



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3501

Introduced 2/14/2014, by Sen. Christine Radogno

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Torture Inquiry and Relief Commission. Adds one member to the current 8 member Commission, with the new member to be a representative of victims of violent crime. Requires the Commission Director to be appointed by the Governor, with the advice and consent of the Senate, rather than be employed by the Commission. Requires the Director to have at least 5 years of experience in the practice of criminal law. Provides that if a victim has not been identified, located, and notified by the Commission at least 30 days prior to the any proceedings of the full Commission, the Commission shall make notification by publication no later than 20 days prior to any proceedings. Requires the Commission (rather than the Director) to use all due diligence to notify convicted claimant's victims of Commission proceedings and conclusions. Requires the Commission to certify in any court filing in a convicted claimant's case that all rules and procedures as to the identification, location, and notification of any victim entitled to notice under this Act have been complied with as required by the Act. If in a convicted claimant's case referred to a trial judge, the judge finds that a victim entitled to notice has not been properly notified or heard by the Commission or finds the Commission failed to exercise all due diligence by not following its established rules and procedures as to the identification, location, and notification of a victim, the judge shall order the case to be returned to the Commission for rehearing. Allows a victim to appeal a Commission finding to the Cook County Circuit Court Chief Judge, if the Commission did not follow established rules and procedures as to the identification, location, and notification of the victim. Effective immediately.

LRB098 14137 MRW 55681 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning human rights.

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

4 Section 5. The Illinois Torture Inquiry and Relief
5 Commission Act is amended by changing Sections 20, 25, 30, 40,
6 45, 50, and 55 as follows:

7 (775 ILCS 40/20)

8 Sec. 20. Membership; chair; meetings; quorum.

9 (a) The Commission shall consist of 9 ~~8~~ voting members as
10 follows:

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

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

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

14 (4) One shall be engaged in the practice of criminal
15 defense law.

16 (5) Three shall be members of the public who are not
17 attorneys and who are not officers or employees of the
18 Judicial branch.

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

20 (7) One shall be a representative of victims of violent
21 crime.

22 The members of the Commission shall be appointed by the
23 Governor, with the advice and consent of the Senate. Members

1 may be re-appointed for additional terms, as provided for under
2 Section 25.

3 (a-1) The Governor shall also appoint alternate Commission
4 members for the Commission members he or she has appointed to
5 serve in the event of scheduling conflicts, conflicts of
6 interest, disability, or other disqualification arising in a
7 particular case. Where an alternate member is called upon to
8 serve in a particular place, the alternate member shall vote in
9 the place of, and otherwise exercise the same powers as, the
10 member which he or she is replacing. The alternate member shall
11 have the same qualifications for appointment as the original
12 member. In making the appointments, the Governor shall make a
13 good faith effort to appoint members with different
14 perspectives of the justice system. The Governor shall also
15 consider geographical location, gender, and racial diversity
16 in making the appointments.

17 (b) The retired judge who is appointed as a member under
18 subsection (a) shall serve as Chair of the Commission. The
19 Commission shall have its initial meeting no later than one
20 month after the appointment of a quorum of members of the
21 Commission, at the call of the Chair. The Commission shall meet
22 a minimum of once every 6 months and may also meet more often
23 at the call of the Chair. The Commission shall meet at such
24 time and place as designated by the Chair, in accordance with
25 the provisions of the Open Meetings Act. Notice of the meetings
26 shall be given at such time and manner as provided by the rules

1 of the Commission, in accordance with the provisions of the
2 Open Meetings Act. A majority of the voting members shall
3 constitute a quorum. All Commission votes shall be by majority
4 vote of the voting members appointed.

5 (Source: P.A. 96-223, eff. 8-10-09.)

6 (775 ILCS 40/25)

7 Sec. 25. Terms of members; compensation; expenses.

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

18 (a-5) The term of the member appointed under clause (a) (7)
19 of Section 20 shall commence on the effective date of this
20 amendatory Act of the 98th General Assembly and shall expire
21 upon the conclusion of all proceedings regarding claims filed
22 under Section 70 of this Act.

23 (a-10) Members serving by virtue of elective or appointive
24 office, may serve only so long as the office holders hold those
25 respective offices. The Chief Judge of the Cook County Circuit

1 Court may remove members for good cause shown. Vacancies
2 occurring before the expiration of a term shall be filled in
3 the manner provided for the members first appointed.

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

10 (Source: P.A. 96-223, eff. 8-10-09.)

11 (775 ILCS 40/30)

12 Sec. 30. Director and other staff. The Director shall be
13 appointed by the Governor, with the advice and consent of the
14 Senate. ~~The Commission shall employ a Director.~~ The Director
15 shall be an attorney licensed to practice in Illinois at the
16 time of appointment and at all times during service as Director
17 and shall have at least 5 years experience in the practice of
18 criminal law as a former prosecutor or defense attorney. The
19 Director shall assist the Commission in developing rules and
20 standards for cases accepted for review, coordinate
21 investigation of cases accepted for review, maintain records
22 for all case investigations, prepare reports outlining
23 Commission investigations and recommendations to the trial
24 court, and apply for and accept on behalf of the Commission any
25 funds that may become available from government grants, private

1 gifts, donations, or bequests from any source.

2 Subject to the approval of the Chair, the Director shall
3 employ such other staff and shall contract for services as is
4 necessary to assist the Commission in the performance of its
5 duties, and as funds permit.

6 The Commission may meet in an area provided by the Illinois
7 Human Rights Commission, or any other State agency. The
8 Illinois Human Rights Commission shall provide, directly or
9 through any other State agency, office space for the Commission
10 and the Commission staff.

11 (Source: P.A. 96-223, eff. 8-10-09.)

12 (775 ILCS 40/40)

13 Sec. 40. Claims of torture; waiver of convicted person's
14 procedural safeguards and privileges; formal inquiry;
15 notification of the crime victim.

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

23 (b) No formal inquiry into a claim of torture shall be made
24 by the Commission unless the Director or the Director's
25 designee first obtains a signed agreement from the convicted

1 person in which the convicted person waives his or her
2 procedural safeguards and privileges including but not limited
3 to the right against self-incrimination under the United States
4 Constitution and the Constitution of the State of Illinois,
5 agrees to cooperate with the Commission, and agrees to provide
6 full disclosure regarding inquiry requirements of the
7 Commission. The waiver under this subsection does not apply to
8 matters unrelated to a convicted person's claim of torture. The
9 convicted person shall have the right to advice of counsel
10 prior to the execution of the agreement and, if a formal
11 inquiry is granted, throughout the formal inquiry. If counsel
12 represents the convicted person, then the convicted person's
13 counsel must be present at the signing of the agreement. If
14 counsel does not represent the convicted person, the Commission
15 Chair shall determine the convicted person's indigency status
16 and, if appropriate, enter an order for the appointment of
17 counsel for the purpose of advising on the agreement.

18 (c) If a formal inquiry regarding a claim of torture is
19 granted, the Commission Director shall use all due diligence to
20 notify the victim in the case and explain the inquiry process.
21 In addition to existing rules on notification of crime victims,
22 the Commission shall adopt rules and procedures for
23 identifying, locating, and notifying victims entitled to
24 notice under the Act. This shall include, but not be limited to
25 use of law enforcement files, court files, victim impact
26 statements, and news media accounts. If a victim has not been

1 identified, located, and notified by the Commission at least 30
2 days prior to any proceedings of the full Commission held in
3 regard to the victim's case, the Commission shall make victim
4 notification by publication no later than 20 days prior to any
5 proceedings in the case. The Commission shall give the victim
6 notice that the victim has the right to present his or her
7 views and concerns throughout the Commission's investigation.

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

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

25 (f) All State discovery and disclosure statutes in effect
26 at the time of formal inquiry shall be enforceable as if the

1 convicted person were currently being tried for the charge for
2 which the convicted person is claiming torture.

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

7 (Source: P.A. 96-223, eff. 8-10-09.)

8 (775 ILCS 40/45)

9 Sec. 45. Commission proceedings.

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

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

1 shall notify the Commission at least 10 days in advance of the
2 proceedings of his or her intent to attend. The Commission may
3 close any portion of the proceedings to the victim, if the
4 victim is to testify and the Commission determines that the
5 victim's testimony would be materially affected if the victim
6 hears other testimony at the 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 9 ☉ voting members of the Commission shall
10 participate in that vote.

11 If 5 or more of the 9 ☉ voting members of the Commission
12 conclude by a preponderance of the evidence that there is
13 sufficient evidence of torture to merit judicial review, the
14 case shall be referred to the Chief Judge of the Circuit Court
15 of Cook County by filing with the clerk of court the opinion of
16 the Commission with supporting findings of fact, as well as the
17 record in support of such opinion, with service on the State's
18 Attorney in non-capital cases and service on both the State's
19 Attorney and Attorney General in capital cases. The filing
20 under this paragraph shall include a certification by the
21 Commission that all rules and procedures as to the
22 identification, location, and notification of any victim
23 entitled to notice under this Act have been complied with as
24 required under subsection (c) of Section 40 of this Act.

25 If less than 5 of the 9 ☉ voting members of the Commission
26 conclude by a preponderance of the evidence that there is

1 sufficient evidence of torture to merit judicial review, the
2 Commission shall conclude there is insufficient evidence of
3 torture to merit judicial review. The Commission shall document
4 that opinion, along with supporting findings of fact, and file
5 those documents and supporting materials with the court clerk
6 in the circuit of original jurisdiction, with a copy to the
7 State's Attorney and the chief judge.

8 The ~~Director of the~~ Commission shall use all due diligence
9 to notify immediately the victim of the Commission's conclusion
10 in a case.

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

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

1 the Commission.

2 (Source: P.A. 96-223, eff. 8-10-09.)

3 (775 ILCS 40/50)

4 Sec. 50. Post-commission judicial review.

5 (a) If the Commission concludes there is sufficient
6 evidence of torture to merit judicial review, the Chair of the
7 Commission shall request the Chief Judge of the Circuit Court
8 of Cook County for assignment to a trial judge for
9 consideration. Prior to judicial review of the evidence of
10 torture by the trial judge, if the judge finds that a victim
11 entitled to notice under this Act has not been properly
12 notified or heard by the Commission as required by this Act or
13 finds the Commission failed to exercise all due diligence by
14 not following its established rules and procedures as to the
15 identification, location, and notification of a victim, the
16 judge shall order the case to be returned to the Commission for
17 rehearing. The court may receive proof by affidavits,
18 depositions, oral testimony, or other evidence. In its
19 discretion the court may order the petitioner brought before
20 the court for the hearing. Notwithstanding the status of any
21 other postconviction proceedings relating to the petitioner,
22 if the court finds in favor of the petitioner, it shall enter
23 an appropriate order with respect to the judgment or sentence
24 in the former proceedings and such supplementary orders as to
25 rearraignment, retrial, custody, bail or discharge, or for such

1 relief as may be granted under a petition for a certificate of
2 innocence, as may be necessary and proper.

3 (b) The State's Attorney, or the State's Attorney's
4 designee, shall represent the State at the hearing before the
5 assigned judge.

6 (Source: P.A. 96-223, eff. 8-10-09.)

7 (775 ILCS 40/55)

8 Sec. 55. No right to further review of decision by
9 Commission; convicted person retains right to other
10 postconviction relief.

11 (a) Unless otherwise authorized by this Act, the decisions
12 of the Commission are final and are subject to review as final
13 decisions under the provisions of the Administrative Review
14 Law, and shall only be overturned if the court finds that they
15 are against the manifest weight of the evidence. If the
16 Commission did not follow established rules and procedures as
17 to the identification, location, and notification of a victim,
18 any finding made by the Commission may be administratively
19 appealed by the victim to the Chief Judge of the Circuit Court
20 of Cook County.

21 (b) A claim of torture asserted through the Commission
22 shall not adversely affect the convicted person's rights to
23 other postconviction relief.

24 (Source: P.A. 96-223, eff. 8-10-09.)

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 775 ILCS 40/20

4 775 ILCS 40/25

5 775 ILCS 40/30

6 775 ILCS 40/40

7 775 ILCS 40/45

8 775 ILCS 40/50

9 775 ILCS 40/55