



Executive Committee

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LRB095 10271 RLC 33931 a

1 AMENDMENT TO HOUSE BILL 765

2 AMENDMENT NO. _____. Amend House Bill 765 by inserting
3 after the title the following:

4 "WHEREAS, Post-conviction review of credible claims of
5 factual innocence supported by verifiable evidence, of torture
6 by Jon Burge and/or officers under his supervision should be
7 addressed expeditiously to ensure the innocent as well as the
8 guilty receive justice; and

9 WHEREAS, More than 200 African-American men and women were
10 victims of systematic torture committed by several Chicago
11 Police officers under the Supervision of Police Commander Jon
12 Burge over a two-decade period, from as early 1970 to 1992 and
13 later; and

14 WHEREAS, In May, 1972, Jon Burge was promoted to Chicago
15 Police Detective and was assigned to Area 2 detective division
16 on the Southside of Chicago; and

17 WHEREAS, Between 1973-1981 - numerous other
18 African-American arrestees were tortured with electric-shock

1 and suffocation at Area 2 by Burge and his cohorts to obtain
2 confessions. The torture included, plastic bags placed over
3 arrestees heads until lose of consciousness; electric shock
4 with dark box referred to as "nigger box", to testicles,
5 armpits, ears, Russian roulette; beatings with guns, fists, and
6 flashlights; repeated racial epithets; cattle prods; and
7 cigarette burns; and

8 WHEREAS, 1988 - Burge is transferred to Area 3 Detective
9 Division and appointed Commander. Many of his trusted Area 2
10 associates, including Sgt John Byrne also transferred to Area
11 3, and allegations of torture follow them; and

12 WHEREAS, 1981-1988 - 55 separate victims allege torture at
13 Area 2, including Madison Hobley, Leroy Orange, Stanley Howard,
14 Darrell Cannon, and Aaron Patterson. In most of these cases,
15 the States Attorney's Office is aware of the allegations, and
16 nonetheless uses the coerced evidence to send the victims to
17 prison; and

18 WHEREAS, January 28, 1991 - Amnesty International issued a
19 report calling for an inquiry into allegations of police
20 torture in Chicago. Mayor Daley had "no comment whatsoever".
21 September 1991 - 13 year old Marcus Wiggins alleged that he had
22 been tortured with electric shock at Area 3. Burge and Byrne
23 allegedly supervised the interrogation; and

24 WHEREAS, January 1992 - During proceedings before the
25 Police Board, City lawyers admitted that the evidence of Area 2
26 torture established "an astounding pattern or plan. . . to

1 torture certain suspects. . . into confessing to crimes or to
2 condone such activity"; and

3 WHEREAS, February 7, 1992 - OPS publicly released its 2
4 torture reports after being ordered to do so by a federal
5 judge, and its findings of "systematic torture" received
6 national attention. Martin and Mayor Daley jointly attack the
7 findings in widely covered public statements, and take no
8 action to criminally investigate or charge Burge or any of his
9 men in light of the OPS findings; and

10 WHEREAS, February-March 1992 - City administratively
11 prosecuted Burge, Yucaitis, and O'Hara in a 6 week hearing
12 before the Police Board for the torture of Andrew Wilson; and

13 WHEREAS, February 11, 1993 - The Chicago Police Board fired
14 Jon Burge and suspended John Yucaitis for 15 months on charges
15 of torturing and physically abusing Andrew Wilson. O'Hara is
16 completely exonerated; and

17 WHEREAS, 1993 - The OPS reopened investigations into
18 approximately 10 of the 60 known victims of police torture.
19 These cases include Cannon and Howard; and

20 WHEREAS, 1993-1994 - After exhaustive investigations, OPS
21 investigators complete detailed reports, sustaining torture
22 allegations in 6 cases, including Cannon and Howard, against
23 several of Burge's trusted Area 2 associates, including Sgt.
24 Byrne and Detective Dignan; and

25 WHEREAS, May 15, 1995 - City of Chicago admitted that
26 Melvin Jones had been electrically shocked in an attempt to

1 extract a confession; and

2 WHEREAS, July 13, 1995 - City of Chicago admits in a legal
3 document that Andrew Wilson was tortured by Burge; and

4 WHEREAS, November 1, 1999 - At Cannon's hearing, Dr. Robert
5 Kirschner, an internationally respected expert on torture and
6 human rights violations, testified that Cannon and several
7 other Area 2 victims were tortured and that this torture was
8 part of a pattern and practice similar to that found in other
9 countries where official torture is practiced by their military
10 and law enforcement agencies; and

11 WHEREAS, 1999 - Federal Judge Milton Shadur found that "it
12 is now common knowledge that Jon Burge and many officers
13 working under him regularly engaged in the physical abuse and
14 torture of prisoners in order to extract confessions"; and

15 WHEREAS, August 2000 - Illinois Supreme Court recognized
16 the importance of the newly discovered evidence of torture, and
17 ordered that Aaron Patterson, Stanley Howard, and 2 other death
18 row inmates be afforded hearings on their allegations of
19 torture; and

20 WHEREAS, April 2002 - Chief Cook County Criminal Court
21 Judge Paul Biebel found that State's Attorney Richard Devine
22 had a conflict arising from his prior representation of Burge,
23 and appointed Retired Judge Edward Egan as Special Prosecutor
24 to investigate Area 2 torture; and

25 WHEREAS, January 10, 2003 - Governor George Ryan granted
26 Madison Hoble, Stanley Howard, Aaron Patterson, and Leroy

1 Orange pardons on the basis of innocence, while determining
2 that their confessions were tortured from them by Burge and his
3 men; and

4 WHEREAS, 2004 - During the course of the civil litigation
5 and in furtherance of the code of silence, Burge, Byrne, and
6 more than 30 other Area 2 detectives and supervisors take the
7 Fifth Amendment on each and every allegation of torture; and

8 WHEREAS, 2004 - Several African-American former Area 2
9 detectives who worked under Burge come forward and broke the
10 code of silence, admitting that they saw or heard evidence of
11 torture, saw implements of torture, including Burge's shock
12 box, and that torture by Burge and his men was an "open secret"
13 at Area 2; and

14 WHEREAS, January 2005 - Federal Appeals Court Judge Diane
15 Wood likened Area 2 torture to that of Abu Ghraib, writing:
16 "[A] mountain of evidence indicates that torture was an
17 ordinary occurrence at the Area 2 station of the Chicago Police
18 Department. Eventually, as this sorry tale came to light, the
19 Office of Professional Standards Investigation of the Police
20 Department looked into the allegations, and it issued a report
21 that concluded that police torture under the command of Lt. Jon
22 Burge - the officer in charge of Hinton's case - had been a
23 regular part of the system for more than ten years. And, in
24 language reminiscent of the news reports of 2004 concerning the
25 notorious Abu Ghraib facility in Iraq, the report said that:
26 [t]he type of abuse described was not limited to the usual

1 beating, but went into such esoteric areas as psychological
2 techniques and planned torture"; and

3 WHEREAS, January 2005 - Judge Wood further found that Area
4 2 torture violated the United Nations prohibition against
5 torture, writing: Indeed, the alleged conduct is so extreme
6 that, if proven, it would fall within the prohibitions
7 established by the United Nations Convention Against Torture
8 ("CAT"), which defines torture as "any act by which severe pain
9 or suffering, whether physical or mental, is intentionally
10 inflicted on a person for such purposes as obtaining from him
11 or a third person information or a confession. . . ." thereby
12 violating the fundamental human rights principles that the
13 United States is committed to uphold. . . .; and

14 WHEREAS, Spring 2005 - Freedom of information documents
15 reveal that the City of Chicago has spent more than \$6,000,000
16 in legal fees defending itself and Burge and his men against
17 allegations of torture, despite repeatedly acknowledging that
18 they had engaged in a pattern and practice of torture; and

19 WHEREAS, May 19, 2006, The United Nations Committee Against
20 Torture ruled that the U.S. Government and the City of Chicago
21 are in violation of the Convention Against Torture and cruel,
22 inhuman, and degrading treatment; and

23 WHEREAS, September 1, 2005 - Frustrated by the fact that
24 the Special Prosecutor had not brought indictments, community
25 groups petitioned the organization of Inter-American
26 Commission on Human Rights and was granted a hearing on police

1 torture and the failure to prosecute Burge and his men; and

2 WHEREAS, July 26, 2006, Special Prosecutor Egan published
3 his findings which concluded that although there had been
4 police torture in at least half of the 148 cases examined, no
5 one, including Burge, could be indicted because of Statute of
6 Limitations; and

7 WHEREAS, Prof. Thomas K. Kenemore, Ph.D., conducted a pilot
8 study of the experiences of people affected by Chicago Police
9 Torture. Dr. Kenemore's findings summarize, among other
10 things, the lasting impact of the torture experience; and

11 WHEREAS, Prof. Kenemore observed that many survivors of
12 torture suffer from post-traumatic stress disorder. "The
13 prolonged and recurrent trauma is known to create a
14 hyper-vigilance and chronic fear of the re-occurrences of the
15 trauma, generalized constriction and avoidance,
16 disassociation, severe mistrust and isolation, a radically
17 changed identity which incorporates the trauma, and a tenacious
18 state of depression"; and

19 WHEREAS, The 200 or more torture victims were forced to
20 confess to crimes and the forced confessions was used to
21 convict them; and

22 WHEREAS, At least 27 victims of torture are still
23 imprisoned in Illinois prisons; and

24 WHEREAS, Public confidence in the justice system is
25 strengthened by thorough and timely inquiry into claims of
26 factual innocence; and

1 WHEREAS, Factual claims of innocence, which are determined
2 to be credible, can most effectively and efficiently be
3 evaluated through complete and independent investigation and
4 review of the same; therefore"; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 1. Short title. This Act may be cited as the
8 Illinois Innocence Inquiry Commission Act.

9 Section 5. Definitions. As used in this Act:

10 (1) "Claim of factual innocence" means a claim on behalf of
11 a living person convicted of a felony in Illinois asserting the
12 complete innocence of any criminal responsibility of the felony
13 for which the person was convicted and for any other reduced
14 level of criminal responsibility relating to the crime, and for
15 which there is some credible, certifiable evidence of innocence
16 that is related to allegations of torture committed by
17 Commander Jon Burge or any officer under the supervision of Jon
18 Burge.

19 (2) "Commission" means the Illinois Innocence Inquiry
20 Commission established by this Act.

21 (3) "Director" means the Director of the Illinois Innocence
22 Inquiry Commission.

23 (4) "Victim" means the victim of the crime, or if the

1 victim of the crime is deceased, the next of kin of the victim.

2 Section 10. Purpose of Act. This Act establishes an
3 extraordinary procedure to investigate and determine credible
4 claims of factual innocence related to allegations of torture
5 that shall require an individual to voluntarily waive rights
6 and privileges as described in this Act.

7 Section 15. Commission established.

8 (a) There is established the Illinois Innocence Inquiry
9 Commission. The Illinois Innocence Inquiry Commission shall be
10 an independent commission under the Administrative Office of
11 the Illinois Courts for administrative purposes.

12 (b) The Administrative Office of the Illinois Courts shall
13 provide administrative support to the Commission as needed. The
14 Director of the Administrative Office of the Illinois Courts
15 shall not reduce or modify the budget of the Commission or use
16 funds appropriated to the Commission without the approval of
17 the Commission.

18 Section 20. Membership; chair; meetings; quorum.

19 (a) The Commission shall consist of 8 voting members as
20 follows:

21 (1) One shall be a Circuit Judge.

22 (2) One shall be a prosecuting attorney.

23 (3) One shall be a victim advocate.

1 (4) One shall be engaged in the practice of criminal
2 defense law.

3 (5) One shall be a public member who is not an attorney
4 and who is not an officer or employee of the Judicial
5 branch.

6 (6) One shall be a sheriff holding office at the time
7 of his or her appointment.

8 (7) The vocations of the 2 remaining appointed voting
9 members shall be at discretion of the Chief Justice.

10 The Chief Justice of the Illinois Supreme Court shall make
11 the initial appointment for members identified in subdivisions
12 (4) through (6) of this subsection. The presiding judge of the
13 First District Appellate Court shall make the initial
14 appointment for members identified in subdivisions (1) through
15 (3) of this subsection. After an appointee has served his or
16 her first 3-year term, the subsequent appointment shall be by
17 the Chief Justice or presiding judge who did not make the
18 previous appointment. Thereafter, the Chief Justice or
19 presiding judge shall rotate the appointing power, except for
20 the 2 discretionary appointments identified by subdivision (7)
21 of this subsection which shall be appointed by the Chief
22 Justice.

23 (a-1) The appointing authority shall also appoint
24 alternate Commission members for the Commission members he or
25 she has appointed to serve in the event of scheduling
26 conflicts, conflicts of interest, disability, or other

1 disqualification arising in a particular case. The alternate
2 members shall have the same qualifications for appointment as
3 the original member. In making the appointments, the appointing
4 authority shall make a good faith effort to appoint members
5 with different perspectives of the justice system. The
6 appointing authority shall also consider geographical
7 location, gender, and racial diversity in making the
8 appointments.

9 (b) The judge who is appointed as a member under subsection
10 (a) shall serve as Chair of the Commission, and he or she shall
11 not have had any substantial previous involvement in any case
12 in which torture has been alleged against Jon Burge or those
13 under his supervision. The Commission shall have its initial
14 meeting no later than January 31, 2008, at the call of the
15 Chair. The Commission shall meet a minimum of once every 6
16 months and may also meet more often at the call of the Chair.
17 The Commission shall meet at such time and place as designated
18 by the Chair. Notice of the meetings shall be given at such
19 time and manner as provided by the rules of the Commission. A
20 majority of the members shall constitute a quorum. All
21 Commission votes shall be by majority vote.

22 Section 25. Terms of members; compensation; expenses.

23 (a) Of the initial members, 2 appointments shall be for
24 one-year terms, 3 appointments shall be for 2-year terms, and 3
25 appointments shall be for 3-year terms. Thereafter, all terms

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

6 Members serving by virtue of elective or appointive office,
7 except for the sheriff, may serve only so long as the office
8 holders hold those respective offices. The Chief Justice may
9 remove members, with cause. Vacancies occurring before the
10 expiration of a term shall be filled in the manner provided for
11 the members first appointed.

12 (b) The Commission members shall receive no salary for
13 serving. All Commission members shall receive necessary
14 subsistence and travel expenses.

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

1 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
7 Administrative Office of the Illinois Courts. The
8 Administrative Office of the Illinois Courts shall provide
9 office space for the Commission and the Commission staff.

10 Section 35. Duties. The Commission shall have the following
11 duties and powers:

12 (1) To establish the criteria and screening process to
13 be used to determine which cases shall be accepted for
14 review.

15 (2) To conduct inquiries into claims of factual
16 innocence, with priority to be given to those cases in
17 which the convicted person is currently incarcerated
18 solely for the crime to which he or she claims factual
19 innocence.

20 (3) To coordinate the investigation of cases accepted
21 for review.

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

23 (5) To prepare written reports outlining Commission
24 investigations and recommendations to the trial court at
25 the completion of each inquiry.

1 (6) To apply for and accept any funds that may become
2 available for the Commission's work from government
3 grants, private gifts, donations, or bequests from any
4 source.

5 Section 40. Claims of innocence; waiver of convicted
6 person's procedural safeguards and privileges; formal inquiry;
7 notification of the crime victim.

8 (a) A claim of factual innocence may be referred to the
9 Commission by any court, person, or agency. The Commission
10 shall not consider a claim of factual innocence if the
11 convicted person is deceased. The determination of whether to
12 grant a formal inquiry regarding any other claim of factual
13 innocence is in the discretion of the Commission. The
14 Commission may informally screen and dismiss a case summarily
15 at its discretion.

16 (b) No formal inquiry into a claim of innocence shall be
17 made by the Commission unless the Director or the Director's
18 designee first obtains a signed agreement from the convicted
19 person in which the convicted person waives his or her
20 procedural safeguard and privileges, agrees to cooperate with
21 the Commission, and agrees to provide full disclosure regarding
22 all matters unrelated to a convicted person's claim of
23 innocence. The convicted person shall have the right to advice
24 of counsel prior to the execution of the agreement and, if a
25 formal inquiry is granted, throughout the formal inquiry. If

1 counsel represents the convicted person, then the convicted
2 person, the Commission Chair shall determine the convicted
3 person's indigency status and, if appropriate, enter an order
4 for the appointment of counsel for the purpose of advising on
5 the agreement.

6 (c) If a formal inquiry regarding a claim of factual
7 innocence is granted, the Director shall use all due diligence
8 to notify the victim in the case and explain the inquiry
9 process. The Commission shall give the victim notice that the
10 victim has the right to present his or her views and concerns
11 throughout the Commission's investigation.

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

24 (e) While performing duties for the Commission, the
25 Director or the Director's designee may serve subpoenas or
26 other process issued by the Commission throughout the State in

1 the same manner and with the same effect as an officer
2 authorized to serve process under the laws of this State.

3 (f) All State discovery and disclosure statutes in effect
4 at the time of formal inquiry shall be enforceable as if the
5 convicted person were currently being tried for the charge for
6 which the convicted person is claiming innocence.

7 (g) If, at any point during an inquiry, the convicted
8 person refuses to comply with requests of the Commission or is
9 otherwise deemed to be uncooperative by the Commission, the
10 Commission shall discontinue the inquiry.

11 Section 45. Commission proceedings.

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

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

1 notify the Commission at least 10 days in advance of the
2 proceedings of his or her intent to attend. If the Commission
3 determines that the victim's presence may interfere with the
4 investigation, the Commission may close any portion of the
5 proceedings to the victim.

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 Except in cases where the convicted person entered and was
11 convicted on a plea of guilty, if 5 or more of the 8 voting
12 members of the Commission conclude there is sufficient evidence
13 of factual innocence to merit judicial review, the case shall
14 be referred to the chief judge in the circuit of original
15 jurisdiction 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. In cases where
20 the convicted person entered and was convicted on a plea of
21 guilty, if all of the 8 voting members of the Commission
22 conclude there is sufficient evidence of factual innocence to
23 merit judicial review, the case shall be referred to the chief
24 judge in the circuit of original jurisdiction.

25 If less than 5 of the 8 voting members of the Commission,
26 or in cases where the convicted person entered and was

1 convicted on a guilty plea less than all of the 8 voting
2 members of the Commission, conclude there insufficient
3 evidence of factual innocence to merit judicial review, the
4 Commission shall conclude there is insufficient evidence of
5 factual innocence to merit judicial review. The Commission
6 shall document that opinion, along with supporting findings of
7 fact, and file those documents and supporting materials with
8 the court clerk in the circuit of original jurisdiction, with a
9 copy to the State's Attorney and the chief judge.

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

13 (d) Evidence of criminal acts, professional misconduct, or
14 other wrongdoing disclosed through formal inquiry or
15 Commission proceedings shall be referred to the appropriate
16 authority. Evidence favorable to the convicted person
17 disclosed through formal inquiry or Commission proceedings
18 shall be disclosed to the convicted person and the convicted
19 person's counsel, if the convicted person has counsel.

20 (e) All proceedings, of the Commission shall be recorded
21 and transcribed as part of the record. All Commission member
22 votes shall be recorded in the record. All records and
23 proceedings of the Commission are confidential and are exempt
24 from public record and public meeting laws except that the
25 supporting records for the Commission's conclusion that there
26 is sufficient evidence of factual innocence to merit judicial

1 review, including all files and materials considered by the
2 Commission and an full transcript of the hearing before the
3 Commission, shall become public at the time of referral to the
4 court. Commission records for conclusions of insufficient
5 evidence of factual innocence to merit judicial review shall
6 remain confidential, except as provided in subsection (d).

7 Section 50. Post-commission 3-judge panel.

8 (a) If the Commission concludes there is sufficient
9 evidence of factual innocence to merit judicial review, the
10 Chair of the Commission shall request the Chief Justice to
11 appoint a 3-judge panel, not to include any trial judge that
12 has had substantial previous involvement in the case, and issue
13 commissions to the members of the 3-judge panel to convene a
14 special session of the court of the original jurisdiction to
15 hear evidence relevant to the Commission's recommendation. The
16 senior judge of the panel shall preside.

17 (b) The senior judge shall enter an order setting the case
18 for hearing at the special session of court for which the
19 3-judge panel is commissioned and shall require the State to
20 file a response to the Commission's opinion within 60 days of
21 the date of the order.

22 (c) The State's Attorney, or the State's Attorney's
23 designee, shall represent the State at the hearing before the
24 3-judge panel.

25 (d) The 3-judge panel shall conduct an evidentiary hearing.

1 At the hearing, the court may compel the testimony of any
2 witness, including the convicted person. The convicted person
3 may not assert any privilege or prevent a witness from
4 testifying. The convicted person has a right to be present at
5 the evidentiary hearing and to be represented by counsel. A
6 waiver of the right to be present shall be in writing.

7 (e) The senior judge shall determine the convicted person's
8 indigency status and, if appropriate, enter an order for the
9 appointment of counsel. The court may also enter an order
10 relieving an indigent convicted person of all or a portion of
11 the costs of the proceedings.

12 (f) The clerk of court shall provide written notification
13 to the victim 30 days prior to any case-related hearings.

14 (g) The 3-judge panel shall rule as to whether the
15 convicted person has proved by clear and convincing evidence
16 that the convicted person is innocent of the charges. Such a
17 determination shall require a unanimous vote. If the vote is
18 unanimous, the panel shall enter dismissal of all or any of the
19 charges. If the vote is not unanimous, the panel shall deny
20 relief.

21 Section 55. No right to further review of decision by
22 Commission or 3-judge panel; convicted person retains right to
23 other postconviction relief.

24 (a) Unless otherwise authorized by this Act, the decisions
25 of the Commission and of the 3-judge panel are final and are

1 not subject to further review by appeal, certification, writ,
2 motion, or otherwise.

3 (b) A claim of factual innocence asserted through the
4 Commission shall not adversely affect the convicted person's
5 rights to other post conviction relief.

6 Section 60. 60 In order to allow staggered terms of members
7 of the Illinois Innocence Inquiry Commission, the Commission
8 members identified in paragraphs (1), (2), and (4) of
9 subsection (a) of Section 20 shall be appointed to initial
10 terms of 2 years, the Commission members identified paragraphs
11 (3), (5), and (6) of subsection (a) of Section 20 shall be
12 appointed to initial terms of 3 years, and the Commission
13 members identified in paragraph (7) of subsection (a) of
14 Section 20 shall be appointed to initial terms of one year.

15 Section 65. Beginning January 1, 2009, and annually
16 thereafter, the Illinois Innocence Inquiry Commission shall
17 report on its activities to the General Assembly and the
18 Governor. The report may contain recommendations of any needed
19 legislative changes related to the activities of the
20 Commission. The report shall recommend the funding needed by
21 the Commission, the State's Attorneys, and the Department of
22 State Police in order to meet their responsibilities under this
23 Act. Recommendations concerning the State's Attorneys or the
24 Department of State Police shall only be made after

1 consultations with the Illinois State's Attorneys Association
2 and the Attorney General.

3 Section 70. The Administrative Office of the Illinois
4 Courts shall report to the General Assembly and the Chief
5 Justice no later than December 31, 2010, and no later than
6 December 31 of every third year, regarding the implementation
7 of this Act and shall include in its report the statistics
8 regarding inquiries and any recommendations for changes. The
9 House of Representatives and the Senate shall refer the report
10 to the appropriate committees for their review.

11 Section 75. The initial members of the Illinois Innocence
12 Inquiry Commission shall be appointed not later than October 1,
13 2007. No claims of actual innocence may be filed with the
14 Commission until November 1, 2007. No claims of actual
15 innocence where the convicted person entered and was convicted
16 on a plea of guilty may be filed with the Commission until
17 November 1, 2009.

18 Section 80. This Act applies to claims of factual innocence
19 filed on or before December 31, 2012.

20 Section 905. The Freedom of Information Act is amended by
21 changing Section 7 as follows:

1 (5 ILCS 140/7) (from Ch. 116, par. 207)

2 Sec. 7. Exemptions.

3 (1) The following shall be exempt from inspection and
4 copying:

5 (a) Information specifically prohibited from
6 disclosure by federal or State law or rules and regulations
7 adopted under federal or State law.

8 (b) Information that, if disclosed, would constitute a
9 clearly unwarranted invasion of personal privacy, unless
10 the disclosure is consented to in writing by the individual
11 subjects of the information. The disclosure of information
12 that bears on the public duties of public employees and
13 officials shall not be considered an invasion of personal
14 privacy. Information exempted under this subsection (b)
15 shall include but is not limited to:

16 (i) files and personal information maintained with
17 respect to clients, patients, residents, students or
18 other individuals receiving social, medical,
19 educational, vocational, financial, supervisory or
20 custodial care or services directly or indirectly from
21 federal agencies or public bodies;

22 (ii) personnel files and personal information
23 maintained with respect to employees, appointees or
24 elected officials of any public body or applicants for
25 those positions;

26 (iii) files and personal information maintained

1 with respect to any applicant, registrant or licensee
2 by any public body cooperating with or engaged in
3 professional or occupational registration, licensure
4 or discipline;

5 (iv) information required of any taxpayer in
6 connection with the assessment or collection of any tax
7 unless disclosure is otherwise required by State
8 statute;

9 (v) information revealing the identity of persons
10 who file complaints with or provide information to
11 administrative, investigative, law enforcement or
12 penal agencies; provided, however, that identification
13 of witnesses to traffic accidents, traffic accident
14 reports, and rescue reports may be provided by agencies
15 of local government, except in a case for which a
16 criminal investigation is ongoing, without
17 constituting a clearly unwarranted per se invasion of
18 personal privacy under this subsection; and

19 (vi) the names, addresses, or other personal
20 information of participants and registrants in park
21 district, forest preserve district, and conservation
22 district programs.

23 (c) Records compiled by any public body for
24 administrative enforcement proceedings and any law
25 enforcement or correctional agency for law enforcement
26 purposes or for internal matters of a public body, but only

1 to the extent that disclosure would:

2 (i) interfere with pending or actually and
3 reasonably contemplated law enforcement proceedings
4 conducted by any law enforcement or correctional
5 agency;

6 (ii) interfere with pending administrative
7 enforcement proceedings conducted by any public body;

8 (iii) deprive a person of a fair trial or an
9 impartial hearing;

10 (iv) unavoidably disclose the identity of a
11 confidential source or confidential information
12 furnished only by the confidential source;

13 (v) disclose unique or specialized investigative
14 techniques other than those generally used and known or
15 disclose internal documents of correctional agencies
16 related to detection, observation or investigation of
17 incidents of crime or misconduct;

18 (vi) constitute an invasion of personal privacy
19 under subsection (b) of this Section;

20 (vii) endanger the life or physical safety of law
21 enforcement personnel or any other person; or

22 (viii) obstruct an ongoing criminal investigation.

23 (d) Criminal history record information maintained by
24 State or local criminal justice agencies, except the
25 following which shall be open for public inspection and
26 copying:

1 (i) chronologically maintained arrest information,
2 such as traditional arrest logs or blotters;

3 (ii) the name of a person in the custody of a law
4 enforcement agency and the charges for which that
5 person is being held;

6 (iii) court records that are public;

7 (iv) records that are otherwise available under
8 State or local law; or

9 (v) records in which the requesting party is the
10 individual identified, except as provided under part
11 (vii) of paragraph (c) of subsection (1) of this
12 Section.

13 "Criminal history record information" means data
14 identifiable to an individual and consisting of
15 descriptions or notations of arrests, detentions,
16 indictments, informations, pre-trial proceedings, trials,
17 or other formal events in the criminal justice system or
18 descriptions or notations of criminal charges (including
19 criminal violations of local municipal ordinances) and the
20 nature of any disposition arising therefrom, including
21 sentencing, court or correctional supervision,
22 rehabilitation and release. The term does not apply to
23 statistical records and reports in which individuals are
24 not identified and from which their identities are not
25 ascertainable, or to information that is for criminal
26 investigative or intelligence purposes.

1 (e) Records that relate to or affect the security of
2 correctional institutions and detention facilities.

3 (f) Preliminary drafts, notes, recommendations,
4 memoranda and other records in which opinions are
5 expressed, or policies or actions are formulated, except
6 that a specific record or relevant portion of a record
7 shall not be exempt when the record is publicly cited and
8 identified by the head of the public body. The exemption
9 provided in this paragraph (f) extends to all those records
10 of officers and agencies of the General Assembly that
11 pertain to the preparation of legislative documents.

12 (g) Trade secrets and commercial or financial
13 information obtained from a person or business where the
14 trade secrets or information are proprietary, privileged
15 or confidential, or where disclosure of the trade secrets
16 or information may cause competitive harm, including:

17 (i) All information determined to be confidential
18 under Section 4002 of the Technology Advancement and
19 Development Act.

20 (ii) All trade secrets and commercial or financial
21 information obtained by a public body, including a
22 public pension fund, from a private equity fund or a
23 privately held company within the investment portfolio
24 of a private equity fund as a result of either
25 investing or evaluating a potential investment of
26 public funds in a private equity fund. The exemption

1 contained in this item does not apply to the aggregate
2 financial performance information of a private equity
3 fund, nor to the identity of the fund's managers or
4 general partners. The exemption contained in this item
5 does not apply to the identity of a privately held
6 company within the investment portfolio of a private
7 equity fund, unless the disclosure of the identity of a
8 privately held company may cause competitive harm.

9 Nothing contained in this paragraph (g) shall be construed
10 to prevent a person or business from consenting to disclosure.

11 (h) Proposals and bids for any contract, grant, or
12 agreement, including information which if it were
13 disclosed would frustrate procurement or give an advantage
14 to any person proposing to enter into a contractor
15 agreement with the body, until an award or final selection
16 is made. Information prepared by or for the body in
17 preparation of a bid solicitation shall be exempt until an
18 award or final selection is made.

19 (i) Valuable formulae, computer geographic systems,
20 designs, drawings and research data obtained or produced by
21 any public body when disclosure could reasonably be
22 expected to produce private gain or public loss. The
23 exemption for "computer geographic systems" provided in
24 this paragraph (i) does not extend to requests made by news
25 media as defined in Section 2 of this Act when the
26 requested information is not otherwise exempt and the only

1 purpose of the request is to access and disseminate
2 information regarding the health, safety, welfare, or
3 legal rights of the general public.

4 (j) Test questions, scoring keys and other examination
5 data used to administer an academic examination or
6 determined the qualifications of an applicant for a license
7 or employment.

8 (k) Architects' plans, engineers' technical
9 submissions, and other construction related technical
10 documents for projects not constructed or developed in
11 whole or in part with public funds and the same for
12 projects constructed or developed with public funds, but
13 only to the extent that disclosure would compromise
14 security, including but not limited to water treatment
15 facilities, airport facilities, sport stadiums, convention
16 centers, and all government owned, operated, or occupied
17 buildings.

18 (l) Library circulation and order records identifying
19 library users with specific materials.

20 (m) Minutes of meetings of public bodies closed to the
21 public as provided in the Open Meetings Act until the
22 public body makes the minutes available to the public under
23 Section 2.06 of the Open Meetings Act.

24 (n) Communications between a public body and an
25 attorney or auditor representing the public body that would
26 not be subject to discovery in litigation, and materials

1 prepared or compiled by or for a public body in
2 anticipation of a criminal, civil or administrative
3 proceeding upon the request of an attorney advising the
4 public body, and materials prepared or compiled with
5 respect to internal audits of public bodies.

6 (o) Information received by a primary or secondary
7 school, college or university under its procedures for the
8 evaluation of faculty members by their academic peers.

9 (p) Administrative or technical information associated
10 with automated data processing operations, including but
11 not limited to software, operating protocols, computer
12 program abstracts, file layouts, source listings, object
13 modules, load modules, user guides, documentation
14 pertaining to all logical and physical design of
15 computerized systems, employee manuals, and any other
16 information that, if disclosed, would jeopardize the
17 security of the system or its data or the security of
18 materials exempt under this Section.

19 (q) Documents or materials relating to collective
20 negotiating matters between public bodies and their
21 employees or representatives, except that any final
22 contract or agreement shall be subject to inspection and
23 copying.

24 (r) Drafts, notes, recommendations and memoranda
25 pertaining to the financing and marketing transactions of
26 the public body. The records of ownership, registration,

1 transfer, and exchange of municipal debt obligations, and
2 of persons to whom payment with respect to these
3 obligations is made.

4 (s) The records, documents and information relating to
5 real estate purchase negotiations until those negotiations
6 have been completed or otherwise terminated. With regard to
7 a parcel involved in a pending or actually and reasonably
8 contemplated eminent domain proceeding under the Eminent
9 Domain Act, records, documents and information relating to
10 that parcel shall be exempt except as may be allowed under
11 discovery rules adopted by the Illinois Supreme Court. The
12 records, documents and information relating to a real
13 estate sale shall be exempt until a sale is consummated.

14 (t) Any and all proprietary information and records
15 related to the operation of an intergovernmental risk
16 management association or self-insurance pool or jointly
17 self-administered health and accident cooperative or pool.

18 (u) Information concerning a university's adjudication
19 of student or employee grievance or disciplinary cases, to
20 the extent that disclosure would reveal the identity of the
21 student or employee and information concerning any public
22 body's adjudication of student or employee grievances or
23 disciplinary cases, except for the final outcome of the
24 cases.

25 (v) Course materials or research materials used by
26 faculty members.

1 (w) Information related solely to the internal
2 personnel rules and practices of a public body.

3 (x) Information contained in or related to
4 examination, operating, or condition reports prepared by,
5 on behalf of, or for the use of a public body responsible
6 for the regulation or supervision of financial
7 institutions or insurance companies, unless disclosure is
8 otherwise required by State law.

9 (y) Information the disclosure of which is restricted
10 under Section 5-108 of the Public Utilities Act.

11 (z) Manuals or instruction to staff that relate to
12 establishment or collection of liability for any State tax
13 or that relate to investigations by a public body to
14 determine violation of any criminal law.

15 (aa) Applications, related documents, and medical
16 records received by the Experimental Organ Transplantation
17 Procedures Board and any and all documents or other records
18 prepared by the Experimental Organ Transplantation
19 Procedures Board or its staff relating to applications it
20 has received.

21 (bb) Insurance or self insurance (including any
22 intergovernmental risk management association or self
23 insurance pool) claims, loss or risk management
24 information, records, data, advice or communications.

25 (cc) Information and records held by the Department of
26 Public Health and its authorized representatives relating

1 to known or suspected cases of sexually transmissible
2 disease or any information the disclosure of which is
3 restricted under the Illinois Sexually Transmissible
4 Disease Control Act.

5 (dd) Information the disclosure of which is exempted
6 under Section 30 of the Radon Industry Licensing Act.

7 (ee) Firm performance evaluations under Section 55 of
8 the Architectural, Engineering, and Land Surveying
9 Qualifications Based Selection Act.

10 (ff) Security portions of system safety program plans,
11 investigation reports, surveys, schedules, lists, data, or
12 information compiled, collected, or prepared by or for the
13 Regional Transportation Authority under Section 2.11 of
14 the Regional Transportation Authority Act or the St. Clair
15 County Transit District under the Bi-State Transit Safety
16 Act.

17 (gg) Information the disclosure of which is restricted
18 and exempted under Section 50 of the Illinois Prepaid
19 Tuition Act.

20 (hh) Information the disclosure of which is exempted
21 under the State Officials and Employees Ethics Act.

22 (ii) Beginning July 1, 1999, information that would
23 disclose or might lead to the disclosure of secret or
24 confidential information, codes, algorithms, programs, or
25 private keys intended to be used to create electronic or
26 digital signatures under the Electronic Commerce Security

1 Act.

2 (jj) Information contained in a local emergency energy
3 plan submitted to a municipality in accordance with a local
4 emergency energy plan ordinance that is adopted under
5 Section 11-21.5-5 of the Illinois Municipal Code.

6 (kk) Information and data concerning the distribution
7 of surcharge moneys collected and remitted by wireless
8 carriers under the Wireless Emergency Telephone Safety
9 Act.

10 (ll) Vulnerability assessments, security measures, and
11 response policies or plans that are designed to identify,
12 prevent, or respond to potential attacks upon a community's
13 population or systems, facilities, or installations, the
14 destruction or contamination of which would constitute a
15 clear and present danger to the health or safety of the
16 community, but only to the extent that disclosure could
17 reasonably be expected to jeopardize the effectiveness of
18 the measures or the safety of the personnel who implement
19 them or the public. Information exempt under this item may
20 include such things as details pertaining to the
21 mobilization or deployment of personnel or equipment, to
22 the operation of communication systems or protocols, or to
23 tactical operations.

24 (mm) Maps and other records regarding the location or
25 security of a utility's generation, transmission,
26 distribution, storage, gathering, treatment, or switching

1 facilities.

2 (nn) Law enforcement officer identification
3 information or driver identification information compiled
4 by a law enforcement agency or the Department of
5 Transportation under Section 11-212 of the Illinois
6 Vehicle Code.

7 (oo) Records and information provided to a residential
8 health care facility resident sexual assault and death
9 review team or the Executive Council under the Abuse
10 Prevention Review Team Act.

11 (pp) Information provided to the predatory lending
12 database created pursuant to Article 3 of the Residential
13 Real Property Disclosure Act, except to the extent
14 authorized under that Article.

15 (qq) Defense budgets and petitions for certification
16 of compensation and expenses for court appointed trial
17 counsel as provided under Sections 10 and 15 of the Capital
18 Crimes Litigation Act. This subsection (qq) shall apply
19 until the conclusion of the trial of the case, even if the
20 prosecution chooses not to pursue the death penalty prior
21 to trial or sentencing.

22 (rr) Records of investigations conducted by the
23 Illinois Innocence Inquiry Commission.

24 (2) This Section does not authorize withholding of
25 information or limit the availability of records to the public,
26 except as stated in this Section or otherwise provided in this

1 Act.

2 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
3 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
4 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
5 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; 94-931, eff.
6 6-26-06; 94-953, eff. 6-27-06; 94-1055, eff. 1-1-07; revised
7 8-3-06.)

8 Section 910. The Code of Criminal Procedure of 1963 is
9 amended by adding Section 116-6 as follows:

10 (725 ILCS 5/116-6 new)

11 Sec. 116-6. Post-trial motions and appeal.

12 (a) Relief from errors committed in criminal trials and
13 proceedings and other post-trial relief may be sought by a
14 motion for innocence claim inquiry under the Illinois Innocence
15 Inquiry Commission Act.

16 (b) For claims of factual innocence, the court may grant a
17 motion for referral to the Illinois Innocence Inquiry
18 Commission.

19 (c) A claim of factual innocence asserted through the
20 Illinois Innocence Inquiry Commission does not impact rights or
21 relief provided for in this Code.

22 (d) When a motion for relief is made under this Article,
23 the court must decide for claims of factual innocence, whether
24 to refer the case for further investigation to the Illinois

1 Innocence Inquiry Commission.

2 Section 999. Effective date. This Act takes effect upon
3 becoming law.".