



Funded Advocacy &  
Independent Representation

**HB 5842 – Rep. Dave Vella, Rep. Justin Slaughter, & Rep. Kevin Olickal**

**Briefing for the  
Illinois State Association of Counties**

June 14, 2024

# FAIR ACT

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## Agenda

### Background

Constitutional Requirements – National Standards – Current IL Practice

### The FAIR Act

Development – Features – County Benefits

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## Background

Stephanie Kollmann

Northwestern Pritzker School of Law

**US Guaranteed Right To Counsel:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and **to have the Assistance of Counsel for his defense.**

**United States Constitution 6<sup>th</sup> Amendment**

**State Guaranteed Right To Counsel:** In criminal prosecutions, **the accused shall have the right to appear and defend in person and by counsel;** to demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the attendance of witnesses in his or her behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

**Illinois Constitution, Bill of Rights SECTION 8. RIGHTS AFTER INDICTMENT**

**US Right to State-Provided Counsel:** “From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. **This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.**”

*Gideon v. Wainwright*, 372 U.S. 335 (1963)

## Timeline

1949: IL public defense structure enacted

1963: *Gideon v. Wainwright*, US Supreme Court

1973: National Advisory Commission on Criminal Justice Standards and Goals sets first defense workload cap (10-year anniversary)

*(many other things happened – but not so many in IL)*

2018: IL Supreme Court applied for USDOJ funding for technical assistance (Sixth Amendment Center review)

2021: Sixth Amendment Center report issued

2023: 60th Anniversary of *Gideon*

ABA 10 Principles of a Public Defense Delivery System

National Public Defense Workload Study (RAND, ABA)

IL Judicial Conference Task Force Report

# ABA Ten Principles of a Public Defense Delivery System

Nov. 2023

- 1: Independence
- 2: Funding, Structure, and Oversight
- 3: Control of Workloads
- 4: Data Collection and Transparency
- 5: Eligibility and Fees for Public Defense
- 6: Early and Confidential Access to Counsel
- 7: Experience, Training and Supervision
- 8: Vertical Representation
- 9: Essential Components of Effective Representation
- 10: Public Defense as Legal System Partners

Illinois has a constitutional obligation to provide a vigorous defense to people who cannot afford to hire private lawyers—but it is one of only seven states with no statewide body to ensure it fulfills this duty.

Multiple reports and investigations from 2019-2023 have revealed Illinois' public defense crisis:

- Illinois has not significantly changed its public defense structure since 1949, 14 years before the modern right to state-provided counsel.
- About 60% of Illinois counties have no government office of public defense and instead contract with private attorneys, often on a part-time basis.
- Judges appoint and remove county chief defenders in every county except Cook—despite professional standards prohibiting these practices.

Decades of county decision-making in a vacuum – without the benefit of detailed caseload analysis, workload standards, or statewide information – has led to understaffing in every county, plus large geographic disparities

## ILPublicDefenderStats.org

<b>County</b>	Kane
<b>Judicial Circuit</b>	16
<b>Appellate District</b>	2
<b>Population</b>	514,182
<b>PD FY 23 Budget</b>	\$4,821,580.00
<b>SA FY 23 Budget</b>	\$15,934,691.00
<b>2022 Criminal Filings</b>	12,281
<b>2022 Juvenile Filings</b>	484

	Allocated	Required	Shortfall
<b>Defense Attorneys</b>	38.00	67.89	29.90
<b>Investigators</b>	2.00	22.63	20.60
<b>Mental Health Staff</b>	0.00	22.63	22.60
<b>Support Staff</b>	9.00	33.94	24.90

<b>County</b>	Grundy
<b>Judicial Circuit</b>	13
<b>Appellate District</b>	3
<b>Population</b>	53,041
<b>PD FY 23 Budget</b>	\$525,814.00
<b>SA FY 23 Budget</b>	\$1,100,771.00
<b>2022 Criminal Filings</b>	1,832
<b>2022 Juvenile Filings</b>	81

	Allocated	Required	Shortfall
<b>Defense Attorneys</b>	4.00	10.07	6.10
<b>Investigators</b>	0.00	3.36	3.40
<b>Mental Health Staff</b>	0.00	3.36	3.40
<b>Support Staff</b>	2.00	5.03	3.00

<b>County</b>	Will
<b>Judicial Circuit</b>	12
<b>Appellate District</b>	3
<b>Population</b>	696,757
<b>PD FY 23 Budget</b>	\$7,777,813.00
<b>SA FY 23 Budget</b>	\$17,499,332.00
<b>2022 Criminal Filings</b>	14,053
<b>2022 Juvenile Filings</b>	590

	Allocated	Required	Shortfall
<b>Defense Attorneys</b>	51.50	75.43	23.90
<b>Investigators</b>	9.00	25.14	16.10
<b>Mental Health Staff</b>	0.00	25.14	25.10
<b>Support Staff</b>	9.00	37.72	28.70





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## FAIR Act Overview

Dave Vella, Illinois State Representative of the 68th District

Sharlyn Grace, Senior Policy Advisor, Cook County Public Defender

Jeff York, DuPage County Chief Public Defender

## Issues we knew legislation needed to address:

- Public defenders need to be able to speak about deficiencies and participate in policy development without fear of employment consequences
- State has a duty to provide defense – but does not yet have enough information to make detailed policy or budget decisions
- Most county-run offices are running well despite need for additional resources – but robust state coordination is needed for recruitment, training, and additional staffing, especially in rural areas

## The FAIR Act will:

- Immediately bring Illinois into compliance with ABA standards for defender independence
- Create a two-year planning process for a hybrid state-plus-county defender system
- Maintain state funding to county defenders without interruption
- Facilitate Illinois' fulfillment of its Sixth Amendment obligations

## How it works:

- Establishes Office of the State Public Defender
  - Assesses local resources, needs, staffing, workloads
  - Distributes state funds and supplement work of county offices
  - Improves recruitment, training, and practice standards
- Creates State Public Defender Commission
  - Requests state defense funding
  - Provides transparent oversight of the Office of the State Public Defender
  - Has power to appoint/remove chief public defenders

# Benefits to Counties

- Reduced litigation risks
- Increased resources and service to constituents
- Uninterrupted defender office and court functions
- No changes to county employment or supervision  
(except process for appointment/removal of chief defender)
- Better information about court functions
- Anticipated additional costs to be borne by the state



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## Questions and Discussion

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## Funded Advocacy

Many individual public defenders currently carry caseloads that should be handled by multiple full-time lawyers while simultaneously performing additional investigation, case management, and administrative duties due to having insufficient support staff. Rural, Black, and Latinx clients are disproportionately impacted by underinvestment in public defense.

### **The FAIR Act creates an Office of the State Public Defender to:**

- Assess, with client communities and local public defenders, client needs and defense office staffing, resources, and workloads around the state.
- Distribute state funds to county defenders and supplement their work with state purchasing and staffing.
- Improve recruitment, hiring, contracting, and training of public defenders statewide.

## Independent Representation

Judges have removed public defenders after they spoke out about insufficient office resources and client services. Judicial appointment and removal of public defenders creates a conflict of interest with client needs and prevents defenders from informing the public about the defense crisis.

### **The FAIR Act creates a State Public Defender Commission to:**

- Appoint and remove county defenders independent of the judiciary, in alignment with national standards.
- Provide transparent oversight of the Office of the State Public Defender and defense expenditures.