



Rep. Karen A. Yarbrough

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LRB097 09651 RLC 56224 a

1 AMENDMENT TO HOUSE BILL 1738

2 AMENDMENT NO. _____. Amend House Bill 1738, AS AMENDED, by
3 inserting immediately after the enacting clause the following:

4 "Section 2.1. The Attorney General Act is amended by
5 changing Section 4 as follows:

6 (15 ILCS 205/4) (from Ch. 14, par. 4)

7 Sec. 4. The duties of the Attorney General shall be--

8 First - To appear for and represent the people of the State
9 before the supreme court in all cases in which the State or the
10 people of the State are interested.

11 Second - To institute and prosecute all actions and
12 proceedings in favor of or for the use of the State, which may
13 be necessary in the execution of the duties of any State
14 officer.

15 Third - To defend all actions and proceedings against any
16 State officer, in his official capacity, in any of the courts

1 of this State or the United States.

2 Fourth - To consult with and advise the several State's
3 Attorneys in matters relating to the duties of their office;
4 and when, in his judgment, the interest of the people of the
5 State requires it, he shall attend the trial of any party
6 accused of crime, and assist in the prosecution. When the
7 Attorney General has requested in writing that a State's
8 Attorney initiate court proceedings to enforce any provisions
9 of the Election Code or to initiate a criminal prosecution with
10 respect to a violation of the Election Code, and when the
11 State's Attorney has declined in writing to initiate those
12 proceedings or prosecutions or when the State's Attorney has
13 neither initiated the proceedings or prosecutions nor
14 responded in writing to the Attorney General within 60 days of
15 the receipt of the request, the Attorney General may,
16 concurrently with or independently of the State's Attorney,
17 initiate such proceedings or prosecutions. The Attorney
18 General may investigate and prosecute any violation of the
19 Election Code at the request of the State Board of Elections or
20 a State's Attorney.

21 Fifth - To investigate alleged violations of the statutes
22 which the Attorney General has a duty to enforce and to conduct
23 other investigations in connection with assisting in the
24 prosecution of a criminal offense at the request of a State's
25 Attorney.

26 Sixth - To consult with and advise the governor and other

1 State officers, and give, when requested, written opinions upon
2 all legal or constitutional questions relating to the duties of
3 such officers respectively.

4 Seventh - To prepare, when necessary, proper drafts for
5 contracts and other writings relating to subjects in which the
6 State is interested.

7 Eighth - To give written opinions, when requested by either
8 branch of the general assembly, or any committee thereof, upon
9 constitutional or legal questions.

10 Ninth - To enforce the proper application of funds
11 appropriated to the public institutions of the State, prosecute
12 breaches of trust in the administration of such funds, and,
13 when necessary, prosecute corporations for failure or refusal
14 to make the reports required by law.

15 Tenth - To keep, a register of all cases prosecuted or
16 defended by him, in behalf of the State or its officers, and of
17 all proceedings had in relation thereto, and to deliver the
18 same to his successor in office.

19 Eleventh - To keep on file in his office a copy of the
20 official opinions issued by the Attorney General and deliver
21 same to his successor.

22 Twelfth - To pay into the State treasury all moneys
23 received by him for the use of the State.

24 Thirteenth - To attend to and perform any other duty which
25 may, from time to time, be required of him by law.

26 Fourteenth - To attend, present evidence to and prosecute

1 indictments returned by each Statewide Grand Jury.

2 Fifteenth - To give written binding and advisory public
3 access opinions as provided in Section 7 of this Act.

4 Sixteenth - To prosecute all death penalty cases in
5 counties with less than 3,000,000 residents based on the most
6 recent federal decennial census. If, in these counties, the
7 defendant is eligible for the death penalty and the State's
8 Attorney in the county certifies the case as a death penalty
9 case, the case shall be transferred to the Attorney General.
10 Once the case has been transferred, the Attorney General may
11 prosecute the case as a death penalty case or may decertify the
12 case as a death penalty case. If the Attorney General
13 decertifies the case, the case may be transferred back to the
14 originating State's Attorney. The Attorney General may grant
15 the originating State's Attorney the authority to prosecute a
16 death penalty case if the State's Attorney's office has at
17 least 5 members of the Capital Litigation Trial Bar.

18 (Source: P.A. 95-699, eff. 11-9-07; 96-542, eff. 1-1-10.)

19 Section 2.2. The Department of State Police Law of the
20 Civil Administrative Code of Illinois is amended by changing
21 Section 2605-90 as follows:

22 (20 ILCS 2605/2605-90)

23 (This Section may contain text from a Public Act with a
24 delayed effective date)

1 Sec. 2605-90. Training; death and homicide investigations.
2 The Department shall provide training in death and homicide
3 investigation for State police officers. The training shall
4 include: (1) ensuring compatibility of equipment for
5 electronic recording of interrogations, (2) how to sound proof
6 rooms during interrogations, (3) reviewing and transcribing
7 recordings, (4) storage of tapes and discs, and (5) the use of
8 recording equipment and proper interviewing techniques. Only
9 State police officers who successfully complete the training
10 may be assigned as lead investigators in death and homicide
11 investigations. Satisfactory completion of the training shall
12 be evidenced by a certificate issued to the officer by the
13 Department.

14 (Source: P.A. 96-1111, eff. 1-1-12.)

15 Section 2.3. The Illinois Criminal Justice Information Act
16 is amended by changing Sections 7.5 and 7.6 as follows:

17 (20 ILCS 3930/7.5)

18 Sec. 7.5. Grants for electronic recording equipment.

19 (a) The Authority, from appropriations made to it for that
20 purpose, shall make grants to local law enforcement agencies
21 for the purpose of: (1) purchasing equipment for electronic
22 recording of interrogations and (2) offsetting the expenses
23 incurred in ensuring equipment compatibility, sound proofing
24 of rooms during interrogations, reviewing and transcribing

1 recordings, storage of tapes and discs, and law enforcement
2 officer training in the use of recording equipment and proper
3 interviewing techniques.

4 (b) The Authority shall promulgate rules to implement this
5 Section.

6 (Source: P.A. 93-206, eff. 7-18-03; 93-517, eff. 8-6-03.)

7 (20 ILCS 3930/7.6)

8 Sec. 7.6. Capital Crimes Database.

9 (a) Subject to appropriation, a Capital Crimes Database
10 shall be created within the Illinois Criminal Justice
11 Information Authority (ICJIA). The General Assembly shall
12 appropriate moneys to the ICJIA for the purposes of
13 implementing this Section.

14 (b) The ICJIA shall collect and retain in the Capital
15 Crimes Database all information on the prosecution, pendency,
16 and disposition of capital and capital eligible cases in
17 Illinois, including the races of the defendants and victims.
18 The Capital Crimes Database shall serve as a repository for all
19 of the foregoing collected information.

20 (c) The ICJIA shall develop administrative rules to provide
21 for the coordination and collection of information in the
22 Capital Crimes Database.

23 (d) Agencies required to provide information on capital
24 cases to the ICJIA, as the ICJIA may request, for the Capital
25 Crimes Database shall include, but not be limited to:

- 1 (1) Office of the Attorney General.
- 2 (2) Illinois Department of Corrections.
- 3 (3) Illinois State Police.
- 4 (4) All county State's Attorneys.
- 5 (5) All county public defenders.
- 6 (6) Office of the State's Attorneys Appellate
- 7 Prosecutor.
- 8 (7) Office of the State Appellate Defender.

9 (e) Agencies requested to provide information on capital
10 cases to the ICJIA for the Capital Crimes Database shall
11 include, but not be limited to:

- 12 (1) Administrative Office of Illinois Courts.
- 13 (2) All county circuit court clerks.

14 (f) The ICJIA shall develop procedures and protocols for
15 the submission of information relating to capital and capital
16 eligible cases to the Database in conjunction with the agencies
17 submitting information.

18 (Source: P.A. 95-688, eff. 10-23-07.)"; and

19 by inserting after the last line of Section 3 the following:

20 "Section 3.1. The Illinois Police Training Act is amended
21 by changing Section 10.11 as follows:

22 (50 ILCS 705/10.11)

23 (This Section may contain text from a Public Act with a

1 delayed effective date)

2 Sec. 10.11. Training; death and homicide investigation.
3 The Illinois Law Enforcement Training ~~and~~ Standards Board shall
4 conduct or approve a training program in death and homicide
5 investigation for the training of law enforcement officers of
6 local government agencies. The training shall include: (1)
7 ensuring compatibility of equipment for electronic recording
8 of interrogations, (2) how to sound proof rooms during
9 interrogations, (3) reviewing and transcribing recordings, (4)
10 storage of tapes and discs, and (5) the use of recording
11 equipment and proper interviewing techniques. Only law
12 enforcement officers who successfully complete the training
13 program may be assigned as lead investigators in death and
14 homicide investigations. Satisfactory completion of the
15 training program shall be evidenced by a certificate issued to
16 the law enforcement officer by the Illinois Law Enforcement
17 Training ~~and~~ Standards Board.

18 (Source: P.A. 96-1111, eff. 1-1-12.)

19 Section 3.2. The Counties Code is amended by changing
20 Section 3-9005 as follows:

21 (55 ILCS 5/3-9005) (from Ch. 34, par. 3-9005)

22 (Text of Section before amendment by P.A. 96-1551)

23 Sec. 3-9005. Powers and duties of State's attorney.

24 (a) Except as otherwise provided in Section 4 of the

1 Attorney General Act, the ~~The~~ duty of each State's attorney
2 shall be:

3 (1) To commence and prosecute all actions, suits,
4 indictments and prosecutions, civil and criminal, in the
5 circuit court for his county, in which the people of the
6 State or county may be concerned.

7 (2) To prosecute all forfeited bonds and
8 recognizances, and all actions and proceedings for the
9 recovery of debts, revenues, moneys, fines, penalties and
10 forfeitures accruing to the State or his county, or to any
11 school district or road district in his county; also, to
12 prosecute all suits in his county against railroad or
13 transportation companies, which may be prosecuted in the
14 name of the People of the State of Illinois.

15 (3) To commence and prosecute all actions and
16 proceedings brought by any county officer in his official
17 capacity.

18 (4) To defend all actions and proceedings brought
19 against his county, or against any county or State officer,
20 in his official capacity, within his county.

21 (5) To attend the examination of all persons brought
22 before any judge on habeas corpus, when the prosecution is
23 in his county.

24 (6) To attend before judges and prosecute charges of
25 felony or misdemeanor, for which the offender is required
26 to be recognized to appear before the circuit court, when

1 in his power so to do.

2 (7) To give his opinion, without fee or reward, to any
3 county officer in his county, upon any question or law
4 relating to any criminal or other matter, in which the
5 people or the county may be concerned.

6 (8) To assist the attorney general whenever it may be
7 necessary, and in cases of appeal from his county to the
8 Supreme Court, to which it is the duty of the attorney
9 general to attend, he shall furnish the attorney general at
10 least 10 days before such is due to be filed, a manuscript
11 of a proposed statement, brief and argument to be printed
12 and filed on behalf of the people, prepared in accordance
13 with the rules of the Supreme Court. However, if such
14 brief, argument or other document is due to be filed by law
15 or order of court within this 10 day period, then the
16 State's attorney shall furnish such as soon as may be
17 reasonable.

18 (9) To pay all moneys received by him in trust, without
19 delay, to the officer who by law is entitled to the custody
20 thereof.

21 (10) To notify, by first class mail, complaining
22 witnesses of the ultimate disposition of the cases arising
23 from an indictment or an information.

24 (11) To perform such other and further duties as may,
25 from time to time, be enjoined on him by law.

26 (12) To appear in all proceedings by collectors of

1 taxes against delinquent taxpayers for judgments to sell
2 real estate, and see that all the necessary preliminary
3 steps have been legally taken to make the judgment legal
4 and binding.

5 (13) To notify, by first-class mail, the State
6 Superintendent of Education, the applicable regional
7 superintendent of schools, and the superintendent of the
8 employing school district or the chief school
9 administrator of the employing nonpublic school, if any,
10 upon the conviction of any individual known to possess a
11 certificate issued pursuant to Article 21 of the School
12 Code of any offense set forth in Section 21-23a of the
13 School Code or any other felony conviction, providing the
14 name of the certificate holder, the fact of the conviction,
15 and the name and location of the court where the conviction
16 occurred. The certificate holder must also be
17 contemporaneously sent a copy of the notice.

18 (b) The State's Attorney of each county shall have
19 authority to appoint one or more special investigators to serve
20 subpoenas, make return of process and conduct investigations
21 which assist the State's Attorney in the performance of his
22 duties. A special investigator shall not carry firearms except
23 with permission of the State's Attorney and only while carrying
24 appropriate identification indicating his employment and in
25 the performance of his assigned duties.

26 Subject to the qualifications set forth in this subsection,

1 special investigators shall be peace officers and shall have
2 all the powers possessed by investigators under the State's
3 Attorneys Appellate Prosecutor's Act.

4 No special investigator employed by the State's Attorney
5 shall have peace officer status or exercise police powers
6 unless he or she successfully completes the basic police
7 training course mandated and approved by the Illinois Law
8 Enforcement Training Standards Board or such board waives the
9 training requirement by reason of the special investigator's
10 prior law enforcement experience or training or both. Any
11 State's Attorney appointing a special investigator shall
12 consult with all affected local police agencies, to the extent
13 consistent with the public interest, if the special
14 investigator is assigned to areas within that agency's
15 jurisdiction.

16 Before a person is appointed as a special investigator, his
17 fingerprints shall be taken and transmitted to the Department
18 of State Police. The Department shall examine its records and
19 submit to the State's Attorney of the county in which the
20 investigator seeks appointment any conviction information
21 concerning the person on file with the Department. No person
22 shall be appointed as a special investigator if he has been
23 convicted of a felony or other offense involving moral
24 turpitude. A special investigator shall be paid a salary and be
25 reimbursed for actual expenses incurred in performing his
26 assigned duties. The county board shall approve the salary and

1 actual expenses and appropriate the salary and expenses in the
2 manner prescribed by law or ordinance.

3 (c) The State's Attorney may request and receive from
4 employers, labor unions, telephone companies, and utility
5 companies location information concerning putative fathers and
6 noncustodial parents for the purpose of establishing a child's
7 paternity or establishing, enforcing, or modifying a child
8 support obligation. In this subsection, "location information"
9 means information about (i) the physical whereabouts of a
10 putative father or noncustodial parent, (ii) the putative
11 father or noncustodial parent's employer, or (iii) the salary,
12 wages, and other compensation paid and the health insurance
13 coverage provided to the putative father or noncustodial parent
14 by the employer of the putative father or noncustodial parent
15 or by a labor union of which the putative father or
16 noncustodial parent is a member.

17 (d) (Blank). ~~For each State fiscal year, the State's~~
18 ~~Attorney of Cook County shall appear before the General~~
19 ~~Assembly and request appropriations to be made from the Capital~~
20 ~~Litigation Trust Fund to the State Treasurer for the purpose of~~
21 ~~providing assistance in the prosecution of capital cases in~~
22 ~~Cook County and for the purpose of providing assistance to the~~
23 ~~State in post-conviction proceedings in capital cases under~~
24 ~~Article 122 of the Code of Criminal Procedure of 1963 and in~~
25 ~~relation to petitions filed under Section 2-1401 of the Code of~~
26 ~~Civil Procedure in relation to capital cases. The State's~~

1 ~~Attorney may appear before the General Assembly at other times~~
2 ~~during the State's fiscal year to request supplemental~~
3 ~~appropriations from the Trust Fund to the State Treasurer.~~

4 (e) The State's Attorney shall have the authority to enter
5 into a written agreement with the Department of Revenue for
6 pursuit of civil liability under Section 17-1a of the Criminal
7 Code of 1961 against persons who have issued to the Department
8 checks or other orders in violation of the provisions of
9 paragraph (d) of subsection (B) of Section 17-1 of the Criminal
10 Code of 1961, with the Department to retain the amount owing
11 upon the dishonored check or order along with the dishonored
12 check fee imposed under the Uniform Penalty and Interest Act,
13 with the balance of damages, fees, and costs collected under
14 Section 17-1a of the Criminal Code of 1961 to be retained by
15 the State's Attorney. The agreement shall not affect the
16 allocation of fines and costs imposed in any criminal
17 prosecution.

18 (Source: P.A. 96-431, eff. 8-13-09.)

19 (Text of Section after amendment by P.A. 96-1551)

20 Sec. 3-9005. Powers and duties of State's attorney.

21 (a) Except as otherwise provided in Section 4 of the
22 Attorney General Act, the ~~The~~ duty of each State's attorney
23 shall be:

24 (1) To commence and prosecute all actions, suits,
25 indictments and prosecutions, civil and criminal, in the

1 circuit court for his county, in which the people of the
2 State or county may be concerned.

3 (2) To prosecute all forfeited bonds and
4 recognizances, and all actions and proceedings for the
5 recovery of debts, revenues, moneys, fines, penalties and
6 forfeitures accruing to the State or his county, or to any
7 school district or road district in his county; also, to
8 prosecute all suits in his county against railroad or
9 transportation companies, which may be prosecuted in the
10 name of the People of the State of Illinois.

11 (3) To commence and prosecute all actions and
12 proceedings brought by any county officer in his official
13 capacity.

14 (4) To defend all actions and proceedings brought
15 against his county, or against any county or State officer,
16 in his official capacity, within his county.

17 (5) To attend the examination of all persons brought
18 before any judge on habeas corpus, when the prosecution is
19 in his county.

20 (6) To attend before judges and prosecute charges of
21 felony or misdemeanor, for which the offender is required
22 to be recognized to appear before the circuit court, when
23 in his power so to do.

24 (7) To give his opinion, without fee or reward, to any
25 county officer in his county, upon any question or law
26 relating to any criminal or other matter, in which the

1 people or the county may be concerned.

2 (8) To assist the attorney general whenever it may be
3 necessary, and in cases of appeal from his county to the
4 Supreme Court, to which it is the duty of the attorney
5 general to attend, he shall furnish the attorney general at
6 least 10 days before such is due to be filed, a manuscript
7 of a proposed statement, brief and argument to be printed
8 and filed on behalf of the people, prepared in accordance
9 with the rules of the Supreme Court. However, if such
10 brief, argument or other document is due to be filed by law
11 or order of court within this 10 day period, then the
12 State's attorney shall furnish such as soon as may be
13 reasonable.

14 (9) To pay all moneys received by him in trust, without
15 delay, to the officer who by law is entitled to the custody
16 thereof.

17 (10) To notify, by first class mail, complaining
18 witnesses of the ultimate disposition of the cases arising
19 from an indictment or an information.

20 (11) To perform such other and further duties as may,
21 from time to time, be enjoined on him by law.

22 (12) To appear in all proceedings by collectors of
23 taxes against delinquent taxpayers for judgments to sell
24 real estate, and see that all the necessary preliminary
25 steps have been legally taken to make the judgment legal
26 and binding.

1 (13) To notify, by first-class mail, the State
2 Superintendent of Education, the applicable regional
3 superintendent of schools, and the superintendent of the
4 employing school district or the chief school
5 administrator of the employing nonpublic school, if any,
6 upon the conviction of any individual known to possess a
7 certificate issued pursuant to Article 21 of the School
8 Code of any offense set forth in Section 21-23a of the
9 School Code or any other felony conviction, providing the
10 name of the certificate holder, the fact of the conviction,
11 and the name and location of the court where the conviction
12 occurred. The certificate holder must also be
13 contemporaneously sent a copy of the notice.

14 (b) The State's Attorney of each county shall have
15 authority to appoint one or more special investigators to serve
16 subpoenas, make return of process and conduct investigations
17 which assist the State's Attorney in the performance of his
18 duties. A special investigator shall not carry firearms except
19 with permission of the State's Attorney and only while carrying
20 appropriate identification indicating his employment and in
21 the performance of his assigned duties.

22 Subject to the qualifications set forth in this subsection,
23 special investigators shall be peace officers and shall have
24 all the powers possessed by investigators under the State's
25 Attorneys Appellate Prosecutor's Act.

26 No special investigator employed by the State's Attorney

1 shall have peace officer status or exercise police powers
2 unless he or she successfully completes the basic police
3 training course mandated and approved by the Illinois Law
4 Enforcement Training Standards Board or such board waives the
5 training requirement by reason of the special investigator's
6 prior law enforcement experience or training or both. Any
7 State's Attorney appointing a special investigator shall
8 consult with all affected local police agencies, to the extent
9 consistent with the public interest, if the special
10 investigator is assigned to areas within that agency's
11 jurisdiction.

12 Before a person is appointed as a special investigator, his
13 fingerprints shall be taken and transmitted to the Department
14 of State Police. The Department shall examine its records and
15 submit to the State's Attorney of the county in which the
16 investigator seeks appointment any conviction information
17 concerning the person on file with the Department. No person
18 shall be appointed as a special investigator if he has been
19 convicted of a felony or other offense involving moral
20 turpitude. A special investigator shall be paid a salary and be
21 reimbursed for actual expenses incurred in performing his
22 assigned duties. The county board shall approve the salary and
23 actual expenses and appropriate the salary and expenses in the
24 manner prescribed by law or ordinance.

25 (c) The State's Attorney may request and receive from
26 employers, labor unions, telephone companies, and utility

1 companies location information concerning putative fathers and
2 noncustodial parents for the purpose of establishing a child's
3 paternity or establishing, enforcing, or modifying a child
4 support obligation. In this subsection, "location information"
5 means information about (i) the physical whereabouts of a
6 putative father or noncustodial parent, (ii) the putative
7 father or noncustodial parent's employer, or (iii) the salary,
8 wages, and other compensation paid and the health insurance
9 coverage provided to the putative father or noncustodial parent
10 by the employer of the putative father or noncustodial parent
11 or by a labor union of which the putative father or
12 noncustodial parent is a member.

13 (d) (Blank). ~~For each State fiscal year, the State's~~
14 ~~Attorney of Cook County shall appear before the General~~
15 ~~Assembly and request appropriations to be made from the Capital~~
16 ~~Litigation Trust Fund to the State Treasurer for the purpose of~~
17 ~~providing assistance in the prosecution of capital cases in~~
18 ~~Cook County and for the purpose of providing assistance to the~~
19 ~~State in post conviction proceedings in capital cases under~~
20 ~~Article 122 of the Code of Criminal Procedure of 1963 and in~~
21 ~~relation to petitions filed under Section 2-1401 of the Code of~~
22 ~~Civil Procedure in relation to capital cases. The State's~~
23 ~~Attorney may appear before the General Assembly at other times~~
24 ~~during the State's fiscal year to request supplemental~~
25 ~~appropriations from the Trust Fund to the State Treasurer.~~

26 (e) The State's Attorney shall have the authority to enter

1 into a written agreement with the Department of Revenue for
2 pursuit of civil liability under subsection (E) of Section 17-1
3 of the Criminal Code of 1961 against persons who have issued to
4 the Department checks or other orders in violation of the
5 provisions of paragraph (1) of subsection (B) of Section 17-1
6 of the Criminal Code of 1961, with the Department to retain the
7 amount owing upon the dishonored check or order along with the
8 dishonored check fee imposed under the Uniform Penalty and
9 Interest Act, with the balance of damages, fees, and costs
10 collected under subsection (E) of Section 17-1 of the Criminal
11 Code of 1961 or under Section 17-1a of that Code to be retained
12 by the State's Attorney. The agreement shall not affect the
13 allocation of fines and costs imposed in any criminal
14 prosecution.

15 (Source: P.A. 96-431, eff. 8-13-09; 96-1551, eff. 7-1-11.);
16 and

17 in Section 5, in Sec. 9-1, immediately below the end of
18 subsection (h-5), by inserting the following:

19 "(h-6) Trial judge overturning death sentence.

20 Upon application of the State or the defendant or upon the
21 court's own motion, the trial judge who presided over a capital
22 case in which the jury determined that death was the
23 appropriate sentence may overturn the jury verdict of death, if
24 the court determines that imposition of the death penalty is
25 unjust, and may sentence the defendant to a term of natural

1 life imprisonment."; and

2 by inserting immediately after the last line of Section 10 the
3 following:

4 "Section 10.1. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 107A-5 as follows:

6 (725 ILCS 5/107A-5)

7 Sec. 107A-5. Lineup and photo spread procedure.

8 (a) All lineups shall be photographed or otherwise
9 recorded. These photographs shall be disclosed to the accused
10 and his or her defense counsel during discovery proceedings as
11 provided in Illinois Supreme Court Rules. All photographs of
12 suspects shown to an eyewitness during the photo spread shall
13 be disclosed to the accused and his or her defense counsel
14 during discovery proceedings as provided in Illinois Supreme
15 Court Rules.

16 (b) Each eyewitness who views a lineup or photo spread
17 shall sign a form containing the following information:

18 (1) The suspect might not be in the lineup or photo
19 spread and the eyewitness is not obligated to make an
20 identification.

21 (2) The eyewitness should not assume that the person
22 administering the lineup or photo spread knows which person
23 is the suspect in the case.

1 (c) Suspects in a lineup or photo spread should not appear
2 to be substantially different from "fillers" or "distracters"
3 in the lineup or photo spread, based on the eyewitness'
4 previous description of the perpetrator, or based on other
5 factors that would draw attention to the suspect.

6 (d) In homicide investigations, all eyewitness
7 identification procedures must be electronically recorded by
8 both audio and video equipment.

9 (e) In homicide investigations, blind administration shall
10 be required of all eyewitness identification procedures. Blind
11 administration may be achieved by use of either of 2 methods:

12 (1) the administrator may not be aware of which person
13 or photograph in the array is the police suspect and which
14 are the fillers. The administrator must assign a number to
15 each person in the array, and use that number when
16 recording the witness' response; or

17 (2) when pictures are used, the administrator may know
18 the identity of the suspect, but may not know which person
19 in the array the witness is viewing. The administrator must
20 assign a number to each picture, which must be placed in
21 folders or displayed on a computer screen. The
22 administrator should then shuffle the folders or computer
23 screen pictures. The administrator may not be aware of the
24 number or position of the suspect, and may not look at the
25 pictures as the witness views them.

26 In using either method, the administrator may permit the

1 witness to view the array more than one time, provided that the
2 entire array is shown to the witness each time. When a blind
3 administration is used in a homicide investigation, sequential
4 procedures must be used, that is, the persons or pictures must
5 be displayed to the witness one at a time. Using the assigned
6 numbers, the administrator must record in writing or
7 electronically the witness' response to each person or picture,
8 before showing the witness the next person or picture.

9 (Source: P.A. 93-605, eff. 11-19-03.)

10 Section 10.2. The Capital Crimes Litigation Act is amended
11 by changing Section 15 as follows:

12 (725 ILCS 124/15)

13 (Section scheduled to be repealed on January 1, 2012)

14 Sec. 15. Capital Litigation Trust Fund.

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

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

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

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

1 for appropriations from the Trust Fund.

2 (1) The Public Defender in Cook County shall request
3 appropriations to the State Treasurer for expenses
4 incurred by the Public Defender and for funding for private
5 appointed defense counsel in Cook County.

6 (2) (Blank). ~~The State's Attorney in Cook County shall~~
7 ~~request an appropriation to the State Treasurer for~~
8 ~~expenses incurred by the State's Attorney.~~

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

24 (4) (Blank). ~~The State's Attorneys Appellate~~
25 ~~Prosecutor shall request a direct appropriation from the~~
26 ~~Trust Fund to pay expenses incurred by the State's~~

1 ~~Attorneys Appellate Prosecutor and an appropriation to the~~
2 ~~State Treasurer for payments from the Trust Fund for~~
3 ~~expenses incurred by State's Attorneys in counties other~~
4 ~~than Cook County.~~

5 (5) ~~The Attorney General shall request a direct~~
6 ~~appropriation from the Trust Fund to pay expenses incurred~~
7 ~~by the Attorney General in assisting the State's Attorneys~~
8 ~~in counties other than Cook County and to pay for expenses~~
9 ~~incurred by the Attorney General when the Attorney General~~
10 ~~is ordered by the presiding judge of the Criminal Division~~
11 ~~of the Circuit Court of Cook County to prosecute or~~
12 ~~supervise the prosecution of Cook County cases and for~~
13 ~~expenses incurred by the Attorney General in representing~~
14 ~~the State in post conviction proceedings in capital cases~~
15 ~~under Article 122 of the Code of Criminal Procedure of 1963~~
16 ~~and in relation to petitions filed under Section 2-1401 of~~
17 ~~the Code of Civil Procedure in relation to capital cases.~~

18 The Public Defender and the State Appellate Defender ~~and~~
19 ~~State's Attorney in Cook County, the State Appellate Defender,~~
20 ~~the State's Attorneys Appellate Prosecutor, and the Attorney~~
21 ~~General~~ may each request supplemental appropriations from the
22 Trust Fund during the fiscal year.

23 (e) Moneys in the Trust Fund shall be expended only as
24 follows:

25 (1) To pay the State Treasurer's costs to administer
26 the Trust Fund. The amount for this purpose may not exceed

1 5% in any one fiscal year of the amount otherwise
2 appropriated from the Trust Fund in the same fiscal year.

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

25 (3) To pay the compensation of trial attorneys, other
26 than public defenders or appellate defenders, who have been

1 appointed by the court to represent defendants who are
2 charged with capital crimes or attorneys approved by or
3 contracted with the State Appellate Defender to represent
4 petitioners in post-conviction proceedings in capital
5 cases under Article 122 of the Code of Criminal Procedure
6 of 1963 and in relation to petitions filed under Section
7 2-1401 of the Code of Civil Procedure in relation to
8 capital cases.

9 (4) (Blank). ~~To provide State's Attorneys with funding~~
10 ~~for capital litigation expenses and for expenses of~~
11 ~~representing the State in post-conviction proceedings in~~
12 ~~capital cases under Article 122 of the Code of Criminal~~
13 ~~Procedure of 1963 and in relation to petitions filed under~~
14 ~~Section 2-1401 of the Code of Civil Procedure in relation~~
15 ~~to capital cases including, but not limited to,~~
16 ~~investigatory and other assistance and expert, forensic,~~
17 ~~and other witnesses necessary to prosecute capital cases.~~
18 ~~State's Attorneys in any county other than Cook County~~
19 ~~seeking funding for capital litigation expenses and for~~
20 ~~expenses of representing the State in post-conviction~~
21 ~~proceedings in capital cases under Article 122 of the Code~~
22 ~~of Criminal Procedure of 1963 and in relation to petitions~~
23 ~~filed under Section 2-1401 of the Code of Civil Procedure~~
24 ~~in relation to capital cases including, but not limited to,~~
25 ~~investigatory and other assistance and expert, forensic,~~
26 ~~or other witnesses under this Section may request that the~~

1 ~~State's Attorneys Appellate Prosecutor or the Attorney~~
2 ~~General, as the case may be, certify the expenses as~~
3 ~~reasonable, necessary, and appropriate for payment from~~
4 ~~the Trust Fund, on a form created by the State Treasurer.~~
5 ~~Upon certification of the expenses and delivery of the~~
6 ~~certification to the State Treasurer, the Treasurer shall~~
7 ~~pay the expenses directly from the Capital Litigation Trust~~
8 ~~Fund if there are sufficient moneys in the Trust Fund to~~
9 ~~pay the expenses.~~

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

18 (6) (Blank). ~~To provide financial support through the~~
19 ~~State's Attorneys Appellate Prosecutor pursuant to the~~
20 ~~State's Attorneys Appellate Prosecutor's Act for the~~
21 ~~several county State's Attorneys outside of Cook County,~~
22 ~~but shall not be used to increase personnel for the State's~~
23 ~~Attorneys Appellate Prosecutor.~~

24 (7) To provide financial support to the State Appellate
25 Defender pursuant to the State Appellate Defender Act.

26 (8) To provide financial support for victims' services

1 in capital cases.

2 Moneys expended from the Trust Fund shall be in addition to
3 county funding for Public Defenders and State's Attorneys, and
4 shall not be used to supplant or reduce ordinary and customary
5 county funding.

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

1 State Appellate Defender, (ii) ~~the Attorney General, the Office~~
2 ~~of the State's Attorneys Appellate Prosecutor, and State's~~
3 ~~Attorneys in counties other than Cook County, (iii)~~ to pay the
4 expenses and compensation of appointed defense counsel and
5 attorneys approved by or contracted with the State Appellate
6 Defender to represent petitioners in post-conviction
7 proceedings in capital cases under Article 122 of the Code of
8 Criminal Procedure of 1963 and in relation to petitions filed
9 under Section 2-1401 of the Code of Civil Procedure in relation
10 to capital cases in counties other than Cook County, and (iii)
11 ~~(iv)~~ to pay the costs of administering the Trust Fund. All
12 expenditures and grants made from the Trust Fund shall be
13 subject to audit by the Auditor General.

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

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

20 (2) The State Treasurer shall establish rules and
21 procedures for grant applications. The rules shall require
22 the Cook County Treasurer as the grant recipient to report
23 on a periodic basis to the State Treasurer how much of the
24 grant has been expended, how much of the grant is
25 remaining, and the purposes for which the grant has been
26 used. The rules may also require the Cook County Treasurer

1 to certify on a periodic basis that expenditures of the
2 funds have been made for expenses that are reasonable,
3 necessary, and appropriate for payment from the Trust Fund.

4 (3) The State Treasurer shall make the grants to the
5 Cook County Treasurer as soon as possible after the
6 beginning of the State fiscal year.

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

9 (5) Grant moneys shall be paid to the Cook County
10 Treasurer in block grants and held in separate accounts for
11 ~~the State's Attorney,~~ the Public Defender, and court
12 appointed defense counsel other than the Cook County Public
13 Defender, respectively, for the designated fiscal year,
14 and are not subject to county appropriation.

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

17 (7) The Cook County Treasurer shall immediately make
18 payment from the appropriate separate account in the county
19 treasury for capital litigation expenses to the ~~State's~~
20 ~~Attorney,~~ Public Defender, or court appointed defense
21 counsel other than the Public Defender, as the case may be,
22 upon order of the ~~State's Attorney,~~ Public Defender or the
23 court, respectively.

24 (h) If a defendant in a capital case in Cook County is
25 represented by court appointed counsel other than the Cook
26 County Public Defender, the appointed counsel shall petition

1 the court for an order directing the Cook County Treasurer to
2 pay the court appointed counsel's reasonable and necessary
3 compensation and capital litigation expenses from grant moneys
4 provided from the Trust Fund. The petitions shall be supported
5 by itemized bills showing the date, the amount of time spent,
6 the work done and the total being charged for each entry. The
7 court shall not authorize payment of bills that are not
8 properly itemized. The petitions shall be filed under seal and
9 considered ex parte but with a court reporter present for all
10 ex parte conferences. The petitions shall be reviewed by both
11 the trial judge and the presiding judge of the circuit court or
12 the presiding judge's designee. The petitions and orders shall
13 be kept under seal and shall be exempt from Freedom of
14 Information requests until the conclusion of the trial and
15 appeal of the case, even if the prosecution chooses not to
16 pursue the death penalty prior to trial or sentencing. Orders
17 denying petitions for compensation or expenses are final.
18 Counsel may not petition for expenses that may have been
19 provided or compensated by the State Appellate Defender under
20 item (c)(5) of Section 10 of the State Appellate Defender Act.

21 (i) In counties other than Cook County, and when the
22 Attorney General is ordered by the presiding judge of the
23 Criminal Division of the Circuit Court of Cook County to
24 prosecute or supervise the prosecution of Cook County cases,
25 and excluding capital litigation expenses or services that may
26 have been provided by the State Appellate Defender under item

1 (c) (5) of Section 10 of the State Appellate Defender Act:

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

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

1 Procedure in relation to capital cases is represented by an
2 attorney approved by or contracted with the State Appellate
3 Defender other than the State Appellate Defender, that
4 attorney shall petition the court to certify compensation
5 and litigation expenses of post-conviction proceedings
6 under Article 122 of the Code of Criminal Procedure of 1963
7 or in relation to petitions filed under Section 2-1401 of
8 the Code of Civil Procedure in relation to capital cases.
9 Upon certification on a form created by the State Treasurer
10 of all or a portion of the compensation and expenses
11 certified as reasonable, necessary, and appropriate for
12 payment from the Trust Fund and the court's delivery of the
13 certification to the Treasurer, the State Treasurer shall
14 pay the certified compensation and expenses from the money
15 appropriated to the Treasurer for that purpose, if there
16 are sufficient moneys in the Trust Fund to make those
17 payments.

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

25 (j) If the Trust Fund is discontinued or dissolved by an
26 Act of the General Assembly or by operation of law, any balance

1 remaining in the Trust Fund shall be returned to the General
2 Revenue Fund after deduction of administrative costs, any other
3 provision of this Act to the contrary notwithstanding.

4 (Source: P.A. 96-381, eff. 1-1-10. Repealed by P.A. 96-1543,
5 eff. 1-1-12.)

6 (P.A. 96-1543, Sec. 15 rep.)

7 Section 10.3. "An Act concerning criminal law", approved
8 March 9, 2011, Public Act 96-1543, is amended by repealing
9 Section 15.

10 Section 95. No acceleration or delay. Where this Act makes
11 changes in a statute that is represented in this Act by text
12 that is not yet or no longer in effect (for example, a Section
13 represented by multiple versions), the use of that text does
14 not accelerate or delay the taking effect of (i) the changes
15 made by this Act or (ii) provisions derived from any other
16 Public Act.

17 Section 99. Effective date. This Act takes effect upon
18 becoming law."