



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5337

Introduced 1/31/2022, by Rep. Patrick Windhorst

SYNOPSIS AS INTRODUCED:

New Act

5 ILCS 140/7.5

30 ILCS 105/5.970 new

720 ILCS 5/9-1

from Ch. 38, par. 9-1

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. Restores the death penalty for the first degree murder of a peace officer killed while performing his or her official duties, to prevent the performance of his or her official duties, or in retaliation for performing his or her official duties, and the defendant knew or should have known that the murdered individual was a peace officer. Enacts the Capital Crimes Litigation Act of 2022. Provides specified funding and resources for cases in which a sentence of death is an authorized disposition. Creates the Capital Litigation Trust Fund. Provides that all unobligated and unexpended moneys in the Death Penalty Abolition Fund are transferred into the Capital Litigation Trust Fund. Amends the State Appellate Defender Act. Provides that in cases in which a sentence of death 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. Amends the Freedom of Information Act, the State Finance Act, and the Criminal Code of 2012 to make conforming changes.

LRB102 23034 RLC 32188 b

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 2022.

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
10 certificate indicating he or she will not seek the death
11 penalty or stated on the record in open court that the death
12 penalty will not be sought, the trial court shall immediately
13 appoint the Public Defender, or any other qualified attorney
14 or attorneys as the Illinois Supreme Court shall by rule
15 provide, to represent the defendant as trial counsel. If the
16 Public Defender is appointed, he or she shall immediately
17 assign the attorney or attorneys who are public defenders to
18 represent the defendant. The counsel shall meet the
19 qualifications as the Supreme Court shall by rule provide. At
20 the request of court appointed counsel in a case in which the
21 death penalty is sought, attorneys employed by the State
22 Appellate Defender may enter an appearance for the limited
23 purpose of assisting counsel 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
19 budgets should be submitted ex parte and filed and
20 maintained under seal in order to protect the defendant's
21 right to effective assistance of counsel, right not to
22 incriminate him or herself and all applicable privileges.
23 Case budgets shall be reviewed and approved by the judge
24 assigned to try the case. As provided under subsection (c)
25 of this Section, petitions for compensation shall be

1 reviewed by both the trial judge and the presiding judge
2 or the presiding 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
24 limited to, counsel, expert, and investigative
25 services, that are likely to be needed through the
26 guilt and penalty phases of the trial. The court shall

1 have discretion to require that budgets be prepared
2 for shorter intervals 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
10 hearing is requested by defense counsel or deemed
11 necessary by the trial judge prior to modifying a budget,
12 the ex parte hearing shall be before the presiding judge
13 or the presiding judge's designee. The judge may then
14 authorize the services nunc pro tunc. If the presiding
15 judge or the presiding judge's designee finds that the
16 services were not 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
26 or 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
16 average change in prices of goods and services purchased by
17 all urban consumers, United States city average, all items,
18 1982-84=100. The new rate resulting from each annual
19 adjustment shall be determined by the State Treasurer and made
20 available to the chief judge of each judicial circuit.

21 (c) Appointed trial counsel may also petition the court
22 for certification of expenses for reasonable and necessary
23 capital 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
4 Procedure. A provider of proposed services must also specify
5 (1) his or her hourly rate; (2) the hourly rate of anyone else
6 in his or her employ for whom reimbursement is sought; and (3)
7 the hourly rate of any person or entity that may be
8 subcontracted to perform these services. Counsel may not
9 petition for certification of expenses that may have been
10 provided or compensated by the State Appellate Defender under
11 item (c)(5.1) of Section 10 of the State Appellate Defender
12 Act. The petitions shall be filed under seal and considered ex
13 parte but with a court reporter present for all ex parte
14 conferences. If the requests are submitted after services have
15 been rendered, the requests shall be supported by an invoice
16 describing the services rendered, the dates the services were
17 performed and the amount of time spent. These petitions shall
18 be reviewed by both the trial judge and the presiding judge of
19 the circuit court or the presiding judge's designee. The
20 petitions and orders shall be kept under seal and shall be
21 exempt from Freedom of Information requests until the
22 conclusion of the trial, even if the prosecution chooses not
23 to pursue the death penalty prior to trial or sentencing. If an
24 ex parte hearing is requested by defense counsel or deemed
25 necessary by the trial judge, the hearing shall be before the
26 presiding judge or the 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
8 must certify reasonable and necessary expenses of the
9 petitioner for travel and per diem (lodging, meals, and
10 incidental expenses). These expenses must be paid at the rate
11 as promulgated by the United States General Services
12 Administration for these expenses for the date and location in
13 which they were incurred, unless extraordinary reasons are
14 shown for the difference. The petitions shall be filed under
15 seal and considered ex parte but with a court reporter present
16 for all ex parte conferences. The petitions shall be reviewed
17 by both the trial judge and the presiding judge of the circuit
18 court or the presiding judge's designee. If an ex parte
19 hearing is requested by defense counsel or deemed necessary by
20 the trial judge, the ex parte hearing shall be before the
21 presiding judge or the presiding judge's designee. If the
22 court determines that the compensation and expenses should be
23 paid from the Capital Litigation Trust Fund, the court shall
24 certify, on a form created by the State Treasurer, that all or
25 a designated portion of the amount requested is reasonable,
26 necessary, and appropriate for payment from the Trust Fund.

1 The form must also be signed by lead trial counsel under the
2 provisions of Section 1-109 of the Code of Civil Procedure
3 verifying that the amount requested is reasonable, necessary,
4 and appropriate. Bills submitted for payment by any individual
5 or entity seeking payment from the Capital Litigation Trust
6 Fund must also be accompanied by a form created by the State
7 Treasurer and signed by the individual or responsible agent of
8 the entity under the provisions of Section 1-109 of the Code of
9 Civil Procedure that the amount requested is accurate and
10 truthful and reflects time spent or expenses incurred.
11 Certification of compensation and expenses by a court in any
12 county other than Cook County shall be delivered by the court
13 to the State Treasurer and must be paid by the State Treasurer
14 directly from the Capital Litigation Trust Fund if there are
15 sufficient moneys in the Trust Fund to pay the compensation
16 and expenses. If the State Treasurer finds within 14 days of
17 his or her receipt of a certification that the compensation
18 and expenses to be paid are unreasonable, unnecessary, or
19 inappropriate, he or she may return the certification to the
20 court setting forth in detail the objection or objections with
21 a request for the court to review the objection or objections
22 before resubmitting the certification. The State Treasurer
23 must send the claimant a copy of the objection or objections.
24 The State Treasurer may only seek a review of a specific
25 objection once. The claimant has 7 days from his or her receipt
26 of the objections to file a response with the court. With or

1 without further hearing, the court must promptly rule on the
2 objections. The petitions and orders shall be kept under seal
3 and shall be exempt from Freedom of Information requests until
4 the conclusion of the trial and appeal of the case, even if the
5 prosecution chooses not to pursue the death penalty prior to
6 trial or sentencing. Certification of compensation and
7 expenses by a court in Cook County shall be delivered by the
8 court to the county treasurer and paid by the county treasurer
9 from moneys granted to the county from the Capital Litigation
10 Trust Fund.

11 Section 15. Capital Litigation Trust Fund.

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

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

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

1 Article 122 of the Code of Criminal Procedure of 1963 and in
2 relation to petitions filed under Section 2-1401 of the Code
3 of Civil Procedure in relation to capital cases as provided in
4 this Act and shall not be appropriated, loaned, or in any
5 manner transferred to the General Revenue Fund of the State of
6 Illinois.

7 (d) Every fiscal year the State Treasurer shall transfer
8 from the General Revenue Fund to the Capital Litigation Trust
9 Fund an amount equal to the full amount of moneys appropriated
10 by the General Assembly (both by original and supplemental
11 appropriation), less any unexpended balance from the previous
12 fiscal year, from the Capital Litigation Trust Fund for the
13 specific purpose of making funding available for the
14 prosecution and defense of capital cases and for the
15 litigation expenses associated with post-conviction
16 proceedings in capital cases under Article 122 of the Code of
17 Criminal Procedure of 1963 and in relation to petitions filed
18 under Section 2-1401 of the Code of Civil Procedure in
19 relation to capital cases. The Public Defender and State's
20 Attorney in Cook County, the State Appellate Defender, the
21 Office of the State's Attorneys Appellate Prosecutor, and the
22 Attorney General shall make annual requests for appropriations
23 from the Trust Fund.

24 (1) The Public Defender in Cook County shall request
25 appropriations to the State Treasurer for expenses
26 incurred by the Public Defender and for funding for

1 private appointed defense counsel in Cook County.

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

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

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

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

19 (e) Moneys in the Trust Fund shall be expended only as
20 follows:

21 (1) To pay the State Treasurer's costs to administer
22 the Trust Fund. The amount for this purpose may not exceed
23 5% in any one fiscal year of the amount otherwise
24 appropriated from the Trust Fund in the same fiscal year.

25 (2) To pay the capital litigation expenses of trial
26 defense and post-conviction proceedings in capital cases

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

21 (3) To pay the compensation of trial attorneys, other
22 than public defenders or appellate defenders, who have
23 been appointed by the court to represent defendants who
24 are charged with capital crimes or attorneys approved by
25 or contracted with the State Appellate Defender to
26 represent petitioners in post-conviction proceedings in

1 capital cases under Article 122 of the Code of Criminal
2 Procedure of 1963 and in relation to petitions filed under
3 Section 2-1401 of the Code of Civil Procedure in relation
4 to capital cases.

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

1 created by the State Treasurer. Upon certification of the
2 expenses and delivery of the certification to the State
3 Treasurer, the Treasurer shall pay the expenses directly
4 from the Capital Litigation Trust Fund if there are
5 sufficient moneys in the Trust Fund to pay the expenses.

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

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

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

26 (f) Moneys in the Trust Fund shall be appropriated to the

1 State Appellate Defender, the Office of the State's Attorneys
2 Appellate Prosecutor, the Attorney General, and the State
3 Treasurer. The State Appellate Defender shall receive an
4 appropriation from the Trust Fund to enable it to provide
5 assistance to appointed defense counsel and attorneys approved
6 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 throughout the State and to Public Defenders in
12 counties other than Cook. The Office of the State's Attorneys
13 Appellate Prosecutor and the Attorney General shall receive
14 appropriations from the Trust Fund to enable them to provide
15 assistance to State's Attorneys in counties other than Cook
16 County and when the Attorney General is ordered by the
17 presiding judge of the Criminal Division of the Circuit Court
18 of Cook County to prosecute or supervise the prosecution of
19 Cook County cases. Moneys shall be appropriated to the State
20 Treasurer to enable the Treasurer (i) to make grants to Cook
21 County, (ii) to pay the expenses of Public Defenders, the
22 State Appellate Defender, the Attorney General, the Office of
23 the State's Attorneys Appellate Prosecutor, and State's
24 Attorneys in counties other than Cook County, (iii) to pay the
25 expenses and compensation of appointed defense counsel and
26 attorneys approved by or contracted with the State Appellate

1 Defender to represent petitioners in post-conviction
2 proceedings in capital cases under Article 122 of the Code of
3 Criminal Procedure of 1963 and in relation to petitions filed
4 under Section 2-1401 of the Code of Civil Procedure in
5 relation to capital cases in counties other than Cook County,
6 and (iv) to pay the costs of administering the Trust Fund. All
7 expenditures and grants made from the Trust Fund shall be
8 subject to audit by the Auditor General.

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

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

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

25 (3) The State Treasurer shall make the grants to the
26 Cook County Treasurer as soon as possible after the

1 beginning of the State fiscal year.

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

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

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

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

19 (h) If a defendant in a capital case in Cook County is
20 represented by court appointed counsel other than the Cook
21 County Public Defender, the appointed counsel shall petition
22 the court for an order directing the Cook County Treasurer to
23 pay the court appointed counsel's reasonable and necessary
24 compensation and capital litigation expenses from grant moneys
25 provided from the Trust Fund. The petitions shall be supported
26 by itemized bills showing the date, the amount of time spent,

1 the work done and the total being charged for each entry. The
2 court shall not authorize payment of bills that are not
3 properly itemized. The petitions shall be filed under seal and
4 considered ex parte but with a court reporter present for all
5 ex parte conferences. The petitions shall be reviewed by both
6 the trial judge and the presiding judge of the circuit court or
7 the presiding judge's designee. The petitions and orders shall
8 be kept under seal and shall be exempt from Freedom of
9 Information requests until the conclusion of the trial and
10 appeal of the case, even if the prosecution chooses not to
11 pursue the death penalty prior to trial or sentencing. Orders
12 denying petitions for compensation or expenses are final.
13 Counsel may not petition for expenses that may have been
14 provided or compensated by the State Appellate Defender under
15 item (c)(5.1) of Section 10 of the State Appellate Defender
16 Act.

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

24 (1) Upon certification by the circuit court, on a form
25 created by the State Treasurer, that all or a portion of
26 the expenses are reasonable, necessary, and appropriate

1 for payment from the Trust Fund and the court's delivery
2 of the certification to the Treasurer, the Treasurer shall
3 pay the certified expenses of Public Defenders and the
4 State Appellate Defender from the money appropriated to
5 the Treasurer for capital litigation expenses of Public
6 Defenders and post-conviction proceeding expenses in
7 capital cases of the State Appellate Defender and expenses
8 in relation to petitions filed under Section 2-1401 of the
9 Code of Civil Procedure in relation to capital cases in
10 any county other than Cook County, if there are sufficient
11 moneys in the Trust Fund to pay the expenses.

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

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

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

21 (j) If the Trust Fund is discontinued or dissolved by an
22 Act of the General Assembly or by operation of law, any balance
23 remaining in the Trust Fund shall be returned to the General
24 Revenue Fund after deduction of administrative costs, any
25 other provision of this Act to the contrary notwithstanding.

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

3 (5 ILCS 140/7.5)

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

7 (a) All information determined to be confidential
8 under Section 4002 of the Technology Advancement and
9 Development Act.

10 (b) Library circulation and order records identifying
11 library users with specific materials under the Library
12 Records Confidentiality Act.

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

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

25 (e) Information the disclosure of which is exempted

1 under Section 30 of the Radon Industry Licensing Act.

2 (f) Firm performance evaluations under Section 55 of
3 the Architectural, Engineering, and Land Surveying
4 Qualifications Based Selection Act.

5 (g) Information the disclosure of which is restricted
6 and exempted under Section 50 of the Illinois Prepaid
7 Tuition Act.

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

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

18 (j) Information and data concerning the distribution
19 of surcharge moneys collected and remitted by carriers
20 under the Emergency Telephone System Act.

21 (k) Law enforcement officer identification information
22 or driver identification information compiled by a law
23 enforcement agency or the Department of Transportation
24 under Section 11-212 of the Illinois Vehicle Code.

25 (l) Records and information provided to a residential
26 health care facility resident sexual assault and death

1 review team or the Executive Council under the Abuse
2 Prevention Review Team Act.

3 (m) Information provided to the predatory lending
4 database created pursuant to Article 3 of the Residential
5 Real Property Disclosure Act, except to the extent
6 authorized under that Article.

7 (n) Defense budgets and petitions for certification of
8 compensation and expenses for court appointed trial
9 counsel as provided under Sections 10 and 15 of the
10 Capital Crimes Litigation Act of 2022. This subsection (n)
11 shall apply until the conclusion of the trial of the case,
12 even if the prosecution chooses not to pursue the death
13 penalty prior to trial or sentencing.

14 (o) Information that is prohibited from being
15 disclosed under Section 4 of the Illinois Health and
16 Hazardous Substances Registry Act.

17 (p) Security portions of system safety program plans,
18 investigation reports, surveys, schedules, lists, data, or
19 information compiled, collected, or prepared by or for the
20 Department of Transportation under Sections 2705-300 and
21 2705-616 of the Department of Transportation Law of the
22 Civil Administrative Code of Illinois, the Regional
23 Transportation Authority under Section 2.11 of the
24 Regional Transportation Authority Act, or the St. Clair
25 County Transit District under the Bi-State Transit Safety
26 Act.

1 (q) Information prohibited from being disclosed by the
2 Personnel Record Review Act.

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

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

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

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

24 (v) Names and information of people who have applied
25 for or received Firearm Owner's Identification Cards under
26 the Firearm Owners Identification Card Act or applied for

1 or received a concealed carry license under the Firearm
2 Concealed Carry Act, unless otherwise authorized by the
3 Firearm Concealed Carry Act; and databases under the
4 Firearm Concealed Carry Act, records of the Concealed
5 Carry Licensing Review Board under the Firearm Concealed
6 Carry Act, and law enforcement agency objections under the
7 Firearm Concealed Carry Act.

8 (v-5) Records of the Firearm Owner's Identification
9 Card Review Board that are exempted from disclosure under
10 Section 10 of the Firearm Owners Identification Card Act.

11 (w) Personally identifiable information which is
12 exempted from disclosure under subsection (g) of Section
13 19.1 of the Toll Highway Act.

14 (x) Information which is exempted from disclosure
15 under Section 5-1014.3 of the Counties Code or Section
16 8-11-21 of the Illinois Municipal Code.

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

25 (z) Records and information provided to a fatality
26 review team or the Illinois Fatality Review Team Advisory

1 Council under Section 15 of the Adult Protective Services
2 Act.

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

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

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

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

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

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

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

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

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

25 (jj) Information and reports that are required to be
26 submitted to the Department of Labor by registering day

1 and temporary labor service agencies but are exempt from
2 disclosure under subsection (a-1) of Section 45 of the Day
3 and Temporary Labor Services Act.

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

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

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

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

13 (oo) Communications, notes, records, and reports
14 arising out of a peer support counseling session
15 prohibited from disclosure under the First Responders
16 Suicide Prevention Act.

17 (pp) Names and all identifying information relating to
18 an employee of an emergency services provider or law
19 enforcement agency under the First Responders Suicide
20 Prevention Act.

21 (qq) Information and records held by the Department of
22 Public Health and its authorized representatives collected
23 under the Reproductive Health Act.

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

26 (ss) Data reported by an employer to the Department of

1 Human Rights pursuant to Section 2-108 of the Illinois
2 Human Rights Act.

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

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

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

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

13 (xx) Information that is exempt from disclosure or
14 information that shall not be made public under the
15 Illinois Insurance Code.

16 (yy) Information prohibited from being disclosed under
17 the Illinois Educational Labor Relations Act.

18 (zz) Information prohibited from being disclosed under
19 the Illinois Public Labor Relations Act.

20 (aaa) Information prohibited from being disclosed
21 under Section 1-167 of the Illinois Pension Code.

22 (bbb) ~~(ccc)~~ Information that is prohibited from
23 disclosure by the Illinois Police Training Act and the
24 Illinois State Police Act.

25 (ccc) ~~(ddd)~~ Records exempt from disclosure under
26 Section 2605-304 of the Illinois ~~Department of~~ State

1 Police Law of the Civil Administrative Code of Illinois.

2 (ddd) ~~(bbb)~~ Information prohibited from being
3 disclosed under Section 35 of the Address Confidentiality
4 for Victims of Domestic Violence, Sexual Assault, Human
5 Trafficking, or Stalking Act.

6 (eee) ~~(ddd)~~ Information prohibited from being
7 disclosed under subsection (b) of Section 75 of the
8 Domestic Violence Fatality Review Act.

9 (Source: P.A. 101-13, eff. 6-12-19; 101-27, eff. 6-25-19;
10 101-81, eff. 7-12-19; 101-221, eff. 1-1-20; 101-236, eff.
11 1-1-20; 101-375, eff. 8-16-19; 101-377, eff. 8-16-19; 101-452,
12 eff. 1-1-20; 101-466, eff. 1-1-20; 101-600, eff. 12-6-19;
13 101-620, eff. 12-20-19; 101-649, eff. 7-7-20; 101-652, eff.
14 1-1-22; 101-656, eff. 3-23-21; 102-36, eff. 6-25-21; 102-237,
15 eff. 1-1-22; 102-292, eff. 1-1-22; 102-520, eff. 8-20-21;
16 102-559, eff. 8-20-21; revised 10-5-21.)

17 Section 105. The State Finance Act is amended by adding
18 Section 5.970 as follows:

19 (30 ILCS 105/5.970 new)

20 Sec. 5.970. The Capital Litigation Trust Fund.

21 Section 110. The Criminal Code of 2012 is amended by
22 changing Section 9-1 as follows:

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

2 Sec. 9-1. First degree murder; death penalties;
3 exceptions; separate hearings; proof; findings; appellate
4 procedures; reversals.

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

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

11 (2) he or she knows that such acts create a strong
12 probability of death or great bodily harm to that
13 individual or another; or

14 (3) he or she, acting alone or with one or more
15 participants, commits or attempts to commit a forcible
16 felony other than second degree murder, and in the course
17 of or in furtherance of such crime or flight therefrom, he
18 or she or another participant causes the death of a
19 person.

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

24 (1) the murdered individual was a peace officer ~~or~~
25 ~~fireman~~ killed in the course of performing his or her
26 official duties, to prevent the performance of his or her

1 official duties, or in retaliation for performing his or
2 her official duties, and the defendant knew or should have
3 known that the murdered individual was a peace officer ~~or~~
4 ~~fireman~~; or

5 (1.5) the murdered individual was a firefighter killed
6 in the course of performing his or her official duties, to
7 prevent the performance of his or her official duties, or
8 in retaliation for performing his or her official duties,
9 and the defendant knew or should have known that the
10 murdered individual was a firefighter; or

11 (2) the murdered individual was an employee of an
12 institution or facility of the Department of Corrections,
13 or any similar local correctional agency, killed in the
14 course of performing his or her official duties, to
15 prevent the performance of his or her official duties, or
16 in retaliation for performing his or her official duties,
17 or the murdered individual was an inmate at such
18 institution or facility and was killed on the grounds
19 thereof, or the murdered individual was otherwise present
20 in such institution or facility with the knowledge and
21 approval of the chief administrative officer thereof; or

22 (3) the defendant has been convicted of murdering two
23 or more individuals under subsection (a) of this Section
24 or under any law of the United States or of any state which
25 is substantially similar to subsection (a) of this Section
26 regardless of whether the deaths occurred as the result of

1 the same act or of several related or unrelated acts so
2 long as the deaths were the result of either an intent to
3 kill more than one person or of separate acts which the
4 defendant knew would cause death or create a strong
5 probability of death or great bodily harm to the murdered
6 individual or another; or

7 (4) the murdered individual was killed as a result of
8 the hijacking of an airplane, train, ship, bus, or other
9 public conveyance; or

10 (5) the defendant committed the murder pursuant to a
11 contract, agreement, or understanding by which he or she
12 was to receive money or anything of value in return for
13 committing the murder or procured another to commit the
14 murder for money or anything of value; or

15 (6) the murdered individual was killed in the course
16 of another felony if:

17 (A) ~~(a)~~ the murdered individual:

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

19 (ii) received physical injuries personally
20 inflicted by the defendant substantially
21 contemporaneously with physical injuries caused by
22 one or more persons for whose conduct the
23 defendant is legally accountable under Section 5-2
24 of this Code, and the physical injuries inflicted
25 by either the defendant or the other person or
26 persons for whose conduct he is legally

1 accountable caused the death of the murdered
2 individual; and

3 (B) ~~(b)~~ in performing the acts which caused the
4 death of the murdered individual or which resulted in
5 physical injuries personally inflicted by the
6 defendant on the murdered individual under the
7 circumstances of subdivision (ii) of subparagraph (A)
8 ~~(a)~~ of paragraph (6) of subsection (b) of this
9 Section, the defendant acted with the intent to kill
10 the murdered individual or with the knowledge that his
11 acts created a strong probability of death or great
12 bodily harm to the murdered individual or another; and

13 (C) ~~(c)~~ the other felony was an inherently violent
14 crime or the attempt to commit an inherently violent
15 crime. In this subparagraph (C) ~~(c)~~, "inherently
16 violent crime" includes, but is not limited to, armed
17 robbery, robbery, predatory criminal sexual assault of
18 a child, aggravated criminal sexual assault,
19 aggravated kidnapping, aggravated vehicular hijacking,
20 aggravated arson, aggravated stalking, residential
21 burglary, and home invasion; or

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

25 (8) the defendant committed the murder with intent to
26 prevent the murdered individual from testifying or

1 participating in any criminal investigation or prosecution
2 or giving material assistance to the State in any
3 investigation or prosecution, either against the defendant
4 or another; or the defendant committed the murder because
5 the murdered individual was a witness in any prosecution
6 or gave material assistance to the State in any
7 investigation or prosecution, either against the defendant
8 or another; for purposes of this paragraph (8),
9 "participating in any criminal investigation or
10 prosecution" is intended to include those appearing in the
11 proceedings in any capacity such as trial judges,
12 prosecutors, defense attorneys, investigators, witnesses,
13 or jurors; or

14 (9) the defendant, while committing an offense
15 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
16 407 or 407.1 or subsection (b) of Section 404 of the
17 Illinois Controlled Substances Act, or while engaged in a
18 conspiracy or solicitation to commit such offense,
19 intentionally killed an individual or counseled,
20 commanded, induced, procured or caused the intentional
21 killing of the murdered individual; or

22 (10) the defendant was incarcerated in an institution
23 or facility of the Department of Corrections at the time
24 of the murder, and while committing an offense punishable
25 as a felony under Illinois law, or while engaged in a
26 conspiracy or solicitation to commit such offense,

1 intentionally killed an individual or counseled,
2 commanded, induced, procured or caused the intentional
3 killing of the murdered individual; or

4 (11) the murder was committed in a cold, calculated
5 and premeditated manner pursuant to a preconceived plan,
6 scheme or design to take a human life by unlawful means,
7 and the conduct of the defendant created a reasonable
8 expectation that the death of a human being would result
9 therefrom; or

10 (12) the murdered individual was an emergency medical
11 technician - ambulance, emergency medical technician -
12 intermediate, emergency medical technician - paramedic,
13 ambulance driver, or other medical assistance or first aid
14 personnel, employed by a municipality or other
15 governmental unit, killed in the course of performing his
16 official duties, to prevent the performance of his
17 official duties, or in retaliation for performing his
18 official duties, and the defendant knew or should have
19 known that the murdered individual was an emergency
20 medical technician - ambulance, emergency medical
21 technician - intermediate, emergency medical technician -
22 paramedic, ambulance driver, or other medical assistance
23 or first aid personnel; or

24 (13) the defendant was a principal administrator,
25 organizer, or leader of a calculated criminal drug
26 conspiracy consisting of a hierarchical position of

1 authority superior to that of all other members of the
2 conspiracy, and the defendant counseled, commanded,
3 induced, procured, or caused the intentional killing of
4 the murdered person; or

5 (14) the murder was intentional and involved the
6 infliction of torture. For the purpose of this Section
7 torture means the infliction of or subjection to extreme
8 physical pain, motivated by an intent to increase or
9 prolong the pain, suffering or agony of the victim; or

10 (15) the murder was committed as a result of the
11 intentional discharge of a firearm by the defendant from a
12 motor vehicle and the victim was not present within the
13 motor vehicle; or

14 (16) the murdered individual was 60 years of age or
15 older and the death resulted from exceptionally brutal or
16 heinous behavior indicative of wanton cruelty; or

17 (17) the murdered individual was a person with a
18 disability and the defendant knew or should have known
19 that the murdered individual was a person with a
20 disability. For purposes of this paragraph (17), "person
21 with a disability" means a person who suffers from a
22 permanent physical or mental impairment resulting from
23 disease, an injury, a functional disorder, or a congenital
24 condition that renders the person incapable of adequately
25 providing for his or her own health or personal care; or

26 (18) the murder was committed by reason of any

1 person's activity as a community policing volunteer or to
2 prevent any person from engaging in activity as a
3 community policing volunteer; or

4 (19) the murdered individual was subject to an order
5 of protection and the murder was committed by a person
6 against whom the same order of protection was issued under
7 the Illinois Domestic Violence Act of 1986; or

8 (20) the murdered individual was known by the
9 defendant to be a teacher or other person employed in any
10 school and the teacher or other employee is upon the
11 grounds of a school or grounds adjacent to a school, or is
12 in any part of a building used for school purposes; or

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

16 (22) the murdered individual was a member of a
17 congregation engaged in prayer or other religious
18 activities at a church, synagogue, mosque, or other
19 building, structure, or place used for religious worship.

20 (b-5) Aggravating Factor; Natural Life Imprisonment. A
21 defendant who has been found guilty of first degree murder and
22 who at the time of the commission of the offense had attained
23 the age of 18 years or more may be sentenced to natural life
24 imprisonment if (i) the murdered individual was a physician,
25 physician assistant, psychologist, nurse, or advanced practice
26 registered nurse, (ii) the defendant knew or should have known

1 that the murdered individual was a physician, physician
2 assistant, psychologist, nurse, or advanced practice
3 registered nurse, and (iii) the murdered individual was killed
4 in the course of acting in his or her capacity as a physician,
5 physician assistant, psychologist, nurse, or advanced practice
6 registered nurse, or to prevent him or her from acting in that
7 capacity, or in retaliation for his or her acting in that
8 capacity.

9 (c) Consideration of factors in Aggravation and
10 Mitigation.

11 The court shall consider, or shall instruct the jury to
12 consider any aggravating and any mitigating factors which are
13 relevant to the imposition of the death penalty. Aggravating
14 factors may include but need not be limited to those factors
15 set forth in subsection (b). Mitigating factors may include
16 but need not be limited to the following:

17 (1) the defendant has no significant history of prior
18 criminal activity;

19 (2) the murder was committed while the defendant was
20 under the influence of extreme mental or emotional
21 disturbance, although not such as to constitute a defense
22 to prosecution;

23 (3) the murdered individual was a participant in the
24 defendant's homicidal conduct or consented to the
25 homicidal act;

26 (4) the defendant acted under the compulsion of threat

1 or menace of the imminent infliction of death or great
2 bodily harm;

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

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

7 (7) the defendant suffers from a reduced mental
8 capacity.

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

14 (d) Separate sentencing hearing.

15 Where requested by the State, the court shall conduct a
16 separate sentencing proceeding to determine the existence of
17 factors set forth in subsection (b) and to consider any
18 aggravating or mitigating factors as indicated in subsection
19 (c). The proceeding shall be conducted:

20 (1) before the jury that determined the defendant's
21 guilt; or

22 (2) before a jury impanelled for the purpose of the
23 proceeding if:

24 A. the defendant was convicted upon a plea of
25 guilty; or

26 B. the defendant was convicted after a trial

1 before the court sitting without a jury; or

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

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

6 (e) Evidence and Argument.

7 During the proceeding any information relevant to any of
8 the factors set forth in subsection (b) may be presented by
9 either the State or the defendant under the rules governing
10 the admission of evidence at criminal trials. Any information
11 relevant to any additional aggravating factors or any
12 mitigating factors indicated in subsection (c) may be
13 presented by the State or defendant regardless of its
14 admissibility under the rules governing the admission of
15 evidence at criminal trials. The State and the defendant shall
16 be given fair opportunity to rebut any information received at
17 the hearing.

18 (f) Proof.

19 The burden of proof of establishing the existence of any
20 of the factors set forth in subsection (b) is on the State and
21 shall not be satisfied unless established beyond a reasonable
22 doubt.

23 (g) Procedure - Jury.

24 If at the separate sentencing proceeding the jury finds
25 that none of the factors set forth in subsection (b) exists,
26 the court shall sentence the defendant to a term of

1 imprisonment under Chapter V of the Unified Code of
2 Corrections. If there is a unanimous finding by the jury that
3 one or more of the factors set forth in subsection (b) exist,
4 the jury shall consider aggravating and mitigating factors as
5 instructed by the court and shall determine whether the
6 sentence of death shall be imposed. If the jury determines
7 unanimously, after weighing the factors in aggravation and
8 mitigation, that death is the appropriate sentence, the court
9 shall sentence the defendant to death. If the court does not
10 concur with the jury determination that death is the
11 appropriate sentence, the court shall set forth reasons in
12 writing including what facts or circumstances the court relied
13 upon, along with any relevant documents, that compelled the
14 court to non-concur with the sentence. This document and any
15 attachments shall be part of the record for appellate review.
16 The court shall be bound by the jury's sentencing
17 determination.

18 If after weighing the factors in aggravation and
19 mitigation, one or more jurors determines that death is not
20 the appropriate sentence, the court shall sentence the
21 defendant to a term of imprisonment under Chapter V of the
22 Unified Code of Corrections.

23 (h) Procedure - No Jury.

24 In a proceeding before the court alone, if the court finds
25 that none of the factors found in subsection (b) exists, the
26 court shall sentence the defendant to a term of imprisonment

1 under Chapter V of the Unified Code of Corrections.

2 If the Court determines that one or more of the factors set
3 forth in subsection (b) exists, the Court shall consider any
4 aggravating and mitigating factors as indicated in subsection
5 (c). If the Court determines, after weighing the factors in
6 aggravation and mitigation, that death is the appropriate
7 sentence, the Court shall sentence the defendant to death.

8 If the court finds that death is not the appropriate
9 sentence, the court shall sentence the defendant to a term of
10 imprisonment under Chapter V of the Unified Code of
11 Corrections.

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

13 In a case in which the defendant has been found guilty of
14 first degree murder by a judge or jury, or a case on remand for
15 resentencing, and the State seeks the death penalty as an
16 appropriate sentence, on the court's own motion or the written
17 motion of the defendant, the court may decertify the case as a
18 death penalty case if the court finds that the only evidence
19 supporting the defendant's conviction is the uncorroborated
20 testimony of an informant witness, as defined in Section
21 115-21 of the Code of Criminal Procedure of 1963, concerning
22 the confession or admission of the defendant or that the sole
23 evidence against the defendant is a single eyewitness or
24 single accomplice without any other corroborating evidence. If
25 the court decertifies the case as a capital case under either
26 of the grounds set forth above, the court shall issue a written

1 finding. The State may pursue its right to appeal the
2 decertification pursuant to Supreme Court Rule 604(a)(1). If
3 the court does not decertify the case as a capital case, the
4 matter shall proceed to the eligibility phase of the
5 sentencing hearing.

6 (i) Appellate Procedure.

7 The conviction and sentence of death shall be subject to
8 automatic review by the Supreme Court. Such review shall be in
9 accordance with rules promulgated by the Supreme Court. The
10 Illinois Supreme Court may overturn the death sentence, and
11 order the imposition of imprisonment under Chapter V of the
12 Unified Code of Corrections if the court finds that the death
13 sentence is fundamentally unjust as applied to the particular
14 case. If the Illinois Supreme Court finds that the death
15 sentence is fundamentally unjust as applied to the particular
16 case, independent of any procedural grounds for relief, the
17 Illinois Supreme Court shall issue a written opinion
18 explaining this finding.

19 (j) Disposition of reversed death sentence.

20 In the event that the death penalty in this Act is held to
21 be unconstitutional by the Supreme Court of the United States
22 or of the State of Illinois, any person convicted of first
23 degree murder shall be sentenced by the court to a term of
24 imprisonment under Chapter V of the Unified Code of
25 Corrections.

26 In the event that any death sentence pursuant to the

1 sentencing provisions of this Section is declared
2 unconstitutional by the Supreme Court of the United States or
3 of the State of Illinois, the court having jurisdiction over a
4 person previously sentenced to death shall cause the defendant
5 to be brought before the court, and the court shall sentence
6 the defendant to a term of imprisonment under Chapter V of the
7 Unified Code of Corrections.

8 (k) Guidelines for seeking the death penalty.

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

13 (Source: P.A. 100-460, eff. 1-1-18; 100-513, eff. 1-1-18;
14 100-863, eff. 8-14-18; 101-223, eff. 1-1-20; 101-652, eff.
15 7-1-21.)

16 Section 115. The Code of Criminal Procedure of 1963 is
17 amended by changing Sections 113-3 and 119-1 as follows:

18 (725 ILCS 5/113-3) (from Ch. 38, par. 113-3)

19 Sec. 113-3. (a) Every person charged with an offense shall
20 be allowed counsel before pleading to the charge. If the
21 defendant desires counsel and has been unable to obtain same
22 before arraignment the court shall recess court or continue
23 the cause for a reasonable time to permit defendant to obtain
24 counsel and consult with him before pleading to the charge. If

1 the accused is a dissolved corporation, and is not represented
2 by counsel, the court may, in the interest of justice, appoint
3 as counsel a licensed attorney of this State.

4 (b) In all cases, except where the penalty is a fine only,
5 if the court determines that the defendant is indigent and
6 desires counsel, the Public Defender shall be appointed as
7 counsel. If there is no Public Defender in the county or if the
8 defendant requests counsel other than the Public Defender and
9 the court finds that the rights of the defendant will be
10 prejudiced by the appointment of the Public Defender, the
11 court shall appoint as counsel a licensed attorney at law of
12 this State, except that in a county having a population of
13 2,000,000 or more the Public Defender shall be appointed as
14 counsel in all misdemeanor cases where the defendant is
15 indigent and desires counsel unless the case involves multiple
16 defendants, in which case the court may appoint counsel other
17 than the Public Defender for the additional defendants. The
18 court shall require an affidavit signed by any defendant who
19 requests court-appointed counsel. Such affidavit shall be in
20 the form established by the Supreme Court containing
21 sufficient information to ascertain the assets and liabilities
22 of that defendant. The Court may direct the Clerk of the
23 Circuit Court to assist the defendant in the completion of the
24 affidavit. Any person who knowingly files such affidavit
25 containing false information concerning his assets and
26 liabilities shall be liable to the county where the case, in

1 which such false affidavit is filed, is pending for the
2 reasonable value of the services rendered by the public
3 defender or other court-appointed counsel in the case to the
4 extent that such services were unjustly or falsely procured.

5 (c) Upon the filing with the court of a verified statement
6 of services rendered the court shall order the county
7 treasurer of the county of trial to pay counsel other than the
8 Public Defender a reasonable fee. The court shall consider all
9 relevant circumstances, including but not limited to the time
10 spent while court is in session, other time spent in
11 representing the defendant, and expenses reasonably incurred
12 by counsel. In counties with a population greater than
13 2,000,000, the court shall order the county treasurer of the
14 county of trial to pay counsel other than the Public Defender a
15 reasonable fee stated in the order and based upon a rate of
16 compensation of not more than \$40 for each hour spent while
17 court is in session and not more than \$30 for each hour
18 otherwise spent representing a defendant, and such
19 compensation shall not exceed \$150 for each defendant
20 represented in misdemeanor cases and \$1250 in felony cases, in
21 addition to expenses reasonably incurred as hereinafter in
22 this Section provided, except that, in extraordinary
23 circumstances, payment in excess of the limits herein stated
24 may be made if the trial court certifies that such payment is
25 necessary to provide fair compensation for protracted
26 representation. A trial court may entertain the filing of this

1 verified statement before the termination of the cause, and
2 may order the provisional payment of sums during the pendency
3 of the cause.

4 (d) In capital cases, in addition to counsel, if the court
5 determines that the defendant is indigent the court may, upon
6 the filing with the court of a verified statement of services
7 rendered, order the county Treasurer of the county of trial to
8 pay necessary expert witnesses for defendant reasonable
9 compensation stated in the order not to exceed \$250 for each
10 defendant.

11 (e) If the court in any county having a population greater
12 than 2,000,000 determines that the defendant is indigent the
13 court may, upon the filing with the court of a verified
14 statement of such expenses, order the county treasurer of the
15 county of trial, in such counties having a population greater
16 than 2,000,000 to pay the general expenses of the trial
17 incurred by the defendant not to exceed \$50 for each
18 defendant.

19 (f) The provisions of this Section relating to appointment
20 of counsel, compensation of counsel, and payment of expenses
21 in capital cases apply except when the compensation and
22 expenses are being provided under the Capital Crimes
23 Litigation Act of 2022.

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

25 (725 ILCS 5/119-1)

1 Sec. 119-1. Death penalty abolished ; partially restored.

2 (a) Except as otherwise provided in this Section,
3 beginning on July 1, 2011 (the effective date of Public Act
4 96-1543) and ~~Beginning on the effective date of this~~
5 ~~amendatory Act of the 96th General Assembly,~~ notwithstanding
6 any other law to the contrary, the death penalty is abolished
7 and a sentence to death may not be imposed.

8 (a-5) Notwithstanding subsection (a), a defendant who at
9 the time of the commission of the offense has attained the age
10 of 18 or more years and who has been found guilty of first
11 degree murder under paragraph (1) of subsection (b) of Section
12 9-1 of the Criminal Code of 2012 may be sentenced to death.

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 102nd General
18 Assembly shall be transferred into the Capital Litigation
19 Trust Fund, together with any moneys the Death Penalty
20 Abolition Fund may receive thereafter , ~~a special fund in the~~
21 ~~State treasury, to be expended by the Illinois Criminal~~
22 ~~Justice Information Authority, for services for families of~~
23 ~~victims of homicide or murder and for training of law~~
24 ~~enforcement personnel.~~

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

1 Section 120. The State Appellate Defender Act is amended
2 by changing Section 10 as follows:

3 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

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

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

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

11 (c) The State Appellate Defender may:

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

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

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

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

3 (5) (blank);

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

12 (5.5) provide training to county public defenders;

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

19 (6) develop a Juvenile Defender Resource Center to:

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

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

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

23 (c-5) For each State fiscal year, the State Appellate
24 Defender shall request a direct appropriation from the Capital
25 Litigation Trust Fund for expenses incurred by the State
26 Appellate Defender in providing assistance to trial attorneys

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

15 (d) (Blank).

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

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