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1 AMENDMENT TO HOUSE BILL 578

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 578 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Counties Code is amended by changing  
5 Section 3-9005 as follows:

6 (55 ILCS 5/3-9005) (from Ch. 34, par. 3-9005)  
7 Sec. 3-9005. Powers and duties of State's attorney.

8 (a) The duty of each State's attorney shall be:

9 (1) To commence and prosecute all actions, suits,  
10 indictments and prosecutions, civil and criminal, in the  
11 circuit court for his county, in which the people of the  
12 State or county may be concerned.

13 (2) To prosecute all forfeited bonds and  
14 recognizances, and all actions and proceedings for the  
15 recovery of debts, revenues, moneys, fines, penalties and  
16 forfeitures accruing to the State or his county, or to any  
17 school district or road district in his county; also, to  
18 prosecute all suits in his county against railroad or  
19 transportation companies, which may be prosecuted in the  
20 name of the People of the State of Illinois.

21 (3) To commence and prosecute all actions and  
22 proceedings brought by any county officer in his official  
23 capacity.

24 (4) To defend all actions and proceedings brought

1 against his county, or against any county or State officer,  
2 in his official capacity, within his county.

3 (5) To attend the examination of all persons brought  
4 before any judge on habeas corpus, when the prosecution is  
5 in his county.

6 (6) To attend before judges and prosecute charges of  
7 felony or misdemeanor, for which the offender is required  
8 to be recognized to appear before the circuit court, when  
9 in his power so to do.

10 (7) To give his opinion, without fee or reward, to any  
11 county officer in his county, upon any question or law  
12 relating to any criminal or other matter, in which the  
13 people or the county may be concerned.

14 (8) To assist the attorney general whenever it may be  
15 necessary, and in cases of appeal from his county to the  
16 Supreme Court, to which it is the duty of the attorney  
17 general to attend, he shall furnish the attorney general at  
18 least 10 days before such is due to be filed, a manuscript  
19 of a proposed statement, brief and argument to be printed  
20 and filed on behalf of the people, prepared in accordance  
21 with the rules of the Supreme Court. However, if such  
22 brief, argument or other document is due to be filed by law  
23 or order of court within this 10 day period, then the  
24 State's attorney shall furnish such as soon as may be  
25 reasonable.

26 (9) To pay all moneys received by him in trust, without  
27 delay, to the officer who by law is entitled to the custody  
28 thereof.

29 (10) To notify, by first class mail, complaining  
30 witnesses of the ultimate disposition of the cases arising  
31 from an indictment or an information.

32 (11) To perform such other and further duties as may,  
33 from time to time, be enjoined on him by law.

34 (12) To appear in all proceedings by collectors of

1 taxes against delinquent taxpayers for judgments to sell  
2 real estate, and see that all the necessary preliminary  
3 steps have been legally taken to make the judgment legal  
4 and binding.

5 (b) The State's Attorney of each county shall have  
6 authority to appoint one or more special investigators to serve  
7 subpoenas, make return of process and conduct investigations  
8 which assist the State's Attorney in the performance of his  
9 duties. A special investigator shall not carry firearms except  
10 with permission of the State's Attorney and only while carrying  
11 appropriate identification indicating his employment and in  
12 the performance of his assigned duties.

13 Subject to the qualifications set forth in this subsection,  
14 special investigators shall be peace officers and shall have  
15 all the powers possessed by investigators under the State's  
16 Attorneys Appellate Prosecutor's Act.

17 No special investigator employed by the State's Attorney  
18 shall have peace officer status or exercise police powers  
19 unless he or she successfully completes the basic police  
20 training course mandated and approved by the Illinois Law  
21 Enforcement Training Standards Board or such board waives the  
22 training requirement by reason of the special investigator's  
23 prior law enforcement experience or training or both. Any  
24 State's Attorney appointing a special investigator shall  
25 consult with all affected local police agencies, to the extent  
26 consistent with the public interest, if the special  
27 investigator is assigned to areas within that agency's  
28 jurisdiction.

29 Before a person is appointed as a special investigator, his  
30 fingerprints shall be taken and transmitted to the Department  
31 of State Police. The Department shall examine its records and  
32 submit to the State's Attorney of the county in which the  
33 investigator seeks appointment any conviction information  
34 concerning the person on file with the Department. No person

1 shall be appointed as a special investigator if he has been  
2 convicted of a felony or other offense involving moral  
3 turpitude. A special investigator shall be paid a salary and be  
4 reimbursed for actual expenses incurred in performing his  
5 assigned duties. The county board shall approve the salary and  
6 actual expenses and appropriate the salary and expenses in the  
7 manner prescribed by law or ordinance.

8 (c) The State's Attorney may request and receive from  
9 employers, labor unions, telephone companies, and utility  
10 companies location information concerning putative fathers and  
11 noncustodial parents for the purpose of establishing a child's  
12 paternity or establishing, enforcing, or modifying a child  
13 support obligation. In this subsection, "location information"  
14 means information about (i) the physical whereabouts of a  
15 putative father or noncustodial parent, (ii) the putative  
16 father or noncustodial parent's employer, or (iii) the salary,  
17 wages, and other compensation paid and the health insurance  
18 coverage provided to the putative father or noncustodial parent  
19 by the employer of the putative father or noncustodial parent  
20 or by a labor union of which the putative father or  
21 noncustodial parent is a member.

22 (d) For each State fiscal year, the State's Attorney of  
23 Cook County shall appear before the General Assembly and  
24 request appropriations to be made from the Capital Litigation  
25 Trust Fund to the State Treasurer for the purpose of providing  
26 assistance in the prosecution of capital cases in Cook County  
27 and for the purpose of providing assistance to the State in  
28 post-conviction proceedings in capital cases under Article 122  
29 of the Code of Criminal Procedure of 1963 and in relation to  
30 petitions filed under Section 2-1401 of the Code of Civil  
31 Procedure in relation to capital cases. The State's Attorney  
32 may appear before the General Assembly at other times during  
33 the State's fiscal year to request supplemental appropriations  
34 from the Trust Fund to the State Treasurer.

1 (e) The State's Attorney shall have the authority to enter  
2 into a written agreement with the Department of Revenue for  
3 pursuit of civil liability under Section 17-1a of the Criminal  
4 Code of 1961 against persons who have issued to the Department  
5 checks or other orders in violation of the provisions of  
6 paragraph (d) of subsection (B) of Section 17-1 of the Criminal  
7 Code of 1961, with the Department to retain the amount owing  
8 upon the dishonored check or order along with the dishonored  
9 check fee imposed under the Uniform Penalty and Interest Act,  
10 with the balance of damages, fees, and costs collected under  
11 Section 17-1a of the Criminal Code of 1961 to be retained by  
12 the State's Attorney. The agreement shall not affect the  
13 allocation of fines and costs imposed in any criminal  
14 prosecution.

15 (Source: P.A. 91-589, eff. 1-1-00; 92-492, eff. 1-1-02.)

16 Section 10. The Code of Criminal Procedure of 1963 is  
17 amended by changing Section 122-1 as follows:

18 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

19 Sec. 122-1. Petition in the trial court.

20 (a) Any person imprisoned in the penitentiary may institute  
21 a proceeding under this Article if the person asserts that:

22 (1) in the proceedings which resulted in his or her  
23 conviction there was a substantial denial of his or her  
24 rights under the Constitution of the United States or of  
25 the State of Illinois or both; or

26 (2) the death penalty was imposed and there is newly  
27 discovered evidence not available to the person at the time  
28 of the proceeding that resulted in his or her conviction  
29 that establishes a substantial basis to believe that the  
30 defendant is actually innocent by clear and convincing  
31 evidence.

32 (a-5) A proceeding under paragraph (2) of subsection (a)

1 may be commenced within a reasonable period of time after the  
2 person's conviction notwithstanding any other provisions of  
3 this Article. In such a proceeding regarding actual innocence,  
4 if the court determines the petition is frivolous or is  
5 patently without merit, it shall dismiss the petition in a  
6 written order, specifying the findings of fact and conclusions  
7 of law it made in reaching its decision. Such order of  
8 dismissal is a final judgment and shall be served upon the  
9 petitioner by certified mail within 10 days of its entry.

10 (b) The proceeding shall be commenced by filing with the  
11 clerk of the court in which the conviction took place a  
12 petition (together with a copy thereof) verified by affidavit.  
13 Petitioner shall also serve another copy upon the State's  
14 Attorney by any of the methods provided in Rule 7 of the  
15 Supreme Court. The clerk shall docket the petition for  
16 consideration by the court pursuant to Section 122-2.1 upon his  
17 or her receipt thereof and bring the same promptly to the  
18 attention of the court.

19 (c) Except as otherwise provided in subsection (a-5), if  
20 the petitioner is under sentence of death and a petition for  
21 writ of certiorari is filed, no proceedings under this Article  
22 shall be commenced more than 6 months after the conclusion of  
23 proceedings in the United States Supreme Court ~~denial of a~~  
24 ~~petition for certiorari to the United States Supreme Court on~~  
25 ~~direct appeal, or more than 6 months from the date for filing~~  
26 ~~such a petition if none is filed~~, unless the petitioner alleges  
27 facts showing that the delay was not due to his or her culpable  
28 negligence. If a petition for certiorari is not filed, no  
29 proceedings under this Article shall be commenced more than 6  
30 months from the date for filing a certiorari petition, unless  
31 the petitioner alleges facts showing that the delay was not due  
32 to his or her culpable negligence.

33 When a defendant has a sentence other than death, no  
34 proceedings under this Article shall be commenced more than 6

1 months after the conclusion of proceedings in the United States  
2 Supreme Court denial of the Petition for Leave to Appeal to the  
3 Illinois Supreme Court, or more than 6 months from the date for  
4 filing such a petition if none is filed, unless the petitioner  
5 alleges facts showing that the delay was not due to his or her  
6 culpable negligence. If a petition for certiorari is not filed,  
7 no proceedings under this Article shall be commenced more than  
8 6 months from the date for filing a certiorari petition, unless  
9 the petitioner alleges facts showing that the delay was not due  
10 to his or her culpable negligence. If a defendant does not file  
11 a direct appeal, the post-conviction petition shall be filed no  
12 later than 3 years from the date of conviction, unless the  
13 petitioner alleges facts showing that the delay was not due to  
14 his or her culpable negligence.

15 This limitation does not apply to a petition advancing a  
16 claim of actual innocence.

17 (d) A person seeking relief by filing a petition under this  
18 Section must specify in the petition or its heading that it is  
19 filed under this Section. A trial court that has received a  
20 petition complaining of a conviction or sentence that fails to  
21 specify in the petition or its heading that it is filed under  
22 this Section need not evaluate the petition to determine  
23 whether it could otherwise have stated some grounds for relief  
24 under this Article.

25 (e) A proceeding under this Article may not be commenced on  
26 behalf of a defendant who has been sentenced to death without  
27 the written consent of the defendant, unless the defendant,  
28 because of a mental or physical condition, is incapable of  
29 asserting his or her own claim.

30 (f) Only one petition may be filed by a petitioner under  
31 this Article without leave of the court. Leave of court may be  
32 granted only if a petitioner demonstrates cause for his or her  
33 failure to bring the claim in his or her initial  
34 post-conviction proceedings and prejudice results from that

1 failure. For purposes of this subsection (f): (1) a prisoner  
2 shows cause by identifying an objective factor that impeded his  
3 or her ability to raise a specific claim during his or her  
4 initial post-conviction proceedings; and (2) a prisoner shows  
5 prejudice by demonstrating that the claim not raised during his  
6 or her initial post-conviction proceedings so infected the  
7 trial that the resulting conviction or sentence violated due  
8 process.

9 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;  
10 revised 12-9-03.)

11 Section 15. The State Appellate Defender Act is amended by  
12 changing Section 10 as follows:

13 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

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

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

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

21 (c) The State Appellate Defender may:

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

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

27 (3) cooperate and consult with state agencies,  
28 professional associations, and other groups concerning the  
29 causes of criminal conduct, the rehabilitation and  
30 correction of persons charged with and convicted of crime,  
31 the administration of criminal justice, and, in counties of  
32 less than 1,000,000 population, study, design, develop and



1 implement model systems for the delivery of trial level  
2 defender services, and make an annual report to the General  
3 Assembly;

4 (4) provide investigative services to appointed  
5 counsel and county public defenders;

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

13 (d) For each State fiscal year, the State Appellate  
14 Defender shall appear before the General Assembly and request  
15 appropriations to be made from the Capital Litigation Trust  
16 Fund to the State Treasurer for the purpose of providing  
17 defense assistance in capital cases outside of Cook County and  
18 for expenses incurred by the the State Appellate Defender in  
19 representing petitioners in capital cases in post-conviction  
20 proceedings under Article 122 of the Code of Criminal Procedure  
21 of 1963 and in relation to petitions filed under Section 2-1401  
22 of the Code of Civil Procedure in relation to capital cases and  
23 for the representation of those petitioners by attorneys  
24 approved by or contracted with the State Appellate Defender.  
25 The State Appellate Defender may appear before the General  
26 Assembly at other times during the State's fiscal year to  
27 request supplemental appropriations from the Trust Fund to the  
28 State Treasurer.

29 (e) The requirement for reporting to the General Assembly  
30 shall be satisfied by filing copies of the report with the  
31 Speaker, the Minority Leader and the Clerk of the House of  
32 Representatives and the President, the Minority Leader and the  
33 Secretary of the Senate and the Legislative Research Unit, as  
34 required by Section 3.1 of the General Assembly Organization

1 Act and filing such additional copies with the State Government  
2 Report Distribution Center for the General Assembly as is  
3 required under paragraph (t) of Section 7 of the State Library  
4 Act.

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

6 Section 20. The Capital Crimes Litigation Act is amended by  
7 changing Section 15 as follows:

8 (725 ILCS 124/15)

9 Sec. 15. Capital Litigation Trust Fund.

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

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

20 (c) Moneys deposited into the Trust Fund shall be used  
21 exclusively for the purposes of providing funding for the  
22 prosecution and defense of capital cases and for providing  
23 funding for post-conviction proceedings in capital cases under  
24 Article 122 of the Code of Criminal Procedure of 1963 and in  
25 relation to petitions filed under Section 2-1401 of the Code of  
26 Civil Procedure in relation to capital cases as provided in  
27 this Act and shall not be appropriated, loaned, or in any  
28 manner transferred to the General Revenue Fund of the State of  
29 Illinois.

30 (d) Every fiscal year the State Treasurer shall transfer  
31 from the General Revenue Fund to the Capital Litigation Trust  
32 Fund an amount equal to the full amount of moneys appropriated

1 by the General Assembly (both by original and supplemental  
2 appropriation), less any unexpended balance from the previous  
3 fiscal year, from the Capital Litigation Trust Fund for the  
4 specific purpose of making funding available for the  
5 prosecution and defense of capital cases and for the litigation  
6 expenses associated with post-conviction proceedings in  
7 capital cases under Article 122 of the Code of Criminal  
8 Procedure of 1963 and in relation to petitions filed under  
9 Section 2-1401 of the Code of Civil Procedure in relation to  
10 capital cases. The Public Defender and State's Attorney in Cook  
11 County, the State Appellate Defender, the State's Attorneys  
12 Appellate Prosecutor, and the Attorney General shall make  
13 annual requests for appropriations from the Trust Fund.

14 (1) The Public Defender in Cook County shall request  
15 appropriations to the State Treasurer for expenses  
16 incurred by the Public Defender and for funding for private  
17 appointed defense counsel in Cook County.

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

21 (3) The State Appellate Defender shall request a direct  
22 appropriation from the Trust Fund for expenses incurred by  
23 the State Appellate Defender in providing assistance to  
24 trial attorneys under item (c)(5) of Section 10 of the  
25 State Appellate Defender Act and for expenses incurred by  
26 the State Appellate Defender in representing petitioners  
27 in capital cases in post-conviction proceedings under  
28 Article 122 of the Code of Criminal Procedure of 1963 and  
29 in relation to petitions filed under Section 2-1401 of the  
30 Code of Civil Procedure in relation to capital cases and  
31 for the representation of those petitioners by attorneys  
32 approved by or contracted with the State Appellate Defender  
33 and an appropriation to the State Treasurer for payments  
34 from the Trust Fund for the defense of cases in counties

1 other than Cook County.

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

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

21 The Public Defender and State's Attorney in Cook County,  
22 the State Appellate Defender, the State's Attorneys Appellate  
23 Prosecutor, and the Attorney General may each request  
24 supplemental appropriations from the Trust Fund during the  
25 fiscal year.

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

28 (1) To pay the State Treasurer's costs to administer  
29 the Trust Fund. The amount for this purpose may not exceed  
30 5% in any one fiscal year of the amount otherwise  
31 appropriated from the Trust Fund in the same fiscal year.

32 (2) To pay the capital litigation expenses of trial  
33 defense and post-conviction proceedings in capital cases  
34 under Article 122 of the Code of Criminal Procedure of 1963

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

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  
27 capital cases.

28 (4) To provide State's Attorneys with funding for  
29 capital litigation expenses and for expenses of  
30 representing the State in post-conviction proceedings in  
31 capital cases under Article 122 of the Code of Criminal  
32 Procedure of 1963 and in relation to petitions filed under  
33 Section 2-1401 of the Code of Civil Procedure in relation  
34 to capital cases including, but not limited to,

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

21           (5) To provide financial support through the Attorney  
22      General pursuant to the Attorney General Act for the  
23      several county State's Attorneys outside of Cook County,  
24      but shall not be used to increase personnel for the  
25      Attorney General's Office, except when the Attorney  
26      General is ordered by the presiding judge of the Criminal  
27      Division of the Circuit Court of Cook County to prosecute  
28      or supervise the prosecution of Cook County cases.

29           (6) To provide financial support through the State's  
30      Attorneys Appellate Prosecutor pursuant to the State's  
31      Attorneys Appellate Prosecutor's Act for the several  
32      county State's Attorneys outside of Cook County, but shall  
33      not be used to increase personnel for the State's Attorneys  
34      Appellate Prosecutor.

1           (7) To provide financial support to the State Appellate  
2           Defender pursuant to the State Appellate Defender Act.

3           Moneys expended from the Trust Fund shall be in addition to  
4           county funding for Public Defenders and State's Attorneys, and  
5           shall not be used to supplant or reduce ordinary and customary  
6           county funding.

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

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

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

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

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

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

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

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

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



1           (7) The Cook County Treasurer shall immediately make  
2 payment from the appropriate separate account in the county  
3 treasury for capital litigation expenses to the State's  
4 Attorney, Public Defender, or court appointed defense  
5 counsel other than the Public Defender, as the case may be,  
6 upon order of the State's Attorney, Public Defender or the  
7 court, respectively.

8           (h) If a defendant in a capital case in Cook County is  
9 represented by court appointed counsel other than the Cook  
10 County Public Defender, the appointed counsel shall petition  
11 the court for an order directing the Cook County Treasurer to  
12 pay the court appointed counsel's reasonable and necessary  
13 compensation and capital litigation expenses from grant moneys  
14 provided from the Trust Fund. These petitions shall be  
15 considered in camera. Orders denying petitions for  
16 compensation or expenses are final. Counsel may not petition  
17 for expenses that may have been provided or compensated by the  
18 State Appellate Defender under item (c) (5) of Section 10 of the  
19 State Appellate Defender Act.

20           (i) In counties other than Cook County, and when the  
21 Attorney General is ordered by the presiding judge of the  
22 Criminal Division of the Circuit Court of Cook County to  
23 prosecute or supervise the prosecution of Cook County cases,  
24 and excluding capital litigation expenses or services that may  
25 have been provided by the State Appellate Defender under item  
26 (c) (5) of Section 10 of the State Appellate Defender Act:

27           (1) Upon certification by the circuit court, on a form  
28 created by the State Treasurer, that all or a portion of  
29 the expenses are reasonable, necessary, and appropriate  
30 for payment from the Trust Fund and the court's delivery of  
31 the certification to the Treasurer, the Treasurer shall pay  
32 the certified expenses of Public Defenders and the State  
33 Appellate Defender from the money appropriated to the  
34 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  
27       of all or a portion of the compensation and expenses  
28       certified as reasonable, necessary, and appropriate for  
29       payment from the Trust Fund and the court's delivery of the  
30       certification to the Treasurer, the State Treasurer shall  
31       pay the certified compensation and expenses from the money  
32       appropriated to the Treasurer for that purpose, if there  
33       are sufficient moneys in the Trust Fund to make those  
34       payments.

1           (3) A petition for capital litigation expenses or  
2           post-conviction proceeding expenses or expenses incurred  
3           in filing a petition under Section 2-1401 of the Code of  
4           Civil Procedure in relation to capital cases under this  
5           subsection shall be considered in camera. Orders denying  
6           petitions for compensation or expenses are final.

7           (j) If the Trust Fund is discontinued or dissolved by an  
8           Act of the General Assembly or by operation of law, any balance  
9           remaining in the Trust Fund shall be returned to the General  
10          Revenue Fund after deduction of administrative costs, any other  
11          provision of this Act to the contrary notwithstanding.

12          (Source: P.A. 93-127, eff. 1-1-04; 93-605, eff. 11-19-03;  
13          revised 12-9-03.)

14          Section 99. Effective date. This Act takes effect upon  
15          becoming law."