



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB4637

Introduced 1/21/2022, by Rep. Tony McCombie

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Capital Crimes Litigation Act of 2022. Provides that if an indigent defendant is charged with an offense for which a sentence of death is authorized, and the State's Attorney has not, at or before arraignment, filed a certificate indicating he or she will not seek the death penalty or stated on the record in open court that the death penalty will not be sought, the trial court shall immediately appoint the Public Defender, or any other qualified attorney or attorneys as the Illinois Supreme Court shall by rule provide, to represent the defendant as trial counsel. Creates the Capital Litigation Trust Fund. Provides that moneys deposited into the Trust Fund shall be used exclusively for the purposes of providing funding for the prosecution and defense of capital cases and for providing funding for post-conviction proceedings. Amends the State Finance Act. Repeals the Death Penalty Abolition Fund and reinstates the Capital Litigation Trust Fund. Amends the Criminal Code of 2012. Provides that a defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if: (1) the murdered individual was a peace officer, firefighter, community policing volunteer, private security officer, correctional institution employee, a person performing duties related to the Adult Protective Services Act or ombudsman under the State Long Term Care Ombudsman Program of the Department on Aging, Department of Human Services employee supervising or controlling sexually dangerous persons or sexually violent persons, or a Department of Children and Family Services employee who was killed: (i) in the course of performing his or her official duties; (ii) to prevent the performance of his or her official duties; or (iii) in retaliation for performing his or her official duties; and (2) the defendant knew or should have known the murdered individual's status. Amends the Freedom of Information Act, the Code of Criminal Procedure of 1963, and the State Appellate Defender Act to make conforming changes.

LRB102 24415 RLC 33649 b

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 1. Short title. This Act may be cited as the  
5 Capital Crimes Litigation Act of 2022.

6 Section 5. Appointment of trial counsel in death penalty  
7 cases. If an indigent defendant is charged with an offense for  
8 which a sentence of death is authorized, and the State's  
9 Attorney has not, at or before arraignment, filed a  
10 certificate indicating he or she will not seek the death  
11 penalty or stated on the record in open court that the death  
12 penalty will not be sought, the trial court shall immediately  
13 appoint the Public Defender, or any other qualified attorney  
14 or attorneys as the Illinois Supreme Court shall by rule  
15 provide, to represent the defendant as trial counsel. If the  
16 Public Defender is appointed, he or she shall immediately  
17 assign the attorney or attorneys who are public defenders to  
18 represent the defendant. The counsel shall meet the  
19 qualifications as the Supreme Court shall by rule provide. At  
20 the request of court appointed counsel in a case in which the  
21 death penalty is sought, attorneys employed by the State  
22 Appellate Defender may enter an appearance for the limited  
23 purpose of assisting counsel appointed under this Section.

1 Section 10. Court appointed trial counsel; compensation  
2 and expenses.

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

10 (a-5) Litigation budget.

11 (1) In a case in which the State has filed a statement  
12 of intent to seek the death penalty, the court shall  
13 require appointed counsel, including those appointed in  
14 Cook County, after counsel has had adequate time to review  
15 the case and prior to engaging trial assistance, to submit  
16 a proposed estimated litigation budget for court approval,  
17 that will be subject to modification in light of facts and  
18 developments that emerge as the case proceeds. Case  
19 budgets should be submitted ex parte and filed and  
20 maintained under seal in order to protect the defendant's  
21 right to effective assistance of counsel, right not to  
22 incriminate him or herself and all applicable privileges.  
23 Case budgets shall be reviewed and approved by the judge  
24 assigned to try the case. As provided under subsection (c)  
25 of this Section, petitions for compensation shall be

1 reviewed by both the trial judge and the presiding judge  
2 or the presiding judge's designee.

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

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

16 (A) the hourly rate at which counsel will be  
17 compensated;

18 (B) the hourly rate at which private  
19 investigators, other than investigators employed by  
20 the Office of the State Appellate Defender, will be  
21 compensated; and

22 (C) the best preliminary estimate that can be made  
23 of the cost of all services, including, but not  
24 limited to, counsel, expert, and investigative  
25 services that are likely to be needed through the  
26 guilt and penalty phases of the trial. The court shall

1           have discretion to require that budgets be prepared  
2           for shorter intervals of time.

3           (4) Appointed counsel may obtain, subject to later  
4           review, investigative, expert, or other services without  
5           prior authorization if necessary for an adequate defense.  
6           If the services are obtained, the presiding judge or the  
7           presiding judge's designee shall consider in an ex parte  
8           proceeding that timely procurement of necessary services  
9           could not await prior authorization. If an ex parte  
10          hearing is requested by defense counsel or deemed  
11          necessary by the trial judge prior to modifying a budget,  
12          the ex parte hearing shall be before the presiding judge  
13          or the presiding judge's designee. The judge may then  
14          authorize the services nunc pro tunc. If the presiding  
15          judge or the presiding judge's designee finds that the  
16          services were not reasonable, payment may be denied.

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

1           (b) Appointed trial counsel shall be compensated upon  
2 presentment and certification by the circuit court of a claim  
3 for services detailing the date, activity, and time duration  
4 for which compensation is sought. Compensation for appointed  
5 trial counsel may be paid at a reasonable rate not to exceed  
6 \$125 per hour. The court shall not authorize payment of bills  
7 that are not properly itemized. A request for payment shall be  
8 presented under seal and reviewed ex parte with a court  
9 reporter present. Every January 20, the statutory rate  
10 prescribed in this subsection shall be automatically increased  
11 or decreased, as applicable, by a percentage equal to the  
12 percentage change in the consumer price index-u during the  
13 preceding 12-month calendar year. "Consumer price index-u"  
14 means the index published by the Bureau of Labor Statistics of  
15 the United States Department of Labor that measures the  
16 average change in prices of goods and services purchased by  
17 all urban consumers, United States city average, all items,  
18 1982-84=100. The new rate resulting from each annual  
19 adjustment shall be determined by the State Treasurer and made  
20 available to the chief judge of each judicial circuit.

21           (c) Appointed trial counsel may also petition the court  
22 for certification of expenses for reasonable and necessary  
23 capital litigation expenses including, but not limited to,  
24 investigatory and other assistance, expert, forensic, and  
25 other witnesses, and mitigation specialists. Each provider of  
26 proposed services must specify the best preliminary estimate

1 that can be made in light of information received in the case  
2 at that point, and the provider must sign this estimate under  
3 the provisions of Section 1-109 of the Code of Civil  
4 Procedure. A provider of proposed services must also specify:  
5 (1) his or her hourly rate; (2) the hourly rate of anyone else  
6 in his or her employ for whom reimbursement is sought; and (3)  
7 the hourly rate of any person or entity that may be  
8 subcontracted to perform these services. Counsel may not  
9 petition for certification of expenses that may have been  
10 provided or compensated by the State Appellate Defender under  
11 item (c)(5.1) of Section 10 of the State Appellate Defender  
12 Act. The petitions shall be filed under seal and considered ex  
13 parte but with a court reporter present for all ex parte  
14 conferences. If the requests are submitted after services have  
15 been rendered, the requests shall be supported by an invoice  
16 describing the services rendered, the dates the services were  
17 performed and the amount of time spent. These petitions shall  
18 be reviewed by both the trial judge and the presiding judge of  
19 the circuit court or the presiding judge's designee. The  
20 petitions and orders shall be kept under seal and shall be  
21 exempt from Freedom of Information requests until the  
22 conclusion of the trial, even if the prosecution chooses not  
23 to pursue the death penalty prior to trial or sentencing. If an  
24 ex parte hearing is requested by defense counsel or deemed  
25 necessary by the trial judge, the hearing shall be before the  
26 presiding judge or the presiding judge's designee.

1 (d) Appointed trial counsel shall petition the court for  
2 certification of compensation and expenses under this Section  
3 periodically during the course of counsel's representation.  
4 The petitions shall be supported by itemized bills showing the  
5 date, the amount of time spent, the work done, and the total  
6 being charged for each entry. The court shall not authorize  
7 payment of bills that are not properly itemized. The court  
8 must certify reasonable and necessary expenses of the  
9 petitioner for travel and per diem (lodging, meals, and  
10 incidental expenses). These expenses must be paid at the rate  
11 as promulgated by the United States General Services  
12 Administration for these expenses for the date and location in  
13 which they were incurred, unless extraordinary reasons are  
14 shown for the difference. The petitions shall be filed under  
15 seal and considered ex parte but with a court reporter present  
16 for all ex parte conferences. The petitions shall be reviewed  
17 by both the trial judge and the presiding judge of the circuit  
18 court or the presiding judge's designee. If an ex parte  
19 hearing is requested by defense counsel or deemed necessary by  
20 the trial judge, the ex parte hearing shall be before the  
21 presiding judge or the presiding judge's designee. If the  
22 court determines that the compensation and expenses should be  
23 paid from the Capital Litigation Trust Fund, the court shall  
24 certify, on a form created by the State Treasurer, that all or  
25 a designated portion of the amount requested is reasonable,  
26 necessary, and appropriate for payment from the Trust Fund.



1 The form must also be signed by lead trial counsel under the  
2 provisions of Section 1-109 of the Code of Civil Procedure  
3 verifying that the amount requested is reasonable, necessary,  
4 and appropriate. Bills submitted for payment by any individual  
5 or entity seeking payment from the Capital Litigation Trust  
6 Fund must also be accompanied by a form created by the State  
7 Treasurer and signed by the individual or responsible agent of  
8 the entity under the provisions of Section 1-109 of the Code of  
9 Civil Procedure that the amount requested is accurate and  
10 truthful and reflects time spent or expenses incurred.  
11 Certification of compensation and expenses by a court in any  
12 county other than Cook County shall be delivered by the court  
13 to the State Treasurer and must be paid by the State Treasurer  
14 directly from the Capital Litigation Trust Fund if there are  
15 sufficient moneys in the Trust Fund to pay the compensation  
16 and expenses. If the State Treasurer finds within 14 days of  
17 his or her receipt of a certification that the compensation  
18 and expenses to be paid are unreasonable, unnecessary, or  
19 inappropriate, he or she may return the certification to the  
20 court setting forth in detail the objection or objections with  
21 a request for the court to review the objection or objections  
22 before resubmitting the certification. The State Treasurer  
23 must send the claimant a copy of the objection or objections.  
24 The State Treasurer may only seek a review of a specific  
25 objection once. The claimant has 7 days from his or her receipt  
26 of the objections to file a response with the court. With or

1 without further hearing, the court must promptly rule on the  
2 objections. The petitions and orders shall be kept under seal  
3 and shall be exempt from Freedom of Information requests until  
4 the conclusion of the trial and appeal of the case, even if the  
5 prosecution chooses not to pursue the death penalty prior to  
6 trial or sentencing. Certification of compensation and  
7 expenses by a court in Cook County shall be delivered by the  
8 court to the county treasurer and paid by the county treasurer  
9 from moneys granted to the county from the Capital Litigation  
10 Trust Fund.

11 Section 15. Capital Litigation Trust Fund.

12 (a) The Capital Litigation Trust Fund is created as a  
13 special fund in the State Treasury. The Trust Fund shall be  
14 administered by the State Treasurer to provide moneys for the  
15 appropriations to be made, grants to be awarded, and  
16 compensation and expenses to be paid under this Act. All  
17 interest earned from the investment or deposit of moneys  
18 accumulated in the Trust Fund shall, under Section 4.1 of the  
19 State Finance Act, be deposited into the Trust Fund.

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

22 (c) Moneys deposited into the Trust Fund shall be used  
23 exclusively for the purposes of providing funding for the  
24 prosecution and defense of capital cases and for providing  
25 funding for post-conviction proceedings in capital cases under

1 Article 122 of the Code of Criminal Procedure of 1963 and in  
2 relation to petitions filed under Section 2-1401 of the Code  
3 of Civil Procedure in relation to capital cases as provided in  
4 this Act and shall not be appropriated, loaned, or in any  
5 manner transferred to the General Revenue Fund of the State of  
6 Illinois.

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

24 (1) The Public Defender in Cook County shall request  
25 appropriations to the State Treasurer for expenses  
26 incurred by the Public Defender and for funding for

1 private appointed defense counsel in Cook County.

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

5 (3) The State Appellate Defender shall request a  
6 direct appropriation from the Trust Fund for expenses  
7 incurred by the State Appellate Defender in providing  
8 assistance to trial attorneys under item (c)(5.1) of  
9 Section 10 of the State Appellate Defender Act and for  
10 expenses incurred by the State Appellate Defender in  
11 representing petitioners in capital cases in  
12 post-conviction proceedings under Article 122 of the Code  
13 of Criminal Procedure of 1963 and in relation to petitions  
14 filed under Section 2-1401 of the Code of Civil Procedure  
15 in relation to capital cases and for the representation of  
16 those petitioners by attorneys approved by or contracted  
17 with the State Appellate Defender and an appropriation to  
18 the State Treasurer for payments from the Trust Fund for  
19 the defense of cases in counties other than Cook County.

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

26 (5) The Attorney General shall request a direct

1 appropriation from the Trust Fund to pay expenses incurred  
2 by the Attorney General in assisting the State's Attorneys  
3 in counties other than Cook County and to pay for expenses  
4 incurred by the Attorney General when the Attorney General  
5 is ordered by the presiding judge of the Criminal Division  
6 of the Circuit Court of Cook County to prosecute or  
7 supervise the prosecution of Cook County cases and for  
8 expenses incurred by the Attorney General in representing  
9 the State in post-conviction proceedings in capital cases  
10 under Article 122 of the Code of Criminal Procedure of  
11 1963 and in relation to petitions filed under Section  
12 2-1401 of the Code of Civil Procedure in relation to  
13 capital cases. The Public Defender and State's Attorney in  
14 Cook County, the State Appellate Defender, the State's  
15 Attorneys Appellate Prosecutor, and the Attorney General  
16 may each request supplemental appropriations from the  
17 Trust Fund during the fiscal year.

18 (e) Moneys in the Trust Fund shall be expended only as  
19 follows:

20 (1) To pay the State Treasurer's costs to administer  
21 the Trust Fund. The amount for this purpose may not exceed  
22 5% in any one fiscal year of the amount otherwise  
23 appropriated from the Trust Fund in the same fiscal year.

24 (2) To pay the capital litigation expenses of trial  
25 defense and post-conviction proceedings in capital cases  
26 under Article 122 of the Code of Criminal Procedure of

1 1963 and in relation to petitions filed under Section  
2 2-1401 of the Code of Civil Procedure in relation to  
3 capital cases including, but not limited to, DNA testing,  
4 including DNA testing under Section 116-3 of the Code of  
5 Criminal Procedure of 1963, analysis, and expert  
6 testimony, investigatory and other assistance, expert,  
7 forensic, and other witnesses, and mitigation specialists,  
8 and grants and aid provided to public defenders, appellate  
9 defenders, and any attorney approved by or contracted with  
10 the State Appellate Defender representing petitioners in  
11 post-conviction proceedings in capital cases under Article  
12 122 of the Code of Criminal Procedure of 1963 and in  
13 relation to petitions filed under Section 2-1401 of the  
14 Code of Civil Procedure in relation to capital cases or  
15 assistance to attorneys who have been appointed by the  
16 court to represent defendants who are charged with capital  
17 crimes. Reasonable and necessary capital litigation  
18 expenses include travel and per diem (lodging, meals, and  
19 incidental expenses).

20 (3) To pay the compensation of trial attorneys, other  
21 than public defenders or appellate defenders, who have  
22 been appointed by the court to represent defendants who  
23 are charged with capital crimes or attorneys approved by  
24 or contracted with the State Appellate Defender to  
25 represent petitioners in post-conviction proceedings in  
26 capital cases under Article 122 of the Code of Criminal

1 Procedure of 1963 and in relation to petitions filed under  
2 Section 2-1401 of the Code of Civil Procedure in relation  
3 to capital cases.

4 (4) To provide State's Attorneys with funding for  
5 capital litigation expenses and for expenses of  
6 representing the State 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  
10 to capital cases including, but not limited to,  
11 investigatory and other assistance and expert, forensic,  
12 and other witnesses necessary to prosecute capital cases.  
13 State's Attorneys in any county other than Cook County  
14 seeking funding for capital litigation expenses and for  
15 expenses of representing the State in post-conviction  
16 proceedings in capital cases under Article 122 of the Code  
17 of Criminal Procedure of 1963 and in relation to petitions  
18 filed under Section 2-1401 of the Code of Civil Procedure  
19 in relation to capital cases including, but not limited  
20 to, investigatory and other assistance and expert,  
21 forensic, or other witnesses under this Section may  
22 request that the State's Attorneys Appellate Prosecutor or  
23 the Attorney General, as the case may be, certify the  
24 expenses as reasonable, necessary, and appropriate for  
25 payment from the Trust Fund, on a form created by the State  
26 Treasurer. Upon certification of the expenses and delivery

1 of the certification to the State Treasurer, the Treasurer  
2 shall pay the expenses directly from the Capital  
3 Litigation Trust Fund if there are sufficient moneys in  
4 the Trust Fund to pay the expenses.

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

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

19 (7) To provide financial support to the State  
20 Appellate Defender under the State Appellate Defender Act.  
21 Moneys expended from the Trust Fund shall be in addition  
22 to county funding for Public Defenders and State's  
23 Attorneys, and shall not be used to supplant or reduce  
24 ordinary and customary county funding.

25 (f) Moneys in the Trust Fund shall be appropriated to the  
26 State Appellate Defender, the State's Attorneys Appellate



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

1 Criminal Procedure of 1963 and in relation to petitions filed  
2 under Section 2-1401 of the Code of Civil Procedure in  
3 relation to capital cases in counties other than Cook County;  
4 and (iv) to pay the costs of administering the Trust Fund. All  
5 expenditures and grants made from the Trust Fund shall be  
6 subject to audit by the Auditor General.

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

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

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

23 (3) The State Treasurer shall make the grants to the  
24 Cook County Treasurer as soon as possible after the  
25 beginning of the State fiscal year.

26 (4) The State's Attorney or Public Defender may apply

1 for supplemental grants during the fiscal year.

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

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

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

17 (h) If a defendant in a capital case in Cook County is  
18 represented by court appointed counsel other than the Cook  
19 County Public Defender, the appointed counsel shall petition  
20 the court for an order directing the Cook County Treasurer to  
21 pay the court appointed counsel's reasonable and necessary  
22 compensation and capital litigation expenses from grant moneys  
23 provided from the Trust Fund. The petitions shall be supported  
24 by itemized bills showing the date, the amount of time spent,  
25 the work done, and the total being charged for each entry. The  
26 court shall not authorize payment of bills that are not

1 properly itemized. The petitions shall be filed under seal and  
2 considered ex parte but with a court reporter present for all  
3 ex parte conferences. The petitions shall be reviewed by both  
4 the trial judge and the presiding judge of the circuit court or  
5 the presiding judge's designee. The petitions and orders shall  
6 be kept under seal and shall be exempt from Freedom of  
7 Information requests until the conclusion of the trial and  
8 appeal of the case, even if the prosecution chooses not to  
9 pursue the death penalty prior to trial or sentencing. Orders  
10 denying petitions for compensation or expenses are final.  
11 Counsel may not petition for expenses that may have been  
12 provided or compensated by the State Appellate Defender under  
13 item (c)(5.1) of Section 10 of the State Appellate Defender  
14 Act.

15 (i) In counties other than Cook County, and when the  
16 Attorney General is ordered by the presiding judge of the  
17 Criminal Division of the Circuit Court of Cook County to  
18 prosecute or supervise the prosecution of Cook County cases,  
19 and excluding capital litigation expenses or services that may  
20 have been provided by the State Appellate Defender under item  
21 (c)(5.1) of Section 10 of the State Appellate Defender Act:

22 (1) Upon certification by the circuit court, on a form  
23 created by the State Treasurer, that all or a portion of  
24 the expenses are reasonable, necessary, and appropriate  
25 for payment from the Trust Fund and the court's delivery  
26 of the certification to the Treasurer, the Treasurer shall

1 pay the certified expenses of Public Defenders and the  
2 State Appellate Defender from the money appropriated to  
3 the Treasurer for capital litigation expenses of Public  
4 Defenders and post-conviction proceeding expenses in  
5 capital cases of the State Appellate Defender and expenses  
6 in relation to petitions filed under Section 2-1401 of the  
7 Code of Civil Procedure in relation to capital cases in  
8 any county other than Cook County, if there are sufficient  
9 moneys in the Trust Fund to pay the expenses.

10 (2) If a defendant in a capital case is represented by  
11 court appointed counsel other than the Public Defender,  
12 the appointed counsel shall petition the court to certify  
13 compensation and capital litigation expenses including,  
14 but not limited to, investigatory and other assistance,  
15 expert, forensic, and other witnesses, and mitigation  
16 specialists as reasonable, necessary, and appropriate for  
17 payment from the Trust Fund. If a petitioner in a capital  
18 case who has filed a petition for post-conviction relief  
19 under Article 122 of the Code of Criminal Procedure of  
20 1963 or a petition under Section 2-1401 of the Code of  
21 Civil Procedure in relation to capital cases is  
22 represented by an attorney approved by or contracted with  
23 the State Appellate Defender other than the State  
24 Appellate Defender, that attorney shall petition the court  
25 to certify compensation and litigation expenses of  
26 post-conviction proceedings under Article 122 of the Code

1 of Criminal Procedure of 1963 or in relation to petitions  
2 filed under Section 2-1401 of the Code of Civil Procedure  
3 in relation to capital cases. Upon certification on a form  
4 created by the State Treasurer of all or a portion of the  
5 compensation and expenses certified as reasonable,  
6 necessary, and appropriate for payment from the Trust Fund  
7 and the court's delivery of the certification to the  
8 Treasurer, the State Treasurer shall pay the certified  
9 compensation and expenses from the money appropriated to  
10 the Treasurer for that purpose, if there are sufficient  
11 moneys in the Trust Fund to make those payments.

12 (3) A petition for capital litigation expenses or  
13 post-conviction proceeding expenses or expenses incurred  
14 in filing a petition under Section 2-1401 of the Code of  
15 Civil Procedure in relation to capital cases under this  
16 subsection shall be considered under seal and reviewed ex  
17 parte with a court reporter present. Orders denying  
18 petitions for compensation or expenses are final.

19 (j) If the Trust Fund is discontinued or dissolved by an  
20 Act of the General Assembly or by operation of law, any balance  
21 remaining in the Trust Fund shall be returned to the General  
22 Revenue Fund after deduction of administrative costs, any  
23 other provision of this Act to the contrary notwithstanding.

24 Section 90. The Freedom of Information Act is amended by  
25 changing Section 7.5 as follows:

1 (5 ILCS 140/7.5)

2 Sec. 7.5. Statutory exemptions. To the extent provided for  
3 by the statutes referenced below, the following shall be  
4 exempt from inspection and copying:

5 (a) All information determined to be confidential  
6 under Section 4002 of the Technology Advancement and  
7 Development Act.

8 (b) Library circulation and order records identifying  
9 library users with specific materials under the Library  
10 Records Confidentiality Act.

11 (c) Applications, related documents, and medical  
12 records received by the Experimental Organ Transplantation  
13 Procedures Board and any and all documents or other  
14 records prepared by the Experimental Organ Transplantation  
15 Procedures Board or its staff relating to applications it  
16 has received.

17 (d) Information and records held by the Department of  
18 Public Health and its authorized representatives relating  
19 to known or suspected cases of sexually transmissible  
20 disease or any information the disclosure of which is  
21 restricted under the Illinois Sexually Transmissible  
22 Disease Control Act.

23 (e) Information the disclosure of which is exempted  
24 under Section 30 of the Radon Industry Licensing Act.

25 (f) Firm performance evaluations under Section 55 of

1 the Architectural, Engineering, and Land Surveying  
2 Qualifications Based Selection Act.

3 (g) Information the disclosure of which is restricted  
4 and exempted under Section 50 of the Illinois Prepaid  
5 Tuition Act.

6 (h) Information the disclosure of which is exempted  
7 under the State Officials and Employees Ethics Act, and  
8 records of any lawfully created State or local inspector  
9 general's office that would be exempt if created or  
10 obtained by an Executive Inspector General's office under  
11 that Act.

12 (i) Information contained in a local emergency energy  
13 plan submitted to a municipality in accordance with a  
14 local emergency energy plan ordinance that is adopted  
15 under Section 11-21.5-5 of the Illinois Municipal Code.

16 (j) Information and data concerning the distribution  
17 of surcharge moneys collected and remitted by carriers  
18 under the Emergency Telephone System Act.

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

23 (l) Records and information provided to a residential  
24 health care facility resident sexual assault and death  
25 review team or the Executive Council under the Abuse  
26 Prevention Review Team Act.



1 (m) Information provided to the predatory lending  
2 database created pursuant to Article 3 of the Residential  
3 Real Property Disclosure Act, except to the extent  
4 authorized under that Article.

5 (n) Defense budgets and petitions for certification of  
6 compensation and expenses for court appointed trial  
7 counsel as provided under Sections 10 and 15 of the  
8 Capital Crimes Litigation Act of 2022. This subsection (n)  
9 shall apply until the conclusion of the trial of the case,  
10 even if the prosecution chooses not to pursue the death  
11 penalty prior to trial or sentencing.

12 (o) Information that is prohibited from being  
13 disclosed under Section 4 of the Illinois Health and  
14 Hazardous Substances Registry Act.

15 (p) Security portions of system safety program plans,  
16 investigation reports, surveys, schedules, lists, data, or  
17 information compiled, collected, or prepared by or for the  
18 Department of Transportation under Sections 2705-300 and  
19 2705-616 of the Department of Transportation Law of the  
20 Civil Administrative Code of Illinois, the Regional  
21 Transportation Authority under Section 2.11 of the  
22 Regional Transportation Authority Act, or the St. Clair  
23 County Transit District under the Bi-State Transit Safety  
24 Act.

25 (q) Information prohibited from being disclosed by the  
26 Personnel Record Review Act.

1           (r) Information prohibited from being disclosed by the  
2 Illinois School Student Records Act.

3           (s) Information the disclosure of which is restricted  
4 under Section 5-108 of the Public Utilities Act.

5           (t) All identified or deidentified health information  
6 in the form of health data or medical records contained  
7 in, stored in, submitted to, transferred by, or released  
8 from the Illinois Health Information Exchange, and  
9 identified or deidentified health information in the form  
10 of health data and medical records of the Illinois Health  
11 Information Exchange in the possession of the Illinois  
12 Health Information Exchange Office due to its  
13 administration of the Illinois Health Information  
14 Exchange. The terms "identified" and "deidentified" shall  
15 be given the same meaning as in the Health Insurance  
16 Portability and Accountability Act of 1996, Public Law  
17 104-191, or any subsequent amendments thereto, and any  
18 regulations promulgated thereunder.

19           (u) Records and information provided to an independent  
20 team of experts under the Developmental Disability and  
21 Mental Health Safety Act (also known as Brian's Law).

22           (v) Names and information of people who have applied  
23 for or received Firearm Owner's Identification Cards under  
24 the Firearm Owners Identification Card Act or applied for  
25 or received a concealed carry license under the Firearm  
26 Concealed Carry Act, unless otherwise authorized by the

1 Firearm Concealed Carry Act; and databases under the  
2 Firearm Concealed Carry Act, records of the Concealed  
3 Carry Licensing Review Board under the Firearm Concealed  
4 Carry Act, and law enforcement agency objections under the  
5 Firearm Concealed Carry Act.

6 (v-5) Records of the Firearm Owner's Identification  
7 Card Review Board that are exempted from disclosure under  
8 Section 10 of the Firearm Owners Identification Card Act.

9 (w) Personally identifiable information which is  
10 exempted from disclosure under subsection (g) of Section  
11 19.1 of the Toll Highway Act.

12 (x) Information which is exempted from disclosure  
13 under Section 5-1014.3 of the Counties Code or Section  
14 8-11-21 of the Illinois Municipal Code.

15 (y) Confidential information under the Adult  
16 Protective Services Act and its predecessor enabling  
17 statute, the Elder Abuse and Neglect Act, including  
18 information about the identity and administrative finding  
19 against any caregiver of a verified and substantiated  
20 decision of abuse, neglect, or financial exploitation of  
21 an eligible adult maintained in the Registry established  
22 under Section 7.5 of the Adult Protective Services Act.

23 (z) Records and information provided to a fatality  
24 review team or the Illinois Fatality Review Team Advisory  
25 Council under Section 15 of the Adult Protective Services  
26 Act.

1           (aa) Information which is exempted from disclosure  
2 under Section 2.37 of the Wildlife Code.

3           (bb) Information which is or was prohibited from  
4 disclosure by the Juvenile Court Act of 1987.

5           (cc) Recordings made under the Law Enforcement  
6 Officer-Worn Body Camera Act, except to the extent  
7 authorized under that Act.

8           (dd) Information that is prohibited from being  
9 disclosed under Section 45 of the Condominium and Common  
10 Interest Community Ombudsperson Act.

11           (ee) Information that is exempted from disclosure  
12 under Section 30.1 of the Pharmacy Practice Act.

13           (ff) Information that is exempted from disclosure  
14 under the Revised Uniform Unclaimed Property Act.

15           (gg) Information that is prohibited from being  
16 disclosed under Section 7-603.5 of the Illinois Vehicle  
17 Code.

18           (hh) Records that are exempt from disclosure under  
19 Section 1A-16.7 of the Election Code.

20           (ii) Information which is exempted from disclosure  
21 under Section 2505-800 of the Department of Revenue Law of  
22 the Civil Administrative Code of Illinois.

23           (jj) Information and reports that are required to be  
24 submitted to the Department of Labor by registering day  
25 and temporary labor service agencies but are exempt from  
26 disclosure under subsection (a-1) of Section 45 of the Day

1 and Temporary Labor Services Act.

2 (kk) Information prohibited from disclosure under the  
3 Seizure and Forfeiture Reporting Act.

4 (ll) Information the disclosure of which is restricted  
5 and exempted under Section 5-30.8 of the Illinois Public  
6 Aid Code.

7 (mm) Records that are exempt from disclosure under  
8 Section 4.2 of the Crime Victims Compensation Act.

9 (nn) Information that is exempt from disclosure under  
10 Section 70 of the Higher Education Student Assistance Act.

11 (oo) Communications, notes, records, and reports  
12 arising out of a peer support counseling session  
13 prohibited from disclosure under the First Responders  
14 Suicide Prevention Act.

15 (pp) Names and all identifying information relating to  
16 an employee of an emergency services provider or law  
17 enforcement agency under the First Responders Suicide  
18 Prevention Act.

19 (qq) Information and records held by the Department of  
20 Public Health and its authorized representatives collected  
21 under the Reproductive Health Act.

22 (rr) Information that is exempt from disclosure under  
23 the Cannabis Regulation and Tax Act.

24 (ss) Data reported by an employer to the Department of  
25 Human Rights pursuant to Section 2-108 of the Illinois  
26 Human Rights Act.

1 (tt) Recordings made under the Children's Advocacy  
2 Center Act, except to the extent authorized under that  
3 Act.

4 (uu) Information that is exempt from disclosure under  
5 Section 50 of the Sexual Assault Evidence Submission Act.

6 (vv) Information that is exempt from disclosure under  
7 subsections (f) and (j) of Section 5-36 of the Illinois  
8 Public Aid Code.

9 (ww) Information that is exempt from disclosure under  
10 Section 16.8 of the State Treasurer Act.

11 (xx) Information that is exempt from disclosure or  
12 information that shall not be made public under the  
13 Illinois Insurance Code.

14 (yy) Information prohibited from being disclosed under  
15 the Illinois Educational Labor Relations Act.

16 (zz) Information prohibited from being disclosed under  
17 the Illinois Public Labor Relations Act.

18 (aaa) Information prohibited from being disclosed  
19 under Section 1-167 of the Illinois Pension Code.

20 (bbb) ~~(ccc)~~ Information that is prohibited from  
21 disclosure by the Illinois Police Training Act and the  
22 Illinois State Police Act.

23 (ccc) ~~(ddd)~~ Records exempt from disclosure under  
24 Section 2605-304 of the Illinois Department of State  
25 Police Law of the Civil Administrative Code of Illinois.

26 (ddd) ~~(bbb)~~ Information prohibited from being

1 disclosed under Section 35 of the Address Confidentiality  
2 for Victims of Domestic Violence, Sexual Assault, Human  
3 Trafficking, or Stalking Act.

4 (eee) ~~(ddd)~~ Information prohibited from being  
5 disclosed under subsection (b) of Section 75 of the  
6 Domestic Violence Fatality Review Act.

7 (Source: P.A. 101-13, eff. 6-12-19; 101-27, eff. 6-25-19;  
8 101-81, eff. 7-12-19; 101-221, eff. 1-1-20; 101-236, eff.  
9 1-1-20; 101-375, eff. 8-16-19; 101-377, eff. 8-16-19; 101-452,  
10 eff. 1-1-20; 101-466, eff. 1-1-20; 101-600, eff. 12-6-19;  
11 101-620, eff. 12-20-19; 101-649, eff. 7-7-20; 101-652, eff.  
12 1-1-22; 101-656, eff. 3-23-21; 102-36, eff. 6-25-21; 102-237,  
13 eff. 1-1-22; 102-292, eff. 1-1-22; 102-520, eff. 8-20-21;  
14 102-559, eff. 8-20-21; revised 10-5-21.)

15 Section 95. The State Finance Act is amended by adding  
16 Section 5.970 as follows:

17 (30 ILCS 105/5.970 new)

18 Sec. 5.970. The Capital Litigation Trust Fund.

19 (30 ILCS 105/5.790 rep.)

20 Section 100. The State Finance Act is amended by repealing  
21 Section 5.790.

22 Section 105. The Criminal Code of 2012 is amended by

1 changing Section 9-1 as follows:

2 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

3 Sec. 9-1. First degree murder; death penalties;  
4 exceptions; separate hearings; proof; findings; appellate  
5 procedures; reversals.

6 (a) A person who kills an individual without lawful  
7 justification commits first degree murder if, in performing  
8 the acts which cause the death:

9 (1) he or she either intends to kill or do great bodily  
10 harm to that individual or another, or knows that such  
11 acts will cause death to that individual or another; or

12 (2) he or she knows that such acts create a strong  
13 probability of death or great bodily harm to that  
14 individual or another; or

15 (3) he or she, acting alone or with one or more  
16 participants, commits or attempts to commit a forcible  
17 felony other than second degree murder, and in the course  
18 of or in furtherance of such crime or flight therefrom, he  
19 or she or another participant causes the death of a  
20 person.

21 (a-5) A defendant who at the time of the commission of the  
22 offense has attained the age of 18 or more and who has been  
23 found guilty of first degree murder may be sentenced to death  
24 if:

25 (1) the murdered individual was a peace officer,



1 firefighter, community policing volunteer, private  
2 security officer, correctional institution employee, a  
3 person performing duties related to the Adult Protective  
4 Services Act or ombudsman under the State Long Term Care  
5 Ombudsman Program of the Department on Aging, Department  
6 of Human Services employee supervising or controlling  
7 sexually dangerous persons or sexually violent persons, or  
8 a Department of Children and Family Services employee who  
9 was killed:

10 (A) in the course of performing his or her  
11 official duties;

12 (B) to prevent the performance of his or her  
13 official duties; or

14 (C) in retaliation for performing his or her  
15 official duties; and

16 (2) the defendant knew or should have known that the  
17 murdered individual was a peace officer, firefighter,  
18 community policing volunteer, private security officer,  
19 correctional institution employee, a person performing  
20 duties related to the Adult Protective Services Act or  
21 ombudsman under the State Long Term Care Ombudsman Program  
22 of the Department on Aging, Department of Human Services  
23 employee supervising or controlling sexually dangerous  
24 persons or sexually violent persons, or a Department of  
25 Children and Family Services employee.

26 In this subsection (a-5), "private security officer" means

1       a registered employee of a private security contractor  
2       agency under the Private Detective, Private Alarm, Private  
3       Security, Fingerprint Vendor, and Locksmith Act of 2004.

4       (b) Aggravating Factors. A defendant who at the time of  
5       the commission of the offense has attained the age of 18 or  
6       more and who has been found guilty of first degree murder may  
7       be sentenced to natural life imprisonment ~~death~~ if:

8               (1) the murdered individual was a peace officer or  
9       firefighter ~~fireman~~ killed in the course of performing his  
10       or her official duties, to prevent the performance of his  
11       or her official duties, or in retaliation for performing  
12       his or her official duties, and the defendant knew or  
13       should have known that the murdered individual was a peace  
14       officer or firefighter ~~fireman~~ ; or

15               (2) the murdered individual was an employee of an  
16       institution or facility of the Department of Corrections,  
17       or any similar local correctional agency, killed in the  
18       course of performing his or her official duties, to  
19       prevent the performance of his or her official duties, or  
20       in retaliation for performing his or her official duties,  
21       or the murdered individual was an inmate at such  
22       institution or facility and was killed on the grounds  
23       thereof, or the murdered individual was otherwise present  
24       in such institution or facility with the knowledge and  
25       approval of the chief administrative officer thereof; or

26               (3) the defendant has been convicted of murdering two

1 or more individuals under subsection (a) of this Section  
2 or under any law of the United States or of any state which  
3 is substantially similar to subsection (a) of this Section  
4 regardless of whether the deaths occurred as the result of  
5 the same act or of several related or unrelated acts so  
6 long as the deaths were the result of either an intent to  
7 kill more than one person or of separate acts which the  
8 defendant knew would cause death or create a strong  
9 probability of death or great bodily harm to the murdered  
10 individual or another; or

11 (4) the murdered individual was killed as a result of  
12 the hijacking of an airplane, train, ship, bus, or other  
13 public conveyance; or

14 (5) the defendant committed the murder pursuant to a  
15 contract, agreement, or understanding by which he or she  
16 was to receive money or anything of value in return for  
17 committing the murder or procured another to commit the  
18 murder for money or anything of value; or

19 (6) the murdered individual was killed in the course  
20 of another felony if:

21 (a) the murdered individual:

22 (i) was actually killed by the defendant, or

23 (ii) received physical injuries personally  
24 inflicted by the defendant substantially  
25 contemporaneously with physical injuries caused by  
26 one or more persons for whose conduct the

1 defendant is legally accountable under Section 5-2  
2 of this Code, and the physical injuries inflicted  
3 by either the defendant or the other person or  
4 persons for whose conduct he is legally  
5 accountable caused the death of the murdered  
6 individual; and

7 (b) in performing the acts which caused the death  
8 of the murdered individual or which resulted in  
9 physical injuries personally inflicted by the  
10 defendant on the murdered individual under the  
11 circumstances of subdivision (ii) of subparagraph (a)  
12 of paragraph (6) of subsection (b) of this Section,  
13 the defendant acted with the intent to kill the  
14 murdered individual or with the knowledge that his  
15 acts created a strong probability of death or great  
16 bodily harm to the murdered individual or another; and

17 (c) the other felony was an inherently violent  
18 crime or the attempt to commit an inherently violent  
19 crime. In this subparagraph (c), "inherently violent  
20 crime" includes, but is not limited to, armed robbery,  
21 robbery, predatory criminal sexual assault of a child,  
22 aggravated criminal sexual assault, aggravated  
23 kidnapping, aggravated vehicular hijacking, aggravated  
24 arson, aggravated stalking, residential burglary, and  
25 home invasion; or

26 (7) the murdered individual was under 12 years of age

1 and the death resulted from exceptionally brutal or  
2 heinous behavior indicative of wanton cruelty; or

3 (8) the defendant committed the murder with intent to  
4 prevent the murdered individual from testifying or  
5 participating in any criminal investigation or prosecution  
6 or giving material assistance to the State in any  
7 investigation or prosecution, either against the defendant  
8 or another; or the defendant committed the murder because  
9 the murdered individual was a witness in any prosecution  
10 or gave material assistance to the State in any  
11 investigation or prosecution, either against the defendant  
12 or another; for purposes of this paragraph (8),  
13 "participating in any criminal investigation or  
14 prosecution" is intended to include those appearing in the  
15 proceedings in any capacity such as trial judges,  
16 prosecutors, defense attorneys, investigators, witnesses,  
17 or jurors; or

18 (9) the defendant, while committing an offense  
19 punishable under Sections 401, 401.1, 401.2, 405, 405.2,  
20 407 or 407.1 or subsection (b) of Section 404 of the  
21 Illinois Controlled Substances Act, or while engaged in a  
22 conspiracy or solicitation to commit such offense,  
23 intentionally killed an individual or counseled,  
24 commanded, induced, procured or caused the intentional  
25 killing of the murdered individual; or

26 (10) the defendant was incarcerated in an institution

1 or facility of the Department of Corrections at the time  
2 of the murder, and while committing an offense punishable  
3 as a felony under Illinois law, or while engaged in a  
4 conspiracy or solicitation to commit such offense,  
5 intentionally killed an individual or counseled,  
6 commanded, induced, procured or caused the intentional  
7 killing of the murdered individual; or

8 (11) the murder was committed in a cold, calculated  
9 and premeditated manner pursuant to a preconceived plan,  
10 scheme or design to take a human life by unlawful means,  
11 and the conduct of the defendant created a reasonable  
12 expectation that the death of a human being would result  
13 therefrom; or

14 (12) the murdered individual was an emergency medical  
15 technician - ambulance, emergency medical technician -  
16 intermediate, emergency medical technician - paramedic,  
17 ambulance driver, or other medical assistance or first aid  
18 personnel, employed by a municipality or other  
19 governmental unit, killed in the course of performing his  
20 official duties, to prevent the performance of his  
21 official duties, or in retaliation for performing his  
22 official duties, and the defendant knew or should have  
23 known that the murdered individual was an emergency  
24 medical technician - ambulance, emergency medical  
25 technician - intermediate, emergency medical technician -  
26 paramedic, ambulance driver, or other medical assistance

1 or first aid personnel; or

2 (13) the defendant was a principal administrator,  
3 organizer, or leader of a calculated criminal drug  
4 conspiracy consisting of a hierarchical position of  
5 authority superior to that of all other members of the  
6 conspiracy, and the defendant counseled, commanded,  
7 induced, procured, or caused the intentional killing of  
8 the murdered person; or

9 (14) the murder was intentional and involved the  
10 infliction of torture. For the purpose of this Section  
11 torture means the infliction of or subjection to extreme  
12 physical pain, motivated by an intent to increase or  
13 prolong the pain, suffering or agony of the victim; or

14 (15) the murder was committed as a result of the  
15 intentional discharge of a firearm by the defendant from a  
16 motor vehicle and the victim was not present within the  
17 motor vehicle; or

18 (16) the murdered individual was 60 years of age or  
19 older and the death resulted from exceptionally brutal or  
20 heinous behavior indicative of wanton cruelty; or

21 (17) the murdered individual was a person with a  
22 disability and the defendant knew or should have known  
23 that the murdered individual was a person with a  
24 disability. For purposes of this paragraph (17), "person  
25 with a disability" means a person who suffers from a  
26 permanent physical or mental impairment resulting from

1 disease, an injury, a functional disorder, or a congenital  
2 condition that renders the person incapable of adequately  
3 providing for his or her own health or personal care; or

4 (18) the murder was committed by reason of any  
5 person's activity as a community policing volunteer or to  
6 prevent any person from engaging in activity as a  
7 community policing volunteer; or

8 (19) the murdered individual was subject to an order  
9 of protection and the murder was committed by a person  
10 against whom the same order of protection was issued under  
11 the Illinois Domestic Violence Act of 1986; or

12 (20) the murdered individual was known by the  
13 defendant to be a teacher or other person employed in any  
14 school and the teacher or other employee is upon the  
15 grounds of a school or grounds adjacent to a school, or is  
16 in any part of a building used for school purposes; or

17 (21) the murder was committed by the defendant in  
18 connection with or as a result of the offense of terrorism  
19 as defined in Section 29D-14.9 of this Code; or

20 (22) the murdered individual was a member of a  
21 congregation engaged in prayer or other religious  
22 activities at a church, synagogue, mosque, or other  
23 building, structure, or place used for religious worship.

24 (b-5) Aggravating Factor; Natural Life Imprisonment. A  
25 defendant who has been found guilty of first degree murder and  
26 who at the time of the commission of the offense had attained



1 the age of 18 years or more may be sentenced to natural life  
2 imprisonment if (i) the murdered individual was a physician,  
3 physician assistant, psychologist, nurse, or advanced practice  
4 registered nurse, (ii) the defendant knew or should have known  
5 that the murdered individual was a physician, physician  
6 assistant, psychologist, nurse, or advanced practice  
7 registered nurse, and (iii) the murdered individual was killed  
8 in the course of acting in his or her capacity as a physician,  
9 physician assistant, psychologist, nurse, or advanced practice  
10 registered nurse, or to prevent him or her from acting in that  
11 capacity, or in retaliation for his or her acting in that  
12 capacity.

13 (c) Consideration of factors in Aggravation and  
14 Mitigation.

15 The court shall consider, or shall instruct the jury to  
16 consider any aggravating and any mitigating factors which are  
17 relevant to the imposition of the death penalty. Aggravating  
18 factors may include but need not be limited to those factors  
19 set forth in subsection (b). Mitigating factors may include  
20 but need not be limited to the following:

21 (1) the defendant has no significant history of prior  
22 criminal activity;

23 (2) the murder was committed while the defendant was  
24 under the influence of extreme mental or emotional  
25 disturbance, although not such as to constitute a defense  
26 to prosecution;

1           (3) the murdered individual was a participant in the  
2           defendant's homicidal conduct or consented to the  
3           homicidal act;

4           (4) the defendant acted under the compulsion of threat  
5           or menace of the imminent infliction of death or great  
6           bodily harm;

7           (5) the defendant was not personally present during  
8           commission of the act or acts causing death;

9           (6) the defendant's background includes a history of  
10          extreme emotional or physical abuse;

11          (7) the defendant suffers from a reduced mental  
12          capacity.

13          Provided, however, that an action that does not otherwise  
14          mitigate first degree murder cannot qualify as a mitigating  
15          factor for first degree murder because of the discovery,  
16          knowledge, or disclosure of the victim's sexual orientation as  
17          defined in Section 1-103 of the Illinois Human Rights Act.

18          (d) Separate sentencing hearing.

19          Where requested by the State, the court shall conduct a  
20          separate sentencing proceeding to determine the existence of  
21          factors set forth in subsection (b) and to consider any  
22          aggravating or mitigating factors as indicated in subsection  
23          (c). The proceeding shall be conducted:

24                 (1) before the jury that determined the defendant's  
25                 guilt; or

26                 (2) before a jury impanelled for the purpose of the

1 proceeding if:

2 A. the defendant was convicted upon a plea of  
3 guilty; or

4 B. the defendant was convicted after a trial  
5 before the court sitting without a jury; or

6 C. the court for good cause shown discharges the  
7 jury that determined the defendant's guilt; or

8 (3) before the court alone if the defendant waives a  
9 jury for the separate proceeding.

10 (e) Evidence and Argument.

11 During the proceeding any information relevant to any of  
12 the factors set forth in subsection (b) may be presented by  
13 either the State or the defendant under the rules governing  
14 the admission of evidence at criminal trials. Any information  
15 relevant to any additional aggravating factors or any  
16 mitigating factors indicated in subsection (c) may be  
17 presented by the State or defendant regardless of its  
18 admissibility under the rules governing the admission of  
19 evidence at criminal trials. The State and the defendant shall  
20 be given fair opportunity to rebut any information received at  
21 the hearing.

22 (f) Proof.

23 The burden of proof of establishing the existence of any  
24 of the factors set forth in subsection (b) is on the State and  
25 shall not be satisfied unless established beyond a reasonable  
26 doubt.

1 (g) Procedure - Jury.

2 If at the separate sentencing proceeding the jury finds  
3 that none of the factors set forth in subsection (b) exists,  
4 the court shall sentence the defendant to a term of  
5 imprisonment under Chapter V of the Unified Code of  
6 Corrections. If there is a unanimous finding by the jury that  
7 one or more of the factors set forth in subsection (b) exist,  
8 the jury shall consider aggravating and mitigating factors as  
9 instructed by the court and shall determine whether the  
10 sentence of death shall be imposed. If the jury determines  
11 unanimously, after weighing the factors in aggravation and  
12 mitigation, that death is the appropriate sentence, the court  
13 shall sentence the defendant to death. If the court does not  
14 concur with the jury determination that death is the  
15 appropriate sentence, the court shall set forth reasons in  
16 writing including what facts or circumstances the court relied  
17 upon, along with any relevant documents, that compelled the  
18 court to non-concur with the sentence. This document and any  
19 attachments shall be part of the record for appellate review.  
20 The court shall be bound by the jury's sentencing  
21 determination.

22 If after weighing the factors in aggravation and  
23 mitigation, one or more jurors determines that death is not  
24 the appropriate sentence, the court shall sentence the  
25 defendant to a term of imprisonment under Chapter V of the  
26 Unified Code of Corrections.

1 (h) Procedure - No Jury.

2 In a proceeding before the court alone, if the court finds  
3 that none of the factors found in subsection (b) exists, the  
4 court shall sentence the defendant to a term of imprisonment  
5 under Chapter V of the Unified Code of Corrections.

6 If the Court determines that one or more of the factors set  
7 forth in subsection (b) exists, the Court shall consider any  
8 aggravating and mitigating factors as indicated in subsection  
9 (c). If the Court determines, after weighing the factors in  
10 aggravation and mitigation, that death is the appropriate  
11 sentence, the Court shall sentence the defendant to death.

12 If the court finds that death is not the appropriate  
13 sentence, the court shall sentence the defendant to a term of  
14 imprisonment under Chapter V of the Unified Code of  
15 Corrections.

16 (h-5) Decertification as a capital case.

17 In a case in which the defendant has been found guilty of  
18 first degree murder by a judge or jury, or a case on remand for  
19 resentencing, and the State seeks the death penalty as an  
20 appropriate sentence, on the court's own motion or the written  
21 motion of the defendant, the court may decertify the case as a  
22 death penalty case if the court finds that the only evidence  
23 supporting the defendant's conviction is the uncorroborated  
24 testimony of an informant witness, as defined in Section  
25 115-21 of the Code of Criminal Procedure of 1963, concerning  
26 the confession or admission of the defendant or that the sole

1 evidence against the defendant is a single eyewitness or  
2 single accomplice without any other corroborating evidence. If  
3 the court decertifies the case as a capital case under either  
4 of the grounds set forth above, the court shall issue a written  
5 finding. The State may pursue its right to appeal the  
6 decertification pursuant to Supreme Court Rule 604(a)(1). If  
7 the court does not decertify the case as a capital case, the  
8 matter shall proceed to the eligibility phase of the  
9 sentencing hearing.

10 (i) Appellate Procedure.

11 The conviction and sentence of death shall be subject to  
12 automatic review by the Supreme Court. Such review shall be in  
13 accordance with rules promulgated by the Supreme Court. The  
14 Illinois Supreme Court may overturn the death sentence, and  
15 order the imposition of imprisonment under Chapter V of the  
16 Unified Code of Corrections if the court finds that the death  
17 sentence is fundamentally unjust as applied to the particular  
18 case. If the Illinois Supreme Court finds that the death  
19 sentence is fundamentally unjust as applied to the particular  
20 case, independent of any procedural grounds for relief, the  
21 Illinois Supreme Court shall issue a written opinion  
22 explaining this finding.

23 (j) Disposition of reversed death sentence.

24 In the event that the death penalty in this Act is held to  
25 be unconstitutional by the Supreme Court of the United States  
26 or of the State of Illinois, any person convicted of first

1 degree murder shall be sentenced by the court to a term of  
2 imprisonment under Chapter V of the Unified Code of  
3 Corrections.

4 In the event that any death sentence pursuant to the  
5 sentencing provisions of this Section is declared  
6 unconstitutional by the Supreme Court of the United States or  
7 of the State of Illinois, the court having jurisdiction over a  
8 person previously sentenced to death shall cause the defendant  
9 to be brought before the court, and the court shall sentence  
10 the defendant to a term of imprisonment under Chapter V of the  
11 Unified Code of Corrections.

12 (k) Guidelines for seeking the death penalty.

13 The Attorney General and State's Attorneys Association  
14 shall consult on voluntary guidelines for procedures governing  
15 whether or not to seek the death penalty. The guidelines do not  
16 have the force of law and are only advisory in nature.

17 (Source: P.A. 100-460, eff. 1-1-18; 100-513, eff. 1-1-18;  
18 100-863, eff. 8-14-18; 101-223, eff. 1-1-20; 101-652, eff.  
19 7-1-21.)

20 Section 110. The Code of Criminal Procedure of 1963 is  
21 amended by changing Sections 113-3 and 119-1 as follows:

22 (725 ILCS 5/113-3) (from Ch. 38, par. 113-3)

23 Sec. 113-3. (a) Every person charged with an offense shall  
24 be allowed counsel before pleading to the charge. If the

1 defendant desires counsel and has been unable to obtain same  
2 before arraignment the court shall recess court or continue  
3 the cause for a reasonable time to permit defendant to obtain  
4 counsel and consult with him before pleading to the charge. If  
5 the accused is a dissolved corporation, and is not represented  
6 by counsel, the court may, in the interest of justice, appoint  
7 as counsel a licensed attorney of this State.

8 (b) In all cases, except where the penalty is a fine only,  
9 if the court determines that the defendant is indigent and  
10 desires counsel, the Public Defender shall be appointed as  
11 counsel. If there is no Public Defender in the county or if the  
12 defendant requests counsel other than the Public Defender and  
13 the court finds that the rights of the defendant will be  
14 prejudiced by the appointment of the Public Defender, the  
15 court shall appoint as counsel a licensed attorney at law of  
16 this State, except that in a county having a population of  
17 2,000,000 or more the Public Defender shall be appointed as  
18 counsel in all misdemeanor cases where the defendant is  
19 indigent and desires counsel unless the case involves multiple  
20 defendants, in which case the court may appoint counsel other  
21 than the Public Defender for the additional defendants. The  
22 court shall require an affidavit signed by any defendant who  
23 requests court-appointed counsel. Such affidavit shall be in  
24 the form established by the Supreme Court containing  
25 sufficient information to ascertain the assets and liabilities  
26 of that defendant. The Court may direct the Clerk of the



1 Circuit Court to assist the defendant in the completion of the  
2 affidavit. Any person who knowingly files such affidavit  
3 containing false information concerning his assets and  
4 liabilities shall be liable to the county where the case, in  
5 which such false affidavit is filed, is pending for the  
6 reasonable value of the services rendered by the public  
7 defender or other court-appointed counsel in the case to the  
8 extent that such services were unjustly or falsely procured.

9 (c) Upon the filing with the court of a verified statement  
10 of services rendered the court shall order the county  
11 treasurer of the county of trial to pay counsel other than the  
12 Public Defender a reasonable fee. The court shall consider all  
13 relevant circumstances, including but not limited to the time  
14 spent while court is in session, other time spent in  
15 representing the defendant, and expenses reasonably incurred  
16 by counsel. In counties with a population greater than  
17 2,000,000, the court shall order the county treasurer of the  
18 county of trial to pay counsel other than the Public Defender a  
19 reasonable fee stated in the order and based upon a rate of  
20 compensation of not more than \$40 for each hour spent while  
21 court is in session and not more than \$30 for each hour  
22 otherwise spent representing a defendant, and such  
23 compensation shall not exceed \$150 for each defendant  
24 represented in misdemeanor cases and \$1250 in felony cases, in  
25 addition to expenses reasonably incurred as hereinafter in  
26 this Section provided, except that, in extraordinary

1 circumstances, payment in excess of the limits herein stated  
2 may be made if the trial court certifies that such payment is  
3 necessary to provide fair compensation for protracted  
4 representation. A trial court may entertain the filing of this  
5 verified statement before the termination of the cause, and  
6 may order the provisional payment of sums during the pendency  
7 of the cause.

8 (d) In capital cases, in addition to counsel, if the court  
9 determines that the defendant is indigent the court may, upon  
10 the filing with the court of a verified statement of services  
11 rendered, order the county Treasurer of the county of trial to  
12 pay necessary expert witnesses for defendant reasonable  
13 compensation stated in the order not to exceed \$250 for each  
14 defendant.

15 (e) If the court in any county having a population greater  
16 than 2,000,000 determines that the defendant is indigent the  
17 court may, upon the filing with the court of a verified  
18 statement of such expenses, order the county treasurer of the  
19 county of trial, in such counties having a population greater  
20 than 2,000,000 to pay the general expenses of the trial  
21 incurred by the defendant not to exceed \$50 for each  
22 defendant.

23 (f) The provisions of this Section relating to appointment  
24 of counsel, compensation of counsel, and payment of expenses  
25 in capital cases apply except when the compensation and  
26 expenses are being provided under the Capital Crimes

1 Litigation Act of 2022.

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

3 (725 ILCS 5/119-1)

4 Sec. 119-1. Death penalty abolished; partially restored.

5 (a) Except as otherwise provided in this Section,  
6 beginning on July 1, 2011 (the effective date of Public Act  
7 96-1543) and Beginning on the effective date of this  
8 amendatory Act of the 96th General Assembly, notwithstanding  
9 any other law to the contrary, the death penalty is abolished  
10 and a sentence to death may not be imposed.

11 (a-5) Notwithstanding subsection (a), a defendant who at  
12 the time of the commission of the offense has attained the age  
13 of 18 or more years and who has been found guilty of first  
14 degree murder under subsection (a-5) of Section 9-1 of the  
15 Criminal Code of 2012 may be sentenced to death.

16 (b) All unobligated and unexpended moneys remaining in ~~the~~  
17 ~~Capital Litigation Trust Fund on the effective date of this~~  
18 ~~amendatory Act of the 96th General Assembly shall be~~  
19 ~~transferred into~~ the Death Penalty Abolition Fund on the  
20 effective date of this amendatory Act of the 102nd General  
21 Assembly shall be transferred into the Capital Litigation  
22 Trust Fund, together with any moneys the Death Penalty  
23 Abolition Fund may receive thereafter , ~~a special fund in the~~  
24 ~~State treasury, to be expended by the Illinois Criminal~~  
25 ~~Justice Information Authority, for services for families of~~

1 ~~victims of homicide or murder and for training of law~~  
2 ~~enforcement personnel.~~

3 (Source: P.A. 96-1543, eff. 7-1-11.)

4 Section 115. The State Appellate Defender Act is amended  
5 by 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  
10 proceedings, when appointed to do so by a court under a Supreme  
11 Court Rule 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,  
24 the administration of criminal justice, and, in counties

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

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

7 (5) (blank);

8 (5.1) 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  
15 as 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:

24 (i) study, design, develop, and implement model systems  
25 for the delivery of trial level defender services for  
26 juveniles in the justice system; (ii) in cases in which a

1 sentence of incarceration or an adult sentence, or both,  
2 is an authorized disposition, provide trial counsel with  
3 legal 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, but not limited to: (i) warrants; (ii) arrests;  
21 (iii) convictions; and (iv) officer safety information. This  
22 authorization applies only to information held on the State  
23 level and shall be used only to protect the personal safety of  
24 the investigators. Any information that is obtained through  
25 this inquiry may not be disclosed by the investigators.

26 (c-5) For each State fiscal year, the State Appellate

1 Defender shall request a direct appropriation from the Capital  
2 Litigation Trust Fund for expenses incurred by the State  
3 Appellate Defender in providing assistance to trial attorneys  
4 under paragraph (5.1) of subsection (c) of this Section and  
5 for expenses incurred by the State Appellate Defender in  
6 representing petitioners in capital cases in post-conviction  
7 proceedings 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 and for the representation of those petitioners  
11 by attorneys approved by or contracted with the State  
12 Appellate Defender and an appropriation to the State Treasurer  
13 for payments from the Trust Fund for the defense of cases in  
14 counties other than Cook County. The State Appellate Defender  
15 may appear before the General Assembly at other times during  
16 the State's fiscal year to request supplemental appropriations  
17 from the Trust Fund to the State Treasurer.

18 (d) (Blank).

19 (e) The requirement for reporting to the General Assembly  
20 shall be satisfied by filing copies of the report as required  
21 by Section 3.1 of the General Assembly Organization Act and  
22 filing such additional copies with the State Government Report  
23 Distribution Center for the General Assembly as is required  
24 under paragraph (t) of Section 7 of the State Library Act.

25 (Source: P.A. 99-78, eff. 7-20-15; 100-1148, eff. 12-10-18.)

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 5 ILCS 140/7.5

5 30 ILCS 105/5.970 new

6 30 ILCS 105/5.790 rep.

7 720 ILCS 5/9-1 from Ch. 38, par. 9-1

8 725 ILCS 5/113-3 from Ch. 38, par. 113-3

9 725 ILCS 5/119-1

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