



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB1781

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.

LRB100 05295 HEP 15306 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 clauses
11 (a)(3) and (a)(6) of Section 20 shall be for one-year terms,
12 the appointments under clauses (a)(1), (a)(2), and (a)(4) of
13 Section 20 shall be for 2-year terms, and the appointments
14 under clause (a)(5) of Section 20 shall be for 3-year terms.
15 Thereafter, all terms shall be for 3 years. Members of the
16 Commission shall serve no more than 2 consecutive 3-year terms
17 plus any initial term of less than 3 years. Except as otherwise
18 provided by this Act, all terms of members shall begin on
19 January 1 and end on December 31.

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

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

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

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

23 The Commission may meet in an area provided by the Illinois
24 Human Rights Commission or any other State agency. The Illinois
25 Human Rights Commission shall provide, directly or through any

1 other State agency, office space for the Commission and the
2 Commission staff.

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

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

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

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

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

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

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

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

23 (a) A claim of wrongful prosecution may be referred to the
24 Commission by any court, person, or agency. The Commission

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

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

1 agreement.

2 (c) If a formal inquiry regarding a claim of wrongful
3 prosecution is granted, the Director shall use all due
4 diligence to notify the victim in the case and explain the
5 inquiry process. The Commission shall give the victim notice
6 that the victim has the right to present his or her views and
7 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 including any in camera review, shall be heard by the Circuit
19 Court of Cook County.

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 wrongful prosecution.

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 Section 45. Commission proceedings.

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

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

1 Commission may close any portion of the proceedings to the
2 victim if the victim is to testify and the Commission
3 determines that the victim's testimony would be materially
4 affected by the victim hearing other testimony at the
5 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 wrongful prosecution to merit judicial
13 review, the case shall be referred to the Chief Judge of the
14 Circuit Court of Cook County by filing with the clerk of court
15 the opinion of the Commission with supporting findings of fact,
16 as well as the record in support of the opinion, with service
17 on the State's Attorney in non-capital cases and service on
18 both the State's Attorney and Attorney General in capital
19 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 wrongful prosecution to merit judicial
23 review, the Commission shall conclude there is insufficient
24 evidence of wrongful prosecution to merit judicial review. The
25 Commission shall document that opinion, along with supporting
26 findings of fact, and file those documents and supporting

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

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

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

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

24 Section 50. Post-commission judicial review.

25 (a) If the Commission concludes there is sufficient

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

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

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

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

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

4 Section 60. Report. Beginning January 1, 2018, and annually
5 thereafter, the Wrongful Prosecution Commission shall report
6 on its activities to the General Assembly and the Governor. The
7 report may contain recommendations of any needed legislative
8 changes related to the activities of the Commission. The report
9 shall recommend the funding needed by the Commission, the
10 State's Attorneys, and the Department of State Police in order
11 to meet their responsibilities under this Act. Recommendations
12 concerning the State's Attorneys or the Department of State
13 Police shall be made only after consultations with the Illinois
14 State's Attorneys Association, the Department of State Police,
15 and the Attorney General.

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

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

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

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