

AN ACT concerning torture.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

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

Section 5. Definitions. As used in this Act:

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

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

(3) "Convicted person" means the person making a claim of torture under this Act.

(4) "Director" means the Director of the Illinois Torture Inquiry and Relief Commission.

(5) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim, which shall be the parent, spouse, child, or sibling of the deceased victim.

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

Section 15. Commission established.

(a) There is established the Illinois Torture Inquiry and Relief Commission. The Illinois Torture Inquiry and Relief Commission shall be an independent commission under the Illinois Human Rights Commission for administrative purposes.

(b) The Illinois Human Rights Commission shall provide administrative support to the Commission as needed. The Executive Director of the Illinois Human Rights Commission shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission.

Section 20. Membership; chair; meetings; quorum.

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

- (1) One shall be a retired Circuit Court Judge.
- (2) One shall be a former prosecuting attorney.
- (3) One shall be a law school professor.
- (4) One shall be engaged in the practice of criminal

defense law.

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

(6) One shall be a former public defender.

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.

(a-1) The Governor shall also appoint 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 shall make a good faith effort to appoint members with different perspectives of the justice system. The Governor shall also consider geographical location, gender, and racial diversity in making the appointments.

(b) The retired judge who is appointed as a member under subsection (a) shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than one

month after the appointment of a quorum of members of the Commission, at the call of the Chair. The Commission shall meet a minimum of once every 6 months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair, in accordance with the provisions of the Open Meetings Act. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission, in accordance with the provisions of the Open Meetings Act. A majority of the voting members shall constitute a quorum. All Commission votes shall be by majority vote of the voting members appointed.

Section 25. Terms of members; compensation; expenses.

(a) Of the initial members, the appointments under clauses (a) (3) and (6) of Section 20 shall be for one-year terms, the appointments under clauses (a) (1), (2), and (4) of Section 20 shall be for 2-year terms, and the appointments under clause (a) (5) of Section 20 shall be for 3-year terms. Thereafter, all terms shall be for 3 years. Members of the Commission shall serve no more than 2 consecutive 3-year terms plus any initial term of less than 3 years. Unless provided otherwise by this Act, all terms of members shall begin on January 1 and end on December 31.

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 before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall 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 that purpose, or from funds obtained from sources other than the General Assembly.

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

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

The Commission may meet in an area provided by the Illinois Human Rights Commission, or any other State agency. The Illinois Human Rights Commission shall provide, directly or through any other State agency, office space for the Commission and the Commission staff.

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

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

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

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

(4) To maintain records for all case investigations.

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

(6) To 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.

Section 40. Claims of torture; waiver of convicted person's

procedural safeguards and privileges; formal inquiry; notification of the crime victim.

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

(b) No formal inquiry into a claim of torture shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the convicted person 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, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding inquiry requirements of the Commission. The waiver under this subsection does not apply to matters unrelated to a convicted person's claim of torture. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person's counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the Commission

Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) 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 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.

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

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

(f) All State discovery and disclosure statutes in effect at the time of 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.

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

Section 45. Commission proceedings.

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct hearings. The determination as to whether to conduct hearings is solely in the discretion of the Commission. Any hearing held in accordance with this Section shall be a public hearing and shall be held subject to the Commission's rules of operation, and conducted pursuant to the Open Meetings Act.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Act, and subject to Section 2(c)(14) of the Open Meetings Act. If the victim plans to attend proceedings otherwise closed to the public, the victim

shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. 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.

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

If 5 or more of the 8 voting members of the Commission conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the State's Attorney in non-capital cases and service on both the State's Attorney and Attorney General in capital cases.

If less than 5 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 Commission shall conclude there is insufficient evidence of torture to merit judicial review. The Commission shall document that opinion, 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.

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

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel. The Commission shall have the discretion to refer its findings together with the supporting record and evidence, to such other parties or entities as the Commission in its discretion shall deem appropriate.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records of the Commission shall be confidential until the proceedings before the Commission are concluded and a final decision has been made by the Commission.

Section 50. Post-commission judicial review.

(a) If the Commission concludes there is sufficient evidence of torture to merit judicial review, the Chair of the

Commission shall request the Chief Judge of the Circuit Court of Cook County for assignment to a trial judge for consideration. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. Notwithstanding the status of any other postconviction proceedings relating to the petitioner, if the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, bail or discharge, or for such relief as may be granted under a petition for a certificate of innocence, as may be necessary and proper.

(b) The State's Attorney, or the State's Attorney's designee, shall represent the State at the hearing before the assigned judge.

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

(a) Unless otherwise authorized by this Act, the decisions of the Commission are final and are subject to review as final decisions under the provisions of the Administrative Review Law, and shall only be overturned if the court finds that they are against the manifest weight of the evidence.

(b) A claim of torture asserted through the Commission

shall not adversely affect the convicted person's rights to other postconviction relief.

Section 60. Report. Beginning January 1, 2010, and annually thereafter, the Illinois Torture Inquiry and Relief Commission shall report on its activities to the General Assembly and the Governor. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the State's Attorneys, and the Department of State Police in order to meet their responsibilities under this 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.

Section 65. Appointment period. The initial members of the Illinois Torture Inquiry and Relief Commission shall be appointed not later than 3 months after the effective date of this Act. No claims of torture may be filed with the Commission until a quorum of members have been appointed.

Section 70. Filing of claims. This Act applies to claims of torture filed not later than 5 years after the effective date of this Act.

Section 99. Effective date. This Act takes effect upon

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becoming law.