



**Testimony of Alisa Kaplan, Policy Director
Illinois Campaign for Political Reform**

**Illinois Senate
Sexual Discrimination and Harassment Awareness and Prevention Task Force**

**Re: Best Practices Recommendations
General Assembly Ethics Reporting and Investigatory Processes**

August 21, 2018

Good morning Madam Co-Chairs and Members of the Task Force. My name is Alisa Kaplan and I'm the Policy Director of the Illinois Campaign for Political Reform (ICPR). ICPR is dedicated to advocating for reforms that increase integrity, accountability, and transparency in Illinois government.

In January 2018, ICPR compiled a list of recommendations for improving the reporting and investigation of sexual harassment complaints in the Illinois General Assembly.

We are pleased that since January, many of these recommendations have been implemented, and that the General Assembly has made great strides in adding more independence and transparency to its system. We applaud these changes and believe they will enhance public trust in the General Assembly and its commitment to addressing this highly sensitive and important issue.

Today I will briefly review our recommendations from January, beginning with those that have been implemented and proceeding to those that have not yet been put into place but that we believe could further improve the process.

Let me note that our recommendations focus only on the legislature, not on other branches. So unless otherwise specified, when I use the terms “Inspector General” or “Ethics Commission,” I am referring to the Legislative Inspector General and the Legislative Ethics Commission, and not to their counterparts in any other branch.

Implemented recommendations

Implemented: Publication of periodic reports

First, to make the process more transparent, ICPR recommended that periodic reports about the activity of the Legislative Inspector General, including the number, type, and resolution of ethics complaints, should be made available to the public. This recommendation has been implemented, and the Inspector General’s quarterly reports will now be made publicly available on its website.

Implemented (with caveats): Changes in the Inspector General selection process

Second, to increase the independence of the office of the Inspector General, ICPR recommended that changes be made in the way the Inspector General is selected. Previously, the Inspector General was chosen by legislative leaders and appointed by a joint resolution of the House and Senate with the approval of three-fifths of both houses.

While the final appointment of the Inspector General still requires the approval of the General Assembly, a layer has been added to the search process. Now, the Legislative Ethics Committee establishes a search committee comprised of four members, each appointed by one of the four legislative leaders. The search committee recommends up to three candidates to the Legislative Ethics Committee, and the final appointment is, as before, made by joint resolution requiring a three-fifths supermajority in the legislature.

Importantly, none of the search committee members may be a legislator or employee of the General Assembly or a registered lobbyist, and each member must be either a retired judge or an ex-prosecutor.

To be sure, the legislature maintains significant control over the new selection process. Legislative leaders choose the search committee members, and the legislature, as before, approves the appointment.

While the addition of a search committee is a positive development, there appears to be a significant gap in the process as outlined in the statute. It is unclear what happens after the search committee recommends its three candidates to the Ethics Commission. Does the Ethics Commission choose one candidate to present to the legislature? If so, what happens if the legislature rejects the chosen candidate or candidates? Can legislative leaders reject the recommended candidates entirely and choose someone else?

The process needs to be fleshed out to account for different scenarios and to ensure that the purpose of the new search committee - to build more independence into the selection system - is fulfilled.

Still, the introduction of a search committee composed of qualified individuals who do not serve in the legislature appears to add a significant buffer between legislative leaders and the selection of the Inspector General. If properly implemented, this is an important change that has the potential to increase the integrity of the search process and the independence of the office.

Implemented: Initiation of sexual harassment complaint investigations without Ethics Commission approval

The third change that ICPR supported and has been implemented is that the Legislative Inspector General can now initiate investigations of sexual harassment complaints without the approval of the Legislative Ethics Commission. Previously, the Inspector General needed approval from the Ethics Commission to open all investigations, including those involving sexual harassment.

ICPR believes that the Inspector General should be able to initiate investigations of *all* types of ethics complaints and hopes that the legislature will continue to work towards that goal. For the purposes of this hearing, however, ICPR is gratified that this change has been made for sexual harassment complaints and views it as indispensable to the Inspector General's independence in this area.

ICPR recommendations that have not yet been implemented

I will now discuss recommendations ICPR made in January that have not yet been implemented, and that we hope the legislature will consider adopting.

Not yet implemented: Subpoena power without Ethics Commission approval

The first recommendation involves the Inspector General's subpoena power, which is particularly important to its ability to conduct independent investigations. As mentioned above, the latest legislation empowers the Inspector General to initiate investigations of sexual harassment complaints without approval from the Legislative Ethics Commission, which it was not permitted to do before.

However, the statutory language still does not give the Inspector General the ability to issue subpoenas without prior approval from the Ethics Commission.

Notably, unlike the Legislative Inspector General, the Executive Inspector General has the ability to issue subpoenas without approval from the Executive Ethics Commission. We believe

the Legislative Inspector General should have the same investigatory powers as its executive counterpart. The Legislative Inspector General's ability to compel the production of documents and the appearance of witnesses without the Commission's approval is central to its ability to conduct thorough, independent investigations. The Legislative Inspector General should be explicitly granted the power to issue subpoenas without Commission approval.

Not yet implemented: Increasing the statute of limitations

Our second outstanding recommendation is that the statute of limitations for ethics complaints should be extended so that all investigations can receive adequate time and attention.

Current law requires that the Inspector General must initiate an investigation within 12 months of the last incident of alleged wrongdoing. We are not proposing that this time limit - the maximum time between the last alleged incident and the initiation of the Inspector General's investigation - be changed from the current 12 months.

However, current law also requires that if the Inspector General finds sufficient grounds to advance the complaint to the Ethics Commission, the Inspector General must file its complaint and have it evaluated by the Attorney General for referral within 18 months of the last alleged wrongdoing. In other words, the complainant must submit a complaint to the Inspector General, the Inspector General must complete its investigation, and the Attorney General must complete its evaluation of the Inspector General's investigation to determine if it merits referral to the Ethics Commission, all within 18 months of the last alleged wrongdoing.

The result of this is that in some cases, the Inspector General may only have six months to complete its investigation and have it evaluated by the Attorney General for referral to the Ethics Commission.

ICPR recommends that this time limit be extended from 18 months to 24 months from the last alleged incident. This would ensure that in all cases, the Inspector General and Attorney General have sufficient time - a minimum of 12 months - to complete a thorough investigation in which the public can have confidence.

Not yet implemented: Required publication of the Inspector General's summary reports in cases involving public officials where substantial evidence of wrongdoing has been found

Our third recommendation involves transparency and the public's right to know about investigations involving public officials. Currently, the law requires summary reports on the Inspector General's individual investigations to be made public only in narrow circumstances. Specifically, the law only requires that a summary report be published if the report resulted in a three day suspension or termination by the relevant jurisdictional authority. ICPR believes that this requirement may leave some important investigative reports unavailable to the public,

including reports on members of the General Assembly, who cannot be suspended or terminated and therefore cannot trigger that publication requirement.

To avoid confusion, it is important here to distinguish between two kinds of reports. The first kind, called a summary report, is created by the Inspector General and describes the findings of its investigation. It is an investigative report, somewhat analogous to a police report.

The second kind of report is created by the Ethics Commission, not the Inspector General. If a complaint makes it all the way from the Inspector General's desk to the Commission, and the Commission ultimately finds that a violation has occurred, the Commission must publish a record of the proceedings resulting in that decision. This report focuses on the proceedings before the Commission, not the findings of the Inspector General's investigation, and is more like a court record than like a police report. Again, the Commission is not required to publish the investigative report, which may have valuable additional information, unless it satisfies the narrow requirements above.

In some cases, neither a disciplinary action that would trigger publication of the Inspector General's report, nor an Ethics Commission action that would trigger publication of the Commission proceedings, may occur. For example, the subject of a complaint may be a member of the General Assembly, who cannot be suspended or terminated. Or the subject of a complaint may resign before they can be terminated or suspended. Or, for a variety of reasons, the case may not be referred to the Ethics Commission, or the Ethics Commission may decide not to act on the complaint or decline to find a violation. In those cases, there may be no public record of an investigation despite its potential public importance.

We believe that if the Inspector General finds substantial evidence of wrongdoing by a public official, the public deserves to know about it. Therefore, we recommend that the Inspector General's report be published within 60 days of the investigation's conclusion in cases involving public officials, even if the case does not result in suspension or termination or never advances to the Legislative Ethics Commission.

We are acutely aware of the need to respect the rights and privacy of those involved in these highly charged and sensitive situations. That is why we are recommending additional publication only in cases where the Inspector General has already found substantial evidence of wrongdoing, and only in cases of public officials who have the platform to respond to the Inspector General's report and whose behavior is particularly important for the public to know about. As always, we recommend redaction of sensitive or private material where appropriate.

Not yet implemented: Members of the public on the Legislative Ethics Commission

Our final recommendation involves the composition of the Legislative Ethics Commission. The Legislative Ethics Commission is appointed by the four legislative leaders, with each leader appointing two Commission members. Currently, the legislative leaders have the authority to

appoint members of the public. But it is not required, and the current Commission is comprised only of legislators. Requiring public appointments would increase the independence and transparency of the Commission and with it, public trust in its proceedings.

Conclusion

In summary, ICPR recommends that four reforms be implemented. First, the Legislative Inspector General's independent subpoena power in sexual harassment cases should be made explicit. Second, the statute of limitations should be amended to allow the Inspector General 24 months instead of 18 months from the last incident of alleged wrongdoing to refer a complaint to the Legislative Ethics Committee. Third, Inspector General reports finding substantial evidence of wrongdoing by public officials should be published within 60 days regardless of whether further action is taken. Fourth, the Legislative Ethics Commission should be comprised of both legislators and members of the public.

ICPR also hopes that the process of appointing a Legislative Inspector General is clarified to ensure that the selection system incorporates as much independence as possible.

ICPR supports the legislature's efforts to make the General Assembly's process of addressing sexual harassment complaints more independent, rigorous, and transparent. We believe that adopting these recommendations would further increase public confidence in this process and, by extension, in the General Assembly as a whole. Thank you for your consideration.