



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5410

Introduced 2/5/2010, by Rep. Constance A. Howard

SYNOPSIS AS INTRODUCED:

725 ILCS 105/9.1
725 ILCS 105/10

from Ch. 38, par. 208-9.1
from Ch. 38, par. 208-10

Amends the State Appellate Defender Act. Provides that for each State fiscal year, the State Appellate Defender shall request a direct appropriation from the Capital Litigation Trust Fund for expenses incurred by the State Appellate Defender in providing assistance to trial attorneys in cases in which the death sentence is an authorized disposition. Makes other changes. Effective immediately.

LRB096 19262 RLC 34653 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 State Appellate Defender Act is amended by
5 changing Sections 9.1 and 10 as follows:

6 (725 ILCS 105/9.1) (from Ch. 38, par. 208-9.1)

7 Sec. 9.1. Individuals ~~Two individuals~~ may share one
8 attorney or staff position. For purposes of this Section,
9 "shared position" means a position in which ~~2~~ individuals share
10 the salary and employee benefits. For purposes of seniority,
11 each individual shall receive credit at a rate equal to the
12 percentage of time employed in a shared position. Attorneys
13 sharing a position may not engage in the private practice of
14 law.

15 (Source: P.A. 83-771.)

16 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

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

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

22 (b) The State Appellate Defender shall submit a budget for

1 the approval of the State Appellate Defender Commission.

2 (c) The State Appellate Defender may:

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

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

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

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

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

1 (6) develop a Juvenile Defender Resource Center to: (i)
2 study, design, develop, and implement model systems for the
3 delivery of trial level defender services for juveniles in
4 the justice system; (ii) in cases in which a sentence of
5 incarceration or an adult sentence, or both, is an
6 authorized disposition, provide trial counsel with legal
7 advice and the assistance of expert witnesses and
8 investigators from funds appropriated to the Office of the
9 State Appellate Defender by the General Assembly
10 specifically for that purpose; (iii) develop and provide
11 training to public defenders on juvenile justice issues,
12 utilizing resources including the State and local bar
13 associations, the Illinois Public Defender Association,
14 law schools, the Midwest Juvenile Defender Center, and pro
15 bono efforts by law firms; and (iv) make an annual report
16 to the General Assembly.

17 Investigators employed by the Capital Trial Assistance
18 Unit ~~Death Penalty Trial Assistance~~ and Capital Post Conviction
19 Unit ~~Capital Litigation Division~~ of the State Appellate
20 Defender shall be authorized to inquire through the Illinois
21 State Police or local law enforcement with the Law Enforcement
22 Agencies Data System (LEADS) under Section 2605-375 of the
23 Civil Administrative Code of Illinois to ascertain whether
24 their potential witnesses have a criminal background,
25 including: (i) warrants; (ii) arrests; (iii) convictions; and
26 (iv) officer safety information. This authorization applies

1 only to information held on the State level and shall be used
2 only to protect the personal safety of the investigators. Any
3 information that is obtained through this inquiry may not be
4 disclosed by the investigators.

5 (d) For each State fiscal year, the State Appellate
6 Defender shall request a direct appropriation from the Capital
7 Litigation Trust Fund for expenses incurred by the State
8 Appellate Defender in providing assistance to trial attorneys
9 under item (c) (5) of this Section and for expenses incurred by
10 the State Appellate Defender in representing petitioners in
11 capital cases in post-conviction proceedings under Article 122
12 of the Code of Criminal Procedure of 1963 and in relation to
13 petitions filed under Section 2-1401 of the Code of Civil
14 Procedure in relation to capital cases and for the
15 representation of those petitioners by attorneys approved by or
16 contracted with the State Appellate Defender and an
17 appropriation to the State Treasurer for payments from the
18 Trust Fund for the defense of cases in counties other than Cook
19 County State Appellate Defender shall appear before the General
20 Assembly and request appropriations to be made from the Capital
21 Litigation Trust Fund to the State Treasurer for the purpose of
22 providing defense assistance in capital cases outside of Cook
23 County and for expenses incurred by the State Appellate
24 Defender in representing petitioners in capital cases in
25 post-conviction proceedings under Article 122 of the Code of
26 Criminal Procedure of 1963 and in relation to petitions filed

1 ~~under Section 2-1401 of the Code of Civil Procedure in relation~~
2 ~~to capital cases and for the representation of those~~
3 ~~petitioners by attorneys approved by or contracted with the~~
4 ~~State Appellate Defender.~~ The State Appellate Defender may
5 appear before the General Assembly at other times during the
6 State's fiscal year to request supplemental appropriations
7 from the Trust Fund to the State Treasurer.

8 (e) The requirement for reporting to the General Assembly
9 shall be satisfied by filing copies of the report with the
10 Speaker, the Minority Leader and the Clerk of the House of
11 Representatives and the President, the Minority Leader and the
12 Secretary of the Senate and the Legislative Research Unit, as
13 required by Section 3.1 of the General Assembly Organization
14 Act and filing such additional copies with the State Government
15 Report Distribution Center for the General Assembly as is
16 required under paragraph (t) of Section 7 of the State Library
17 Act.

18 (Source: P.A. 94-340, eff. 1-1-06; 95-376, eff. 1-1-08.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.