

HB 2568 -- INNOCENCE INQUIRY COMMISSION

SPONSOR: Dogan

This bill establishes the "Missouri Innocence Inquiry Commission", which shall be an independent commission under the Office of State Courts Administrator (OSCA), and OSCA will provide administrative support to the commission as needed. The bill specifies who will comprise the eight voting members of the committee, all of whom will be initially appointed by the Chief Justice of the Missouri Supreme Court. The bill also specifies the lengths of the terms to which the members will be appointed. The circuit court judge appointed as a member of the commission will serve as chair of the commission, and the commission must have its first meeting prior to January 31, 2021, at the call of the chair. The commission must meet at least once every six months. The commission will employ a director, who must report to OSCA. The director must also be an attorney licensed to practice law in Missouri at the time of his or her appointment and for the duration of his or her service as director. The bill provides the duties of the director as well as the duties and powers of the commission.

A claim of factual innocence for any conviction may be referred to the commission by any court, a state or local agency, or a claimant's counsel. Factual claims of innocence may also be made directly by the claimant for certain specified offenses. If the convicted person is deceased, the commission will not consider a claim. No formal inquiry into a claim of factual innocence will be made by the commission unless the director or his or her designee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the commission, and agrees to provide full disclosure regarding all inquiry requirements of the commission. The convicted person will have the right to advice of counsel prior to the execution of the agreement.

At the completion of a formal inquiry, all relevant evidence will be presented to the full commission in a public hearing. During the hearing, the commission may compel testimony of any witness. If a witness asserts his or her privilege against self-incrimination, the commission chair may order the witness to testify or produce other information if the chair determines the testimony will likely be material to the investigation and necessary to reach a correct factual determination in the case at hand. The chair must not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than the one for which the witness is granted immunity. The director must use all due diligence to notify the victim at least 30 days before any proceedings of the

full commission held in regard to the victim's case, as well as other rights the victim has regarding his or her case. After hearing evidence, the full commission must vote to establish further case disposition and all eight voting members of the commission must participate in the vote. The bill specifies the vote required to determine whether a case merits further judicial review. When a case proceeds for further judicial review, the prosecuting attorney and defense counsel may determine which evidence, if any, will be presented to the three-judge panel, the members of which will be appointed by the Chief Justice of the Missouri Supreme Court upon request by the chair of the commission.

The three-judge panel will conduct an evidentiary hearing, at which the testimony of any witness, including the convicted person, may be compelled. The clerk of the court must provide written notification to the victim 30 days before any case-related hearings. The panel must rule as to whether the convicted person has proven by clear and convincing evidence that he or she is innocent of the charges. Such a determination requires a unanimous vote. If a convicted person is determined to be innocent of all charges, such person will be eligible for compensation. Unless otherwise authorized, the commission's decisions and those of the panel are final and not subject to further review.

The commission must report annually to the General Assembly on its activities before February 1 of each year.