



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2992

Introduced 2/5/2020, by Sen. Brian W. Stewart

SYNOPSIS AS INTRODUCED:

New Act

5 ILCS 140/7.5

720 ILCS 5/9-1

725 ILCS 5/113-3

725 ILCS 5/119-1

725 ILCS 105/10

from Ch. 38, par. 9-1

from Ch. 38, par. 113-3

from Ch. 38, par. 208-10

Amends the Criminal Code of 2012 relating to first degree murder. Adds and eliminates aggravating factors for which the death penalty may be imposed. Amends the Code of Criminal Procedure of 1963. Eliminates provision that abolishes the sentence of death. Enacts the Capital Crimes Litigation Act of 2020. 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 20102 RLC 69635 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 2020.

6 Section 5. Appointment of trial counsel in death penalty
7 cases. If an indigent defendant is charged with an offense for
8 which a sentence of death is authorized, and the State's
9 Attorney has not, at or before arraignment, filed a certificate
10 indicating he or she will not seek the death penalty or stated
11 on the record in open court that the death penalty will not be
12 sought, the trial court shall immediately appoint the Public
13 Defender, or any other qualified attorney or attorneys as the
14 Illinois Supreme Court shall by rule provide, to represent the
15 defendant as trial counsel. If the Public Defender is
16 appointed, he or she shall immediately assign the attorney or
17 attorneys who are public defenders to represent the defendant.
18 The counsel shall meet the qualifications as the Supreme Court
19 shall by rule provide. At the request of court appointed
20 counsel in a case in which the death penalty is sought,
21 attorneys employed by the State Appellate Defender may enter an
22 appearance for the limited purpose of assisting counsel
23 appointed under this Section.

1 Section 10. Court appointed trial counsel; compensation
2 and expenses.

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

10 (a-5) Litigation budget.

11 (1) In a case in which the State has filed a statement
12 of intent to seek the death penalty, the court shall
13 require appointed counsel, including those appointed in
14 Cook County, after counsel has had adequate time to review
15 the case and prior to engaging trial assistance, to submit
16 a proposed estimated litigation budget for court approval,
17 that will be subject to modification in light of facts and
18 developments that emerge as the case proceeds. Case budgets
19 should be submitted ex parte and filed and maintained under
20 seal in order to protect the defendant's right to effective
21 assistance of counsel, right not to incriminate him or
22 herself and all applicable privileges. Case budgets shall
23 be reviewed and approved by the judge assigned to try the
24 case. As provided under subsection (c) of this Section,
25 petitions for compensation shall be reviewed by both the

1 trial judge and the presiding judge or the presiding
2 judge's designee.

3 (2) The litigation budget shall serve purposes
4 comparable to those of private retainer agreements by
5 confirming both the court's and the attorney's
6 expectations regarding fees and expenses. Consideration
7 should be given to employing an ex parte pretrial
8 conference in order to facilitate reaching agreement on a
9 litigation budget at the earliest opportunity.

10 (3) The budget shall be incorporated into a sealed
11 initial pretrial order that reflects the understandings of
12 the court and counsel regarding all matters affecting
13 counsel compensation and reimbursement and payments for
14 investigative, expert and other services, including, but
15 not limited to, the following matters:

16 (A) the hourly rate at which counsel will be
17 compensated;

18 (B) the hourly rate at which private
19 investigators, other than investigators employed by
20 the Office of the State Appellate Defender, will be
21 compensated; and

22 (C) the best preliminary estimate that can be made
23 of the cost of all services, including, but not limited
24 to, counsel, expert, and investigative services that
25 are likely to be needed through the guilt and penalty
26 phases of the trial. The court shall have discretion to

1 require that budgets be prepared for shorter intervals
2 of time.

3 (4) Appointed counsel may obtain, subject to later
4 review, investigative, expert, or other services without
5 prior authorization if necessary for an adequate defense.
6 If the services are obtained, the presiding judge or the
7 presiding judge's designee shall consider in an ex parte
8 proceeding that timely procurement of necessary services
9 could not await prior authorization. If an ex parte hearing
10 is requested by defense counsel or deemed necessary by the
11 trial judge prior to modifying a budget, the ex parte
12 hearing shall be before the presiding judge or the
13 presiding judge's designee. The judge may then authorize
14 the services nunc pro tunc. If the presiding judge or the
15 presiding judge's designee finds that the services were not
16 reasonable, payment may be denied.

17 (5) An approved budget shall guide counsel's use of
18 time and resources by indicating the services for which
19 compensation is authorized. The case budget shall be
20 re-evaluated when justified by changed or unexpected
21 circumstances and shall be modified by the court when
22 reasonable and necessary for an adequate defense. If an ex
23 parte hearing is requested by defense counsel or deemed
24 necessary by the trial judge prior to modifying a budget,
25 the ex parte hearing shall be before the presiding judge or
26 the presiding judge's designee.

1 (b) Appointed trial counsel shall be compensated upon
2 presentment and certification by the circuit court of a claim
3 for services detailing the date, activity, and time duration
4 for which compensation is sought. Compensation for appointed
5 trial counsel may be paid at a reasonable rate not to exceed
6 \$125 per hour. The court shall not authorize payment of bills
7 that are not properly itemized. A request for payment shall be
8 presented under seal and reviewed ex parte with a court
9 reporter present. Every January 20, the statutory rate
10 prescribed in this subsection shall be automatically increased
11 or decreased, as applicable, by a percentage equal to the
12 percentage change in the consumer price index-u during the
13 preceding 12-month calendar year. "Consumer price index-u"
14 means the index published by the Bureau of Labor Statistics of
15 the United States Department of Labor that measures the average
16 change in prices of goods and services purchased by all urban
17 consumers, United States city average, all items, 1982-84=100.
18 The new rate resulting from each annual adjustment shall be
19 determined by the State Treasurer and made available to the
20 chief judge of each judicial circuit.

21 (c) Appointed trial counsel may also petition the court for
22 certification of expenses for reasonable and necessary capital
23 litigation expenses including, but not limited to,
24 investigatory and other assistance, expert, forensic, and
25 other witnesses, and mitigation specialists. Each provider of
26 proposed services must specify the best preliminary estimate

1 that can be made in light of information received in the case
2 at that point, and the provider must sign this estimate under
3 the provisions of Section 1-109 of the Code of Civil Procedure.
4 A provider of proposed services must also specify: (1) his or
5 her hourly rate; (2) the hourly rate of anyone else in his or
6 her employ for whom reimbursement is sought; and (3) the hourly
7 rate of any person or entity that may be subcontracted to
8 perform these services. Counsel may not petition for
9 certification of expenses that may have been provided or
10 compensated by the State Appellate Defender under item (c) (5.1)
11 of Section 10 of the State Appellate Defender Act. The
12 petitions shall be filed under seal and considered ex parte but
13 with a court reporter present for all ex parte conferences. If
14 the requests are submitted after services have been rendered,
15 the requests shall be supported by an invoice describing the
16 services rendered, the dates the services were performed and
17 the amount of time spent. These petitions shall be reviewed by
18 both the trial judge and the presiding judge of the circuit
19 court or the presiding judge's designee. The petitions and
20 orders shall be kept under seal and shall be exempt from
21 Freedom of Information requests until the conclusion of the
22 trial, even if the prosecution chooses not to pursue the death
23 penalty prior to trial or sentencing. If an ex parte hearing is
24 requested by defense counsel or deemed necessary by the trial
25 judge, the hearing shall be before the presiding judge or the
26 presiding judge's designee.

1 (d) Appointed trial counsel shall petition the court for
2 certification of compensation and expenses under this Section
3 periodically during the course of counsel's representation.
4 The petitions shall be supported by itemized bills showing the
5 date, the amount of time spent, the work done, and the total
6 being charged for each entry. The court shall not authorize
7 payment of bills that are not properly itemized. The court must
8 certify reasonable and necessary expenses of the petitioner for
9 travel and per diem (lodging, meals, and incidental expenses).
10 These expenses must be paid at the rate as promulgated by the
11 United States General Services Administration for these
12 expenses for the date and location in which they were incurred,
13 unless extraordinary reasons are shown for the difference. The
14 petitions shall be filed under seal and considered ex parte but
15 with a court reporter present for all ex parte conferences. The
16 petitions shall be reviewed by both the trial judge and the
17 presiding judge of the circuit court or the presiding judge's
18 designee. If an ex parte hearing is requested by defense
19 counsel or deemed necessary by the trial judge, the ex parte
20 hearing shall be before the presiding judge or the presiding
21 judge's designee. If the court determines that the compensation
22 and expenses should be paid from the Capital Litigation Trust
23 Fund, the court shall certify, on a form created by the State
24 Treasurer, that all or a designated portion of the amount
25 requested is reasonable, necessary, and appropriate for
26 payment from the Trust Fund. The form must also be signed by

1 lead trial counsel under the provisions of Section 1-109 of the
2 Code of Civil Procedure verifying that the amount requested is
3 reasonable, necessary, and appropriate. Bills submitted for
4 payment by any individual or entity seeking payment from the
5 Capital Litigation Trust Fund must also be accompanied by a
6 form created by the State Treasurer and signed by the
7 individual or responsible agent of the entity under the
8 provisions of Section 1-109 of the Code of Civil Procedure that
9 the amount requested is accurate and truthful and reflects time
10 spent or expenses incurred. Certification of compensation and
11 expenses by a court in any county other than Cook County shall
12 be delivered by the court to the State Treasurer and must be
13 paid by the State Treasurer directly from the Capital
14 Litigation Trust Fund if there are sufficient moneys in the
15 Trust Fund to pay the compensation and expenses. If the State
16 Treasurer finds within 14 days of his or her receipt of a
17 certification that the compensation and expenses to be paid are
18 unreasonable, unnecessary, or inappropriate, he or she may
19 return the certification to the court setting forth in detail
20 the objection or objections with a request for the court to
21 review the objection or objections before resubmitting the
22 certification. The State Treasurer must send the claimant a
23 copy of the objection or objections. The State Treasurer may
24 only seek a review of a specific objection once. The claimant
25 has 7 days from his or her receipt of the objections to file a
26 response with the court. With or without further hearing, the

1 court must promptly rule on the objections. The petitions and
2 orders shall be kept under seal and shall be exempt from
3 Freedom of Information requests until the conclusion of the
4 trial and appeal of the case, even if the prosecution chooses
5 not to pursue the death penalty prior to trial or sentencing.
6 Certification of compensation and expenses by a court in Cook
7 County shall be delivered by the court to the county treasurer
8 and paid by the county treasurer from moneys granted to the
9 county from the Capital Litigation Trust Fund.

10 Section 15. Capital Litigation Trust Fund.

11 (a) The Capital Litigation Trust Fund is created as a
12 special fund in the State Treasury. The Trust Fund shall be
13 administered by the State Treasurer to provide moneys for the
14 appropriations to be made, grants to be awarded, and
15 compensation and expenses to be paid under this Act. All
16 interest earned from the investment or deposit of moneys
17 accumulated in the Trust Fund shall, under Section 4.1 of the
18 State Finance Act, be deposited into the Trust Fund.

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

21 (c) Moneys deposited into the Trust Fund shall be used
22 exclusively for the purposes of providing funding for the
23 prosecution and defense of capital cases and for providing
24 funding for post-conviction proceedings in capital cases under
25 Article 122 of the Code of Criminal Procedure of 1963 and in

1 relation to petitions filed under Section 2-1401 of the Code of
2 Civil Procedure in relation to capital cases as provided in
3 this Act and shall not be appropriated, loaned, or in any
4 manner transferred to the General Revenue Fund of the State of
5 Illinois.

6 (d) Every fiscal year the State Treasurer shall transfer
7 from the General Revenue Fund to the Capital Litigation Trust
8 Fund an amount equal to the full amount of moneys appropriated
9 by the General Assembly (both by original and supplemental
10 appropriation), less any unexpended balance from the previous
11 fiscal year, from the Capital Litigation Trust Fund for the
12 specific purpose of making funding available for the
13 prosecution and defense of capital cases and for the litigation
14 expenses associated with 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 to
18 capital cases. The Public Defender and State's Attorney in Cook
19 County, the State Appellate Defender, the State's Attorneys
20 Appellate Prosecutor, and the Attorney General shall make
21 annual requests for appropriations from the Trust Fund.

22 (1) The Public Defender in Cook County shall request
23 appropriations to the State Treasurer for expenses
24 incurred by the Public Defender and for funding for private
25 appointed defense counsel in Cook County.

26 (2) The State's Attorney in Cook County shall request

1 an appropriation to the State Treasurer for expenses
2 incurred by the State's Attorney.

3 (3) The State Appellate Defender shall request a direct
4 appropriation from the Trust Fund for expenses incurred by
5 the State Appellate Defender in providing assistance to
6 trial attorneys under item (c)(5.1) of Section 10 of the
7 State Appellate Defender Act and for expenses incurred by
8 the State Appellate Defender in representing petitioners
9 in capital cases in post-conviction proceedings under
10 Article 122 of the Code of Criminal Procedure of 1963 and
11 in relation to petitions filed under Section 2-1401 of the
12 Code of Civil Procedure in relation to capital cases and
13 for the representation of those petitioners by attorneys
14 approved by or contracted with the State Appellate Defender
15 and an appropriation to the State Treasurer for payments
16 from the Trust Fund for the defense of cases in counties
17 other than Cook County.

18 (4) The State's Attorneys Appellate Prosecutor shall
19 request a direct appropriation from the Trust Fund to pay
20 expenses incurred by the State's Attorneys Appellate
21 Prosecutor and an appropriation to the State Treasurer for
22 payments from the Trust Fund for expenses incurred by
23 State's Attorneys in counties other than Cook County.

24 (5) The Attorney General shall request a direct
25 appropriation from the Trust Fund to pay expenses incurred
26 by the Attorney General in assisting the State's Attorneys

1 in counties other than Cook County and to pay for expenses
2 incurred by the Attorney General when the Attorney General
3 is ordered by the presiding judge of the Criminal Division
4 of the Circuit Court of Cook County to prosecute or
5 supervise the prosecution of Cook County cases and for
6 expenses incurred by the Attorney General in representing
7 the State in 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 The Public Defender and State's Attorney in Cook County,
12 the State Appellate Defender, the State's Attorneys
13 Appellate Prosecutor, and the Attorney General may each
14 request supplemental appropriations from the Trust Fund
15 during the fiscal year.

16 (e) Moneys in the Trust Fund shall be expended only as
17 follows:

18 (1) To pay the State Treasurer's costs to administer
19 the Trust Fund. The amount for this purpose may not exceed
20 5% in any one fiscal year of the amount otherwise
21 appropriated from the Trust Fund in the same fiscal year.

22 (2) To pay the capital litigation expenses of trial
23 defense and post-conviction proceedings in capital cases
24 under Article 122 of the Code of Criminal Procedure of 1963
25 and in relation to petitions filed under Section 2-1401 of
26 the Code of Civil Procedure in relation to capital cases

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

18 (3) To pay the compensation of trial attorneys, other
19 than public defenders or appellate defenders, who have been
20 appointed by the court to represent defendants who are
21 charged with capital crimes or attorneys approved by or
22 contracted with the State Appellate Defender to represent
23 petitioners in post-conviction proceedings in capital
24 cases under Article 122 of the Code of Criminal Procedure
25 of 1963 and in relation to petitions filed under Section
26 2-1401 of the Code of Civil Procedure in relation to

1 capital cases.

2 (4) To provide State's Attorneys with funding for
3 capital litigation expenses and for expenses of
4 representing the State in post-conviction proceedings in
5 capital cases under Article 122 of the Code of Criminal
6 Procedure of 1963 and in relation to petitions filed under
7 Section 2-1401 of the Code of Civil Procedure in relation
8 to capital cases including, but not limited to,
9 investigatory and other assistance and expert, forensic,
10 and other witnesses necessary to prosecute capital cases.
11 State's Attorneys in any county other than Cook County
12 seeking funding for capital litigation expenses and for
13 expenses of representing the State in post-conviction
14 proceedings in capital cases under Article 122 of the Code
15 of Criminal Procedure of 1963 and in relation to petitions
16 filed under Section 2-1401 of the Code of Civil Procedure
17 in relation to capital cases including, but not limited to,
18 investigatory and other assistance and expert, forensic,
19 or other witnesses under this Section may request that the
20 State's Attorneys Appellate Prosecutor or the Attorney
21 General, as the case may be, certify the expenses as
22 reasonable, necessary, and appropriate for payment from
23 the Trust Fund, on a form created by the State Treasurer.
24 Upon certification of the expenses and delivery of the
25 certification to the State Treasurer, the Treasurer shall
26 pay the expenses directly from the Capital Litigation Trust

1 Fund if there are sufficient moneys in the Trust Fund to
2 pay the expenses.

3 (5) To provide financial support through the Attorney
4 General under the Attorney General Act for the several
5 county State's Attorneys outside of Cook County, but shall
6 not be used to increase personnel for the Attorney
7 General's Office, except when the Attorney General is
8 ordered by the presiding judge of the Criminal Division of
9 the Circuit Court of Cook County to prosecute or supervise
10 the prosecution of Cook County cases.

11 (6) To provide financial support through the State's
12 Attorneys Appellate Prosecutor under the State's Attorneys
13 Appellate Prosecutor's Act for the several county State's
14 Attorneys outside of Cook County, but shall not be used to
15 increase personnel for the State's Attorneys Appellate
16 Prosecutor.

17 (7) To provide financial support to the State Appellate
18 Defender under the State Appellate Defender Act. Moneys
19 expended from the Trust Fund shall be in addition to county
20 funding for Public Defenders and State's Attorneys, and
21 shall not be used to supplant or reduce ordinary and
22 customary county funding.

23 (f) Moneys in the Trust Fund shall be appropriated to the
24 State Appellate Defender, the State's Attorneys Appellate
25 Prosecutor, the Attorney General, and the State Treasurer. The
26 State Appellate Defender shall receive an appropriation from

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

1 capital cases in counties other than Cook County; and (iv) to
2 pay the costs of administering the Trust Fund. All expenditures
3 and grants made from the Trust Fund shall be subject to audit
4 by the Auditor General.

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

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

10 (2) The State Treasurer shall establish rules and
11 procedures for grant applications. The rules shall require
12 the Cook County Treasurer as the grant recipient to report
13 on a periodic basis to the State Treasurer how much of the
14 grant has been expended, how much of the grant is
15 remaining, and the purposes for which the grant has been
16 used. The rules may also require the Cook County Treasurer
17 to certify on a periodic basis that expenditures of the
18 funds have been made for expenses that are reasonable,
19 necessary, and appropriate for payment from the Trust Fund.

20 (3) The State Treasurer shall make the grants to the
21 Cook County Treasurer as soon as possible after the
22 beginning of the State fiscal year.

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

25 (5) Grant moneys shall be paid to the Cook County
26 Treasurer in block grants and held in separate accounts for

1 the State's Attorney, the Public Defender, and court
2 appointed defense counsel other than the Cook County Public
3 Defender, respectively, for the designated fiscal year,
4 and are not subject to county appropriation.

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

7 (7) The Cook County Treasurer shall immediately make
8 payment from the appropriate separate account in the county
9 treasury for capital litigation expenses to the State's
10 Attorney, Public Defender, or court appointed defense
11 counsel other than the Public Defender, as the case may be,
12 upon order of the State's Attorney, Public Defender or the
13 court, respectively.

14 (h) If a defendant in a capital case in Cook County is
15 represented by court appointed counsel other than the Cook
16 County Public Defender, the appointed counsel shall petition
17 the court for an order directing the Cook County Treasurer to
18 pay the court appointed counsel's reasonable and necessary
19 compensation and capital litigation expenses from grant moneys
20 provided from the Trust Fund. The petitions shall be supported
21 by itemized bills showing the date, the amount of time spent,
22 the work done, and the total being charged for each entry. The
23 court shall not authorize payment of bills that are not
24 properly itemized. The petitions shall be filed under seal and
25 considered ex parte but with a court reporter present for all
26 ex parte conferences. The petitions shall be reviewed by both

1 the trial judge and the presiding judge of the circuit court or
2 the presiding judge's designee. The petitions and orders shall
3 be kept under seal and shall be exempt from Freedom of
4 Information requests until the conclusion of the trial and
5 appeal of the case, even if the prosecution chooses not to
6 pursue the death penalty prior to trial or sentencing. Orders
7 denying petitions for compensation or expenses are final.
8 Counsel may not petition for expenses that may have been
9 provided or compensated by the State Appellate Defender under
10 item (c) (5.1) of Section 10 of the State Appellate Defender
11 Act.

12 (i) In counties other than Cook County, and when the
13 Attorney General is ordered by the presiding judge of the
14 Criminal Division of the Circuit Court of Cook County to
15 prosecute or supervise the prosecution of Cook County cases,
16 and excluding capital litigation expenses or services that may
17 have been provided by the State Appellate Defender under item
18 (c) (5.1) of Section 10 of the State Appellate Defender Act:

19 (1) Upon certification by the circuit court, on a form
20 created by the State Treasurer, that all or a portion of
21 the expenses are reasonable, necessary, and appropriate
22 for payment from the Trust Fund and the court's delivery of
23 the certification to the Treasurer, the Treasurer shall pay
24 the certified expenses of Public Defenders and the State
25 Appellate Defender from the money appropriated to the
26 Treasurer for capital litigation expenses of Public

1 Defenders and post-conviction proceeding expenses in
2 capital cases of the State Appellate Defender and expenses
3 in relation to petitions filed under Section 2-1401 of the
4 Code of Civil Procedure in relation to capital cases in any
5 county other than Cook County, if there are sufficient
6 moneys in the Trust Fund to pay the expenses.

7 (2) If a defendant in a capital case is represented by
8 court appointed counsel other than the Public Defender, the
9 appointed counsel shall petition the court to certify
10 compensation and capital litigation expenses including,
11 but not limited to, investigatory and other assistance,
12 expert, forensic, and other witnesses, and mitigation
13 specialists as reasonable, necessary, and appropriate for
14 payment from the Trust Fund. If a petitioner in a capital
15 case who has filed a petition for post-conviction relief
16 under Article 122 of the Code of Criminal Procedure of 1963
17 or a petition under Section 2-1401 of the Code of Civil
18 Procedure in relation to capital cases is represented by an
19 attorney approved by or contracted with the State Appellate
20 Defender other than the State Appellate Defender, that
21 attorney shall petition the court to certify compensation
22 and litigation expenses of post-conviction proceedings
23 under Article 122 of the Code of Criminal Procedure of 1963
24 or in relation to petitions filed under Section 2-1401 of
25 the Code of Civil Procedure in relation to capital cases.
26 Upon certification on a form created by the State Treasurer

1 of all or a portion of the compensation and expenses
2 certified as reasonable, necessary, and appropriate for
3 payment from the Trust Fund and the court's delivery of the
4 certification to the Treasurer, the State Treasurer shall
5 pay the certified compensation and expenses from the money
6 appropriated to the Treasurer for that purpose, if there
7 are sufficient moneys in the Trust Fund to make those
8 payments.

9 (3) A petition for capital litigation expenses or
10 post-conviction proceeding expenses or expenses incurred
11 in filing a petition under Section 2-1401 of the Code of
12 Civil Procedure in relation to capital cases under this
13 subsection shall be considered under seal and reviewed ex
14 parte with a court reporter present. Orders denying
15 petitions for compensation or expenses are final.

16 (j) If the Trust Fund is discontinued or dissolved by an
17 Act of the General Assembly or by operation of law, any balance
18 remaining in the Trust Fund shall be returned to the General
19 Revenue Fund after deduction of administrative costs, any other
20 provision of this Act to the contrary notwithstanding.

21 Section 100. The Freedom of Information Act is amended by
22 changing Section 7.5 as follows:

23 (5 ILCS 140/7.5)

24 Sec. 7.5. Statutory exemptions. To the extent provided for

1 by the statutes referenced below, the following shall be exempt
2 from inspection and copying:

3 (a) All information determined to be confidential
4 under Section 4002 of the Technology Advancement and
5 Development Act.

6 (b) Library circulation and order records identifying
7 library users with specific materials under the Library
8 Records Confidentiality Act.

9 (c) Applications, related documents, and medical
10 records received by the Experimental Organ Transplantation
11 Procedures Board and any and all documents or other records
12 prepared by the Experimental Organ Transplantation
13 Procedures Board or its staff relating to applications it
14 has received.

15 (d) Information and records held by the Department of
16 Public Health and its authorized representatives relating
17 to known or suspected cases of sexually transmissible
18 disease or any information the disclosure of which is
19 restricted under the Illinois Sexually Transmissible
20 Disease Control Act.

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

23 (f) Firm performance evaluations under Section 55 of
24 the Architectural, Engineering, and Land Surveying
25 Qualifications Based Selection Act.

26 (g) Information the disclosure of which is restricted

1 and exempted under Section 50 of the Illinois Prepaid
2 Tuition Act.

3 (h) Information the disclosure of which is exempted
4 under the State Officials and Employees Ethics Act, and
5 records of any lawfully created State or local inspector
6 general's office that would be exempt if created or
7 obtained by an Executive Inspector General's office under
8 that Act.

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

13 (j) Information and data concerning the distribution
14 of surcharge moneys collected and remitted by carriers
15 under the Emergency Telephone System Act.

16 (k) Law enforcement officer identification information
17 or driver identification information compiled by a law
18 enforcement agency or the Department of Transportation
19 under Section 11-212 of the Illinois Vehicle Code.

20 (l) Records and information provided to a residential
21 health care facility resident sexual assault and death
22 review team or the Executive Council under the Abuse
23 Prevention Review Team Act.

24 (m) Information provided to the predatory lending
25 database created pursuant to Article 3 of the Residential
26 Real Property Disclosure Act, except to the extent

1 authorized under that Article.

2 (n) Defense budgets and petitions for certification of
3 compensation and expenses for court appointed trial
4 counsel as provided under Sections 10 and 15 of the Capital
5 Crimes Litigation Act of 2020. This subsection (n) shall
6 apply until the conclusion of the trial of the case, even
7 if the prosecution chooses not to pursue the death penalty
8 prior to trial or sentencing.

9 (o) Information that is prohibited from being
10 disclosed under Section 4 of the Illinois Health and
11 Hazardous Substances Registry Act.

12 (p) Security portions of system safety program plans,
13 investigation reports, surveys, schedules, lists, data, or
14 information compiled, collected, or prepared by or for the
15 Regional Transportation Authority under Section 2.11 of
16 the Regional Transportation Authority Act or the St. Clair
17 County Transit District under the Bi-State Transit Safety
18 Act.

19 (q) Information prohibited from being disclosed by the
20 Personnel Record Review Act.

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

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

25 (t) All identified or deidentified health information
26 in the form of health data or medical records contained in,

1 stored in, submitted to, transferred by, or released from
2 the Illinois Health Information Exchange, and identified
3 or deidentified health information in the form of health
4 data and medical records of the Illinois Health Information
5 Exchange in the possession of the Illinois Health
6 Information Exchange Authority due to its administration
7 of the Illinois Health Information Exchange. The terms
8 "identified" and "deidentified" shall be given the same
9 meaning as in the Health Insurance Portability and
10 Accountability Act of 1996, Public Law 104-191, or any
11 subsequent amendments thereto, and any regulations
12 promulgated thereunder.

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

16 (v) Names and information of people who have applied
17 for or received Firearm Owner's Identification Cards under
18 the Firearm Owners Identification Card Act or applied for
19 or received a concealed carry license under the Firearm
20 Concealed Carry Act, unless otherwise authorized by the
21 Firearm Concealed Carry Act; and databases under the
22 Firearm Concealed Carry Act, records of the Concealed Carry
23 Licensing Review Board under the Firearm Concealed Carry
24 Act, and law enforcement agency objections under the
25 Firearm Concealed Carry Act.

26 (w) Personally identifiable information which is

1 exempted from disclosure under subsection (g) of Section
2 19.1 of the Toll Highway Act.

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

6 (y) Confidential information under the Adult
7 Protective Services Act and its predecessor enabling
8 statute, the Elder Abuse and Neglect Act, including
9 information about the identity and administrative finding
10 against any caregiver of a verified and substantiated
11 decision of abuse, neglect, or financial exploitation of an
12 eligible adult maintained in the Registry established
13 under Section 7.5 of the Adult Protective Services Act.

14 (z) Records and information provided to a fatality
15 review team or the Illinois Fatality Review Team Advisory
16 Council under Section 15 of the Adult Protective Services
17 Act.

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

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

22 (cc) Recordings made under the Law Enforcement
23 Officer-Worn Body Camera Act, except to the extent
24 authorized under that Act.

25 (dd) Information that is prohibited from being
26 disclosed under Section 45 of the Condominium and Common

1 Interest Community Ombudsperson Act.

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

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

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

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

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

14 (jj) Information and reports that are required to be
15 submitted to the Department of Labor by registering day and
16 temporary labor service agencies but are exempt from
17 disclosure under subsection (a-1) of Section 45 of the Day
18 and Temporary Labor Services Act.

19 (kk) Information prohibited from disclosure under the
20 Seizure and Forfeiture Reporting Act.

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

24 (mm) Records that are exempt from disclosure under
25 Section 4.2 of the Crime Victims Compensation Act.

26 (nn) Information that is exempt from disclosure under

1 Section 70 of the Higher Education Student Assistance Act.

2 (oo) Communications, notes, records, and reports
3 arising out of a peer support counseling session prohibited
4 from disclosure under the First Responders Suicide
5 Prevention Act.

6 (pp) Names and all identifying information relating to
7 an employee of an emergency services provider or law
8 enforcement agency under the First Responders Suicide
9 Prevention Act.

10 (qq) Information and records held by the Department of
11 Public Health and its authorized representatives collected
12 under the Reproductive Health Act.

13 (rr) Information that is exempt from disclosure under
14 the Cannabis Regulation and Tax Act.

15 (ss) Data reported by an employer to the Department of
16 Human Rights pursuant to Section 2-108 of the Illinois
17 Human Rights Act.

18 (tt) Recordings made under the Children's Advocacy
19 Center Act, except to the extent authorized under that Act.

20 (uu) Information that is exempt from disclosure under
21 Section 50 of the Sexual Assault Evidence Submission Act.

22 (vv) Information that is exempt from disclosure under
23 subsections (f) and (j) of Section 5-36 of the Illinois
24 Public Aid Code.

25 (ww) Information that is exempt from disclosure under
26 Section 16.8 of the State Treasurer Act.

1 (xx) Information that is exempt from disclosure or
2 information that shall not be made public under the
3 Illinois Insurance Code.

4 (yy) ~~(oo)~~ Information prohibited from being disclosed
5 under the Illinois Educational Labor Relations Act.

6 (zz) ~~(pp)~~ Information prohibited from being disclosed
7 under the Illinois Public Labor Relations Act.

8 (aaa) ~~(qq)~~ Information prohibited from being disclosed
9 under Section 1-167 of the Illinois Pension Code.

10 (Source: P.A. 100-20, eff. 7-1-17; 100-22, eff. 1-1-18;
11 100-201, eff. 8-18-17; 100-373, eff. 1-1-18; 100-464, eff.
12 8-28-17; 100-465, eff. 8-31-17; 100-512, eff. 7-1-18; 100-517,
13 eff. 6-1-18; 100-646, eff. 7-27-18; 100-690, eff. 1-1-19;
14 100-863, eff. 8-14-18; 100-887, eff. 8-14-18; 101-13, eff.
15 6-12-19; 101-27, eff. 6-25-19; 101-81, eff. 7-12-19; 101-221,
16 eff. 1-1-20; 101-236, eff. 1-1-20; 101-375, eff. 8-16-19;
17 101-377, eff. 8-16-19; 101-452, eff. 1-1-20; 101-466, eff.
18 1-1-20; 101-600, eff. 12-6-19; 101-620, eff. 12-20-19; revised
19 1-6-20.)

20 Section 105. The Criminal Code of 2012 is amended by
21 changing Section 9-1 as follows:

22 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

23 Sec. 9-1. First degree murder; death penalties;
24 exceptions; separate hearings; proof; findings; appellate

1 procedures; reversals.

2 (a) A person who kills an individual without lawful
3 justification commits first degree murder if, in performing the
4 acts which cause the death:

5 (1) he or she either intends to kill or do great bodily
6 harm to that individual or another, or knows that such acts
7 will cause death to that individual or another; or

8 (2) he or she knows that such acts create a strong
9 probability of death or great bodily harm to that
10 individual or another; or

11 (3) he or she is attempting or committing a forcible
12 felony other than second degree murder.

13 (b) Aggravating Factors. A defendant who at the time of the
14 commission of the offense has attained the age of 18 or more
15 and who has been found guilty of first degree murder may be
16 sentenced to death if:

17 (1) the murdered individual was a peace officer,
18 employee of an institution or facility of the Department of
19 Corrections or any similar local correctional agency,
20 emergency medical technician, or fireman killed in the
21 course of performing his or her official duties, to prevent
22 the performance of his or her official duties, or in
23 retaliation for performing his or her official duties, and
24 the defendant knew or should have known that the murdered
25 individual was so employed ~~a peace officer or fireman~~; or

26 (2) (blank); or ~~the murdered individual was an employee~~

1 ~~of an institution or facility of the Department of~~
2 ~~Corrections, or any similar local correctional agency,~~
3 ~~killed in the course of performing his or her official~~
4 ~~duties, to prevent the performance of his or her official~~
5 ~~duties, or in retaliation for performing his or her~~
6 ~~official duties, or the murdered individual was an inmate~~
7 ~~at such institution or facility and was killed on the~~
8 ~~grounds thereof, or the murdered individual was otherwise~~
9 ~~present in such institution or facility with the knowledge~~
10 ~~and approval of the chief administrative officer thereof;~~
11 ~~or~~

12 (3) the defendant has been convicted of murdering two
13 or more individuals under subsection (a) of this Section or
14 under any law of the United States or of any state which is
15 substantially similar to subsection (a) of this Section
16 regardless of whether the deaths occurred as the result of
17 the same act or of several related or unrelated acts so
18 long as the deaths were the result of either an intent to
19 kill more than one person or of separate acts which the
20 defendant knew would cause death or create a strong
21 probability of death or great bodily harm to the murdered
22 individual or another; or

23 (4) (blank); ~~the murdered individual was killed as a~~
24 ~~result of the hijacking of an airplane, train, ship, bus,~~
25 ~~or other public conveyance; or~~

26 (5) (blank); ~~or the defendant committed the murder~~

~~pursuant to a contract, agreement, or understanding by which he or she was to receive money or anything of value in return for committing the murder or procured another to commit the murder for money or anything of value; or~~

(6) (blank); or ~~the murdered individual was killed in the course of another felony if:~~

~~(a) the murdered individual:~~

~~(i) was actually killed by the defendant, or~~

~~(ii) received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by one or more persons for whose conduct the defendant is legally accountable under Section 5-2 of this Code, and the physical injuries inflicted by either the defendant or the other person or persons for whose conduct he is legally accountable caused the death of the murdered individual; and~~

~~(b) in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual under the circumstances of subdivision (ii) of subparagraph (a) of paragraph (6) of subsection (b) of this Section, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to~~

1 ~~the murdered individual or another; and~~

2 ~~(c) the other felony was an inherently violent~~
3 ~~crime or the attempt to commit an inherently violent~~
4 ~~crime. In this subparagraph (c), "inherently violent~~
5 ~~crime" includes, but is not limited to, armed robbery,~~
6 ~~robbery, predatory criminal sexual assault of a child,~~
7 ~~aggravated criminal sexual assault, aggravated~~
8 ~~kidnapping, aggravated vehicular hijacking, aggravated~~
9 ~~arson, aggravated stalking, residential burglary, and~~
10 ~~home invasion; or~~

11 (6.5) the murdered individual was killed during the
12 commission of, or attempted commission of, a violation of
13 Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of
14 the Criminal Code of 2012; or

15 (7) the murdered individual was under 12 years of age
16 and the death resulted from exceptionally brutal or heinous
17 behavior indicative of wanton cruelty; or

18 (8) (blank); or ~~the defendant committed the murder with~~
19 ~~intent to prevent the murdered individual from testifying~~
20 ~~or participating in any criminal investigation or~~
21 ~~prosecution or giving material assistance to the State in~~
22 ~~any investigation or prosecution, either against the~~
23 ~~defendant or another; or the defendant committed the murder~~
24 ~~because the murdered individual was a witness in any~~
25 ~~prosecution or gave material assistance to the State in any~~
26 ~~investigation or prosecution, either against the defendant~~

1 ~~or another; for purposes of this paragraph (8),~~
2 ~~"participating in any criminal investigation or~~
3 ~~prosecution" is intended to include those appearing in the~~
4 ~~proceedings in any capacity such as trial judges,~~
5 ~~prosecutors, defense attorneys, investigators, witnesses,~~
6 ~~or jurors; or~~

7 (9) (blank); or ~~the defendant, while committing an~~
8 ~~offense punishable under Sections 401, 401.1, 401.2, 405,~~
9 ~~405.2, 407 or 407.1 or subsection (b) of Section 404 of the~~
10 ~~Illinois Controlled Substances Act, or while engaged in a~~
11 ~~conspiracy or solicitation to commit such offense,~~
12 ~~intentionally killed an individual or counseled,~~
13 ~~commanded, induced, procured or caused the intentional~~
14 ~~killing of the murdered individual; or~~

15 (10) (blank); or ~~the defendant was incarcerated in an~~
16 ~~institution or facility of the Department of Corrections at~~
17 ~~the time of the murder, and while committing an offense~~
18 ~~punishable as a felony under Illinois law, or while engaged~~
19 ~~in a conspiracy or solicitation to commit such offense,~~
20 ~~intentionally killed an individual or counseled,~~
21 ~~commanded, induced, procured or caused the intentional~~
22 ~~killing of the murdered individual; or~~

23 (11) (blank); or ~~the murder was committed in a cold,~~
24 ~~calculated and premeditated manner pursuant to a~~
25 ~~preconceived plan, scheme or design to take a human life by~~
26 ~~unlawful means, and the conduct of the defendant created a~~

1 ~~reasonable expectation that the death of a human being~~
2 ~~would result therefrom; or~~

3 (12) (blank); or ~~the murdered individual was an~~
4 ~~emergency medical technician — ambulance, emergency~~
5 ~~medical technician — intermediate, emergency medical~~
6 ~~technician — paramedic, ambulance driver, or other medical~~
7 ~~assistance or first aid personnel, employed by a~~
8 ~~municipality or other governmental unit, killed in the~~
9 ~~course of performing his official duties, to prevent the~~
10 ~~performance of his official duties, or in retaliation for~~
11 ~~performing his official duties, and the defendant knew or~~
12 ~~should have known that the murdered individual was an~~
13 ~~emergency medical technician — ambulance, emergency~~
14 ~~medical technician — intermediate, emergency medical~~
15 ~~technician — paramedic, ambulance driver, or other medical~~
16 ~~assistance or first aid personnel; or~~

17 (13) (blank); or ~~the defendant was a principal~~
18 ~~administrator, organizer, or leader of a calculated~~
19 ~~criminal drug conspiracy consisting of a hierarchical~~
20 ~~position of authority superior to that of all other members~~
21 ~~of the conspiracy, and the defendant counseled, commanded,~~
22 ~~induced, procured, or caused the intentional killing of the~~
23 ~~murdered person; or~~

24 (14) the murder was intentional and involved the
25 infliction of torture. For the purpose of this Section
26 torture means the infliction of or subjection to extreme

1 physical pain, motivated by an intent to increase or
2 prolong the pain, suffering or agony of the victim; or

3 (15) (blank); or ~~the murder was committed as a result~~
4 ~~of the intentional discharge of a firearm by the defendant~~
5 ~~from a motor vehicle and the victim was not present within~~
6 ~~the motor vehicle; or~~

7 (16) (blank); or ~~the murdered individual was 60 years~~
8 ~~of age or older and the death resulted from exceptionally~~
9 ~~brutal or heinous behavior indicative of wanton cruelty; or~~

10 (17) (blank); or ~~the murdered individual was a person~~
11 ~~with a disability and the defendant knew or should have~~
12 ~~known that the murdered individual was a person with a~~
13 ~~disability. For purposes of this paragraph (17), "person~~
14 ~~with a disability" means a person who suffers from a~~
15 ~~permanent physical or mental impairment resulting from~~
16 ~~disease, an injury, a functional disorder, or a congenital~~
17 ~~condition that renders the person incapable of adequately~~
18 ~~providing for his or her own health or personal care; or~~

19 (18) (blank); or ~~the murder was committed by reason of~~
20 ~~any person's activity as a community policing volunteer or~~
21 ~~to prevent any person from engaging in activity as a~~
22 ~~community policing volunteer; or~~

23 (19) (blank); or ~~the murdered individual was subject to~~
24 ~~an order of protection and the murder was committed by a~~
25 ~~person against whom the same order of protection was issued~~
26 ~~under the Illinois Domestic Violence Act of 1986; or~~

1 (20) (blank); or ~~the murdered individual was known by~~
2 ~~the defendant to be a teacher or other person employed in~~
3 ~~any school and the teacher or other employee is upon the~~
4 ~~grounds of a school or grounds adjacent to a school, or is~~
5 ~~in any part of a building used for school purposes; or~~

6 (21) the murder was committed by the defendant in
7 connection with or as a result of the offense of terrorism
8 as defined in Section 29D-14.9 of this Code; or

9 (22) the murdered individual was a member of a
10 congregation engaged in prayer or other religious
11 activities at a church, synagogue, mosque, or other
12 building, structure, or place used for religious worship.

13 (b-5) Aggravating Factor; Natural Life Imprisonment. A
14 defendant who has been found guilty of first degree murder and
15 who at the time of the commission of the offense had attained
16 the age of 18 years or more may be sentenced to natural life
17 imprisonment if (i) the murdered individual was a physician,
18 physician assistant, psychologist, nurse, or advanced practice
19 registered nurse, (ii) the defendant knew or should have known
20 that the murdered individual was a physician, physician
21 assistant, psychologist, nurse, or advanced practice
22 registered nurse, and (iii) the murdered individual was killed
23 in the course of acting in his or her capacity as a physician,
24 physician assistant, psychologist, nurse, or advanced practice
25 registered nurse, or to prevent him or her from acting in that
26 capacity, or in retaliation for his or her acting in that

1 capacity.

2 (c) Consideration of factors in Aggravation and
3 Mitigation.

4 The court shall consider, or shall instruct the jury to
5 consider any aggravating and any mitigating factors which are
6 relevant to the imposition of the death penalty. Aggravating
7 factors may include but need not be limited to those factors
8 set forth in subsection (b). Mitigating factors may include but
9 need not be limited to the following:

10 (1) the defendant has no significant history of prior
11 criminal activity;

12 (2) the murder was committed while the defendant was
13 under the influence of extreme mental or emotional
14 disturbance, although not such as to constitute a defense
15 to prosecution;

16 (3) the murdered individual was a participant in the
17 defendant's homicidal conduct or consented to the
18 homicidal act;

19 (4) the defendant acted under the compulsion of threat
20 or menace of the imminent infliction of death or great
21 bodily harm;

22 (5) the defendant was not personally present during
23 commission of the act or acts causing death;

24 (6) the defendant's background includes a history of
25 extreme emotional or physical abuse;

26 (7) the defendant suffers from a reduced mental

1 capacity.

2 Provided, however, that an action that does not otherwise
3 mitigate first degree murder cannot qualify as a mitigating
4 factor for first degree murder because of the discovery,
5 knowledge, or disclosure of the victim's sexual orientation as
6 defined in Section 1-103 of the Illinois Human Rights Act.

7 (d) Separate sentencing hearing.

8 Where requested by the State, the court shall conduct a
9 separate sentencing proceeding to determine the existence of
10 factors set forth in subsection (b) and to consider any
11 aggravating or mitigating factors as indicated in subsection
12 (c). The proceeding shall be conducted:

13 (1) before the jury that determined the defendant's
14 guilt; or

15 (2) before a jury impanelled for the purpose of the
16 proceeding if:

17 A. the defendant was convicted upon a plea of
18 guilty; or

19 B. the defendant was convicted after a trial before
20 the court sitting without a jury; or

21 C. the court for good cause shown discharges the
22 jury that determined the defendant's guilt; or

23 (3) before the court alone if the defendant waives a
24 jury for the separate proceeding.

25 (e) Evidence and Argument.

26 During the proceeding any information relevant to any of

1 the factors set forth in subsection (b) may be presented by
2 either the State or the defendant under the rules governing the
3 admission of evidence at criminal trials. Any information
4 relevant to any additional aggravating factors or any
5 mitigating factors indicated in subsection (c) may be presented
6 by the State or defendant regardless of its admissibility under
7 the rules governing the admission of evidence at criminal
8 trials. The State and the defendant shall be given fair
9 opportunity to rebut any information received at the hearing.

10 (f) Proof.

11 The burden of proof of establishing the existence of any of
12 the factors set forth in subsection (b) is on the State and
13 shall not be satisfied unless established beyond a reasonable
14 doubt.

15 (g) Procedure - Jury.

16 If at the separate sentencing proceeding the jury finds
17 that none of the factors set forth in subsection (b) exists,
18 the court shall sentence the defendant to a term of
19 imprisonment under Chapter V of the Unified Code of
20 Corrections. If there is a unanimous finding by the jury that
21 one or more of the factors set forth in subsection (b) exist,
22 the jury shall consider aggravating and mitigating factors as
23 instructed by the court and shall determine whether the
24 sentence of death shall be imposed. If the jury determines
25 unanimously, after weighing the factors in aggravation and
26 mitigation, that death is the appropriate sentence, the court

1 shall sentence the defendant to death. If the court does not
2 concur with the jury determination that death is the
3 appropriate sentence, the court shall set forth reasons in
4 writing including what facts or circumstances the court relied
5 upon, along with any relevant documents, that compelled the
6 court to non-concur with the sentence. This document and any
7 attachments shall be part of the record for appellate review.
8 The court shall be bound by the jury's sentencing
9 determination.

10 If after weighing the factors in aggravation and
11 mitigation, one or more jurors determines that death is not the
12 appropriate sentence, the court shall sentence the defendant to
13 a term of imprisonment under Chapter V of the Unified Code of
14 Corrections.

15 (h) Procedure - No Jury.

16 In a proceeding before the court alone, if the court finds
17 that none of the factors found in subsection (b) exists, the
18 court shall sentence the defendant to a term of imprisonment
19 under Chapter V of the Unified Code of Corrections.

20 If the Court determines that one or more of the factors set
21 forth in subsection (b) exists, the Court shall consider any
22 aggravating and mitigating factors as indicated in subsection
23 (c). If the Court determines, after weighing the factors in
24 aggravation and mitigation, that death is the appropriate
25 sentence, the Court shall sentence the defendant to death.

26 If the court finds that death is not the appropriate

1 sentence, the court shall sentence the defendant to a term of
2 imprisonment under Chapter V of the Unified Code of
3 Corrections.

4 (h-5) Decertification as a capital case.

5 In a case in which the defendant has been found guilty of
6 first degree murder by a judge or jury, or a case on remand for
7 resentencing, and the State seeks the death penalty as an
8 appropriate sentence, on the court's own motion or the written
9 motion of the defendant, the court may decertify the case as a
10 death penalty case if the court finds that the only evidence
11 supporting the defendant's conviction is the uncorroborated
12 testimony of an informant witness, as defined in Section 115-21
13 of the Code of Criminal Procedure of 1963, concerning the
14 confession or admission of the defendant or that the sole
15 evidence against the defendant is a single eyewitness or single
16 accomplice without any other corroborating evidence. If the
17 court decertifies the case as a capital case under either of
18 the grounds set forth above, the court shall issue a written
19 finding. The State may pursue its right to appeal the
20 decertification pursuant to Supreme Court Rule 604(a)(1). If
21 the court does not decertify the case as a capital case, the
22 matter shall proceed to the eligibility phase of the sentencing
23 hearing.

24 (i) Appellate Procedure.

25 The conviction and sentence of death shall be subject to
26 automatic review by the Supreme Court. Such review shall be in

1 accordance with rules promulgated by the Supreme Court. The
2 Illinois Supreme Court may overturn the death sentence, and
3 order the imposition of imprisonment under Chapter V of the
4 Unified Code of Corrections if the court finds that the death
5 sentence is fundamentally unjust as applied to the particular
6 case. If the Illinois Supreme Court finds that the death
7 sentence is fundamentally unjust as applied to the particular
8 case, independent of any procedural grounds for relief, the
9 Illinois Supreme Court shall issue a written opinion explaining
10 this finding.

11 (j) Disposition of reversed death sentence.

12 In the event that the death penalty in this Act is held to
13 be unconstitutional by the Supreme Court of the United States
14 or of the State of Illinois, any person convicted of first
15 degree murder shall be sentenced by the court to a term of
16 imprisonment under Chapter V of the Unified Code of
17 Corrections.

18 In the event that any death sentence pursuant to the
19 sentencing provisions of this Section is declared
20 unconstitutional by the Supreme Court of the United States or
21 of the State of Illinois, the court having jurisdiction over a
22 person previously sentenced to death shall cause the defendant
23 to be brought before the court, and the court shall sentence
24 the defendant to a term of imprisonment under Chapter V of the
25 Unified Code of Corrections.

26 (k) Guidelines for seeking the death penalty.

1 The Attorney General and State's Attorneys Association
2 shall consult on voluntary guidelines for procedures governing
3 whether or not to seek the death penalty. The guidelines do not
4 have the force of law and are only advisory in nature.

5 (Source: P.A. 100-460, eff. 1-1-18; 100-513, eff. 1-1-18;
6 100-863, eff. 8-14-18; 101-223, eff. 1-1-20.)

7 Section 110. The Code of Criminal Procedure of 1963 is
8 amended by changing Sections 113-3 and 119-1 as follows:

9 (725 ILCS 5/113-3) (from Ch. 38, par. 113-3)

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

19 (b) In all cases, except where the penalty is a fine only,
20 if the court determines that the defendant is indigent and
21 desires counsel, the Public Defender shall be appointed as
22 counsel. If there is no Public Defender in the county or if the
23 defendant requests counsel other than the Public Defender and
24 the court finds that the rights of the defendant will be

1 prejudiced by the appointment of the Public Defender, the court
2 shall appoint as counsel a licensed attorney at law of this
3 State, except that in a county having a population of 2,000,000
4 or more the Public Defender shall be appointed as counsel in
5 all misdemeanor cases where the defendant is indigent and
6 desires counsel unless the case involves multiple defendants,
7 in which case the court may appoint counsel other than the
8 Public Defender for the additional defendants. The court shall
9 require an affidavit signed by any defendant who requests
10 court-appointed counsel. Such affidavit shall be in the form
11 established by the Supreme Court containing sufficient
12 information to ascertain the assets and liabilities of that
13 defendant. The Court may direct the Clerk of the Circuit Court
14 to assist the defendant in the completion of the affidavit. Any
15 person who knowingly files such affidavit containing false
16 information concerning his assets and liabilities shall be
17 liable to the county where the case, in which such false
18 affidavit is filed, is pending for the reasonable value of the
19 services rendered by the public defender or other
20 court-appointed counsel in the case to the extent that such
21 services were unjustly or falsely procured.

22 (c) Upon the filing with the court of a verified statement
23 of services rendered the court shall order the county treasurer
24 of the county of trial to pay counsel other than the Public
25 Defender a reasonable fee. The court shall consider all
26 relevant circumstances, including but not limited to the time

1 spent while court is in session, other time spent in
2 representing the defendant, and expenses reasonably incurred
3 by counsel. In counties with a population greater than
4 2,000,000, the court shall order the county treasurer of the
5 county of trial to pay counsel other than the Public Defender a
6 reasonable fee stated in the order and based upon a rate of
7 compensation of not more than \$40 for each hour spent while
8 court is in session and not more than \$30 for each hour
9 otherwise spent representing a defendant, and such
10 compensation shall not exceed \$150 for each defendant
11 represented in misdemeanor cases and \$1250 in felony cases, in
12 addition to expenses reasonably incurred as hereinafter in this
13 Section provided, except that, in extraordinary circumstances,
14 payment in excess of the limits herein stated may be made if
15 the trial court certifies that such payment is necessary to
16 provide fair compensation for protracted representation. A
17 trial court may entertain the filing of this verified statement
18 before the termination of the cause, and may order the
19 provisional payment of sums during the pendency of the cause.

20 (d) In capital cases, in addition to counsel, if the court
21 determines that the defendant is indigent the court may, upon
22 the filing with the court of a verified statement of services
23 rendered, order the county Treasurer of the county of trial to
24 pay necessary expert witnesses for defendant reasonable
25 compensation stated in the order not to exceed \$250 for each
26 defendant.

1 (e) If the court in any county having a population greater
2 than 2,000,000 determines that the defendant is indigent the
3 court may, upon the filing with the court of a verified
4 statement of such expenses, order the county treasurer of the
5 county of trial, in such counties having a population greater
6 than 2,000,000 to pay the general expenses of the trial
7 incurred by the defendant not to exceed \$50 for each defendant.

8 (f) The provisions of this Section relating to appointment
9 of counsel, compensation of counsel, and payment of expenses in
10 capital cases apply except when the compensation and expenses
11 are being provided under the Capital Crimes Litigation Act of
12 2020.

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

14 (725 ILCS 5/119-1)

15 Sec. 119-1. Death penalty restored ~~abolished~~.

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

20 (b) All unobligated and unexpended moneys remaining in ~~the~~
21 ~~Capital Litigation Trust Fund on the effective date of this~~
22 ~~amendatory Act of the 96th General Assembly shall be~~
23 ~~transferred into~~ the Death Penalty Abolition Fund on the
24 effective date of this amendatory Act of the 101st General
25 Assembly shall be transferred into the Capital Litigation Trust

1 ~~Fund , a special fund in the State treasury, to be expended by~~
2 ~~the Illinois Criminal Justice Information Authority, for~~
3 ~~services for families of victims of homicide or murder and for~~
4 ~~training of law enforcement personnel.~~

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

6 Section 115. The State Appellate Defender Act is amended by
7 changing Section 10 as follows:

8 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

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

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

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

16 (c) The State Appellate Defender may:

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

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

22 (3) cooperate and consult with state agencies,
23 professional associations, and other groups concerning the
24 causes of criminal conduct, the rehabilitation and

1 correction of persons charged with and convicted of crime,
2 the administration of criminal justice, and, in counties of
3 less than 1,000,000 population, study, design, develop and
4 implement model systems for the delivery of trial level
5 defender services, and make an annual report to the General
6 Assembly;

7 (4) hire investigators to provide investigative
8 services to appointed counsel and county public defenders;

9 (5) (blank);

10 (5.1) in cases in which a death sentence is an
11 authorized disposition, provide trial counsel with legal
12 assistance and the assistance of expert witnesses,
13 investigators, and mitigation specialists from funds
14 appropriated to the State Appellate Defender specifically
15 for that purpose by the General Assembly. The Office of
16 State Appellate Defender shall not be appointed to serve as
17 trial counsel in capital cases;

18 (5.5) provide training to county public defenders;

19 (5.7) provide county public defenders with the
20 assistance of expert witnesses and investigators from
21 funds appropriated to the State Appellate Defender
22 specifically for that purpose by the General Assembly. The
23 Office of the State Appellate Defender shall not be
24 appointed to act as trial counsel;

25 (6) develop a Juvenile Defender Resource Center to: (i)
26 study, design, develop, and implement model systems for the

1 delivery of trial level defender services for juveniles in
2 the justice system; (ii) in cases in which a sentence of
3 incarceration or an adult sentence, or both, is an
4 authorized disposition, provide trial counsel with legal
5 advice and the assistance of expert witnesses and
6 investigators from funds appropriated to the Office of the
7 State Appellate Defender by the General Assembly
8 specifically for that purpose; (iii) develop and provide
9 training to public defenders on juvenile justice issues,
10 utilizing resources including the State and local bar
11 associations, the Illinois Public Defender Association,
12 law schools, the Midwest Juvenile Defender Center, and pro
13 bono efforts by law firms; and (iv) make an annual report
14 to the General Assembly.

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

1 this inquiry may not be disclosed by the investigators.

2 (c-5) For each State fiscal year, the State Appellate
3 Defender shall request a direct appropriation from the Capital
4 Litigation Trust Fund for expenses incurred by the State
5 Appellate Defender in providing assistance to trial attorneys
6 under paragraph (5.1) of subsection (c) of this Section and for
7 expenses incurred by the State Appellate Defender in
8 representing petitioners in capital cases in post-conviction
9 proceedings under Article 122 of the Code of Criminal Procedure
10 of 1963 and in relation to petitions filed under Section 2-1401
11 of the Code of Civil Procedure in relation to capital cases and
12 for the representation of those petitioners by attorneys
13 approved by or contracted with the State Appellate Defender and
14 an appropriation to the State Treasurer for payments from the
15 Trust Fund for the defense of cases in counties other than Cook
16 County. The State Appellate Defender may appear before the
17 General Assembly at other times during the State's fiscal year
18 to request supplemental appropriations from the Trust Fund to
19 the State Treasurer.

20 (d) (Blank).

21 (e) The requirement for reporting to the General Assembly
22 shall be satisfied by filing copies of the report as required
23 by Section 3.1 of the General Assembly Organization Act and
24 filing such additional copies with the State Government Report
25 Distribution Center for the General Assembly as is required
26 under paragraph (t) of Section 7 of the State Library Act.

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