

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 Freedom of Information Act is amended by
5 changing Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 Sec. 7. Exemptions.

8 (1) The following shall be exempt from inspection and
9 copying:

10 (a) Information specifically prohibited from
11 disclosure by federal or State law or rules and regulations
12 adopted under federal or State law.

13 (b) Information that, if disclosed, would constitute a
14 clearly unwarranted invasion of personal privacy, unless
15 the disclosure is consented to in writing by the individual
16 subjects of the information. The disclosure of information
17 that bears on the public duties of public employees and
18 officials shall not be considered an invasion of personal
19 privacy. Information exempted under this subsection (b)
20 shall include but is not limited to:

21 (i) files and personal information maintained with
22 respect to clients, patients, residents, students or
23 other individuals receiving social, medical,
24 educational, vocational, financial, supervisory or
25 custodial care or services directly or indirectly from
26 federal agencies or public bodies;

27 (ii) personnel files and personal information
28 maintained with respect to employees, appointees or
29 elected officials of any public body or applicants for
30 those positions;

31 (iii) files and personal information maintained
32 with respect to any applicant, registrant or licensee

1 by any public body cooperating with or engaged in
2 professional or occupational registration, licensure
3 or discipline;

4 (iv) information required of any taxpayer in
5 connection with the assessment or collection of any tax
6 unless disclosure is otherwise required by State
7 statute;

8 (v) information revealing the identity of persons
9 who file complaints with or provide information to
10 administrative, investigative, law enforcement or
11 penal agencies; provided, however, that identification
12 of witnesses to traffic accidents, traffic accident
13 reports, and rescue reports may be provided by agencies
14 of local government, except in a case for which a
15 criminal investigation is ongoing, without
16 constituting a clearly unwarranted per se invasion of
17 personal privacy under this subsection; and

18 (vi) the names, addresses, or other personal
19 information of participants and registrants in park
20 district, forest preserve district, and conservation
21 district programs.

22 (c) Records compiled by any public body for
23 administrative enforcement proceedings and any law
24 enforcement or correctional agency for law enforcement
25 purposes or for internal matters of a public body, but only
26 to the extent that disclosure would:

27 (i) interfere with pending or actually and
28 reasonably contemplated law enforcement proceedings
29 conducted by any law enforcement or correctional
30 agency;

31 (ii) interfere with pending administrative
32 enforcement proceedings conducted by any public body;

33 (iii) deprive a person of a fair trial or an
34 impartial hearing;

35 (iv) unavoidably disclose the identity of a
36 confidential source or confidential information

1 furnished only by the confidential source;

2 (v) disclose unique or specialized investigative
3 techniques other than those generally used and known or
4 disclose internal documents of correctional agencies
5 related to detection, observation or investigation of
6 incidents of crime or misconduct;

7 (vi) constitute an invasion of personal privacy
8 under subsection (b) of this Section;

9 (vii) endanger the life or physical safety of law
10 enforcement personnel or any other person; or

11 (viii) obstruct an ongoing criminal investigation.

12 (d) Criminal history record information maintained by
13 State or local criminal justice agencies, except the
14 following which shall be open for public inspection and
15 copying:

16 (i) chronologically maintained arrest information,
17 such as traditional arrest logs or blotters;

18 (ii) the name of a person in the custody of a law
19 enforcement agency and the charges for which that
20 person is being held;

21 (iii) court records that are public;

22 (iv) records that are otherwise available under
23 State or local law; or

24 (v) records in which the requesting party is the
25 individual identified, except as provided under part
26 (vii) of paragraph (c) of subsection (1) of this
27 Section.

28 "Criminal history record information" means data
29 identifiable to an individual and consisting of
30 descriptions or notations of arrests, detentions,
31 indictments, informations, pre-trial proceedings, trials,
32 or other formal events in the criminal justice system or
33 descriptions or notations of criminal charges (including
34 criminal violations of local municipal ordinances) and the
35 nature of any disposition arising therefrom, including
36 sentencing, court or correctional supervision,

1 rehabilitation and release. The term does not apply to
2 statistical records and reports in which individuals are
3 not identified and from which their identities are not
4 ascertainable, or to information that is for criminal
5 investigative or intelligence purposes.

6 (e) Records that relate to or affect the security of
7 correctional institutions and detention facilities.

8 (f) Preliminary drafts, notes, recommendations,
9 memoranda and other records in which opinions are
10 expressed, or policies or actions are formulated, except
11 that a specific record or relevant portion of a record
12 shall not be exempt when the record is publicly cited and
13 identified by the head of the public body. The exemption
14 provided in this paragraph (f) extends to all those records
15 of officers and agencies of the General Assembly that
16 pertain to the preparation of legislative documents.

17 (g) Trade secrets and commercial or financial
18 information obtained from a person or business where the
19 trade secrets or information are proprietary, privileged
20 or confidential, or where disclosure of the trade secrets
21 or information may cause competitive harm, including all
22 information determined to be confidential under Section
23 4002 of the Technology Advancement and Development Act.
24 Nothing contained in this paragraph (g) shall be construed
25 to prevent a person or business from consenting to
26 disclosure.

27 (h) Proposals and bids for any contract, grant, or
28 agreement, including information which if it were
29 disclosed would frustrate procurement or give an advantage
30 to any person proposing to enter into a contractor
31 agreement with the body, until an award or final selection
32 is made. Information prepared by or for the body in
33 preparation of a bid solicitation shall be exempt until an
34 award or final selection is made.

35 (i) Valuable formulae, computer geographic systems,
36 designs, drawings and research data obtained or produced by

1 any public body when disclosure could reasonably be
2 expected to produce private gain or public loss. The
3 exemption for "computer geographic systems" provided in
4 this paragraph (i) does not extend to requests made by news
5 media as defined in Section 2 of this Act when the
6 requested information is not otherwise exempt and the only
7 purpose of the request is to access and disseminate
8 information regarding the health, safety, welfare, or
9 legal rights of the general public.

10 (j) Test questions, scoring keys and other examination
11 data used to administer an academic examination or
12 determined the qualifications of an applicant for a license
13 or employment.

14 (k) Architects' plans, engineers' technical
15 submissions, and other construction related technical
16 documents for projects not constructed or developed in
17 whole or in part with public funds and the same for
18 projects constructed or developed with public funds, but
19 only to the extent that disclosure would compromise
20 security, including but not limited to water treatment
21 facilities, airport facilities, sport stadiums, convention
22 centers, and all government owned, operated, or occupied
23 buildings.

24 (l) Library circulation and order records identifying
25 library users with specific materials.

26 (m) Minutes of meetings of public bodies closed to the
27 public as provided in the Open Meetings Act until the
28 public body makes the minutes available to the public under
29 Section 2.06 of the Open Meetings Act.

30 (n) Communications between a public body and an
31 attorney or auditor representing the public body that would
32 not be subject to discovery in litigation, and materials
33 prepared or compiled by or for a public body in
34 anticipation of a criminal, civil or administrative
35 proceeding upon the request of an attorney advising the
36 public body, and materials prepared or compiled with

1 respect to internal audits of public bodies.

2 (o) Information received by a primary or secondary
3 school, college or university under its procedures for the
4 evaluation of faculty members by their academic peers.

5 (p) Administrative or technical information associated
6 with automated data processing operations, including but
7 not limited to software, operating protocols, computer
8 program abstracts, file layouts, source listings, object
9 modules, load modules, user guides, documentation
10 pertaining to all logical and physical design of
11 computerized systems, employee manuals, and any other
12 information that, if disclosed, would jeopardize the
13 security of the system or its data or the security of
14 materials exempt under this Section.

15 (q) Documents or materials relating to collective
16 negotiating matters between public bodies and their
17 employees or representatives, except that any final
18 contract or agreement shall be subject to inspection and
19 copying.

20 (r) Drafts, notes, recommendations and memoranda
21 pertaining to the financing and marketing transactions of
22 the public body. The records of ownership, registration,
23 transfer, and exchange of municipal debt obligations, and
24 of persons to whom payment with respect to these
25 obligations is made.

26 (s) The records, documents and information relating to
27 real estate purchase negotiations until those negotiations
28 have been completed or otherwise terminated. With regard to
29 a parcel involved in a pending or actually and reasonably
30 contemplated eminent domain proceeding under Article VII
31 of the Code of Civil Procedure, records, documents and
32 information relating to that parcel shall be exempt except
33 as may be allowed under discovery rules adopted by the
34 Illinois Supreme Court. The records, documents and
35 information relating to a real estate sale shall be exempt
36 until a sale is consummated.

1 (t) Any and all proprietary information and records
2 related to the operation of an intergovernmental risk
3 management association or self-insurance pool or jointly
4 self-administered health and accident cooperative or pool.

5 (u) Information concerning a university's adjudication
6 of student or employee grievance or disciplinary cases, to
7 the extent that disclosure would reveal the identity of the
8 student or employee and information concerning any public
9 body's adjudication of student or employee grievances or
10 disciplinary cases, except for the final outcome of the
11 cases.

12 (v) Course materials or research materials used by
13 faculty members.

14 (w) Information related solely to the internal
15 personnel rules and practices of a public body.

16 (x) Information contained in or related to
17 examination, operating, or condition reports prepared by,
18 on behalf of, or for the use of a public body responsible
19 for the regulation or supervision of financial
20 institutions or insurance companies, unless disclosure is
21 otherwise required by State law.

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

24 (z) Manuals or instruction to staff that relate to
25 establishment or collection of liability for any State tax
26 or that relate to investigations by a public body to
27 determine violation of any criminal law.

28 (aa) Applications, related documents, and medical
29 records received by the Experimental Organ Transplantation
30 Procedures Board and any and all documents or other records
31 prepared by the Experimental Organ Transplantation
32 Procedures Board or its staff relating to applications it
33 has received.

34 (bb) Insurance or self insurance (including any
35 intergovernmental risk management association or self
36 insurance pool) claims, loss or risk management

1 information, records, data, advice or communications.

2 (cc) Information and records held by the Department of
3 Public Health and its authorized representatives relating
4 to known or suspected cases of sexually transmissible
5 disease or any information the disclosure of which is
6 restricted under the Illinois Sexually Transmissible
7 Disease Control Act.

8 (dd) Information the disclosure of which is exempted
9 under Section 30 of the Radon Industry Licensing Act.

10 (ee) Firm performance evaluations under Section 55 of
11 the Architectural, Engineering, and Land Surveying
12 Qualifications Based Selection Act.

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

20 (gg) Information the disclosure of which is restricted
21 and exempted under Section 50 of the Illinois Prepaid
22 Tuition Act.

23 (hh) Information the disclosure of which is exempted
24 under the State Officials and Employees Ethics Act.

25 (ii) Beginning July 1, 1999, information that would
26 disclose or might lead to the disclosure of secret or
27 confidential information, codes, algorithms, programs, or
28 private keys intended to be used to create electronic or
29 digital signatures under the Electronic Commerce Security
30 Act.

31 (jj) Information contained in a local emergency energy
32 plan submitted to a municipality in accordance with a local
33 emergency energy plan ordinance that is adopted under
34 Section 11-21.5-5 of the Illinois Municipal Code.

35 (kk) Information and data concerning the distribution
36 of surcharge moneys collected and remitted by wireless

1 carriers under the Wireless Emergency Telephone Safety
2 Act.

3 (ll) Vulnerability assessments, security measures, and
4 response policies or plans that are designed to identify,
5 prevent, or respond to potential attacks upon a community's
6 population or systems, facilities, or installations, the
7 destruction or contamination of which would constitute a
8 clear and present danger to the health or safety of the
9 community, but only to the extent that disclosure could
10 reasonably be expected to jeopardize the effectiveness of
11 the measures or the safety of the personnel who implement
12 them or the public. Information exempt under this item may
13 include such things as details pertaining to the
14 mobilization or deployment of personnel or equipment, to
15 the operation of communication systems or protocols, or to
16 tactical operations.

17 (mm) Maps and other records regarding the location or
18 security of a utility's generation, transmission,
19 distribution, storage, gathering, treatment, or switching
20 facilities.

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

26 (oo) Records and information provided to a residential
27 health care facility resident sexual assault and death
28 review team or the Residential Health Care Facility
29 Resident Sexual Assault and Death Review Teams Executive
30 Council under the Residential Health Care Facility
31 Resident Sexual Assault and Death Review Team Act.

32 (pp) Defense budgets and petitions for certification
33 of compensation and expenses for court appointed trial
34 counsel as provided under Sections 10 and 15 of the Capital
35 Crimes Litigation Act. This subsection (pp) shall apply
36 until the conclusion of the trial and appeal of the case,

1 even if the prosecution chooses not to pursue the death
2 penalty prior to trial or sentencing.

3 (2) This Section does not authorize withholding of
4 information or limit the availability of records to the public,
5 except as stated in this Section or otherwise provided in this
6 Act.

7 (Source: P.A. 92-16, eff. 6-28-01; 92-241, eff. 8-3-01; 92-281,
8 eff. 8-7-01; 92-645, eff. 7-11-02; 92-651, eff. 7-11-02; 93-43,
9 eff. 7-1-03; 93-209, eff. 7-18-03; 93-237, eff. 7-22-03;
10 93-325, eff. 7-23-03, 93-422, eff. 8-5-03; 93-577, eff.
11 8-21-03; 93-617, eff. 12-9-03.)

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

14 (725 ILCS 124/10)

15 Sec. 10. Court appointed trial counsel; compensation and
16 expenses.

17 (a) This Section applies only to compensation and expenses
18 of trial counsel appointed by the court as set forth in Section
19 5, other than public defenders, for the period after
20 arraignment and so long as the State's Attorney has not, at any
21 time, filed a certificate indicating he or she will not seek
22 the death penalty or stated on the record in open court that
23 the death penalty will not be sought.

24 (a-5) Litigation budget.

25 (1) In a case in which the State has filed a statement
26 of intent to seek the death penalty, the court shall
27 require appointed counsel, including those appointed in
28 Cook County, after counsel has had adequate time to review
29 the case and prior to engaging trial assistance, to submit
30 a proposed estimated litigation budget for court approval,
31 that will be subject to modification in light of facts and
32 developments that emerge as the case proceeds. Case budgets
33 should be submitted ex parte and filed and maintained under
34 seal in order to protect the defendant's right to effective

1 assistance of counsel, right not to incriminate him or
2 herself and all applicable privileges. Case budgets shall
3 be reviewed and approved by the judge assigned to try the
4 case. As provided under subsection (c) of this Section,
5 petitions for compensation shall be reviewed by both the
6 trial judge and the presiding judge or the presiding
7 judge's designee.

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

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

21 (A) The hourly rate at which counsel will be
22 compensated;

23 (B) The hourly rate at which private
24 investigators, other than investigators employed by
25 the Office of the State Appellate Defender, will be
26 compensated; and

27 (C) The best preliminary estimate that can be made
28 of the cost of all services, including, but not limited
29 to, counsel, expert, and investigative services, that
30 are likely to be needed through the guilt and penalty
31 phases of the trial. The court shall have discretion to
32 require that budgets be prepared for shorter intervals
33 of time.

34 (4) Appointed counsel may obtain, subject to later
35 review, investigative, expert or other services without
36 prior authorization if necessary for an adequate defense.

1 If such services are obtained, the presiding judge or the
2 presiding judge's designee shall consider in an ex parte
3 proceeding that timely procurement of necessary services
4 could not await prior authorization. If an ex parte hearing
5 is requested by defense counsel or deemed necessary by the
6 trial judge prior to modifying a budget, the ex parte
7 hearing shall be before the presiding judge or the
8 presiding judge's designee. The judge may then authorize
9 such services nunc pro tunc. If the presiding judge or the
10 presiding judge's designee finds that the services were not
11 reasonable, payment may be denied.

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

22 (b) Appointed trial counsel shall be compensated upon
23 presentment and certification by the circuit court of a claim
24 for services detailing the date, activity, and time duration
25 for which compensation is sought. Compensation for appointed
26 trial counsel may be paid at a reasonable rate not to exceed
27 \$125 per hour. The court shall not authorize payment of bills
28 that are not properly itemized. A request for payment shall be
29 presented under seal and reviewed ex parte with a court
30 reporter present.

31 Beginning in 2001, every January 20, the statutory rate
32 prescribed in this subsection shall be automatically increased
33 or decreased, as applicable, by a percentage equal to the
34 percentage change in the consumer price index-u during the
35 preceding 12-month calendar year. "Consumer price index-u"
36 means the index published by the Bureau of Labor Statistics of

1 the United States Department of Labor that measures the average
2 change in prices of goods and services purchased by all urban
3 consumers, United States city average, all items, 1982-84=100.
4 The new rate resulting from each annual adjustment shall be
5 determined by the State Treasurer and made available to the
6 chief judge of each judicial circuit.

7 (c) Appointed trial counsel may also petition the court for
8 certification of expenses for reasonable and necessary capital
9 litigation expenses including, but not limited to,
10 investigatory and other assistance, expert, forensic, and
11 other witnesses, and mitigation specialists. Counsel may not
12 petition for certification of expenses that may have been
13 provided or compensated by the State Appellate Defender under
14 item (c) (5) of Section 10 of the State Appellate Defender Act.
15 The petitions shall be filed under seal and considered ex parte
16 but with a court reporter present for all ex parte conferences.
17 If the requests are submitted after services have been
18 rendered, the requests shall be supported by an invoice
19 describing the services rendered, the dates the services were
20 performed and the amount of time spent. These petitions shall
21 be reviewed by both the trial judge and the presiding judge of
22 the circuit court or the presiding judge's designee. The
23 petitions and orders shall be kept under seal and shall be
24 exempt from Freedom of Information requests until the
25 conclusion of the trial, even if the prosecution chooses not to
26 pursue the death penalty prior to trial or sentencing. If an ex
27 parte hearing is requested by defense counsel or deemed
28 necessary by the trial judge, the hearing shall be before the
29 presiding judge or the presiding judge's designee.

30 (d) Appointed trial counsel shall petition the court for
31 certification of compensation and expenses under this Section
32 periodically during the course of counsel's representation.
33 The petitions shall be supported by itemized bills showing the
34 date, the amount of time spent, the work done and the total
35 being charged for each entry. The court shall not authorize
36 payment of bills that are not properly itemized. The petitions

1 shall be filed under seal and considered ex parte but with a
2 court reporter present for all ex parte conferences. The
3 petitions shall be reviewed by both the trial judge and the
4 presiding judge of the circuit court or the presiding judge's
5 designee. If an ex parte hearing is requested by defense
6 counsel or deemed necessary by the trial judge, the ex parte
7 hearing shall be before the presiding judge or the presiding
8 judge's designee. If the court determines that the compensation
9 and expenses should be paid from the Capital Litigation Trust
10 Fund, the court shall certify, on a form created by the State
11 Treasurer, that all or a designated portion of the amount
12 requested is reasonable, necessary, and appropriate for
13 payment from the Trust Fund. Certification of compensation and
14 expenses by a court in any county other than Cook County shall
15 be delivered by the court to the State Treasurer and paid by
16 the State Treasurer directly from the Capital Litigation Trust
17 Fund if there are sufficient moneys in the Trust Fund to pay
18 the compensation and expenses. The petitions and orders shall
19 be kept under seal and shall be exempt from Freedom of
20 Information requests until the conclusion of the trial and
21 appeal of the case, even if the prosecution chooses not to
22 pursue the death penalty prior to trial or sentencing.
23 Certification of compensation and expenses by a court in Cook
24 County shall be delivered by the court to the county treasurer
25 and paid by the county treasurer from moneys granted to the
26 county from the Capital Litigation Trust Fund.

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

28 (725 ILCS 124/15)

29 Sec. 15. Capital Litigation Trust Fund.

30 (a) The Capital Litigation Trust Fund is created as a
31 special fund in the State Treasury. The Trust Fund shall be
32 administered by the State Treasurer to provide moneys for the
33 appropriations to be made, grants to be awarded, and
34 compensation and expenses to be paid under this Act. All
35 interest earned from the investment or deposit of moneys

1 accumulated in the Trust Fund shall, under Section 4.1 of the
2 State Finance Act, be deposited into the Trust Fund.

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

5 (c) Moneys deposited into the Trust Fund shall be used
6 exclusively for the purposes of providing funding for the
7 prosecution and defense of capital cases and for providing
8 funding for post-conviction proceedings in capital cases under
9 Article 122 of the Code of Criminal Procedure of 1963 and in
10 relation to petitions filed under Section 2-1401 of the Code of
11 Civil Procedure in relation to capital cases as provided in
12 this Act and shall not be appropriated, loaned, or in any
13 manner transferred to the General Revenue Fund of the State of
14 Illinois.

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

31 (1) The Public Defender in Cook County shall request
32 appropriations to the State Treasurer for expenses
33 incurred by the Public Defender and for funding for private
34 appointed defense counsel in Cook County.

35 (2) The State's Attorney in Cook County shall request
36 an appropriation to the State Treasurer for expenses

1 incurred by the State's Attorney.

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

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

23 (5) The Attorney General shall request a direct
24 appropriation from the Trust Fund to pay expenses incurred
25 by the Attorney General in assisting the State's Attorneys
26 in counties other than Cook County and to pay for expenses
27 incurred by the Attorney General when the Attorney General
28 is ordered by the presiding judge of the Criminal Division
29 of the Circuit Court of Cook County to prosecute or
30 supervise the prosecution of Cook County cases and for
31 expenses incurred by the Attorney General in representing
32 the State in post-conviction proceedings in capital cases
33 under Article 122 of the Code of Criminal Procedure of 1963
34 and in relation to petitions filed under Section 2-1401 of
35 the Code of Civil Procedure in relation to capital cases.
36 The Public Defender and State's Attorney in Cook County,

1 the State Appellate Defender, the State's Attorneys Appellate
2 Prosecutor, and the Attorney General may each request
3 supplemental appropriations from the Trust Fund during the
4 fiscal year.

5 (e) Moneys in the Trust Fund shall be expended only as
6 follows:

7 (1) To pay the State Treasurer's costs to administer
8 the Trust Fund. The amount for this purpose may not exceed
9 5% in any one fiscal year of the amount otherwise
10 appropriated from the Trust Fund in the same fiscal year.

11 (2) To pay the capital litigation expenses of trial
12 defense and post-conviction proceedings in capital cases
13 under Article 122 of the Code of Criminal Procedure of 1963
14 and in relation to petitions filed under Section 2-1401 of
15 the Code of Civil Procedure in relation to capital cases
16 including, but not limited to, DNA testing, including DNA
17 testing under Section 116-3 of the Code of Criminal
18 Procedure of 1963, analysis, and expert testimony,
19 investigatory and other assistance, expert, forensic, and
20 other witnesses, and mitigation specialists, and grants
21 and aid provided to public defenders, appellate defenders,
22 and any attorney approved by or contracted with the State
23 Appellate Defender representing petitioners in
24 post-conviction proceedings in capital cases under Article
25 122 of the Code of Criminal Procedure of 1963 and in
26 relation to petitions filed under Section 2-1401 of the
27 Code of Civil Procedure in relation to capital cases or
28 assistance to attorneys who have been appointed by the
29 court to represent defendants who are charged with capital
30 crimes.

31 (3) To pay the compensation of trial attorneys, other
32 than public defenders or appellate defenders, who have been
33 appointed by the court to represent defendants who are
34 charged with capital crimes or attorneys approved by or
35 contracted with the State Appellate Defender to represent
36 petitioners in post-conviction proceedings in capital

1 cases under Article 122 of the Code of Criminal Procedure
2 of 1963 and in relation to petitions filed under Section
3 2-1401 of the Code of Civil Procedure in relation to
4 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 to,
21 investigatory and other assistance and expert, forensic,
22 or other witnesses under this Section may request that the
23 State's Attorneys Appellate Prosecutor or the Attorney
24 General, as the case may be, certify the expenses as
25 reasonable, necessary, and appropriate for payment from
26 the Trust Fund, on a form created by the State Treasurer.
27 Upon certification of the expenses and delivery of the
28 certification to the State Treasurer, the Treasurer shall
29 pay the expenses directly from the Capital Litigation Trust
30 Fund if there are sufficient moneys in the Trust Fund to
31 pay the expenses.

32 (5) To provide financial support through the Attorney
33 General pursuant to the Attorney General Act for the
34 several county State's Attorneys outside of Cook County,
35 but shall not be used to increase personnel for the
36 Attorney General's Office, except when the Attorney

1 General is ordered by the presiding judge of the Criminal
2 Division of the Circuit Court of Cook County to prosecute
3 or supervise the prosecution of Cook County cases.

4 (6) To provide financial support through the State's
5 Attorneys Appellate Prosecutor pursuant to the State's
6 Attorneys Appellate Prosecutor's Act for the several
7 county State's Attorneys outside of Cook County, but shall
8 not be used to increase personnel for the State's Attorneys
9 Appellate Prosecutor.

10 (7) To provide financial support to the State Appellate
11 Defender pursuant to the State Appellate Defender Act.

12 Moneys expended from the Trust Fund shall be in addition to
13 county funding for Public Defenders and State's Attorneys, and
14 shall not be used to supplant or reduce ordinary and customary
15 county funding.

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

1 Appellate Defender, the Attorney General, the Office of the
2 State's Attorneys Appellate Prosecutor, and State's Attorneys
3 in counties other than Cook County, (iii) to pay the expenses
4 and compensation of appointed defense counsel and attorneys
5 approved by or contracted with the State Appellate Defender to
6 represent petitioners in 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 in counties other than Cook County, and (iv) to
11 pay the costs of administering the Trust Fund. All expenditures
12 and grants made from the Trust Fund shall be subject to audit
13 by the Auditor General.

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

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

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

29 (3) The State Treasurer shall make the grants to the
30 Cook County Treasurer as soon as possible after the
31 beginning of the State fiscal year.

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

34 (5) Grant moneys shall be paid to the Cook County
35 Treasurer in block grants and held in separate accounts for
36 the State's Attorney, the Public Defender, and court

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

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

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

13 (h) If a defendant in a capital case in Cook County is
14 represented by court appointed counsel other than the Cook
15 County Public Defender, the appointed counsel shall petition
16 the court for an order directing the Cook County Treasurer to
17 pay the court appointed counsel's reasonable and necessary
18 compensation and capital litigation expenses from grant moneys
19 provided from the Trust Fund. The petitions shall be supported
20 by itemized bills showing the date, the amount of time spent,
21 the work done and the total being charged for each entry. The
22 court shall not authorize payment of bills that are not
23 properly itemized. The petitions shall be filed under seal and
24 considered ex parte but with a court reporter present for all
25 ex parte conferences. The petitions shall be reviewed by both
26 the trial judge and the presiding judge of the circuit court or
27 the presiding judge's designee. The petitions and orders shall
28 be kept under seal and shall be exempt from Freedom of
29 Information requests until the conclusion of the trial and
30 appeal of the case, even if the prosecution chooses not to
31 pursue the death penalty prior to trial or sentencing. ~~These~~
32 petitions shall be considered in camera. Orders denying
33 petitions for compensation or expenses are final. Counsel may
34 not petition for expenses that may have been provided or
35 compensated by the State Appellate Defender under item (c) (5)
36 of Section 10 of the State Appellate Defender Act.

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

8 (1) Upon certification by the circuit court, on a form
9 created by the State Treasurer, that all or a portion of
10 the expenses are reasonable, necessary, and appropriate
11 for payment from the Trust Fund and the court's delivery of
12 the certification to the Treasurer, the Treasurer shall pay
13 the certified expenses of Public Defenders and the State
14 Appellate Defender from the money appropriated to the
15 Treasurer for capital litigation expenses of Public
16 Defenders and post-conviction proceeding expenses in
17 capital cases of the State Appellate Defender and expenses
18 in relation to petitions filed under Section 2-1401 of the
19 Code of Civil Procedure in relation to capital cases in any
20 county other than Cook County, if there are sufficient
21 moneys in the Trust Fund to pay the expenses.

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

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

26 (Source: P.A. 93-127, eff. 1-1-04; 93-605, eff. 11-19-03;
27 93-972, eff. 8-20-04.)