92GMSHB2058

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD, 62706

GEORGE H. RYAN
GOVERNOR

August 23, 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 2058, entitled "AN ACT in relation to terrorism", with my specific recommendations for change.

House Bill 2058 amends the Criminal Code of 1961, the Solicitation for Charity Act, the Firearm Owners Identification Card Act, the Code of Criminal Procedure of 1963, the Boarding Aircraft with Weapon Act, the Statewide Grand Jury Act, the Unified Code of Corrections, the Charitable Trust Act and other Acts with respect to investigating, prosecuting and punishing acts of terrorism. Specifically, the bill amends the Criminal Code of 1961 to allow the death penalty to be considered for a first-degree murder committed as a result of or in connection with a terrorism offense.

House Bill 2058 is the second terrorism bill to pass the General Assembly. On February 8th of this year, I amendatorily vetoed the first terrorism bill (House Bill 2299) due to, among others, concerns surrounding the over-expansive eavesdropping & wiretapping provisions, the expansion of our death eligibility factors, the need for additional due process protections before seizing and freezing of assets of charitable organizations and persons, and other technical flaws. The proposed amendments were important to protecting the constitutional rights of our citizens from some of the overly broad provisions of this legislation. I am pleased to see that the General Assembly has passed a much-improved anti-terrorism bill by including all but one of my suggested changes in House Bill 2058. However, the one suggested amendatory veto change that the General Assembly did not incorporate into House Bill 2058 is removing the addition of an unnecessary death eligibility factor for a first-degree murder committed as part of a terrorist offense. Our current death penalty statute has numerous provisions that cover just about every conceivable murder circumstance that would be committed by a terrorist. Illinois' legislative response to the tragic events of September 11th should not compromise our state government's integrity by succumbing to the urge to enact largely symbolic legislative changes.

House Bill 2058 passed the General Assembly on May 29, 2002. This was a month and a half after my Commission on Capital Punishment delivered its report with 85 proposed reforms to the death penalty system and more than two weeks after I introduced reform legislation that would codify many of the Commission's recommendations. The General Assembly, however, did not address the important issue of comprehensive death penalty reform during the spring legislative session, but rather sent me yet another bill expanding the death penalty. This occurred despite what I believe is a growing consensus to limit eligibility factors in some fashion. The General Assembly has convened committees to look into the issue of death penalty reform, which have been meeting over

the summer months. And while I applaud both the House and Senate for convening these committees to look into the issue of death penalty reform, I am troubled by the relative ease with which a death penalty expansion bill was able to pass before any real legislative attention had been given to carrying out much needed reforms. Given our State's capital punishment track record, there can be little doubt that reform should take precedence over expanding death penalty eligibility in what most believe to be a flawed system. Failure to do so can only serve to demonstrate that Illinois is more concerned with making a symbolic statement with an unnecessary death penalty provision than with ensuring that additional innocent persons do not end up on death row and executed at the hands of the state.

While it is true that the General Assembly previously passed the Capital Crimes Litigation Act to better fund defense and prosecution of capital cases and legislation requiring stricter controls over retaining evidence, this year I did not receive a single death penalty reform proposal. For the third time in barely over a year, I am receiving legislation aimed at expanding the death penalty statute, despite my two previous vetoes of the prior attempts to expand the statute. Instead of sending me comprehensive death penalty reform legislation, I have received only death penalty expansion legislation. This, despite the fact that my Commission comprised of intelligent, insightful, experienced, passionate and well-rounded individuals has come up with 85 recommendations for change to our flawed capital punishment system. The Illinois State Bar Association, the Illinois State's Attorney?s Association, the Illinois Chiefs of Police, the Illinois Public Defender's Association and many others have gone on record as agreeing with the vast majority of the Commission's recommendations.

Since the reinstatement of the death penalty on June 27, 1977, the number of innocent persons exonerated from death row has outnumbered the number of those who have been executed. There may still be innocent persons on death row-sentenced to die by a badly flawed system. If that system is allowed to continue unchanged and unreformed, then there undoubtedly will be more innocent men and women who find themselves awaiting their death at the hands of the people of the State of Illinois for a crime that they did not commit.

Now is the time for reform of Illinois' death penalty system. To do anything otherwise is unjust, unfair and unprincipled.

Therefore, if the General Assembly wants to expand the death penalty with House Bill 2058, then justice demands that the General Assembly be prepared to adopt some needed reforms to make sure the death penalty is considered and imposed in a fair and just manner. To that end, I am proposing an amendatory veto of House Bill 2058 to include changes in the death penalty system that I believe will help keep Illinois' death penalty statutes constitutional, address technical flaws in the system and begin restoring public confidence in our system of justice. There are additional reforms the General Assembly must consider in November, but the reform proposals contained in this amendatory veto are both applicable and necessary to the death penalty provision in this bill.

For these reasons, I hereby return House Bill 2058 with the following recommendations for change:

on page 1, by inserting between lines 3 and 4 the following:

"Section 2. The Counties Code is amended by changing Section 3-4006 as follows:

(55 ILCS 5/3-4006) (from Ch. 34, par. 3-4006)

Sec. 3-4006. Duties of public defender. The Public Defender, as directed by the court, shall act as attorney, without fee, before any court within any county for all persons who are held in custody or who are charged with the commission of any criminal offense, and who the court finds

are unable to employ counsel.

The Public Defender shall be the attorney, without fee, when so appointed by the court under Section 1-20 of the Juvenile Court Act or Section 1-5 of the Juvenile Court Act of 1987 or by any court under Section 5(b) of the Parental Notice of Abortion Act of 1983 for any party who the court finds is financially unable to employ counsel.

The Public Defender may act as attorney, without fee and appointment by the court, for a person in custody during the person's interrogation regarding first degree murder for which the death penalty may be imposed, if the person has requested the advice of counsel and there is a reasonable belief that the person is indigent. Any further representation of the person by the Public Defender shall be pursuant to Section 109-1 of the Code of Criminal Procedure of 1963.

Every court shall, with the consent of the defendant and where the court finds that the rights of the defendant would be prejudiced by the appointment of the public defender, appoint counsel other than the public defender, except as otherwise provided in Section 113-3 of the "Code of Criminal Procedure of 1963". That counsel shall be compensated as is provided by law. He shall also, in the case of the conviction of any such person, prosecute any proceeding in review which in his judgment the interests of justice require. (Source: P.A. 86-962.)"; and

on page 8, by replacing lines 18 through 21 with the following:

"(b) Aggravating Factors. A defendant:

(i) who at the time of the commission of the offense has attained the age of 18 or more;

(ii) ~~and~~ who has been found guilty of first degree murder; and

(iii) whose guilt was not, in the determination of the court, based solely upon the uncorroborated testimony of one eyewitness, of one accomplice, or of one incarcerated informant;

may be sentenced to death if:";

and on page 11, by replacing lines 1 and 2 with the following:

"to prevent the murdered individual from testifying or participating in any criminal investigation or prosecution or giving material assistance to the"; and

on page 11, by replacing line 5 with the following:

"murder because the murdered individual was a witness or participated in"; and

on page 13, by replacing lines 23 through 27 with the following:

"For the purpose of this Section:

Torture" means the intentional and depraved infliction of extreme physical pain for a prolonged period of time prior to the victim's death.

"Depraved" means the defendant relished the infliction of extreme physical pain upon the victim evidencing debasement or perversion or that the defendant evidenced a sense of pleasure in the infliction of extreme physical pain.

"Participating in any criminal investigation or prosecution" is intended to include those appearing in the proceedings in any capacity, such as trial judges, prosecutors, defense attorneys, investigators, witnesses, or jurors.

(c) Consideration of accomplice or informant testimony and factors in aggravation and mitigation.

When the sentence of death is being sought by the State, the court shall consider, or shall instruct the jury to consider that the testimony of an accomplice or incarcerated informant who may provide evidence against a defendant for pay, immunity from punishment, or personal advantage must be examined and weighed with greater care than the testimony of

an ordinary witness. Whether the accomplice or informant's testimony has been affected by interest or prejudice against the defendant must be determined. In making the determination, the jury must consider (i) whether the accomplice or incarcerated informant has received anything, including pay, immunity from prosecution, leniency in prosecution, or personal advantage, in exchange for testimony, (ii) any other case in which the accomplice or informant testified or offered statements against an individual but was not called, and whether the statements were admitted in the case, and whether the accomplice or informant received any deal, promise, inducement, or benefit in exchange for that testimony or statement, (iii) whether the accomplice or informant has ever changed his or her testimony, (iv) the criminal history of the accomplice or informant, and (v) any other evidence relevant to the credibility of the accomplice or informant.

The court shall also consider, or shall also instruct the jury to consider, any aggravating and any mitigating factors which are relevant to the imposition of the death penalty. Before the jury makes a determination with respect to the imposition of the death penalty, the court shall also instruct the jury of the applicable alternative sentences under Chapter V of the Unified Code of Corrections that the court may impose for first degree murder if a jury determination precludes the death sentence. Aggravating"; and

on page 14, line 10, by replacing the period with ";.-

(6) the defendant's background includes a history of extreme emotional or physical abuse;

(7) the defendant suffers from a reduced mental capacity."; and

on page 15, line 4, by inserting after the period the following:

"The defendant shall be given the opportunity, personally or through counsel, to make a statement that is not subject to cross-examination. If the proceeding is before a jury, the defendant's statement shall be reduced to writing in advance and submitted to the court and the State, so that the court may rule upon any evidentiary objection with respect to admissibility of the statement."; and

on page 15, by replacing lines 22 through 29 with the following:

"determines unanimously, after weighing the factors in aggravation and mitigation, that death is the appropriate sentence and the court concurs with the jury determination ~~that--there--are-no-mitigating-factors-sufficient-to-preclude the--imposition--of--the--death--sentence~~, the court shall sentence the defendant to death. If the court does not concur with the jury determination that death is the appropriate sentence, the court shall set forth reasons in writing and shall then sentence the defendant to a term of natural life imprisonment under Chapter V of the Unified Code of Corrections.

If ~~Unless~~ the jury determines unanimously, after weighing the factors in aggravation and mitigation, that death is not the appropriate sentence, ~~finds that there are no mitigating factors sufficient to preclude the imposition--of--the--death sentence~~ the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections."; and

on page 16, by replacing lines 5 through 13 with the following:

"subsection (c). If the Court determines, after weighing the factors in aggravation and mitigation, that death is the appropriate sentence that there are no mitigating factors sufficient to preclude the imposition of the death sentence, the Court shall sentence the defendant to death.

If ~~Unless~~ the court finds that ~~there are no mitigating factors sufficient to preclude the imposition of the sentence~~

~~of~~ death is not the appropriate sentence, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections."; and

on page 16, line 17, by inserting after the period the following:

"Upon the request of the defendant, the Supreme Court must determine whether the sentence was imposed due to some arbitrary factor; whether an independent weighing of the aggravating and mitigating circumstances indicate death was the proper sentence; and whether the sentence of death was excessive or disproportionate to the penalty imposed in similar cases. The Supreme Court may order the collection of data and information to support the review required by this subsection (i)."; and

on page 20, line 5, by replacing "and" with "~~and~~"; and

on page 22, line 3, by replacing the period with the following:

"; and

(k) Recording the interrogation or statement of a person in custody for first degree murder or a witness in a first degree murder case, when the person in custody or witness knows the interrogation is being conducted by a law enforcement officer or prosecutor. For the purposes of this Section, "interrogation of a person in custody" means any interrogation during which the person being interrogated is not free to leave and the person is being asked questions relevant to the first degree murder investigation."; and

on page 41, by replacing line 28 with the following:

"108B-11, 108B-12, 108B-14, 114-11, 114-13, 116-3, 122-1, and 122-2.1 and by adding Sections 108B-7.5, 113-7, 114-15, 114-16, 115-16.1, and 115-21 as"; and

on page 68, by inserting between lines 1 and 2 the following:

"(725 ILCS 5/113-7 new)

Sec. 113-7. Notice of intention to seek or decline the death penalty. The State's Attorney or Attorney General shall provide notice of the State's intention to seek or decline the death penalty by filing a Notice of Intent to Seek or Decline the Death Penalty as soon as practicable. In no event shall the filing of the notice be later than 120 days after arraignment, unless, for good cause shown, the court directs otherwise. A notice of intent to seek the death penalty shall also include all of the statutory aggravating factors enumerated in subsection (b) of Section 9-1 of the Criminal Code of 1961 which the State intends to introduce during the death penalty sentencing hearing.

(725 ILCS 5/114-11) (from Ch. 38, par. 114-11)

Sec. 114-11. Motion to Suppress Confession.

(a) Prior to the trial of any criminal case a defendant may move to suppress as evidence any confession given by him on the ground that it was not voluntary.

(b) The motion shall be in writing and state facts showing wherein the confession is involuntary.

(c) If the allegations of the motion state facts which, if true, show that the confession was not voluntarily made the court shall conduct a hearing into the merits of the motion.

(d) The burden of going forward with the evidence and the burden of proving that a confession was voluntary shall be on the State. Objection to the failure of the State to call all material witnesses on the issue of whether the confession was voluntary must be made in the trial court.

(e) The motion shall be made only before a court with jurisdiction to try the offense.

(f) The issue of the admissibility of the confession shall not be submitted to the jury. The circumstances surrounding the making of the confession may be submitted to the jury as bearing upon the credibility or the weight to be

given to the confession.

(g) The motion shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion. If the motion is made during trial, and the court determines that the motion is not untimely, and the court conducts a hearing on the merits and enters an order suppressing the confession, the court shall terminate the trial with respect to every defendant who was a party to the hearing and who was within the scope of the order of suppression, without further proceedings, unless the State files a written notice that there will be no interlocutory appeal from such order of suppression. In the event of such termination, the court shall proceed with the trial of other defendants not thus affected. Such termination of trial shall be proper and shall not bar subsequent prosecution of the identical charges and defendants; however, if after such termination the State fails to prosecute the interlocutory appeal until a determination of the merits of the appeal by the reviewing court, the termination shall be improper within the meaning of subparagraph (a) (3) of Section 3--4 of the "Criminal Code of 1961", approved July 28, 1961, as amended, and subsequent prosecution of such defendants upon such charges shall be barred.

(h) In capital cases, the court may also conduct a hearing pursuant to Section 115-21 on the admissibility of the statement made by the defendant where the statement has not been recorded by electronic video or audio, regardless of whether the defense requests such a hearing. (Source: P.A. 76-1096.)

(725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

Sec. 114-13. Discovery in criminal cases.

(a) Discovery procedures in criminal cases shall be in accordance with Supreme Court Rules.

(b) Discovery deposition procedures applicable in cases for which the death penalty may be imposed shall be in accordance with Supreme Court Rules and this subsection (b), unless the State has given notice of its intention not to seek the death penalty.

(1) The intent of this subsection is to (i) ensure that capital defendants receive fair and impartial trials and sentencing hearings within the courts of this State and (ii) minimize the occurrence of error to the maximum extent feasible by identifying and correcting with due promptness any error that may occur.

(2) A party may, with leave of court upon a showing of good cause, take the discovery deposition upon oral questions of any person disclosed as a witness as provided by law or Supreme Court Rule. In determining whether to allow a deposition, the court should consider (i) the consequences to the party if the deposition is not allowed, (ii) the complexities of the issues involved, (iii) the complexity of the testimony of the witness, and (iv) the other opportunities available to the party to discover the information sought by deposition. Under no circumstances, however, may the defendant be deposed.

(3) The taking of depositions shall be in accordance with rules providing for the taking of depositions in civil actions, and the order for the taking of a deposition may provide that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place.

(4) A defendant shall have no right to be physically present at a discovery deposition. If there is any concern regarding witness safety, the court may require that the deposition be held in a place or manner that will ensure the security of the witness. The court may also issue protective orders to restrict the use and disclosure of information provided by a witness.

(5) Absent good cause shown to the court, depositions shall be completed within 90 days after the disclosure of witnesses. The parties shall have the right to compel depositions under this subsection by subpoena. No witness may be deposed more than once, except by leave of the court upon a showing of good cause.

(6) If the defendant is indigent, the costs of taking depositions shall be paid by the county where the

criminal charge is initiated with reimbursement to the county from the Capital Litigation Trust Fund. If the defendant is not indigent, the costs shall be allocated as in civil actions.

(Source: Laws 1963, p. 2836.)

(725 ILCS 5/114-15 new)

Sec. 114-15. Motion for genetic marker groupings comparison analysis.

(a) A defendant may make a motion for a court order before trial for comparison analysis by the Department of State Police with those genetic marker groupings maintained under subsection (f) of Section 5-4-3 of the Unified Code of Corrections if the defendant meets all of the following requirements:

(1) The defendant is charged with any offense.

(2) The defendant seeks for the Department of State Police to identify genetic marker groupings from evidence collected by criminal justice agencies pursuant to the alleged offense.

(3) The defendant seeks comparison analysis of genetic marker groupings of the evidence under subdivision (2) to those of the defendant, to those of other forensic evidence, and to those maintained under subsection (f) of Section 5-4-3 of the Unified Code of Corrections.

(4) Genetic marker grouping analysis must be performed by a laboratory compliant with the quality assurance standards required by the Department of State Police for genetic marker grouping analysis comparisons.

(5) Reasonable notice of the motion shall be served upon the State.

(b) The Department of State Police may promulgate rules for the types of comparisons performed and the quality assurance standards required for submission of genetic marker groupings. The provisions of the Administrative Review Law shall apply to all actions taken under the rules so promulgated.

(725 ILCS 5/114-16 new)

Sec. 114-16. Motion to preclude death penalty based upon mental retardation.

(a) A defendant charged with first degree murder may make a motion prior to trial to preclude the imposition of the death penalty based upon the mental retardation of the defendant. The motion shall be in writing and shall state facts to demonstrate the mental retardation of the defendant. As used in this Section, "mental retardation" means:

(1) having significantly subaverage general intellectual functioning as evidenced by a functional intelligence quotient (I.Q.) of 70 or below; and

(2) having deficits in adaptive behavior. The mental retardation must have been manifested during the developmental period, or by 18 years of age.

(b) Notwithstanding any provision of law to the contrary, a defendant with mental retardation at the time of committing first degree murder shall not be sentenced to death.

(c) The burden of going forward with the evidence and the burden of proving the defendant's mental retardation by a preponderance of the evidence is upon the defendant. The determination of whether the defendant was mentally retarded at the time of the offense of first degree murder shall be made by the court after a hearing.

(d) If the issue of mental retardation is raised prior to trial and the court determines that the defendant is not a person with mental retardation, the defendant shall be entitled to offer evidence to the trier of fact of diminished intellectual capacity as a mitigating circumstance pursuant to clause (c)(7) of Section 9-1 of the Criminal Code of 1961.

(e) The determination by the trier of fact on the defendant's motion shall not be appealable by interlocutory appeal, but may be a basis of appeal by either the State or defendant following the sentencing stage of the trial.

(725 ILCS 5/115-16.1 new)

Sec. 115-16.1. Witness qualification in first degree murder trial.

(a) In a prosecution for first degree murder where the State has given notice of its intention to seek the death penalty, the prosecution must promptly notify the court and the defendant's attorney of the intention to introduce testimony at trial from a person who is in custody or who was in custody at the time of the factual matters to which the person will testify. The notice to the defendant's attorney must include the identification, criminal history, and background of the witness. The prosecution must also promptly notify the defendant's attorney of any discussion, inducement, benefit, or agreement between that witness and a law enforcement agency, officer, or prosecutor for that witness.

(b) After notice has been given to the court pursuant to subsection (a), the court must prior to trial conduct an evidentiary hearing to determine the reliability and admissibility of the testimony of the witness. The prosecution has the burden of proving by a preponderance of the evidence the reliability of the testimony of the witness. In making its determination, the court may consider:

(1) the specific statements or facts to which the witness will testify;

(2) the time, place, and other circumstances regarding the statements or facts to which the witness will testify;

(3) any discussion, inducement, benefit, or agreement between the witness and a law enforcement agency or officer for that witness;

(4) the criminal history of the witness;

(5) whether the witness has ever recanted his or her testimony;

(6) other criminal cases in which the witness has testified;

(7) the presence or absence of any relationship between the accused and the witness; and

(8) any other evidence relevant to the credibility of the witness.

(725 ILCS 5/115-21 new)

Sec. 115-21. Evidence of statement in capital case.

(a)The General Assembly believes that justice and fairness are best served if the custodial interrogation and any statement of the defendant that may result from the interrogation in a capital case are recorded by means of electronic video and audio. The General Assembly finds that the video and audio recording of the interrogation and statement produce some of the best evidence with respect to the voluntariness and reliability of the statement and compliance with the constitutional rights of the defendant. The General Assembly understands that to implement such recording practices will require time, training, and funding. Therefore, the General Assembly believes that law enforcement officers, to the extent possible, should record any interrogations and statements of the suspect, defendant, or significant witness in capital cases in video and audio format. However, the General Assembly also recognizes that such video and audio recording may not always be available or practical under the circumstances and resources of a particular case. Further, an interrogation or statement that is not recorded by video or audio may be just as reliable and voluntary as one that is so recorded. Therefore, the purpose of this Section is not to mandate video and audio recording of interrogations and statements in first degree murder cases and compel the exclusion of unrecorded statements or interrogations, but rather to guarantee an admissibility hearing before the court for statements made without a video or audio recording. The State's Attorney for each county and the Attorney General shall each report separately to the General Assembly by August 1, 2003 as to the implementation of these recording procedures in their respective jurisdictions.

(b) When a statement of the defendant made during a custodial interrogation without an electronic video and audio recording of the interrogation and statement is to be offered as evidence at trial for first degree murder when the State has given notice of its intention to seek

the death penalty, the court must conduct a hearing on the admissibility of the statement regardless of whether an admissibility objection has been made. In making a determination regarding admissibility of the statement, the court must review the facts with respect to the voluntariness of the statement, whether the defendant was properly advised of law. The hearing required by this Section may be combined with the hearing on the defendant's motion to suppress his or her confession pursuant to Section 114-11 of this Code.

(c) For the purposes of this Section, "custodial interrogation" means any interrogation during which the person being interrogated is not free to leave and the person is being asked questions relevant to the first degree murder investigation.

(725 ILCS 5/116-3)

Sec. 116-3. Motion for fingerprint or forensic testing not available at trial regarding actual innocence.

(a) A defendant may make a motion before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint or forensic DNA testing, including comparison analysis of genetic marker groupings of the evidence collected by criminal justice agencies pursuant to the alleged offense, to those of the defendant, to those of other forensic evidence, and to those maintained under subsection (f) of Section 5-4-3 of the Unified Code of Corrections, on evidence that was secured in relation to the trial which resulted in his or her conviction, but which was not subject to the testing which is now requested because the technology for the testing was not available at the time of trial. Reasonable notice of the motion shall be served upon the State.

(b) The defendant must present a prima facie case that:

(1) identity was the issue in the trial which resulted in his or her conviction; and

(2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

(c) The trial court shall allow the testing under reasonable conditions designed to protect the State's interests in the integrity of the evidence and the testing process upon a determination that:

(1) the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence that significantly advances the defendant's claim of innocence;

(2) the testing requested employs a scientific method generally accepted within the relevant scientific community.

(Source: P.A. 90-141, eff. 1-1-98.)

(725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

Sec. 122-1. Petition in the trial court.

(a) Any person imprisoned in the penitentiary may institute a proceeding under this Article if the person who asserts that:

1) in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both; or

(2) the death penalty was imposed and there is newly discovered evidence not available to the person at the time of the proceeding that resulted in his or her conviction that establishes the person's innocence.

(a-5) A proceeding under paragraph (2) of subsection (a) may be commenced at any time after the person's conviction notwithstanding any other provisions of ~~may--institute--a proceeding-under~~ this Article. In such a proceeding regarding actual innocence, if the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision. Such order of dismissal is a final judgment and shall be served upon the petitioner by certified mail within 10 days of its entry.

(b) The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place a petition (together with a copy thereof) verified by affidavit. Petitioner shall also serve another copy upon the State's Attorney by any of the methods provided in Rule 7 of the Supreme Court. The clerk shall docket the petition for consideration by the court pursuant to Section 122-2.1 upon his or her receipt thereof and bring the same promptly to the attention of the court.

(c) Except as otherwise provided in subsection (a-5), if the petitioner is under sentence of death, no proceedings under this Article shall be commenced more than 6 months after the issuance of the mandate by the Supreme Court following affirmance of the defendant's direct appeal of the trial court verdict. In all other cases, no proceedings under this Article shall be commenced more than 6 months after the denial of a petition for leave to appeal or the date for filing such a petition if none is filed or more than 45 days after the defendant files his or her brief in the appeal of the sentence before the Illinois Supreme Court (or more than 45 days after the deadline for the filing of the defendant's brief with the Illinois Supreme Court if no brief is filed) or 3 years from the date of conviction, whichever is sooner, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence.

(d) A person seeking relief by filing a petition under this Section must specify in the petition or its heading that it is filed under this Section. A trial court that has received a petition complaining of a conviction or sentence that fails to specify in the petition or its heading that it is filed under this Section need not evaluate the petition to determine whether it could otherwise have stated some grounds for relief under this Article.

(e) A proceeding under this Article may not be commenced on behalf of a defendant who has been sentenced to death without the written consent of the defendant, unless the defendant, because of a mental or physical condition, is incapable of asserting his or her own claim.

(Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97; 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

(725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

Sec. 122-2.1. (a) Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon pursuant to this Section.

(1) If the petitioner is under sentence of death and is without counsel and alleges that he is without means to procure counsel, he shall state whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is so requested, the court shall appoint counsel if satisfied that the petitioner has no means to procure counsel.

(2) If the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision. Such order of dismissal is a final judgment and shall be served upon the petitioner by certified mail within 10 days of its entry.

(b) If the petition is not dismissed pursuant to this Section, the court shall order the petition to be docketed for further consideration in accordance with Sections 122-4 through 122-6. If the petitioner is under sentence of death, the court shall order the petition to be docketed for further consideration and hearing within one year of the filing of the petition.

(c) In considering a petition pursuant to this Section, the court may examine the court file of the proceeding in which the petitioner was convicted, any action taken by an appellate court in such proceeding and any transcripts of such proceeding. (Source: P.A. 86-655; 87-904.)

Section 20.5. The Capital Crimes Litigation Act is amended by changing Sections 10 and 19 as follows:

25 ILCS 124/10)
(Section scheduled to be repealed on July 1, 2004)
Sec. 10. Court appointed trial counsel; compensation and expenses.
(a) This Section applies only to compensation and expenses of trial counsel appointed by the court as set forth in Section 5, other than public defenders, for the period after arraignment and so long as the State's Attorney has not, at any time, filed a certificate indicating he or she will not seek the death penalty or stated on the record in open court that the death penalty will not be sought.
(b)Appointed trial counsel shall be compensated upon presentment and certification by the circuit court of a claim for services detailing the date, activity, and time duration for which compensation is sought. Compensation for appointed trial counsel may be paid at a reasonable rate not to exceed $125 per hour.

Beginning in 2001, every January 20, the statutory rate prescribed in this subsection shall be automatically increased or decreased, as applicable, by a percentage equal to the percentage change in the consumer price index-u during the preceding 12- month calendar year. "Consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84=100. The new rate resulting from each annual adjustment shall be determined by the State Treasurer and made available to the chief judge of each judicial circuit. <u>Payment in excess of the limitations stated in this subsection (b) may be made if the trial court certifies that such payment is necessary to provide fair compensation for representation based upon customary charges in the relevant legal market for attorneys of similar skill, background, and experience. A trial court may entertain the filing of this verified statement before the termination of the cause and may order the provisional payment of sums during the pendency of the cause.</u>
(c) Appointed trial counsel may also petition the court for certification of expenses for reasonable and necessary capital litigation expenses including, but not limited to, investigatory and other assistance, expert, forensic, and other witnesses, and mitigation specialists. Counsel may not petition for certification of expenses that may have been provided or compensated by the State Appellate Defender under item (c)(5) of Section 10 of the State Appellate Defender Act.
(d) Appointed trial counsel shall petition the court for certification of compensation and expenses under this Section periodically during the course of counsel's representation. If the court determines that the compensation and expenses should be paid from the Capital Litigation Trust Fund, the court shall certify, on a form created by the State Treasurer, that all or a designated portion of the amount requested is reasonable, necessary, and appropriate for payment from the Trust Fund. Certification of compensation and expenses by a court in any county other than Cook County shall be delivered by the court to the State Treasurer and paid by the State Treasurer directly from the Capital Litigation Trust Fund if there are sufficient moneys in the Trust Fund to pay the compensation and expenses. Certification of compensation and expenses by a court in Cook County shall be delivered by the court to the county treasurer and paid by the county treasurer from moneys granted to the county from the Capital Litigation Trust Fund.
(Source: P.A. 91-589, eff. 1-1-00.)

(725 ILCS 124/19)
(Section scheduled to be repealed on July 1, 2004)
Sec. 19. Report; repeal.
(a) The Cook County Public Defender, the Cook County State's Attorney, the State Appellate Defender, the State's Attorneys Appellate Prosecutor, and the Attorney General shall each report separately to the General Assembly by January 1, 2004 detailing the amounts of money received by them through this Act, the uses for

which those funds were expended, the balances then in the Capital Litigation Trust Fund or county accounts, as the case may be, dedicated to them for the use and support of Public Defenders, appointed trial defense counsel, and State's Attorneys, as the case may be. The report shall describe and discuss the need for continued funding through the Fund and contain any suggestions for changes to this Act.

(b) (Blank) ~~Unless the General Assembly provides otherwise, this Act is repealed on July 1, 2004.~~

(Source: P.A. 91-589, eff. 1-1-00.)"; and

on page 73, line 29, by inserting after "5-4-3" the following:

"and by adding Section 5-2-7"; and

on page 81, by inserting between lines 27 and 28 the following:

"(730 ILCS 5/5-2-7 new)

Sec. 5-2-7. Fitness to be executed.

(a) A person is unfit to be executed if the person is mentally retarded. For the purposes of this Section, "mentally retarded" means:

(1) having significantly sub-average general intellectual functioning as evidenced by a functional intelligence quotient (I.Q.) of 70 or below; and

(2) having deficits in adaptive behavior.

The mental retardation must have been manifested during the developmental period, or by 18 years of age.

(b) The question of fitness to be executed may be raised after pronouncement of the death sentence. The procedure for raising and deciding the question shall be the same as that provided for raising and deciding the question of fitness to stand trial subject to the following specific provisions:

(1) the question shall be raised by motion filed in the sentencing court;

(2) the question shall be decided by the court;

(3) the burden of proving that the offender is unfit to be executed is on the offender;

(4) if the offender is found to be mentally retarded, the court must resentence the offender to natural life imprisonment under Chapter V of the Unified Code of Corrections."; and

on page 84, by replacing lines 19 and 20 with the following:

"Illinois and to all prosecutorial agencies. Notwithstanding the limits on disclosure stated by this subsection (f), the genetic marker grouping analysis information obtained under this Act also may be released by court order pursuant to a motion under Section 114-15 of the Code of Criminal Procedure of 1963 to a defendant who meets all of the requirements under that Section.

Notwithstanding any other statutory provision to the contrary, all".

With these specific recommendations for change, House Bill 2058 will have my approval. I respectfully request your concurrence.

Sincerely,
s/GEORGE H. RYAN
Governor