

Planning underway for Implementation of the FAIR Act

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“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” *Gideon v. Wainwright* (1963)

The right to counsel for indigent defendants in criminal prosecutions is a bedrock of our justice system. Historically, Illinois has been one of just a few states that relies on a county-based indigent defense system rather than state-level oversight. More than half of Illinois counties have part-time public defenders, and the resources available to those defenders is dependent on the availability of local county resources.

In response to the challenges of this model, in 2018, the Court sought and received a grant award from the federally-funded Sixth Amendment Center to closely examine public defense in selected Illinois counties. The Center issued its report in 2021 called “[The Right to Counsel in Illinois: Evaluation of Adult Criminal Trial-Level Indigent Defense Services.](#)”

In response to the Sixth Amendment report, the Court created the Illinois Judicial Conference (IJC) Criminal Indigent Defense Task Force (Task Force) which was tasked with developing recommendations in follow up to the report recommendations.

The Task Force report recommendations included three key items:

1. Full state funding of trial-level public defense services;
2. Establishing a statewide office of trial-level public defense services within the Illinois Judicial Branch to provide a continuous flow of administrative and operational support to local public defender offices; and
3. Developing and implementing a rigorous strategy and infrastructure within this new office for the recruitment and retention of public defense attorneys.

After earlier efforts to effectuate statewide public defense services stalled in the legislature, the Funded Advocacy and Independent Representation (FAIR) Act was signed into law in August 2025. Among other things, the FAIR Act creates an Office of the State Public Defender (OSPD), effective January 1, 2027, to be managed by a State Public Defender and overseen by the State Public Defender Commission (Commission).

The Supreme Court’s commitment to an inclusive 3-Branch process

In response to the mandates of the FAIR Act, Chief Justice P. Scott Neville, Jr. and the Illinois Supreme Court are committed to working with the Executive and Legislative

Branches to bring about the successful implementation of the FAIR Act and its goal of ensuring that indigent defendants receive proper representation throughout our state's 102 counties. The Court, acting as convener of the 3-branch implementation efforts, recently communicated with the four Legislative leaders to share plans for a comprehensive and inclusive process giving all relevant stakeholders a voice in the implementation. Discussions with the Executive Branch are also underway. The multi-disciplinary, 3-branch stakeholder implementation team, to be identified shortly, will begin the important work of planning for the new Office of State Public Defender's budget and other needs.

The Court determined that an incubator model is needed to help stand up this new office. The incubator model was successfully used when the new Office of Statewide Pretrial Services (OSPS) was developed and fully staffed with assistance from the Administrative Office of the Illinois Courts (AOIC) before becoming an independent Judicial Branch agency. This time, OSPS will serve as the incubator for the OSPD. OSPS will provide the operational and administrative infrastructure – which will include anything from hosting Zoom calls, to providing meeting space, to assisting with IT and HR support – that is necessary for this new Office of State Public Defender to begin operations and grow to fulfill its statutory mandate.

Key dates

The Illinois State Public Defender Commission is effective July 1, 2026, with appointments to be in place by October 1, 2026. It will be composed of 11 members – 4 appointed by the Governor, 4 appointed by the Legislature and 3 appointed by the Supreme Court.

The initial State Public Defender will be selected by the Court by Jan. 1, 2027, for a two-year term. The State Public Defender will be responsible for setting standards for attorney workloads, training, and resources, assessing each county's need for additional resources and distributing funds to counties' public defense offices. The Commission will appoint subsequent State Public Defenders for six-year terms.

With the commitment of this 3-branch effort, the project is beginning to take shape. Working together, the implementation team will create the plan to achieve the FAIR Act's goal of a statewide indigent defense structure with adequate resources for all 102 counties. It is a historic moment and tremendous opportunity for the Illinois justice system.