



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB4683

by Rep. Patricia R. Bellock

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/Art. 121A heading new  
725 ILCS 5/121A-1 new  
725 ILCS 5/121A-2 new  
725 ILCS 5/121A-3 new

Amends the Code of Criminal Procedure of 1963. Any party who learns of the death of a defendant in a criminal case that is pending on appeal shall promptly notify the other party and file a certificate of notice of the defendant's death with the court before which the appeal is pending. If the appeal is by the State, upon the filing of the certificate, the court shall vacate the judgment and sentence of the trial court and the cause shall be forever abated. If the appeal is by the defendant, upon the filing of the certificate, the court shall immediately stay further action in the proceeding for 28 days. During the stay, the executor or administrator of the defendant's estate, the defendant's attorney on appeal, the Office of the Appellate Defender, or the Public Defender in the county in which the defendant was convicted, or other successor in interest shall have standing to petition the court for leave to intervene in the appeal for the purpose of pursuing the appeal in place of the defendant. If the court receives a timely petition for leave to intervene, the court shall permit the petitioning party to intervene in the appeal in place of the defendant and the appeal shall proceed in the same manner as if the defendant were still alive. If, after intervention, the appeal results in: (1) the entry of an order affirming the decision of the trial court, the intervenor may continue to pursue the appeal on the behalf of the defendant or seek post-conviction relief to the extent that further appellate or post-conviction relief would have been available to the defendant were he or she still alive; (2) a finding of error by the court resulting in the reversal of a defendant's conviction, the court shall vacate the judgment and sentence of the trial court and the cause shall be forever abated; or (3) a finding of error which would require the trial court to resentence the defendant, but does not require reversal of the defendant's sentence, the court shall vacate the sentence imposed by the trial court and the conviction shall stand. If no petition for leave of the court to intervene is filed, the court shall dismiss the appeal without disturbing the decision of the trial court or sentence it imposed.

LRB099 15776 MRW 40082 b

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 Code of Criminal Procedure of 1963 is  
5 amended by adding the heading of Article 121A and Sections  
6 121A-1, 121A-2, and 121A-3 as follows:

7 (725 ILCS 5/Art. 121A heading new)

8 ARTICLE 121A. PENDING APPEAL AFTER DEFENDANT'S DEATH

9 (725 ILCS 5/121A-1 new)

10 Sec. 121A-1. Application of Article.

11 Unless otherwise provided by Rules of the Supreme Court,  
12 this Article shall govern pending review in all criminal cases  
13 after the death of the defendant.

14 (725 ILCS 5/121A-2 new)

15 Sec. 121A-2. Pending appeal by the State after the  
16 defendant's death.

17 (a) Whenever the prosecuting attorney or the attorney for a  
18 defendant who is representing a defendant on appeal of a  
19 criminal case by the State, learns of the death of the  
20 defendant, he or she shall promptly notify the other party and  
21 file a certificate of notice of the defendant's death with the

1 court before which the appeal is pending. Upon the filing of  
2 the certificate, the court shall vacate the judgment and  
3 sentence of the trial court and the cause shall be forever  
4 abated.

5 (725 ILCS 5/121A-3 new)

6 Sec. 121A-3. Pending appeal by the defendant after the  
7 defendant's death.

8 (a) Whenever the prosecuting attorney or the attorney for a  
9 defendant who is appealing the defendant's conviction or  
10 sentence in a criminal case, learns of the death of the  
11 defendant, he or she shall promptly notify the other party and  
12 file a certificate of notice of the defendant's death with the  
13 court before which the appeal is pending. Upon the filing of  
14 the certificate, the court shall immediately stay further  
15 action in the proceeding for 28 days.

16 (b) The executor or administrator of the defendant's  
17 estate, the defendant's attorney on appeal, the Office of the  
18 Appellate Defender, or the Public Defender in the county in  
19 which the defendant was convicted, or other successor in  
20 interest shall have standing to petition the court for leave to  
21 intervene in the appeal for the purpose of pursuing the appeal  
22 in place of the defendant. A successor in interest shall file a  
23 petition during the period of stay under subsection (a) of this  
24 Section. If the court receives a timely petition for leave to  
25 intervene, the court shall permit the petitioning party to

1 intervene in the appeal in place of the defendant and the  
2 appeal shall proceed in the same manner as if the defendant  
3 were still alive. If, after intervention, the appeal results  
4 in:

5 (1) the entry of an order affirming the decision of the  
6 trial court, the intervenor may continue to pursue the  
7 appeal on the behalf of the defendant or seek  
8 post-conviction relief to the extent that further  
9 appellate or post-conviction relief would have been  
10 available to the defendant were he or she still alive;

11 (2) a finding of error by the court resulting in the  
12 reversal of a defendant's conviction, the court shall  
13 vacate the judgment and sentence of the trial court and the  
14 cause shall be forever abated; or

15 (3) a finding of error which would require the trial  
16 court to resentence the defendant, but does not require  
17 reversal of the defendant's sentence, the court shall  
18 vacate the sentence imposed by the trial court and the  
19 conviction shall stand.

20 (c) If no petition for leave of the court to intervene is  
21 filed under subsection (b) of this Section, the court shall  
22 dismiss the appeal without disturbing the decision of the trial  
23 court or sentence it imposed.