



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB0180

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

New Act

Creates the Wrongful Prosecution Commission Act. Creates the Wrongful Prosecution Commission as an independent commission under the Illinois Human Rights Commission for administrative purposes. Defines "claim of wrongful prosecution" as a claim by or on behalf of a living person convicted of a crime in a county of more than 3,000,000 inhabitants asserting that the person was falsely incriminated for the crime and there is credible evidence related to allegations of the use of false evidence to obtain the conviction. Defines other terms. Provides that the Commission shall conduct inquiries into claims of wrongful prosecution. Provides that if the Commission concludes there is sufficient evidence of wrongful prosecution to merit judicial review, the Chair of the Commission shall request that the Chief Judge of the Circuit Court of Cook County assign the case to a trial judge for consideration. Provides that the Act applies to claims of wrongful prosecution filed not later than 5 years after the effective date of the Act. Repeals the Act 10 years after the effective date. Effective immediately.

LRB101 04700 LNS 49709 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning wrongful prosecution.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Wrongful Prosecution Commission Act.

6 Section 5. Definitions. As used in this Act:

7 "Claim of wrongful prosecution" means a claim by or on
8 behalf of a living person convicted of a crime in a county of
9 more than 3,000,000 inhabitants asserting that the person was
10 falsely incriminated for the crime and there is credible
11 evidence related to allegations of the use of false evidence to
12 obtain the conviction.

13 "Commission" means the Wrongful Prosecution Commission
14 established by this Act.

15 "Convicted person" means the person making a claim of
16 wrongful prosecution under this Act.

17 "Director" means the Director of the Wrongful Prosecution
18 Commission.

19 "Victim" means the victim of the crime, or if the victim of
20 the crime is deceased, the parent, spouse, child, or sibling of
21 the deceased victim.

22 Section 10. Purpose of Act. This Act establishes an

1 extraordinary procedure to investigate and determine factual
2 claims of wrongful prosecution related to allegations of
3 wrongful prosecution that shall require an individual to
4 voluntarily waive rights and privileges as described in this
5 Act.

6 Section 15. Commission established.

7 (a) The Wrongful Prosecution Commission is established as
8 an independent commission under the Illinois Human Rights
9 Commission for administrative purposes.

10 (b) The Illinois Human Rights Commission shall provide
11 administrative support to the Commission as needed. The
12 Executive Director of the Illinois Human Rights Commission
13 shall not reduce or modify the budget of the Commission or use
14 funds appropriated to the Commission without the approval of
15 the Commission.

16 Section 20. Membership; chair; meetings; quorum.

17 (a) The Commission shall consist of 8 voting members as
18 follows:

19 (1) One shall be a retired Circuit Court Judge.

20 (2) One shall be a former prosecuting attorney.

21 (3) One shall be a law school professor.

22 (4) One shall be engaged in the practice of criminal
23 defense law.

24 (5) Three shall be members of the public who are not

1 attorneys and who are not officers or employees of the
2 Judicial branch.

3 (6) One shall be a former public defender.

4 The members of the Commission shall be appointed by the
5 Governor, with the advice and consent of the Senate. Members
6 may be reappointed for additional terms, as provided under
7 Section 25. In making the appointments, the Governor shall make
8 a good faith effort to appoint members with different
9 perspectives of the justice system. The Governor shall also
10 consider geographical location, gender, and racial diversity
11 in making the appointments.

12 (b) In the event of scheduling conflicts, conflicts of
13 interest, disability, or other disqualification arising in a
14 particular case, the Governor shall appoint alternate
15 Commission members for the Commission members he or she has
16 appointed to serve. If an alternate member is called upon to
17 serve, the alternate member shall vote in the place of and
18 otherwise exercise the same powers as the member which he or
19 she is replacing. The alternate member shall have the same
20 qualifications for appointment as the original member.

21 (c) The retired judge who is appointed as a member under
22 subsection (a) shall serve as Chair of the Commission. The
23 Commission shall have its initial meeting no later than one
24 month after the appointment of a quorum of members of the
25 Commission, at the call of the Chair. The Commission shall meet
26 a minimum of once every 6 months and may meet more often at the

1 call of the Chair. The Commission shall meet at such time and
2 place as designated by the Chair, in accordance with the
3 provisions of the Open Meetings Act. Notice of the meetings
4 shall be given at such time and manner as provided by the rules
5 of the Commission, in accordance with the provisions of the
6 Open Meetings Act. A majority of the voting members shall
7 constitute a quorum. All Commission votes shall be by majority
8 vote of the voting members appointed.

9 Section 25. Terms of members; compensation; expenses.

10 (a) Of the initial members, the appointments under
11 paragraphs (3) and (6) of subsection (a) of Section 20 shall be
12 for one-year terms, the appointments under paragraphs (1), (2),
13 and (4) of subsection (a) of Section 20 shall be for 2-year
14 terms, and the appointments under paragraph (5) of subsection
15 (a) of Section 20 shall be for 3-year terms. Thereafter, all
16 terms shall be for 3 years. Members of the Commission shall
17 serve no more than 2 consecutive 3-year terms plus any initial
18 term of less than 3 years. Except as otherwise provided by this
19 Act, all terms of members shall begin on January 1 and end on
20 December 31.

21 A member serving by virtue of elective or appointive office
22 may serve only so long as the member holds the respective
23 office. The Chief Judge of the Cook County Circuit Court may
24 remove members for good cause shown. Vacancies occurring before
25 the expiration of a term shall be filled in the manner provided

1 for the members first appointed.

2 (b) The Commission members shall receive no salary for
3 serving, but may be reimbursed for reasonable expenses incurred
4 as a result of their duties as members of the Commission from
5 funds appropriated by the General Assembly for that purpose or
6 from funds obtained from sources other than the General
7 Assembly.

8 Section 30. Director and other staff. The Commission shall
9 employ a Director. The Director shall be an attorney licensed
10 to practice in Illinois at the time of appointment and at all
11 times during service as Director. The Director shall assist the
12 Commission in developing rules and standards for cases accepted
13 for review, coordinate investigation of cases accepted for
14 review, maintain records for all case investigations, prepare
15 reports outlining Commission investigations and
16 recommendations to the trial court, and apply for and accept on
17 behalf of the Commission any funds that may become available
18 from government grants, private gifts, donations, or bequests
19 from any source.

20 Subject to the approval of the Chair, the Director shall
21 employ such other staff and shall contract for services as is
22 necessary to assist the Commission in the performance of its
23 duties and as funds permit.

24 The Commission may meet in an area provided by the Illinois
25 Human Rights Commission or any other State agency. The Illinois

1 Human Rights Commission shall provide, directly or through any
2 other State agency, office space for the Commission and the
3 Commission staff.

4 Section 35. Duties. The Commission shall have the
5 following duties and powers:

6 (1) To establish the criteria and screening process to
7 be used to determine which cases shall be accepted for
8 review.

9 (2) To conduct inquiries into claims of wrongful
10 prosecution.

11 (3) To coordinate the investigation of cases accepted
12 for review.

13 (4) To maintain records for all case investigations.

14 (5) To prepare written reports outlining Commission
15 investigations and recommendations to the trial court at
16 the completion of each inquiry.

17 (6) To apply for and accept any funds that may become
18 available for the Commission's work from government
19 grants, private gifts, donations, or bequests from any
20 source.

21 Section 40. Claims of wrongful prosecution; waiver of
22 convicted person's procedural safeguards and privileges;
23 formal inquiry; notification of the crime victim.

24 (a) A claim of wrongful prosecution may be referred to the

1 Commission by any court, person, or agency. The Commission
2 shall not consider a claim of wrongful prosecution if the
3 convicted person is deceased. The determination of whether to
4 grant a formal inquiry regarding any other claim of wrongful
5 prosecution is in the discretion of the Commission. The
6 Commission may informally screen and dismiss a case summarily
7 at its discretion.

8 (b) No formal inquiry into a claim of wrongful prosecution
9 shall be made by the Commission unless the Director or the
10 Director's designee first obtains a signed agreement from the
11 convicted person in which the convicted person waives his or
12 her procedural safeguards and privileges, including, but not
13 limited to, the right against self-incrimination under the
14 United States Constitution and the Constitution of the State of
15 Illinois, agrees to cooperate with the Commission, and agrees
16 to provide full disclosure regarding inquiry requirements of
17 the Commission. The waiver under this subsection does not apply
18 to matters unrelated to a convicted person's claim of wrongful
19 prosecution. The convicted person has the right to advice of
20 counsel prior to the execution of the agreement and, if a
21 formal inquiry is granted, throughout the formal inquiry. If
22 counsel represents the convicted person, then the convicted
23 person's counsel must be present at the signing of the
24 agreement. If counsel does not represent the convicted person,
25 the Commission Chair shall determine the convicted person's
26 indigency status and, if appropriate, enter an order for the

1 appointment of counsel for the purpose of advising on the
2 agreement.

3 (c) If a formal inquiry regarding a claim of wrongful
4 prosecution is granted, the Director shall use all due
5 diligence to notify the victim in the case and explain the
6 inquiry process. The Commission shall give the victim notice
7 that the victim has the right to present his or her views and
8 concerns throughout the Commission's investigation.

9 (d) The Commission may use any measure provided in the Code
10 of Civil Procedure and the Code of Criminal Procedure of 1963
11 to obtain information necessary to its inquiry. The Commission
12 may also do any of the following: issue subpoenas or other
13 process to compel the attendance of witnesses and the
14 production of evidence; administer oaths; petition the Circuit
15 Court of Cook County or of the original jurisdiction for
16 enforcement of process or for other relief; and prescribe its
17 own rules of procedure. All challenges with regard to the
18 Commission's authority or the Commission's access to evidence,
19 including any in camera review, shall be heard by the Circuit
20 Court of Cook County.

21 (e) While performing duties for the Commission, the
22 Director or the Director's designee may serve subpoenas or
23 other process issued by the Commission throughout the State in
24 the same manner and with the same effect as an officer
25 authorized to serve process under the laws of this State.

26 (f) All State discovery and disclosure statutes in effect

1 at the time of formal inquiry shall be enforceable as if the
2 convicted person were currently being tried for the charge for
3 which the convicted person is claiming wrongful prosecution.

4 (g) If, at any point during an inquiry, the convicted
5 person refuses to comply with requests of the Commission or is
6 otherwise deemed to be uncooperative by the Commission, the
7 Commission shall discontinue the inquiry.

8 Section 45. Commission proceedings.

9 (a) At the completion of a formal inquiry, all relevant
10 evidence shall be presented to the full Commission. As part of
11 its proceedings, the Commission may conduct hearings. The
12 determination whether to conduct hearings is solely in the
13 discretion of the Commission. Any hearing held in accordance
14 with this Section shall be a public hearing and shall be held
15 subject to the Commission's rules of operation and conducted
16 pursuant to the Open Meetings Act.

17 (b) The Director shall use all due diligence to notify the
18 victim at least 30 days prior to any proceedings of the full
19 Commission held in regard to the victim's case. The Commission
20 shall notify the victim that the victim is permitted to attend
21 proceedings otherwise closed to the public, subject to any
22 limitations imposed by this Act, and subject to paragraph (14)
23 of subsection (c) of Section 2 of the Open Meetings Act. If the
24 victim plans to attend proceedings otherwise closed to the
25 public, the victim shall notify the Commission at least 10 days

1 in advance of the proceedings of his or her intent to attend.
2 The Commission may close any portion of the proceedings to the
3 victim if the victim is to testify and the Commission
4 determines that the victim's testimony would be materially
5 affected by the victim hearing other testimony at the
6 proceeding.

7 (c) After hearing the evidence, the full Commission shall
8 vote to establish further case disposition as provided by this
9 subsection. All 8 voting members of the Commission shall
10 participate in that vote.

11 If 5 or more of the 8 voting members of the Commission
12 conclude by a preponderance of the evidence that there is
13 sufficient evidence of wrongful prosecution to merit judicial
14 review, the case shall be referred to the Chief Judge of the
15 Circuit Court of Cook County by filing with the clerk of court
16 the opinion of the Commission with supporting findings of fact,
17 as well as the record in support of the opinion, with service
18 on the State's Attorney in non-capital cases and service on
19 both the State's Attorney and Attorney General in capital
20 cases.

21 If less than 5 of the 8 voting members of the Commission
22 conclude by a preponderance of the evidence that there is
23 sufficient evidence of wrongful prosecution to merit judicial
24 review, the Commission shall conclude there is insufficient
25 evidence of wrongful prosecution to merit judicial review. The
26 Commission shall document that opinion, along with supporting

1 findings of fact, and file those documents and supporting
2 materials with the court clerk in the circuit of original
3 jurisdiction, with a copy to the State's Attorney and the chief
4 judge.

5 The Director of the Commission shall use all due diligence
6 to immediately notify the victim of the Commission's conclusion
7 in a case.

8 (d) Evidence of criminal acts, professional misconduct, or
9 other wrongdoing disclosed through formal inquiry or
10 Commission proceedings shall be referred to the appropriate
11 authority. Evidence favorable to the convicted person
12 disclosed through formal inquiry or Commission proceedings
13 shall be disclosed to the convicted person and the convicted
14 person's counsel, if the convicted person has counsel. The
15 Commission shall have the discretion to refer its findings,
16 together with the supporting record and evidence, to such other
17 parties or entities as the Commission in its discretion deems
18 appropriate.

19 (e) All proceedings of the Commission shall be recorded and
20 transcribed as part of the record. All Commission member votes
21 shall be recorded in the record. All records of the Commission
22 shall be confidential until the proceedings before the
23 Commission are concluded and a final decision is made by the
24 Commission.

25 Section 50. Post-commission judicial review.

1 (a) If the Commission concludes there is sufficient
2 evidence of wrongful prosecution to merit judicial review, the
3 Chair of the Commission shall request the Chief Judge of the
4 Circuit Court of Cook County to assign the case to a trial
5 judge for consideration. The court may receive proof by
6 affidavits, depositions, oral testimony, or other evidence. In
7 its discretion, the court may order the petitioner brought
8 before the court for the hearing. Notwithstanding the status of
9 any other postconviction proceedings relating to the
10 petitioner, if the court finds in favor of the petitioner, it
11 shall enter an appropriate order with respect to the judgment
12 or sentence in the former proceedings and such supplementary
13 orders as to rearraignment, retrial, custody, bail or
14 discharge, or for such relief as may be granted under a
15 petition for a certificate of innocence, as may be necessary
16 and proper.

17 (b) The State's Attorney or the State's Attorney's designee
18 shall represent the State at the hearing before the assigned
19 judge.

20 Section 55. Further review of decision by Commission;
21 postconviction relief.

22 (a) Unless otherwise authorized by this Act, the decision
23 of the Commission is final and subject to review under the
24 Administrative Review Law, and shall be overturned only if the
25 court finds that the decision is against the manifest weight of

1 the evidence.

2 (b) A claim of wrongful prosecution brought before the
3 Commission shall not adversely affect the convicted person's
4 right to other postconviction relief.

5 Section 60. Report. Beginning January 1, 2020, and annually
6 thereafter, the Wrongful Prosecution Commission shall report
7 on its activities to the General Assembly and the Governor. The
8 report may contain recommendations of any needed legislative
9 changes related to the activities of the Commission. The report
10 shall recommend the funding needed by the Commission, the
11 State's Attorneys, and the Department of State Police in order
12 to meet their responsibilities under this Act. Recommendations
13 concerning the State's Attorneys or the Department of State
14 Police shall be made only after consultations with the Illinois
15 State's Attorneys Association, the Department of State Police,
16 and the Attorney General.

17 Section 65. Appointment period. The initial members of the
18 Wrongful Prosecution Commission shall be appointed not later
19 than 3 months after the effective date of this Act. No claims
20 of wrongful prosecution may be filed with the Commission until
21 a quorum of members has been appointed.

22 Section 70. Filing of claims. This Act applies to claims of
23 wrongful prosecution filed not later than 5 years after the

1 effective date of this Act.

2 Section 75. Repeal. This Act is repealed 10 years after the
3 effective date of this Act.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.