

**ILLINOIS CAPITAL PUNISHMENT  
REFORM STUDY COMMITTEE**

**FIFTH ANNUAL REPORT**

**October 8, 2009**

**ILLINOIS CAPITAL PUNISHMENT  
REFORM STUDY COMMITTEE**

**FIFTH ANNUAL REPORT**

Leigh B. Bienen  
Jennifer A. Bishop-Jenkins (2/22/08)\*  
James R. Coldren, Jr.  
Kirk W. Dillard  
Walter Hehner (11/6/08)\*  
Jeffrey M. Howard  
T. Clinton Hull (4/14/09)\*\*  
Boyd J. Ingemunson  
Gerald E. Nora (11/2/08)\*\*  
Edwin R. Parkinson  
Charles M. Schiedel  
Richard D. Schwind, Vice Chair  
Geoffrey R. Stone  
Randolph N. Stone  
Thomas P. Sullivan, Chair  
Arthur L. Turner  
Michael J. Waller  
Eric C. Weis (7/17/09)\*

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\* Date of appointment

\*\* Date of resignation

October 8, 2009

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# Capital Punishment Reform Study Committee

Thomas P. Sullivan  
Chair

Richard D. Schwind  
Vice Chair

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Jennifer A. Bishop-Jenkins  
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Eric C. Weis

October 8, 2009

Tom Cross  
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Senate President  
327 Capitol Building  
Springfield, IL 62706

Michael J. Madigan  
Speaker of the House  
300 Capitol Building  
Springfield, IL 62706

Christine Radogno  
Minority Leader  
309A Capitol Building  
Springfield, IL 62706

Re: Fifth annual report of the Illinois Capital Punishment Reform Study Committee

Dear Ms. Radogno and Messrs. Cross, Cullerton and Madigan:

The statute which established this Committee provides that the Committee shall report annually to the General Assembly. 20 ILCS3929/2(b). The Committee has previously submitted four reports:

First: Activities from inception in early 2005 through April 27, 2005, dated April 27, 2005.

Second: Activities from April 28 to December 31, 2005, dated February 28, 2006.

Third: Activities during 2006, dated April 9, 2007.

Fourth: Activities during 2007, dated  
May 12, 2008.

This is the Committee's fifth report, covering activities during  
2008.

**I. ADMINISTRATIVE MATTERS.**

**1. Committee membership and consultants.**

In February 2008, Jennifer A. Bishop-Jenkins was appointed  
to replace Thomas P. Needham, who resigned in May 2006. In  
November 2008, Gerald E. Nora resigned, and Walter Hehner was  
appointed in his place.<sup>1</sup>

Peter G. Baroni resigned as Committee counsel in March,  
2008, and has not been replaced.

Pursuant to contracts with Loyola University of Chicago,  
David E. Olson, Chairperson and Associate Professor of the  
Department of Criminal Justice, and his colleagues have provided  
expert consulting services to the Committee.<sup>2</sup>

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<sup>1</sup> T. Clinton Hull resigned in April 2009, and was replaced by  
Eric C. Weis in July 2009. Committee members have filed with the  
Secretary of State Index Division the form entitled "Disclosure of  
Appointee Interest in State Contracts."

<sup>2</sup> The Committee's contracts with Mr. Baroni and Loyola University  
were entered into in accordance with the Illinois Procurement Act

## **2. The Committee's tenure.**

In accordance with the Committee's recommendation in its Fourth Annual Report (pages 2-6), the Committee's tenure was extended by statute by one year, to December 31, 2009. P.A. 95-893, § 5, eff. Aug. 22, 2008.

## **3. Full Committee meetings during 2008.**

The full Committee held nine meetings in Chicago during 2008, the first six at the office of the Illinois Criminal Justice Information Authority (CJIA), and the last three at the office of Jenner & Block. The meetings were held on January 28, March 4, April 8, May 14, June 12, July 22, September 17, October 22 and December 4. Guests were in attendance at several of the meetings, some by teleconference, listed in Appendix 1.

The notices, agendas and minutes of Committee meetings are posted on the CJIA website, and the meetings have been and will continue to be open for public attendance, as required by the Illinois Open Meetings Act.

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(30 ILCS 500/1-5 et seq), and are posted on the website of the Illinois Criminal Justice Information Authority.

#### **4. Subcommittee meetings during 2008.**

Subcommittee meetings were held at various locations and on various dates, summarized below, on some occasions with guests, listed in Appendix 2. The notices, agendas and minutes of subcommittee meetings are posted on the CJIA website, and the meetings have been and will continue to be open for public attendance, as required by the Illinois Open Meetings Act.

The names of the four subcommittees, their members and meetings held during 2008, are described below.

##### *Subcommittee 1 - Police and investigations.*

Members: James R. Coldren, Jr., chair, T. Clinton Hull, Richard D. Schwind and Geoffrey R. Stone. Meetings held February 22, March 21 and November 14, 2008.

##### *Subcommittee 2 - Eligibility for capital punishment and proportionality.*

Members: Leigh B. Bienen, chair, Kirk W. Dillard, Thomas P. Sullivan and Michael J. Waller. Meeting held August 27, 2008.

##### *Subcommittee 3 - Trial court proceedings.*

Members: Jeffrey M. Howard, chair, Boyd J. Ingemunson, Edwin R. Parkinson and Randolph N. Stone. Meetings held January 28, April 7, June 12 and September 10, 2008.



*Subcommittee 4 - Post-conviction proceedings, DNA and general topics.*

Members: Charles M. Schiedel, chair, Jennifer Bishop-Jenkins (appointed February 2008), Walter Hehner (appointed November 2008), Gerald E. Nora (resigned November 2008), and Arthur L. Turner. The subcommittee chair attended a meeting of the Illinois Laboratory Advisory Committee on September 9, 2008.

**5. House Judiciary hearing, September 2008.**

The General Assembly House Judiciary Committee invited representatives of the Committee to testify at a hearing on September 18, 2008, relating to whether or not a statute should be enacted repealing the moratorium on executions. The Committee members agreed that Messrs. Parkinson and Sullivan should appear on the Committee's behalf, with the understanding that, if asked the Committee members' views on the proposed legislation relating to the moratorium, or whether the General Assembly should await action on the proposed legislation until the Committee has completed its work and submitted its final report, the spokespersons should respond that these subjects are outside the

Committee's statutorily defined functions, and therefore the Committee takes no position.<sup>3</sup>

Following the hearing before the House Judiciary Committee on September 18, 2008, Messrs. Parkinson and Sullivan reported to the full Committee that they recounted for the Judiciary Committee the background, membership and working of the Committee. In response to a question from the Chair of the Committee, they responded that the full Committee had agreed, with one dissent, that because this Committee's mandate relates solely to studying reforms to the Illinois capital punishment system, the Committee takes no position as to whether the moratorium should be left in place or revoked.

#### **6. Public hearings scheduled for 2009.**

Pursuant to the statutory direction (20 ILCS 3229/2(c)), Committee members agreed to hold public hearings early in 2009

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<sup>3</sup> Mr. G. Stone dissented, stating that in his opinion the Committee should take the position that the moratorium on executions should not be repealed until the Committee has filed its final report.

in Chicago at the Thompson Center, and in Springfield at the Capitol Building.<sup>4</sup>

## **II. COMMITTEE MATTERS AND RECOMMENDATIONS.**

### **1. Surveys to State's Attorneys and Public Defenders.**

In February 2008, representatives of Loyola University sent surveys to all Illinois State's Attorneys<sup>5</sup> and Public Defenders,<sup>6</sup> containing questions on various subjects relevant to the Committee's statutory authority. These surveys were approved in

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<sup>4</sup> The public hearings were held in Chicago on January 26, and in Springfield on March 2, 2009.

<sup>5</sup> Mr. Olson's letter, a list of the 102 State's Attorneys to whom it was addressed, and the survey document, are attached as Appendix 4 to the Committee's March 4, 2008 minutes, and as Appendix 3 to the Committee's May 13, 2008 minutes. 53 responses were received, including 15 from State's Attorneys who had served notices of intent to seek capital punishment in murder cases since January 1, 2003. Other State's Attorneys reported that first degree murder indictments were returned in their counties, but they did not serve notices of intent to seek capital punishment. The results of the survey are summarized at pages 3 through 7, and Appendix 1, of the Committee's April 8, 2008 minutes, and as Appendix 3 to the Committee's May 13, 2008 minutes, and in following sections of this report.

<sup>6</sup> Mr. Olson's letter, a list of the 99 Public Defenders (including private lawyers who act as public defenders under contract with local counties) to whom it was addressed, and the survey document, are attached as Appendix 5 to the Committee's March 4, 2008 minutes. 55 responses were received, which are summarized at pages 3 through 8, and in Appendices 1 and 2, of the Committee's May 13, 2008 minutes.

advance by all Committee members. Respondents were assured that their identities and responses to survey questions would remain anonymous.

## **2. Electronic recording of custodial interviews of homicide suspects.**

One series of questions in the surveys related to the prosecutors' and public defenders' experiences under the Illinois statute requiring that custodial interviews of suspects in first degree murder investigations be electronically recorded from the *Miranda* warnings until the end of the interviews.<sup>7</sup>

The practice of making electronic recordings of custodial interviews of homicide suspects has proven successful, and is widely accepted among law enforcement personnel. More than 80% of prosecutors that responded stated that they believe recorded custodial interviews have been instrumental in obtaining convictions, and approximately 40% believe that recordings have influenced defendants to enter into negotiated agreements involving pleas of guilty.

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<sup>7</sup> 705 ILCS 405/5-401.5; 725 ILCS 5/103-2/1. The statute contains a number of circumstances that excuse the need for recordings.

Committee members associated with law enforcement organizations pointed out the need for funding to update recording facilities and equipment, and storage of electronic recordings. We therefore repeat a portion of the recommendation contained in the Committee's Fourth Annual Report (page 18):<sup>8</sup>

*Recommendations: The General Assembly should provide funding related to the statutorily mandated recordings of custodial interviews in homicide investigations, for expenses related to relating to purchase of electronic equipment, assuring equipment compatibility, sound proof rooms, reviewing and transcribing recordings, and storage of tapes and discs.*

### **3. Eyewitness lineups and photo spreads.**

The survey to prosecutors revealed that those who responded agreed by a margin of two to one that in all lineups and photo spreads, the administrator should be "blind," that is, a person who does not know the identity of the suspect, provided that such a person is reasonably available at the time and place that the identification procedure takes place. The Committee members agreed to further consider in 2009 recommendations for legislation (1) requiring use of blind administrators and/or blind procedures, (2) requiring that eyewitness procedures that take place in police

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<sup>8</sup> All recommendations in this report were adopted unanimously.

and sheriff detention facilities be electronically recorded, and  
(3) amending the IL Eavesdropping Act (720 ILCS 5/14-2(a)(1)) to  
permit electronic recordings by law enforcement personnel of  
statements made during eyewitness identification procedures  
without the knowledge or consent of witnesses or suspects.

**4. Uniformity and proportionality review of capital sentences.**

The Committee members discussed how they should go  
about fulfilling the statutory mandate (20 ILCS 3939/2(b)(1)) – that  
the Committee should study and report to the General Assembly  
regarding:

“The impact of the reforms on the issue of  
uniformity and proportionality in the  
application of the death penalty including,  
but not limited to, the tracking of data  
related to whether the reforms have  
eliminated the statistically significant  
differences in sentencing related to the  
geographic location of the homicide and the  
race of the victim found by the Governor’s  
Commission on Capital Punishment in its  
report issued on April 15, 2002.”

The regional and racial disparities are discussed in the  
Report of the Governor’s Commission on Capital Punishment (April  
15, 2002) at pages 167-68; the results of the study by the experts  
retained by the Governor’s Commission are contained in the

Technical Appendix to the Report, and at 81 Oregon Law Review 39 (2002).

Relating to this matter, the Committee was informed that the 14 men on Illinois' death row as a result of capital sentences imposed from January 1, 2003 to December 31, 2007, include the following –

Race and ethnicity of defendants:

8 Caucasian  
6 African-American.

Race of victims:

9 Caucasian  
3 African-American  
1 Hispanic  
1 Asian

Number of victims:

8 cases - 2 or more victims  
6 cases - 1 victim

Locale of homicides:

9 urban (DuPage, Kane and Will counties are considered urban)  
5 rural

The Committee has attempted to collect all first degree murder indictments returned in Illinois from January 1, 2003 through December 31, 2008 (we recognize that as of the end of

2008, some of those cases were not finally disposed of in the trial courts). Thus far we have received indictments from a majority of Illinois counties, including Cook County.

The indictments normally contain the names of the defendants and victims, the dates of the homicides, and the counties in which the homicides were committed. However, the foregoing information about the men currently on death row, and the information contained in the first degree murder indictments, do not contain sufficient information for the Committee to respond to the statutory directive quoted above.<sup>9</sup> The reasons are:

- The indictments rarely indicate whether or not the crime was capital-eligible, that is, was a case in which capital punishment could be sought under the applicable Illinois statutes; details on the

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<sup>9</sup> Loyola University personnel performed an analysis of data provided by the Illinois Department of Corrections, relating to persons found guilty of first degree murder. However, this information was inadequate for comparative analysis, because the data often did not disclose whether the defendants were death-eligible, and the demographic characteristics of the crimes. Nevertheless, these data indicated that the proportion of persons convicted of first degree murder has decreased since the period immediately before the moratorium was imposed, namely, July 1988 to December 1999. The data also indicated that the probability that persons convicted of first degree murder in rural counties will receive death sentences is higher than persons convicted in more populous counties.



characteristics of and relations between the defendants and victims; or the facts and circumstances of the cases.<sup>10</sup>

- The indictments do not indicate whether the State's Attorney filed or intends to file a certificate of intent to seek capital punishment.

In order for the Committee to respond to the statutory directive, it is necessary that we know a great deal more about all homicide cases that were capital-eligible. As to the progress of the cases through the courts, we should learn: whether, if a certificate was filed, it was later withdrawn; whether an agreed plea of guilty was entered; whether, if the case went to trial, the defendant was acquitted, or was found guilty of a capital or non-capital offense; whether, after a finding of guilty, the defendant was sentenced to imprisonment for life or a term of years, or capital punishment was imposed.

Further, in order to analyze and determine whether the death penalty has been applied uniformly and proportionately since

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<sup>10</sup> Information on circumstances of some homicides may be found in newspaper accounts and other extra-legal sources. However, these sources are time-consuming to accumulate, usually incomplete, and often unreliable.

January 1, 2003, or whether racial and geographic differences in sentencing have been eliminated by the enacted reforms, additional information must be accumulated, including:

(1) The total number of first degree murder indictments returned in all 102 counties since January 1, 2003 in which the defendant was *eligible* for capital punishment as defined by the Illinois statutes, *regardless* of whether the State's Attorney filed a notice under Illinois Supreme Court Rule 416(c) of intention to seek the death penalty,

(2) The counties in which the crimes were allegedly committed, and where the trial occurred;

(3) The sex, race, ethnicity, age and citizenship of the defendants and the victims;

(4) A detailed summary of the facts and circumstances of each case, including, but not limited to, the age and mental and emotional condition of the defendants and victims at the time of the crimes, the relationships between the defendants and the victims, the severity of the crimes, the prior criminal record of the defendants and victims, and other facts relevant to the existence of

the statutory aggravating factors that make the homicide one that is capital-eligible.

*The Capital Crimes Database Act.*

In response to a recommendation made by the Committee in its Third Annual Report (page 21), the General Assembly passed and the Governor approved a statute creating the Capital Crimes Database Act (CCDA), 20 ILCS 3930/7.6. The data required to be collected will assist in responding to the statutory directive.

However, as written, the CCDA will not supply the Illinois Supreme Court, when dealing with appeals in capital cases, all of the information needed for the Court to conduct what is known as comparative proportionality review, should the Court undertake to do so.<sup>11</sup> This review entails analysis as to whether death penalties

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<sup>11</sup> The Illinois Supreme Court has stated that it does not engage in comparative proportionality review of capital cases. *People v. Mertz*, 218 Ill.2d 1, 94 (2005); *People v. Thompson*, 222 Ill.2d 1, 47-48 (2006). Indeed, at this time the Court does not have access to the information which would enable it to make meaningful comparisons to death sentences imposed in other capital-eligible cases. Rather, the Court has restricted its review to comparing the sentences imposed on co-defendants, see, e.g., *People v. Cabullero*, 179 Ill.2d 205, 216-17 (1997); see also 720 ILCL 5/9-1(i). The Court has also set aside capital sentences that, in light of the facts of the case, the Court found to be “excessive,” or “where such an extreme penalty was found to be inappropriate in light of

were imposed only on persons who have been convicted of the most heinous homicides, compared to all those indicted for homicides in which capital punishment was a potential penalty.

The CCDA statute provides that it was adopted “Subject to appropriation.” *Thus far, no funding has been authorized; the statute has not been funded.*

The data provided for inclusion in the CCDA must be obtained (as well as other data about the details of the crimes) in order to determine whether the Illinois capital punishment system has been and is being applied with uniformity and proportionality, and to enable the tracking of data related to whether the reforms have eliminated the significant racial and geographic disparities found by the Governor’s Commission. Thus, in order to enable the Supreme Court of Illinois to perform comparative proportionality review of capital cases, the Court must be able to determine, for example, in light of and compared to all first degree murder indictments returned in Illinois in which a capital sentence was a

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any relevant mitigating factors,” *People v. Smith*, 177 Ill.2d 53, 97-101 (1997).

potential penalty (regardless of whether or not the State's Attorney filed a certificate of intent to seek a death sentence):

- Whether, in cases involving similar facts and circumstances, other prosecutors in Illinois have or have not sought a capital sentence;
- Whether, in similar cases in which a death sentence was sought, a death sentence was or was not imposed;
- Whether, in cases in which a death penalty has been imposed, there is an indication of disparity of treatment relating to the race of the victims or defendants, or the location of the crimes;
- Whether, the cases in which the death penalty was sought and imposed fall into the small category of cases described as “the worst of the worst.”<sup>12</sup>

Unless and until the information needed to make the foregoing analyses is gathered and analyzed, neither the Committee nor the Supreme Court of Illinois – or anyone else, for that matter – will be able to determine whether the reforms to the

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<sup>12</sup> There is also a potential underlying statutory issue: whether the Illinois Criminal Code, with 21 eligibility factors for capital punishment, sufficiently narrows the pool of capital-eligible cases from the universe of all homicides.

Illinois capital punishment system adopted by the General Assembly have ensured that the capital punishment system in Illinois has been and is now being applied with “uniformity and proportionality”; whether capital punishment is being imposed only upon the few persons who have committed the most heinous murders; or whether the reforms “have eliminated the statistically significant differences in sentencing related to the geographic location of the homicide and the race of the victim found by the Governor’s Commission.”<sup>13</sup>

As the foregoing discussion reveals, because the CCDA has not been funded, it remains a dead letter on the Illinois statute books. The data required by the CCDA is an important step toward enabling the Supreme Court to perform comparative proportionality reviews, should it choose to do so. Accordingly, the Committee recommended in its Fourth Report (page 18) that the necessary steps should be taken by the General Assembly and the Governor

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<sup>13</sup> In order to facilitate this effort, the Committee has collected indictments in more than 700 homicide cases from outside Cook County, and several hundred in Cook County. An analysis of these data, including a listing of all counties which have had no first degree murders, and all counties where the State’s Attorney has not responded to our requests for information, will be included in the Committee’s final report.

to provide funding needed to implement the CCDA. Despite our recommendation, no funding has yet been provided. Accordingly, we repeat the recommendation we made in our Fourth Report:

*Recommendation: The General Assembly and the Governor should take the steps necessary to provide the funding necessary to implement the collection, recording, coding, arrangement, comparison and analysis of the data in a professional manner, as called for in the statute mandating creation of a 'Capital Crimes Database,' 20 ILCS 3930/7.6.*

## **5. The Capital Litigation Trust Fund.**

The Capital Litigation Trust Fund (CLTF) was created in January 2000, for the purpose of funding various costs related to capital prosecutions. The statutory provision creating this Committee requires us to study the impact of the various reforms on the costs associated with the administration of the Illinois capital punishment system.

Members of this Committee have learned of abuses of the CLTF by court-appointed defense lawyers, through submission of inflated bills for services and expenses.<sup>14</sup>

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<sup>14</sup> This subject was discussed by witnesses during the Committee's public hearing held in Springfield in March 2009.

Trial judges in capital cases are the “gatekeepers” when court-appointed lawyers apply for compensation from the CLTF. Statutory provisions have recently been added in order to give the trial judges additional authority to perform their function of assuring that the bills are reasonable.

The Committee members have learned that no funds were appropriated by the General Assembly for inclusion in the CLTF to pay for the prosecution of capital cases outside Cook County. These funds ought to be appropriated, so that the State is assured of proper legal representation in these cases. Therefore, the Committee submits the following recommendation:

*Recommendation: The General Assembly should appropriate reasonable funds to pay for the prosecution of capital cases outside Cook County.*

**6. Illinois’ forensic science laboratories.**

This subject is discussed at pages 42 to 44 of the committee’s Fourth Report. A memorandum from John M. Collins, Chairman of the IL Laboratory Advisory Committee (ILAC), dated April 8, 2008, is quoted in part at page 47 of that report.

At the Committee’s meeting on May 13, 2008, the Committee heard from three employees of the Illinois State Police (ISP) who



hold supervisory positions in the Division of Forensic Services (DFS), one of whom serves as the DFS representative on the ILAC. The ILAC 2006 and 2007 reports are attached as Appendices 6 and 7 to the Committee's minutes of March 4, 2008, and the ISP FY 2007 DNA Accountability report is attached as Appendix 8 to the Committee's May 31, 2008 minutes.

On September 8, 2008, a member of subcommittee 4 attended a meeting of ILAC in Springfield.

The Committee's meeting on December 4, 2008 was attended (in person and by conference telephone) by the Chair of the ILAC, an ILAC member, and four supervisory personnel of the ISP DFS, three of whom had attended the Committee's May 13, 2008 meeting.

We summarize below the several areas of concern relating to Illinois forensic laboratories, which have important functions in capital as well as non-capital cases.

(a) *Salary and benefit problems in state operated laboratories.*

ILAC members reported, and supervisory ISP DFS personnel concurred that the problem with salaries of the first line supervisors, Public Service Administrators (PSAs), has been

alleviated, because they have become members of the Illinois State Employees Association, with increased salary levels, with the result that forensic scientists are again interested in promotions into those positions. However, they reiterated the problems in the salary structure which inhibits employment of scientists as Senior Public Service Administrators (SPSAs), who remain Merit Compensation employees. We have been told by ISP DFS personnel that, by the end of 2009, only four SPSAs will make more than the top of the forensic PSA scale, and that by the end of 2010, no SPSAs will make more than the top of the forensic PSA pay scale. Thus, forensic scientists and PSAs frequently have higher salary levels than their SPSA laboratory Directors, with the result that many qualified scientists and lower level managers decline offers of promotions to higher level positions.

The ISP DFS Deputy Director reported that there has been no change in the amount of the pensions provided to ISP DFS forensic scientists. This situation, coupled with the salary levels discussed above, continues to result in many qualified forensic scientists leaving ISP to work for other state or privately owned labs.

*(b) Filling Illinois State Police Division of Forensic Services positions.*

Under the previous administration, there were lengthy delays in filling critical frontline and managerial positions. Consequently, forensic scientists were performing clerical, evidence technician, management and janitorial duties, rather than working cases. The audit of the ISP DFS by the Illinois Office of the Auditor General (report dated March 2009) specifically stated the lack of these support positions was adversely impacting the backlog.

Soon after Governor Quinn took office, he authorized the hiring of 23 critical forensic positions, including scientists, evidence technicians, managers, clerical and janitorial. Filling these positions would allow the forensic scientists to immediately return to analyzing cases. Unfortunately, due to the State's financial situation, only three positions were filled prior to the hiring freeze.

*(c) The physical conditions of the state laboratories' facilities and equipment.*

Aging facilities continue to provide challenges and negatively impact operations within the DFS laboratories. Utilizing remodeled, non-laboratory space as forensic science laboratories has resulted in numerous health, safety, and evidence related issues being

experienced at a number of ISP facilities. Issues include mold, lead residue, air pressure, heating/ventilation/air conditioning (HVAC) concerns, and leaking roofs which can damage evidence, cause contamination, and result in Illinois Department of Labor citations. Three of the most critical facilities are the Southern Illinois Forensic Science Centre in Carbondale, and the Joliet and Westchester laboratories.

Overcrowding is also a concern. The Metro-East laboratory in Fairview Heights, and the forensic science labs in Chicago cannot handle any additional staff, and require a new facility (Metro-East) and a substantial expansion (Chicago).

There is insufficient general revenue funding to purchase expensive forensic scientific equipment, thus older instruments are utilized. When the instruments break down, monies are spent to repair them. The down time impacts the backlog, since many cases cannot be processed without the instrumentation.

Fortunately, with respect to DNA, there is ample federal grant funding, hence the DFS has and continues to purchase the latest in DNA scientific technology. However, there is little federal grant funding available for any of the other scientific disciplines.

(d) *DNA sample and forensic biology testing.*

In the responses to Loyola University's survey to State's Attorneys, 60% reported that they have experienced delays in receiving results from forensic laboratories in homicide cases. All respondents were satisfied with the quality of the forensic work product in capital cases.

In December 2008, the Deputy Director of the ISP DFS submitted a report to the Committee which stated that grant funding spent on DNA testing increased to almost 2.65 million in FY 2008. His report continues:

The ISP is continuing to make progress in decreasing the DNA backlog. Most cases which ultimately undergo DNA analysis are first received into the laboratory as Forensic Biology cases. The first step in the analysis of these cases is the detection and identification of a biological stain using various serological techniques. If suitable and probative biological material is identified through these processes, the case then becomes a DNA case and undergoes separate, highly-technical analytical processes to obtain a DNA profile from the stain. Approximately 60 percent of Forensic Biology cases have biological material suitable for DNA analysis. Consequently, it is crucial to focus on decreasing both the Forensic Biology and DNA backlogs. The ISP 2008 DNA Accountability Report (p. 2) states that as of

June 30, 2008 the DNA backlog – defined as cases still unworked after 30 days in the DNA section – was 1,149 cases, including those cases at the outsourced vendor. The Forensic Biology backlog was reported as 1,597 cases. As of October 31, 2008, the DNA Backlog was 983, including those cases at the outsourced vendor. The forensic biology backlog was 1,302 cases. To provide some relevance to these backlog figures, the ISP DFS received approximately 400 DNA cases and 500 Forensic Biology cases per month since January 1, 2008.

The Deputy Director stated that as of the end of FY 09, 1,088 DNA specimens had been sent for testing and analysis to outside vendors.

The following information is taken from the FY 2009 DNA Testing Accountability Report:

“Interest in the use of DNA in casework continues to steadily increase. In FY 2004, the ISP received 2,386 DNA cases. In FY 2008, this increased to 4,515 cases. This trend has continued in FY 2009 with 5,317 DNA cases received in ISP operational laboratories, an 18% increase over FY 2008 submissions and a 123% increase since FY 2004. The number of DNA cases received in FY 2009 represents only 4.6% of the total cases received for all forensic disciplines within the ISP forensic laboratory system for the year.”

\* \* \*

“The Forensic Biology backlog dropped from a high of 2,604 cases in September 2007 to a low of 128 cases in June 2009. This backlog figure is the lowest for Forensic Biology cases since 1995, before the ISP opened the Forensic Science Center at Chicago and became responsible for analysis of all Chicago Police Department cases.

“By the end of FY 2009, the ISP in-house DNA backlog was 749 cases. There was no outsourced DNA backlog as all outsourced cases were completed by the vendor prior to the end of the fiscal year.”

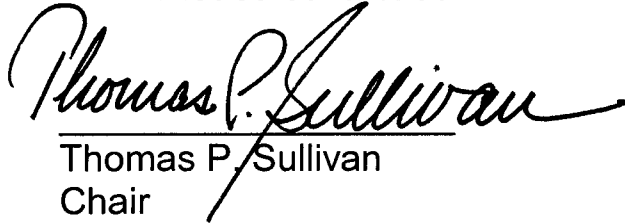
(e) *Dialogue among the General Assembly, the Illinois State Police Department of Forensic Services and Illinois Laboratory Advisory Committee.*

The ILAC members reported the continued lack of response from the General Assembly as to ILAC’s repeatedly expressed problems and warnings. Accordingly, the Committee repeats and again calls the General Assembly’s attention to the recommendation made in our Fourth Annual Report (page 48):

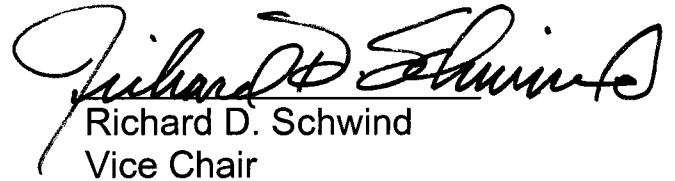
*Recommendation: Representatives of the General Assembly Judiciary Committee and the Chair of the ILAC should discuss and attempt to resolve the concerns expressed by the ILAC Chair.*

**III. CONCLUSION.**

*Please contact us if further information is desired.*



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312-814-5387

cc: Governor, State of Illinois  
Chief Justice, Supreme Court of Illinois  
Committee members



## Appendix 1

### List of guests in attendance at meetings

<u>Name</u>	<u>Affiliation</u>
Jane Bohman	Executive Director, Illinois Coalition to Abolish the Death Penalty
Jordan Boulger	Loyola Univ. graduate student, assistant to David E. Olson
Greg Cheyne	Student, Univ. of Chicago Law School
John Collins	Chair, Illinois Laboratory Advisory Committee (ILAC), and Director, DuPage County Laboratory
Daniel Diorio	Northwestern Univ. undergraduate student
Scott Giles	Colonel and Deputy Director, Illinois State Police (ISP) Division of Forensic Services
Barbara Hayler	Professor Emerita of Criminal Justice, University of Illinois, Springfield
Kyle Kirts	Attorney, House Republican Staff
Lori G. Levin	Executive Director, Illinois Criminal Justice Information Authority
Patrick D. McAnany	President, Illinois Coalition to Abolish the Death Penalty
Catherine McMillan	Campaign to End the Death Penalty
Donna Metzger	Commander, ISP Division of

<b><u>Name</u></b>	<b><u>Affiliation</u></b>
Kathleen Monahan	Forensic Sciences Command Project Director, Illinois Violent Death Reporting System
Jeremy Schroeder	Executive Director, Illinois Coalition to Abolish the Death Penalty
Anna Segura-Abernathy	Lt. and Chief of Staff to Deputy Director, ISP Division of Forensic Services
Rob Sherman	Green Party candidate for State Representative, 53rd District
Allan R. Sincox	Lawyer, Illinois Appellate Defender Office, and member, ILAC
Don Stemen	Assistant Professor, Loyola Univ., Associate of David E. Olson
Mark Warnsing	Legal Counsel, Senate Republican staff
Carl Weitzel	Lt. Colonel and Assistant Deputy Director, ISP Division of Forensic Services
Laura Weizeorick	Northwestern Univ. law student, assistant to Ms. Bienen
Dan Yuhas	Deputy State Appellate Defender

## **Appendix 2**

### **List of guests in attendance at subcommittee meetings**

<b><u>Name</u></b>	<b><u>Affiliation</u></b>
Richard A. Devine	Cook County State's Attorney
Scott Giles	Colonel and Deputy Director, ISP Division of Forensic Services
Donna Metzger	Commander, ISP Division of Forensic Sciences Command
Carl Weitzel	Lt. Colonel and Assistant Deputy Director, ISP Division of Forensic Services