



MEMORANDUM

ISACo prepared this analysis of HB 3363 to inform county officials and staff about the changes in Illinois proposed within the legislation. ISACo encourages county staff to carefully review the content of the legislation to ensure a complete understanding of any new requirements and responsibilities.

Overview

House Bill 3363 proposes the establishment of the Office of State Public Defender as an independent agency within the judicial branch. This office would be overseen by a State Public Defender appointed for a six-year term by a newly formed State Public Defender Commission. The commission, comprising 11 members with experience in indigent defense or a commitment to quality representation, would be responsible for approving budgets, setting standards for trial-level public defense, and overseeing the distribution of the Public Defender Fund.

The legislation aims to enhance the quality and consistency of legal representation for individuals unable to afford counsel across Illinois. It provides for the State Public Defender to offer support to county public defenders, including access to attorneys, investigators, expert witnesses, and training programs. Additionally, the bill outlines procedures for the appointment and removal of public defenders, establishes salary benchmarks, and sets accountability and reporting requirements to ensure effective oversight of indigent defense services.

Key Provisions

State Public Defender and Commission

- A new State Public Defender will be appointed by a State Public Defender Commission for a 6-year term.
- The Commission includes appointees from the Governor and legislative leaders, with required representation from public defense and civil rights organizations.

Support for County Public Defenders

The State Public Defender will offer counties:

- Attorneys, investigators, and expert witness support.
- Access to digital discovery, case management, and legal research systems.

- Training programs and assistance with workloads and salary benchmarks.

Changes to the Appointment Process

In counties under 3 million in population:

- A nominating committee (including local and state representatives) selects a candidate. The nominating committee shall consist of 4-6 members. The chair is the State Public Defender. The co-chair is the Chief Judge or a Circuit Judge serving as their designee. The State Public Defender and Circuit Judges shall each appoint half of the other committee members.
- Final appointment is made by the State Public Defender Commission.
- Appointments will last 10 years and removal is for cause only.

In counties over 3 million (e.g., Cook County):

- The County Board President appoints with board consent.
- New qualification and removal provisions apply.

State Reimbursement and Public Defender Fund

- If the Chief Public Defender position is full-time, their salary must be 95% (currently 90%) of the State's Attorney's salary.
- The State reimbursement would be the same amount as the county's State's Attorney under Section 4-2001.
- State funding for assistant public defenders must be at least equal to that for Assistant State's Attorneys, including supplements for counties housing certain State institutions as described in Section 4-2001.
- A new Public Defender Fund will allow for additional state support, provided counties do not reduce their own funding.
- Requests by counties for financial support from the Public Defender Fund originate with the Chief County Public Defender and must be submitted directly to the Office of the State Public Defender. Funds are to be deposited into the Public Defender's operational budget directly by county treasurers.

Office Space and Expenses

- County boards are required to provide office space and cover necessary expenses for the Chief County Public Defender and their staff, including costs related to travel, social workers, investigators, expert witnesses, and administrative personnel.
- In counties with populations under 500,000, these expenses must be approved by the circuit court. For multi-county public defender offices, costs are shared according to a joint resolution by the participating county boards.

Accountability and Reporting Requirements

The bill establishes a comprehensive framework for statewide performance oversight and data accountability in Illinois' indigent defense system, with direct implications for county governments that operate local public defender offices. Below are key elements and their potential impact:

Establishment of Performance Metrics

- Requires the State Public Defender Commission to implement performance metrics aligned with both Commission-established standards and national benchmarks (e.g., ABA, Sixth Amendment obligations). The Commission must provide a written report on the performance metrics to the Governor, General Assembly, and Illinois Supreme Court, not later than December 15 of each year, commencing with the calendar year following the effective date of the Act.

County Impact: County-based public defender systems will be evaluated against state and national standards, possibly affecting funding, staffing, or procedural requirements if found deficient.

Mandatory Data Collection Procedures

- Authorizes and mandates the collection of operational and performance data from public defender offices, including staffing, caseloads, expenditures, and eligibility processes.

County Impact: Counties must support or integrate their case management and data systems with those used by the State. This could require IT upgrades, additional staff training, and regular reporting compliance.

Comprehensive Scope of Data

- Annual caseload statistics by matter type.
- Public defender and State's Attorney staffing levels and compensation.
- Annual expenditures on expert witnesses, litigation support, office infrastructure, etc.
- Eligibility criteria and denial rates for public defense services.
- Local attorney qualification standards compared to state benchmarks.

County Impact: Counties will face new administrative burdens to report granular financial and operational data annually. Counties may also face comparative scrutiny if their local standards fall short of state criteria.

Annual Reporting Requirements

- The Commission must submit a detailed annual report to the Governor, General Assembly, and Illinois Supreme Court and publish it online.

County Impact: These reports will publicly highlight county-level performance, which could lead to public and legislative pressure on underperforming jurisdictions or trigger policy reforms.

Research and Recommendations

- Empowers the Commission to study the data and recommend reforms to improve indigent defense.

County Impact: Counties may be required to implement new practices or restructure defense services based on these recommendations.

Summary of County Government Implications

Compliance Burden: Counties will need to collect and transmit standardized data, possibly requiring system upgrades or staffing changes.

Transparency and Accountability: Public reporting of county-level performance may expose deficiencies and drive reform.

Potential for Funding Pressure: Demonstrated underperformance or failure to meet benchmarks could affect state funding allocations or trigger state intervention.

This provision marks a shift toward a more centralized, data-driven approach to monitoring public defense services in Illinois, with significant operational and administrative implications for county governments.

Mandate Flexibility: Several mandates related to hiring regional deputies and new staff have been changed from “shall” to “may,” which reduces the obligation for immediate expansion and coordination with counties. This applies to the following: 1) the appointment of deputy public defenders by the State Public Defender; and 2) the hiring and training of new State-employed personnel by the Office of the State Public Defender. These responsibilities would be permissive.

A prior requirement for the State Public Defender to adopt formal internal governance rules has been removed, which reduces codified guidance on internal operations. Without this provision, the State Public Defender is no longer statutorily obligated to create a structured set of internal rules or directives to guide the day-to-day operations and responsibilities within the Office. This includes formal guidance for organizational hierarchy, personnel responsibilities, and internal procedures.

Conclusion

HB 3363 removes the authority of local judges to appoint the public defender.

The bill postulates a significant shift in the governance and support of public defense services in Illinois. County governments will experience changes in appointment authority, increased state

support and oversight, new reporting requirements, and access to supplemental state funds. While offering opportunities for modernization and equity in public defense, the bill also requires careful attention to compliance and local operational impacts.