



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3627

Introduced 2/22/2021, by Rep. Andrew S. Chesney

SYNOPSIS AS INTRODUCED:

New Act

5 ILCS 140/7.5

720 ILCS 5/9-1

725 ILCS 5/113-3

725 ILCS 5/119-1

725 ILCS 105/10

from Ch. 38, par. 9-1

from Ch. 38, par. 113-3

from Ch. 38, par. 208-10

Amends the Criminal Code of 2012 relating to first degree murder. Adds and eliminates aggravating factors for which the death penalty may be imposed. Amends the Code of Criminal Procedure of 1963. Eliminates provision that abolishes the sentence of death. Enacts the Capital Crimes Litigation Act of 2021. Provides that all unobligated and unexpended moneys remaining in the Death Penalty Abolition Fund on the effective date of the amendatory Act shall be transferred into the Capital Litigation Trust Fund. Amends the State Appellate Defender Act. Provides that in cases in which a death sentence is an authorized disposition, the State Appellate Defender shall provide trial counsel with legal assistance and the assistance of expert witnesses, investigators, and mitigation specialists from funds appropriated to the State Appellate Defender specifically for that purpose by the General Assembly. Provides that the Office of State Appellate Defender shall not be appointed to serve as trial counsel in capital cases.

LRB102 15295 KMF 20650 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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 2021.

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 100. 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 2021. 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 Regional Transportation Authority under Section 2.11 of
19 the Regional Transportation Authority Act or the St. Clair
20 County Transit District under the Bi-State Transit Safety
21 Act.

22 (q) Information prohibited from being disclosed by the
23 Personnel Record Review Act.

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

26 (s) Information the disclosure of which is restricted

1 under Section 5-108 of the Public Utilities Act.

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

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

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

1 Carry Act, and law enforcement agency objections under the
2 Firearm Concealed Carry Act.

3 (w) Personally identifiable information which is
4 exempted from disclosure under subsection (g) of Section
5 19.1 of the Toll Highway Act.

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

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

17 (z) Records and information provided to a fatality
18 review team or the Illinois Fatality Review Team Advisory
19 Council under Section 15 of the Adult Protective Services
20 Act.

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

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

25 (cc) Recordings made under the Law Enforcement
26 Officer-Worn Body Camera Act, except to the extent

1 authorized under that Act.

2 (dd) Information that is prohibited from being
3 disclosed under Section 45 of the Condominium and Common
4 Interest Community Ombudsperson Act.

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

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

9 (gg) Information that is prohibited from being
10 disclosed under Section 7-603.5 of the Illinois Vehicle
11 Code.

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

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

17 (jj) Information and reports that are required to be
18 submitted to the Department of Labor by registering day
19 and temporary labor service agencies but are exempt from
20 disclosure under subsection (a-1) of Section 45 of the Day
21 and Temporary Labor Services Act.

22 (kk) Information prohibited from disclosure under the
23 Seizure and Forfeiture Reporting Act.

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

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

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

5 (oo) Communications, notes, records, and reports
6 arising out of a peer support counseling session
7 prohibited from disclosure under the First Responders
8 Suicide Prevention Act.

9 (pp) Names and all identifying information relating to
10 an employee of an emergency services provider or law
11 enforcement agency under the First Responders Suicide
12 Prevention Act.

13 (qq) Information and records held by the Department of
14 Public Health and its authorized representatives collected
15 under the Reproductive Health Act.

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

18 (ss) Data reported by an employer to the Department of
19 Human Rights pursuant to Section 2-108 of the Illinois
20 Human Rights Act.

21 (tt) Recordings made under the Children's Advocacy
22 Center Act, except to the extent authorized under that
23 Act.

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

26 (vv) Information that is exempt from disclosure under

1 subsections (f) and (j) of Section 5-36 of the Illinois
2 Public Aid Code.

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

5 (xx) Information that is exempt from disclosure or
6 information that shall not be made public under the
7 Illinois Insurance Code.

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

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

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

14 (Source: P.A. 100-20, eff. 7-1-17; 100-22, eff. 1-1-18;
15 100-201, eff. 8-18-17; 100-373, eff. 1-1-18; 100-464, eff.
16 8-28-17; 100-465, eff. 8-31-17; 100-512, eff. 7-1-18; 100-517,
17 eff. 6-1-18; 100-646, eff. 7-27-18; 100-690, eff. 1-1-19;
18 100-863, eff. 8-14-18; 100-887, eff. 8-14-18; 101-13, eff.
19 6-12-19; 101-27, eff. 6-25-19; 101-81, eff. 7-12-19; 101-221,
20 eff. 1-1-20; 101-236, eff. 1-1-20; 101-375, eff. 8-16-19;
21 101-377, eff. 8-16-19; 101-452, eff. 1-1-20; 101-466, eff.
22 1-1-20; 101-600, eff. 12-6-19; 101-620, eff. 12-20-19; 101-649,
23 eff. 7-7-20.)

24 Section 105. The Criminal Code of 2012 is amended by
25 changing Section 9-1 as follows:

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

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

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

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

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

14 (3) he or she is attempting or committing a forcible
15 felony other than second degree murder.

16 (b) Aggravating Factors. A defendant who at the time of
17 the commission of the offense has attained the age of 18 or
18 more and who has been found guilty of first degree murder may
19 be sentenced to death if:

20 (1) the murdered individual was a peace officer,
21 employee of an institution or facility of the Department
22 of Corrections or any similar local correctional agency,
23 or fireman killed in the course of performing his official
24 duties, to prevent the performance of his or her official
25 duties, or in retaliation for performing his or her

1 official duties, and the defendant knew or should have
2 known that the murdered individual was so employed ~~a peace~~
3 ~~officer or fireman; or~~

4 (2) (blank); or ~~the murdered individual was an~~
5 ~~employee of an institution or facility of the Department~~
6 ~~of Corrections, or any similar local correctional agency,~~
7 ~~killed in the course of performing his or her official~~
8 ~~duties, to prevent the performance of his or her official~~
9 ~~duties, or in retaliation for performing his or her~~
10 ~~official duties, or the murdered individual was an inmate~~
11 ~~at such institution or facility and was killed on the~~
12 ~~grounds thereof, or the murdered individual was otherwise~~
13 ~~present in such institution or facility with the knowledge~~
14 ~~and approval of the chief administrative officer thereof;~~
15 ~~or~~

16 (3) the defendant has been convicted of murdering two
17 or more individuals under subsection (a) of this Section
18 or under any law of the United States or of any state which
19 is substantially similar to subsection (a) of this Section
20 regardless of whether the deaths occurred as the result of
21 the same act or of several related or unrelated acts so
22 long as the deaths were the result of either an intent to
23 kill more than one person or of separate acts which the
24 defendant knew would cause death or create a strong
25 probability of death or great bodily harm to the murdered
26 individual or another; or

1 (4) (blank); or ~~the murdered individual was killed as~~
2 ~~a result of the hijacking of an airplane, train, ship,~~
3 ~~bus, or other public conveyance; or~~

4 (5) (blank); or ~~the defendant committed the murder~~
5 ~~pursuant to a contract, agreement, or understanding by~~
6 ~~which he or she was to receive money or anything of value~~
7 ~~in return for committing the murder or procured another to~~
8 ~~commit the murder for money or anything of value; or~~

9 (6) (blank); or ~~the murdered individual was killed in~~
10 ~~the course of another felony if:~~

11 ~~(a) the murdered individual:~~

12 ~~(i) was actually killed by the defendant, or~~

13 ~~(ii) received physical injuries personally~~
14 ~~inflicted by the defendant substantially~~
15 ~~contemporaneously with physical injuries caused by~~
16 ~~one or more persons for whose conduct the~~
17 ~~defendant is legally accountable under Section 5-2~~
18 ~~of this Code, and the physical injuries inflicted~~
19 ~~by either the defendant or the other person or~~
20 ~~persons for whose conduct he is legally~~
21 ~~accountable caused the death of the murdered~~
22 ~~individual; and~~

23 ~~(b) in performing the acts which caused the death~~
24 ~~of the murdered individual or which resulted in~~
25 ~~physical injuries personally inflicted by the~~
26 ~~defendant on the murdered individual under the~~

1 ~~circumstances of subdivision (ii) of subparagraph (a)~~
2 ~~of paragraph (6) of subsection (b) of this Section,~~
3 ~~the defendant acted with the intent to kill the~~
4 ~~murdered individual or with the knowledge that his~~
5 ~~acts created a strong probability of death or great~~
6 ~~bodily harm to the murdered individual or another; and~~

7 ~~(c) the other felony was an inherently violent~~
8 ~~crime or the attempt to commit an inherently violent~~
9 ~~crime. In this subparagraph (c), "inherently violent~~
10 ~~crime" includes, but is not limited to, armed robbery,~~
11 ~~robbery, predatory criminal sexual assault of a child,~~
12 ~~aggravated criminal sexual assault, aggravated~~
13 ~~kidnapping, aggravated vehicular hijacking, aggravated~~
14 ~~arson, aggravated stalking, residential burglary, and~~
15 ~~home invasion; or~~

16 (7) the murdered individual was under 12 years of age
17 and the death resulted from exceptionally brutal or
18 heinous behavior indicative of wanton cruelty; or

19 (8) (blank); or ~~the defendant committed the murder~~
20 ~~with intent to prevent the murdered individual from~~
21 ~~testifying or participating in any criminal investigation~~
22 ~~or prosecution or giving material assistance to the State~~
23 ~~in any investigation or prosecution, either against the~~
24 ~~defendant or another; or the defendant committed the~~
25 ~~murder because the murdered individual was a witness in~~
26 ~~any prosecution or gave material assistance to the State~~

1 ~~in any investigation or prosecution, either against the~~
2 ~~defendant or another; for purposes of this paragraph (8),~~
3 ~~"participating in any criminal investigation or~~
4 ~~prosecution" is intended to include those appearing in the~~
5 ~~proceedings in any capacity such as trial judges,~~
6 ~~prosecutors, defense attorneys, investigators, witnesses,~~
7 ~~or jurors; or~~

8 (9) (blank); ~~or the defendant, while committing an~~
9 ~~offense punishable under Sections 401, 401.1, 401.2, 405,~~
10 ~~405.2, 407 or 407.1 or subsection (b) of Section 404 of the~~
11 ~~Illinois Controlled Substances Act, or while engaged in a~~
12 ~~conspiracy or solicitation to commit such offense,~~
13 ~~intentionally killed an individual or counseled,~~
14 ~~commanded, induced, procured or caused the intentional~~
15 ~~killing of the murdered individual; or~~

16 (10) (blank); ~~or the defendant was incarcerated in an~~
17 ~~institution or facility of the Department of Corrections~~
18 ~~at the time of the murder, and while committing an offense~~
19 ~~punishable as a felony under Illinois law, or while~~
20 ~~engaged in a conspiracy or solicitation to commit such~~
21 ~~offense, intentionally killed an individual or counseled,~~
22 ~~commanded, induced, procured or caused the intentional~~
23 ~~killing of the murdered individual; or~~

24 (11) (blank); ~~or the murder was committed in a cold,~~
25 ~~calculated and premeditated manner pursuant to a~~
26 ~~preconceived plan, scheme or design to take a human life~~

1 ~~by unlawful means, and the conduct of the defendant~~
2 ~~created a reasonable expectation that the death of a human~~
3 ~~being would result therefrom; or~~

4 (12) (blank); or ~~the murdered individual was an~~
5 ~~emergency medical technician — ambulance, emergency~~
6 ~~medical technician — intermediate, emergency medical~~
7 ~~technician — paramedic, ambulance driver, or other medical~~
8 ~~assistance or first aid personnel, employed by a~~
9 ~~municipality or other governmental unit, killed in the~~
10 ~~course of performing his official duties, to prevent the~~
11 ~~performance of his official duties, or in retaliation for~~
12 ~~performing his official duties, and the defendant knew or~~
13 ~~should have known that the murdered individual was an~~
14 ~~emergency medical technician — ambulance, emergency~~
15 ~~medical technician — intermediate, emergency medical~~
16 ~~technician — paramedic, ambulance driver, or other medical~~
17 ~~assistance or first aid personnel; or~~

18 (13) (blank); or ~~the defendant was a principal~~
19 ~~administrator, organizer, or leader of a calculated~~
20 ~~criminal drug conspiracy consisting of a hierarchical~~
21 ~~position of authority superior to that of all other~~
22 ~~members of the conspiracy, and the defendant counseled,~~
23 ~~commanded, induced, procured, or caused the intentional~~
24 ~~killing of the murdered person; or~~

25 (14) (blank); or ~~the murder was intentional and~~
26 ~~involved the infliction of torture. For the purpose of~~

1 ~~this Section torture means the infliction of or subjection~~
2 ~~to extreme physical pain, motivated by an intent to~~
3 ~~increase or prolong the pain, suffering or agony of the~~
4 ~~victim; or~~

5 (15) (blank); or ~~the murder was committed as a result~~
6 ~~of the intentional discharge of a firearm by the defendant~~
7 ~~from a motor vehicle and the victim was not present within~~
8 ~~the motor vehicle; or~~

9 (16) (blank); or ~~the murdered individual was 60 years~~
10 ~~of age or older and the death resulted from exceptionally~~
11 ~~brutal or heinous behavior indicative of wanton cruelty;~~
12 ~~or~~

13 (17) (blank); or ~~the murdered individual was a person~~
14 ~~with a disability and the defendant knew or should have~~
15 ~~known that the murdered individual was a person with a~~
16 ~~disability. For purposes of this paragraph (17), "person~~
17 ~~with a disability" means a person who suffers from a~~
18 ~~permanent physical or mental impairment resulting from~~
19 ~~disease, an injury, a functional disorder, or a congenital~~
20 ~~condition that renders the person incapable of adequately~~
21 ~~providing for his or her own health or personal care; or~~

22 (18) (blank); or ~~the murder was committed by reason of~~
23 ~~any person's activity as a community policing volunteer or~~
24 ~~to prevent any person from engaging in activity as a~~
25 ~~community policing volunteer; or~~

26 (19) (blank); or ~~the murdered individual was subject~~

1 ~~to an order of protection and the murder was committed by a~~
2 ~~person against whom the same order of protection was~~
3 ~~issued under the Illinois Domestic Violence Act of 1986;~~
4 ~~or~~

5 (20) murder was committed by the defendant ~~the~~
6 ~~murdered individual was known by the defendant to be a~~
7 ~~teacher or other person employed in any school and the~~
8 ~~teacher or other employee is~~ upon the grounds of a school
9 or grounds adjacent to a school, or is in any part of a
10 building used for school purposes; or

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

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

18 (b-5) Aggravating Factor; Natural Life Imprisonment. A
19 defendant who has been found guilty of first degree murder and
20 who at the time of the commission of the offense had attained
21 the age of 18 years or more may be sentenced to natural life
22 imprisonment if (i) the murdered individual was a physician,
23 physician assistant, psychologist, nurse, or advanced practice
24 registered nurse, (ii) the defendant knew or should have known
25 that the murdered individual was a physician, physician
26 assistant, psychologist, nurse, or advanced practice

1 registered nurse, and (iii) the murdered individual was killed
2 in the course of acting in his or her capacity as a physician,
3 physician assistant, psychologist, nurse, or advanced practice
4 registered nurse, or to prevent him or her from acting in that
5 capacity, or in retaliation for his or her acting in that
6 capacity.

7 (c) Consideration of factors in Aggravation and
8 Mitigation.

9 The court shall consider, or shall instruct the jury to
10 consider any aggravating and any mitigating factors which are
11 relevant to the imposition of the death penalty. Aggravating
12 factors may include but need not be limited to those factors
13 set forth in subsection (b). Mitigating factors may include
14 but need not be limited to the following:

15 (1) the defendant has no significant history of prior
16 criminal activity;

17 (2) the murder was committed while the defendant was
18 under the influence of extreme mental or emotional
19 disturbance, although not such as to constitute a defense
20 to prosecution;

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

24 (4) the defendant acted under the compulsion of threat
25 or menace of the imminent infliction of death or great
26 bodily harm;

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

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

5 (7) the defendant suffers from a reduced mental
6 capacity.

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

12 (d) Separate sentencing hearing.

13 Where requested by the State, the court shall conduct a
14 separate sentencing proceeding to determine the existence of
15 factors set forth in subsection (b) and to consider any
16 aggravating or mitigating factors as indicated in subsection
17 (c). The proceeding shall be conducted:

18 (1) before the jury that determined the defendant's
19 guilt; or

20 (2) before a jury impanelled for the purpose of the
21 proceeding if:

22 A. the defendant was convicted upon a plea of
23 guilty; or

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

26 C. the court for good cause shown discharges the

1 jury that determined the defendant's guilt; or
2 (3) before the court alone if the defendant waives a
3 jury for the separate proceeding.

4 (e) Evidence and Argument.

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

16 (f) Proof.

17 The burden of proof of establishing the existence of any
18 of the factors set forth in subsection (b) is on the State and
19 shall not be satisfied unless established beyond a reasonable
20 doubt.

21 (g) Procedure - Jury.

22 If at the separate sentencing proceeding the jury finds
23 that none of the factors set forth in subsection (b) exists,
24 the court shall sentence the defendant to a term of
25 imprisonment under Chapter V of the Unified Code of
26 Corrections. If there is a unanimous finding by the jury that

1 one or more of the factors set forth in subsection (b) exist,
2 the jury shall consider aggravating and mitigating factors as
3 instructed by the court and shall determine whether the
4 sentence of death shall be imposed. If the jury determines
5 unanimously, after weighing the factors in aggravation and
6 mitigation, that death is the appropriate sentence, the court
7 shall sentence the defendant to death. If the court does not
8 concur with the jury determination that death is the
9 appropriate sentence, the court shall set forth reasons in
10 writing including what facts or circumstances the court relied
11 upon, along with any relevant documents, that compelled the
12 court to non-concur with the sentence. This document and any
13 attachments shall be part of the record for appellate review.
14 The court shall be bound by the jury's sentencing
15 determination.

16 If after weighing the factors in aggravation and
17 mitigation, one or more jurors determines that death is not
18 the appropriate sentence, the court shall sentence the
19 defendant to a term of imprisonment under Chapter V of the
20 Unified Code of Corrections.

21 (h) Procedure - No Jury.

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

26 If the Court determines that one or more of the factors set

1 forth in subsection (b) exists, the Court shall consider any
2 aggravating and mitigating factors as indicated in subsection
3 (c). If the Court determines, after weighing the factors in
4 aggravation and mitigation, that death is the appropriate
5 sentence, the Court shall sentence the defendant to death.

6 If the court finds that death is not the appropriate
7 sentence, the court shall sentence the defendant to a term of
8 imprisonment under Chapter V of the Unified Code of
9 Corrections.

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

11 In a case in which the defendant has been found guilty of
12 first degree murder by a judge or jury, or a case on remand for
13 resentencing, and the State seeks the death penalty as an
14 appropriate sentence, on the court's own motion or the written
15 motion of the defendant, the court may decertify the case as a
16 death penalty case if the court finds that the only evidence
17 supporting the defendant's conviction is the uncorroborated
18 testimony of an informant witness, as defined in Section
19 115-21 of the Code of Criminal Procedure of 1963, concerning
20 the confession or admission of the defendant or that the sole
21 evidence against the defendant is a single eyewitness or
22 single accomplice without any other corroborating evidence. If
23 the court decertifies the case as a capital case under either
24 of the grounds set forth above, the court shall issue a written
25 finding. The State may pursue its right to appeal the
26 decertification pursuant to Supreme Court Rule 604(a)(1). If

1 the court does not decertify the case as a capital case, the
2 matter shall proceed to the eligibility phase of the
3 sentencing hearing.

4 (i) Appellate Procedure.

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

17 (j) Disposition of reversed death sentence.

18 In the event that the death penalty in this Act is held to
19 be unconstitutional by the Supreme Court of the United States
20 or of the State of Illinois, any person convicted of first
21 degree murder shall be sentenced by the court to a term of
22 imprisonment under Chapter V of the Unified Code of
23 Corrections.

24 In the event that any death sentence pursuant to the
25 sentencing provisions of this Section is declared
26 unconstitutional by the Supreme Court of the United States or

1 of the State of Illinois, the court having jurisdiction over a
2 person previously sentenced to death shall cause the defendant
3 to be brought before the court, and the court shall sentence
4 the defendant to a term of imprisonment under Chapter V of the
5 Unified Code of Corrections.

6 (k) Guidelines for seeking the death penalty.

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

11 (Source: P.A. 100-460, eff. 1-1-18; 100-513, eff. 1-1-18;
12 100-863, eff. 8-14-18; 101-223, eff. 1-1-20.)

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

15 (725 ILCS 5/113-3) (from Ch. 38, par. 113-3)

16 Sec. 113-3. (a) Every person charged with an offense shall
17 be allowed counsel before pleading to the charge. If the
18 defendant desires counsel and has been unable to obtain same
19 before arraignment the court shall recess court or continue
20 the cause for a reasonable time to permit defendant to obtain
21 counsel and consult with him before pleading to the charge. If
22 the accused is a dissolved corporation, and is not represented
23 by counsel, the court may, in the interest of justice, appoint
24 as counsel a licensed attorney of this State.

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

1 extent that such services were unjustly or falsely procured.

2 (c) Upon the filing with the court of a verified statement
3 of services rendered the court shall order the county
4 treasurer of the county of trial to pay counsel other than the
5 Public Defender a reasonable fee. The court shall consider all
6 relevant circumstances, including but not limited to the time
7 spent while court is in session, other time spent in
8 representing the defendant, and expenses reasonably incurred
9 by counsel. In counties with a population greater than
10 2,000,000, the court shall order the county treasurer of the
11 county of trial to pay counsel other than the Public Defender a
12 reasonable fee stated in the order and based upon a rate of
13 compensation of not more than \$40 for each hour spent while
14 court is in session and not more than \$30 for each hour
15 otherwise spent representing a defendant, and such
16 compensation shall not exceed \$150 for each defendant
17 represented in misdemeanor cases and \$1250 in felony cases, in
18 addition to expenses reasonably incurred as hereinafter in
19 this Section provided, except that, in extraordinary
20 circumstances, payment in excess of the limits herein stated
21 may be made if the trial court certifies that such payment is
22 necessary to provide fair compensation for protracted
23 representation. A trial court may entertain the filing of this
24 verified statement before the termination of the cause, and
25 may order the provisional payment of sums during the pendency
26 of the cause.

1 (d) In capital cases, in addition to counsel, if the court
2 determines that the defendant is indigent the court may, upon
3 the filing with the court of a verified statement of services
4 rendered, order the county Treasurer of the county of trial to
5 pay necessary expert witnesses for defendant reasonable
6 compensation stated in the order not to exceed \$250 for each
7 defendant.

8 (e) If the court in any county having a population greater
9 than 2,000,000 determines that the defendant is indigent the
10 court may, upon the filing with the court of a verified
11 statement of such expenses, order the county treasurer of the
12 county of trial, in such counties having a population greater
13 than 2,000,000 to pay the general expenses of the trial
14 incurred by the defendant not to exceed \$50 for each
15 defendant.

16 (f) The provisions of this Section relating to appointment
17 of counsel, compensation of counsel, and payment of expenses
18 in capital cases apply except when the compensation and
19 expenses are being provided under the Capital Crimes
20 Litigation Act of 2021.

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

22 (725 ILCS 5/119-1)

23 Sec. 119-1. Death penalty restored ~~abolished~~.

24 (a) (Blank). ~~Beginning on the effective date of this~~
25 ~~amendatory Act of the 96th General Assembly, notwithstanding~~

1 ~~any other law to the contrary, the death penalty is abolished~~
2 ~~and a sentence to death may not be imposed.~~

3 (b) All unobligated and unexpended moneys remaining in ~~the~~
4 ~~Capital Litigation Trust Fund on the effective date of this~~
5 ~~amendatory Act of the 96th General Assembly shall be~~
6 ~~transferred into~~ the Death Penalty Abolition Fund on the
7 effective date of this amendatory Act of the 102nd General
8 Assembly shall be transferred into the Capital Litigation
9 Trust Fund , ~~a special fund in the State treasury, to be~~
10 ~~expended by the Illinois Criminal Justice Information~~
11 ~~Authority, for services for families of victims of homicide or~~
12 ~~murder and for training of law enforcement personnel.~~

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

14 Section 115. The State Appellate Defender Act is amended
15 by changing Section 10 as follows:

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

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

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

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

24 (c) The State Appellate Defender may:

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

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

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

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

17 (5) (blank);

18 (5.1) in cases in which a death sentence is an
19 authorized disposition, provide trial counsel with legal
20 assistance and the assistance of expert witnesses,
21 investigators, and mitigation specialists from funds
22 appropriated to the State Appellate Defender specifically
23 for that purpose by the General Assembly. The Office of
24 State Appellate Defender shall not be appointed to serve
25 as trial counsel in capital cases;

26 (5.5) provide training to county public defenders;

1 (5.7) provide county public defenders with the
2 assistance of expert witnesses and investigators from
3 funds appropriated to the State Appellate Defender
4 specifically for that purpose by the General Assembly. The
5 Office of the State Appellate Defender shall not be
6 appointed to act as trial counsel;

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

23 Investigators employed by the Capital Trial Assistance
24 Unit and Capital Post Conviction Unit of the State Appellate
25 Defender shall be authorized to inquire through the Illinois
26 State Police or local law enforcement with the Law Enforcement

1 Agencies Data System (LEADS) under Section 2605-375 of the
2 Civil Administrative Code of Illinois to ascertain whether
3 their potential witnesses have a criminal background,
4 including, but not limited to: (i) warrants; (ii) arrests;
5 (iii) convictions; and (iv) officer safety information. This
6 authorization applies only to information held on the State
7 level and shall be used only to protect the personal safety of
8 the investigators. Any information that is obtained through
9 this inquiry may not be disclosed by the investigators.

10 (c-5) For each State fiscal year, the State Appellate
11 Defender shall request a direct appropriation from the Capital
12 Litigation Trust Fund for expenses incurred by the State
13 Appellate Defender in providing assistance to trial attorneys
14 under paragraph (5.1) of subsection (c) of this Section and
15 for expenses incurred by the State Appellate Defender in
16 representing petitioners in capital cases in post-conviction
17 proceedings under Article 122 of the Code of Criminal
18 Procedure of 1963 and in relation to petitions filed under
19 Section 2-1401 of the Code of Civil Procedure in relation to
20 capital cases and for the representation of those petitioners
21 by attorneys approved by or contracted with the State
22 Appellate Defender and an appropriation to the State Treasurer
23 for payments from the Trust Fund for the defense of cases in
24 counties other than Cook County. The State Appellate Defender
25 may appear before the General Assembly at other times during
26 the State's fiscal year to request supplemental appropriations

1 from the Trust Fund to the State Treasurer.

2 (d) (Blank).

3 (e) The requirement for reporting to the General Assembly
4 shall be satisfied by filing copies of the report as required
5 by Section 3.1 of the General Assembly Organization Act and
6 filing such additional copies with the State Government Report
7 Distribution Center for the General Assembly as is required
8 under paragraph (t) of Section 7 of the State Library Act.

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