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CHAPTER LXV: TORTURE INQUIRY AND RELIEF COMMISSION

PART 3500

ORGANIZATION, PUBLIC INFORMATION, PROCEDURES AND RULEMAKING

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AUTHORITY: Implementing and authorized by the Illinois Torture Inquiry and Relief Commission Act [775 ILCS 40].

SOURCE: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; amended at 38 Ill. Reg. _____, effective September 19, 2014.

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SUBPART A: ORGANIZATION

Section 3500.10 Commission Members

- a) The Illinois Torture Inquiry and Relief Commission consists of 8 voting members as follows:
 - 1) One retired Circuit Court Judge.
 - 2) One former prosecuting attorney.
 - 3) One law school professor.
 - 4) One who is engaged in the practice of criminal defense law.
 - 5) Three members of the public who are not attorneys and who are not officers or employees of the judicial branch.
 - 6) One former public defender.
- b) The members of the Commission shall be appointed by the Governor, with the advice and consent of the Senate. Members may be re-appointed for additional terms, as provided for under Section 25 of the Act. [775 ILCS 40/20(a)]
- c) The Governor also appoints alternate Commission members for the Commission members he or she has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. Where an alternate member is called upon to serve in a particular place, the alternate member shall vote in the place of, and otherwise exercise the same powers as, the member which he or she is replacing. The alternate member shall have the same qualifications for appointment as the original member. In making the appointments, the Governor makes a good faith effort to appoint members with different perspectives of the justice system. The Governor also considers geographical location, gender, and racial diversity in making the appointments. [775 ILCS 40/20(a-1)]

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011)

Section 3500.20 Chair of the Commission

The retired judge who is appointed as a member shall serve as Chair of the Commission. [775 ILCS 40/20(b)]

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011)

Section 3500.30 Terms of Members

- a) Of the initial members, the appointments under Section 3500.10(a)(3) and (6) are for one-year terms, the appointments under Section 3500.10 (a)(1), (2), and (4) are for 2-year terms, and the appointments under Section 3500.10 (a)(5) are for 3-year terms. Thereafter, all terms shall be for 3 years. Members of the Commission shall not serve more than 2 consecutive 3-year terms, plus any initial term of less than 3 years. Unless provided otherwise by the Act, all terms of members begin on January 1 and end on December 31.
- b) Members serving by virtue of elective or appointive office may serve only so long as the office holders hold those respective offices. The Chief Judge of the Cook County Circuit Court may remove members for good cause shown. Vacancies occurring during the expiration of a term shall be filled in the manner provided for the members first appointed. [775 ILCS 40/25(a)]

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011)

Section 3500.40 Compensation and Expenses

Commission members receive no salary for serving, but may be reimbursed for reasonable expenses incurred as a result of their duties as members of the Commission from funds appropriated by the General Assembly for the purpose, or from funds obtained from sources other than the General Assembly. [775 ILCS 40/25(b)]

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011)

Section 3500.50 Director

The Commission employs a Director, who is an attorney licensed to practice law in Illinois. The Director assists the Commission in developing rules and standards for cases accepted for review, coordinating investigation of cases accepted for review, maintaining records for all case investigation, preparing reports outlining Commission investigations and recommendations to the trial court, and applying for and accepting on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source. [775 ILCS 40/30]

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011)

Section 3500.60 Other Staff

Subject to the approval of the Chair, the Director employs such other staff and contracts for services as is necessary to assist the Commission in the performance of its duties, and as funds permit. [775 ILCS 40/30]

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011)

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SUBPART B: PUBLIC INFORMATION

Section 3500.210 Commission Records

- a) The official record in every claim filed with the Commission consists of the Claim Form (see 20 Ill. Adm. Code 2000.Appendix B) and all subsequent pleadings, notices, subpoenas, evidence received, photographs, waiver forms, computer disks, transcripts, briefs, reports, memoranda, orders, findings of fact and decisions and amendments to these documents.
- b) The official record is confidential and not subject to public disclosure until after the Commission's final decision in the case, except as otherwise provided in this Part, the Freedom of Information Act [5 ILCS 140], or the Open Meetings Act [5 ILCS 120].
- c) After the Commission's final decision on the claim, the official record shall be available for public inspection upon making appropriate arrangements with the Director.
- d) Inspection of any records that are available for that purpose shall be permitted only at the Commission's office. Inspection appointments shall take place only during normal business hours, which are 8:30 a.m. to 5:00 p.m. Monday through Friday, exclusive of State holidays. Persons inspecting records shall not be permitted to take briefcases, folders, or similar materials into the room where inspection takes place. A Commission employee may be present during inspection. Records to be copied will be identified and segregated during the course of the inspection.
- e) When a person requests a copy of a record maintained in an electronic format, the Commission shall furnish it in the electronic format specified by the person. If it is not feasible to furnish the record in the specified electronic format, then the Commission shall furnish it in the format in which it is maintained by the Commission, or in paper format, at the option of the person making the request.
- f) Copying Fees
 - 1) The Commission will provide copies of records and certification of records in accordance with the maximum fee allowed under Section 6 of the Freedom of Information Act.
 - 2) Copies of records will be provided only after payment of any fees due. Payment must be by certified or cashier's check, or by money order, payable to "Treasurer, State of Illinois".

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- g) The official record described in this Section is distinct from the administrative record that the Commission is required to file with the Circuit Court under Section 45 of the Act and 20 Ill. Adm. Code 2000.60. The administrative record is compiled for purposes of facilitating judicial review after the Commission renders a decision in its cases.

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

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SUBPART C: PROCEDURES

Section 3500.310 Meetings

- a) *The Commission meets a minimum of once every 6 months and may also meet more often at the call of the Chair. The Commission meets at such time and place as designated by the Chair, in accordance with the provisions of the Open Meetings Act. Notice of the meetings is given on the Commission's website, www.Illinois.gov/ihr, in accordance with the provisions of the Open Meetings Act. [775 ILCS 40/20(b)]*
- b) The Commission meets in an area provided by the Illinois Human Rights Commission or another State agency.
- c) At the conclusion of the business portion of each Commission meeting that is open to the public pursuant to the Open Meetings Act, the Commission shall set aside a period of time for public comment. Any person desiring to address the Commission shall be allowed up to 3 minutes for comments or questions. Only one person may speak on behalf of any organization.
- d) Because of time demands on the Commission, the total time for presentations by the public at any meeting shall be limited to 30 minutes unless a Commissioner moves for, and the Commission approves, a longer period. Any person wishing to address the Commission but unable or not allowed to do so may submit a written statement to the Commission.
- e) The victim in each case has the *right to present his or her views and concerns throughout the Commission's investigation.* [775 ILCS 40/40(c)] This right includes both the right to present written materials to the Commission and its staff and the right to address the Commission at a public meeting. Because of time demands on the Commission, the total time for oral presentations by each victim at each meeting shall be limited to 5 minutes. The Commission will also permit an additional 3 minutes to each family member of the victim, up to a total time limit for the victim and family members in each case of 15 minutes, unless the Chair alters these limits.
- f) At the conclusion of a formal inquiry, the next of kin of the convicted person shall be given the right to address the Commission at a public meeting prior to the Commission's decision. (The convicted person, either by letter or through counsel, shall be informed of this right.) Because of time demands on the Commission, the total time for an oral presentation by the next of kin of the convicted person shall be limited to three minutes, unless the Chair alters this limit.

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- g) Personal attacks, use of profane language, and social and/or ethnic slurs will not be tolerated. Speakers are strongly encouraged to refrain from rude, derogatory and abusive comments and personal attacks.
- h) Speakers making rude, profane or slanderous remarks, or who become boisterous while addressing or while attending the meeting, may be requested to leave by the presiding Chair.
- i) Any person may record by tape, film or other means the meetings of the Commission or its committees that are open to the public pursuant to the Open Meetings Act. However, if the recording process interferes with the overall decorum and proceeding of a meeting, the recording will be discontinued at the discretion of the presiding Chair.

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.320 Quorum

A majority of the voting members constitutes a quorum. All Commission votes are by a majority vote of the appointed voting members [775 ILCS 40/20(b)], except for votes to refer cases to the Circuit Court, which require 5 affirmative votes (see 775 ILCS 40/45(c)).

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.330 Claim of Torture

A request for a formal inquiry into a claim of torture is accomplished by filing a Claim Form (see 20 Ill. Adm. Code 2000.Appendix B):

- a) Any individual, court or agency may complete and file a Claim Form on behalf of a living person asserting a claim of torture.
- b) Any person may call or write the Commission to request that a Claim Form be mailed or faxed to that person in order to file a claim. The Commission also maintains a website (www.Illinois.gov/ihrc) from which a Claim Form may be printed or downloaded.
- c) A completed Claim Form may be filed by either mailing it to the Illinois Torture Inquiry and Relief Commission, 100 W. Randolph St., Ste. 10-300, Chicago IL 60601, or by faxing it to the Commission's office.
- d) A claimant may use the Claim Form supplied by the Commission or a letter communicating substantially the same information requested in the Claim Form.
- e) A Claim Form shall be considered filed on the date it is mailed or transmitted to the Commission.

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.340 Initial Screening of Claim Form

- a) Upon receipt of the Claim Form, the Director, or his or her designee, will conduct an initial screening of the Claim Form to determine whether it satisfies the following minimum criteria required for the Commission to consider a claim of torture:
 - 1) The Claim Form is properly completed;
 - 2) The claim meets the definition of "claim of torture" contained in 20 Ill. Adm. Code 2000.10; and
 - 3) The Claim Form is timely filed by August 10, 2014. (See 775 ILCS 40/70.)
- b) If the Claim Form is not properly completed, the Director shall return it to the person who submitted it, indicating why the Form has not been filed and giving the opportunity to resubmit it.
- c) If the Claim Form is properly completed, the claim will be filed and assigned a claim number.
- d) If the claim meets the definition of "claim of torture" contained in 20 Ill. Adm. Code 2000.10, the claim shall proceed to the Waiver of Convicted Person's Procedural Safeguards and Privileges under Section 3500.350. The claim shall be set for investigation, in the manner and priority to be determined by the Director, subject to Section 35(2) of the Act and Section 3500.375(c) of this Part, and any direction by the Commission.
- e) If the claim does not meet the definition of "claim of torture" contained in 20 Ill. Adm. Code 2000.10 solely because none of the police officers involved served under Jon Burge, the Director shall send a letter to the claimant informing him or her that the matter will not be given priority by the Commission, and that further action may not be taken until it is determined that the Commission has jurisdiction over claims that do not involve officers who served under Jon Burge.
- f) If the Claim Form demonstrates that the claim does not meet the definition of "claim of torture" contained in 20 Ill. Adm. Code 2000.10 for a reason other than that discussed in subsection (e) of this Section, the Director shall recommend in a written report to the Commission that the claim be denied for the reasons specified in the report.

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- 1) The Commission shall vote to accept or to reject the Director's recommendation by majority vote of the voting members appointed. At least 4 votes are required to accept a recommendation to deny a claim.
- 2) If the Commission accepts the recommendation to deny the claim, the Director shall notify the convicted person, and the person filing the claim if other than the convicted person, in writing that the claim was denied and the reasons for the denial.

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.350 Waiver of Convicted Person's Procedural Safeguards and Privileges

- a) If the Director determines that the Claim Form satisfies the requirements of the initial screening, the Director, or his or her designee, will obtain a properly signed and witnessed Waiver Form (see 20 Ill. Adm. Code 2000.Appendix C) from the convicted person before proceeding further.
- b) The *convicted person* must sign a written waiver in which the convicted person waives his or her procedural safeguards and privileges, including but not limited to the right against self-incrimination under the United States Constitution and the Constitution of the State of Illinois, only as those safeguards and privileges pertain to the offense for which the person was convicted and with respect to which the person is claiming torture. The convicted person must also agree to cooperate fully with the Commission and agree to provide full disclosure regarding the torture inquiry. The waiver does not apply to matters unrelated to a convicted person's claim of torture. [775 ILCS 40/40(b)]
- c) *The convicted person has the right to advice of counsel before the execution of the waiver and, if a formal inquiry is initiated, throughout the duration of the formal inquiry. If counsel represents the convicted person, the convicted person's counsel must be present at the signing of the waiver.* [775 ILCS 40/40]
- d) If the convicted person is not represented by counsel, *the Commission Chair shall determine if the person is indigent and, if so, enter an order providing for the appointment of counsel for the purpose of advising on the waiver and representing the convicted person throughout the remainder of the proceedings upon the claim.* [775 ILCS 40/40] The determination of indigency shall be made by having the convicted person complete and send to the Director an Application for Appointed Counsel Based Upon Indigency contained in 20 Ill. Adm. Code 2000.Appendix G. The Director shall furnish an Application to the convicted person upon request. The Director shall forward a properly completed Application to the Chair for purpose of making the decision regarding indigency.
- e) If the convicted person refuses to sign the Waiver Form, the Director shall recommend to the Commission that the claim of torture be dismissed. The Commission shall vote to accept or reject the Director's recommendation by majority vote of the voting members appointed. At least 4 votes are required to accept a recommendation to dismiss a claim.
- f) If the Director determines that the Waiver Form has been properly signed and witnessed, the claim shall proceed to Informal Inquiry under Section 3500.360.

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(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.360 Informal Inquiry and Summary Dismissal

- a) After the completed Claim Form and Waiver Form have been received, an informal inquiry shall be performed by the Director or his or her designee to determine whether additional investigation is warranted.
- b) The Director or his or her designee may issue, serve and enforce subpoenas pursuant to Section 3500.375(a)(1) and (a)(5) to compel the production of evidence as part of an informal inquiry for purposes including, but not being limited to, obtaining documents relating to claims, determining whether a formal inquiry is warranted, and obtaining victim notification information.
- c) If, after completion of the informal inquiry, the Director finds that there appears to be no reasonable possibility that the claim is credible, the Director shall recommend to the Commission that the claim be summarily dismissed. A written report will be prepared documenting this finding and will be presented to the Commission for its review.
- d) The Commission shall vote to accept or reject the Director's recommendation by majority vote of the voting members present. At least 4 members must vote to accept the recommendation for the claim to be dismissed.
- e) If the Commission accepts the Director's recommendation, the convicted person, and the person filing the Claim Form if other than the convicted person, shall be notified in writing that the claim has been summarily dismissed and the reasons for the dismissal.

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.370 Summary Referral (Repealed)

(Source: Repealed at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.375 Formal Inquiry

- a) If the claim is not summarily dismissed, a formal inquiry will be initiated by the Director on behalf of the *Commission*. In conducting the formal inquiry, *any measure provided in the Code of Civil Procedure [735 ILCS 5] and the Code of Criminal Procedure of 1963 [725 ILCS 5]* may be used to obtain information necessary to the inquiry, including but not limited to:
- 1) Issuing and serving *subpoenas or other process to compel the attendance of witnesses and the production of evidence*;
 - 2) *Administering oaths*;
 - 3) Issuing written interrogatories;
 - 4) Conducting oral depositions;
 - 5) Petitioning the *appropriate Circuit Court for enforcement of process or for other relief*, such as contempt; [775 ILCS 40/40(d)]
 - 6) Conducting physical and/or psychological examinations of the convicted person to ascertain evidence of torture;
 - 7) Hiring experts or other specialists as needed to assist the Commission in the inquiry; and
 - 8) Conducting on-site visits to detention centers or other locations where torture is alleged to have taken place.
- b) *All State discovery and disclosure statutes in effect at the time of the formal inquiry shall be enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming torture.* [775 ILCS 40/40(f)]
- c) In conducting the formal inquiries, *priority will be given to those cases in which the convicted person is currently incarcerated solely for the crime to which the convicted person claims torture by Jon Burge or officers under his command, or both.* [775 ILCS 40/35(2)]
- d) *All records of the Commission are confidential until the proceedings before the Commission are concluded and a final decision has been made by the Commission.* [775 ILCS 40/45(e)]

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- e) If a witness is represented by counsel, the witness is entitled to have counsel present and to consult with counsel at any interview or formal testimony. Counsel may provide information in writing or make requests of the Commission. Nevertheless, counsel has no right to examine witnesses or to participate as if a party to litigation.
- f) *If, at any point during an inquiry, the convicted person refuses to comply with requests of the Commission or is otherwise deemed uncooperative by the Commission, the Commission shall discontinue the inquiry.* [775 ILCS 40/40(g)] The Director may recommend that the inquiry be terminated. The Commission shall vote to accept or reject the Director's recommendation by majority vote of the voting members appointed. At least 4 votes are required to accept a recommendation to terminate a claim.
- g) Whenever any person knowingly fails or refuses to comply with a subpoena served in accordance with this Section, the Commission will petition the appropriate Circuit Court for an order enforcing the subpoena.
- h) *If a formal inquiry regarding a claim of torture is granted, the Director shall use all due diligence to notify the victim in the case and explain the formal inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.* [775 ILCS 40/40(c)] A victim shall have the right to present his or her views and concerns in writing throughout the Commission's investigation. A victim shall also have the right to present oral comments during the Commission's public comment period, and will, at the discretion of the Chair, ordinarily be permitted to speak before other persons make public comments. At any meeting at which a claim is scheduled for decision by the Commission, a victim, if present, shall be permitted to present oral comments before the Commission decides the claim. The victim shall abide by the rules applicable to comments set forth in Section 3500.310(e).
- i) At the completion of the formal inquiry, the Director shall report the results and his or her recommendation to the full Commission. The written report will summarize all the relevant evidence, include the reasons for the recommendation, and present any other matters necessary for the Commission to make an informed decision regarding the claim. Following transmission of the Director's report and recommendation, the Commission may elect to receive additional evidence in the form of an evidentiary proceeding under Section 3500.380. In all other cases, the Commission shall vote to decide the disposition of the claim as set forth in Section 3500.385.

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(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.380 Evidentiary Proceedings Before the Commission

- a) If the Commission elects to hold an evidentiary hearing, the following procedures will apply:
 - 1) At the hearing, all relevant evidence from the formal inquiry shall be presented to the full Commission in summary form as part of the Director's report and recommendation.
 - 2) The Director shall present the additional evidence the Commission has elected to consider, unless the Commission orders otherwise.
 - 3) All testimony taken shall be under oath or affirmation.
 - 4) The appearance of a witness necessary for the taking of evidence, including the convicted person, may be compelled by serving a subpoena upon that person in accordance with the procedures set forth in 20 Ill. Adm. Code 2000.40. The subpoena also may require the production at the hearing of documents or things.
- b) Any person present for the purpose of the evidentiary proceeding will not be allowed to address the Commission except as part of the scheduled proceeding.
- c) Any hearing before the full Commission shall be conducted subject to this Part and the Open Meetings Act. All proceedings of the full Commission shall be recorded by audio and transcribed as part of the record. All Commission members' votes shall be recorded in the record.
- d) After reviewing all the relevant evidence from the formal inquiry, and the additional evidence taken during an evidentiary proceeding, if any, the Commission shall vote to decide the claim as set forth in Section 3500.385.

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

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Section 3000.385 Decisions

- a) *All 8 voting members of the Commission, including alternate members if necessary, shall participate in that vote. [775 ILCS 40/45(c)]*
- b) *If at least 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 of Cook County by filing with the Clerk of the Court the opinion of the Commission with supporting findings of fact as well as the administrative record in support of such opinion. Any written dissents from the decision by a member of the Commission shall also be filed. A copy of these materials shall be served on the State's Attorney.*
 - 1) Given the statutory standard (Section 45(b) of the Act), the Commission may find that there is significant evidence of torture that is sufficient for it to conclude that a claim merits judicial review without the Commission also finding that it is more likely than not that any particular fact occurred.
 - 2) The Commission may, but is not required to, find that it is more likely than not that one or more particular facts occurred. If it does so, it shall so state in its decision.
- c) *If fewer than 5 of the voting members decide by a preponderance of the evidence that there is sufficient evidence of torture to conclude that the claim is credible, the Commission shall determine that the claim of torture does not merit judicial review for appropriate relief. The Commission shall document that determination in a written decision, along with supporting findings of fact, and file those documents, supporting materials, and the administrative record with the Court Clerk in the circuit of original jurisdiction, with a copy to the State's Attorney and the Chief Judge. [775 ILCS 40/45(c)] Any written dissents from the decision by a member of the Commission shall also be filed.*
- d) *The Director shall use all due diligence to notify immediately both the convicted person and the victim in writing of the Commission's conclusion regarding the claim, and furnish them with a copy of the written decision. [775 ILCS 40/45] This notice shall be given as promptly as reasonably practicable and, in the case of the conclusion of a formal inquiry, absent exceptional circumstances, shall be given no later than 10 business days after the written decision is issued by the Commission.*
- e) The absence, incapacity or failure to appoint one or more of the voting members shall not prevent the Commission from rendering a decision if at least 5 voting

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members, including alternate members, of the Commission who are present decide that there is sufficient evidence of torture to merit judicial review pursuant to subsection (b), or if at least 4 voting members, including alternate members, who are present decide that there is not sufficient evidence to merit judicial review pursuant to subsection (c). If there are insufficient votes under both provisions to render a decision, the claim shall be tabled and brought before the Commission again at a subsequent meeting.

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.386 Factors Considered in Decisions

- a) The Commission will consider all relevant factors in making its decision. These factors may include:
- 1) Whether the person has consistently claimed to have been tortured;
 - 2) Whether the claim was first made shortly after the incident in question;
 - 3) Whether the claim is corroborated by medical evidence;
 - 4) Whether the claim is corroborated by observations made by others of the physical and emotional condition of the claimant shortly after the alleged torture;
 - 5) Whether the claim is strikingly similar to other claims of torture contained in the Reports of the Chicago Police Department's Office of Professional Standards, and the Report of the Special State's Attorney, regarding their investigations of Jon Burge and police officers under his command, and/or to evidence introduced at the criminal trial of Jon Burge;
 - 6) Whether the officers accused are identified in other cases alleging torture;
 - 7) Whether the claim of torture is consistent with the Office of Professional Standards' findings of systematic and methodical torture at Area 2 under Jon Burge;
 - 8) The length of time, if any, since the accused officer had served under Jon Burge;
 - 9) Whether the strength of the evidence against the claimant, in a particular case, could bear on a possible motive for having coerced a confession.
- b) None of the factors listed in subsection (a) are dispositive, and the Commission has the right to weigh these and other factors as it sees fit in any individual case.

(Source: Adopted at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.390 Notification of Crime Victim

- a) If a formal inquiry is initiated, the Commission, through its Director, shall use all due diligence to give written notification to the victim in the case, explaining the inquiry process and notifying the victim of the right to present the victim's views and concerns throughout the inquiry.
- b) *The Director shall use all due diligence to notify the victim in writing at least 30 days before any proceedings of the full Commission held in regard to the case involving the victim. The victim shall also be notified that the victim is permitted to attend proceedings of the full Commission otherwise closed to the public, subject to any limitations imposed by the Act and subject to Section 2(c)(14) of the Open Meetings Act. If the victim plans to attend proceedings otherwise closed to the public, the victim must notify the Director in writing at least 10 days in advance of the proceedings of his or her intent to attend. [775 ILCS 40/45(b)]*
- c) Notwithstanding the requirements of subsection (b), *the Commission may close any portion of the proceedings to the victim, if the victim is to testify and the Commission determines that the victim's testimony would be materially affected if the victim hears other testimony at the proceeding. [775 ILCS 40/45(b)]*

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011; Amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 3500.395 Commission Reports to General Assembly and Governor

- a) On January 1 of each year, the Commission shall report on its activities to the General Assembly and the Governor.
- b) The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall also recommend the funding needed by the Commission, the State's Attorneys and the Department of State Police in order to meet the responsibilities of each agency under the Act. Recommendations concerning the State's Attorneys or the Department of State Police shall only be made after consultations with the Illinois State's Attorneys Association, the Department of State Police and the Attorney General. [775 ILCS 40/60]

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011)

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SUBPART D: RULE MAKING

Section 3500.410 Adoption of Rules

The Commission adopts rules in accordance with the Illinois Administrative Procedure Act [5 ILCS 100].

(Source: Adopted at 35 Ill. Reg. 15125, effective August 25, 2011)

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER VIII: TORTURE INQUIRY AND RELIEF COMMISSION

PART 2000
POLICY, HEARINGS AND FORMS

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AUTHORITY: Implementing and authorized by the Illinois Torture Inquiry and Relief Commission Act [775 ILCS 40].

SOURCE: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011; amended at 38 Ill. Reg. _____, effective September 19, 2014.

Section 2000.10 Definition of Terms

"Act" means the Illinois Torture Inquiry and Relief Commission Act [775 ILCS 40].

"Alternate member" means an individual appointed by the Governor to serve in the stead of a Commission member who cannot participate in a Commission vote due to scheduling conflicts, conflict of interest, disability or other disqualifications (see 2 Ill. Adm. 3500.10(c)).

"Chair" means the chair of the Commission, who is the retired judge appointed to the Commission by the Governor.

"Claim of torture" means a claim on behalf of a living person convicted of a felony in Illinois asserting that the person was tortured into confessing to the crime for which the person was convicted, 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. [775 ILCS 40/5(1)]

"Commission" or "TIRC" means the Illinois Torture Inquiry and Relief Commission. [775 ILCS 40/5(2)]

"Convicted person" means the person asserting a claim of torture under the Act. [775 ILCS 40/5(3)]

"Director" means the Director of the Commission, who is an attorney licensed to practice in Illinois. The Director assists the Commission in developing rules and standards for cases accepted for review, coordinating investigation of cases accepted for review, maintaining records for all case investigation, preparing reports outlining Commission investigations and recommendations to the trial court, and applying for and accepting on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source. [775 ILCS 40/30]

"Related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge" means that the claim or allegations involved are similar to allegations of torture discussed in:

the November 2, 1990 Office of Professional Standards report on allegations against Burge;

the July 19, 2006 Cook County Special Prosecutor's Report; and/or

testimony in the 2010 federal criminal trial of Jon Burge; and

that the allegations involve:

Commander Burge himself;

one or more officers who were, at the time of the interrogation (or other incident) in question, under the supervision of Burge; and/or

one or more officers who had previously been under the supervision of Burge.

"Tortured Confession" includes any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges were a result of (or, if the convicted person denies making the statements, occurred shortly after) interrogation that the convicted person claims included torture. (See 775 ILCS 40/5(1).)

"Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime. (See 775 ILCS 40/5(1).)

"Victim" means the victim of the crime of which the person claiming torture has been convicted, including, if that person is deceased, the next of kin of that person, which shall be the parent, spouse, child, or sibling of the deceased. [775 ILCS 40/5(5)]

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011; amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 2000.20 Duties and Powers of Commission

- a) The Commission is an independent commission created by statute to implement an extraordinary procedure to investigate and determine factual claims related to certain allegations of torture.
- b) The Commission has the duty and power to:
 - 1) *Establish the criteria and screening process to be used to determine which cases shall be accepted for review;*
 - 2) *Conduct inquiries into claims of torture;*
 - 3) *Coordinate the investigation of cases accepted for review;*
 - 4) *Maintain records for all case investigations;*
 - 5) *Prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry;*
 - 6) *Apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations or bequests from any source [775 ILCS 40/35]; and*
 - 7) Create, amend and utilize such forms, discovery demands, and subpoenas as may be necessary to perform its duties and exercise its powers.
- c) In exercising its powers with respect to investigating claims, the Commission acts through its Director, subject to the general supervision of the Chair and, as appropriate, the Commission as a whole.

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011; amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 2000.30 Nature of Investigations

The Commission shall conduct all investigations in a professional and thorough manner, and all investigations shall be properly documented and result in a written report of findings and a decision. The Commission does not represent any individual, but instead functions solely to determine if a claim of torture is credible and merits judicial review for appropriate relief.

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011)

Section 2000.40 Subpoenas

- a) A subpoena may be issued to compel the attendance of witnesses. The subpoena shall bear the current address and phone number of the Commission, a citation to the statutory section authorizing the Commission to issue subpoenas, a unique TIRC subpoena number, the TIRC case number to which the subpoena relates, the address to which the witness is to report, the time at which the witness is to report and the signature of the Director or his or her designee.
- b) A subpoena duces tecum may be issued to compel the production of records, correspondence or other documents. The subpoena shall bear the current address and phone number of the Commission, a citation to the statutory section authorizing the Commission to issue subpoenas, a unique TIRC subpoena number, the TIRC case number to which the subpoena relates, a description of the records sought, the date by which the records are to be returned and the signature of the Director or his or her designee.
- c) Witness and mileage fees shall be the same as are paid witnesses in the Circuit Courts of the State of Illinois, as set forth in Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3].
- d) Service on the subpoenaed person shall be by personal service, certified mail or facsimile, or by leaving a copy at the principal office or place of business of a subpoenaed corporation or partnership. A subpoena shall be served reasonably in advance of its return date.

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011; amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 2000.50 Relief

- a) If the Commission concludes there is sufficient evidence of torture to merit judicial review, the Chair shall request the Chief Judge of the Circuit Court of Cook County to assign the case to a trial judge for consideration of the evidence and the appropriate relief. [775 ILCS 40/50(a)]
- b) The Chair shall recommend that the case be assigned to a judge other than the judge who tried the criminal case and other than the judge who presided over any previous post-conviction proceedings.
- c) The Commission has no authority to award monetary compensation, even if it concludes there is sufficient evidence of torture to merit judicial review for other relief.
- d) A claim of torture asserted through the Commission does not adversely affect the convicted person's rights to other post-conviction relief.
- e) The Commission has the discretion to refer its findings and written decision, along with the supporting record and evidence, to such other parties or entities as the Commission deems appropriate. [775 ILCS 40/45(d)]

(Source: Adopted at 35. Ill. Reg. 15142, effective August 25, 2011)

Section 2000.60 Review of Decisions

- a) *The decisions of the Commission are final and are subject to review as final decisions under the Administrative Review Law [735 ILCS 5/Art. III] pursuant to which the decision may be overturned only if the court finds that it is against the manifest weight of the evidence. [775 ILCS 40/55(a)]*
- b) To facilitate judicial review by the Court, the Director shall file an administrative record. The administrative record filed with the Court shall consist of:
 - 1) A decision stating the Commission's findings;
 - 2) Any transcripts, statements, testimony or other evidentiary material presented to all of the Commissioners when the Commissioners reviewed the case;
 - 3) A copy of an audio recording of the Commission's deliberations about the case. If, through a malfunctioning recording device or other mistake, a recording is not available, the Director shall substitute the portion of the minutes of the meeting or meetings describing the Commission's discussion and votes about the case.

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011; amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 2000.APPENDIX A Employee Confidentiality Agreement

ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

Employee Confidentiality Agreement

It is the policy of the Illinois Torture Inquiry and Relief Commission (TIRC) to protect the confidentiality it receives, including information about investigations, confidential informants, and other sensitive information. As part of your employment with TIRC you may have access to, among other things, TIRC electronic data, investigation files, and other sensitive information, which is subject to the following conditions:

I, _____, understand that the information that I encounter during my employment at TIRC is confidential. I also understand that disclosure of that information to any individual outside of TIRC could compromise an investigation. I agree to respect the confidentiality of individuals to whose records and identity I have access. If I have a question regarding the confidentiality of a particular piece of information, I will ask the Director of TIRC for advice.

With regard to electronic data, I, _____, also understand that all such information is confidential, including the fact that an investigation has been opened. Access or use of electronic data is restricted to TIRC business and may not be used for other purposes or to satisfy personal curiosity. I agree to follow the policies and procedures established by TIRC for the use of the electronic data. Failure to do so may result in the revocation of my ability to access the data and/or disciplinary action, including termination of my employment.

I agree, by my signature below, that, absent authority by law or the express written consent of the Director, I will never disclose the existence of an investigation, its progress, its resolution, the TIRC recommendation, or any information about an investigation to any party other than the employees of TIRC and/or a Commission member. I understand that, even should the investigation become public, I am not permitted to discuss the investigation with anyone absent the express, written consent of the Director. I also understand that, upon termination of my employment with TIRC, I continue to be bound by this agreement and will not discuss even the existence of an investigation with anyone.

I understand that my failure to abide by this agreement may result in my immediate termination or other appropriate disciplinary action.

Employee Signature

Date

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011)

Section 2000.APPENDIX B Form to File Claim of Torture

FORM TO FILE CLAIM OF TORTURE WITH TIRC

1. Name and current address of person claiming to have been tortured:

2. Name and current address of person signing this form (if different than No. 1 above):

3. Details of claimant's felony conviction based upon allegedly tortured confession:

a. Circuit Court: _____

b. Year: _____

c. Crimes of Conviction: _____

d. Sentence: _____

e. Case Number (if known): _____

4. Details of alleged torture:

a. Law enforcement agency: _____

b. Dates: _____

c. Names of persons committing alleged torture: _____

d. Brief description of alleged torture: _____

5. Names and current addresses of persons who could support your claim:

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____

6. Location of documentation supporting your claim: _____

Claimant or Person Signing on Claimant's Behalf

Date

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011)

Section 2000.APPENDIX C TIRC Waiver Form**TIRC WAIVER FORM**

I, _____, was born on _____. I have not consumed any drugs or alcohol in the last 24 hours, other than prescription medication consisting of _____, and I am not under the influence of drugs or alcohol at the present time. I am otherwise of sound mind and body.

I have filed, or caused to be filed on my behalf a Claim of Torture with the Illinois Torture Inquiry and Relief Commission (TIRC). I am represented by counsel, _____, who is present or has stated in writing (attached to this Waiver) that she/he cannot be present. I have discussed this Waiver thoroughly with my counsel, and I am satisfied with the advice I have received. If my counsel is not present, I am comfortable proceeding in counsel's absence.

It is my understanding that the TIRC, by statute, cannot investigate my Claim if I refuse to sign this Waiver, and that is the reason I am voluntarily signing it. No promises or threats have been made to induce me to sign the Waiver, other than the fact that the TIRC will agree to investigate my Claim, in accordance with its rules and procedures. No promises have been made to me by anyone as to what the outcome of that investigation will be.

It is also my understanding that, by signing this Waiver, I am giving up my procedural safeguards and privileges, including, but not limited to, giving up my right not to incriminate myself under the United States Constitution and the Constitution of the State of Illinois, pertaining only to the offense of conviction regarding which I am claiming torture. Anything I say pertaining to that offense that might incriminate me can and will be used against me in the investigation and/or a court of law. This waiver does not apply to matters unrelated to my claim of torture.

Finally, it is my understanding that I must continue to cooperate with the TIRC throughout the investigation into my claim of torture and that, if I refuse to cooperate at any time, the TIRC may terminate the investigation. I also realize that the TIRC has no power to award any money to me for any reason.

By signing this Waiver, I acknowledge that I have read this Waiver and discussed the terms of it with my counsel, and that is my free and voluntary decision to sign it. A copy of this signed Waiver will be provided to me.

Claimant

Date

TIRC

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Witness

Date

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011; amended at 38 Ill. Reg. _____, effective September 19, 2014)

Section 2000.APPENDIX D Subpoena and Certificate of Service (Repealed)

(Source: Repealed at 38 Ill. Reg. _____, effective September 19, 2014)

Section 2000.APPENDIX E Subpoena Duces Tecum and Certificate of Service (Repealed)

(Source: Repealed at 38 Ill. Reg. _____, effective September 19, 2014)

**Section 2000.APPENDIX F Fee Schedule for Duplication and Certification of Records
(Repealed)**

(Source: Repealed at 38 Ill. Reg. _____, effective September 19, 2014)

Section 2000.APPENDIX G Application and Order for Appointed Counsel Based Upon Indigency

IN RE:
[Name of Claimant]

TIRC Claim No.:

APPLICATION FOR APPOINTED COUNSEL BASED UPON INDIGENCY

I, _____, on oath state:

1. I am employed as a (n) _____
by _____.

2. My other sources of income (including spouse's income) or support are: _____
_____.

3. The amount of income that I expect for this year is \$_____.

4. My income for the previous year was \$_____.

5. The person(s) dependent on me for support are _____.

6. My other sources of income are: SSI Public Aid Food Stamps Family Assistance
 Foster Care Aid to Aged, Blind and Disabled Temporary Assistance for Needy Families
 General Assistance State Transitional Assistance State Children and Family Services
 Other: _____ \$ _____ (per month).

7. The nature and value of property I own includes: Real Estate (Describe property, specify
address, present value and mortgage liens outstanding. _____

_____.

Cash, bank accounts etc. \$ _____ Clothing and Jewelry \$ _____
 Motor vehicle – Model _____ Year _____ Value \$ _____

8. My monthly living expenses, including payments of debts and child support are \$_____

9. I am unable to pay the cost of counsel for this claim and to do so would cause a substantial hardship on me and my family.

Under penalties of perjury and/or contempt, the undersigned certifies that the statements set forth in this Application are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that s/he verily believes the same to be true.

Signature of Applicant

ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

ORDER

It is hereby ordered that:

- The Applicant is appointed counsel for representation on the claim referenced above.

- The Application is denied because the Applicant has not demonstrated indigency.

Dated:

TIRC Chair

(Source: Adopted at 35 Ill. Reg. 15142, effective August 25, 2011)