



Judiciary II - Criminal Law Committee

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LRB095 19342 RLC 49374 a

1 AMENDMENT TO HOUSE BILL 5032

2 AMENDMENT NO. _____. Amend House Bill 5032 by inserting
3 after the title the following:

4 "WHEREAS, Factual claims of torture, which are determined
5 to be credible, can most effectively and efficiently be
6 evaluated through complete and independent investigation and
7 review of the same; therefore"; and

8 by replacing everything after the enacting clause with the
9 following:

10 "Section 1. Short title. This Act may be cited as the
11 Illinois Torture Inquiry and Relief Commission Act.

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

13 (1) "Claim of torture" means a claim on behalf of a living
14 person convicted of a felony in Illinois asserting that he was
15 tortured into confessing to the crime for which the person was

1 convicted and the tortured confession was used to obtain the
2 conviction and for which there is some credible evidence
3 related to allegations of torture committed by Commander Jon
4 Burge or any officer under the supervision of Jon Burge.

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

7 (3) "Director" means the Director of the Illinois Torture
8 Inquiry and Relief Commission.

9 (4) "Victim" means the victim of the crime, or if the
10 victim of the crime is deceased, the next of kin of the victim.

11 Section 10. Purpose of Act. This Act establishes an
12 extraordinary procedure to investigate and determine factual
13 claims of torture related to allegations of torture that shall
14 require an individual to voluntarily waive rights and
15 privileges as described in this Act.

16 Section 15. Commission established.

17 (a) There is established the Illinois Torture and Relief
18 Inquiry Commission. The Illinois Torture Relief Inquiry
19 Commission shall be an independent commission under the
20 Administrative Office of the Illinois Courts for
21 administrative purposes.

22 (b) The Administrative Office of the Illinois Courts shall
23 provide administrative support to the Commission as needed. The
24 Director of the Administrative Office of the Illinois Courts

1 shall not reduce or modify the budget of the Commission or use
2 funds appropriated to the Commission without the approval of
3 the Commission.

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

5 (a) The Commission shall consist of 8 voting members as
6 follows:

7 (1) One shall be a Circuit Court Judge, with 10 years
8 or less seniority.

9 (2) One shall be a former prosecuting attorney.

10 (3) One shall be a law school professor.

11 (4) One shall be engaged in the practice of criminal
12 defense law.

13 (5) Three shall be members of the public who are not
14 attorneys and who are not officers or employees of the
15 Judicial branch.

16 (6) One shall be a former public defender.

17 The Commission shall be appointed as follows:

18 2 members appointed by the Governor;

19 2 members appointed by the President of the Senate;

20 One member appointed by the Minority Leader of the
21 Senate;

22 2 members appointed by the Speaker of the House of
23 Representatives; and

24 One member appointed by the Minority Leader of the
25 House of Representatives.

1 After an appointee has served his or her first 3-year term,
2 the subsequent appointment or reappointment may be by the
3 initial appointing authority.

4 (a-1) The appointing authority shall also appoint
5 alternate Commission members for the Commission members he or
6 she has appointed to serve in the event of scheduling
7 conflicts, conflicts of interest, disability, or other
8 disqualification arising in a particular case. The alternate
9 members shall have the same qualifications for appointment as
10 the original member. In making the appointments, the appointing
11 authority shall make a good faith effort to appoint members
12 with different perspectives of the justice system. The
13 appointing authority shall also consider geographical
14 location, gender, and racial diversity in making the
15 appointments.

16 (b) The judge who is appointed as a member under subsection
17 (a) shall serve as Chair of the Commission. The Commission
18 shall have its initial meeting no later than January 31, 2009,
19 at the call of the Chair. The Commission shall meet a minimum
20 of once every 6 months and may also meet more often at the call
21 of the Chair. The Commission shall meet at such time and place
22 as designated by the Chair. Notice of the meetings shall be
23 given at such time and manner as provided by the rules of the
24 Commission. A majority of the members shall constitute a
25 quorum. All Commission votes shall be by majority vote.

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

2 (a) Of the initial members, 2 appointments shall be for
3 one-year terms, 3 appointments shall be for 2-year terms, and 3
4 appointments shall be for 3-year terms. Thereafter, all terms
5 shall be for 3 years. Members of the Commission shall serve no
6 more than 2 consecutive 3-year terms plus any initial term of
7 less than 3 years. Unless provided otherwise by this Act, all
8 terms of members shall begin on January 1 and end on December
9 31.

10 Members serving by virtue of elective or appointive office,
11 may serve only so long as the office holders hold those
12 respective offices. The Chief Judge of the Cook County Circuit
13 Court may remove members, with cause. Vacancies occurring
14 before the expiration of a term shall be filled in the manner
15 provided for the members first appointed.

16 (b) The Commission members shall receive no salary for
17 serving. All Commission members shall receive necessary
18 subsistence and travel expenses.

19 Section 30. Director and other staff. The Commission shall
20 employ a Director. The Director shall be an attorney licensed
21 to practice in Illinois at the time of appointment and at all
22 times during service as Director. The Director shall assist the
23 Commission in developing rules and standards for cases accepted
24 for review, coordinate investigation of cases accepted for
25 review, maintain records for all cases investigations, prepare

1 reports outlining Commission investigations and
2 recommendations to the trial court, and apply for and accept on
3 behalf of the Commission any funds that may become available
4 from government grants, private gifts, donations, or bequests
5 from any source.

6 Subject to the approval of the Chair, the Director shall
7 employ such other staff and shall contract for services as is
8 necessary to assist the Commission in the performance of its
9 duties, and as funds permit.

10 The Commission may meet in an area provided by the
11 Administrative Office of the Illinois Courts. The
12 Administrative Office of the Illinois Courts shall provide
13 office space for the Commission and the Commission staff.

14 Section 35. Duties. The Commission shall have the following
15 duties and powers:

16 (1) To establish the criteria and screening process to
17 be used to determine which cases shall be accepted for
18 review.

19 (2) To conduct inquiries into claims of torture with
20 priority to be given to those cases in which the convicted
21 person is currently incarcerated solely for the crime to
22 which he or she claims torture by Jon Burge or officers
23 under his command, or both.

24 (3) To coordinate the investigation of cases accepted
25 for review.

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

2 (5) To prepare written reports outlining Commission
3 investigations and recommendations to the trial court at
4 the completion of each inquiry.

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

9 Section 40. Claims of torture; waiver of convicted person's
10 procedural safeguards and privileges; formal inquiry;
11 notification of the crime victim.

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

19 (b) No formal inquiry into a claim of torture shall be made
20 by the Commission unless the Director or the Director's
21 designee first obtains a signed agreement from the convicted
22 person in which the convicted person waives his or her
23 procedural safeguard and privileges, agrees to cooperate with
24 the Commission, and agrees to provide full disclosure regarding
25 inquiry requirements of the Commission. The Waiver under this

1 subsection does not apply to matters unrelated to a convicted
2 person's claim of torture. The convicted person shall have the
3 right to advice of counsel prior to the execution of the
4 agreement and, if a formal inquiry is granted, throughout the
5 formal inquiry. If counsel represents the convicted person,
6 then the convicted person's counsel must be present at the
7 signing of the agreement. If counsel does not represent the
8 convicted person, the Commission Chair shall determine the
9 convicted person's indigency status and, if appropriate, enter
10 an order for the appointment of counsel for the purpose of
11 advising on the agreement.

12 (c) If a formal inquiry regarding a claim of torture is
13 granted, the Director shall use all due diligence to notify the
14 victim in the case and explain the inquiry process. The
15 Commission shall give the victim notice that the victim has the
16 right to present his or her views and concerns throughout the
17 Commission's investigation.

18 (d) The Commission may use any measure provided in the Code
19 of Civil Procedure and the Code of Criminal Procedure of 1963
20 to obtain information necessary to its inquiry. The Commission
21 may also do any of the following: issue process to compel the
22 attendance of witnesses and the production of evidence,
23 administer oaths, petition the Circuit Court of Cook County or
24 of the original jurisdiction for enforcement of process or for
25 other relief, and prescribe its own rules of procedure. All
26 challenges with regard to the Commission's authority or the

1 Commission's access to evidence shall be heard by the
2 Commission Chair in the Chair's judicial capacity, including
3 any in camera review.

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

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

13 (g) If, at any point during an inquiry, the convicted
14 person refuses to comply with requests of the Commission or is
15 otherwise deemed to be uncooperative by the Commission, the
16 Commission shall discontinue the inquiry.

17 Section 45. Commission proceedings.

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

25 (b) The Director shall use all due diligence to notify the

1 victim at least 30 days prior to any proceedings of the full
2 Commission held in regard to the victim's case. The Commission
3 shall notify the victim that the victim is permitted to attend
4 proceedings otherwise closed to the public, subject to any
5 limitations imposed by this Act, If the victim plans to attend
6 proceedings otherwise closed to the public, the victim shall
7 notify the Commission at least 10 days in advance of the
8 proceedings of his or her intent to attend. If the Commission
9 determines that the victim's presence may interfere with the
10 investigation, the Commission may close any portion of the
11 proceedings to the victim.

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

16 If 5 or more of the 8 voting members of the Commission
17 conclude there is sufficient evidence of torture to merit
18 judicial review, the case shall be referred to the Chief Judge
19 of the Circuit Court of Cook County by filing with the clerk of
20 court the opinion of the Commission with supporting findings of
21 fact, as well as the record in support of such opinion, with
22 service on the State's Attorney if another State's Attorney is
23 appointed other than Richard Devine in non-capital cases and
24 service on both the State's Attorney and Attorney General in
25 capital cases.

26 If less than 5 of the 8 voting members of the Commission

1 conclude there is insufficient evidence of torture to merit
2 judicial review, the Commission shall conclude there is
3 insufficient evidence of torture to merit judicial review. The
4 Commission shall document that opinion, along with supporting
5 findings of fact, and file those documents and supporting
6 materials with the court clerk in the circuit of original
7 jurisdiction, with a copy to the State's Attorney and the chief
8 judge.

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

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

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

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

6 Section 50. Post-commission judicial review.

7 (a) If the Commission concludes there is sufficient
8 evidence of torture to merit judicial review, the Chair of the
9 Commission shall request the Chief Judge of the Circuit Court
10 of Cook County for assignment to a trial judge for
11 consideration. The court may receive proof by affidavits,
12 depositions, oral testimony, or other evidence. In its
13 discretion the court may order the petitioner brought before
14 the court for the hearing. If the court finds in favor of the
15 petitioner, it shall enter an appropriate order with respect to
16 the judgment or sentence in the former proceedings and such
17 supplementary orders as to rearraignment, retrial, custody,
18 bail or discharge as may be necessary and proper.

19 (b) The State's Attorney, or the State's Attorney's
20 designee, shall represent the State at the hearing before the
21 Assigned judge.

22 Section 55. No right to further review of decision by
23 Commission; convicted person retains right to other
24 postconviction relief.

1 (a) Unless otherwise authorized by this Act, the decisions
2 of the Commission are final and are subject to further review
3 by appeal, certification, writ, motion, or otherwise.

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

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

16 Section 65. Beginning January 1, 2010, and annually
17 thereafter, the Illinois Torture and Inquiry Relief Commission
18 shall report on its activities to the General Assembly and the
19 Governor. The report may contain recommendations of any needed
20 legislative changes related to the activities of the
21 Commission. The report shall recommend the funding needed by
22 the Commission, the State's Attorneys, and the Department of
23 State Police in order to meet their responsibilities under this
24 Act. Recommendations concerning the State's Attorneys or the

1 Department of State Police shall only be made after
2 consultations with the Illinois State's Attorneys Association
3 and the Attorney General.

4 Section 70. The Administrative Office of the Illinois
5 Courts shall report to the General Assembly and the Chief
6 Justice no later than December 31, 2011, and no later than
7 December 31 of every third year, regarding the implementation
8 of this Act and shall include in its report the statistics
9 regarding inquiries and any recommendations for changes. The
10 House of Representatives and the Senate shall refer the report
11 to the appropriate committees for their review.

12 Section 75. The initial members of the Illinois Torture
13 Inquiry and Relief Commission shall be appointed not later than
14 October 1, 2008. No claims of torture may be filed with the
15 Commission until November 1, 2008.

16 Section 80. This Act applies to claims of torture filed on
17 or before December 31, 2013.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."