



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2082

Introduced 2/25/2005, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

725 ILCS 124/10
725 ILCS 124/15

Amends the Code of Criminal Procedure of 1963. Provides that in a case in which the State has filed a statement of intent to seek the death penalty, the court shall require appointed counsel, after counsel has had adequate time to review the case, to submit a proposed estimated litigation budget for court approval that will be subject to modification in light of facts and developments that emerge as the case proceeds. Provides that the budget shall be incorporated into a sealed initial pretrial order that reflects the understandings of the court and counsel regarding all matters affecting counsel compensation and reimbursement and payments for investigative, expert and other services. Provides that the court shall not authorize payment of bills to appointed trial counsel that are not properly itemized.

LRB094 10920 RXD 41483 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Capital Crimes Litigation Act is amended by
5 changing Sections 10 and 15 as follows:

6 (725 ILCS 124/10)

7 Sec. 10. Court appointed trial counsel; compensation and
8 expenses.

9 (a) This Section applies only to compensation and expenses
10 of trial counsel appointed by the court as set forth in Section
11 5, other than public defenders, for the period after
12 arraignment and so long as the State's Attorney has not, at any
13 time, filed a certificate indicating he or she will not seek
14 the death penalty or stated on the record in open court that
15 the death penalty will not be sought.

16 (a-5) Litigation budget.

17 (1) In a case in which the State has filed a statement
18 of intent to seek the death penalty, the court shall
19 require appointed counsel, after counsel has had adequate
20 time to review the case and prior to engaging trial
21 assistance, to submit a proposed estimated litigation
22 budget for court approval, including the use of whenever
23 possible of investigators and other litigation support
24 provided by the Office of the Appellate Defender, that will
25 be subject to modification in light of facts and
26 developments that emerge as the case proceeds. Case budgets
27 should be submitted ex parte and filed and maintained under
28 seal in order to protect the defendant's right to effective
29 assistance of counsel, right not to incriminate him or
30 herself and all applicable privileges.

31 (2) The litigation budget shall serve purposes
32 comparable to those of private retainer agreements by

1 confirming both the court's and the attorney's
2 expectations regarding fees and expenses. Consideration
3 should be given to employing an ex parte pretrial
4 conference in order to facilitate reaching agreement on a
5 litigation budget at the earliest opportunity.

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

12 (A) The hourly rate at which counsel will be
13 compensated;

14 (B) The hourly rate at which private
15 investigators, other than investigators employed by
16 the Office of the State Appellate Defender, will be
17 compensated; and

18 (C) The best preliminary estimate that can be made
19 of the cost of all services, including, but not limited
20 to, counsel, expert, and investigative services, that
21 are likely to be needed through the guilt and penalty
22 phases of the trial. The court shall have discretion to
23 require that budgets be prepared for shorter intervals
24 of time.

25 (4) Appointed counsel may obtain, subject to later
26 review, investigative, expert or other services without
27 prior authorization if necessary for an adequate defense.
28 If such services are obtained, the trial judge shall
29 consider in an ex parte proceeding that timely procurement
30 of necessary services could not await prior authorization.
31 The judge may then authorize such services nunc pro tunc.

32 (5) An approved budget shall guide counsel's use of
33 time and resources by indicating the services for which
34 compensation is authorized. Case budget shall be
35 re-evaluated when justified by changed or unexpected
36 circumstances and shall be modified by the court when

1 reasonable and necessary for an adequate defense.

2 (b) Appointed trial counsel shall be compensated upon
3 presentment and certification by the circuit court of a claim
4 for services detailing the date, activity, and time duration
5 for which compensation is sought. Compensation for appointed
6 trial counsel may be paid at a reasonable rate not to exceed
7 \$125 per hour. The court shall not authorize payment of bills
8 that are not properly itemized. A request for payment shall be
9 presented under seal and reviewed ex parte with a court
10 reporter present.

11 Beginning in 2001, every January 20, the statutory rate
12 prescribed in this subsection shall be automatically increased
13 or decreased, as applicable, by a percentage equal to the
14 percentage change in the consumer price index-u during the
15 preceding 12-month calendar year. "Consumer price index-u"
16 means the index published by the Bureau of Labor Statistics of
17 the United States Department of Labor that measures the average
18 change in prices of goods and services purchased by all urban
19 consumers, United States city average, all items, 1982-84=100.
20 The new rate resulting from each annual adjustment shall be
21 determined by the State Treasurer and made available to the
22 chief judge of each judicial circuit.

23 (c) Appointed trial counsel may also petition the court for
24 certification of expenses for reasonable and necessary capital
25 litigation expenses including, but not limited to,
26 investigatory and other assistance, expert, forensic, and
27 other witnesses, and mitigation specialists. Counsel may not
28 petition for certification of expenses that may have been
29 provided or compensated by the State Appellate Defender under
30 item (c) (5) of Section 10 of the State Appellate Defender Act.
31 The petitions shall be filed under seal and considered ex parte
32 but with a court reporter present for all ex parte conferences.
33 If the requests are submitted after services have been
34 rendered, the requests shall be supported by an invoice
35 describing the services rendered, the dates the services were
36 performed and the amount of time spent. These petitions shall

1 be reviewed by both the trial judge and the presiding judge of
2 the circuit court or the presiding judge's designee. The
3 petitions and orders shall be kept under seal and shall be
4 exempt from Freedom of Information requests until the
5 conclusion of the trial and appeal of the case, even if the
6 prosecution chooses not to pursue the death penalty prior to
7 trial or sentencing.

8 (d) Appointed trial counsel shall petition the court for
9 certification of compensation and expenses under this Section
10 periodically during the course of counsel's representation.
11 The petitions shall be supported by itemized bills showing the
12 date, the amount of time spent, the work done and the total
13 being charged for each entry. The court shall not authorize
14 payment of bills that are not properly itemized. The petitions
15 shall be filed under seal and considered ex parte but with a
16 court reporter present for all ex parte conferences. The
17 petitions shall be reviewed by both the trial judge and the
18 presiding judge of the circuit court or the presiding judge's
19 designee. If the court determines that the compensation and
20 expenses should be paid from the Capital Litigation Trust Fund,
21 the court shall certify, on a form created by the State
22 Treasurer, that all or a designated portion of the amount
23 requested is reasonable, necessary, and appropriate for
24 payment from the Trust Fund. Certification of compensation and
25 expenses by a court in any county other than Cook County shall
26 be delivered by the court to the State Treasurer and paid by
27 the State Treasurer directly from the Capital Litigation Trust
28 Fund if there are sufficient moneys in the Trust Fund to pay
29 the compensation and expenses. The petitions and orders shall
30 be kept under seal and shall be exempt from Freedom of
31 Information requests until the conclusion of the trial and
32 appeal of the case, even if the prosecution chooses not to
33 pursue the death penalty prior to trial or sentencing.
34 Certification of compensation and expenses by a court in Cook
35 County shall be delivered by the court to the county treasurer
36 and paid by the county treasurer from moneys granted to the

1 county from the Capital Litigation Trust Fund.

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

3 (725 ILCS 124/15)

4 Sec. 15. Capital Litigation Trust Fund.

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

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

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

25 (d) Every fiscal year the State Treasurer shall transfer
26 from the General Revenue Fund to the Capital Litigation Trust
27 Fund an amount equal to the full amount of moneys appropriated
28 by the General Assembly (both by original and supplemental
29 appropriation), less any unexpended balance from the previous
30 fiscal year, from the Capital Litigation Trust Fund for the
31 specific purpose of making funding available for the
32 prosecution and defense of capital cases and for the litigation
33 expenses associated with post-conviction proceedings in
34 capital cases under Article 122 of the Code of Criminal
35 Procedure of 1963 and in relation to petitions filed under

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

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

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

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

28 (4) The State's Attorneys Appellate Prosecutor shall
29 request a direct appropriation from the Trust Fund to pay
30 expenses incurred by the State's Attorneys Appellate
31 Prosecutor and an appropriation to the State Treasurer for
32 payments from the Trust Fund for expenses incurred by
33 State's Attorneys in counties other than Cook County.

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

1 in counties other than Cook County and to pay for expenses
2 incurred by the Attorney General when the Attorney General
3 is ordered by the presiding judge of the Criminal Division
4 of the Circuit Court of Cook County to prosecute or
5 supervise the prosecution of Cook County cases and for
6 expenses incurred by the Attorney General in representing
7 the State in post-conviction proceedings in capital cases
8 under Article 122 of the Code of Criminal Procedure of 1963
9 and in relation to petitions filed under Section 2-1401 of
10 the Code of Civil Procedure in relation to capital cases.

11 The Public Defender and State's Attorney in Cook County,
12 the State Appellate Defender, the State's Attorneys Appellate
13 Prosecutor, and the Attorney General may each request
14 supplemental appropriations from the Trust Fund during the
15 fiscal year.

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

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

22 (2) To pay the capital litigation expenses of trial
23 defense and post-conviction proceedings in capital cases
24 under Article 122 of the Code of Criminal Procedure of 1963
25 and in relation to petitions filed under Section 2-1401 of
26 the Code of Civil Procedure in relation to capital cases
27 including, but not limited to, DNA testing, including DNA
28 testing under Section 116-3 of the Code of Criminal
29 Procedure of 1963, analysis, and expert testimony,
30 investigatory and other assistance, expert, forensic, and
31 other witnesses, and mitigation specialists, and grants
32 and aid provided to public defenders, appellate defenders,
33 and any attorney approved by or contracted with the State
34 Appellate Defender representing petitioners in
35 post-conviction proceedings in capital cases under Article
36 122 of the Code of Criminal Procedure of 1963 and in

1 relation to petitions filed under Section 2-1401 of the
2 Code of Civil Procedure in relation to capital cases or
3 assistance to attorneys who have been appointed by the
4 court to represent defendants who are charged with capital
5 crimes.

6 (3) To pay the compensation of trial attorneys, other
7 than public defenders or appellate defenders, who have been
8 appointed by the court to represent defendants who are
9 charged with capital crimes or attorneys approved by or
10 contracted with the State Appellate Defender to represent
11 petitioners in post-conviction proceedings in capital
12 cases under Article 122 of the Code of Criminal Procedure
13 of 1963 and in relation to petitions filed under Section
14 2-1401 of the Code of Civil Procedure in relation to
15 capital cases.

16 (4) To provide State's Attorneys with funding for
17 capital litigation expenses and for expenses of
18 representing the State in post-conviction proceedings in
19 capital cases under Article 122 of the Code of Criminal
20 Procedure of 1963 and in relation to petitions filed under
21 Section 2-1401 of the Code of Civil Procedure in relation
22 to capital cases including, but not limited to,
23 investigatory and other assistance and expert, forensic,
24 and other witnesses necessary to prosecute capital cases.
25 State's Attorneys in any county other than Cook County
26 seeking funding for capital litigation expenses and for
27 expenses of representing the State in post-conviction
28 proceedings in capital cases under Article 122 of the Code
29 of Criminal Procedure of 1963 and in relation to petitions
30 filed under Section 2-1401 of the Code of Civil Procedure
31 in relation to capital cases including, but not limited to,
32 investigatory and other assistance and expert, forensic,
33 or other witnesses under this Section may request that the
34 State's Attorneys Appellate Prosecutor or the Attorney
35 General, as the case may be, certify the expenses as
36 reasonable, necessary, and appropriate for payment from

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

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

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

21 (7) To provide financial support to the State Appellate
22 Defender pursuant to the State Appellate Defender Act.

23 Moneys expended from the Trust Fund shall be in addition to
24 county funding for Public Defenders and State's Attorneys, and
25 shall not be used to supplant or reduce ordinary and customary
26 county funding.

27 (f) Moneys in the Trust Fund shall be appropriated to the
28 State Appellate Defender, the State's Attorneys Appellate
29 Prosecutor, the Attorney General, and the State Treasurer. The
30 State Appellate Defender shall receive an appropriation from
31 the Trust Fund to enable it to provide assistance to appointed
32 defense counsel and attorneys approved by or contracted with
33 the State Appellate Defender to represent petitioners in
34 post-conviction proceedings in capital cases under Article 122
35 of the Code of Criminal Procedure of 1963 and in relation to
36 petitions filed under Section 2-1401 of the Code of Civil

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

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

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

30 (2) The State Treasurer shall establish rules and
31 procedures for grant applications. The rules shall require
32 the Cook County Treasurer as the grant recipient to report
33 on a periodic basis to the State Treasurer how much of the
34 grant has been expended, how much of the grant is
35 remaining, and the purposes for which the grant has been
36 used. The rules may also require the Cook County Treasurer

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

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

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

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

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

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

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

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

12 (i) In counties other than Cook County, and when the
13 Attorney General is ordered by the presiding judge of the
14 Criminal Division of the Circuit Court of Cook County to
15 prosecute or supervise the prosecution of Cook County cases,
16 and excluding capital litigation expenses or services that may
17 have been provided by the State Appellate Defender under item
18 (c)(5) of Section 10 of the State Appellate Defender Act:

19 (1) Upon certification by the circuit court, on a form
20 created by the State Treasurer, that all or a portion of
21 the expenses are reasonable, necessary, and appropriate
22 for payment from the Trust Fund and the court's delivery of
23 the certification to the Treasurer, the Treasurer shall pay
24 the certified expenses of Public Defenders and the State
25 Appellate Defender from the money appropriated to the
26 Treasurer for capital litigation expenses of Public
27 Defenders and post-conviction proceeding expenses in
28 capital cases of the State Appellate Defender and expenses
29 in relation to petitions filed under Section 2-1401 of the
30 Code of Civil Procedure in relation to capital cases in any
31 county other than Cook County, if there are sufficient
32 moneys in the Trust Fund to pay the expenses.

33 (2) If a defendant in a capital case is represented by
34 court appointed counsel other than the Public Defender, the
35 appointed counsel shall petition the court to certify
36 compensation and capital litigation expenses including,

1 but not limited to, investigatory and other assistance,
2 expert, forensic, and other witnesses, and mitigation
3 specialists as reasonable, necessary, and appropriate for
4 payment from the Trust Fund. If a petitioner in a capital
5 case who has filed a petition for post-conviction relief
6 under Article 122 of the Code of Criminal Procedure of 1963
7 or a petition under Section 2-1401 of the Code of Civil
8 Procedure in relation to capital cases is represented by an
9 attorney approved by or contracted with the State Appellate
10 Defender other than the State Appellate Defender, that
11 attorney shall petition the court to certify compensation
12 and litigation expenses of post-conviction proceedings
13 under Article 122 of the Code of Criminal Procedure of 1963
14 or in relation to petitions filed under Section 2-1401 of
15 the Code of Civil Procedure in relation to capital cases.
16 Upon certification on a form created by the State Treasurer
17 of all or a portion of the compensation and expenses
18 certified as reasonable, necessary, and appropriate for
19 payment from the Trust Fund and the court's delivery of the
20 certification to the Treasurer, the State Treasurer shall
21 pay the certified compensation and expenses from the money
22 appropriated to the Treasurer for that purpose, if there
23 are sufficient moneys in the Trust Fund to make those
24 payments.

25 (3) A petition for capital litigation expenses or
26 post-conviction proceeding expenses or expenses incurred
27 in filing a petition under Section 2-1401 of the Code of
28 Civil Procedure in relation to capital cases under this
29 subsection shall be considered under seal and reviewed ex
30 parte with a court reporter present ~~in camera~~. Orders
31 denying petitions for compensation or expenses are final.

32 (j) If the Trust Fund is discontinued or dissolved by an
33 Act of the General Assembly or by operation of law, any balance
34 remaining in the Trust Fund shall be returned to the General
35 Revenue Fund after deduction of administrative costs, any other
36 provision of this Act to the contrary notwithstanding.

1 (Source: P.A. 93-127, eff. 1-1-04; 93-605, eff. 11-19-03;
2 93-972, eff. 8-20-04.)