CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting, August 8, 2005

The fifth meeting of the Committee was held on August 8 at 120 S. Riverside Plaza, Chicago, from 2 to 4:45 P. M.

Present	Not present
James R. Coldren, Jr.	Leigh B. Bienen
James B. Durkin (conference phone)	Kirk W. Dillard
Theodore A. Gottfried	Edwin R. Parkinson
Jeffrey M. Howard	Arthur L. Turner
Boyd J. Ingemunson	
Thomas P. Needham	
Gerald E. Nora	
Richard D. Schwind	
Geoffrey R. Stone	
Randolph N. Stone (conference phone)	
Thomas P. Sullivan	
Michael J. Waller	

Also present: attorney Peter G. Baroni; Robert Boehmer, General Counsel, CJIA; Edwin Colfax, Northwestern University School of Law, Center on Wrongful

Convictions; Edan Evan, Downstate IL Innocence Project; Paul Froelich, State Representative, 56th District; Lori Levin, Executive Director, CJIA; Patrick D. McAnany, IL Coalition to Abolish the Death Penalty; Dan Rippy, Legal Counsel, IL Senate Republican Caucus; Derek Persico, office of IL House Republican Leader Tom Cross; and Kathryn Saltmarsh, Office of State Appellate Defender.

The Chair welcomed new member, Boyd Ingemunson, to the Committee, as replacement for Jeffery J. Tomczak.

The minutes of the meeting of June 13, 2005 were approved as written.

IL Open Meetings Act.

Attached to these minutes as Appendices 1 and 2 are memoranda prepared by the Chair, after consultation with Mr. Rippy, and distributed on July 5 and 8, 2005 by the Chair to all Committee members, containing a summary of the Committee members' obligations under the IL Open Meetings Act. This summary relates to meetings of the full Committee and subcommittees held in person and meetings by telephone conference call.

Because future full Committee meetings will be held at the CJIA offices at 120 S. Riverside Plaza, Chicago, and because funding for the Committee has been appropriated to CJIA's budget, it was agreed that notices and agendas of all full Committee and subcommittee meetings should be posted on CJIA's website and 10th floor bulletin board. Ms. Levin stated that Hank Anthony, Associate Director

of CJIA's Office of Administrative Services, will serve as primary contact for Committee members (telephone 312-793-8550). The Committee and subcommittee chairs should give advance notice to Mr. Anthony of all prospective meetings, so that notice may be posted on the CJIA website and bulletin board at least 48 hours in advance of the meetings. If the meeting is to be held at the CJIA office, the subcommittee chair should call Mr. Anthony well in advance to ascertain whether a room will be available on the proposed meeting date.

Mr. Boehmer stated that, in the event of meetings held by conference call, a speaker phone will be made available in the CJIA office, so that members of the public may come to the CJIA office and listen to what is said during the meetings.

It was also agreed that after meetings are held, the chair or designated person of the Committee and subcommittees should send the minutes of the meetings to CJIA's webmaster, Christopher Schweda (CSchweda@icjia.state.il.us), for posting on the CJIA website and bulletin board. Minutes are to be posted within seven days of their approval.

Retention of a Committee Reporter/Special Counsel.

A motion was made and seconded to close the meeting, pursuant to 5 ILCS 120/2 (c) (1), for a discussion of this subject. All members voted in favor of the motion, except Mr. Gottfried, who voted against closure, and Messrs. G. and R. Stone, who abstained.

The meeting was then closed. An audio recording was made of the closed portion of the meeting.

When the open meeting resumed, Mr. Schwind stated that during the closed portion of the meeting he was authorized to prepare a job description of the position to be filled, and consult with Mr. Boehmer as to the appropriate way the Committee should proceed, consistent with IL law.

Report of Subcommittee 1 - Police and Investigations.

The subcommittee members met at the University of Chicago Law School on August 1. Minutes of the meeting are attached as Appendix 3.

Mr. Coldren's memorandum of his visit on July 11 with Mr. Sullivan and others to view new facilities of the Chicago Police Department (CPD) for recording suspects in custodial homicide investigations, is attached as Appendix 4.

Mr. Howard presented a summary of the results of these two meetings. He also distributed "A Lawyer's Guide to the Chicago Police Department's Electronic Recording of Interrogations," prepared by Sheri H. Mecklenburg, General Counsel to the CPD Superintendent of Police, attached as Appendix 5. Mr. Coldren reported that the CPD has a training CD available. (Recording custodial interrogations in homicide investigations was the subject of Recommendation 4 of the IL Governor's Commission on Capital Punishment, April 2002.)

Mr. Sullivan stated that in future meetings we may wish to consider whether the IL statutes should be further amended to provide for police recordings of custodial investigations, without the knowledge or consent of the suspects, in additional classes of felony investigations.

Mr. Needham reported on a meeting he and Mr. Sullivan attended on June 15, at CPD headquarters, with Ms. Mecklenburg, State Senator John Cullerton, State Representative Julie Hamos, and a Jenner & Block law student summer intern. Ms. Mecklenburg summarized the status of the one-year pilot programs of the "double blind sequential" (hereafter "sequential") method of conducting lineups and photo spreads. The pilot programs are being conducted pursuant to 725 ILCS 5/107A-10 by police departments in Evanston and Joliet, and in CPD Areas 3, 4 and 5 of District 11. (Use of the double blind sequential method was the subject of Recommendation 12 of the Governor's Commission.)

The simultaneous method is the procedure traditionally used, in which all the members of the lineup or photo spread are displayed to the eyewitness at the same time, and then the administrator - who may or may not know which person in the array is the police suspect - inquires whether the witness sees the person believed to be the perpetrator, and the witness' degree of certainty.

In the sequential method, the administrator is not aware of the identity of the police suspect (this is the "double blind" aspect), and the members of the lineup or

photo spread are displayed to the witness one by one (that is, sequentially). The witness is asked to state his/her response to the person or photo - that is, the witness' degree of certainty as to whether or not this person is the perpetrator - before proceeding to the next.

In Evanston, every other lineup or photo spread is being conducted using the simultaneous procedure, and the sequential method is used in the alternative lineups and photo spreads. In Joliet, one of the two methods is being used in two of the four city police departments, and the other method in the other two departments. In CPD District 11, Area 4, the sequential method is being used for all lineups and photo spreads, and the simultaneous method is being used in Areas 3 and 5. The administrators of all of these lineups and photo spreads are required to fill out a form contemporaneously with the conduct of each, and forward the completed forms to a central location for later analysis. Ms. Mecklenburg is collecting the forms, and sending copies to two consultants retained to assist with the project.

Mr. Sullivan reported that the pilot programs are expected to end on September 30, and thereafter, as required by the statute, a report of the results of the programs is to be prepared for the IL General Assembly by the IL Department of State Police. (725 ILCS 5/107A-10(g).) He anticipates meeting again with Ms.

Mecklenburg after October 1, together with Ms. Hamos and Mr. Cullerton, to discuss procedures to be followed in drafting the report and related subjects.

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

Owing to scheduling conflicts, the subcommittee has not met since the full Committee meeting on June 13.

Mr. Sullivan called attention to a story in the Chicago Tribune of June 15, attached as Appendix 6, regarding "a backlog of untested DNA samples in Chicago police evidence vaults from as far back as 1998." The story reports that the IL State Police officials, who are responsible for testing by the IL State Police Crime Lab, stated they "are aiming to have the backlog dealt with by the end of July," and thereafter "state officials want to process DNA samples within 30 days." (Compare Recommendations 21, 23 and 26 of the Governor's Commission.)

Mr. Sullivan also reported on the progress being made by the subcommittee on its efforts to determine whether the IL statutory aggravating factors are in compliance with the "narrowing" requirements announced in *Zant. v. Stephens*, 462 U. S. 862, 877 (1983): state legislative aggravating factors that make defendants convicted of murder subject to capital punishment "must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to

others found guilty of murder." The members are considering conducting a study of all cases prosecuted in IL since January 1, 2003 in which the defendant was eligible for capital punishment. (Compare Governor's Commission Recommendations 27 and 28.)

Mr. Waller reported that the IL State's Attorneys Association has on its agenda for its meeting in December a protocol for making decisions as to whether or not to seek capital punishment in death eligible cases. (See Recommendation 29 of the Governor's Commission.)

Reports of Subcommittee 3 - Trial Court Proceedings, and Subcommittee 4 - Post- Conviction Proceedings, and General Topics.

On June 24, Subcommittees 3 and 4 held a joint meeting at the Office of the State Appellate Defender, 203 N. LaSalle, Chicago. The minutes of the meeting are attached as Appendix 7, and materials distributed at the meeting (except the provisions of SB 2082) are attached as Appendix 8. The meeting concerned the IL Capital Litigation Trust Fund; Ms. Nadine Jakubowski of the IL State Treasurer's Office was guest speaker. Among other things, she told of an alleged abuse of the Trust Fund by a lawyer in Jefferson County, whose petition for fees and expenses was approved for payment by the trial judge. She stated that, in an effort to prevent future similar abuses of the Trust Fund, two new statutes, SB 469 and 2082, have been enacted by the IL General Assembly; the bills are awaiting the

Governor's signature. SB 2082 includes provisions which require an appointed defense lawyer in a capital case to submit *ex parte* a proposed estimated litigation budget for approval by the trial judge. The judge is required to include the budget into a sealed initial pretrial order that reflects the understandings of the judge and the appointed lawyer regarding compensation and reimbursement for services and expenses. Modifications to the budget are authorized. The new provisions also prohibit the court from authorizing payment of bills that are not properly itemized. Ms. Saltmarsh of the IL State Appellate Defender's Office has prepared a more comprehensive summary of the new provisions, attached as Appendix 9.

Ms. Jakubowski was invited, and she agreed, to make ongoing recommendations to the Committee as to ways in which the Trust Fund legislation might be improved.

Mr. Howard also reported that the Cook County Treasurer, Maria Pappas, declined to send a representative to meet on August 8 at 11 A. M. with members of Subcommittees 3 and 4. Ms. Pappas' reason for declining to meet was that the Treasurer's Office performs purely ministerial functions in connection with disbursements from the Capital Litigation Trust Fund, and makes no independent judgments as to the reasonableness or appropriateness of charges that have been approved for payment from the Trust Fund. Ms. Pappas said she will send a letter to the Committee explaining her position.

Mr. Durkin expressed the view that the provisions of the statute, 725 ILCS 124/15 (g) and (h), require the Treasurer to make independent judgments regarding the appropriateness of the bills submitted for payment from the Trust Fund.

Mr. Gottfried stated that Subcommittees 3 and 4 will make a renewed effort to hold a meeting with Ms. Pappas in the near future.

Mr. Howard reported that a scheduled meeting with Judge Michael P. Toomin, Chair of the Special Illinois Supreme Court Committee on Capital Cases, had to be cancelled and will be rescheduled. The subject is to be the training of trial court judges who preside over capital cases, and of lawyers who try capital cases.

Other Business.

First Item. Mr. Sullivan raised the question whether the office holders who make appointments to the Committee pursuant to 20 ILCS 3929/2 (a), are authorized to remove their appointees who have not resigned, died or become physically or legally disabled from serving. It was agreed this subject will be held on the agenda for further consideration at the next Committee meeting.

Second Item. Mr. Schwind requested that each member send a brief biography to Mr. Boehmer of CJIA, so he may assemble and post them on the CJIA Committee website.

Next Meeting - September 26, 2005, 2 P.M.

It was agreed that the next meeting of the full Committee will be held on September 26 at 2 P. M., at the CJIA offices, 120 S. Riverside Plaza, Chicago.

Thomas P. Sullivan,
Chair
August 23, 2005

Attachments - Appendices 1 through 9.

CHICAGO_1298951_2

TPS

From: Sullivan, Thomas P

Sent: Tuesday, July 05, 2005 5:12 PM

To: 'lbbienen@law.northwestern.edu'; 'j-coldren@govst.edu'; 'senator@kdillard.com'; 'bdrew@hds.ilga.gov'; 'durkin@wildmanharrold.com'; 'theodore.gottfried@osad.state.il.us'; 'ceraetc@aol.com'; 'boydingemunson@hotmail.com'; 'tpn@needhamlaw.com'; 'geinora@uchicago.edu'; 'JerryNora@aol.com'; 'eparkinson@ilsaap.org'; 'rschwind@atg.state.il.us'; 'g-stone@uchicago.edu'; 'rn-stone@uchicago.edu'; 'repartturner9@aol.com'; 'mwaller@co.lake.il.us'

Cc: 'peter@landb.us'; 'drippy@senategop.state.il.us'

Subject: Illinois Open Meetings Act

Here is my summary of the Committee members' obligations under the Illinois Open Meetings Act.

TPS
7/5/05

The Capital Punishment Reform Study Committee has been determined to be subject to the provisions of the IL Open Meetings Act. The Act, as it applies to us, may be summarized as follows:

1. Notice and agendas of meetings.

Public notice must be given of all Committee and subcommittee meetings, involving a gathering of a majority of a quorum to discuss public business, as follows:

* *Regular meetings.* At the beginning of each calendar year, public notice must be given showing a schedule of the dates, times and places of all regular meetings for the the year. The notice is to be posted at the principal office of the body, or if there is none, at the building in which the meetings are to be held. The agenda for regular meetings is to be posted in the same places 48 hours in advance of each meeting.

* *Special or rescheduled meetings.* Notice and agendas of special or rescheduled meetings must be given 48 hours in advance by posting at the principal office and the building where the meeting will be held.

* Items not on a meeting agenda may be considered, but no action may be taken on those items.

2. Access to meetings.

Any member of the public may attend a meeting of the Committee and

APPENDIX 1

subcommittees, and may electronically record or film the proceedings.

3. Minutes of meetings.

Minutes must be kept of all meetings, including the date, time and place of the meeting, the members recorded as present or absent; a summary of discussion on all matters proposed, deliberated or decided; and a record of any votes taken. The minutes must be made available for public inspection within seven days of the approval of the minutes.

4. Closed meetings.

On vote of a majority of a quorum present, meetings may be closed for a number of specified reasons (see 5 ILCS 120/2 (c)), including appointment of specific employees or legal counsel. The minutes of the public meeting must disclose the vote of each member on the question of closing the meeting, and a citation to the specific statutory exemption which authorizes the closing. The body must keep a verbatim record of all closed meetings in the form of an audio or video recording. No final action may be taken at a closed meeting.

TPS

From: Sullivan, Thomas P
Sent: Friday, July 08, 2005 11:14 AM
To: 'lbbienen@law.northwestern.edu'; 'j-coldren@govst.edu'; 'senator@kdillard.com'; 'bdrew@hds.ilga.gov'; 'durkin@wildmanharrold.com'; 'theodore.gottfried@osad.state.il.us'; 'ceraetc@aol.com'; 'boydingemunson@hotmail.com'; 'tpn@needhamlaw.com'; 'geinora@uchicago.edu'; 'JerryNora@aol.com'; 'eparkinson@ilsaap.org'; 'rschwind@atg.state.il.us'; 'g-stone@uchicago.edu'; 'm-stone@uchicago.edu'; 'repartturner9@aol.com'; 'mwaller@co.lake.il.us'
Cc: 'peter@landb.us'; 'drippy@senategop.state.il.us'
Subject: Illinois Open Meetings Act

Leigh Bienen has asked whether the Illinois Open Meetings Act applies to telephone conferences. The Attorney General's Manual states at page 25 that telephonic and electronic assemblages are subject to the same requirements as personal meetings. In the event of a telephonic meeting, the required notice must be given, and the public must be afforded an opportunity to hear, by speaker phone or other device, the proceedings at the meeting.

TPS

APPENDIX 2

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
Police and Investigations Subcommittee

Subcommittee Meeting
University of Chicago Law School (Prof. Geoffrey Stone's Office)
1 August 2005, Noon to 1:30 p.m.

Subcommittee members present: Chip Coldren, Jerry Nora, Geoff Stone

Not present: Tom Needham

- Subcommittee members present discussed a schedule of regular meetings, and agreed to schedule regular meetings of the Subcommittee every other month on the first Monday at the University of Chicago Law School; other meetings can be scheduled as needed. Thus, the next several Subcommittee meetings will be scheduled for:

  October 3, 2005
  December 5, 2005
  February 6, 2006
  April 3, 2006

  If the University of Chicago Law School is not available or does not have a suitable meeting location, then the Subcommittee will meet at the ICJIA offices, according to the offer of Ms. Levin at the last full Committee meeting.

  Pending approval of this schedule at the full Committee meeting, Chip will forward this schedule to the person designated as a liaison at ICJIA so the schedule can be posted on the ICJIA web site. Chip will also work with Geoff Stone at the University of Chicago Law School to make sure that meeting agenda are posted at least 48 hours in advance of regular meetings. Chip will also work with the University of Chicago Law School and ICJIA to post other Subcommittee meetings or rescheduled regular meetings according to the mandates of the Open Meetings Act.

- Subcommittee members present discussed activities since the last Subcommittee meeting. Chip explained that he had a telephone conversation with Dr. Tom Jurkanin of the Illinois Law Enforcement Training and Standards Board (ILTSB) and learned the following:

    - ILTSB has done little regarding the police officer decertification issue, the best contact for information on that matter would be with the Illinois Labor Relations Board.
    - ISP is doing most of the work on sequential line-ups and interrogation/interview videotaping, so it would be best to contact them. Dr. Jurkanin also suggested that the Subcommittee contact Ms. Ellen Mandeltort of the Attorney General's office, who has been involved in training on these matters.

- ILTSB has not been directly involved in issues regarding preservation of evidence, and Dr. Jurkanin suggested the Subcommittee contact the Illinois Chiefs of Police and Sheriffs Associations to inquire further about development of procedures or training in that area.

Follow-up actions pending on these items are as follows:

- Gerry Nora will place a follow up call to the Labor Relations Board, to discuss any rules or procedures developed regarding police officer decertification
- Gerry Nora will contact Ms. Mandeltort at the Attorney General's office regarding law enforcement training issues
- Chip will contact the Illinois State Police, Illinois Chief's Assoc., and the Sheriff's Assoc. to follow-up on any actions or developments with those organizations, especially regarding preservation of evidence.

- Chip summarized his visit (with Tom Sullivan and several others) to the Chicago Police Department (CPD) new videotaping set-up at the Wentworth District stationhouse (see attached). Several questions and discussion topics arose from that summary:
  - When, exactly, do interviews start and stop?
  - Do suspects consent to interviews? Can they decline the videotaping?
  - Who can access the recorded interviews (for example, can journalists or other authors obtain them?)
  - Gerry Nora said he could bring in some examples of videotaped interviews once they become public record.
  - Gerry expressed some concern about how people appeared on the recorded interviews. For example, if an interviewer is closer to the camera, and stands up, does he/she look bigger than the other person(s) in the room? This could be important.
  - What is the status of the ICJIA project to study the implementation of videotaped interviews in capital cases.

- Committee members present suggested that Sherry Mecklenberg of CPD (ISP?) attend the next Subcommittee meeting, so the Subcommittee can delve into questions about line-ups and videotaped interviews directly with her. Chip will contact her about this.

The next Subcommittee meeting is scheduled for Monday, October 3rd, 2 p.m. at the University of Chicago Law School; an agenda will be forthcoming.

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Notes from A Demonstration of the Chicago Police Department
Interview/Interrogation Recording Capability

51st and Wentworth District Station, July 11, 2005, 2:00 p.m.

Committee members present: Tom Sullivan, Chip Coldren

CPD representatives present: Deputy Chief of Detectives Mike Chasen, Lt. Martin Reizak, Sherry Mecklenberg

Others present: law student interns from Jenner & Block

- The session began with a debriefing from CPD representatives. The law mandating video recording of all interviews or interrogations with murder suspects was enacted two years ago, and it goes into effect on July 18, 2005 (next week). The CPS representatives explained that implementation of hand held video cameras during interviews would satisfy the legal requirement, but CPD wanted to go beyond that. They wanted a system that would protect them (CPD) from lawsuits, and that would make the best case for the prosecution. CPD looked at what other jurisdictions were either implementing or planning regarding videotaped interviews, and determined that conventional video tapes would present storage problems.

  Thus, they invented their own system. It is a digital system with:
  - Continuous recording
  - Infrared backup in case lights go off in the interview room
  - Procedures that avoid repeated turning on and off of the system
  - Unalterable recordings
  - Tape backup capability
  - Capability to make duplicates
  - A split signal, so that one computer file is transferred to downtown HQ and another is kept locally on DVD for access by the State's Attorney's Office (copies of these files are maintained locally for 14 days following an interview, after that attorneys must request copies of interview files from downtown HQ)
  - A computer menu that 'authenticates' each interview, thus restricting access for attorneys to files pertaining only to cases they are assigned to (e.g., prosecutors and defense attorneys cannot access video files for cases not assigned specifically to them); each interview is treated as a separate file, linked to a particular case
  - An attorney switch, so that videotaping can be immediately de-activated when a privileged client-attorney conversation starts; the time counter continues on the tape but the substance of the discussion is not recorded, thus preserving lawyer/client confidentiality

- CPD representatives explained that there are 37 such interview rooms available city-wide, 8 here at the Wentworth District; CPS also has portable equipment for emergencies or when its need is warranted

- In response to a question about the extensiveness of testing of this new system, CPD representatives explained that they tested it repeatedly; they took 1 room out of service and ran the system continuously for 96-108 hours, turning it on and off repeatedly; they experienced no problems

- CPD representatives explained the storage requirements for this system:
    - They store the interviews in 1-hour segments on mpeg files
    - 1 hour of interview requires .8 gigabytes
    - They estimate that, for 450 homicides in one year, they will need about 78 tetrabytes of storage space (1 tetrabyte = 1,000 gigabytes)
    - Storage media costs about $500,000 per 100 tetrabytes
    - They would like to retain interview files for 5 years

[Note: we should revisit these estimates or get clarification]

- Tom Sullivan asked what CPD would think about changing the eavesdropping law to allow such videotaping for all felonies, not just homicides; this seems to be where things are headed; but the cost of storage will be an issue

- Following this discussion, which lasted about 1 hour, we walked over the interview rooms and received a demonstration.

A LAWYER'S GUIDE TO THE CHICAGO POLICE DEPARTMENT'S ELECTRONIC RECORDING OF INTERROGATIONS

This report was prepared by:

Sheri H. Mecklenburg
General Counsel to the Superintendent of Police
Chicago Police Department

July 2005

APPENDIX 5

A LAWYER'S GUIDE TO THE CHICAGO POLICE DEPARTMENT'S ELECTRONIC RECORDING OF INTERROGATIONS

Prepared by Sheri H. Mecklenburg
General Counsel to the Superintendent of the Chicago Police Department

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A LAWYER'S GUIDE TO THE CHICAGO POLICE DEPARTMENT'S ELECTRONIC RECORDING OF INTERROGATIONS

I. INTRODUCTION

On July 18, 2005, the Chicago Police Department ("CPD") will begin digital recording of custodial interrogations in places of detention of persons suspected of a homicide, pursuant to 725 ILCS 5/103.21. CPD has been developing a system for recording interrogations for more than two years, and have invested substantially in training our investigators on the system. CPD's system is custom-designed and already is setting the standard for other jurisdictions. Even before the system was implemented, jurisdictions from around the country and abroad have visited CPD to view the system.

CPD realizes that, at least initially, there will be many questions from lawyers involved in cases in which there is a recording of the interrogation. The purpose of this Guide is to answer many of these questions. This Guide will first review the statute governing electronically recorded interrogations in Illinois. This review of the statute does not serve as a substitute for reading the law but rather serves to put CPD's system in context. This Guide then will explain the state-of-the-art system which CPD has designed and implemented. Finally, this Guide will address the discovery process for obtaining a copy of a digitally recorded interrogation.

II. THE LAW

On July 18, 2003, the Illinois State legislature passed 725 ILCS 5/103-2.1, requiring electronic recording of custodial interrogations of persons accused in homicide investigations ("the Law"). The Law allowed two years from that date for implementation, thus becoming effective on July 18, 2005.

A. Presumption of Inadmissibility unless electronically recorded.

The Law provides that statements made by a suspect in a homicide case during a custodial interrogation at a place of detention are presumed inadmissible unless the entire interrogation is electronically recorded. Specifically, under the Law, "an oral, written or sign language statement of an accused made as a result of a custodial interrogation at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding" brought under certain homicide offenses as defined under the Criminal Code of Illinois, "unless (1) an electronic recording is made of the custodial interrogation and; (2) the recording is substantially accurate and not intentionally altered." 725 ILCS 5/103-2.1(b), (d).

B. Offenses which mandate electronic recording

The "homicide" offenses to which this Law applies are: First Degree Murder (Section 9-1 of the Criminal Code, 720 ILCS 5/9-1); Intentional Homicide of an Unborn Child (Section 9-1.2 of the Criminal Code, 720 ILCS 5/9-1.2); Second Degree Murder (Section 9-2 of the Criminal Code, 720 ILCS 5/9-2); Voluntary Manslaughter of an Unborn Child (Section 9-2.1 of the Criminal Code, 720 ILCS 5/9-2.1); Involuntary Manslaughter and Reckless Homicide (Section 9-3 of the Criminal Code, 720 ILCS 5/9-3); Involuntary Manslaughter and Reckless Homicide of an Unborn Child (Section 9-3.2 of the Criminal Code, 720 ILCS 5/9-3.2); Drug-induced Homicide (Section 9-3.3 of the Criminal Code, 720 ILCS 5/9-3.3). In addition, on July 11, 2005, the Governor signed a separate bill that requiring electronic recording of interrogations of a person charged with a DUI that resulted in a death. See Public Act 94-0117.

C. Definitions: electronic recording, custodial interrogation, place of detention.

Under the Law, "electronic recording" is defined as motion picture, audiotape or videotape or digital recording. 725 ILCS 5/103-2.1. CPD has chosen to digitally record both audio and video, although a simple audio recording alone would satisfy the Law.

The Law defines a custodial interrogation as "any interrogation during which (I) a reasonable person in the subject's position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response." 725 ILCS 5/103-2.1(a). The Law further defines a "'place of detention' as a building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency, not a courthouse, that is owned or operated by a law enforcement agency at which persons are or may be held in detention in connection with criminal charges against those persons." Id.

D. Required Retention

Every electronic recording made pursuant to the Law must be preserved until such time as the defendant's conviction for any offense relating to the statement is final and all direct and *habeas corpus* appeals are exhausted, or the prosecution of such offenses is barred by law. 725 ILCS 5/103-2.1c).

E. Admissibility of unrecorded interrogations

1. When the presumption can be overcome

The presumption of inadmissibility of a statement made in the course of an unrecorded interrogation may be overcome *by a preponderance of the evidence* that the statement was reliable and voluntary, based upon the totality of the circumstances. 725 ILCS 5/103-2.1(f).

2. Impeachment

An unrecorded statement is always admissible for purpose of impeachment. 725 ILCS 5/103-2.1(d), (e).

3. Exceptions to Inadmissibility of Unrecorded Statements

The Law provides certain specific exceptions to the presumption of inadmissibility, referred to as "Section (e) exceptions." 725 ILCS 5/203-2.1(e). The State bears the burden of proving, *by a preponderance of the evidence*, that one of these exceptions applies to allow admissibility:

(1) a statement made by an accused in open court at his or her trial, before a grand jury, or at a preliminary hearing;

(ii) a statement which was made during a custodial interrogation that was not recorded as required by the Law because electronic recording was not feasible;

(iii) a voluntary statement, whether or not the result of a custodial interrogation, that goes to the credibility of the accused as a witness;

(iv) a spontaneous statement that is not made in response to a question;

(v) a statement made after question that is routinely asked during the processing of the arrest of the suspect;

(vi) a statement made during a custodial interrogation by a suspect who requests that the electronic recording not be made, provided that the request is electronically recorded;

(vii) a statement made during a custodial interrogation conducted outside of Illinois;

(viii) a statement made at a time when the interrogators are unaware that a death has in fact occurred; or

(ix) any other statement that may be admissible under law.

F. <u>Confidentiality and Disclosure</u>

The Law provides that any electronic recording of a statement made pursuant to the Law "shall be confidential and exempt from public inspection and copying, as provided under Section 7 of the Freedom of Information Act, and the information shall not be transmitted to anyone except as needed to comply with this Section." 725 ILCS 5/103-2.1(g). Section 7 of the Freedom of Information Act provides an exemption for disclosure of, among other things, certain records of law enforcement agencies.

G. <u>Juvenile Version of the Law</u> - 705 ILCS 405/5-401.5

The Legislature also enacted a similar law applicable to juveniles, to render inadmissible any unrecorded statement of a minor who is charged with an act that if committed by an adult would be brought as one of the homicide offenses covered by the adult version of the Law. The juvenile version differs in that, unlike the adult version, a court is not excluded from the definition of "place of detention."

III. THE CHICAGO POLICE DEPARTMENT ELECTRONIC RECORDING SYSTEM

A. <u>The system in general</u>

Although the law requires only an electronic recording, CPD has chosen to implement a state-of-the art digital recording system. CPD had this system designed to its own unique specifications, at a cost of millions of dollars. CPD has installed the digital recording equipment in 38 rooms, which includes all interrogation rooms at each of the five Detective Areas, three interrogation rooms at the Homan Square facility and two polygraph rooms. CPD also has acquired portable equipment in the event that our officers conduct custodial interrogations in

places of detention outside CPD facilities, such as a county jail, or if the interrogation moves outside the facility, such as to the scene of the crime during a reenactment. This Guide will describe only the permanently-installed system.

In each of the rooms where the equipment is installed, the actual camera lens is placed unobtrusively in an upper corner of the room, near the ceiling. The camera is stationary but is installed at an angle designed to capture all parts of the room. A microphone also is installed in the ceiling, designed to pick up discussions even at a whisper.

B. <u>The control box: Turning the equipment on and off</u>

A metal control box is installed on the wall outside of each interrogation room. The control box, about 8 inches squared, has a hinged door which locks. The keys shall be maintained by supervisors. The inside of the control box contains a screen or monitor and a red button in the lower left corner. Pushing the red button causes the monitor to display live viewing of the inside of the room, serving as an "electronic peephole."

The control box also contains a black "on-off" switch located in the upper right corner of the inside of the box. The detective simply pushes the switch to the "on" position to start the recording. When the recording equipment is on, a red light will appear at the top of the control box to alert those outside the room that the room is in use with recording equipment. If the equipment were inadvertently turned off, the system emits a long, low beep in the interrogation room to notify the interrogator that the recording equipment has been turned off.

The control box contains two earphone jacks to allow someone outside the room to listen to the interrogation as they watch it on the monitor. This could be useful for another detective working on the same case, for a supervisor or for a felony review Assistant States Attorney.

C. When will the recording be turned on? When will the recording be turned off?

CPD does not need the consent of the homicide suspect to record because the Law creates an exception to the eavesdropping statute for the recording of statements by homicide suspects during a custodial interrogation. If a suspect requests that his statements not be recorded, law enforcement is permitted to turn off the equipment, provided that the suspect's request is recorded. Law enforcement is not obligated, however, to turn off the recording even at the request of the suspect.

CPD will turn on the recording when the suspect is placed in the interrogation room or, in the event that a witness becomes a suspect, as soon as the officers have reason to believe that the person is a suspect. The recording will be left on continuously while the suspect is in the interrogation room. The recording also will continue to run if the suspect is taken from the room for a short and temporary break, such as to use the bathroom.

The recording will be turned off when the interrogation is over. The recording also may be turned off when the suspect is out of the room for an extended period, such as if a suspect is to stand in multiple lineups. The detective will restart the recording equipment when the interrogation continues. The ending time of the first video and the beginning time of the second video will document the length of the break.

D. How will I know when the recording has been turned on, off or restarted?

The date and digital clock reflecting real time of the interrogation will be displayed continuously on the bottom of the recording, as well the Area and room where the recording took place. The digital clock is tied to the CPD clock system and cannot be changed. The digital clock at the bottom of the recording runs from the time that the equipment is turned on until the

time that it is turned off, showing the time and length of the interrogation, as well as certain points in the interrogation.

As soon as the recording equipment is turned off, the signal for that recording will be sent to the computer hard drive Storage Area Network ("SAN") at CPD headquarters. The SAN is a huge computer contained in its own room. The recording is now in its own computer file on the SAN. If the recording equipment is turned back on, a new recording file is created. A new recording file technologically cannot be made to continue from a prior recording file. Each recording file must be saved separately, resulting in its own inventory number. *See* Section IIIG, below, for discussion of *Saving and Inventorying the Recording*.

E. What if the lights in the room are turned off?

When the lights in the room are on, the recording (and the monitor in the control box) show the room in full color. In fact, the inside of the rooms have been painted a vivid blue to reduce the glare of the walls, because light colored walls cast significant glares during initial tests. However, if the lights in the room are turned off for any reason (such as to allow the suspect to sleep), the room will be completely dark but both the monitor and the recording still show the room clearly through infrared lighting. When the lights are turned off, both the monitor and the recording will switch from color to black-and-white. This change from color to black-and-white indicates that the lights have been turned off.

F. What if an attorney goes into the room to confer with his/her client? How will the privilege be maintained?

The control box contains a switch that requires a key to turn it. This is the "attorney switch." Before an attorney steps into the interrogation room to confer with his/her client, the

attorney will be given an "attorney key" to activate the attorney switch. Once activated, all video and audio signals will be blocked so as to maintain the confidentiality of the attorney-client discussions; the recording will continue to show the date and time but will display the words "no signal" on both the recording and the monitors. While the attorney switch is on, the attorney will hear a low-pitched tone or "beep" in the room approximately every 45 seconds, indicating that the attorney switch remains activated and that all video and audio signals remain blocked.The attorney will keep the key until finished and then, upon leaving, return the key to the detective. The attorney can watch as the detective turns the attorney switch to resume regular recording.

G. Saving and inventorying the recording

As the equipment is recording, the signal contemporaneously is sent to a temporary hard drive in the equipment room located at the unit of interrogation. Each unit's equipment room contains large-scale computer equipment as well its own cooling unit to prevent overheating of the equipment. Only authorized, trained personnel are permitted to enter the equipment room.

As previously noted, when the "off" button is pushed to stop the recording, the temporary hard drive at the unit's equipment room automatically will begin transmitting the recording to the long-term hard drive of the SAN located at Chicago Police Headquarters. The recordings will be stored on the hard drive of the SAN; there is no storage on tapes, CDs or DVDs. CPD does not yet know how long it will take to reach capacity of storage on the SAN. Some estimates are 18 months. CPD will retain the recording permanently but, in light of changing technology, CPD has not yet committed to a storage procedure when the SAN reaches capacity. Within the first year of the program, CPD will determine whether it will purchase a

new SAN as the current one reaches capacity or if there is a more efficient and economical storage procedure. CPD anticipates keeping the recordings stored on-line for five years and will explore archiving options for extended storage.

The signal can take up to eight hours to complete in the SAN, depending upon the length of the recording, although testing showed shorter periods for sending even long recordings. The recording cannot be retrieved from the network until the detective has properly stored the recording by entering certain case information into the computer. When the detective logs onto the computer, any video files from that detective's Area which have not yet been permanently stored on the network automatically will appear on the computer screen with the Area, date, time and room of the recording so that the detective will know which recording is associated with his case. The detective then enters the necessary information into the computer for permanent network storage including, among other things, the name of the case, the name of the suspect interrogated and the names of the detectives assigned to the case. CPD will allow the detective up to three (3) days to enter this information into the computer. Supervisors regularly will monitor the computer program to ensure that all recordings are timely stored.

Once the detective enters the information required, the recording is permanently stored. Each stored recording automatically will be labeled with an Inventory Number starting with a "V" to indicate that the number refers to a video. For example, a recording would be indicated by an inventory number "V01234." When an RD# (Records Division #) is entered into the video computer system, all "V" inventories associated with that RD# will appear, showing all recordings associated with that case. If the recording equipment was turned off and then turned back on during the course of the interrogation, a new recording file automatically was created

and stored under a separate "V" inventory number. There will be at least one "V" number for each suspect recorded. There may be more than one "V" number for a single suspect, if the video recording was turned off during a break in the interrogation. More than one "V" number also may indicate multiple suspects.

The signal will remain on the temporary hard drive located in the equipment room at the place of interrogation for approximately 14 days, as back up to insure against system failure. The temporary hard drive has limited space and, therefore, after 14 days, will recycle and record over old interrogation signals. Long before that, the recording will have transferred to the SAN.

H. Is there any way to view a specific part of the video without watching it all?

The interrogators will, where practicable, note in their General Progress Reports the time that certain events occur during the interrogation, for the purpose of subsequently tracking the interrogation. These notations may reflect relatively insignificant events such as food, bathroom or nap breaks, or they may reflect significant events such as giving and/or waiving Miranda Rights, incriminating statements or a physical demonstration. When the detective inputs the case information into the computer for storage of the recording, the detective will have the option of filling in a screen for "Tracking Events." Tracking Events will provide a guide to facilitate watching the recording but are not meant to be, and are not represented as, a complete log of the interrogation.[1] The complete and accurate record of the interrogation is the recording itself.

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[1]For example, a prosecutor or defense attorney might consider something significant in the interrogation that the detective did not note on the Tracking Events either due to inadvertence or because other events had just been logged and the detective did not feel it was necessary to separate the events. In addition, a detective in the middle of an interrogation may want to minimize his/her note taking in order to continue a discussion and rapport with the subject.

When the detective enters the Tracking Events on the computer screen, these entries are linked with the recording, so that the computer can access a specific part of the recording directly by hitting the Tracking Event on the computer. For discovery of the Tracking Event screen, *see* Section IV ("Discovery"), below. Even a hard copy of the Tracking Event screen guides an attorney to a specific portion by matching the notation with the time on the recording.

I. <u>Who can access the recording</u>?

Only certain Chicago Police Department members will have the ability to access a specific recording for viewing. The detectives initially entered into the computer as assigned to the case can view the recording, as well as the Cold Case unit and certain exempt members. Other members will not be able to watch a recorded interrogation. If another member of CPD has a legitimate reason to view the recording, an exempt command staff member can authorize that member to view it. The computer contains a screen called "Access History," which will show who has accessed the recording and when.

The Assistant States Attorneys also will have access to view the recordings. The computer "Access History" screen will reflect any access by CPD personnel *and* States Attorney personnel. For discovery of the computer Access History, *see* Section IV ("Discovery"), below.

J. <u>What if the equipment is used to record an interrogation that is not covered by this Law, for instance a sexual assault suspect</u>?

If a CPD member uses the equipment to record an interrogation of a suspect not covered by this Law, CPD will burn the recording to a DVD and notify the prosecutor's office of the existence of the DVD recording, but CPD will not permanently store it on the SAN.

IV. **DISCOVERY**

Discovery of recordings of interrogations, like all discovery, shall be in accordance with the Supreme Court Rules. 725 ILCS 5/114-15. The Supreme Court rules require the State to disclose to defense counsel any written or recorded statements made by the accused and also to inform defense counsel if there has been any electronic surveillance of conversations to which the accused was a party. S.Ct. Rule 412(a), (b). This obligation shall be performed as soon as practicable. S.Ct. Rule 412(d). The State may perform this obligation in any manner mutually agreeable or by notifying defense counsel that the material may be inspected...copied...during specified reasonable times; and making available to defense counsel at the time specified such material and suitable facilities or other arrangements for inspection, testing, copying, photographing of such material or information. S.Ct. Rule 412(e).

The State shall ensure that a flow of information be maintained between the various investigative personnel and the State sufficient to place within its possession or control all material and information relevant to the accused and the offense charged. S.Ct. Rule 412(f). Upon defense counsel's request for material or information which is discoverable if in the possession of the State, and which is in the possession of other governmental personnel, the State shall use diligent and good-faith efforts to cause the material to be made available to defense counsel and *if the State's efforts are unsuccessful*, the court shall issue suitable subpoenas or orders. S.Ct. Rule 412(g) (emphasis added). (Similarly, under 725 ILCS 5/114-15, a law enforcement agency shall provide *to the State* all material or information in its control that would tend to negate the guilt of the accused or reduce his punishment.)

A. **Discovery of the Recorded Interrogation**

In order for CPD to satisfy its obligation to provide the State with a copy of the recording, and to allow the State to satisfy its obligation to provide access to the defense, CPD has opened its network to the Office of the Cook County States Attorney so that the State will have the same access as CPD to the original computer files of recorded interrogations. When the detective enters the information in the computer to permanently store the recording, the recording will become accessible on the network to CPD *and* the State. The State will then make a duplicate of the recording for production to the defense.

The recordings are in a format that must be burned to a DVD-CD. Each DVD-CD allows up to approximately 4 hours of recording to be stored (whereas a regular CD has only 700 mb, which allows only 30-45 minutes of recording); therefore, the State may produce multiple DVD-CDs for a single interrogation. The format is in an Mpeg 4 file that can be played only on a computer. The recordings cannot be burned in a format that can be played on a regular VCR or DVD player.

Once the State has produced a copy of the recording to the defense, the defense can burn duplicate copies on their own equipment. Because it is the State's obligation to produce a copy of the recording, once the State has fulfilled that obligation, CPD will return to the court any subpoena which requests additional copies of the recording for failure to comply with Supreme Court Rule 412 and to inform the court that the recording is available from the State. If CPD is forced to make duplicate copies, it will be very expensive and CPD will require a fee from the person seeking the duplicate.

B. Discovery of the Felony Review Portions of the Interrogation

During the interrogation, a prosecutor on-site *may* have burned to a DVD-CD parts of the interrogation for purposes of felony review. The equipment room at the unit's premises contains additional monitors for viewing by a felony review assistant, a supervisor or another detective involved in the case. The equipment room also has limited ability to burn a DVD-CD from the temporary hard drive, which may be utilized by the felony review assistant. This equipment burns hour-for-hour and the burner can be turned off and on manually to capture only parts of the interrogation, such as the Miranda rights or the actual confession. The felony review assistant can control the burner for purposes of reviewing the case. Because this burner can be turned off and on for partial recordings, any DVD-CD made on this equipment will contain a watermark and words indicating the location of where the recording was burned (e.g., Detective Division, Area 1) followed by the words "not an official document" to show that it is not the official document of the Chicago Police Department. Only a copy burned from the permanently stored SAN file is the official document of the recording.

C. Discovery of Computer Records Associated With the Recording

The information entered into the computer for storage of, or access to, the recorded interrogations also will be accessible through the computer network to the Office of the States Attorney and will be available for discovery from the State. For example, the State will have access through the network to the computer screens for storage, Tracking Events and Access History, and will be able to produce it to the defense. The State also will be able to run the RD# through the computer to ensure that the State has produced all videos associated with a case.

D. <u>Discovery of polygraph recordings/mobile equipment recordings</u>

The recording equipment located in the polygraph rooms is not equipped to send a signal to the SAN. Recordings made in the polygraph rooms will be recorded directly onto a DVD-CR. Upon finishing, the polygraph operator will label the DVD-CR with the case information and hand the DVD-CR to the detective. The detective will upload the DVD-CR into the SAN back at the Area, so that it is available on the network to the State to produce to the defense. The polygraph recording will automatically, upon being uploaded, receive its own "V" inventory number. The polygraph recording will display the date and real time of the polygraph, the date and place of the upload and, in place of the location of the polygraph, will contain the words "DVD," indicating that it was transferred directly to a DVD and then uploaded to the SAN.

The detective will send the original DVD to CPD's Records Division. The DVD contents will have been duplicated on the network and therefore there will be no need to produce the DVD separately. Nevertheless, upon request by the State or by subpoena issued by the court, CPD will provide to the State or the court, free of charge, two copies of the DVD – one for the State and one for the defense. The request should indicate "Polygraph Digital Recording DVD." Additional copies will not be provided by CPD except upon court order and for a fee.

Similarly, recordings made on the mobile equipment will indicate the words "DVD" in place of the location of the recording. Like the procedure with recordings in the polygraph rooms, CPD will upload those recordings to the SAN to make it available on the network. CPD will follow the same inventory and discovery procedures for a recording by the mobile equipment as CPD does for a recording in a polygraph room. The initial request should indicate "Mobile Equipment Recording of Interrogation DVD."

V. CONCLUSION

CPD has invested millions of dollars in state-of-the-art digital recording equipment which far exceeds the requirements of the Law. CPD has designed and implemented this sophisticated recording system to protect the constitutional rights of the accused as well as to protect CPD officers from false accusations of misconduct. CPD is confident that this digital recording system will ensure the integrity of the process and further will promote the public's confidence in the Chicago Police Department, homicide convictions and our criminal justice system. CPD has provided this Guide in an effort to make the recording process transparent, so that every attorney, whether prosecutor or defense, will fully understand the Chicago Police Department's Electronic Recording of Interrogations.

This Guide has been prepared by Sheri H. Mecklenburg, General Counsel to the Superintendent of the Chicago Police Department.

State police crime lab set to clear backlog of DNA

Rape-kit samples have been sent from vaults in Chicago

By Carlos Sadovi
Tribune staff reporter

Illinois State Police officials are expected this summer to clear up a backlog of untested DNA samples in Chicago police evidence vaults from as far back as 1998, state and local officials said Tuesday.

The announcement comes after a Tribune story earlier this year highlighted a dispute between state and local officials about whether to report more than 1,200 untested DNA samples from rape kits in an annual state [illegible]it.

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Chicago police officials said the Illinois State Police Crime lab has now accepted the disputed number of rape kits and is expected to receive another 30 samples taken from crime victims in 2005. The kits hold traces of DNA left by attackers that can lead to a suspect when compared with national and state DNA databases.

"They were very responsive to the request and acted very quickly," said Richard Kobel, deputy chief of the Chicago police detective division.

Since January, the department has been in contact with state police officials and sent them monthly shipments, Kobel said.

State police officials said they are aiming to have the backlog dealt with by the end of July. Once it has been eliminated, state officials want to process DNA samples within 30 days, said Lt. Lincoln Hampton, a state police spokesman. Cases now can take as long as four months to be analyzed, he said.

"We are on target, the cases are in our system . . . we want to get these cases solved. If it gets criminals off the streets, that's our goal," Hampton said.

Gov. Rod Blagojevich allocated $2.6 million in fiscal 2004 and 2005 to help ease the backlog problem, spending the money on hiring and training 13 lab analysts and sending the majority of the samples to private labs, said Abby Ottenhoff, a spokeswoman for the governor. The governor's office has allocated $2.2 million in the fiscal 2006 budget to deal with the remaining case backlog, she said.

"The governor has been committed to eliminating the DNA backlog and making sure that evidence being stored in the lockers has been tested and put to use by investigators," Ottenhoff said. "We are pleased that the process of getting samples from Chicago is working smoothly."

A law passed last year required the state police to make yearly reports to the governor's office and the General Assembly on the agency's progress in clearing a backlog of DNA evidence kits in rape cases. The backlog was highlighted in a Tribune story in December 2003.

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Sheri Mecklenburg, chief counsel to Chicago Police Supt. Philip Cline, said department officials told state police about the disputed numbers before the audit was released. Mecklenburg, head of the Women's DNA Initiative, a private group raising money to have the rape kits analyzed, said she is happy the backlog is being eliminated.

She said her group has submitted 250 DNA samples for testing in private labs.

"We are grateful that the state has stepped up on this and hope that between the state and WDNA's efforts the backlog will be eliminated in 2005," Mecklenburg said. "We hope this brings some measure of comfort to the victims and prevents future crimes."

Mecklenburg has written to state legislators to try to have the reporting requirement changed so the numbers presented by the state police include all kits awaiting DNA analysis, whether or not they are in the hands of state police officials. Her recommendation would require local law enforcement to report the number of cases in their possession to state police.

Chicago police officials are conducting an internal audit of untested DNA samples in its vaults, which go back to 1996 and have never been offered for testing to state police officials.

Sasha Walters, director of advocacy services for Rape Victims Advocates, a Chicago counseling center, applauded the state's efforts but said the law should be changed to reflect all the cases in the state.

"That's great news, any kit that's processed means one more piece of evidence that is available for use by the prosecution," she said.

Sen. John Cullerton (D-Chicago) had planned to hold hearings this summer on whether the law should be changed to include the recommendations by Mecklenburg's group and the Chicago Police Department. He said he must meet with Chicago police officials before deciding whether to pursue holding public hearings.

"I think we should clarify [the law], it shouldn't be subject to opinions, it should be facts," he said.

Sen. Kirk Dillard (R-Hinsdale) who was critical of the state's original numbers, said a formal hearing may not be called because the issue has been resolved. But he said changes in the law may be called for during the fall veto session.

"We should make sure that the public and the legislature know the exact number of backlogged DNA cases. It's something we should stay on top off," he said.

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Sen. John Cullerton (D-Chicago) had planned to hold hearings this summer on whether the law should be changed to include the recommendations by Mecklenburg's group and the Chicago Police Department. He said he must meet with Chicago police officials before deciding whether to pursue holding public hearings.

"I think we should clarify [the law], it shouldn't be subject to opinions, it should be facts," he said.

Sen. Kirk Dillard (R-Hinsdale) who was critical of the state's original numbers, said a formal hearing may not be called because the issue has been resolved. But he said changes in the law may be called for during the fall veto session.

"We should make sure that the public and the legislature know the exact number of backlogged DNA cases. It's something we should stay on top off," he said.

csadovi@tribune.com

MINUTES OF THE MEETING
OF
THE POST-CONVICTION PROCEEDINGS SUB-COMMITTEE
AND
THE TRIAL SUB-COMMITTEE
OF
THE CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

June 24, 2005

Office of the State Appellate Defender
First District Office
Conference Room
203 N. LaSalle, 24th Floor,
Chicago, IL

Handouts:

- Capital Litigation Trust Fund Expenditure Report 1/1/2000- Present
- Full Text SB 2082
- Full Text SB 0469
- Agenda
- Treasurer's Office Handout on Capital Litigation Trust Fund

Present

- Ted Gottfried
- Richard Schwind
- Kathy Saltmarsh
- Jeff Howard
- Leigh Bienen- Via Phone
- Evan Jean Wilson
- Jim Durkin
- Ed Parkinson
- Nadine Jakubowski
- Emily Glunz
- Chad Rubaleab

- Called to order 9:40 AM
- Minutes Approved
  - Open Meeting Act
    - Notice Posted on Door
- Guest Speaker *Nadine Jakubowski* from the Illinois State Treasurer's Office
- The statutory hourly rate for court-appointed counsel is currently $138.66. The rate goes up every Jan. 20th pursuant to the cost of living index.
- Payments okayed until August 1, but fiscal year ends on June 30th.

- Discussion on how the Capital Litigation Trust Fund is meant to be spent.
  - Jim Durkin asked several questions about how the fund could be better monitored and scrutinized.

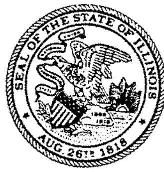
- Judges are the ones who monitor or approve expenditures not Nadine Jakubowski.
  - Ms. Jakubowski only sends documentation back if there are clerical errors. She then explained that it falls to the judges to determine if something is proper or necessary.
- Ted Gottfried and Richard Schwind asked Nadine Jakubowski to make suggestions to the full committee about how the fund could be better monitored and for appropriate distribution.
- The question was asked about whether there should be appropriations based on the different stages of litigation? (Pre/Post Trial)
- The fund is not generally used to pay personnel in the Attorney General or Public Defenders' Offices, however, it is used for training, hotels, per diems, experts, and deposition.
  - There were questions about whether and how the fund should be used for training.

- Richard Schwind criticized the use of the fund for cases that might technically qualify for death, but are not yet declared as a death penalty case. In these cases the state says -No Death. This is done simply to save counties expenses; the States Attorney and Defense both know that it isn't a real death penalty case.
  - What is a "reasonable and necessary expense"? Should there be guidelines?

- Political changes
  - Judicial oversight and accountability - some judges are careful about spending since they don't want to draw attention to themselves. However, some judges use the fund as an open check book.
    - There is a conflict with change of venue...Who should pay for housing and food for the defendant and jury?
      - Counties often bill each other for the costs of these things.
    - Should there be direct legislation to identify approved/unapproved expenditures more explicitly?
    - Subcommittee asked Nadine Jakubowski for ongoing recommendations for reform.
    - Questions were asked about whether judges have the opportunity to share their practices of approving or disapproving expenditures.

- Cook County Treasurer to give a presentation similar to the one that Nadine Jakubowski gave today. Jeff Howard was asked to contact the appropriate people and set up the presentation for the next meeting of the Trial Sub-committee, which the Post-Conviction Proceedings Sub-committee members will attend.
- August 8 is the next full meeting, and Jeff Howard will look into having the sub-committee meeting on the same date.

- Adjourned @ 11:15 AM



OFFICE OF THE STATE APPELLATE DEFENDER

Administrative Office

400 West Monroe - Suite 202
P.O. Box 5240
Springfield, IL 62705-5240
Telephone: 217/782-7203
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THEODORE A. GOTTFRIED
APPELLATE DEFENDER

DAVID P. BERGSCHNEIDER
LEGAL DIRECTOR

KATHRYN SALTMARSH
LEGISLATIVE LIAISON

JENNIFER S. WALSH
ASSISTANT DEFENDER

TO: Capital Punishment Reform Study Committee Members

FROM: Ted Gottfried

DATE: June 30, 2005

Enclosed please find the materials that were distributed at the Post-Conviction Proceedings Sub-committee and the Trial Sub-committee meeting on June 24, 2005.

CAPITAL LITIGATION TRUST FUND
STATISTICAL REPORT
TOP 6 CASES AS OF 6-20-05

EXPENSES BY CASE - FY00

	Case #		Appt'd Counsel	Public Defense	State's Attorney	Total
Jefferson	88-CF-73	Cecil Sutherland	$0.00	$0.00	$0.00	**$0.00**
Hancock	96-CF-46	Daniel Ramsey	$0.00	$0.00	$0.00	**$0.00**
ingston	98-CF-19	Andrew Urdiales	$1,593.75	$0.00	$0.00	**$1,593.75**
Sangamon	99-CF-992	Dale Lash	$0.00	$0.00	$0.00	**$0.00**
Henderson	01-CF-31	John R. Boyd	$0.00	$0.00	$0.00	**$0.00**
Coles	01-CF-392	Anthony Mertz	$0.00	$0.00	$0.00	**$0.00**

EXPENSES BY CASE - FY01

Case #	Appt'd Counsel	Public Defense	State's Attorney	Total
88-CF-73	$43,437.50	$41,112.30	$10,868.66	**$95,418.46**
96-CF-46	$78,012.50	$2,559.94	$0.00	**$80,572.44**
98-CF-19	$2,084.06	$0.00	$0.00	**$2,084.06**
99-CF-992	$12,013.41	$7,957.60	$790.20	**$20,761.21**
01-CF-31	$9,533.93	$2,099.07	$10,294.41	**$21,927.41**
01-CF-392	$0.00	$0.00	$0.00	**$0.00**

EXPENSES BY CASE - FY02

Case #	Appt'd Counsel	Public Defense	State's Attorney	Total
88-CF-73	$276,571.14	$67,718.36	$17,585.48	**$361,874.98**
96-CF-46	$126,576.44	$11,449.06	$0.00	**$138,025.50**
98-CF-19	$11,049.87	$0.00	$0.00	**$11,049.87**
99-CF-992	$181,477.47	$6,390.92	$329.91	**$188,198.30**
01-CF-31	$372,094.18	$13,009.46	$29,637.83	**$414,741.47**
01-CF-392	$42,729.15	$10,185.01	$7,928.31	**$60,842.47**

EXPENSES BY CASE - FY03

Case #	Appt'd Counsel	Public Defense	State's Attorney	Total
88-CF-73	$434,142.73	$0.00	$19,502.98	**$453,645.71**
96-CF-46	$142,002.62	$0.00	$6,298.19	**$148,300.81**
98-CF-19	$27,573.47	$0.00	$283.86	**$27,857.33**
99-CF-992	$267,149.59	$0.00	$15,396.58	**$282,546.17**
01-CF-31	$3,087.88	$0.00	$0.00	**$3,087.88**
01-CF-392	$299,057.72	$0.00	$75,748.72	**$374,806.44**

EXPENSES BY CASE - FY04

Case #	Appt'd Counsel	Public Defense	State's Attorney	Total
88-CF-73	$1,145,994.17	$0.00	$323,802.19	**$1,469,796.36**
96-CF-46	$47,007.17	$0.00	$0.00	**$47,007.17**
98-CF-19	$257,675.60	$0.00	$192,779.39	**$450,454.99**
99-CF-992	$0.00	$0.00	$0.00	**$0.00**
01-CF-31	$0.00	$0.00	$0.00	**$0.00**
01-CF-392	$0.00	$0.00	$0.00	**$0.00**

EXPENSES BY CASE - FY05

Case #	Appt'd Counsel	Public Defense	State's Attorney	Total
88-CF-73	$32,919.45	$0.00	$21.50	**$32,940.95**
96-CF-46	$25,381.63	$0.00	$0.00	**$25,381.63**
98-CF-19	$1,011.52	$0.00	$0.00	**$1,011.52**
99-CF-992	$0.00	$0.00	$0.00	**$0.00**
01-CF-31	$0.00	$0.00	$0.00	**$0.00**
01-CF-392	$0.00	$0.00	$0.00	**$0.00**

EXPENSES BY CASE - FY00 - FY05

Case #	Appt'd Counsel	Public Defense	State's Attorney	Total
88-CF-73	$1,933,064.99	$108,830.66	$371,780.81	**$2,413,676.46**
96-CF-46	$418,980.36	$14,009.00	$6,298.19	**$439,287.55**
98-CF-19	$300,988.27	$0.00	$193,063.25	**$494,051.52**
99-CF-992	$460,640.47	$14,348.52	$16,516.69	**$491,505.68**
01-CF-31	$384,715.99	$15,108.53	$39,932.24	**$439,756.76**
01-CF-392	$341,786.87	$10,185.01	$83,677.03	**$435,648.91**

CAPITAL LITIGATION TRUST FUND - EXPENDITURES FROM JANUARY 1, 2000 - PRESENT

6/23/2005

FISCAL YEAR	WHO	APPROPRIATION O.C.,P.D.,S.A.	$ SPENT	REMAINING BALANCE	TOTAL APPROPRIATION	TOTAL SPENT	TOTAL REMAINING
2000	Outside Cook	$ 962,000.00	$ 279,236.96	$ 682,763.04			
		212,000.00	177,930.52	34,069.48			
		500,000.00	50,500.21	449,499.79			
		$ 1,674,000.00	**$ 507,667.69**	**$ 1,166,332.31**			
	Cook	3,457,100.00	0.00	3,463,849.65 plus interest			
		812,500.00	0.00	825,927.04 plus interest			
		1,095,600.00	454,993.54	657,700.66 plus interest			
		$ 5,365,200.00	**$ 454,993.54**	**$ 4,947,477.35**	**$ 7,039,200.00**	**$ 962,661.23**	**$ 6,113,809.66**
2001	Outside Cook	1,924,000.00	970,114.07	953,885.93			
		424,000.00	421,348.43	2,651.57			
		1,000,000.00	114,910.11	885,089.89			
		$ 3,348,000.00	**$ 1,506,372.61**	**$ 1,841,627.39**			
	Cook	6,914,200.00	260,155.67	7,022,309.32 plus interest			
		1,625,000.00	442,267.32	1,246,035.26 plus interest			
		2,191,200.00	907,949.71	1,377,334.94 plus interest			
		$ 10,730,400.00	**$ 1,610,372.70**	**$ 9,645,679.52**	**$ 14,078,400.00**	**$ 3,116,745.31**	**$ 11,487,306.91**
2002	Outside Cook	1,924,000.00	2,481,732.49	0.00			
		424,000.00	413,924.23	10,075.77			
		1,000,000.00	143,085.81	856,914.19			
		$ 3,348,000.00	**$ 3,038,742.53**	**$ 866,989.96**			
	Cook	6,914,200.00	537,939.57	5,669,999.95 plus interest			
		1,625,000.00	1,040,067.96	611,861.54 plus interest			
		2,191,200.00	2,227,949.43	1,003.85 plus interest			
		$ 10,730,400.00	**$ 3,805,956.96**	**$ 6,282,865.34**	**$ 14,078,400.00**	**$ 6,844,699.49**	**$ 7,149,855.30**
2003	Outside Cook	1,924,000.00	2,887,114.87	0.00			
		424,000.00	112,828.29	311,171.71			
		1,000,000.00	229,558.70	770,441.30			
		$ 3,348,000.00	**$ 3,229,501.86**	**$ 1,081,613.01**			
	Cook	6,914,200.00	1,321,737.52	5,592,462.48 plus interest			
		1,625,000.00	1,625,000.00	0.00 plus interest			
		2,191,200.00	2,190,391.28	808.72 plus interest			
		$ 10,730,400.00	**$ 5,137,128.80**	**$ 5,593,271.20**	**$ 14,078,400.00**	**$ 8,366,630.66**	**$ 6,674,884.21**

Period	Source							
2004	Outside Cook	3,000,000.00	3,000,000.00	0.00				
		500,000.00	38,285.50	461,714.50				
		1,000,000.00	577,600.74	422,399.26				
		$ 4,500,000.00	**$ 3,615,886.24**	**$ 884,113.76**				
	Cook	800,000.00	586,780.09	213,219.91	plus interest			
		1,462,500.00	1,354,419.36	108,080.64	plus interest			
		2,191,200.00	2,188,437.67	2,762.33	plus interest			
		$ 4,453,700.00	**$ 4,129,637.12**	**$ 324,062.88**		**$ 8,953,700.00**	**$ 7,745,523.36**	**$ 1,208,176.64**
2005 to 6-23-05	Outside Cook	3,000,000.00	1,764,694.27	1,235,305.73				
		500,000.00	37,332.79	462,667.21				
		1,000,000.00	113,923.04	886,076.96				
		$ 4,500,000.00	**$ 1,915,950.10**	**$ 2,584,049.90**				
to May 2005	Cook	1,200,000.00	826,788.99	373,211.01	plus interest			
		1,625,000.00	1,184,098.55	440,901.45	plus interest			
		2,691,200.00	1,629,883.71	1,061,316.29	plus interest			
		$ 5,516,200.00	**$ 3,640,771.25**	**$ 1,875,428.75**		**$ 10,016,200.00**	**$ 5,556,721.35**	**$ 4,459,478.65**

Illinois State
TREASURER'S OFFICE
Treasurer Judy Baar Topinka

Capital Litigation Program

The Capital Crimes Litigation Trust Fund was created by the Capital Crimes Litigation Act. This legislation was developed to promote fairness in the prosecution and defense of capital crimes within the State of Illinois.

My office has the responsibility for administering this Trust Fund, which is available to all State's Attorneys, Public Defenders, and appointed Defense Counsels throughout the State of Illinois.

Anyone interested in this program, or have any questions should contact the Director of the program at (312) 814-1232 or the Assistant Program Coordinator at (217) 558-1250.

Sincerely,

Judy Baar Topinka
Illinois State Treasurer

General

The Capital Litigation Trust Fund is a special fund in the State Treasury that is administered by Treasurer Judy Baar Topinka to provide monies for compensation and expenses to be paid for the prosecution and defense of capital cases throughout the State of Illinois beginning on January 1, 2000.

Recent Legislation enacted by the Illinois General Assembly empowers the Illinois State Treasurer to administer the Capital Litigation Trust Fund. This fund will provide for the coverage of expenses incurred during the disposition of capital crimes litigation. This coverage of expenses made possible by the Capital Litigation Trust Fund is available to defense and prosecution counsel. The Office of the State Attorney General, the State Appellate Prosecutor and the State Appellate Defender will make direct appropriation requests to the General Assembly.

Court Fees

Monies appropriated to the Treasurer enable her to pay expenses in cases in which an indigent defendant is accused of a criminal offense for which a sentence of death is authorized. The Treasurer pays the expenses by (a) making grants to Cook County, (b) reimbursing public defenders and State's Attorneys for expenses in counties other than Cook County, and (c) reimbursing expenses and providing compensation to appointed defense counsel, other than public defenders, in counties other than Cook County. If the State's Attorney in a case indicates that he or she will not seek the death penalty by stating so on the record or by filing a certificate, expenses will not be paid from the Fund.

Monies in the Trust Fund may only be used to pay the following expenses:

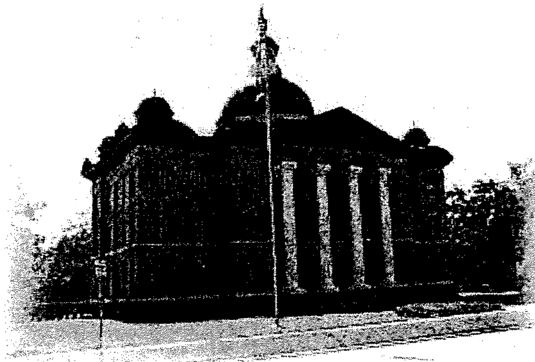
1. The capital litigation expenses of trial defense including, but not limited to, investigatory and other assistance, experts, forensics, and other witnesses, mitigation specialists, and grants and aid provided to public defenders or assistance to attorneys who have been appointed by the court to represent defendants who are charged with capital crimes.
2. Compensation of trial attorneys, other than public defenders, who have been appointed by the court to represent defendants who are charged with capital crimes.
3. The capital litigation expenses of State's Attorneys including, but not limited to, investigatory and other assistance, experts, forensics, and other witnesses necessary to prosecute capital cases.
4. Financial support through the Attorney General pursuant to the Attorney General Act for the several county State's Attorneys outside of Cook County.
5. Financial support through the State's Attorneys Appellate Prosecutor's Act for the several county State's Attorneys outside of Cook County.
6. Financial support to the State Appellate Defender pursuant to the State Appellate Defender Act.

Every fiscal year the State Treasurer will transfer from the General Revenue Fund to the Capital Litigation Trust fund an amount equal to the full amount of monies appropriated by the General Assembly, less any unexpended balance from the previous fiscal year. The Public Defender and State's Attorney in Cook County, the State Appellate Defender, the State's Attorneys Appellate Prosecutor, and the Attorney General will make annual requests for appropriations from the Fund.

Application Process

All parties seeking claims for expenditures will be required to comply with all applications, procedures and documentations required by the State Treasurer in order to receive monies from the Capital Litigation Trust Fund. These forms will include but may not be limited to application forms which will list itemized expenses for expert witnesses, all other witnesses, forensics, investigatory and other assistance, and compensation for appointed counsel.

The State Treasurer will require twenty (20) business days from the date of submittal of complete, accurate and certified claim forms to process and distribute requested funds. All defense claims must be certified by the signature of the trial judge. All prosecution claims must be certified by the signature of the State's Attorney Appellate Prosecutor or State Attorney General.



Certification Forms

For public defenders, appointed defense counsel other than public defenders, and State's Attorneys, in counties other than Cook, the Treasurer will only make payments from the Capital Litigation Trust Fund for capital litigation expenses that are specified in the Capital Crimes Litigation Act and certified as reasonable, necessary and appropriate for payment from the Fund. Public defenders, in counties other than Cook seeking payment of expenses from the Fund are required to complete a "Certification of Expenses of Public Defender" form and have the expenses certified by the court. Appointed defense counsel other than public defenders, in counties other than Cook, seeking compensation and/or expenses from the Fund are required to complete a "Certification of Compensation and Expenses of Appointed Defense Counsel" form and have said certified by the court. State's Attorney in counties other than Cook seeking payment from the Fund are required to complete a "Certification of Expenses of State's Attorneys" form and have the expenses certified by either the Attorney General or the State's Attorneys Appellate Prosecutor.

Completed certification forms must be delivered to the following address to enable the State

Treasurer to process the payment:

Judy Baar Topinka
Treasurer of the State of Illinois
James R. Thompson Center
100 West Randolph Street, Suite 15-600
Chicago, Illinois 60601
Attn: Program Coordinator
Capital Litigation Trust Fund

Public defenders, appointed defense counsel other than public defenders, and State's Attorneys in Cook County must contact the Cook County Treasurer's Office for payment of expenses from the Fund.

Further Questions

All organizations and individuals who have any questions regarding processes and procedures regarding the release of monies from the Capital Litigation Trust Fund are encouraged to call the program representatives at the Treasurer's Office at (312) 814-1232 or (217) 558-1250 for additional assistance.

Legal Resources

The Treasurer's Office has provided several links that can be used by Legal Services.

Note:

Some of the documents and forms available on this web site are in "PDF format." This means that the files are compressed so they can be viewed or printed easily. But you'll need a PDF reader to use these files. Fortunately, we can link you to a free PDF reader. To view the pdf-files in these web pages, you need to have the free program Adobe Acrobat Reader, version 3.01 or later, on your computer. You must also have the PDF Viewer plug-in installed in the Netscape plug-in folder (or directory). Both of these can be downloaded from Adobe's website:

Click on the appropriate icon to view the application form:

State's Attorney	Public Defender	Appointed Council

Please feel free to E-Mail the Treasurer's Office.

Last updated on June 20, 2005

CERTIFICATION OF EXPENSES OF STATE'S ATTORNEY

This form should be used by State's Attorneys in counties other than Cook seeking payment of expenses from the Capital Litigation Trust Fund.

State's Attorney: ______________________________

Case Name: ______________________________

Case Number: ______________________________

Judge: ______________________________

Court: ______________________________

The Capital Crimes Litigation Act (725 ILCS 124) provides that the Capital Litigation Trust Fund may be used "To provide State's Attorneys with funding for capital litigation expenses including, but not limited to, investigatory and other assistance and expert, forensic, and other witnesses necessary to prosecute capital cases."

The State's Attorney named above hereby seeks the certification of the following expenses as reasonable, necessary, and appropriate for payment from the Capital Litigation Trust Fund:

Description of Expense	Amount
	$
	$
	$
	$
	$
Total Expenses:	$

The State's Attorney requests that payment be made as indicated below:

Payee: ______________________________

Address: ______________________________

____

____

Upon review of the expenses listed herein, including all supporting documentation, I certify that the expenses are reasonable, necessary and appropriate for payment from the Capital Litigation Trust Fund. I also hereby certify that the defendant in this case is indigent and that the State's Attorney had not 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, prior to incurring these expenses.

Signed: ______________________________ Date: ____________________
(Attorney General or State's Attorneys Appellate Prosecutor)

Name: ______________________________ Title: ____________________

Certification of Compensation And Expenses of Appointed Defense Counsel

This form should be used by appointed defense counsel other than public defenders, in counties other than Cook, seeking compensation and / or expenses from the Capital Litigation Trust Fund.

Defense Counsel: ______________________________
Case Name: ______________________________
Case Number: ______________________________
Judge: ______________________________
Court: ______________________________

The Capital Crimes Litigation Act (725 ILCS 124) provides that the Capital Litigation Trust Fund may be used "to pay the compensation of trial attorneys other than public defenders, who have been appointed by the court to represent defendants who are charged with capital crimes." The act further provides, "appointed trial counsel may also petition the court for certification of expenses."

The defense counsel named above hereby seeks the certification of the compensation and / or expenses as reasonable, necessary, and appropriate for payment from the Capital Litigation Trust Fund (if additional space is needed, please attach an itemized billing statement to this form):

Date	Activity	Duration
________	______________________________	________
________	______________________________	________
	Total Hours:	________
	Rate of compensation per hour ($138.66 maximum) $	________
	Total Compensation Sought: $	________

Description of Expense	Amount
______________________________	$________
______________________________	$________
Total Expenses:	$________
Total Compensation and Expenses Sought:	$________

Defense counsel requests that payment be made as indicated below:

Payee: ______________________________
Address: ______________________________
____
____

Upon review of the expenses listed herein, including all supporting documentation, I certify that the expenses are reasonable, necessary and appropriate for payment from the Capital Litigation Trust Fund. I also hereby certify that the defendant in this case is indigent and that the State's Attorney had not 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, prior to incurring these expenses.

______________________________ Judge

______________________________ Date

Illinois State Treasurer Judy Baar Topinka • 100 W. Randolph, Suite 15-600 • Chicago, IL 60601 • 312/814-1700

CERTIFICATION OF EXPENSES OF PUBLIC DEFENDER

This form should be used by public defenders, in counties other than Cook, seeking payment of expenses from the Capital Litigation Trust Fund.

Defense Counsel: ______________________________

Case Name: ______________________________

Case Number: ______________________________

Judge: ______________________________

Court: ______________________________

The Capital Crimes Litigation Act (725 ILCS 124) provides that the Capital Litigation Trust Fund may be used "To pay the capital litigation expenses of trial defense including, but not limited to, investigatory and other assistance, expert, forensic, and other witnessesan mitigation specialists . . ."

Defense counsel named above hereby seeks the certification of the following expenses as reasonable, necessary, and appropriate for payment from the Capital Litigation Trust Fund:

Description of Expense	Amount
	$
	$
	$
	$
	$
	$
	$
Total Expenses:	$

Defense counsel requests that payment be made as indicated below:

Payee: ______________________________

Address: ______________________________

____

____

Upon review of the expenses listed herein, including all supporting documentation, I certify that the expenses are reasonable, necessary and appropriate for payment from the Capital Litigation Trust Fund. I also hereby certify that the defendant in this case is indigent and that the State's Attorney had not 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, prior to incurring these expenses.

______________________________ Judge

______________________________ Date

1 AN ACT concerning criminal law.

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

4 Section 5. The Capital Crimes Litigation Act is amended by
5 changing Section 5 as follows:

6 (725 ILCS 124/5)
7 Sec. 5. Appointment of trial counsel in death penalty
8 cases. If an indigent defendant is charged with an offense for
9 which a sentence of death is authorized, and the State's
10 Attorney has not, at or before arraignment, filed a certificate
11 indicating he or she will not seek the death penalty or stated
12 on the record in open court that the death penalty will not be
13 sought, the trial court shall immediately appoint the Public
14 Defender, or such other qualified attorney or attorneys as the
15 Illinois Supreme Court shall by rule provide, to represent the
16 defendant as trial counsel. If the Public Defender is
17 appointed, he or she shall immediately assign such attorney or
18 attorneys who are public defenders to represent the defendant.
19 The counsel shall meet the qualifications as the Supreme Court
20 shall by rule provide. At the request of court appointed
21 counsel in a case in which the death penalty is sought,
22 attorneys employed by the State Appellate Defender may enter an
23 appearance for the limited purpose of assisting counsel
24 appointed under this Section.
25 (Source: P.A. 91-589, eff. 1-1-00.)

26 Section 10. The State Appellate Defender Act is amended by
27 changing Section 10 as follows:

28 (725 ILCS 105/10) (from Ch. 38, par. 208-10)
29 Sec. 10. Powers and duties of State Appellate Defender.
30 (a) The State Appellate Defender shall represent indigent

1 persons on appeal in criminal and delinquent minor proceedings,
2 when appointed to do so by a court under a Supreme Court Rule
3 or law of this State.
4 (b) The State Appellate Defender shall submit a budget for
5 the approval of the State Appellate Defender Commission.
6 (c) The State Appellate Defender may:
7 (1) maintain a panel of private attorneys available to
8 serve as counsel on a case basis;
9 (2) establish programs, alone or in conjunction with
10 law schools, for the purpose of utilizing volunteer law
11 students as legal assistants;
12 (3) cooperate and consult with state agencies,
13 professional associations, and other groups concerning the
14 causes of criminal conduct, the rehabilitation and
15 correction of persons charged with and convicted of crime,
16 the administration of criminal justice, and, in counties of
17 less than 1,000,000 population, study, design, develop and
18 implement model systems for the delivery of trial level
19 defender services, and make an annual report to the General
20 Assembly;
21 (4) hire investigators to provide investigative
22 services to appointed counsel and county public defenders;
23 (5) in cases in which a death sentence is an authorized
24 disposition, provide trial counsel with legal advice and
25 the assistance of expert witnesses, investigators, and
26 mitigation specialists from funds appropriated to the
27 State Appellate Defender specifically for that purpose by
28 the General Assembly. The Office of State Appellate
29 Defender shall not be appointed to serve as trial counsel
30 in capital cases.
31 Investigators employed by the Death Penalty Trial
32 Assistance and Capital Litigation Division of the State
33 Appellate Defender shall be authorized to inquire through the
34 Illinois State Police or local law enforcement with the Law
35 Enforcement Agencies Data System (LEADS) under Section
36

2605-375 of the Civil Administrative Code of Illinois to

1 ascertain whether their potential witnesses have a criminal
2 background, including: (i) warrants; (ii) arrests; (iii)
3 convictions; and (iv) officer safety information. This
4 authorization applies only to information held on the State
5 level and shall be used only to protect the personal safety of
6 the investigators. Any information that is obtained through
7 this inquiry may not be disclosed by the investigators.

8 (d) For each State fiscal year, the State Appellate
9 Defender shall appear before the General Assembly and request
10 appropriations to be made from the Capital Litigation Trust
11 Fund to the State Treasurer for the purpose of providing
12 defense assistance in capital cases outside of Cook County and
13 for expenses incurred by ~~the~~ the State Appellate Defender in
14 representing petitioners in capital cases in post-conviction
15 proceedings under Article 122 of the Code of Criminal Procedure
16 of 1963 and in relation to petitions filed under Section 2-1401
17 of the Code of Civil Procedure in relation to capital cases and
18 for the representation of those petitioners by attorneys
19 approved by or contracted with the State Appellate Defender.
20 The State Appellate Defender may appear before the General
21 Assembly at other times during the State's fiscal year to
22 request supplemental appropriations from the Trust Fund to the
23 State Treasurer.

24 (e) The requirement for reporting to the General Assembly
25 shall be satisfied by filing copies of the report with the
26 Speaker, the Minority Leader and the Clerk of the House of
27 Representatives and the President, the Minority Leader and the
28 Secretary of the Senate and the Legislative Research Unit, as
29 required by Section 3.1 of the General Assembly Organization
30 Act and filing such additional copies with the State Government
31 Report Distribution Center for the General Assembly as is
32 required under paragraph (t) of Section 7 of the State Library
33 Act.

34 (Source: P.A. 93-972, eff. 8-20-04; 93-1011, eff. 1-1-05;

http://www.ilga.gov/legislation/fulltext.asp?DocName=09400SB0469lv&SessionID=50&GA=9... 6/7/2005

35 revised 10-14-04.)

SB2082 – Changes to the operation of the Capital Litigation Trust Fund

Senate Bill 2082 is the agreed bill to address the issue that arose in *People v. Sutherland*, a Jefferson County death penalty case. Over the course of four years in *Sutherland*, the Capital Litigation Trust Fund (CLTF) paid out $2.4 million to the defense, including attorneys fees, investigators fees, experts, forensics, and other expenses. All parties involved in the original drafting of the Capital Crimes Litigation Act, which created the fund, agreed that this was an abuse of the fund and that it was an aberration, considering that over 140 cases had been funded by the CLTF, with no others having this magnitude of expenses.

The substance of SB2082 was negotiated with the Office of the State Appellate Defender, the State's Attorneys' Appellate Prosecutor, the ISBA, and Cook County Public Defender and State's Attorney having input. The prosecutors had a working group that suggested following the federal model as set forth in the federal Criminal Justice Act, 18 USC §3006A et seq., which requires defense counsel to submit a budget to the trial judge after reviewing available information on the case. The budget acts as a guide for spending. If necessary, the budget can be modified. The federal model also protects the defense's financial information from disclosure to the prosecution by having the budget and any modification requests filed under seal and considered *ex parte*. This protection is strong because the budget documents can reveal sensitive information about the defense strategy as well as implicating the defendant's right to counsel and the attorney-client privilege, among other things.

SB2082 makes the following changes to the Capital Crimes Litigation Act:

1. Budgets are now required from court appointed counsel. Budgets and all other financial requests are filed under seal and are protected from FOIA requests until the trial is over. The federal model exempts these documents through trial and appeal, however including the appellate phase in our bill was unacceptable to the Cook County State's Attorney. I would note that in two Macon County cases the prosecutors used FOIA requests to the administrator of the fund to find out who the defense was consulting. (NOTE: There will be a technical amendment to the FOIA part of the bill because the exemption still includes the appeal phase, while the text of the Capital Crimes Litigation Act exempts this information only through trial).

2. Budgets, requests for modification, and requests for payment are now reviewed by two judges, the trial judge and the presiding judge or that judge's nominee.

3. If an *ex parte* hearing is necessary, that hearing will be before the presiding judge's nominee rather than the trial judge. This was at the request of the prosecutors who felt that an *ex parte* hearing with the trial judge would give the defense an opportunity to educate the judge about the defense theory of the

case. These *ex parte* hearings are in front of a court reporter and are part of the record for appellate review. This changes the original language which allowed for *in camera* review of financial requests. Prosecutors in several cases had convinced trial judges that they should be privy to discussions of financial requests because *in camera* was not the same as *ex parte*. Clarification was necessary.

4. SB2082 clarifies that a judge shall not authorize a bill that is not properly itemized. This was a problem in the *Sutherland* case where bills were narrative, rather than itemizing the time spent on each task.