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TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Organization, Public Information, Procedures, and Rulemaking
- 2) Code Citation: 2 Ill. Adm. Code 3500
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
3500.10	New
3500.20	New
3500.30	New
3500.40	New
3500.50	New
3500.60	New
3500.210	New
3500.310	New
3500.320	New
3500.330	New
3500.340	New
3500.350	New
3500.360	New
3500.370	New
3500.375	New
3500.380	New
3500.385	New
3500.390	New
3500.395	New
3500.410	New
- 4) Statutory Authority: 775 ILCS 40
- 5) Effective Date of Rules: August 25, 2011
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the agency's principal office at the address below and is available for public inspection.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 9) Notice of Proposed Rules Published in the Illinois Register: 35 Ill. Reg. 8113; May 27, 2011
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: Other than grammatical and typographical corrections, the only change is contained in Section 3500.375(g), where the second sentence was moved to the end of the subsection.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: This rulemaking consists of the composition of the Torture Inquiry and Relief Commission and its staff, a description of the Commission records, the process for filing a claim of torture and making a decision on the claim, notification of the crime victim, and the annual Commission reports to the General Assembly and the Governor.
- 16) Information and questions regarding this rulemaking shall be directed to:
- Illinois Torture Inquiry and Relief Commission
c/o Executive Director David Thomas
Michael J. Bilandic Building
160 N. LaSalle Street, Room N506
Chicago, Illinois 60601
- 312/814-4608
- 17) Does this rule require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? [30 ILCS 500/5-25] No

The full text of the Adopted Rules begins on the next page:

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER LXV: TORTURE INQUIRY AND RELIEF COMMISSION

PART 3500

ORGANIZATION, PUBLIC INFORMATION, PROCEDURES AND RULEMAKING

SUBPART A: ORGANIZATION

Section	
3500.10	Commission Members
3500.20	Chair of the Commission
3500.30	Terms of Members
3500.40	Compensation and Expenses
3500.50	Director
3500.60	Other Staff

SUBPART B: PUBLIC INFORMATION

Section	
3500.210	Commission Records

SUBPART C: PROCEDURES

Section	
3500.310	Meetings
3500.320	Quorum
3500.330	Claim of Torture
3500.340	Initial Screening of Claim Form
3500.350	Wavier of Convicted Person's Procedural Safeguards and Privileges
3500.360	Informal Inquiry and Summary Dismissal
3500.370	Summary Referral
3500.375	Formal Inquiry
3500.380	Evidentiary Proceedings Before the Commission
3500.385	Decisions
3500.390	Notification of Crime Victim
3500.395	Commission Reports to General Assembly and Governor

SUBPART D: RULEMAKING

Section	
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TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

3500.410 Adoption of Rules

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.

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*

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

with different perspectives of the justice system. The Governor also considers geographical location, genders and racial diversity in making the appointments.
[775 ILCS 40/20(a-1)]

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)]

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)]

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)]

Section 3500.50 Director

The Commission employs a Director, 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

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

become available from government grants, private gifts, donations, or bequests from any source.
[775 ILCS 40/30]

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]

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, 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) The Commission shall maintain the official record in its office during the full period the claim is active and for an additional period of two years from the date of the Commission's final decision. Final decisions shall be retained as part of the permanent record of the Commission.
- e) 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

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

inspection. Records to be copied will be identified and segregated during the course of the inspection.

- f) 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.
- g) Copying Fees:
 - 1) Unless a fee is otherwise fixed by statute, the Commission will provide copies of records and certification of records in accordance with the fee schedule set forth in 20 Ill. Adm. Code 2000.Appendix F.
 - 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".
 - 3) The Commission will provide copies of records without charge to federal, State, county and municipal agencies, Constitutional officers and members of the General Assembly, and not-for-profit organizations providing evidence of good standing with the Secretary of State's Office.
 - 4) Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of records when furnished in a paper format will not apply to those records when furnished in an electronic format.

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)]

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 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 three 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) 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.
- f) 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.
- g) 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.

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)]

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):

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 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/ihr) 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, 160 N. LaSalle Street, Room N506, Chicago IL 60601, or by faxing it to (312)814-4598.

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; and
 - 2) The claim meets the definitions contained in 20 Ill. Adm. Code 2000.10(d).
- 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. However, if the Form demonstrates that the claim does not meet the definitions contained in 20 Ill. Adm. Code 2000.10(d), the Director shall recommend in a written report to the Commission that the claim be denied for the reasons specified in the report.
- d) The Commission shall vote to accept or to reject the Director's recommendation by majority vote of the voting members present.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- e) 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.
- f) All other claims will proceed to the Waiver of Convicted Person's Procedural Safeguards and Privileges under Section 3500.350.

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 the right against self-incrimination under the United States Constitution and the Constitution of the State of Illinois only* as it pertains 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.
- 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.*
- 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 the Application and Order 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.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 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 present.
- 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.

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, consisting of taking all reasonable steps to interview the convicted person, interview any witnesses identified by the convicted person, and review any documents provided by the convicted person.
- b) 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.
- c) The Commission shall vote to accept or reject the Director's recommendation by majority vote of the voting members present.
- d) 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.

Section 3500.370 Summary Referral

- a) If the Director's informal inquiry under Section 3500.360 demonstrates that the claim satisfies each of the four conditions listed in this subsection (a), and the other available evidence demonstrates that the claim of torture is credible and the case merits judicial review, the Director may recommend that the Commission forego a formal inquiry, as defined in Section 3500.375, and instead refer the case

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

directly to the Chief Judge of the Circuit Court of Cook County for appropriate relief:

- 1) The person has consistently claimed to have been tortured;
 - 2) 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;
 - 3) The officers accused are identified in other cases alleging torture; and
 - 4) The claim of torture is consistent with the Office of Professional Standards' findings of systematic and methodical torture at Area 2 under Jon Burge.
- b) The Director's recommendation shall be presented to the Commission in a written report documenting the finding and the reasons for the finding.
 - c) The Commission shall vote to accept or reject the Director's recommendation by majority vote of the voting members present.
 - d) If the Commission accepts the Director's recommendation, the convicted person, and the individual filing the Claim Form if other than the convicted person, shall be notified in writing by the Director that the claim has been referred to the Chief Judge of the Circuit Court of Cook County for appropriate relief.
 - e) Nothing in this Section shall be construed to preclude the Commission from exercising any of the powers listed in Section 3500.375(a) in making the determination to summarily refer the claim.

Section 3500.375 Formal Inquiry

- a) If the Claim is not summarily dismissed or summarily referred, then a formal inquiry will be initiated by the *Commission under the auspices of the Director*. *In conducting the formal inquiry, any measure contained 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:*

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 1) Issuing and serving *subpoenas* (see 20 Ill. Adm. Code 2000.Appendices D and E) *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)]
- e) Any person who is a witness appearing voluntarily or pursuant to subpoena, shall be advised of the right against self-incrimination under the United States

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

Constitution and the Constitution of the State of Illinois. However, the witness shall also be advised that the Commission may draw an adverse inference from the refusal of the witness to answer questions.

- f) If a witness is represented by counsel, counsel may be present at proceedings requiring the presence of the witness, but counsel shall not be permitted to participate in the proceedings in any way.
- g) *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 present.
- h) 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.
- 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.

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.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 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.
 - 5) No Commission employee shall testify at an evidentiary proceeding regarding the contents of any files, documents, reports, memoranda, or records of the Commission, or of the results of any investigation conducted by the Commission, except upon Order of the Commission. Such an Order will be issued only if the information to be elicited from the testimony is admissible and cannot be obtained through other means.
- 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.

Section 3500.385 Decisions

- a) *All 8 voting members of the Commission, including alternate members if necessary, shall participate in the vote.*
- b) *If at least 5 voting members of the Commission decide by a preponderance of the evidence that there is sufficient evidence of torture to conclude that the claim is credible and merits judicial review for appropriate relief, the case shall be referred to the Chief Judge of the Circuit Court of Cook County by filing with the*

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

Clerk of the Court the written decision of the Commission, accompanied by findings of fact and the record in support of the written decision. 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.

- 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 and supporting materials with the Court Clerk in the circuit of original jurisdiction, with a copy to the State's Attorney and the Chief Judge. Any written dissents from the decision by a member of the Commission shall also be filed.* [775 ILCS 40/45(c)]
- d) The Director shall notify both the convicted person and the victim in writing of the Commission's decision regarding the claim, and furnish them with a copy of the written decision. This notice shall be given within 30 days after the written decision is issued by the Commission.

Section 3500.390 Notification of Crime Victim

- a) *If a formal inquiry is initiated, the 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 to the Director in writing the victim's views and concerns throughout the inquiry.* [775 ILCS 40/40(c)]
- 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.*
- c) Notwithstanding the requirements of subsection (d), *the Commission may close any portion of the proceedings to the victim, if the victim is to testify and the*

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

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)]

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]*

SUBPART D: RULEMAKING

Section 3500.410 Adoption of Rules

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

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Policy, Hearings, and Forms
- 2) Code Citation: 20 Ill. Adm. Code 2000
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
2000.10	New
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agreements issued by JCAR? Yes

- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: This rulemaking consists of a definition of terms used in the rules, a description of the duties and powers of the Torture Inquiry and Relief Commission, a description of the nature of Commission investigations, the procedure for issuance and service of subpoenas, a description of the available relief, the procedure for review of Commission decisions, and examples of various forms to be used by the Commission.
- 16) Information and questions regarding this adopted rulemaking shall be directed to:
- Illinois Torture Inquiry and Relief Commission
c/o Executive Director David Thomas
Michael J. Bilandic Building
160 N. LaSalle Street, Room N506
Chicago, Illinois 60601
- 312/814-4608
- 17) Does this rulemaking require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25]? No

The full text of the Adopted Rules begins on the next page:

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER VIII: TORTURE INQUIRY AND RELIEF COMMISSIONPART 2000
POLICY, HEARINGS AND FORMS

Section	
2000.10	Definition of Terms
2000.20	Duties and Powers of Commission
2000.30	Nature of Investigations
2000.40	Subpoenas
2000.50	Relief
2000.60	Review of Decisions
2000.APPENDIX A	Employee Confidentiality Agreement
2000.APPENDIX B	Form to File Claim of Torture
2000.APPENDIX C	TIRC Waiver Form
2000.APPENDIX D	Subpoena and Certificate of Service
2000.APPENDIX E	Subpoena Duces Tecum and Certificate of Service
2000.APPENDIX F	Fee Schedule for Duplication and Certification of Records
2000.APPENDIX G	Application and Order for Appointed Counsel Based Upon Indigency

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.

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.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

"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 there is some credible evidence related to the allegations of torture. [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]

"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.

"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)]

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:

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

- 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, as that term is defined in Section 2000.10(d);*
- 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; and*
- 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]*

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.

Section 2000.40 Subpoenas

- a) A subpoena in the form specified in Appendix D may be issued to compel the attendance of witnesses.
- b) A subpoena duces tecum, in the form specified in Appendix E, may be issued to compel the production of records, correspondence or other documents.
- 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

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

subpoenaed corporation or partnership. A subpoena shall be served reasonably in advance of its return date.

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)]*

Section 2000.60 Review of Decisions

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)]

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

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.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

Employee Signature

Date

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

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: _____

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

5. As a result of the torture described above, did you confess to the offense of which you were convicted? Yes No

6. If you did confess, was that confession used against you to obtain the conviction? Yes No

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

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

8. Location of documentation supporting your claim: _____

Claimant or Person Signing on Claimant's Behalf

Date

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

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 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.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

Claimant

Date

Witness

Date

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

Section 2000.APPENDIX D Subpoena and Certificate of Service



ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

160 North LaSalle Street, Room N506

Chicago, Illinois 60601

312/814-4608

SUBPOENA

To:

Subpoena No.: 20__-00 _____

Case No.: _____ - _____

WE COMMAND YOU, pursuant to the Illinois Torture Inquiry and Relief Commission Act, to appear at the Office of the Commission, 160 N. LaSalle Street, Room N506, Chicago IL 60601 on _____, 2011, at the hour of _____ a.m. / p.m.

Personal appearance in answer to this subpoena is required. Failure to respond may result in punishment as required by law.

By Order of the Illinois Torture Inquiry and Relief Commission

Director

At Chicago, Illinois this _____ day of _____, 20__

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

**ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION
CERTIFICATE OF SERVICE**

I, _____, hereby certify that, on the ____ day of _____, 2011, I served the attached subpoena on _____, the person named or the agency identified, by furnishing that person the subpoena at _____ (address).

The subpoena was served by _____ .
(Indicate personal service, certified mail or facsimile.)

Signature

Date

Notary Public

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

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



ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

160 North LaSalle Street, Room N506
Chicago, Illinois 60601
312/814-4608

SUBPOENA DUCES TECUM

To:

Subpoena No.: 20__-00 _____
Case No.: ____ - _____

WE COMMAND YOU, pursuant to the Illinois Torture Inquiry and Relief Commission Act, to provide the Commission Office, 160 N. LaSalle Street, Room N506, Chicago IL 60601 on or before (two weeks after signature date) with all the following books, records, electronic data and papers that are in your possession, custody or control:

Personal appearance in answer to this subpoena is not required. Information may be submitted by mail to the Commission Office at the above address. Failure to respond may result in punishment as provided by law.

By Order of the Illinois Torture Inquiry and Relief Commission

Director

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

Dated at Chicago, Illinois this _____ day of _____, 20__

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

**ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION
CERTIFICATE OF SERVICE**

I, _____, hereby certify that, on the ____ day of _____, 20__, I served the attached subpoena duces tecum on _____, the person named or the agency identified, by furnishing that person the subpoena duces tecum at _____ (address). The subpoena duces tecum was served by _____ .
(Indicate personal service, certified mail or facsimile.)

Signature

Date

Notary Public

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

Section 2000.APPENDIX F Fee Schedule for Duplication and Certification of Records

<u>TYPE OF DUPLICATION</u>	<u>FEE (per copy)</u>
Paper copy from original, up to and including 50 copies of black and white, letter or legal sized copies	No Charge
Paper copy from original, in excess of 50 copies of black and white, letter or legal sized copies	\$.15/page
Paper copy from microfilm original	\$.15/page
Microfilm diazo from original	\$.50/diazo
VHS video copy of tape	Actual cost of the reproduction
Audio tape copy of tape	Actual cost of the reproduction
CD ROM disk	Actual cost of the reproduction
Photograph from negative	Actual cost of the reproduction
Blueprints/oversized prints	Actual cost of the reproduction
Paper copies in color or in a size other than letter or legal	Actual cost of the reproduction
 <u>CERTIFICATION FEE</u>	 <u>\$1.00/record</u>

NOTE: Expense for delivery other than by First Class U.S. Mail must be borne by requester.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

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

IN RE: 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 persons dependent on me for support are _____.

6. My other sources of income are: SSI Public Aid SNAP Benefits 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.

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

Signature of Applicant

TORTURE INQUIRY AND RELIEF COMMISSION

NOTICE OF ADOPTED RULES

ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

ORDER

IN RE: TIRC Claim No. :

- The Claimant, having demonstrated indigency, is appointed counsel for the limited purpose of advising Claimant regarding the Waiver procedure set forth in 2 Ill. Adm. Code 3500.350, and, if a Formal Inquiry is initiated pursuant to 2 Ill. Adm. Code 3500.375, regarding the Formal Inquiry as long as the Claim is pending before the Torture Inquiry and Relief Commission. Counsel is appointed to advise Claimant only with regard to Claimant's pending Claim before the Commission, and not about any other legal matters Claimant may have.

- The Claimant's Application for appointed counsel is denied because the Application fails to demonstrate indigency.

Date

TIRC Chair