



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB2119

Introduced 2/26/2021, 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. Changes the definition of "claim of torture" by deleting the requirement that the allegations of torture occur within a county of more than 3,000,000 inhabitants. Defines "torture". Provides that, no later than one year after the effective date, the Commission shall 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 shall make a report of its findings to the Governor and the General Assembly. Repeals a Section providing that the Act applies to claims of torture filed not later than August 10, 2019 (10 years after the effective date of the Act). Makes conforming changes.

LRB102 15319 LNS 20675 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 was  
11 tortured into confessing to the crime for which the person was  
12 convicted and the tortured confession was used to obtain the  
13 conviction and for which there is some credible evidence  
14 related to allegations of torture ~~occurring within a county of~~  
15 ~~more than 3,000,000 inhabitants.~~

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

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

20 (4) "Director" means the Director of the Illinois Torture  
21 Inquiry and Relief Commission.

22 (4.5) "Torture" means:

23 Any act by which severe pain or suffering, whether

1 physical or mental, is intentionally inflicted on a  
2 person.

3 Any pain or suffering that is intentionally inflicted  
4 on a person for such purposes as obtaining from that  
5 person a confession.

6 Any pain or suffering that is intentionally inflicted  
7 on a person for purposes of punishing for a suspected act  
8 by that person.

9 Any intimidation or coercion for any reason based on  
10 discrimination of any kind.

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

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

16 (775 ILCS 40/25)

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

18 (a) Of the initial members, the appointments under clauses  
19 (a) (3) and (6) of Section 20 shall be for one-year terms, the  
20 appointments under clauses (a) (1), (2), and (4) of Section 20  
21 shall be for 2-year terms, and the appointments under clause  
22 (a) (5) of Section 20 shall be for 3-year terms. Thereafter,  
23 all terms shall be for 3 years. Members of the Commission shall  
24 serve no more than 2 consecutive 3-year terms plus any initial  
25 term of less than 3 years. Unless provided otherwise by this

1 Act, all terms of members shall begin on January 1 and end on  
2 December 31.

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

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

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

16 (775 ILCS 40/40)

17 Sec. 40. Claims of torture; waiver of convicted person's  
18 procedural safeguards and privileges; formal inquiry;  
19 notification of the crime victim.

20 (a) A claim of torture may be referred to the Commission by  
21 any court, person, or agency. The Commission shall not  
22 consider a claim of torture if the convicted person is  
23 deceased. The determination of whether to grant a formal  
24 inquiry regarding any other claim of torture is in the  
25 discretion of the Commission. The Commission may informally

1 screen and dismiss a case summarily at its discretion.

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

23 (c) If a formal inquiry regarding a claim of torture is  
24 granted, the Director shall use all due diligence to notify  
25 the victim in the case and explain the inquiry process. The  
26 Commission shall give the victim notice that the victim has

1 the right to present his or her views and concerns throughout  
2 the Commission's investigation.

3 (d) The Commission may use any measure provided in the  
4 Code of Civil Procedure and the Code of Criminal Procedure of  
5 1963 to obtain information necessary to its inquiry. The  
6 Commission may also do any of the following: issue subpoenas  
7 or other process to compel the attendance of witnesses and the  
8 production of evidence, administer oaths, petition the Circuit  
9 Court ~~of Cook County~~ or of the original jurisdiction for  
10 enforcement of process or for other relief, and prescribe its  
11 own rules of procedure. All challenges with regard to the  
12 Commission's authority or the Commission's access to evidence  
13 shall be heard by the Circuit Court of the original  
14 jurisdiction ~~Cook County~~, including any in camera review.

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

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

24 (g) If, at any point during an inquiry, the convicted  
25 person refuses to comply with requests of the Commission or is  
26 otherwise deemed to be uncooperative by the Commission, the

1 Commission shall discontinue the inquiry.

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

3 (775 ILCS 40/45)

4 Sec. 45. Commission proceedings.

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

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

1 hears other testimony at the proceeding.

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

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

16 If less than 5 of the 8 voting members of the Commission  
17 conclude by a preponderance of the evidence that there is  
18 sufficient evidence of torture to merit judicial review, the  
19 Commission shall conclude there is insufficient evidence of  
20 torture to merit judicial review. The Commission shall  
21 document that opinion, along with supporting findings of fact,  
22 and file those documents and supporting materials with the  
23 court clerk in the circuit of original jurisdiction, with a  
24 copy to the State's Attorney and the chief judge.

25 The Director of the Commission shall use all due diligence  
26 to notify immediately the victim of the Commission's



1 conclusion in a case.

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

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

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

20 (775 ILCS 40/50)

21 Sec. 50. Post-commission judicial review.

22 (a) If the Commission concludes there is sufficient  
23 evidence of torture to merit judicial review, the Chair of the  
24 Commission shall request the Chief Judge of the original  
25 jurisdiction ~~Circuit Court of Cook County~~ for assignment to a

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

13 (b) The State's Attorney, or the State's Attorney's  
14 designee, shall represent the State at the hearing before the  
15 assigned judge.

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

17 (775 ILCS 40/75 new)

18 Sec. 75. Processing of claims.

19 (a) No later than one year after the effective date of this  
20 amendatory Act of the 102nd General Assembly, the Commission  
21 shall determine the resources necessary to assess the  
22 credibility or lack thereof of each claim within 2 years after  
23 the date upon the claim was received, and shall make a report  
24 of its findings to the Governor and the General Assembly.

25 (b) This Section is repealed 2 years after the effective

1 date of this amendatory Act of the 102nd General Assembly.

2 (775 ILCS 40/70 rep.)

3 Section 10. The Illinois Torture Inquiry and Relief

4 Commission Act is amended by repealing Section 70.