



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5441

Introduced 2/15/2012, by Rep. Karen A. Yarbrough

SYNOPSIS AS INTRODUCED:

725 ILCS 105/10

from Ch. 38, par. 208-10

Amends State Appellate Defender Act. Deletes the discretionary duty of the State Appellate Defender to provide assistance to trial counsel in capital cases. Adds the discretionary duty to provide training, assistance of expert witnesses, and investigators to public defenders from funds appropriated for those purposes. Prohibits the State Appellate Defender from being appointed as trial counsel. Deletes authority of investigators for the Capital Trial Assistance Unit and Capital Post Conviction Unit to access the Law Enforcement Agencies Data System (LEADS) for witness background checks. Deletes the authority for the State Appellate Defender to request appropriations from the Capital Litigation Trust Fund for capital case expenses in assisting trial counsel, representing petitioners in post-conviction proceedings, and in defending cases in counties other than Cook County. Effective immediately.

LRB097 17719 MRW 62933 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 Section 10 as follows:

6 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

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

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

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

14 (c) The State Appellate Defender may:

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

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

20 (3) cooperate and consult with state agencies,
21 professional associations, and other groups concerning the
22 causes of criminal conduct, the rehabilitation and
23 correction of persons charged with and convicted of crime,

1 the administration of criminal justice, and, in counties of
2 less than 1,000,000 population, study, design, develop and
3 implement model systems for the delivery of trial level
4 defender services, and make an annual report to the General
5 Assembly;

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

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

16 (5.5) provide training to county public defenders;

17 (5.7) provide county public defenders with the
18 assistance of expert witnesses and investigators from
19 funds appropriated to the State Appellate Defender
20 specifically for that purpose by the General Assembly. The
21 Office of the State Appellate Defender shall not be
22 appointed to act as trial counsel;

23 (6) develop a Juvenile Defender Resource Center to: (i)
24 study, design, develop, and implement model systems for the
25 delivery of trial level defender services for juveniles in
26 the justice system; (ii) in cases in which a sentence of

1 incarceration or an adult sentence, or both, is an
2 authorized disposition, provide trial counsel with legal
3 advice and the assistance of expert witnesses and
4 investigators from funds appropriated to the Office of the
5 State Appellate Defender by the General Assembly
6 specifically for that purpose; (iii) develop and provide
7 training to public defenders on juvenile justice issues,
8 utilizing resources including the State and local bar
9 associations, the Illinois Public Defender Association,
10 law schools, the Midwest Juvenile Defender Center, and pro
11 bono efforts by law firms; and (iv) make an annual report
12 to the General Assembly.

13 ~~Investigators employed by the Capital Trial Assistance~~
14 ~~Unit and Capital Post Conviction Unit of the State Appellate~~
15 ~~Defender shall be authorized to inquire through the Illinois~~
16 ~~State Police or local law enforcement with the Law Enforcement~~
17 ~~Agencies Data System (LEADS) under Section 2605-375 of the~~
18 ~~Civil Administrative Code of Illinois to ascertain whether~~
19 ~~their potential witnesses have a criminal background,~~
20 ~~including: (i) warrants; (ii) arrests; (iii) convictions; and~~
21 ~~(iv) officer safety information. This authorization applies~~
22 ~~only to information held on the State level and shall be used~~
23 ~~only to protect the personal safety of the investigators. Any~~
24 ~~information that is obtained through this inquiry may not be~~
25 ~~disclosed by the investigators.~~

26 (d) (Blank.) ~~For each State fiscal year, the State~~

1 ~~Appellate Defender shall request a direct appropriation from~~
2 ~~the Capital Litigation Trust Fund for expenses incurred by the~~
3 ~~State Appellate Defender in providing assistance to trial~~
4 ~~attorneys under item (c) (5) of this Section and for expenses~~
5 ~~incurred by the State Appellate Defender in representing~~
6 ~~petitioners in capital cases in post conviction proceedings~~
7 ~~under Article 122 of the Code of Criminal Procedure of 1963 and~~
8 ~~in relation to petitions filed under Section 2-1401 of the Code~~
9 ~~of Civil Procedure in relation to capital cases and for the~~
10 ~~representation of those petitioners by attorneys approved by or~~
11 ~~contracted with the State Appellate Defender and an~~
12 ~~appropriation to the State Treasurer for payments from the~~
13 ~~Trust Fund for the defense of cases in counties other than Cook~~
14 ~~County. The State Appellate Defender may appear before the~~
15 ~~General Assembly at other times during the State's fiscal year~~
16 ~~to request supplemental appropriations from the Trust Fund to~~
17 ~~the State Treasurer.~~

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

1 Act.

2 (Source: P.A. 95-376, eff. 1-1-08; 96-1148, eff. 7-21-10.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.