

## EXISTING COUNTY PUBLIC DEFENDERS

Issue	Current Law	FAIR Act
<b>Chief PD Appointment</b>	<p><u>Outside Cook</u>: Appointed by Chief Judge.</p> <p><u>In Cook</u>: appointed by County Board President.</p>	<p>State (Chief) Public Defender Nominates and Commission Appoints, <b><i>exact process is TBD</i></b>:                      “During the initial State Public Defender’s term, the State Public Defender shall collaborate with the Public Defender Advisory Board to devise an application and selection process for whenever there is an open public defender position” (pg 6)</p> <p>NOTE: New process is only triggered by a vacancy.</p>
<b>Chief PD Terms</b>	<p><u>Outside Cook</u>: No definite terms</p> <p><u>In Cook</u>: Six-year renewable term</p>	Six year renewable terms for all chiefs.
<b>Chief PD Term Limits</b>	None.	None.
<b>Chief PD Qualifications</b>	<p><u>Outside Cook</u>: none except being licensed to practice law.</p> <p><u>In Cook</u>:</p> <ol style="list-style-type: none"> <li>1. Licensed for five years,</li> <li>2. “clearly demonstrated experience in the representation of persons accused of crime”</li> <li>3. who has had administrative experience</li> <li>4. “dedicated to the goals of providing high quality representation for eligible persons and to improving the quality of defense services generally”</li> </ol>	<p><u>Same as Cook currently</u>:</p> <ol style="list-style-type: none"> <li>1. Licensed for five years,</li> <li>2. “clearly demonstrated experience in the representation of persons accused of crime”</li> <li>3. who has had administrative experience</li> <li>4. “dedicated to the goals of providing high quality representation for eligible persons and to improving the quality of defense services generally”</li> </ol>
<b>Chief PD Removal</b>	<p><u>Outside Cook</u>: At will, removal at any time for any or no reason.</p> <p><u>In Cook</u>: only for good cause or dereliction of duty after notice and a hearing before the county board</p>	<p><u>Same as Cook now</u>:                      “only for good cause or dereliction of duty after notice and a hearing before the State Public Defender Commission” (pg 35)</p>
<b>Chief PD Salary</b>	<p>“not less than 90% of the compensation of the State’s Attorney of such county”</p> <p>Reimbursed by state at a lower rate than SA.</p>	<p>At least equal to State’s Attorney’s salary</p> <p>State reimbursement equal to SA salary reimbursement</p>

Issue	Current Law	FAIR Act
<b>Combined offices</b>	Allows two or more adjoining counties to form a PD office	Provides more flexibility and guidance: two or more counties within the same judicial circuit but which need not be adjoining (pg 33)
<b>Transparency &amp; FOIA</b>	Cook and some other county PDs are subject to FOIA, most are not.	No change to <u>county</u> PD offices.  New <u>state</u> office would be subject to FOIA but Act creates a new exemption for client files: "Records created or compiled by a State public defender agency or commission subject to this Act that contain: individual client identity; individual case file information; records that are otherwise subject to attorney-client privilege; records that would not be discoverable in litigation; records under Section 2.15; training materials; records related to attorney consultation and representation strategy; or any of the above concerning clients of county public defenders or other defender agencies and firms. This exclusion does not apply to de-identified, aggregated, administrative records, such as general case processing and workload information. (pgs 14-15)

## NEW STATE PUBLIC DEFENDER

Note: Under current law, the Attorney General can assist State's Attorneys and even prosecute offenses in the counties but no such backup exists for defenders.

Issue	FAIR Act
<b>Statewide Office</b>	Creates Office of State Public Defender (OSPD)
<b>Location of OSPD</b>	"independent agency within the judicial branch ... under the supervision and direction of the State Public Defender"
<b>Initial Appointment of (Chief) State PD</b> (two-year term)	First chief: "nominated by a nonprofit organization created by and composed of Illinois' public defenders to advance public defense practice and appointed for a 2-year term by a majority vote of the Supreme Court."
<b>Subsequent Appointment of</b>	By majority of OSPD Commission

<p><b>(Chief) State PD</b> (six-year terms)</p>	
<p><b>OSPD Commission Composition</b></p>	<p><b>11 members:</b></p> <ul style="list-style-type: none"> <li>● 2 nominated by Governor from a panel of PD recommendations</li> <li>● 2 nominated by ILSC from a panel of PD recommendations</li> <li>● 1 nominated by ILSC from bar association</li> <li>● 2 from ILGA House (one majority, one minority)</li> <li>● 2 from ILGA Senate (one majority, one minority)</li> <li>● 1 CBO rep nominated by Governor</li> <li>● 1 civil rights org rep nominated by Governor</li> </ul>
<p><b>OSPD Commission Qualifications</b></p>	<p>“significant experience in the defense of indigent clients in criminal or juvenile proceedings <b>or</b> shall have demonstrated a strong commitment to quality representation in indigent defense matters.</p> <p>No person shall be appointed to the Commission who, within the 2 years prior to appointment, has received compensation to be a judge, elected official, judicial officer, prosecutor, or law enforcement official, or who has served as an employee of such a person.” (pg 11)</p>
<p><b>OSPD Commission Terms and Term Limits</b></p>	<p>After initial terms, staggered 4 year terms.</p> <p>No more than two full 4-year terms.</p>
<p><b>State (Chief) PD salary</b></p>	<p>Equivalent to the AG</p>
<p><b>Scope of OSPD</b> (Allow for planning, avoid overly rigid description in the statute)</p>	<p>“The State Public Defender shall adopt rules, instructions, and orders consistent with this Act, further defining the organization of the Office of the State Public Defender and the duties of the Office's employees.”</p>
<p><b>Appointment of OSPD as Counsel</b></p>	<p>“Shall act as attorney when appointed by the court, without fee, <b>for all otherwise unrepresented persons</b> who are held in custody or who are charged with the commission” (pg 2) (<i>language matches existing County Code, except that county offices represent “all persons” while state office represents “all otherwise unrepresented persons,” allowing for county defenders to manage caseloads, capacity, and expertise</i>)</p> <p>“provide representation in counties located within its regional offices <b>in addition to</b> appointed counsel and county public defenders” (pg 3)</p> <p>“During the initial State Public Defender's term, the State Public Defender shall collaborate with the Public Defender Advisory Board to determine which judicial circuits or geographic regions require State public defenders and how many public defenders and staff are required to supplement existing public defenders, staff, and appointed counsel for the State in order to comply with the State's legal and ethical obligations.” (pgs 5-6)</p>
<p><b>Support from OSPD to County PDs</b></p>	<p>1. “provide county public defenders with the assistance of attorneys, expert witnesses, investigators, administrative staff, and social service staff”</p>

	<p>2. “provide training to county public defenders”                  3. “maintain a panel of private attorneys available to serve as counsel on a case-by-case basis” (pg 3)</p> <p>“During the initial State Public Defender's term, the State Public Defender shall establish a procedure for distributions from the Public Defender Fund described under Section 3-4014 of the Counties Code.” (pg 7) (<i>See extensive discussion of funding uses and prohibition on county offsets on pages 7-8</i>)</p>
<p><b>Recruitment and Retention</b></p>	<p>“establish programs, alone or in conjunction with law schools, for the purpose of using law students as legal assistants” (pg 4)</p> <p>“The State Public Defender shall establish a recruitment and retention plan to ensure a skilled and diverse workforce is available to serve clients in every part of the State” (pg 4)</p> <p>“(h) The State Public Defender shall maintain a website to provide...information for people seeking employment in public defense...” (pgs 4-5)</p> <p>“During the initial State Public Defender's term, the State Public Defender shall collaborate with the Public Defender Advisory Board to devise an application and selection process for whenever there is an open public defender position.” (pg 6)</p>
<p><b>Reporting &amp; Transparency</b></p>	<p>“(h) The State Public Defender shall maintain a website to provide the public with information about the Office of State Public Defender and its organization, information on how to join the Client Community Advisory Board, information for people seeking employment in public defense, supplementary statistics and reports of public interest, reports to the Commission and State agencies, and agendas, minutes, and documents for Commission meetings.</p> <p>(i) The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report as required by Section 3.1 of the General Assembly Organization Act and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act.</p> <p>(j) All required reports shall be simultaneously transmitted to the Supreme Court and to the Governor.” (pgs 4-5)</p> <p>Subject to FOIA <i>but creates new new exceptions</i> (see pages 14-15)</p>
<p><b>Workload &amp; Other Standards</b></p>	<p>“During the initial State Public Defender's 2-year term, the State Public Defender shall establish a Public Defender Advisory Board, composed of attorneys providing public defense services in this State, including public defenders, which shall meet regularly to advise the Office of the State Public Defender regarding legal practice issues and resource needs around the State and establishing workload, staffing, and salary standards for the provision of public defense throughout the State.” (pg 5)</p>
<p><b>Client Community Input</b></p>	<p>“During the initial State Public Defender's term, the State Public Defender shall establish a Client Community Advisory Board, composed of former clients and impacted community members, which shall meet regularly to advise the Office of the State Public Defender regarding client legal issues and needs around the State” (pg 6)</p>
<p><b>Structure of Statewide Office</b></p>	<p>“The State Public Defender may establish regional offices. The State Public Defender shall appoint a deputy defender for each regional office who shall serve as the administrator of that office.” (pg 8)</p>