



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1276

Introduced 2/3/2023, by Sen. Robert Peters

SYNOPSIS AS INTRODUCED:

775 ILCS 40/5
775 ILCS 40/25
775 ILCS 40/40
775 ILCS 40/45
775 ILCS 40/50
775 ILCS 40/75 new
775 ILCS 40/70 rep.

Amends the Illinois Torture Inquiry and Relief Commission Act. In the definition of "claim of torture": provides that it also means a third party was tortured into implicating a person for the crime for which the person was convicted; provides that it also means a witness statement was used to obtain the conviction; and removes language providing that the allegations of torture occur within a county of more than 3,000,000 inhabitants. Defines "torture" as: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; any pain or suffering that is intentionally inflicted on a person for such purposes as obtaining from that person a confession or information about a third party; any pain or suffering that is intentionally inflicted on a person for purposes of punishing a suspected act by that person; or any intimidation or coercion for any reason based on discrimination of any kind. Requires the Torture Inquiry and Relief Commission to determine the resources necessary to assess the credibility or lack thereof of each claim within 2 years after the date upon the claim was received, and to make a report of its findings to the Governor and the General Assembly. Repeals a provision providing that the Act applies to claims of torture filed not later than 10 years after the effective date of the Act (August 10, 2009). Makes conforming changes.

LRB103 26040 LNS 52395 b

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 5, 25, 40, 45,
6 and 50 and by adding Section 75 as follows:

7 (775 ILCS 40/5)

8 Sec. 5. Definitions. As used in this Act:

9 (1) "Claim of torture" means a claim on behalf of a living
10 person convicted of a felony in Illinois asserting that he or
11 she was tortured into confessing to the crime or a third party
12 was tortured into implicating him or her for the crime for
13 which the person was convicted and the tortured confession or
14 witness statement was used to obtain the conviction and for
15 which there is some credible evidence related to allegations
16 of torture ~~occurring within a county of more than 3,000,000~~
17 ~~inhabitants.~~

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

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

22 (4) "Director" means the Director of the Illinois Torture
23 Inquiry and Relief Commission.

1 (4.5) "Torture" means:

2 (i) Any act by which severe pain or suffering, whether
3 physical or mental, is intentionally inflicted on a
4 person.

5 (ii) Any pain or suffering that is intentionally
6 inflicted on a person for such purposes as obtaining from
7 that person a confession or information about a third
8 party.

9 (iii) Any pain or suffering that is intentionally
10 inflicted on a person for purposes of punishing a
11 suspected act by that person.

12 (iv) Any intimidation or coercion for any reason based
13 on discrimination of any kind.

14 (5) "Victim" means the victim of the crime, or if the
15 victim of the crime is deceased, the next of kin of the victim,
16 which shall be the parent, spouse, child, or sibling of the
17 deceased victim.

18 (Source: P.A. 99-688, eff. 7-29-16.)

19 (775 ILCS 40/25)

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

21 (a) Of the initial members, the appointments under clauses
22 (a) (3) and (6) of Section 20 shall be for one-year terms, the
23 appointments under clauses (a) (1), (2), and (4) of Section 20
24 shall be for 2-year terms, and the appointments under clause
25 (a) (5) of Section 20 shall be for 3-year terms. Thereafter,

1 all terms shall be for 3 years. Members of the Commission shall
2 serve no more than 2 consecutive 3-year terms plus any initial
3 term of less than 3 years. Unless provided otherwise by this
4 Act, all terms of members shall begin on January 1 and end on
5 December 31.

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

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

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

20 (775 ILCS 40/40)

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

24 (a) A claim of torture may be referred to the Commission by
25 any court, person, or agency. The Commission shall not

1 consider a claim of torture if the convicted person is
2 deceased. The determination of whether to grant a formal
3 inquiry regarding any other claim of torture is in the
4 discretion of the Commission. The Commission may informally
5 screen and dismiss a case summarily at its discretion.

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

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

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

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

24 (f) All State discovery and disclosure statutes in effect
25 at the time of formal inquiry shall be enforceable as if the
26 convicted person were currently being tried for the charge for

1 which the convicted person is claiming torture.

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

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

7 (775 ILCS 40/45)

8 Sec. 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 as to whether to conduct hearings is solely in
13 the discretion of the Commission. Any hearing held in
14 accordance with this Section shall be a public hearing and
15 shall be held subject to the Commission's rules of operation,
16 and conducted 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 Section
23 2(c)(14) of the Open Meetings Act. If the victim plans to
24 attend proceedings otherwise closed to the public, the victim
25 shall notify the Commission at least 10 days in advance of the

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

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

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

20 If less than 5 of the 8 voting members of the Commission
21 conclude by a preponderance of the evidence that there is
22 sufficient evidence of torture to merit judicial review, the
23 Commission shall conclude there is insufficient evidence of
24 torture to merit judicial review. The Commission shall
25 document that opinion, along with supporting findings of fact,
26 and file those documents and supporting materials with the

1 court clerk in the circuit of original jurisdiction, with a
2 copy to the State's Attorney and the chief judge.

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

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

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

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

24 (775 ILCS 40/50)

25 Sec. 50. Post-commission judicial review.

1 (a) If the Commission concludes there is sufficient
2 evidence of torture to merit judicial review, the Chair of the
3 Commission shall request the Chief Judge of the original
4 jurisdiction ~~Circuit Court of Cook County~~ for assignment to a
5 trial 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
9 of 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, pretrial release
14 or 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
18 designee, shall represent the State at the hearing before the
19 assigned judge.

20 (Source: P.A. 101-652, eff. 1-1-23.)

21 (775 ILCS 40/75 new)

22 Sec. 75. Processing of claims.

23 (a) No later than one year after the effective date of this
24 amendatory Act of the 103rd General Assembly, the Commission
25 shall determine the resources necessary to assess the

1 credibility or lack thereof of each claim within 2 years after
2 the date upon the claim was received, and shall make a report
3 of its findings to the Governor and the General Assembly.

4 (b) This Section is repealed 2 years after the effective
5 date of this amendatory Act of the 103rd General Assembly.

6 (775 ILCS 40/70 rep.)

7 Section 10. The Illinois Torture Inquiry and Relief
8 Commission Act is amended by repealing Section 70.