judicial review, the commission shall make a copy of the entire  
95 file available to the prosecuting attorney and defense counsel. Upon availability, the  
96 commission shall provide the prosecuting attorney and defense counsel a copy of the  
97 uncertified and certified transcripts of the commission's proceedings. Absent a judicial  
98 finding of malicious conduct, the commission and commission staff shall not be civilly  
99 liable for acting in compliance with this subsection.



100           **8. With respect to the evidence presented to the three-judge panel, the prosecuting**  
101 **attorney and defense counsel may determine which evidence, if any, will be presented to**  
102 **the three-judge panel.**

**546.1024. 1. (1) If the commission concludes or the prosecuting attorney and the**  
2 **convicted person's counsel agree under subsection 6 of section 546.1021 there is sufficient**  
3 **evidence of factual innocence to merit judicial review, the chair of the commission shall**  
4 **request the chief justice of the Missouri supreme court to appoint a three-judge panel, not**  
5 **to include any trial judge who has had substantial previous involvement in the case, and**  
6 **issue commissions to the members of the three-judge panel to convene a special session of**  
7 **the court having original jurisdiction to hear evidence relevant to the commission's**  
8 **recommendation. The senior judge of the panel shall preside. The chief justice shall**  
9 **appoint the three-judge panel within twenty days of the filing of the commission's opinion**  
10 **finding sufficient evidence of factual innocence to merit judicial review.**

11           **(2) If the commission concludes there is credible evidence of prosecutorial**  
12 **misconduct in the case, the chair of the commission may request the attorney general to**  
13 **appoint a special prosecutor to represent the state in lieu of the prosecuting attorney of the**  
14 **court in which the person was convicted or such prosecuting attorney's designee. The**  
15 **request for the special prosecutor shall be made within twenty days of the filing of the**  
16 **commission's opinion finding sufficient evidence of innocence to merit judicial review.**  
17 **Upon receipt of a request under this subdivision to appoint a special prosecutor, the**  
18 **attorney general may temporarily assign a prosecuting attorney, assistant prosecuting**  
19 **attorney, or other qualified attorney to represent the state at the hearing before the**  
20 **three-judge panel. However, the attorney general shall not appoint as special prosecutor**  
21 **any attorney who prosecuted or assisted with the prosecution in the trial of the convicted**  
22 **person or is a prosecuting attorney in the court in which the convicted person was tried.**  
23 **The appointment shall be made no later than twenty days after the receipt of the request.**

24           **2. (1) The judge in the court having original jurisdiction shall enter an order**  
25 **setting the case for hearing at the special session for which the three-judge panel is**  
26 **commissioned and shall require the state to file a response to the commission's opinion**  
27 **within ninety days of the date of the order. Such response, at the time of original filing or**  
28 **through amendment at any time before or during the proceedings, may include joining the**  
29 **defense in a motion to dismiss the charges with prejudice on the basis of innocence.**

30           **(2) The commission's entire file, including files obtained from other agencies, shall**  
31 **be unencumbered by protective orders when transferred to the prosecuting attorney and**  
32 **defense counsel under subsection 7 of this section unless either of the following applies:**

33 (a) The prosecuting attorney and defense counsel have consented to a protective  
34 order over a portion of the file; or

35 (b) The prosecuting attorney and defense counsel have been given an opportunity  
36 to be heard by the senior judge of the three-judge panel before a protective order is issued.

37 3. The prosecuting attorney of the court in which the person was convicted, or the  
38 prosecuting attorney's designee, shall represent the state at the hearing before the  
39 three-judge panel, except as otherwise provided by this section.

40 4. The three-judge panel shall conduct an evidentiary hearing. At the hearing, the  
41 court, and the defense and prosecution through the court, may compel the testimony of any  
42 witness, including the convicted person. All credible, verifiable evidence relevant to the  
43 case, even if considered by a jury or judge in a prior proceeding, may be presented during  
44 the hearing. The convicted person shall not assert any privilege or prevent a witness from  
45 testifying. The convicted person has a right to be present at the evidentiary hearing and  
46 to be represented by counsel. A waiver of the right to be present shall be in writing.

47 5. The judge in the court having original jurisdiction shall determine the convicted  
48 person's indigency status and, if appropriate, enter an order for the appointment of  
49 counsel. The court may also enter an order relieving an indigent convicted person of all  
50 or a portion of the costs of the proceedings.

51 6. The clerk of the court shall provide written notification to the victim thirty days  
52 prior to any case-related hearings.

53 7. Upon the motion of either party, the senior judge of the panel may direct the  
54 attorneys for the parties to appear before him or her for a conference on any matter in the  
55 case.

56 8. The three-judge panel shall rule as to whether the convicted person has proved  
57 by clear and convincing evidence that the convicted person is innocent of the charges. Such  
58 a determination shall require a unanimous vote. If the vote is unanimous, the panel shall  
59 enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall  
60 deny relief.

61 9. A person who is determined by the three-judge panel to be innocent of all  
62 charges and against whom the charges are dismissed under this section is eligible for  
63 compensation.

546.1027. 1. Unless otherwise authorized by sections 546.1000 to 546.1036, the  
2 decisions of the commission and of the three-judge panel are final and are not subject to  
3 further review by appeal, certification, writ, motion, or otherwise.

4 2. A claim of factual innocence asserted through the commission shall not adversely  
5 affect the convicted person's rights to other postconviction relief.

546.1030. 1. Upon receiving written notice from the commission of a commission inquiry, the state shall preserve all files and evidence subject to disclosure. After the commission provides written notice to the state that the commission's inquiry is complete, the duty to preserve under this section shall cease; however, other preservation requirements may be applicable.

2. The commission is entitled to a copy of all records preserved under subsection 1 of this section, including access to inspect and examine all physical evidence.

3. Upon request of the commission, the state shall transfer custody of physical evidence to the commission's director, or the director's designee, for forensic and DNA testing. The commission shall preserve evidence in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, while subject to a continuous chain of custody and securely retained with sufficient official documentation to locate the evidence. At or prior to the completion of the commission's inquiry, the commission shall return all remaining evidence.

4. The commission shall have the right to subject physical evidence to forensic and DNA testing, including consumption of biological material, as necessary for the commission's inquiry. If testing complies with Federal Bureau of Investigation requirements and the data meets the National DNA Index System criteria, profiles obtained from the testing shall be searched and uploaded to CODIS, as defined in section 650.100. The commission shall incur all costs associated with ensuring compliance with Federal Bureau of Investigation requirements and the National DNA Index System criteria.

546.1033. The commission shall report annually before February first of each year to the general assembly on its activities. The report may contain recommendations of any needed legislative changes related to the activities of the commission. The report shall recommend the funding needed by the commission, the prosecuting attorneys, and the Missouri state highway patrol in order to meet the commission's responsibilities. Recommendations concerning the prosecuting attorneys or the Missouri state highway patrol shall only be made after consultations with the Missouri Association of Prosecuting Attorneys and the attorney general.

546.1036. The commission shall promulgate rules to implement the provisions of sections 546.1000 to 546.1036. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held

8 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**  
9 **after August 28, 2021, shall be invalid and void.**

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