

Frequently Asked Questions

1. Who can file claims with the Commission?

The law that created the Commission is the Illinois Torture Inquiry and Relief Commission Act (the “TIRC Act”). That law said that a claim can be filed before the Commission by anyone who has a “claim of torture.” A claim can also be filed by any court, person, or agency on behalf of someone else who has a “claim of torture.” The law defines an eligible “claim of torture:”

"Claim of torture" means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some credible evidence related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge.

The claim must therefore be made by or on behalf of:

- a living person,
- convicted of a felony in Illinois, and
- who claims he (or she) was tortured into confessing to the crime of conviction.
- The tortured confession must have been used to obtain the conviction, and
- there must be some credible evidence,
- related to allegations of torture committed by Jon Burge or an officer under Burge’s supervision.

All six of these requirements must be met.

2. I was tortured by an officer who had worked under Jon Burge, but my arrest and confession were after Burge supervised that officer. What will the Commission do with my claim?

The Commission believes that claims of torture against officers who had previously worked for Jon Burge are “related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge,” as required by the TIRC Act. For that reason, the Commission will accept and act on your claim.

You should know, however, that at least one Circuit Judge has ruled that the Commission does not have authority over such cases. The Commission does not agree with that ruling, and will continue acting on such cases unless there is a clear appellate ruling that the Commission does not have authority over cases involving officers who formerly worked for Jon Burge.

3. Is there a cutoff date for filing claims?

Yes, under the TIRC Act, all claims must be filed by August 10, 2014.

4. Will the Commission still exist after the cutoff date?

Yes, the Commission intends to keep working until it completes the cases that are pending before it on August 10, 2014. An additional period of approximately 1-2 years will likely be needed to complete all work.

5. I was tortured, but my claim doesn't have anything to do with Jon Burge. Can I still file a claim with the Commission?

At first, the Commission accepted claims that are not against Jon Burge or officers who worked for him. One trial judge has already ruled that the Commission has no authority to act on such claims, and there is substantial doubt as to whether the TIRC Act gives the Commission authority over such claims. Because the August 10, 2014, cutoff is approaching, the Commission will continue to accept for filing claims that are not against officers who were supervised by Jon Burge. But please understand that unless there is a clear appellate court ruling giving the Commission authority to act in such cases, the Commission will likely not take any action on a claim unless it involves an allegation of torture committed by Commander Jon Burge, or an officer who was then or previously had been under the supervision of Jon Burge. At this point, our ability to address claims that do not involve officers who served under Jon Burge is uncertain.

6. In what order is the Commission deciding cases?

The TIRC Act says that the Commission must give priority to those cases in which the convicted person is currently incarcerated solely for the crime to which he or she claims torture by Jon Burge or officers under his command, or both. The Commission will give priority to those cases, then start working on cases for which it has jurisdiction.

7. What relief can the Commission give?

Explaining this point is somewhat complicated, because of Illinois' complicated system for providing post-conviction relief to persons convicted of crimes.

- Convicted persons normally have a brief period in Illinois to file a post-conviction remedy, absent exceptions that show a violation of constitutional rights, such as newly discovered evidence or proof of actual innocence. If the petition is brought later, the convicted person must convince the court that he or she is entitled to a full hearing before the court will hold a hearing to take evidence of a violation.

- If a claim is brought to the Commission, TIRC investigates the cases brought before it to see if there is credible evidence of torture that merits judicial review. The Commission can investigate the case and refer the claim even if the claimant has not met normal procedural deadlines.
- If a case is referred to the Circuit Court by TIRC, it automatically gives the claimant the opportunity for a full hearing before a judge. If the Circuit Judge decides that it is likely that a confession was coerced, the judge can award a new trial to the claimant.
- The Commission also has the discretion to refer evidence of criminal acts, professional misconduct, or other wrongdoing to the appropriate authority.

8. Does the Commission have to be sure that torture occurred before it makes a referral to Court?

No. If 5 or more of the 8 voting members of the Commission conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court. The Commission interprets this language to be the rough equivalent of a “probable cause” determination. The Commission does not have to decide it is more likely than not that torture occurred, but it must decide that there is sufficient credible evidence of torture for a claimant to deserve his or her day in court.

9. What if I disagree with the Commission’s decision?

The decision of the Commission is final, but it is possible that it may be subject to court review. If you file a claim and the Commission rules against you, you may have a limited time to file a petition for Administrative Review with the Circuit Court. You should immediately consult an attorney.

10. Are the Commission’s determinations binding on the Court?

That is for the courts to decide. In general, the Commission’s decisions give claimants the right to a full hearing in court. There may be individual cases where the Commission makes factual findings that events more likely than not occurred. There is an argument that those findings are entitled to special deference in court. The court will have to determine how much deference should be given those findings and the Commission’s decisions.

11. What kind of waiver do I have to sign to proceed with the Commission?

The TIRC Act requires that a claimant must waive his or her right against self-incrimination in order for the Commission to conduct a formal inquiry into a claim of torture. The claimant must agree to provide full disclosure regarding inquiry requirements of the Commission. The waiver does not apply to matters unrelated to a convicted person's claim of torture.

The Commission does not routinely ask claimants whether they committed the crime for which they were convicted. But it reserves the right to ask questions related to a convicted person's claim of torture in some cases that could potentially be incriminating.

12. I think I have newly discovered evidence or another reason to file a new post-conviction proceeding? Can I go before the commission and also proceed in court with a post-conviction petition?

Yes. Both remedies are independent.

13. I heard that Judge Biebel recently appointed a Special Master for Burge cases. How does that affect the Commission?

Judge Biebel recently appointed Dean David Yellen of the Loyola Law School as a Special Master. The appointment of a Special Master by Judge Biebel does not affect either TIRC's processes, or the Court's. The Special Master's sole task is to search for any and all prisoners who are still incarcerated and who may have what Judge Biebel called a "valid claim." The elements of a "valid claim" include all of the following:

- The individual was convicted based in part upon a confession;
- The confession was the end result of an interrogation in which Burge or officers under his chain of command or direct supervision participated;
- The individual made an allegation of coercion in the context of his original proceedings, either at a motion to suppress or in some other clear and definitive way, that his confession was the product of physical abuse or torture, and those objections were overruled;
- He remains incarcerated today; and
- He has never had the opportunity to present his claim of coerced confession with the benefit of the substantial evidence now available to implicate Burge and those who worked under him.

Once someone with a valid claim is identified, Judge Biebel's order says that the Judge will appoint *pro bono* counsel. The Commission will be happy to work with the appointed counsel in evaluating a claim.

14. So will TIRC still hear cases even though there is now a Special Master?

Yes.

15. I already have filed a claim with TIRC, but I also have a "valid claim" as defined by Judge Biebel. What does this mean for me?

Any claimants who are already before the Commission and are identified by the Special Master would likely be eligible to have free, *pro bono* counsel appointed by Judge Biebel. The Commission will continue to investigate your claim.

16. I heard the Commission has had its funding cut off by the State. Is it able to complete its business?

For a period in 2012-13, the Commission did not receive funding from the state government. Funding was restored in 2013, and the Governor's Office has committed to providing the Commission with at least the same, if not more funding, for the next fiscal year. The Commission is currently being funded at an adequate level to do its job. In addition to its Executive Director, the Commission has added a staff attorney and has retained a retired federal law enforcement agent to act as an investigator.

17. What rights does a crime victim have?

Under the TIRC Act, the victim of the crime (or if the victim of the crime is deceased, the next of kin of the victim, which shall be the parent, spouse, child, or sibling of the deceased victim) has the right to present his or her views and concerns throughout the Commission's investigation. The victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Act, and subject to Section 2(c)(14) of the Open Meetings Act.

18. How do I get in touch with the Commission?

You can write to the Commission at Suite 5-100, 100 West Randolph, Chicago, IL 60601.