92GMSHB1812

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD, 62706

GEORGE H. RYAN
GOVERNOR

August 17, 2001

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

Pursuant to Article IV, Section 9(b) of the Illinois Constitution of 1970, I hereby veto House Bill 1812 entitled "AN ACT concerning organized gangs, which may be referred to as the Severo Anti-gang Amendments of 2001."

House Bill 1812 would add a new eligibility factor to this State's death penalty sentencing statue. This new provision would make a defendant eligible for the death penalty where the murder was committed in furtherance of the activities of an organized gang. The bill also adds several new criminal offenses to the Criminal Code, which again are based upon activities in furtherance of an organized gang. While I sympathize with the circumstances that prompted the legislature to pass House Bill 1812, I must veto it for the following reasons.

I have long been a supporter of tough measures to combat gang activity in our state. Illinois has some of the toughest laws on the books to severely punish gang-related crimes. In fact, most gang-related murders would qualify for the imposition of the death penalty under the existing eligibility factors in our death penalty statue. Unfortunately, this still has not deterred gang members from killing. Moreover, the General Assembly recently passed the 15-20-Life laws which I proposed that also substantially enhanced the sentences for criminals, including gang members, who use firearms in committing violent offenses. Although there have been legal challenges to this initiative, I am confident that the Illinois Supreme Court will ultimately uphold these laws as federal and state courts have done elsewhere in upholding similar sentencing enhancement provisions.

Of course, we must continue to provide better support for law enforcement activities designed to break the stranglehold of fear and cycle of violence that gang activity produces in some of our communities. We all recognize, however, that even the most effective work by police and prosecutors will not, by itself, solve this problem. We must continue to work to provide better educational and economic opportunities to our most impoverished communities where gang activity and violence have flourished. We must also ensure that we have programs that will provide meaningful alternatives to gang membership for every child to discourage their participation in criminal activity.

I am proud to say that in partnership with the General Assembly, we have done much to provide new economic and educational opportunities in this State. We recognize that eliminating crime and violence in our society requires us to equally focus on prevention, enforcement and rehabilitation. We have made significant progress in the last two years; however, our work is far from over.

While House Bill 1812 represents a well-meaning effort to address serious gang activity that results in a murder, I believe its efforts are misdirected in light of existing laws, constitutional concerns and our past history of erroneously sentencing individuals to death.

First, it is essential to recognize that most serious

gang activity that results in murder is already covered by our existing death penalty statue. For example, a gang member committing murder while attempting or committing another serious felony offense is eligible for the death penalty. The list of qualifying felony offenses is lengthy and includes crimes such as robbery, armed violence, burglary, home invasion, kidnapping and forcible detention. Current law specifically provides that the death penalty may be imposed for a killing committed in the course of a streegang criminal drug conspiracy. Murders committed while engaging in various drug offenses are also punishable by death. There is no question that gangs and gang violence exist because of, and are fueled by, the illegal drug trade.

Further, under our current death penalty statute, the killing of a police officer, correctional officer or inmate already makes a gang member eligible for the death penalty. A gang member who has previously been convicted of a murder is also subject to a death sentence. Committing a murder pursuant to an agreement in exchange for anything of value (including drugs) will also result in eligibility for the death penalty. Murdering someone who is going to testify or who is assisting the State in any investigation or prosecution will make the murderer eligible for the death penalty. The death penalty statute also makes gang leaders eligible for the death penalty for counseling, inducing, procuring or causing the murder of another individual. Finally, our existing death penalty statute also makes a defendant eligible for the death penalty if the murder results from a drive-by shooting. The addition of a blanket eligibility factor making someone eligible for the death penalty based merely on gang membership duplicates existing statues, sweeps more broadly than is necessary and raises constitutional concerns.

In an effort to define the conditions under which gang activity would result in the death penalty or one of the new crimes described by the bill, the legislature has incorporated the definition of "organized gang" from the Illinois Streetgang Terrorism Omnibus Prevention Act (740 ILCS 147). The intention of this Act is to create a civil remedy available to public authorities to be pursued against gang members. Its purpose is to include the broadest range of activity possible. Using this broad civil definition of gang activity as a basis for the imposition of the death penalty or to define the scope of other criminal prohibitions is unwise.

Although the General Assembly modified this legislation to attempt to avoid infringing an individual's constitutional right of association, the intended broad scope of prohibited conduct "in furtherance" of an organized gang does not completely eliminate this concern. Furthermore, significant opposition to this legislation developed in the General Assembly because of the clear disparate impact this bill will have on minorities. Today, nearly 70% of those on death row are racial or ethnic minorities. Such disproportionate numbers have already raised due process and equal protection challenges to our existing capital punishment system. Moreover, as we continue to almost annually add eligibility factors to our death penalty statute, we introduce more arbitrariness and discretion and edge ever closer to our previous capital punishment system that was effectively held unconstitutional by the United States Supreme Court in 1972. Over the last year, I have heard from prosecutors, judges and defense attorneys who have suggested we already have far too many eligibility factors under our existing capital punishment statute.

We must also be mindful that the very nature of gang activity has historically produced difficulties with the reliable identification of a killer or killers and with proving guilt based on unimpeachable evidence. Where the state seeks to impose and carry out a death sentence, an obviouslyirreversible decision, we must be morally certain the individual is actually guilty of the charged murder. Given the broad scope of this legislation, coupled with our past experience, we would clearly be adding ambiguity to our

capital punishment system and raising additional constitutional issues.

For these reasons, I hereby veto and return House Bill 1812.

Sincerely,
s/GEORGE H. RYAN
Governor