



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB0469

Introduced 2/16/2005, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

725 ILCS 124/5  
725 ILCS 105/10

from Ch. 38, par. 208-10

Amends the Capital Crimes Litigation Act. Provides that at the request of court appointed counsel in a case in which the death penalty is sought, attorneys employed by the State Appellate Defender may enter an appearance for the limited purpose of assisting appointed counsel. Amends the State Appellate Defender Act. Provides that in addition to other assistance given, in cases in which a death sentence is an authorized disposition, a State Appellate Defender may provide trial counsel with legal advice.

LRB094 08528 RXD 38735 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 5. The Capital Crimes Litigation Act is amended by  
5 changing Section 5 as follows:

6 (725 ILCS 124/5)

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

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

26 Section 10. The State Appellate Defender Act is amended by  
27 changing Section 10 as follows:

28 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

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

30 (a) The State Appellate Defender shall represent indigent

1 persons on appeal in criminal and delinquent minor proceedings,  
2 when appointed to do so by a court under a Supreme Court Rule  
3 or law of this State.

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

6 (c) The State Appellate Defender may:

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

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

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

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

23 (5) in cases in which a death sentence is an authorized  
24 disposition, provide trial counsel with legal advice and  
25 the assistance of expert witnesses, investigators, and  
26 mitigation specialists from funds appropriated to the  
27 State Appellate Defender specifically for that purpose by  
28 the General Assembly. The Office of State Appellate  
29 Defender shall not be appointed to serve as trial counsel  
30 in capital cases.

31 Investigators employed by the Death Penalty Trial  
32 Assistance and Capital Litigation Division of the State  
33 Appellate Defender shall be authorized to inquire through the  
34 Illinois State Police or local law enforcement with the Law  
35 Enforcement Agencies Data System (LEADS) under Section  
36 2605-375 of the Civil Administrative Code of Illinois to

1 ascertain whether their potential witnesses have a criminal  
2 background, including: (i) warrants; (ii) arrests; (iii)  
3 convictions; and (iv) officer safety information. This  
4 authorization applies only to information held on the State  
5 level and shall be used only to protect the personal safety of  
6 the investigators. Any information that is obtained through  
7 this inquiry may not be disclosed by the investigators.

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

24 (e) The requirement for reporting to the General Assembly  
25 shall be satisfied by filing copies of the report with the  
26 Speaker, the Minority Leader and the Clerk of the House of  
27 Representatives and the President, the Minority Leader and the  
28 Secretary of the Senate and the Legislative Research Unit, as  
29 required by Section 3.1 of the General Assembly Organization  
30 Act and filing such additional copies with the State Government  
31 Report Distribution Center for the General Assembly as is  
32 required under paragraph (t) of Section 7 of the State Library  
33 Act.

34 (Source: P.A. 93-972, eff. 8-20-04; 93-1011, eff. 1-1-05;  
35 revised 10-14-04.)