

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD, 62706GEORGE H. RYAN
GOVERNOR

July 16, 2002

To the Honorable Members of the
Illinois House of Representatives
92nd General Assembly

Pursuant to the authority vested in the Governor by Article IV, Section 9(e) of the Illinois Constitution of 1970, and re-affirmed by the People of the State of Illinois by popular referendum in 1974, and conforming to the standard articulated by the Illinois Supreme Court in People ex Rel. Klinger v. Howlett, 50 Ill. 2d 242 (1972), Continental Illinois National Bank and Trust Co. v. Zagel, 78 Ill. 2d 387 (1979), People ex Rel. City of Canton v. Crouch, 79 Ill. 2d 356 (1980), and County of Kane v. Carlson, 116 Ill. 2d 186 (1987), that gubernatorial action be consistent with the fundamental purposes and the intent of the bill, I hereby return House Bill 5652, entitled "AN ACT in relation to criminal law," with my specific recommendations for change.

House Bill 5652 contains three separate provisions. The first would amend the Unified Code of Corrections to provide that a defendant convicted of cannabis trafficking or controlled substance trafficking may receive only a maximum of 4.5 days of good conduct credit for each month of his or her sentence of imprisonment. Secondly, House Bill 5652 would further amend the Unified Code of Corrections to add certain reckless homicide offenses involving drugs or alcohol and 2 or more deaths to the list of offenses for which a prisoner may not receive the additional good conduct credit that is provided for participation in drug abuse and certain other correctional programs. Finally, this bill would amend the Criminal Code of 1961 to clarify that the offense of aggravated robbery only applies if the offender had no firearm or other dangerous weapon in his or her possession when he or she committed the robbery.

The latter two of these provisions are needed technical changes to insure that the law is applied fairly and equitably. However, the first provisions, which would add cannabis trafficking and controlled substance trafficking to the "Truth-In-Sentencing" law (TIS) poses several problems.

First, when TIS was first considered, it was known that funds were not available to cover all criminal offenses because of costs of incarceration associated with the longer time spent in prison under the Truth-In-Sentencing law. Since covering only some offenses with TIS raises constitutional proportionality questions, this risk was minimized by the decision to cover only the most serious criminal offenses with TIS. This led to TIS for crimes committed against the person such as murder, criminal sexual assault, armed robbery, etc. Since TIS was enacted in 1996 only one new offense has been added, and that was aggravated arson last year due to its inherent life-endangering nature. Because cannabis and controlled substance trafficking is not a violent crime against the person, including it in a category with only the most violent crimes against the person raises potential constitutional issues.

Furthermore, the Federal "Violent Offender Incarceration-Truth-in-Sentencing" (VOI-TIS) program, which provided funds to states to pay for additional incarceration costs and prison construction costs brought on by increasing prison time was discontinued last year. As discussed, adding drug trafficking to TIS would seem to be a significant departure from the original intent of VOI-TIS and would have a significant fiscal impact particularly given that federal funds are no longer available to pay for any of the existing Truth-In-Sentencing offenses, let alone new offenses.

This one component of the bill accounts for the full \$3.3 million fiscal impact (over ten years) that the Department of Corrections estimates would result from the enactment of this bill as written. While proponents of this change are likely to argue that the violent nature of most drug trafficking warrants its inclusion in the Truth-In-Sentencing laws, it is difficult to justify spending more money on longer prison terms for drug offenders at the same time that funds are being cut at both the federal and state level for incarceration and prison construction. Moreover, there is a growing consensus that treatment programs, not longer incarceration, may offer better results in combating the scourge of narcotics. Further, as noted earlier, the fiscal impact becomes even more difficult to justify when one considers the inconsistency that this provision would bring to the current list of Truth-In-Sentencing offenses which would include only the most violent crimes.

Finally, the current trafficking offenses already double the minimum time in prison from what the sentence would be for the actual delivery of that amount of cannabis or controlled substance to a person. Consequently, under current law the sentence for high-end amounts of controlled substances under the trafficking law is a minimum 30 years imprisonment, which means at least 15 years served (less six months of potential meritorious good time). Requiring that 85% of the 30 years or 25.5 years be served in prison for drug trafficking would result in a longer minimum sentence and length of stay than the minimum sentence and length of stay for murder, which are both only 20 years. Some judges have already criticized the trafficking provisions as too harsh. Our state's prisons are already overcrowded with drug offenders who may be serving more time than warranted by the offense and adding these drug trafficking provisions to our Truth-In-Sentencing laws only creates the risk of the courts invalidating Illinois' other TIS provisions. For these reasons, I return House Bill 5652 with the following recommendations for change:

on page 1, line 29, by replacing "Sections 3-6-3 and 5-4-1" with "Section 3-6-3"; and

on page 4, by deleting lines 11 through 20; and

on page 5, by replacing "œ" with "or"; and

on page 5, by replacing lines 17 through 21 with "date of this amendatory Act of the 92nd General Assembly."; and

on pages 6, by replacing lines 15 through 18 with "Assembly, or first degree murder, a Class X"; and

on page 10, by deleting lines 16 through 33; and

by deleting all of pages 11 through 16; and

on page 17, by deleting lines 1 through 24.

With these specific recommendations for change, House Bill 5652 will have my approval. I respectfully request your concurrence.

Sincerely,
s/GEORGE H. RYAN
Governor