

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
THIRD ANNUAL REPORT

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April 9, 2007

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Capital Punishment Reform Study Committee

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Re: Third annual report of the Capital Punishment Reform Study
Committee

Gentlemen:

The statute which established this Committee provides that the Committee shall report annually to the General Assembly. 20 ILCS3929/2(b). The Committee's first report, submitted on April 27, 2005, covered activities from inception in early 2005 through April 27, 2005. The Committee's second report, submitted on February 28, 2006, covered activities during the balance of the year 2005, that is, from April 28 to December 31, 2005. This is the Committee's third report, covering the calendar year 2006.

Administrative matters.

(1) Committee member Thomas P. Needham, appointed by the Governor, resigned from the Committee on May 8, 2006. The Governor has not yet named a replacement for Mr. Needham.

(2) The General Assembly appropriated \$150,000 for Committee expenses for each of the fiscal years ended June 30, 2006 and 2007. These appropriations have been authorized and administered through the Illinois Criminal Justice Information Authority (CJIA).

(3) After following the procedures specified in the Illinois Procurement Act (IPA) (30 ILCS 500/1-5 et seq), the Committee entered into a contract retaining Peter G. Baroni on a part time basis as Reporter/Special Counsel to assist in the Committee's work. The contract is posted on the CJIA website.

(4) After following the procedures specified in the IPA, the Committee entered into a contract retaining Professor David E. Olson of Loyola University, Chicago to assist the Committee in developing and implementing data collection methods and surveys of criminal justice agencies/representatives, in order to gauge the implementation and impact of the capital punishment reform legislation. Dr. Olson will be assisted by

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students from Loyola's Criminal Justice program. The contract is posted on the CJIA website.

Meetings held by the full Committee and subcommittees.

The notices, agendas and minutes of Committee and subcommittee meetings are posted on the CJIA website. All meetings were open for public attendance as required by the Illinois Open Meetings Act.

The full Committee held eight meetings during 2006, at the CJIA offices, 120 S. Riverside Plaza, Chicago, Illinois 60606 on January 23, February 27, March 22, April 10, June 19, September 7, October 23, and December 13. Subcommittee meetings were held at various locations and dates, on some occasions with invited guests in attendance, summarized below.

Subcommittee 1 -- Police and Investigations.

Members: James R. Coldren, Jr., Gerald E. Nora and Geoffrey R.

Stone

Meetings were held in 2005 on February 6, attended by Michael Cook, John Palcu and Larry Rafferty of the South Suburban Major Crimes Task Force; May 23; August 1; and November 7. Meetings were held in 2006 on May 5; June 5, attended by Crystal Marchigiani, Chief, Cook

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County Public Defender Homicide Task Force; June 21; October 20;
December 4, the first meeting attended by Jon Allard, Assistant State's
Attorney, St. Clair County, Lt. Jeffrey Wild, O'Fallon Police Department,
Lt. Steven Johnson, St. Clair County Sheriff's Office and Master Sgt. James
Morrissey, Illinois State Police, Collinsville, and the second meeting
attended by James M. Stern, James A. Gomric and John J. O'Gara,
Belleville, IL, members of the Capital Litigation Trial Bar, and private
investigators Alva Busch and Timothy Nikolavzyk; and December 11,
attended by Sheri Mecklenburg, General Counsel to the Superintendent of
the Chicago Police Department.

*Subcommittee 2 -- Eligibility for Capital Punishment, DNA, and
Proportionality.*

Members: Leigh B. Bienen, Kirk W. Dillard, Thomas P. Sullivan and
Michael J. Waller

Meetings were held in 2005 on May 19; June 6; September 26,
attended by Stephen L. Richards, Deputy Defender, Death Penalty Trial
Assistance Division, Office of State Appellate Defender; October 5; and
November 8. Meetings were held in 2006 on February 22; March 15;
April 13; June 13; August 14; October 17; and December 11.

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Subcommittee 3 – Trial Court Proceedings.

Members: Jeffrey M. Howard, Boyd J. Ingemunson, Edwin R.

Parkinson and Randolph N. Stone

Meetings were held in 2005 on May 27; June 24 (joint meeting with subcommittee 4), attended by Nadine Jakubowski, Illinois State Treasurer's Office; and November 8, attended by Stephen L. Richards. Meetings were held in 2006 on February 4, attended by a Judge from the Circuit Court of Cook County; May 10; June 19; October 16, attended by a Judge from central Illinois; and December 12.

Subcommittee 4-- Post-Conviction Proceedings, and General Topics.

Members: James B. Durkin, Theodore A. Gottfried, Richard D.

Schwind and Arthur L. Turner

Meetings were held in 2005 on May 16; June 24 (joint meeting with subcommittee 3); and October 14. Meetings were held in 2006 on March 29; May 11, attended by Alan R. Simcox, Staff Attorney, Death Penalty Trial Assistance Division, Office of State Appellate Defender, and member of Illinois Laboratory Advisory Committee; June 19, attended by Dr. Jan L. Johnson, Director, Illinois State Police Forensic Center, Chicago; October 23; and December 13.

The public hearing in Springfield, Illinois on November 13, 2006.

The Committee's enabling statute provides, "The Committee shall hold hearings on a periodic basis to receive testimony from the public regarding the manner in which reforms have impacted the capital punishment system." 20 ILCS 3929/2 (b) (5). The Committee held its first public hearing in the State Capitol Building in Springfield on November 13, 2006 from 1 to 4:30 PM. Notices of the hearing were distributed to the news media and various groups concerned with matters relating to capital punishment and criminal justice reform. The following persons testified at the hearing:

Gerald E. Nora, Assistant Cook County State's Attorney.

Patrick McAnany, President, and Regan McCullough, Research Assistant, Illinois Coalition to Abolish the Death Penalty.

Jennifer Bishop Jenkins, Illinois Victims Organization.

Gail Rice, victim's family member.

Larry Golden, Downstate Illinois Innocence Project.

Linda Virgil, Chair, Illinois Legislation, National Alliance on Mental Illness.

Robert B. Haida, State's Attorney, St. Clair County, and Illinois State's Attorneys Association.

The statements of these witnesses brought many important issues and concerns to the Committee's attention, which will be subjects of our work and investigations during 2007. The transcript of this hearing will be posted on the CJIA website.

Substantive matters.

1. Experience with electronic recording of custodial interrogations in homicide investigations.

In 2003, Illinois enacted legislation which creates a rebuttable presumption that oral or written statements made to a law enforcement officer by a suspect who is in custody in a place of detention are inadmissible in evidence in a trial for homicide, unless the statements were electronically recorded from the *Miranda* warnings to the end of the interview. The statute contains several exceptions from the recording requirement. The presumption of inadmissibility may be overcome if the State proves by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.

705 ILCS 405/5-401.5; 725 ILCS 5/103-2/1.

Illinois was the first state to enact mandatory recording legislation; Maine, New Mexico, Wisconsin and the District of Columbia have since enacted similar statutes.

Members of the Committee have interviewed both law enforcement personnel (police and prosecutors) and defense lawyers about their experience with this law. The State's Attorney of St. Clair County, speaking on behalf of the Illinois State's Attorney's Association, testified on this subject at the public hearing on November 13, 2006.

The information we obtained establishes that some officers and prosecutors were initially skeptical about recording complete custodial interviews in homicide investigations. With experience, however, almost all law enforcement personnel have come to recognize and appreciate the benefits of this practice. These benefits include, for example, an increase in the quality of interviews because detectives do not have to take notes while they question suspects; a reduction in the number of motions to suppress based upon allegations that the *Miranda* warnings were not given and/or that coercive tactics were used; incontestable evidence as to what was said and done during the interviews; and more pleas of guilty.

Prosecutors from several counties reported that the early reactions among many detectives – the officers that usually conduct interviews of suspects in homicide investigations – ranged from wary to resistant. After the policy was implemented on a statewide basis beginning in July 2005, as

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detectives and their supervisors became comfortable with recording complete custodial interviews, the reactions changed to near unanimous support for the practice. There has been a reduction both in the number of motions to suppress confessions filed in homicide cases on the ground that the *Miranda* warnings were not given, or that coercive tactics were used, and in testimonial disputes at trial about what was said or done during custodial questionings.

Appearing on behalf of the Illinois State's Attorney's Association at the public hearing, the State's Attorney of St. Clair County testified that he had instituted a recording requirement for local law enforcement agencies in St. Clair County before the mandatory recording statute took effect. Most county law enforcement personnel initially were "not totally on board" because "they perceived it as intrusive into their decision making." However, the use of electronic recordings "has been so overwhelmingly successful that most of the police departments in my jurisdiction now videotape interrogations in almost every felony investigation. The police, law enforcement realize that it's better for them. It protects them from false accusations of physical or mental coercion. It's a better end product; it now becomes a judicial decision to make on admissibility, but many of the

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related issues that we had to deal with, and many of the issues I think were the foundation for some of the exoneration cases, are now gone, at least in St. Clair County, and certainly across the State as it relates to homicide cases.... I can tell you that most law enforcement in St. Clair County has responded very positively to this, and it's working for us."

The defense lawyers interviewed about recording custodial interviews of homicide suspects also expressed favorable impressions. One told of a client who allegedly confessed on videotape, but the prosecutor dismissed the indictment because after watching the video he agreed that the "confession" was not credible. The defense lawyers found that the recordings "keep the police honest" by allowing viewers to focus on coercive treatment of suspects that is not reflected in police reports.

The Chief of the Cook County Public Defender's Homicide Task Force informed the subcommittee that the practice under the recording mandate contrasts sharply with the prior practice of recording only the suspect's final statement or confession, in which the suspects were asked to repeat statements made during prior unrecorded interviews. Now, with entire interviews recorded, there is reliable, objective evidence as to what occurred, which has reduced the number of pretrial motions to suppress

based upon the failure to give *Miranda* warnings, and allegations that the police persisted in questioning despite the suspect's request for a lawyer. When confessions or damaging admissions are obtained, the recordings provide strong evidence that is difficult to defend in court. On the other hand, recordings are often helpful to the defense when they illustrate the suspects' remorse for their conduct. The Chief said that, overall, complete custodial recordings in homicide investigations have been helpful in advancing the truth finding process.

The Committee members are satisfied that the statutory requirement of recording complete custodial interrogations in homicide investigations has proven beneficial from the standpoint of both law enforcement and defense. Recordings assist in the truth-finding function of the criminal justice system by helping to make certain that guilty persons are convicted and innocent persons are not charged.

2. *The need for additional funding for electronic recording.*

There are some significant costs associated with electronic recordings, for example, for the necessary video and audio equipment, including back up equipment to be available in case of primary equipment failure, assuring equipment compatibility, sound proof rooms, training of detectives,

consistency of training in different jurisdictions, reviewing and transcribing recordings, and storage of tapes and discs. The law enforcement personnel interviewed, both police and prosecutors, agreed that additional funding should be provided to cover these costs, to enable them to purchase state of the art equipment, and to make sure that the equipment used throughout the state is compatible.

*Recommendation:*¹ The General Assembly should provide additional funding to law enforcement agencies for expenses related to the statutory mandate of electronic recording of custodial interrogations in homicide investigations. The General Assembly should also make budgetary and administrative provisions for the development of technical guidelines for mandated recording of custodial interrogations in all homicide investigations, and should instruct the Illinois Law Enforcement Training and Standards Board, working with relevant and knowledgeable law enforcement and technology accreditation groups, to develop these guidelines.

¹ All recommendations herein were adopted unanimously.

3. *Concerns about jurors' reactions to the propriety of certain police methods used during custodial interrogations.*

A number of the police and prosecutors reported that some detectives have become concerned about the reactions of jurors when they see recordings of certain lawful methods sometimes used by investigators during custodial questioning, such as overstating or misstating the evidence of the suspect's guilt, blaming the victim, sympathizing with the suspect, and using other forms of deception. The concern is that jurors may not realize that many of these methods are permissible, and therefore may be inclined to distrust resulting confessions or admissions, or conclude that these methods constituted impermissible or unethical behavior. Some detectives said they have decided to forego these methods, but they do so reluctantly because they believe their ability to obtain truthful admissions and confessions will be impaired. We believe it would be helpful for instructions to be included within the Illinois Supreme Court's Pattern Jury Instructions – Criminal explaining the methods that may lawfully be used by police when questioning suspects.

Recommendation: The Illinois Pattern Jury Instruction Committee should draft, and the Illinois Supreme Court should approve, pattern jury

instructions explaining which methods may lawfully be used by law enforcement officers during custodial interrogations of suspects, and which may not, in accordance with rulings of the United States and Illinois Supreme Courts.

4. *The pilot program regarding sequential lineups and photo spreads.*

The capital punishment reform legislation required that a one-year pilot program be conducted in three police departments in order to compare the relative effectiveness of the sequential eyewitness identification procedure with the prevailing simultaneous eyewitness identification procedure. 725 ILCS 5/107A-10. In the simultaneous method, the witness views all persons in the lineup and all photos in the photo spread (sometimes on a computer screen) at the same time, and the witness is asked to state whether he/she recognizes the perpetrator. In the sequential method, the witness views the lineup participants or photos individually, one at a time, and the witness is asked to express his/her degree of certainty that each person is or is not the perpetrator before the administrator shows the witness the next person or photo.

The pilot programs were conducted in the Evanston, Joliet and Chicago (District 4, Areas 11, 12 and 13) Police Departments. The report of the study, entitled "Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures," was published in March 2006.

The report has given rise to controversy, in part because the study did not use parallel systems of conducting the lineups and photo spreads: in the simultaneous procedures the administrators were not required to be "blind," – that is, not aware of the identity of the member of the array who is the police suspect – whereas in the sequential procedures blind administrators were used. As a consequence, the members of the Committee believe the study is not a sound basis upon which to draw final conclusions about which of the two procedures is preferable. We are satisfied, however, that blind administrators should be used whenever practicable, whether the simultaneous or sequential method is used.

The National Institute for Justice (NIJ) of the United States Department of Justice may conduct a new, comprehensive comparison of the simultaneous and sequential procedures, using rigorous, accepted scientific techniques, with both blind and non-blind administrators, using both

methods on a randomly selected basis. A number of other similar initiatives are pending in several other jurisdictions sponsored by various organizations. The Committee will review and report to the General Assembly as to the results of these additional studies.

Recommendation: Legislation should be enacted requiring that whenever practicable the administrator of an eyewitness lineup or photo spread should not be aware of which member of the array is the police suspect.

5. Prosecutors' recommended procedures for selection of cases for capital punishment.

As part of the 2003 reform legislation relating to the capital punishment, the Illinois General Assembly enacted 720 ILCS 5/9-1(k), which provides that the Attorney General and State's Attorneys Association shall promulgate voluntary guidelines for procedures governing whether or not to seek the death penalty. On February 22, 2006, the Attorney General and the Association adopted "Death Penalty Decision Guidelines," which "do not have the force of law, but they are intended to assist State's Attorneys in exercising their discretion in conformance with the highest standards of justice."

These guidelines are an excellent statement of the factors which State's Attorneys should consider in deciding whether to pursue capital punishment in cases which are death eligible. While the guidelines are not mandatory, they articulate the policy and practice to be followed in the individual counties of the state as follows:

“ . . . The primary factors in making a decision to seek a death sentence are the need to not only have absolutely no doubt regarding the defendant's guilt but also his/her eligibility for the imposition of death pursuant to the first degree murder statute. The basis of both the charging decision and the decision to seek death must be fundamentally fair and consistent with the law. The decision to seek death should not be automatic simply because the defendant appears to be clearly guilty and clearly eligible. In making this decision, State's Attorneys should be focused on the strength of the case and the background and character of the defendant. *See, e.g., Gregg v. Georgia*, 428 U.S. 153, 49 L.Ed.2 859, 903 (1976). . . .”

* * *

“These proposed guidelines are not intended to be a substitute for adopting appropriate policies and procedures at a local level. These guidelines are illustrative of certain basic factors which should be considered in the exercise of discretion.”

Introduction, Guidelines at 2-3.

The Committee will investigate the utilization and implementation of these guidelines.

6. *Capital punishment proportionality.*

The legislation establishing this Committee directs the Committee to report on “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 16, 2002.” 20 ILCS 3929/2 (b)(1).²

² As part of the reforms adopted by the 93rd General Assembly, a provision was adopted providing that the Illinois Supreme Court may overturn a death sentence and order imprisonment “if the court finds that the death sentence is fundamentally unjust as applied to the particular case.” 720 ILCS 5/9-1(i). The Illinois Supreme Court has held that this provision does not authorize proportionality comparison to other unrelated first degree murder cases. *People v. Mertz*, 218 Ill. 2d 1, 94-95 (2005); *People v. Thompson*, 222 Ill. 2d 1, 47-48 (2006).

The Committee has undertaken to determine the frequency of capital eligibility among all homicide cases in Illinois, the frequency with which the State's Attorneys exercise their discretion to seek the death penalty when authorized to do so, the geographical distribution of capital certifications, the frequency of use of the various eligibility factors, data relating to the race of the victim and defendant when capital punishment is sought, and other factors that bear upon "the issue of uniformity and proportionality in the application of the death penalty." To that end, the Committee has retained the services of David Olson, a Professor of Criminology and expert on survey research and collection of data, to assist in the preparation of a survey document. We intend to send the survey to persons and agencies in Illinois who are involved in the criminal justice system, including judges of trial and reviewing courts, law enforcement officials, prosecutors, defense lawyers, law professors, and others with knowledge of the system, especially as it relates to prosecutors' exercise of discretion to seek the death penalty from among the homicide cases presented to them, and the outcomes of cases certified for capital punishment pursuant to Illinois Supreme Court Rule 416(c).

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The comprehensive survey will augment the data gathered by the Committee pursuant to our request for information from 102 State's Attorneys across the State relating to first degree murder indictments. By the end of 2006 almost three quarters of the counties, 75 in total, had responded by sending copies of murder indictments in their counties for the years 2003, 2004 and 2005. As expected, there was some variability in the form of the indictments. As of December, 2006 only four major counties had not complied with the Committee's request for information: Sangamon, Will, Champaign and McLean. See Tables 1, 2 and 3 attached. The data set developed from this data collection effort eventually will include all cases of first degree murder and death eligible murder, and information in the public record about first degree murders and capital prosecutions since January 1, 2003.

The Committee will continue to seek reliable factual information about the number of first degree murders in the State by county, the number of death-eligible murders in the State by county, the number of cases certified as capital cases in each county, and the outcomes of those cases. This information will provide the factual basis for conclusions regarding

proportionality, and the implementation of the reforms relevant to the statutory aggravating factors.

Recommendation: The General Assembly should enact legislation, or the Illinois Supreme Court should enact a rule, mandating the creation of a statewide capital crimes database, and a repository and monitoring system for the data collected.

7. *Training of and funding for judges and lawyers in capital trials.*

The statute establishing this Committee provides that we are to study and report on “The implementation of training for police, prosecutors, defense attorneys, and judges as recommended by the Governor’s Commission on Capital Punishment,” and “The quality of representation provided by defense counsel to defendants in capital prosecutions.” 20 ILCS 3929/2(b)(2), (4).

The Illinois Supreme Court enacted a rule which provides for certification of lawyers as members of the Capital Litigation Trial Bar (CLTB), in order “to insure that counsel who participate in capital cases possess the ability, knowledge and experience to do so in a competent and professional manner.” Rule 714(a). Provisions are made for continuing

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education involving at least 12 hours of approved training courses every two years relating to the preparation and trial of capital cases. Rule 714(g). The Office of the Attorney General, the State Appellate Prosecutor, the State Appellate Defender, the Cook County Public Defender, and the Cook County State's Attorney, all provide for capital litigation training opportunities to attorneys involved, or interested in becoming involved, in capital litigation.

The Illinois Supreme Court also enacted Rule 43, which requires trial judges who preside over capital cases to attend an approved training course every two years. The purpose is "to insure the highest degree of judicial competency during a capital trial and sentencing hearing." Several defense lawyers who are members of the Capital Litigation Trial Bar (CLTB) told Committee members that they have experienced difficulties in capital trials because the trial judges are inexperienced in the complexities and unique problems involved in capital trials. They believe that intensive training and/or experience in capital trials should be a prerequisite to every judge who is assigned to preside over a capital trial. However, it appears that this situation has been largely resolved as a result of the training mandated by the

Supreme Court. We believe a readily accessible listing of qualified trial judges should be available to both prosecutors and defense lawyers.

The Committee heard from various concerned members of the legal community concerning the need for additional funding for training of prosecutors, defense lawyers and judges in the legal, practical and technological issues involved in capital litigation. We will look further into this matter in the coming year.

Recommendation: The Administrative Office of the Illinois Courts should create an electronically accessible list of trial court judges who have received capital case training, and the training each judge received.

8. *Capital Litigation Trial Bar.*

Members of the Committee heard from a variety of parties that the creation of the CLTB has had a significantly positive impact on the quality of representation provided by attorneys handling capital cases. One judge praised the creation of the CLTB as the most important change in the area of capital litigation, by precluding unqualified lawyers from handling capital cases.

Members learned that in some parts of Illinois it is difficult to find defense attorneys who are members of the CLTB, so that the presiding judge

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is placed in the position of seeking or sometimes beseeching an attorney to serve, who may be required to travel from an inconvenient distance to defend a capital case. This situation suggests a need for action by state and local bar associations, to urge lawyers to consider becoming qualified members of the CLTB.

Members of the Committee also heard reports of the excessive length it takes for applicants to receive certification on their admission into the CLTB. This usually occurs in the larger counties in Illinois. In the coming year, the Committee will seek information from the Administrative Office of the Illinois Courts to determine the average length of time it takes to process applications for the CLTB.

9. *Capital Litigation Trust Fund.*

Members of the legal community praised the existence of the CLTF. Almost all believe it helps “level the playing field.”

We were told of abuses of the CLTF after its creation in 2000. 725 ILCS 124/15. However, the General Assembly passed legislation in 2005 changing the process for accessing the fund by appointed defense counsel, including requiring *ex parte* submission of proposed case budgets, and that petitions for defense counsel compensation be approved in advance

of payment by both the trial judge and the presiding judge. 725 ILCS 124/10(a-5). These changes seem to have corrected the problem. A trial judge who was interviewed thought this new process worked well, but he believes the judiciary should have the same oversight authority relating to prosecutors as they have with respect to defense counsel spending.

Another concern raised by a downstate trial judge, as well as other knowledgeable sources, is the economic pressure on some county prosecutors to seek death in cases where an eligibility factor exists, solely in order to shift the financial burden to pay for the prosecution and defense from the local county budget to the State through the CLTF. During the course of the upcoming year, the Committee will investigate this matter.

A problem experienced by the Law Office of the Cook County Public Defender (LOCCPD) is its inability to access the CLTF for up to four months during the State's fiscal year. Because money is provided to the LOCCPD in the form of a grant, it is not available from the beginning of the fiscal year until the grant is replenished, which does not occur until October or November. This causes bills to accumulate, resulting in expert witnesses and other vendors becoming dissatisfied with the length of time to receive payment, which in turn affects some vendors' willingness to take on

additional work in capital cases involving the LOCCPD. The Committee intends to investigate and report further on this matter.

10. State operated forensic laboratories processing and testing DNA samples.

The Illinois State Police (ISP) provides crime scene and forensic services to many criminal justice agencies. The ISP forensic science laboratory system is the third largest crime laboratory system in the world. All ISP labs are certified by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD). In 2005, the ISP forensic science lab system became accredited by the International Organization for Standardization (ISO). The State Police Department is required by statute to report to the Governor and the General Assembly “the extent of the backlog of cases awaiting testing or awaiting DNA analysis.”
730 ILCS 5/5-4-3a.

In 2004, the Illinois General Assembly established the Illinois Laboratory Advisory Committee (ILAC). 20 ILCS 3981/5. The statute mandates that the responsibilities of the ILAC, among others, are to examine ways to make more efficient use of State laboratories, including facilities, personnel and equipment; to examine ways to reduce laboratory backlogs; to

make recommendations regarding staffing and funding needs to ensure resources that allow for accurate, timely and complete analysis of all samples submitted for testing; and to make recommendations regarding accreditation and quality assurance as it applies to laboratory testing that will be in compliance with recognized International Organization for Standardization and applicable professional standards.

DNA sample testing. Requests for DNA testing in criminal cases may be made by either the prosecution or defense. The requests for testing of DNA samples may be divided into three categories: (1) testing of samples relating to cases that have not been concluded at the trial court level, usually involving evidence obtained at crime scenes and from suspected criminals (725 ILCS 5/116-5); (2) processing of DNA samples of persons convicted of felonies for inclusion in the federal Combined DNA Index System, known as CODIS; and (3) testing DNA samples of persons who have been convicted if, after conviction in which identify was an issue, the court has ordered forensic testing, including DNA comparisons, upon a showing that the evidence was not subject to testing at the time of trial, has not been altered, and the results have the potential to produce relevant evidence, even

though the results may not completely exonerate the defendant (725 ILCS 5/116-3).

The Committee has received disturbing reports of the backlog on testing DNA samples, and has attempted to obtain current information on this subject:

- The ISP 2005 report, titled “2005 DNA Testing Accountability Report,” stated that at the end of 2005, the DNA processing backlog (in excess of 30 days) was extremely high, consisting of 3,063 samples at year end, owing in part to a discovery that hundreds of DNA samples had been mistakenly analyzed by a private firm to which the samples had been “outsourced” for testing. (*Id.* at 6, 8.). Owing to a 2006 change in the statute, the next ISP report on the status of DNA testing is not due until August 1, 2007. 730 ILCS 5/5-4-3a.

- The ILAC has reported that the labs have serious problems in hiring qualified personnel, especially at the supervisory level, owing in substantial part to the salary structure. ILAC 2006 Report, at 3.

- We have made repeated efforts to obtain information from the Governor’s office about the current status of the DNA testing and the

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reported backlog. At this point the office has not provided the Committee with current DNA backlog numbers.

The Committee is very concerned about the reported backlog of DNA testing, especially relating to pending criminal cases. In the coming year, members of the Committee will continue efforts to learn about the currency of DNA testing in both pre- and post-conviction cases, and whether additional funding is needed in order to maintain DNA testing on a current basis.

Funding, oversight and accreditation. Members of this Committee met with representatives of ILAC and the Director of the ISP Forensic Center in Chicago. The ILAC members believe there should be oversight in crime lab procedures and protocol, but ILAC lacks the necessary investigative power and sanction authority, as well as a staff and budget.

Of great concern to both the ILAC and the ISP is the accreditation of private labs used in testing evidence in criminal cases. There is consensus that there should be uniform standards for testing. The ASCLD is a recognized body in the field of forensic laboratory science, but Illinois law does not require labs to be accredited by the ASCLD or any other authoritative body. The primary reason private labs do not seek

accreditation is cost. The ASCLD charges the Illinois State Police laboratory in Chicago \$25,000 per year and an additional \$80,000 every five years to maintain its accreditation.

The decision as to how to allocate limited resources can be difficult, but it appears that federal grants may be available to assist in the clean up of DNA testing backlogs. The Committee will investigate the availability of these grants, and report further on these subjects.

11. Allegations of police perjury.

The Committee inquired as to the use of the statutory provision allowing for decertification of accredited police officers for committing perjury. 50 ILCS 705/6.1. We were informed that the Illinois Law Enforcement Training and Standards Board has not received any complaints of police perjury since the enactment of the statute in 2003.

12. Areas of the Committee's responsibilities still to be investigated.

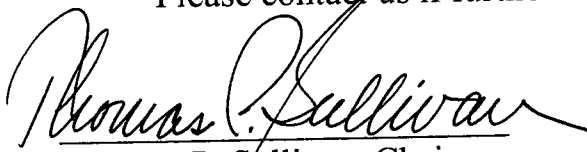
Several areas that the Committee will investigate in 2007 include (1) the implementation of training for police (20 ILCS 3929/2(b)(2)); (2) the impact of the various reforms on the quality of evidence used during capital prosecutions (20 ILCS 3929/2(b)(4)); (3) the impact of the various reforms on the costs associated with the administration of the Illinois capital

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punishment system (20 ILCS 3929/2(b)(5)); (4) the impact of the reforms enacted by the 93rd General Assembly against the backdrop of reforms that have been implemented by the judiciary and other government agencies, and (5) other proposed reforms which may provide the basis of future recommendations to the General Assembly in order to make fully effective the reforms enacted by the 93rd General Assembly.

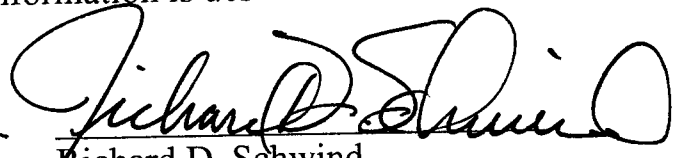
Conclusion.

Please contact us if further information is desired.



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Chief Justice, Supreme Court of Illinois
Committee members

Table 1

Number of Indictments for First Degree Murder Provided by State's Attorneys (SA), and Number of Murders Reported by the Illinois State Police (ISP),* by County and Year 2003-2005

	2003		2004		2005		2003-2005 total	
	SA	ISP*	SA	ISP*	SA	ISP*	SA	ISP*
1 Adams	1	[4]	0	[1]	0	[1]	1	[6]
2 Boone	2	[2]	1	[1]	0	[0]	3	[3]
3 Brown	0	[0]	1	[1]	0	[0]	1	[1]
4 Christian	0	[0]	1	[0]	0	[0]	1	[0]
5 Clinton	1	[1]	0	[0]	0	[0]	1	[1]
6 Coles	0	[0]	1	[2]	0	[0]	1	[2]
7 DuPage	2	[6]	7	[16]	7	[9]	16	[31]
8 Edgar	1	[1]	3	[2]	0	[0]	4	[3]
9 Effingham	1	[1]	0	[0]	0	[0]	1	[1]
10 Fayette	2	[0]	1	[0]	0	[0]	1	[0]
11 Ford	0	[0]	0	[1]	1	[1]	1	[2]
12 Gallatin	2	[0]	0	[0]	0	[0]	2	[0]
13 Iroquois	0	[0]	1	[3]	1	[0]	2	[3]
14 Jackson	2	[1]	1	[0]	2	[2]	5	[3]
15 Jasper	0	[0]	1	[1]	0	[0]	1	[1]
16 Kankakee	0	[5]	2	[2]	5	[5]	7	[12]
17 Kendall	3	[1]	2	[2]	0	[2]	5	[5]
18 Lake	17	[15]	9	[9]	12	[13]	38	[37]
19 Lawrence	0	[0]	0	[0]	1	[0]	1	[0]
20 Macon	8	[8]	1	[5]	9	[9]	18	[22]
21 Madison	8	[9]	12	[11]	11	[11]	31	[31]
22 Marshall	1	[0]	0	[0]	0	[0]	1	[0]
23 Massac	1	[1]	4	[0]	0	[0]	5	[1]
24 McDonough	0	[0]	0	[1]	1	[0]	1	[1]
25 McHenry	1	[1]	3	[5]	5	[2]	9	[8]
26 Monroe	0	[0]	1	[0]	0	[0]	1	[0]
27 Morgan	1	[3]	0	[0]	3	[4]	4	[7]
28 Peoria	4	[9]	8	[16]	13	[17]	25	[42]
29 Pope	1	[0]	0	[0]	0	[0]	1	[0]
30 Putnam	1	[0]	0	[0]	1	[0]	2	[0]
31 Richland	0	[0]	0	[0]	4	[0]	4	[0]
32 Rock Island	1	[1]	2	[2]	4	[5]	7	[8]
33 Saline	0	[0]	0	[1]	1	[0]	1	[1]
34 Shelby	0	[0]	1	[1]	1	[0]	2	[1]
35 St. Clair	19	[22]	11	[34]	21	[46]	51	[102]
36 Stephenson	0	[0]	1	[1]	0	[0]	1	[1]
37 Tazewell^	2	[2]	2	[2]	0	[0]	4	[4]
38 Vermillion	3	[7]	12	[8]	10	[5]	25	[20]
39 Warren	0	[0]	1	[1]	0	[0]	1	[1]
40 Washington	2	[2]	0	[0]	0	[0]	2	[2]
41 Wayne	1	[2]	1	[0]	0	[0]	2	[2]
42 Whiteside	0	[1]	1	[5]	0	[0]	1	[6]
43 Williamson	0	[1]	0	[0]	2	[3]	2	[4]
44 Winnebago	13	[13]	11	[15]	21	[24]	45	[52]
TOTALS	99	[119]	103	[149]	136	[159]	338	[427]

* Annual figures from the Illinois State Police in brackets.

SOURCE: Data for the Illinois State Police was obtained from the Illinois State Police's reports published by the Illinois Uniform Crime Reporting Program. ISP data for 2003 was obtained from Section II - "Crime Index Offenses/Crime Rate Comparison 2004/2003" of the publication Crime in Illinois 2004. ISP data for 2004 and 2005 were obtained from Section II - "Crime Index Offenses/Crime Rate Comparison 2005/2004" of the publication Crime in Illinois 2005. These reports may be viewed online at <http://www.isp.state.il.us/crime/ucrhome.cfm>.

NOTE: the numbers of indictments may not correspond to the number of reported murders for reasons of lag, an unidentified or unarrested defendant or other reasons.

^ Tazewell provided 1 indictment for 2003 and 1 indictment for 2004. There is also 1 additional case for 2003 pending and 1 additional case for 2004 pending. No indictments were provided for those cases and therefore only 1 is noted for each year.

Table 2

Number of Murders Reported by the Illinois State Police, (ISP) in Counties where the State's Attorney did not Respond or Provide Indictments for First Degree Murder Cases, by County and Year, 2003-2005

	2003 ISP	2004 ISP	2005 ISP	2003-2005 total ISP
1 Alexander	2	2	0	4
2 Carroll	0	1	0	1
3 Champaign	5	4	5	14
4 Clay	1	0	0	1
5 Dekalb	0	0	2	2
6 Edwards	0	0	0	0
7 Franklin	0	0	0	0
8 Hancock	1	0	1	2
9 Jefferson	2	1	0	3
10 Jo Daviess	0	2	0	2
11 Knox	0	4	0	4
12 Lasalle	1	1	0	2
13 Lee	0	0	1	1
14 Logan	3	0	0	3
15 Macoupin	1	2	1	4
16 Marion	0	0	0	0
17 McLean	2	4	5	11
18 Menard	0	1	0	1
19 Mercer	0	0	0	0
20 Montgomery	1	2	0	3
21 Ogle	2	0	0	2
22 Perry	3	1	2	6
23 Pulaski	0	0	0	0
24 Randolph	0	1	0	1
25 Sangamon	10	10	5	25
26 White	0	1	1	2
27 Will	20	17	19	56
TOTAL	54	54	42	150
28 Dewitt*	3	0	0	
29 Kane**	21	20	19	

* Dewitt's State's Attorney sent a letter with names of two people charged with first degree murder but did not provide copies of the indictments. The numbers in the table for Dewitt indicate the total number of murders according to ISP.

* Kane's State's Attorney responded to request with a list of indictment numbers and names, but did not provide any indictments. The numbers in the table for Kane indicate the total number of murders according to ISP.

SOURCE: Data from the Illinois State Police was obtained from the Illinois State Police's reports published by the Illinois Uniform Crime Reporting Program. ISP data for 2003 was obtained from Section II - "Crime

Index Offenses/Crime Rate Comparison 2004/2003" of the publication Crime in Illinois 2004. ISP data for 2004 and 2005 were obtained from Section II - "Crime Index Offenses/Crime Rate Comparison 2005/2004" of the publication Crime in Illinois 2005. These reports may be viewed online at <http://www.isp.state.il.us/crime/ucrhome.cfm>.

Table 3

Counties Reporting No First Degree Murders by County and Year 2003 - 2005

	2003	2004	2005
	SA	SA	SA
1 Bond	0	0	0
2 Bureau	0	0*	0
3 Calhoun	0	0	0
4 Cass	0	0	0
5 Clark	0	0	0
6 Crawford	0	0	0
7 Cumberland	0	0	0
8 Douglas	0	0*	0
9 Fulton	0	0	0
10 Greene	0	0	0
11 Grundy	0*	0	0
12 Hamilton	0	0	0
13 Hardin	0	0	0
14 Henderson	0	0	0
15 Henry	0	0	0
16 Jersey	0	0	0
17 Johnson	0	0	0
18 Livingston	0*	0	0
19 Mason	0	0	0
20 Moultrie	0	0	0
21 Piatt [^]	0*	0	0
22 Pike	0	0	0
23 Schuyler	0	0	0
24 Scott	0	0	0
25 Stark	0	0	0
26 Union	0	0	0
27 Wabash	0	0	0
28 Woodford	0	0	0

* The Illinois State Police (ISP) also reported no murders for these counties with the following exceptions: one murder for Bureau in 2004, one for Grundy in 2003, one for Livingston in 2003, one for Piatt in 2003, and one for Douglas in 2004. Although the State's Attorney reported no first degree murders, a total of five murders were reported by ISP.

[^] Piatt State's Attorney stated there were "no murders reported in 2005". There is no reference to 2003 or 2004.

SOURCE: Data for the Illinois State Police was obtained from the Illinois State Police's reports published by the Illinois Uniform Crime Reporting Program. ISP data for 2003 was obtained from Section II - "Crime Index Offenses/Crime Rate Comparison 2004/2003" of the publication *Crime in Illinois 2004*. ISP data for 2004 and 2005 were obtained from Section II - "Crime Index Offenses/Crime Rate Comparison 2005/2004" of the publication *Crime in Illinois 2005*. These reports may be viewed online at <http://www.isp.state.il.us/crime/ucrhome.cfm>.