



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3915

Introduced 10/17/2019, by Rep. David McSweeney - Andrew S. Chesney

SYNOPSIS AS INTRODUCED:

New Act

5 ILCS 140/7.5

30 ILCS 105/5.876 rep.

725 ILCS 5/113-3

from Ch. 38, par. 113-3

725 ILCS 5/119-1

725 ILCS 105/10

from Ch. 38, par. 208-10

Amends the Code of Criminal Procedure of 1963. Eliminates provision that abolishes the sentence of death. Enacts the Capital Crimes Litigation Act of 2019. Provides that all unobligated and unexpended moneys remaining in the Death Penalty Abolition Fund on the effective date of the amendatory Act shall be transferred into the Capital Litigation Trust Fund. Amends the State Appellate Defender Act. Provides that in cases in which a death sentence is an authorized disposition, the State Appellate Defender shall provide trial counsel with legal assistance and the assistance of expert witnesses, investigators, and mitigation specialists from funds appropriated to the State Appellate Defender specifically for that purpose by the General Assembly. Provides that the Office of State Appellate Defender shall not be appointed to serve as trial counsel in capital cases.

LRB101 13801 RLC 62659 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

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 Capital Crimes Litigation Act of 2019.

6 Section 3. Legislative intent. The intent of the General
7 Assembly in enacting this Act and reenacting the death penalty
8 is to have the death penalty serve as a deterrent to violent
9 crime with the specific goal of reducing mass shootings, serial
10 killings, and gun violence. The General Assembly has confidence
11 in the ability of crime laboratory biochemical testing,
12 including DNA testing, to reduce or eliminate wrongful criminal
13 convictions in Illinois, including, but not limited to, cases
14 involving the death penalty.

15 Section 5. Appointment of trial counsel in death penalty
16 cases. If an indigent defendant is charged with an offense for
17 which a sentence of death is authorized, and the State's
18 Attorney has not, at or before arraignment, filed a certificate
19 indicating he or she will not seek the death penalty or stated
20 on the record in open court that the death penalty will not be
21 sought, the trial court shall immediately appoint the Public
22 Defender, or any other qualified attorney or attorneys as the

1 Illinois Supreme Court shall by rule provide, to represent the
2 defendant as trial counsel. If the Public Defender is
3 appointed, he or she shall immediately assign the attorney or
4 attorneys who are public defenders to represent the defendant.
5 The counsel shall meet the qualifications as the Supreme Court
6 shall by rule provide. At the request of court appointed
7 counsel in a case in which the death penalty is sought,
8 attorneys employed by the State Appellate Defender may enter an
9 appearance for the limited purpose of assisting counsel
10 appointed under this Section.

11 Section 10. Court appointed trial counsel; compensation
12 and expenses.

13 (a) This Section applies only to compensation and expenses
14 of trial counsel appointed by the court as set forth in Section
15 5, other than public defenders, for the period after
16 arraignment and so long as the State's Attorney has not, at any
17 time, filed a certificate indicating he or she will not seek
18 the death penalty or stated on the record in open court that
19 the death penalty will not be sought.

20 (a-5) Litigation budget.

21 (1) In a case in which the State has filed a statement
22 of intent to seek the death penalty, the court shall
23 require appointed counsel, including those appointed in
24 Cook County, after counsel has had adequate time to review
25 the case and prior to engaging trial assistance, to submit

1 a proposed estimated litigation budget for court approval,
2 that will be subject to modification in light of facts and
3 developments that emerge as the case proceeds. Case budgets
4 should be submitted ex parte and filed and maintained under
5 seal in order to protect the defendant's right to effective
6 assistance of counsel, right not to incriminate him or
7 herself and all applicable privileges. Case budgets shall
8 be reviewed and approved by the judge assigned to try the
9 case. As provided under subsection (c) of this Section,
10 petitions for compensation shall be reviewed by both the
11 trial judge and the presiding judge or the presiding
12 judge's designee.

13 (2) The litigation budget shall serve purposes
14 comparable to those of private retainer agreements by
15 confirming both the court's and the attorney's
16 expectations regarding fees and expenses. Consideration
17 should be given to employing an ex parte pretrial
18 conference in order to facilitate reaching agreement on a
19 litigation budget at the earliest opportunity.

20 (3) The budget shall be incorporated into a sealed
21 initial pretrial order that reflects the understandings of
22 the court and counsel regarding all matters affecting
23 counsel compensation and reimbursement and payments for
24 investigative, expert and other services, including but
25 not limited to the following matters:

26 (A) the hourly rate at which counsel will be

1 compensated;

2 (B) the hourly rate at which private
3 investigators, other than investigators employed by
4 the Office of the State Appellate Defender, will be
5 compensated; and

6 (C) the best preliminary estimate that can be made
7 of the cost of all services, including, but not limited
8 to, counsel, expert, and investigative services, that
9 are likely to be needed through the guilt and penalty
10 phases of the trial. The court shall have discretion to
11 require that budgets be prepared for shorter intervals
12 of time.

13 (4) Appointed counsel may obtain, subject to later
14 review, investigative, expert, or other services without
15 prior authorization if necessary for an adequate defense.
16 If the services are obtained, the presiding judge or the
17 presiding judge's designee shall consider in an ex parte
18 proceeding that timely procurement of necessary services
19 could not await prior authorization. If an ex parte hearing
20 is requested by defense counsel or deemed necessary by the
21 trial judge prior to modifying a budget, the ex parte
22 hearing shall be before the presiding judge or the
23 presiding judge's designee. The judge may then authorize
24 the services nunc pro tunc. If the presiding judge or the
25 presiding judge's designee finds that the services were not
26 reasonable, payment may be denied.

1 (5) An approved budget shall guide counsel's use of
2 time and resources by indicating the services for which
3 compensation is authorized. The case budget shall be
4 re-evaluated when justified by changed or unexpected
5 circumstances and shall be modified by the court when
6 reasonable and necessary for an adequate defense. If an ex
7 parte hearing is requested by defense counsel or deemed
8 necessary by the trial judge prior to modifying a budget,
9 the ex parte hearing shall be before the presiding judge or
10 the presiding judge's designee.

11 (b) Appointed trial counsel shall be compensated upon
12 presentment and certification by the circuit court of a claim
13 for services detailing the date, activity, and time duration
14 for which compensation is sought. Compensation for appointed
15 trial counsel may be paid at a reasonable rate not to exceed
16 \$125 per hour. The court shall not authorize payment of bills
17 that are not properly itemized. A request for payment shall be
18 presented under seal and reviewed ex parte with a court
19 reporter present. Every January 20, the statutory rate
20 prescribed in this subsection shall be automatically increased
21 or decreased, as applicable, by a percentage equal to the
22 percentage change in the consumer price index-u during the
23 preceding 12-month calendar year. "Consumer price index-u"
24 means the index published by the Bureau of Labor Statistics of
25 the United States Department of Labor that measures the average
26 change in prices of goods and services purchased by all urban

1 consumers, United States city average, all items, 1982-84=100.
2 The new rate resulting from each annual adjustment shall be
3 determined by the State Treasurer and made available to the
4 chief judge of each judicial circuit.

5 (c) Appointed trial counsel may also petition the court for
6 certification of expenses for reasonable and necessary capital
7 litigation expenses, including, but not limited to,
8 investigatory and other assistance, expert, forensic, and
9 other witnesses, and mitigation specialists. Each provider of
10 proposed services must specify the best preliminary estimate
11 that can be made in light of information received in the case
12 at that point, and the provider must sign this estimate under
13 the provisions of Section 1-109 of the Code of Civil Procedure.
14 A provider of proposed services must also specify (1) his or
15 her hourly rate; (2) the hourly rate of anyone else in his or
16 her employ for whom reimbursement is sought; and (3) the hourly
17 rate of any person or entity that may be subcontracted to
18 perform these services. Counsel may not petition for
19 certification of expenses that may have been provided or
20 compensated by the State Appellate Defender under item (c)(5.1)
21 of Section 10 of the State Appellate Defender Act. The
22 petitions shall be filed under seal and considered ex parte but
23 with a court reporter present for all ex parte conferences. If
24 the requests are submitted after services have been rendered,
25 the requests shall be supported by an invoice describing the
26 services rendered, the dates the services were performed and

1 the amount of time spent. These petitions shall be reviewed by
2 both the trial judge and the presiding judge of the circuit
3 court or the presiding judge's designee. The petitions and
4 orders shall be kept under seal and shall be exempt from
5 Freedom of Information requests until the conclusion of the
6 trial, even if the prosecution chooses not to pursue the death
7 penalty prior to trial or sentencing. If an ex parte hearing is
8 requested by defense counsel or deemed necessary by the trial
9 judge, the hearing shall be before the presiding judge or the
10 presiding judge's designee.

11 (d) Appointed trial counsel shall petition the court for
12 certification of compensation and expenses under this Section
13 periodically during the course of counsel's representation.
14 The petitions shall be supported by itemized bills showing the
15 date, the amount of time spent, the work done and the total
16 being charged for each entry. The court shall not authorize
17 payment of bills that are not properly itemized. The court must
18 certify reasonable and necessary expenses of the petitioner for
19 travel and per diem (lodging, meals, and incidental expenses).
20 These expenses must be paid at the rate as promulgated by the
21 United States General Services Administration for these
22 expenses for the date and location in which they were incurred,
23 unless extraordinary reasons are shown for the difference. The
24 petitions shall be filed under seal and considered ex parte but
25 with a court reporter present for all ex parte conferences. The
26 petitions shall be reviewed by both the trial judge and the

1 presiding judge of the circuit court or the presiding judge's
2 designee. If an ex parte hearing is requested by defense
3 counsel or deemed necessary by the trial judge, the ex parte
4 hearing shall be before the presiding judge or the presiding
5 judge's designee. If the court determines that the compensation
6 and expenses should be paid from the Capital Litigation Trust
7 Fund, the court shall certify, on a form created by the State
8 Treasurer, that all or a designated portion of the amount
9 requested is reasonable, necessary, and appropriate for
10 payment from the Trust Fund. The form must also be signed by
11 lead trial counsel under the provisions of Section 1-109 of the
12 Code of Civil Procedure verifying that the amount requested is
13 reasonable, necessary, and appropriate. Bills submitted for
14 payment by any individual or entity seeking payment from the
15 Capital Litigation Trust Fund must also be accompanied by a
16 form created by the State Treasurer and signed by the
17 individual or responsible agent of the entity under the
18 provisions of Section 1-109 of the Code of Civil Procedure that
19 the amount requested is accurate and truthful and reflects time
20 spent or expenses incurred. Certification of compensation and
21 expenses by a court in any county other than Cook County shall
22 be delivered by the court to the State Treasurer and must be
23 paid by the State Treasurer directly from the Capital
24 Litigation Trust Fund if there are sufficient moneys in the
25 Trust Fund to pay the compensation and expenses. If the State
26 Treasurer finds, within 14 days of his or her receipt of a

1 certification, that the compensation and expenses to be paid
2 are unreasonable, unnecessary, or inappropriate, he or she may
3 return the certification to the court setting forth in detail
4 the objection or objections with a request for the court to
5 review the objection or objections before resubmitting the
6 certification. The State Treasurer must send the claimant a
7 copy of the objection or objections. The State Treasurer may
8 only seek a review of a specific objection once. The claimant
9 has 7 days from his or her receipt of the objections to file a
10 response with the court. With or without further hearing, the
11 court must promptly rule on the objections. The petitions and
12 orders shall be kept under seal and shall be exempt from
13 Freedom of Information requests until the conclusion of the
14 trial and appeal of the case, even if the prosecution chooses
15 not to pursue the death penalty prior to trial or sentencing.
16 Certification of compensation and expenses by a court in Cook
17 County shall be delivered by the court to the county treasurer
18 and paid by the county treasurer from moneys granted to the
19 county from the Capital Litigation Trust Fund.

20 Section 15. Capital Litigation Trust Fund.

21 (a) The Capital Litigation Trust Fund is created as a
22 special fund in the State treasury. The Trust Fund shall be
23 administered by the State Treasurer to provide moneys for the
24 appropriations to be made, grants to be awarded, and
25 compensation and expenses to be paid under this Act. All

1 interest earned from the investment or deposit of moneys
2 accumulated in the Trust Fund shall, under Section 4.1 of the
3 State Finance Act, be deposited into the Trust Fund.

4 (b) Moneys deposited into the Trust Fund shall not be
5 considered general revenue of the State of Illinois.

6 (c) Moneys deposited into the Trust Fund shall be used
7 exclusively for the purposes of providing funding for the
8 prosecution and defense of capital cases and for providing
9 funding for post-conviction proceedings in capital cases under
10 Article 122 of the Code of Criminal Procedure of 1963 and in
11 relation to petitions filed under Section 2-1401 of the Code of
12 Civil Procedure in relation to capital cases as provided in
13 this Act and shall not be appropriated, loaned, or in any
14 manner transferred to the General Revenue Fund of the State of
15 Illinois.

16 (d) Every fiscal year, the State Treasurer shall transfer
17 from the General Revenue Fund to the Capital Litigation Trust
18 Fund an amount equal to the full amount of moneys appropriated
19 by the General Assembly (both by original and supplemental
20 appropriation), less any unexpended balance from the previous
21 fiscal year, from the Capital Litigation Trust Fund for the
22 specific purpose of making funding available for the
23 prosecution and defense of capital cases and for the litigation
24 expenses associated with post-conviction proceedings in
25 capital cases under Article 122 of the Code of Criminal
26 Procedure of 1963 and in relation to petitions filed under

1 Section 2-1401 of the Code of Civil Procedure in relation to
2 capital cases. The Public Defender and State's Attorney in Cook
3 County, the State Appellate Defender, the State's Attorneys
4 Appellate Prosecutor, and the Attorney General shall make
5 annual requests for appropriations from the Trust Fund.

6 (1) The Public Defender in Cook County shall request
7 appropriations to the State Treasurer for expenses
8 incurred by the Public Defender and for funding for private
9 appointed defense counsel in Cook County.

10 (2) The State's Attorney in Cook County shall request
11 an appropriation to the State Treasurer for expenses
12 incurred by the State's Attorney.

13 (3) The State Appellate Defender shall request a direct
14 appropriation from the Trust Fund for expenses incurred by
15 the State Appellate Defender in providing assistance to
16 trial attorneys under item (c)(5.1) of Section 10 of the
17 State Appellate Defender Act and for expenses incurred by
18 the State Appellate Defender in representing petitioners
19 in capital cases in post-conviction proceedings under
20 Article 122 of the Code of Criminal Procedure of 1963 and
21 in relation to petitions filed under Section 2-1401 of the
22 Code of Civil Procedure in relation to capital cases and
23 for the representation of those petitioners by attorneys
24 approved by or contracted with the State Appellate Defender
25 and an appropriation to the State Treasurer for payments
26 from the Trust Fund for the defense of cases in counties

1 other than Cook County.

2 (4) The State's Attorneys Appellate Prosecutor shall
3 request a direct appropriation from the Trust Fund to pay
4 expenses incurred by the State's Attorneys Appellate
5 Prosecutor and an appropriation to the State Treasurer for
6 payments from the Trust Fund for expenses incurred by
7 State's Attorneys in counties other than Cook County.

8 (5) The Attorney General shall request a direct
9 appropriation from the Trust Fund to pay expenses incurred
10 by the Attorney General in assisting the State's Attorneys
11 in counties other than Cook County and to pay for expenses
12 incurred by the Attorney General when the Attorney General
13 is ordered by the presiding judge of the Criminal Division
14 of the Circuit Court of Cook County to prosecute or
15 supervise the prosecution of Cook County cases and for
16 expenses incurred by the Attorney General in representing
17 the State in post-conviction proceedings in capital cases
18 under Article 122 of the Code of Criminal Procedure of 1963
19 and in relation to petitions filed under Section 2-1401 of
20 the Code of Civil Procedure in relation to capital cases.
21 The Public Defender and State's Attorney in Cook County,
22 the State Appellate Defender, the State's Attorneys
23 Appellate Prosecutor, and the Attorney General may each
24 request supplemental appropriations from the Trust Fund
25 during the fiscal year.

26 (e) Moneys in the Trust Fund shall be expended only as

1 follows:

2 (1) To pay the State Treasurer's costs to administer
3 the Trust Fund. The amount for this purpose may not exceed
4 5% in any one fiscal year of the amount otherwise
5 appropriated from the Trust Fund in the same fiscal year.

6 (2) To pay the capital litigation expenses of trial
7 defense and post-conviction proceedings in capital cases
8 under Article 122 of the Code of Criminal Procedure of 1963
9 and in relation to petitions filed under Section 2-1401 of
10 the Code of Civil Procedure in relation to capital cases
11 including, but not limited to, DNA testing, including DNA
12 testing under Section 116-3 of the Code of Criminal
13 Procedure of 1963, analysis, and expert testimony,
14 investigatory and other assistance, expert, forensic, and
15 other witnesses, and mitigation specialists, and grants
16 and aid provided to public defenders, appellate defenders,
17 and any attorney approved by or contracted with the State
18 Appellate Defender representing petitioners in
19 post-conviction proceedings in capital cases under Article
20 122 of the Code of Criminal Procedure of 1963 and in
21 relation to petitions filed under Section 2-1401 of the
22 Code of Civil Procedure in relation to capital cases or
23 assistance to attorneys who have been appointed by the
24 court to represent defendants who are charged with capital
25 crimes. Reasonable and necessary capital litigation
26 expenses include travel and per diem (lodging, meals, and

1 incidental expenses).

2 (3) To pay the compensation of trial attorneys, other
3 than public defenders or appellate defenders, who have been
4 appointed by the court to represent defendants who are
5 charged with capital crimes or attorneys approved by or
6 contracted with the State Appellate Defender to represent
7 petitioners in post-conviction proceedings in capital
8 cases under Article 122 of the Code of Criminal Procedure
9 of 1963 and in relation to petitions filed under Section
10 2-1401 of the Code of Civil Procedure in relation to
11 capital cases.

12 (4) To provide State's Attorneys with funding for
13 capital litigation expenses and for expenses of
14 representing the State in post-conviction proceedings in
15 capital cases under Article 122 of the Code of Criminal
16 Procedure of 1963 and in relation to petitions filed under
17 Section 2-1401 of the Code of Civil Procedure in relation
18 to capital cases including, but not limited to,
19 investigatory and other assistance and expert, forensic,
20 and other witnesses necessary to prosecute capital cases.
21 State's Attorneys in any county other than Cook County
22 seeking funding for capital litigation expenses and for
23 expenses of representing the State in post-conviction
24 proceedings in capital cases under Article 122 of the Code
25 of Criminal Procedure of 1963 and in relation to petitions
26 filed under Section 2-1401 of the Code of Civil Procedure

1 in relation to capital cases including, but not limited to,
2 investigatory and other assistance and expert, forensic,
3 or other witnesses under this Section may request that the
4 State's Attorneys Appellate Prosecutor or the Attorney
5 General, as the case may be, certify the expenses as
6 reasonable, necessary, and appropriate for payment from
7 the Trust Fund, on a form created by the State Treasurer.
8 Upon certification of the expenses and delivery of the
9 certification to the State Treasurer, the Treasurer shall
10 pay the expenses directly from the Capital Litigation Trust
11 Fund if there are sufficient moneys in the Trust Fund to
12 pay the expenses.

13 (5) To provide financial support through the Attorney
14 General under the Attorney General Act for the several
15 county State's Attorneys outside of Cook County, but shall
16 not be used to increase personnel for the Attorney
17 General's Office, except when the Attorney General is
18 ordered by the presiding judge of the Criminal Division of
19 the Circuit Court of Cook County to prosecute or supervise
20 the prosecution of Cook County cases.

21 (6) To provide financial support through the State's
22 Attorneys Appellate Prosecutor under the State's Attorneys
23 Appellate Prosecutor's Act for the several county State's
24 Attorneys outside of Cook County, but shall not be used to
25 increase personnel for the State's Attorneys Appellate
26 Prosecutor.

1 (7) To provide financial support to the State Appellate
2 Defender under the State Appellate Defender Act. Moneys
3 expended from the Trust Fund shall be in addition to county
4 funding for Public Defenders and State's Attorneys, and
5 shall not be used to supplant or reduce ordinary and
6 customary county funding.

7 (f) Moneys in the Trust Fund shall be appropriated to the
8 State Appellate Defender, the State's Attorneys Appellate
9 Prosecutor, the Attorney General, and the State Treasurer. The
10 State Appellate Defender shall receive an appropriation from
11 the Trust Fund to enable it to provide assistance to appointed
12 defense counsel and attorneys approved by or contracted with
13 the State Appellate Defender to represent petitioners in
14 post-conviction proceedings in capital cases under Article 122
15 of the Code of Criminal Procedure of 1963 and in relation to
16 petitions filed under Section 2-1401 of the Code of Civil
17 Procedure in relation to capital cases throughout the State and
18 to Public Defenders in counties other than Cook. The State's
19 Attorneys Appellate Prosecutor and the Attorney General shall
20 receive appropriations from the Trust Fund to enable them to
21 provide assistance to State's Attorneys in counties other than
22 Cook County and when the Attorney General is ordered by the
23 presiding judge of the Criminal Division of the Circuit Court
24 of Cook County to prosecute or supervise the prosecution of
25 Cook County cases. Moneys shall be appropriated to the State
26 Treasurer to enable the Treasurer (i) to make grants to Cook

1 County, (ii) to pay the expenses of Public Defenders, the State
2 Appellate Defender, the Attorney General, the Office of the
3 State's Attorneys Appellate Prosecutor, and State's Attorneys
4 in counties other than Cook County, (iii) to pay the expenses
5 and compensation of appointed defense counsel and attorneys
6 approved by or contracted with the State Appellate Defender to
7 represent petitioners in post-conviction proceedings in
8 capital cases under Article 122 of the Code of Criminal
9 Procedure of 1963 and in relation to petitions filed under
10 Section 2-1401 of the Code of Civil Procedure in relation to
11 capital cases in counties other than Cook County, and (iv) to
12 pay the costs of administering the Trust Fund. All expenditures
13 and grants made from the Trust Fund shall be subject to audit
14 by the Auditor General.

15 (g) For Cook County, grants from the Trust Fund shall be
16 made and administered as follows:

17 (1) For each State fiscal year, the State's Attorney
18 and Public Defender must each make a separate application
19 to the State Treasurer for capital litigation grants.

20 (2) The State Treasurer shall establish rules and
21 procedures for grant applications. The rules shall require
22 the Cook County Treasurer as the grant recipient to report
23 on a periodic basis to the State Treasurer how much of the
24 grant has been expended, how much of the grant is
25 remaining, and the purposes for which the grant has been
26 used. The rules may also require the Cook County Treasurer

1 to certify on a periodic basis that expenditures of the
2 funds have been made for expenses that are reasonable,
3 necessary, and appropriate for payment from the Trust Fund.

4 (3) The State Treasurer shall make the grants to the
5 Cook County Treasurer as soon as possible after the
6 beginning of the State fiscal year.

7 (4) The State's Attorney or Public Defender may apply
8 for supplemental grants during the fiscal year.

9 (5) Grant moneys shall be paid to the Cook County
10 Treasurer in block grants and held in separate accounts for
11 the State's Attorney, the Public Defender, and court
12 appointed defense counsel other than the Cook County Public
13 Defender, respectively, for the designated fiscal year,
14 and are not subject to county appropriation.

15 (6) Expenditure of grant moneys under this subsection
16 (g) is subject to audit by the Auditor General.

17 (7) The Cook County Treasurer shall immediately make
18 payment from the appropriate separate account in the county
19 treasury for capital litigation expenses to the State's
20 Attorney, Public Defender, or court appointed defense
21 counsel other than the Public Defender, as the case may be,
22 upon order of the State's Attorney, Public Defender or the
23 court, respectively.

24 (h) If a defendant in a capital case in Cook County is
25 represented by court appointed counsel other than the Cook
26 County Public Defender, the appointed counsel shall petition

1 the court for an order directing the Cook County Treasurer to
2 pay the court appointed counsel's reasonable and necessary
3 compensation and capital litigation expenses from grant moneys
4 provided from the Trust Fund. The petitions shall be supported
5 by itemized bills showing the date, the amount of time spent,
6 the work done and the total being charged for each entry. The
7 court shall not authorize payment of bills that are not
8 properly itemized. The petitions shall be filed under seal and
9 considered ex parte but with a court reporter present for all
10 ex parte conferences. The petitions shall be reviewed by both
11 the trial judge and the presiding judge of the circuit court or
12 the presiding judge's designee. The petitions and orders shall
13 be kept under seal and shall be exempt from Freedom of
14 Information requests until the conclusion of the trial and
15 appeal of the case, even if the prosecution chooses not to
16 pursue the death penalty prior to trial or sentencing. Orders
17 denying petitions for compensation or expenses are final.
18 Counsel may not petition for expenses that may have been
19 provided or compensated by the State Appellate Defender under
20 item (c)(5.1) of Section 10 of the State Appellate Defender
21 Act.

22 (i) In counties other than Cook County, and when the
23 Attorney General is ordered by the presiding judge of the
24 Criminal Division of the Circuit Court of Cook County to
25 prosecute or supervise the prosecution of Cook County cases,
26 and excluding capital litigation expenses or services that may

1 have been provided by the State Appellate Defender under item
2 (c) (5.1) of Section 10 of the State Appellate Defender Act:

3 (1) Upon certification by the circuit court, on a form
4 created by the State Treasurer, that all or a portion of
5 the expenses are reasonable, necessary, and appropriate
6 for payment from the Trust Fund and the court's delivery of
7 the certification to the Treasurer, the Treasurer shall pay
8 the certified expenses of Public Defenders and the State
9 Appellate Defender from the money appropriated to the
10 Treasurer for capital litigation expenses of Public
11 Defenders and post-conviction proceeding expenses in
12 capital cases of the State Appellate Defender and expenses
13 in relation to petitions filed under Section 2-1401 of the
14 Code of Civil Procedure in relation to capital cases in any
15 county other than Cook County, if there are sufficient
16 moneys in the Trust Fund to pay the expenses.

17 (2) If a defendant in a capital case is represented by
18 court appointed counsel other than the Public Defender, the
19 appointed counsel shall petition the court to certify
20 compensation and capital litigation expenses including,
21 but not limited to, investigatory and other assistance,
22 expert, forensic, and other witnesses, and mitigation
23 specialists as reasonable, necessary, and appropriate for
24 payment from the Trust Fund. If a petitioner in a capital
25 case who has filed a petition for post-conviction relief
26 under Article 122 of the Code of Criminal Procedure of 1963

1 or a petition under Section 2-1401 of the Code of Civil
2 Procedure in relation to capital cases is represented by an
3 attorney approved by or contracted with the State Appellate
4 Defender other than the State Appellate Defender, that
5 attorney shall petition the court to certify compensation
6 and litigation expenses of post-conviction proceedings
7 under Article 122 of the Code of Criminal Procedure of 1963
8 or in relation to petitions filed under Section 2-1401 of
9 the Code of Civil Procedure in relation to capital cases.
10 Upon certification on a form created by the State Treasurer
11 of all or a portion of the compensation and expenses
12 certified as reasonable, necessary, and appropriate for
13 payment from the Trust Fund and the court's delivery of the
14 certification to the Treasurer, the State Treasurer shall
15 pay the certified compensation and expenses from the money
16 appropriated to the Treasurer for that purpose, if there
17 are sufficient moneys in the Trust Fund to make those
18 payments.

19 (3) A petition for capital litigation expenses or
20 post-conviction proceeding expenses or expenses incurred
21 in filing a petition under Section 2-1401 of the Code of
22 Civil Procedure in relation to capital cases under this
23 subsection shall be considered under seal and reviewed ex
24 parte with a court reporter present. Orders denying
25 petitions for compensation or expenses are final.

26 (j) If the Trust Fund is discontinued or dissolved by an

1 Act of the General Assembly or by operation of law, any balance
2 remaining in the Trust Fund shall be returned to the General
3 Revenue Fund after deduction of administrative costs, any other
4 provision of this Act to the contrary notwithstanding.

5 Section 90. The Freedom of Information Act is amended by
6 changing Section 7.5 as follows:

7 (5 ILCS 140/7.5)

8 Sec. 7.5. Statutory exemptions. To the extent provided for
9 by the statutes referenced below, the following shall be exempt
10 from inspection and copying:

11 (a) All information determined to be confidential
12 under Section 4002 of the Technology Advancement and
13 Development Act.

14 (b) Library circulation and order records identifying
15 library users with specific materials under the Library
16 Records Confidentiality Act.

17 (c) Applications, related documents, and medical
18 records received by the Experimental Organ Transplantation
19 Procedures Board and any and all documents or other records
20 prepared by the Experimental Organ Transplantation
21 Procedures Board or its staff relating to applications it
22 has received.

23 (d) Information and records held by the Department of
24 Public Health and its authorized representatives relating

1 to known or suspected cases of sexually transmissible
2 disease or any information the disclosure of which is
3 restricted under the Illinois Sexually Transmissible
4 Disease Control Act.

5 (e) Information the disclosure of which is exempted
6 under Section 30 of the Radon Industry Licensing Act.

7 (f) Firm performance evaluations under Section 55 of
8 the Architectural, Engineering, and Land Surveying
9 Qualifications Based Selection Act.

10 (g) Information the disclosure of which is restricted
11 and exempted under Section 50 of the Illinois Prepaid
12 Tuition Act.

13 (h) Information the disclosure of which is exempted
14 under the State Officials and Employees Ethics Act, and
15 records of any lawfully created State or local inspector
16 general's office that would be exempt if created or
17 obtained by an Executive Inspector General's office under
18 that Act.

19 (i) Information contained in a local emergency energy
20 plan submitted to a municipality in accordance with a local
21 emergency energy plan ordinance that is adopted under
22 Section 11-21.5-5 of the Illinois Municipal Code.

23 (j) Information and data concerning the distribution
24 of surcharge moneys collected and remitted by carriers
25 under the Emergency Telephone System Act.

26 (k) Law enforcement officer identification information

1 or driver identification information compiled by a law
2 enforcement agency or the Department of Transportation
3 under Section 11-212 of the Illinois Vehicle Code.

4 (l) Records and information provided to a residential
5 health care facility resident sexual assault and death
6 review team or the Executive Council under the Abuse
7 Prevention Review Team Act.

8 (m) Information provided to the predatory lending
9 database created pursuant to Article 3 of the Residential
10 Real Property Disclosure Act, except to the extent
11 authorized under that Article.

12 (n) Defense budgets and petitions for certification of
13 compensation and expenses for court appointed trial
14 counsel as provided under Sections 10 and 15 of the Capital
15 Crimes Litigation Act of 2019. This subsection (n) shall
16 apply until the conclusion of the trial of the case, even
17 if the prosecution chooses not to pursue the death penalty
18 prior to trial or sentencing.

19 (o) Information that is prohibited from being
20 disclosed under Section 4 of the Illinois Health and
21 Hazardous Substances Registry Act.

22 (p) Security portions of system safety program plans,
23 investigation reports, surveys, schedules, lists, data, or
24 information compiled, collected, or prepared by or for the
25 Regional Transportation Authority under Section 2.11 of
26 the Regional Transportation Authority Act or the St. Clair

1 County Transit District under the Bi-State Transit Safety
2 Act.

3 (q) Information prohibited from being disclosed by the
4 Personnel Record ~~Records~~ Review Act.

5 (r) Information prohibited from being disclosed by the
6 Illinois School Student Records Act.

7 (s) Information the disclosure of which is restricted
8 under Section 5-108 of the Public Utilities Act.

9 (t) All identified or deidentified health information
10 in the form of health data or medical records contained in,
11 stored in, submitted to, transferred by, or released from
12 the Illinois Health Information Exchange, and identified
13 or deidentified health information in the form of health
14 data and medical records of the Illinois Health Information
15 Exchange in the possession of the Illinois Health
16 Information Exchange Authority due to its administration
17 of the Illinois Health Information Exchange. The terms
18 "identified" and "deidentified" shall be given the same
19 meaning as in the Health Insurance Portability and
20 Accountability Act of 1996, Public Law 104-191, or any
21 subsequent amendments thereto, and any regulations
22 promulgated thereunder.

23 (u) Records and information provided to an independent
24 team of experts under the Developmental Disability and
25 Mental Health Safety Act (also known as Brian's Law).

26 (v) Names and information of people who have applied

1 for or received Firearm Owner's Identification Cards under
2 the Firearm Owners Identification Card Act or applied for
3 or received a concealed carry license under the Firearm
4 Concealed Carry Act, unless otherwise authorized by the
5 Firearm Concealed Carry Act; and databases under the
6 Firearm Concealed Carry Act, records of the Concealed Carry
7 Licensing Review Board under the Firearm Concealed Carry
8 Act, and law enforcement agency objections under the
9 Firearm Concealed Carry Act.

10 (w) Personally identifiable information which is
11 exempted from disclosure under subsection (g) of Section
12 19.1 of the Toll Highway Act.

13 (x) Information which is exempted from disclosure
14 under Section 5-1014.3 of the Counties Code or Section
15 8-11-21 of the Illinois Municipal Code.

16 (y) Confidential information under the Adult
17 Protective Services Act and its predecessor enabling
18 statute, the Elder Abuse and Neglect Act, including
19 information about the identity and administrative finding
20 against any caregiver of a verified and substantiated
21 decision of abuse, neglect, or financial exploitation of an
22 eligible adult maintained in the Registry established
23 under Section 7.5 of the Adult Protective Services Act.

24 (z) Records and information provided to a fatality
25 review team or the Illinois Fatality Review Team Advisory
26 Council under Section 15 of the Adult Protective Services

1 Act.

2 (aa) Information which is exempted from disclosure
3 under Section 2.37 of the Wildlife Code.

4 (bb) Information which is or was prohibited from
5 disclosure by the Juvenile Court Act of 1987.

6 (cc) Recordings made under the Law Enforcement
7 Officer-Worn Body Camera Act, except to the extent
8 authorized under that Act.

9 (dd) Information that is prohibited from being
10 disclosed under Section 45 of the Condominium and Common
11 Interest Community Ombudsperson Act.

12 (ee) Information that is exempted from disclosure
13 under Section 30.1 of the Pharmacy Practice Act.

14 (ff) Information that is exempted from disclosure
15 under the Revised Uniform Unclaimed Property Act.

16 (gg) Information that is prohibited from being
17 disclosed under Section 7-603.5 of the Illinois Vehicle
18 Code.

19 (hh) Records that are exempt from disclosure under
20 Section 1A-16.7 of the Election Code.

21 (ii) Information which is exempted from disclosure
22 under Section 2505-800 of the Department of Revenue Law of
23 the Civil Administrative Code of Illinois.

24 (jj) Information and reports that are required to be
25 submitted to the Department of Labor by registering day and
26 temporary labor service agencies but are exempt from

1 disclosure under subsection (a-1) of Section 45 of the Day
2 and Temporary Labor Services Act.

3 (kk) Information prohibited from disclosure under the
4 Seizure and Forfeiture Reporting Act.

5 (ll) Information the disclosure of which is restricted
6 and exempted under Section 5-30.8 of the Illinois Public
7 Aid Code.

8 (mm) ~~(ll)~~ Records that are exempt from disclosure under
9 Section 4.2 of the Crime Victims Compensation Act.

10 (nn) ~~(ll)~~ Information that is exempt from disclosure
11 under Section 70 of the Higher Education Student Assistance
12 Act.

13 (Source: P.A. 99-78, eff. 7-20-15; 99-298, eff. 8-6-15; 99-352,
14 eff. 1-1-16; 99-642, eff. 7-28-16; 99-776, eff. 8-12-16;
15 99-863, eff. 8-19-16; 100-20, eff. 7-1-17; 100-22, eff. 1-1-18;
16 100-201, eff. 8-18-17; 100-373, eff. 1-1-18; 100-464, eff.
17 8-28-17; 100-465, eff. 8-31-17; 100-512, eff. 7-1-18; 100-517,
18 eff. 6-1-18; 100-646, eff. 7-27-18; 100-690, eff. 1-1-19;
19 100-863, eff. 8-14-18; 100-887, eff. 8-14-18; revised
20 10-12-18.)

21 (30 ILCS 105/5.876 rep.)

22 Section 91. The State Finance Act is amended by repealing
23 Section 5.876.

24 Section 92. The Code of Criminal Procedure of 1963 is

1 amended by changing Sections 113-3 and 119-1 as follows:

2 (725 ILCS 5/113-3) (from Ch. 38, par. 113-3)

3 Sec. 113-3. (a) Every person charged with an offense shall
4 be allowed counsel before pleading to the charge. If the
5 defendant desires counsel and has been unable to obtain same
6 before arraignment the court shall recess court or continue the
7 cause for a reasonable time to permit defendant to obtain
8 counsel and consult with him before pleading to the charge. If
9 the accused is a dissolved corporation, and is not represented
10 by counsel, the court may, in the interest of justice, appoint
11 as counsel a licensed attorney of this State.

12 (b) In all cases, except where the penalty is a fine only,
13 if the court determines that the defendant is indigent and
14 desires counsel, the Public Defender shall be appointed as
15 counsel. If there is no Public Defender in the county or if the
16 defendant requests counsel other than the Public Defender and
17 the court finds that the rights of the defendant will be
18 prejudiced by the appointment of the Public Defender, the court
19 shall appoint as counsel a licensed attorney at law of this
20 State, except that in a county having a population of 2,000,000
21 or more the Public Defender shall be appointed as counsel in
22 all misdemeanor cases where the defendant is indigent and
23 desires counsel unless the case involves multiple defendants,
24 in which case the court may appoint counsel other than the
25 Public Defender for the additional defendants. The court shall

1 require an affidavit signed by any defendant who requests
2 court-appointed counsel. Such affidavit shall be in the form
3 established by the Supreme Court containing sufficient
4 information to ascertain the assets and liabilities of that
5 defendant. The Court may direct the Clerk of the Circuit Court
6 to assist the defendant in the completion of the affidavit. Any
7 person who knowingly files such affidavit containing false
8 information concerning his assets and liabilities shall be
9 liable to the county where the case, in which such false
10 affidavit is filed, is pending for the reasonable value of the
11 services rendered by the public defender or other
12 court-appointed counsel in the case to the extent that such
13 services were unjustly or falsely procured.

14 (c) Upon the filing with the court of a verified statement
15 of services rendered the court shall order the county treasurer
16 of the county of trial to pay counsel other than the Public
17 Defender a reasonable fee. The court shall consider all
18 relevant circumstances, including but not limited to the time
19 spent while court is in session, other time spent in
20 representing the defendant, and expenses reasonably incurred
21 by counsel. In counties with a population greater than
22 2,000,000, the court shall order the county treasurer of the
23 county of trial to pay counsel other than the Public Defender a
24 reasonable fee stated in the order and based upon a rate of
25 compensation of not more than \$40 for each hour spent while
26 court is in session and not more than \$30 for each hour

1 otherwise spent representing a defendant, and such
2 compensation shall not exceed \$150 for each defendant
3 represented in misdemeanor cases and \$1250 in felony cases, in
4 addition to expenses reasonably incurred as hereinafter in this
5 Section provided, except that, in extraordinary circumstances,
6 payment in excess of the limits herein stated may be made if
7 the trial court certifies that such payment is necessary to
8 provide fair compensation for protracted representation. A
9 trial court may entertain the filing of this verified statement
10 before the termination of the cause, and may order the
11 provisional payment of sums during the pendency of the cause.

12 (d) In capital cases, in addition to counsel, if the court
13 determines that the defendant is indigent the court may, upon
14 the filing with the court of a verified statement of services
15 rendered, order the county Treasurer of the county of trial to
16 pay necessary expert witnesses for defendant reasonable
17 compensation stated in the order not to exceed \$250 for each
18 defendant.

19 (e) If the court in any county having a population greater
20 than 2,000,000 determines that the defendant is indigent the
21 court may, upon the filing with the court of a verified
22 statement of such expenses, order the county treasurer of the
23 county of trial, in such counties having a population greater
24 than 2,000,000 to pay the general expenses of the trial
25 incurred by the defendant not to exceed \$50 for each defendant.

26 (f) The provisions of this Section relating to appointment

1 of counsel, compensation of counsel, and payment of expenses in
2 capital cases apply except when the compensation and expenses
3 are being provided under the Capital Crimes Litigation Act of
4 2019.

5 (Source: P.A. 91-589, eff. 1-1-00.)

6 (725 ILCS 5/119-1)

7 Sec. 119-1. Death Penalty Abolition Fund ~~penalty~~
8 ~~abolished.~~

9 (a) (Blank). ~~Beginning on the effective date of this~~
10 ~~amendatory Act of the 96th General Assembly, notwithstanding~~
11 ~~any other law to the contrary, the death penalty is abolished~~
12 ~~and a sentence to death may not be imposed.~~

13 (b) All unobligated and unexpended moneys remaining in ~~the~~
14 ~~Capital Litigation Trust Fund on the effective date of this~~
15 ~~amendatory Act of the 96th General Assembly shall be~~
16 ~~transferred into the Death Penalty Abolition Fund~~ on the
17 effective date of this amendatory Act of the 101st General
18 Assembly shall be transferred into the Capital Litigation Trust
19 Fund ~~, a special fund in the State treasury, to be expended by~~
20 ~~the Illinois Criminal Justice Information Authority, for~~
21 ~~services for families of victims of homicide or murder and for~~
22 ~~training of law enforcement personnel.~~

23 (Source: P.A. 96-1543, eff. 7-1-11.)

24 Section 93. The State Appellate Defender Act is amended by

1 changing Section 10 as follows:

2 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

3 Sec. 10. Powers and duties of State Appellate Defender.

4 (a) The State Appellate Defender shall represent indigent
5 persons on appeal in criminal and delinquent minor proceedings,
6 when appointed to do so by a court under a Supreme Court Rule
7 or law of this State.

8 (b) The State Appellate Defender shall submit a budget for
9 the approval of the State Appellate Defender Commission.

10 (c) The State Appellate Defender may:

11 (1) maintain a panel of private attorneys available to
12 serve as counsel on a case basis;

13 (2) establish programs, alone or in conjunction with
14 law schools, for the purpose of utilizing volunteer law
15 students as legal assistants;

16 (3) cooperate and consult with state agencies,
17 professional associations, and other groups concerning the
18 causes of criminal conduct, the rehabilitation and
19 correction of persons charged with and convicted of crime,
20 the administration of criminal justice, and, in counties of
21 less than 1,000,000 population, study, design, develop and
22 implement model systems for the delivery of trial level
23 defender services, and make an annual report to the General
24 Assembly;

25 (4) hire investigators to provide investigative

1 services to appointed counsel and county public defenders;

2 (5) (blank);

3 (5.1) in cases in which a death sentence is an
4 authorized disposition, provide trial counsel with legal
5 assistance and the assistance of expert witnesses,
6 investigators, and mitigation specialists from funds
7 appropriated to the State Appellate Defender specifically
8 for that purpose by the General Assembly. The Office of
9 State Appellate Defender shall not be appointed to serve as
10 trial counsel in capital cases;

11 (5.5) provide training to county public defenders;

12 (5.7) provide county public defenders with the
13 assistance of expert witnesses and investigators from
14 funds appropriated to the State Appellate Defender
15 specifically for that purpose by the General Assembly. The
16 Office of the State Appellate Defender shall not be
17 appointed to act as trial counsel;

18 (6) develop a Juvenile Defender Resource Center to: (i)
19 study, design, develop, and implement model systems for the
20 delivery of trial level defender services for juveniles in
21 the justice system; (ii) in cases in which a sentence of
22 incarceration or an adult sentence, or both, is an
23 authorized disposition, provide trial counsel with legal
24 advice and the assistance of expert witnesses and
25 investigators from funds appropriated to the Office of the
26 State Appellate Defender by the General Assembly

1 specifically for that purpose; (iii) develop and provide
2 training to public defenders on juvenile justice issues,
3 utilizing resources including the State and local bar
4 associations, the Illinois Public Defender Association,
5 law schools, the Midwest Juvenile Defender Center, and pro
6 bono efforts by law firms; and (iv) make an annual report
7 to the General Assembly.

8 Investigators employed by the Capital Trial Assistance
9 Unit and Capital Post Conviction Unit of the State Appellate
10 Defender shall be authorized to inquire through the Illinois
11 State Police or local law enforcement with the Law Enforcement
12 Agencies Data System (LEADS) under Section 2605-375 of the
13 Civil Administrative Code of Illinois to ascertain whether
14 their potential witnesses have a criminal background,
15 including, but not limited to: (i) warrants; (ii) arrests;
16 (iii) convictions; and (iv) officer safety information. This
17 authorization applies only to information held on the State
18 level and shall be used only to protect the personal safety of
19 the investigators. Any information that is obtained through
20 this inquiry may not be disclosed by the investigators.

21 (c-5) For each State fiscal year, the State Appellate
22 Defender shall request a direct appropriation from the Capital
23 Litigation Trust Fund for expenses incurred by the State
24 Appellate Defender in providing assistance to trial attorneys
25 under paragraph (5.1) of subsection (c) of this Section and for
26 expenses incurred by the State Appellate Defender in

1 representing petitioners in capital cases in post-conviction
2 proceedings under Article 122 of the Code of Criminal Procedure
3 of 1963 and in relation to petitions filed under Section 2-1401
4 of the Code of Civil Procedure in relation to capital cases and
5 for the representation of those petitioners by attorneys
6 approved by or contracted with the State Appellate Defender and
7 an appropriation to the State Treasurer for payments from the
8 Trust Fund for the defense of cases in counties other than Cook
9 County. The State Appellate Defender may appear before the
10 General Assembly at other times during the State's fiscal year
11 to request supplemental appropriations from the Trust Fund to
12 the State Treasurer.

13 (d) (Blank).

14 (e) The requirement for reporting to the General Assembly
15 shall be satisfied by filing copies of the report as required
16 by Section 3.1 of the General Assembly Organization Act and
17 filing such additional copies with the State Government Report
18 Distribution Center for the General Assembly as is required
19 under paragraph (t) of Section 7 of the State Library Act.

20 (Source: P.A. 99-78, eff. 7-20-15; 100-1148, eff. 12-10-18.)