

SB0048



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0048

Introduced 1/30/2009, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Torture Inquiry and Relief Commission Act. Creates the Illinois Torture Inquiry and Relief Commission as an independent commission under the Illinois Human Rights Commission for administrative purposes. Provides that the Commission shall conduct inquiries into claims of torture with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime with respect to which he or she claims torture by Jon Burge or officers under his command, or both. Provides that if the Commission concludes there is sufficient evidence of torture to merit judicial review, the Chair of the Commission shall request the Chief Judge of the Circuit Court of Cook County for assignment to a trial judge for consideration. Provides that the Act applies to claims of torture filed not later than 5 years after the effective date of the Act. Effective immediately.

LRB096 04487 RLC 14539 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning torture.

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 Illinois Torture Inquiry and Relief Commission Act.

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

7 (1) "Claim of torture" means a claim on behalf of a living
8 person convicted of a felony in Illinois asserting that he was
9 tortured into confessing to the crime for which the person was
10 convicted and the tortured confession was used to obtain the
11 conviction and for which there is some credible evidence
12 related to allegations of torture committed by Commander Jon
13 Burge or any officer under the supervision of Jon Burge.

14 (2) "Commission" means the Illinois Torture Inquiry and
15 Relief Commission established by this Act.

16 (3) "Convicted person" means the person making a claim of
17 torture under this Act.

18 (4) "Director" means the Director of the Illinois Torture
19 Inquiry and Relief Commission.

20 (5) "Victim" means the victim of the crime, or if the
21 victim of the crime is deceased, the next of kin of the victim,
22 which shall be the parent, spouse, child, or sibling of the
23 deceased victim.

1 Section 10. Purpose of Act. This Act establishes an
2 extraordinary procedure to investigate and determine factual
3 claims of torture related to allegations of torture that shall
4 require an individual to voluntarily waive rights and
5 privileges as described in this Act.

6 Section 15. Commission established.

7 (a) There is established the Illinois Torture Inquiry and
8 Relief Commission. The Illinois Torture Inquiry and Relief
9 Commission shall be an independent commission under the
10 Illinois Human Rights Commission for administrative purposes.

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

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

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

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

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

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

23 (4) One shall be engaged in the practice of criminal

1 defense law.

2 (5) Three shall be members of the public who are not
3 attorneys and who are not officers or employees of the
4 Judicial branch.

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

6 The Commission shall be appointed as follows:

7 2 members appointed by the Governor;

8 2 members appointed by the President of the Senate;

9 One member appointed by the Minority Leader of the
10 Senate;

11 2 members appointed by the Speaker of the House of
12 Representatives; and

13 One member appointed by the Minority Leader of the
14 House of Representatives.

15 After an appointee has served his or her first 3-year term,
16 the subsequent appointment or reappointment may be by the
17 initial appointing authority.

18 (a-1) The appointing authority shall also appoint
19 alternate Commission members for the Commission members he
20 or she has appointed to serve in the event of scheduling
21 conflicts, conflicts of interest, disability, or other
22 disqualification arising in a particular case. Where an
23 alternate member is called upon to serve in a particular
24 place, the alternate member shall vote in the place of, and
25 otherwise exercise the same powers as, the member which he
26 or she is replacing. The alternate member shall have the

1 same qualifications for appointment as the original
2 member. In making the appointments, the appointing
3 authority shall make a good faith effort to appoint members
4 with different perspectives of the justice system. The
5 appointing authority shall also consider geographical
6 location, gender, and racial diversity in making the
7 appointments.

8 (b) The retired judge who is appointed as a member
9 under subsection (a) shall serve as Chair of the
10 Commission. The Commission shall have its initial meeting
11 no later than one month after the appointment of a quorum
12 of members of the Commission, at the call of the Chair. The
13 Commission shall meet a minimum of once every 6 months and
14 may also meet more often at the call of the Chair. The
15 Commission shall meet at such time and place as designated
16 by the Chair, in accordance with the provisions of the Open
17 Meetings Act. Notice of the meetings shall be given at such
18 time and manner as provided by the rules of the Commission,
19 in accordance with the provisions of the Open Meetings Act.
20 A majority of the voting members shall constitute a quorum.
21 All Commission votes shall be by majority vote of the
22 voting members appointed.

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

24 (a) Of the initial members, the appointments under clauses
25 (a) (3) and (6) of Section 20 shall be for one-year terms, the

1 appointments under clauses (a) (1), (2), and (4) of Section 20
2 shall be for 2-year terms, and the appointments under clause
3 (a) (5) of Section 20 shall be for 3-year terms. Thereafter, all
4 terms shall be for 3 years. Members of the Commission shall
5 serve no more than 2 consecutive 3-year terms plus any initial
6 term of less than 3 years. Unless provided otherwise by this
7 Act, all terms of members shall begin on January 1 and end on
8 December 31.

9 Members serving by virtue of elective or appointive office,
10 may serve only so long as the office holders hold those
11 respective offices. The Chief Judge of the Cook County Circuit
12 Court may remove members for good cause shown. Vacancies
13 occurring before the expiration of a term shall be filled in
14 the manner provided for the members first appointed.

15 (b) The Commission members shall receive no salary for
16 serving, but may be reimbursed for reasonable expenses incurred
17 as a result of their duties as members of the Commission from
18 funds appropriated by the General Assembly for that purpose, or
19 from funds obtained from sources other than the General
20 Assembly.

21 Section 30. Director and other staff. The Commission shall
22 employ a Director. The Director shall be an attorney licensed
23 to practice in Illinois at the time of appointment and at all
24 times during service as Director. The Director shall assist the
25 Commission in developing rules and standards for cases accepted

1 for review, coordinate investigation of cases accepted for
2 review, maintain records for all case investigations, prepare
3 reports outlining Commission investigations and
4 recommendations to the trial court, and apply for and accept on
5 behalf of the Commission any funds that may become available
6 from government grants, private gifts, donations, or bequests
7 from any source.

8 Subject to the approval of the Chair, the Director shall
9 employ such other staff and shall contract for services as is
10 necessary to assist the Commission in the performance of its
11 duties, and as funds permit.

12 The Commission may meet in an area provided by the Illinois
13 Human Rights Commission, or any other State agency. The
14 Illinois Human Rights Commission shall provide, directly or
15 through any other State agency, office space for the Commission
16 and the Commission staff.

17 Section 35. Duties. The Commission shall have the
18 following duties and powers:

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

21 (2) To conduct inquiries into claims of torture with
22 priority to be given to those cases in which the convicted
23 person is currently incarcerated solely for the crime to which
24 he or she claims torture by Jon Burge or officers under his
25 command, or both.

1 (3) To coordinate the investigation of cases accepted for
2 review.

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

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

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

10 Section 40. Claims of torture; waiver of convicted person's
11 procedural safeguards and privileges; formal inquiry;
12 notification of the crime victim.

13 (a) A claim of torture may be referred to the Commission by
14 any court, person, or agency. The Commission shall not consider
15 a claim of torture if the convicted person is deceased. The
16 determination of whether to grant a formal inquiry regarding
17 any other claim of torture is in the discretion of the
18 Commission. The Commission may informally screen and dismiss a
19 case summarily at its discretion.

20 (b) No formal inquiry into a claim of torture shall be made
21 by the Commission unless the Director or the Director's
22 designee first obtains a signed agreement from the convicted
23 person in which the convicted person waives his or her
24 procedural safeguards and privileges including but not limited
25 to the right against self-incrimination under the United States

1 Constitution and the Constitution of the State of Illinois,
2 agrees to cooperate with the Commission, and agrees to provide
3 full disclosure regarding Inquiry requirements of the
4 Commission. The waiver under this subsection does not apply to
5 matters unrelated to a convicted person's claim of torture. The
6 convicted person shall have the right to advice of counsel
7 prior to the execution of the agreement and, if a formal
8 inquiry is granted, throughout the formal inquiry. If counsel
9 represents the convicted person, then the convicted person's
10 counsel must be present at the signing of the agreement. If
11 counsel does not represent the convicted person, the Commission
12 Chair shall determine the convicted person's indigency status
13 and, if appropriate, enter an order for the appointment of
14 counsel for the purpose of advising on the agreement.

15 (c) If a formal inquiry regarding a claim of torture is
16 granted, the Director shall use all due diligence to notify the
17 victim in the case and explain the inquiry process. The
18 Commission shall give the victim notice that the victim has the
19 right to present his or her views and concerns throughout the
20 Commission's investigation.

21 (d) The Commission may use any measure provided in the Code
22 of Civil Procedure and the Code of Criminal Procedure of 1963
23 to obtain information necessary to its inquiry. The Commission
24 may also do any of the following: issue subpoenas or other
25 process to compel the attendance of witnesses and the
26 production of evidence, administer oaths, petition the Circuit

1 Court of Cook County or of the original jurisdiction for
2 enforcement of process or for other relief, and prescribe its
3 own rules of procedure. All challenges with regard to the
4 Commission's authority or the Commission's access to evidence
5 shall be heard by the Circuit Court of Cook County, including
6 any in camera review.

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

12 (f) All State discovery and disclosure statutes in effect
13 at the time of formal inquiry shall be enforceable as if the
14 convicted person were currently being tried for the charge for
15 which the convicted person is claiming torture.

16 (g) If, at any point during an inquiry, the convicted
17 person refuses to comply with requests of the Commission or is
18 otherwise deemed to be uncooperative by the Commission, the
19 Commission shall discontinue the inquiry.

20 Section 45. Commission proceedings.

21 (a) At the completion of a formal inquiry, all relevant
22 evidence shall be presented to the full Commission. As part of
23 its proceedings, the Commission may conduct hearings. The
24 determination as to whether to conduct hearings is solely in
25 the discretion of the Commission. Any hearing held in

1 accordance with this Section shall be a public hearing and
2 shall be held subject to the Commission's rules of operation,
3 and conducted pursuant to the Open Meetings Act.

4 (b) The Director shall use all due diligence to notify the
5 victim at least 30 days prior to any proceedings of the full
6 Commission held in regard to the victim's case. The Commission
7 shall notify the victim that the victim is permitted to attend
8 proceedings otherwise closed to the public, subject to any
9 limitations imposed by this Act, and subject to Section
10 2(c)(14) of the Open Meetings Act. If the victim plans to
11 attend proceedings otherwise closed to the public, the victim
12 shall notify the Commission at least 10 days in advance of the
13 proceedings of his or her intent to attend. The Commission may
14 close any portion of the proceedings to the victim, if the
15 victim is to testify and the Commission determines that the
16 victim's testimony would be materially affected if the victim
17 hears other testimony at the proceeding.

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

22 If 5 or more of the 8 voting members of the Commission
23 conclude by a preponderance of the evidence that there is
24 sufficient evidence of torture to merit judicial review, the
25 case shall be referred to the Chief Judge of the Circuit Court
26 of Cook County by filing with the clerk of court the opinion of

1 the Commission with supporting findings of fact, as well as the
2 record in support of such opinion, with service on the State's
3 Attorney in non-capital cases and service on both the State's
4 Attorney and Attorney General in capital cases.

5 If less than 5 of the 8 voting members of the Commission
6 conclude by a preponderance of the evidence that there is
7 sufficient evidence of torture to merit judicial review, the
8 Commission shall conclude there is insufficient evidence of
9 torture to merit judicial review. The Commission shall document
10 that opinion, along with supporting findings of fact, and file
11 those documents and supporting materials with the court clerk
12 in the circuit of original jurisdiction, with a copy to the
13 State's Attorney and the chief judge.

14 The Director of the Commission shall use all due diligence
15 to notify immediately the victim of the Commission's conclusion
16 in a case.

17 (d) Evidence of criminal acts, professional misconduct, or
18 other wrongdoing disclosed through formal inquiry or
19 Commission proceedings shall be referred to the appropriate
20 authority. Evidence favorable to the convicted person
21 disclosed through formal inquiry or Commission proceedings
22 shall be disclosed to the convicted person and the convicted
23 person's counsel, if the convicted person has counsel. The
24 Commission shall have the discretion to refer its findings
25 together with the supporting record and evidence, to such other
26 parties or entities as the Commission in its discretion shall

1 deem appropriate.

2 (e) All proceedings of the Commission shall be recorded and
3 transcribed as part of the record. All Commission member votes
4 shall be recorded in the record. All records of the Commission
5 shall be confidential until the proceedings before the
6 Commission are concluded and a final decision has been made by
7 the Commission.

8 Section 50. Post-commission judicial review.

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

24 (b) The State's Attorney, or the State's Attorney's
25 designee, shall represent the State at the hearing before the

1 assigned judge.

2 Section 55. No right to further review of decision by
3 Commission; convicted person retains right to other
4 postconviction relief.

5 (a) Unless otherwise authorized by this Act, the decisions
6 of the Commission are final and are subject to review as final
7 decisions under the provisions of the Administrative Review
8 Law, and shall only be overturned if the court finds that they
9 are against the manifest weight of the evidence.

10 (b) A claim of torture asserted through the Commission
11 Shall not adversely affect the convicted person's rights to
12 other postconviction relief.

13 Section 60. Report. Beginning January 1, 2010, and annually
14 thereafter, the Illinois Torture Inquiry and Relief Commission
15 shall report on its activities to the General Assembly and the
16 Governor. The report may contain recommendations of any needed
17 legislative changes related to the activities of the
18 Commission. The report shall recommend the funding needed by
19 the Commission, the State's Attorneys, and the Department of
20 State Police in order to meet their responsibilities under this
21 Act. Recommendations concerning the State's Attorneys or the
22 Department of State Police shall only be made after
23 consultations with the Illinois State's Attorneys Association,
24 the Department of State Police, and the Attorney General.

1 Section 65. Appointment period. The initial members of the
2 Illinois Torture Inquiry and Relief Commission shall be
3 appointed not later than 3 months after the effective date of
4 this Act. No claims of torture may be filed with the Commission
5 until a quorum of members have been appointed.

6 Section 70. Filing of claims. This Act applies to claims of
7 torture filed not later than 5 years after the effective date
8 of this Act.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.