

1 AN ACT concerning torture.

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

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

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

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

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

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

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

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

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

6           Section 15. Commission established.

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

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

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

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

20                 (1) One shall be a retired Circuit Court Judge.

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

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

23                 (4) One shall be engaged in the practice of criminal

1 defense law.

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

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

6 The members of the Commission shall be appointed by the  
7 Governor, with the advice and consent of the Senate. Members  
8 may be re-appointed for additional terms, as provided for under  
9 Section 25.

10 (a-1) The Governor shall also appoint alternate Commission  
11 members for the Commission members he or she has appointed to  
12 serve in the event of scheduling conflicts, conflicts of  
13 interest, disability, or other disqualification arising in a  
14 particular case. Where an alternate member is called upon to  
15 serve in a particular place, the alternate member shall vote in  
16 the place of, and otherwise exercise the same powers as, the  
17 member which he or she is replacing. The alternate member shall  
18 have the same qualifications for appointment as the original  
19 member. In making the appointments, the Governor shall make a  
20 good faith effort to appoint members with different  
21 perspectives of the justice system. The Governor shall also  
22 consider geographical location, gender, and racial diversity  
23 in making the appointments.

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

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

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

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

23 Members serving by virtue of elective or appointive office,  
24 may serve only so long as the office holders hold those  
25 respective offices. The Chief Judge of the Cook County Circuit

1 Court may remove members for good cause shown. Vacancies  
2 occurring before the expiration of a term shall be filled in  
3 the manner provided for the members first appointed.

4 (b) The Commission members shall receive no salary for  
5 serving, but may be reimbursed for reasonable expenses incurred  
6 as a result of their duties as members of the Commission from  
7 funds appropriated by the General Assembly for that purpose, or  
8 from funds obtained from sources other than the General  
9 Assembly.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (b) No formal inquiry into a claim of torture shall be made  
11 by the Commission unless the Director or the Director's  
12 designee first obtains a signed agreement from the convicted  
13 person in which the convicted person waives his or her  
14 procedural safeguards and privileges including but not limited  
15 to the right against self-incrimination under the United States  
16 Constitution and the Constitution of the State of Illinois,  
17 agrees to cooperate with the Commission, and agrees to provide  
18 full disclosure regarding inquiry requirements of the  
19 Commission. The waiver under this subsection does not apply to  
20 matters unrelated to a convicted person's claim of torture. The  
21 convicted person shall have the right to advice of counsel  
22 prior to the execution of the agreement and, if a formal  
23 inquiry is granted, throughout the formal inquiry. If counsel  
24 represents the convicted person, then the convicted person's  
25 counsel must be present at the signing of the agreement. If  
26 counsel does not represent the convicted person, the Commission

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

4 (c) If a formal inquiry regarding a claim of torture is  
5 granted, the Director shall use all due diligence to notify the  
6 victim in the case and explain the inquiry process. The  
7 Commission shall give the victim notice that the victim has the  
8 right to present his or her views and concerns throughout the  
9 Commission's investigation.

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

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



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

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

9 Section 45. Commission proceedings.

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

18 (b) The Director shall use all due diligence to notify the  
19 victim at least 30 days prior to any proceedings of the full  
20 Commission held in regard to the victim's case. The Commission  
21 shall notify the victim that the victim is permitted to attend  
22 proceedings otherwise closed to the public, subject to any  
23 limitations imposed by this Act, and subject to Section  
24 2(c)(14) of the Open Meetings Act. If the victim plans to  
25 attend proceedings otherwise closed to the public, the victim

1 shall notify the Commission at least 10 days in advance of the  
2 proceedings of his or her intent to attend. The Commission may  
3 close any portion of the proceedings to the victim, if the  
4 victim is to testify and the Commission determines that the  
5 victim's testimony would be materially affected if the victim  
6 hears other testimony at the proceeding.

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

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

20 If less than 5 of the 8 voting members of the Commission  
21 conclude by a preponderance of the evidence that there is  
22 sufficient evidence of torture to merit judicial review, the  
23 Commission shall conclude there is insufficient evidence of  
24 torture to merit judicial review. The Commission shall document  
25 that opinion, along with supporting findings of fact, and file  
26 those documents and supporting materials with the court clerk

1 in the circuit of original jurisdiction, with a copy to the  
2 State's Attorney and the chief judge.

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

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

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

23 Section 50. Post-commission judicial review.

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

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

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

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

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

25 (b) A claim of torture asserted through the Commission

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

3 Section 60. Report. Beginning January 1, 2010, and annually  
4 thereafter, the Illinois Torture Inquiry and Relief Commission  
5 shall report on its activities to the General Assembly and the  
6 Governor. The report may contain recommendations of any needed  
7 legislative changes related to the activities of the  
8 Commission. The report shall recommend the funding needed by  
9 the Commission, the State's Attorneys, and the Department of  
10 State Police in order to meet their responsibilities under this  
11 Act. Recommendations concerning the State's Attorneys or the  
12 Department of State Police shall only be made after  
13 consultations with the Illinois State's Attorneys Association,  
14 the Department of State Police, and the Attorney General.

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

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

23 Section 99. Effective date. This Act takes effect upon

1 becoming law.