

August 14, 2015

To the Honorable Members of
The Illinois House of Representatives,
99th General Assembly:

Today I return House Bill 218 with specific recommendations for change.

Together we have taken significant steps to reforming our criminal justice system. In February, I established the Illinois State Commission on Criminal Justice and Sentencing Reform to recommend amendments to State law to reduce the State's current prison population by 25% by 2025. The General Assembly passed legislation this session to shorten the length of juvenile aftercare (parole), eliminate mandatory life sentences for juveniles, protect victims of prostitution and trafficking, and shorten the waiting time for expungements, among other legislation. Our work is not done, but I thank the members of the General Assembly for being partners in this effort.

Although the possession of non-medical cannabis is and will remain illegal under Illinois law, criminal penalties for possession of small amounts of cannabis are too severe. Under current law, possession of up to 2.5 grams is a Class C misdemeanor, punishable by incarceration of up to 30 days; possession of up to 10 grams is a Class B misdemeanor, punishable by incarceration of up to 180 days; and possession of up to 30 grams is a Class A misdemeanor or Class 4 felony, depending on prior convictions, punishable by incarceration of up to one year. Even if jail time is avoided, a person convicted of possession is saddled with a criminal record that impedes future employment opportunities and increases recidivism.

The criminal prosecution of cannabis possession is also a drain on public resources. By classifying possession as a misdemeanor or felony, rather than as a civil law violation, our police, prosecutors, public defenders, and corrections officers spend significant time and tax-dollars to arrest, prosecute, and incarcerate offenders. In 2014 alone, police made 15,427 arrests for possession of up to 2.5 grams of cannabis; 11,920 arrests for possession

of up to 10 grams of cannabis; and 5,496 arrests for possession of up to 30 grams of cannabis. The time and expense to arrest, prosecute, and in some cases incarcerate almost 33,000 persons per year for minor possession is a diversion of critical public resources that are needed elsewhere.

House Bill 218 would reclassify the possession of small quantities of cannabis as a civil law violation, rather than a misdemeanor. Possession would still be illegal and subject to a fine, but not a criminal offense. Consequently, the taxpayers would be spared the time and expense of arresting, prosecuting, and potentially incarcerating offenders, and the offender would avoid a criminal record. Possession of larger quantities of cannabis would continue to be a misdemeanor or felony, depending on the quantity.

I support the fundamental purposes of this bill. I thank the sponsors for their diligent and thoughtful work and the many Illinoisans and organizations who contributed to this legislation, while acknowledging that many still have questions and concerns about its impact.

Recognizing that this legislation is a significant change in how our State handles illegal drug possession, any change must be made carefully and incrementally. I have particular concern about three metrics, each of which is addressed below, so am returning this bill with specific recommendations for change.

Delineation Among Violations

Current law delineates violations for possession of small amounts of cannabis as follows: up to 2.5 grams (Class C misdemeanor); up to 10 grams (Class B misdemeanor); and up to 30 grams (Class A misdemeanor or Class 4 felony).

House Bill 218 creates a new delineation at 15 grams. The bill would reclassify the first two classes of violation (possession of up to 10 grams) as a civil law violation, which I support for the reasons explained above. But the bill goes farther, by also classifying possession of up to 15 grams as a civil violation, while providing that possession of 15 to 30 grams would be a Class B misdemeanor. In other words, the bill would create a delineation at 15 grams, which does not exist under current law.

I recommend that the delineation remain at 10 grams, rather than be moved to 15 grams. Many local ordinances, from Cook County to Carbondale, already use 10 grams as the delineation between civil law violation and misdemeanor, having taken their cue from State law. In addition, the State reports arrest and incarceration data based on current statutory delineations, meaning that future comparisons to study the effect of House Bill 218 if it becomes law will be easier without changing the delineation.

Leaving the delineation at 10 grams will still accomplish the bill's fundamental purposes. As noted above, 83% of the arrests in 2014 for possession of up to 30 grams were for

possession of less than 10 grams. Therefore, providing a civil law violation for possession of up to 10 grams will still dramatically reduce the number of arrests.

Penalty for Civil Law Violation

Under current law, a person convicted of possession of up to 10 grams of cannabis is subject to a fine of up to \$1,500, in addition to potential incarceration. House Bill 218 would reduce the fine to a minimum of \$55 and a maximum of \$125.

Although reducing the fine from \$1,500 is reasonable, \$55 to \$125 is too low. I recommend that the fine be a minimum of \$100 and a maximum of \$200. That range would be more in line with fines under local ordinances, including Cook County (\$200), Chicago (\$250 to \$500), Carbondale (\$250 to \$750), Evanston (\$50 to \$500), and Urbana (\$300). That range would also be in line with California and New York, both of which impose minimum fines of \$100.

In addition, House Bill 218 directs that \$55 of the fine be distributed to certain sources, including the circuit clerk, law enforcement agency, the county for drug addiction services, the State's Attorney Appellate Prosecutor, and the State's Attorney. The remaining proceeds are then to be turned over to the law enforcement agency that issued the ticket; but because the minimum fine is \$55, there may be no remainder to distribute. Imposing a minimum fine of \$100 would ensure additional proceeds are available to local law enforcement agencies to ensure their costs are adequately covered.

Imposing a fine of \$100 to \$200 will still accomplish the bill's fundamental purposes. That range of fine is still a significant reduction from the current \$1,500 fine.

Driving Under the Influence of Cannabis

House Bill 218 also establishes a standard for driving under the influence of cannabis. Under current law, a driver is presumed to be under the influence of cannabis if there is any trace of tetrahydrocannabinol (THC) detected in his or her blood, even if the usage occurred days or weeks earlier and the driver is no longer impaired. House Bill 218 would raise this limit from zero to 15 nanograms of THC per milliliter of blood (ng/mL). A driver would also continue to be guilty of driving under the influence if he or she exhibited other signs of impairment, regardless of the amount of THC detected.

Although I appreciate the need to update the limit above zero, the limit proposed in House Bill 218 is too high. The sponsors' intent was to establish a limit that would not jeopardize the safety of the driver or the public, would realistically reflect whether a driver was impaired, and would not exceed the equivalent limit for alcohol impairment. In light of this intent and the limitations on scientific research available to us, I believe that 5 ng/mL is the appropriate limit at this time.

As the sponsors of House Bill 218 acknowledged during the course of negotiation and debate, the science is limited and evolving. Both proponents and opponents have cited the work of European researchers on the causes and effects of cannabis-impaired driving. Dr. Jan Ramaekers opined that 5 ng/mL would cause approximately the same degree of impairment as our 0.08% standard for blood alcohol concentration. For that reason, both Colorado and Washington, where recreational cannabis was legalized, set the limit at 5 ng/mL, while Nevada set the limit at 2 ng/mL.

We need more research and more time to understand the effects of cannabis on driving. Equating impairment caused by cannabis to impairment caused by alcohol is neither so simple nor, given that cannabis remains illegal and the effects of cannabis are different than the effects of alcohol, appropriate. Until then, I cannot support a 15 ng/mL limit, which would be *three times* the limit in any other state.

Setting the limit at 5 ng/mL of whole blood will still accomplish the bill's fundamental purposes. That limit is a significant increase over the current zero-tolerance policy.

Incorporation of House Bill 3215

The General Assembly also passed House Bill 3215, which makes certain technical and other changes to House Bill 218 “[i]f and only if House Bill 218 of the 99th General Assembly becomes law in the form in which it passed the House on April 23, 2015”.

The passage of House Bill 3215 was an integral part of the passage of House Bill 218. Unfortunately, because of the references in House Bill 3215 to “the form in which [House Bill 218] passed the House on April 23, 2015, House Bill 3215 will not take effect if the changes recommended here are accepted. Therefore, to ensure that the entire legislation – including both House Bill 3215 and House Bill 218 – becomes law, I also recommend that the changes included in House Bill 3215 be incorporated into House Bill 218.

Conclusion

I again thank the sponsors for their diligent and thoughtful work on House Bill 218. The changes recommended here still work towards the fundamental purposes of the bill: that possession of small amounts of cannabis be a civil law violation rather than a misdemeanor; that the fine for possession of small amounts of cannabis be reduced significantly; and that the limit for driving under the influence of cannabis be increased from zero.

Therefore, pursuant to Section 9(e) of Article IV of the Illinois Constitution of 1970, I hereby return House Bill 218, entitled “AN ACT concerning transportation”, with the following specific recommendations for change:

On page 111, line 11, by replacing “15” with “5”; and

On page 111, line 13, by replacing “25” with “10”; and

On page 114, line 14, by replacing “15” with “5”; and

On page 114, line 14, by replacing “25” with “10”; and

On page 114, line 19, by replacing “15” with “5”; and

On page 114, line 20, by replacing “25” with “10”; and

On page 181, line 14, by replacing “15” with “10”; and

On page 181, line 16, by replacing “\$55” with “\$100”; and

On page 181, line 17, by replacing “\$125” with “\$200”; and

On page 182, line 24, by replacing “15” with “10”; and

On page 185, line 20, by replacing “\$55” with “\$100”; and

On page 185, line 20, by replacing “\$125” with “\$200”; and

For the purpose of incorporating the changes included in House Bill 3215:

On page 6, by replacing line 22 with “the circuit court shall expunge, upon order of the court, or in the absence of a court order on or before”; and

On page 138, by replacing lines 1 through 5 with “(5.3) (blank);”; and

On page 138, by replacing lines 6 through 10 with “(5.5) (blank); or”; and

On page 138, by replacing line 14 with “consumption of cannabis listed in the Cannabis Control Act,”; and

On page 181, by replacing lines 18 through 21 with “clerk of the circuit court. Within 30 days after the deposit of the fine, the clerk shall distribute the”; and

On page 185, by replacing lines 21 through 24 with “be payable to the clerk of the circuit court. Within 30 days after the deposit of the fine, the clerk shall distribute the”.

With these changes, House Bill 218 will have my approval. I respectfully request your concurrence.

Sincerely,

Bruce Rauner
GOVERNOR