

AN ACT concerning criminal law.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Capital Crimes Litigation Act is amended by changing Sections 10 and 15 as follows:

(725 ILCS 124/10)

Sec. 10. Court appointed trial counsel; compensation and expenses.

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

(a-5) Litigation budget.

(1) In a case in which the State has filed a statement of intent to seek the death penalty, the court shall require appointed counsel, including those appointed in Cook County, after counsel has had adequate time to review the case and prior to engaging trial assistance, to submit a proposed estimated litigation budget for court approval, that will be subject to modification in light of facts and

developments that emerge as the case proceeds. Case budgets should be submitted ex parte and filed and maintained under seal in order to protect the defendant's right to effective assistance of counsel, right not to incriminate him or herself and all applicable privileges. Case budgets shall be reviewed and approved by the judge assigned to try the case. As provided under subsection (c) of this Section, petitions for compensation shall be reviewed by both the trial judge and the presiding judge or the presiding judge's designee.

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

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

(A) The hourly rate at which counsel will be compensated;

(B) The hourly rate at which private

investigators, other than investigators employed by the Office of the State Appellate Defender, will be compensated; and

(C) The best preliminary estimate that can be made of the cost of all services, including, but not limited to, counsel, expert, and investigative services, that are likely to be needed through the guilt and penalty phases of the trial. The court shall have discretion to require that budgets be prepared for shorter intervals of time.

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

(5) An approved budget shall guide counsel's use of time and resources by indicating the services for which

compensation is authorized. The case budget shall be re-evaluated when justified by changed or unexpected circumstances and shall be modified by the court when reasonable and necessary for an adequate defense. If an ex parte hearing is requested by defense counsel or deemed necessary by the trial judge prior to modifying a budget, the ex parte hearing shall be before the presiding judge or the presiding judge's designee.

(b) Appointed trial counsel shall be compensated upon presentment and certification by the circuit court of a claim for services detailing the date, activity, and time duration for which compensation is sought. Compensation for appointed trial counsel may be paid at a reasonable rate not to exceed \$125 per hour. The court shall not authorize payment of bills that are not properly itemized. A request for payment shall be presented under seal and reviewed ex parte with a court reporter present.

Beginning in 2001, every January 20, the statutory rate prescribed in this subsection shall be automatically increased or decreased, as applicable, by a percentage equal to the percentage change in the consumer price index-u during the preceding 12-month calendar year. "Consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84=100.

The new rate resulting from each annual adjustment shall be determined by the State Treasurer and made available to the chief judge of each judicial circuit.

(c) Appointed trial counsel may also petition the court for certification of expenses for reasonable and necessary capital litigation expenses including, but not limited to, investigatory and other assistance, expert, forensic, and other witnesses, and mitigation specialists. Each provider of proposed services must specify the best preliminary estimate that can be made in light of information received in the case at that point, and the provider must sign this estimate under the provisions of Section 1-109 of the Code of Civil Procedure. A provider of proposed services must also specify (1) his or her hourly rate; (2) the hourly rate of anyone else in his or her employ for whom reimbursement is sought; and (3) the hourly rate of any person or entity that may be subcontracted to perform these services. Counsel may not petition for certification of expenses that may have been provided or compensated by the State Appellate Defender under item (c)(5) of Section 10 of the State Appellate Defender Act. The petitions shall be filed under seal and considered ex parte but with a court reporter present for all ex parte conferences. If the requests are submitted after services have been rendered, the requests shall be supported by an invoice describing the services rendered, the dates the services were performed and the amount of time spent. These petitions shall be reviewed by

both the trial judge and the presiding judge of the circuit court or the presiding judge's designee. The petitions and orders shall be kept under seal and shall be exempt from Freedom of Information requests until the conclusion of the trial, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing. If an ex parte hearing is requested by defense counsel or deemed necessary by the trial judge, the hearing shall be before the presiding judge or the presiding judge's designee.

(d) Appointed trial counsel shall petition the court for certification of compensation and expenses under this Section periodically during the course of counsel's representation. The petitions shall be supported by itemized bills showing the date, the amount of time spent, the work done and the total being charged for each entry. The court shall not authorize payment of bills that are not properly itemized. The court must certify reasonable and necessary expenses of the petitioner for travel and per diem (lodging, meals, and incidental expenses). These expenses must be paid at the rate as promulgated by the United States General Services Administration for these expenses for the date and location in which they were incurred, unless extraordinary reasons are shown for the difference. The petitions shall be filed under seal and considered ex parte but with a court reporter present for all ex parte conferences. The petitions shall be reviewed by both the trial judge and the presiding judge of the circuit court or the presiding judge's

designee. If an ex parte hearing is requested by defense counsel or deemed necessary by the trial judge, the ex parte hearing shall be before the presiding judge or the presiding judge's designee. If the court determines that the compensation and expenses should be paid from the Capital Litigation Trust Fund, the court shall certify, on a form created by the State Treasurer, that all or a designated portion of the amount requested is reasonable, necessary, and appropriate for payment from the Trust Fund. The form must also be signed by lead trial counsel under the provisions of Section 1-109 of the Code of Civil Procedure verifying that the amount requested is reasonable, necessary, and appropriate. Bills submitted for payment by any individual or entity seeking payment from the Capital Litigation Trust Fund must also be accompanied by a form created by the State Treasurer and signed by the individual or responsible agent of the entity under the provisions of Section 1-109 of the Code of Civil Procedure that the amount requested is accurate and truthful and reflects time spent or expenses incurred. Certification of compensation and expenses by a court in any county other than Cook County shall be delivered by the court to the State Treasurer and must be paid by the State Treasurer directly from the Capital Litigation Trust Fund if there are sufficient moneys in the Trust Fund to pay the compensation and expenses. If the State Treasurer finds within 14 days of his or her receipt of a certification that the compensation and expenses to be paid are

unreasonable, unnecessary, or inappropriate, he or she may return the certification to the court setting forth in detail the objection or objections with a request for the court to review the objection or objections before resubmitting the certification. The State Treasurer must send the claimant a copy of the objection or objections. The State Treasurer may only seek a review of a specific objection once. The claimant has 7 days from his or her receipt of the objections to file a response with the court. With or without further hearing, the court must promptly rule on the objections. The petitions and orders shall be kept under seal and shall be exempt from Freedom of Information requests until the conclusion of the trial and appeal of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing. Certification of compensation and expenses by a court in Cook County shall be delivered by the court to the county treasurer and paid by the county treasurer from moneys granted to the county from the Capital Litigation Trust Fund.

(Source: P.A. 94-664, eff. 1-1-06.)

(725 ILCS 124/15)

Sec. 15. Capital Litigation Trust Fund.

(a) The Capital Litigation Trust Fund is created as a special fund in the State Treasury. The Trust Fund shall be administered by the State Treasurer to provide moneys for the appropriations to be made, grants to be awarded, and

compensation and expenses to be paid under this Act. All interest earned from the investment or deposit of moneys accumulated in the Trust Fund shall, under Section 4.1 of the State Finance Act, be deposited into the Trust Fund.

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

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

(d) Every fiscal year the State Treasurer shall transfer from the General Revenue Fund to the Capital Litigation Trust Fund an amount equal to the full amount of moneys appropriated by the General Assembly (both by original and supplemental appropriation), less any unexpended balance from the previous fiscal year, from the Capital Litigation Trust Fund for the specific purpose of making funding available for the prosecution and defense of capital cases and for the litigation expenses associated with post-conviction proceedings in capital cases under Article 122 of the Code of Criminal

Procedure of 1963 and in relation to petitions filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases. The Public Defender and State's Attorney in Cook County, the State Appellate Defender, the State's Attorneys Appellate Prosecutor, and the Attorney General shall make annual requests for appropriations from the Trust Fund.

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

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

(3) The State Appellate Defender shall request a direct appropriation from the Trust Fund for expenses incurred by the State Appellate Defender in providing assistance to trial attorneys under item (c)(5) of Section 10 of the State Appellate Defender Act and for expenses incurred by the State Appellate Defender in representing petitioners in capital cases in post-conviction proceedings under Article 122 of the Code of Criminal Procedure of 1963 and in relation to petitions filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases and for the representation of those petitioners by attorneys approved by or contracted with the State Appellate Defender and an appropriation to the State Treasurer for payments

from the Trust Fund for the defense of cases in counties other than Cook County.

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

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

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

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

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

(2) To pay the capital litigation expenses of trial defense and post-conviction proceedings in capital cases under Article 122 of the Code of Criminal Procedure of 1963 and in relation to petitions filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases including, but not limited to, DNA testing, including DNA testing under Section 116-3 of the Code of Criminal Procedure of 1963, analysis, and expert testimony, investigatory and other assistance, expert, forensic, and other witnesses, and mitigation specialists, and grants and aid provided to public defenders, appellate defenders, and any attorney approved by or contracted with the State Appellate Defender representing petitioners in post-conviction proceedings in capital cases under Article 122 of the Code of Criminal Procedure of 1963 and in relation to petitions filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases or assistance to attorneys who have been appointed by the court to represent defendants who are charged with capital crimes. Reasonable and necessary capital litigation

expenses include travel and per diem (lodging, meals, and incidental expenses).

(3) To pay the compensation of trial attorneys, other than public defenders or appellate defenders, who have been appointed by the court to represent defendants who are charged with capital crimes or attorneys approved by or contracted with the State Appellate Defender to represent petitioners in post-conviction proceedings in capital cases under Article 122 of the Code of Criminal Procedure of 1963 and in relation to petitions filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases.

(4) To provide State's Attorneys with funding for capital litigation expenses and for expenses of representing the State in post-conviction proceedings in capital cases under Article 122 of the Code of Criminal Procedure of 1963 and in relation to petitions filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases including, but not limited to, investigatory and other assistance and expert, forensic, and other witnesses necessary to prosecute capital cases. State's Attorneys in any county other than Cook County seeking funding for capital litigation expenses and for expenses of representing the State in post-conviction proceedings in capital cases under Article 122 of the Code of Criminal Procedure of 1963 and in relation to petitions

filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases including, but not limited to, investigatory and other assistance and expert, forensic, or other witnesses under this Section may request that the State's Attorneys Appellate Prosecutor or the Attorney General, as the case may be, certify the expenses as reasonable, necessary, and appropriate for payment from the Trust Fund, on a form created by the State Treasurer. Upon certification of the expenses and delivery of the certification to the State Treasurer, the Treasurer shall pay the expenses directly from the Capital Litigation Trust Fund if there are sufficient moneys in the Trust Fund to pay the expenses.

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

(6) To provide financial support through the State's Attorneys Appellate Prosecutor pursuant to the State's Attorneys Appellate Prosecutor's Act for the several county State's Attorneys outside of Cook County, but shall not be used to increase personnel for the State's Attorneys

Appellate Prosecutor.

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

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

(f) Moneys in the Trust Fund shall be appropriated to the State Appellate Defender, the State's Attorneys Appellate Prosecutor, the Attorney General, and the State Treasurer. The State Appellate Defender shall receive an appropriation from the Trust Fund to enable it to provide assistance to appointed defense counsel and attorneys approved by or contracted with the State Appellate Defender to represent petitioners in post-conviction proceedings in capital cases under Article 122 of the Code of Criminal Procedure of 1963 and in relation to petitions filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases throughout the State and to Public Defenders in counties other than Cook. The State's Attorneys Appellate Prosecutor and the Attorney General shall receive appropriations from the Trust Fund to enable them to provide assistance to State's Attorneys in counties other than Cook County and when the Attorney General is ordered by the presiding judge of the Criminal Division of the Circuit Court of Cook County to prosecute or supervise the prosecution of Cook County cases. Moneys shall be appropriated to the State

Treasurer to enable the Treasurer (i) to make grants to Cook County, (ii) to pay the expenses of Public Defenders, the State Appellate Defender, the Attorney General, the Office of the State's Attorneys Appellate Prosecutor, and State's Attorneys in counties other than Cook County, (iii) to pay the expenses and compensation of appointed defense counsel and attorneys approved by or contracted with the State Appellate Defender to represent petitioners in post-conviction proceedings in capital cases under Article 122 of the Code of Criminal Procedure of 1963 and in relation to petitions filed under Section 2-1401 of the Code of Civil Procedure in relation to capital cases in counties other than Cook County, and (iv) to pay the costs of administering the Trust Fund. All expenditures and grants made from the Trust Fund shall be subject to audit by the Auditor General.

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

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

(2) The State Treasurer shall establish rules and procedures for grant applications. The rules shall require the Cook County Treasurer as the grant recipient to report on a periodic basis to the State Treasurer how much of the grant has been expended, how much of the grant is remaining, and the purposes for which the grant has been

used. The rules may also require the Cook County Treasurer to certify on a periodic basis that expenditures of the funds have been made for expenses that are reasonable, necessary, and appropriate for payment from the Trust Fund.

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

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

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

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

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

(h) If a defendant in a capital case in Cook County is represented by court appointed counsel other than the Cook

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

(i) In counties other than Cook County, and when the Attorney General is ordered by the presiding judge of the Criminal Division of the Circuit Court of Cook County to prosecute or supervise the prosecution of Cook County cases, and excluding capital litigation expenses or services that may

have been provided by the State Appellate Defender under item (c) (5) of Section 10 of the State Appellate Defender Act:

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

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

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

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

(j) If the Trust Fund is discontinued or dissolved by an

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Act of the General Assembly or by operation of law, any balance remaining in the Trust Fund shall be returned to the General Revenue Fund after deduction of administrative costs, any other provision of this Act to the contrary notwithstanding.

(Source: P.A. 93-127, eff. 1-1-04; 93-605, eff. 11-19-03; 93-972, eff. 8-20-04; 94-664, eff. 1-1-06.)