FAIR ACT
Funded Advocacy & Independent Representation

FAIR ACT IMPLEMENTATION FAQS

WHAT IS THE FAIR ACT?

The FAIR Act was signed into law in 2025. The law creates a statewide office (the Office of the State Public Defender (OSPD)) and a commission for public defense to ensure that the constitutional right to counsel in criminal cases is provided to all people in Illinois in a just and equitable manner. An initial State Public Defender (SPD) will be appointed in January 2027. The law contemplates a two-year planning period, from January 2027 through the end of 2029.

WHAT WILL THE STATE PUBLIC DEFENDER BE RESPONSIBLE FOR?

During the two-year planning period (2027-2029), the initial State Public Defender will develop the infrastructure and foundational policies and procedures for their office. The initial SPD must immediately establish a procedure for distributions from the Public Defender Fund. Within their first year, the SPD must devise an application process for open Chief County PD positions; and initiate a survey to determine the number of people providing public defense services in the state and the types and numbers of matters they are handling. In addition, the SPD must establish a Public Defender Advisory Board, a Client Community Advisory Board, and a Juvenile Court Workgroup. Within the first two years, the SPD must determine judicial district public defender needs and a case assignment framework; as well as develop Chief County Public Defender retention and removal standards.

WHAT WILL THE OSPD DO AFTER THE INITIAL PLANNING PERIOD?

Starting in January 2029, the OSPD is required to establish a statewide recruitment and retention plan, establish training programs, maintain a public-facing website, and report to the General Assembly. Tasks that are permissible, but not mandatory, include providing direct representation, assisting county PDs with staffing, maintaining a panel of private attorneys available to serve as counsel, providing funding to county PDs, ensuring access to relevant technology, and advocating on behalf of public defense interests.

IS THE OFFICE OF THE STATE PUBLIC DEFENDER (OSPD) CURRENTLY OPERATING?

Not yet. The initial State Public Defender will be appointed in January 2027.

WHAT IS THE STATE PUBLIC DEFENDER COMMISSION RESPONSIBLE FOR?

The newly created State Public Defender Commission, which will oversee the OSPD, will be appointed in July 2026. Its scope is broad and includes appointing the first full-term State Public Defender in January 2029. The Commission will also appoint county-level Chief Public Defenders, as openings occur, starting in 2027. The Commission's immediate duties are to identify operational costs and funding sources to establish the OSPD and to approve the distribution process for the Public Defender Fund. The Commission is also responsible for implementing a system of public defense performance metrics.

WHO WILL SERVE ON THE COMMISSION?

The 11 Commission members will be appointed by the Governor, the Supreme Court, and leaders from the House and Senate. The appointees must have significant experience in the defense of indigent clients or a demonstrated commitment to quality representation in indigent defense matters.

CAN LOCAL COURTS APPOINT THE STATE PUBLIC DEFENDER TO LOCAL CRIMINAL CASES?

Not yet. While providing direct representation for clients is contemplated in the law, this is not an immediate duty of the OSPD. In fact, during the planning period, the initial SPD must develop a case assignment framework to help judges decide when appointing the SPD might be appropriate.

HOW WILL NEW COUNTY-LEVEL CHIEF PUBLIC DEFENDERS BE APPOINTED UNDER THE FAIR ACT?

For counties with populations under 3 million people, the process is laid out in some detail in the FAIR Act and ensures the independence of the position. Starting on January 1, 2027, when a vacancy in the role of county Chief Public Defender occurs, the Chief Judge of that locality must notify the State Public Defender. The SPD must then convene and co-chair with the Chief Judge a 4 to 6-member Local Nominating Committee. The local committee recommends candidates to the Commission, and the Commission makes the final decision and appoints the Chief County PD, who will serve a 10-year term. The appointment process in counties with a population over 3 million people remains unchanged.

WHO CAN SERVE ON THE LOCAL NOMINATING COMMITTEE?

Half of the members of the Local Nominating Committee will be appointed by the SPD, and the other half will be appointed by the Chief Judge. The members must be familiar with public defense practices in the relevant county and judicial circuit. The members must not pose a conflict with the local public defender's office and must broadly represent public defense stakeholders (which may include representatives of legal associations, law schools, the public defense community, the private defense bar, former public defender clients, and others). Excluded from possible committee members are people who were compensated as prosecutors or law enforcement officials and their employees within the previous two years.

WILL THE STATE NOW BE ASSUMING THE COSTS OF LOCAL PUBLIC DEFENSE? WILL COUNTY BOARDS BE ABLE TO REDUCE OR ELIMINATE THE LOCAL COUNTY PUBLIC DEFENDER BUDGETS?

No, any funding that goes from the SPD to local county PDs, including funds from the Public Defender Fund, must "supplement, not supplant" county public defense budgets. Local county PDs will be relying on county boards to continue funding their offices.

HAS THE GENERAL ASSEMBLY ALLOCATED FUNDING TO THE NEW OSPD?

For the time being, the new OSPD is being housed within the Office of State Pretrial Services (OSPS). With support from the Illinois Supreme Court, the OSPS is including a $1.3 million line item in its 2026-2027 budget request, which will serve as initial funding to OSPD to support the hiring of staff and other resources.

ANY QUESTIONS?

You may direct questions to the co-chairs of the Transition Team, Elisabeth Pollock, Champaign County Public Defender (epollock@champaigncountyil.gov) and Nathan Rowland, Gallatin and Hamilton County Public Defender (nathan@bbrlawoffice.com). You may also contact Kahalah Clay, the administrator for the Transition Team, with any questions (kclay@ilosps.gov).



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