92GMSHB2299

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD, 62706

GEORGE H. RYAN
GOVERNOR

February 8, 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 2299, entitled "AN ACT in relation to terrorism", with my specific recommendations for change.

House Bill 2299 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, and the Charitable Trust Act with respect to investigating, prosecuting and punishing acts of terrorism.

House Bill 2299 creates a new Terrorism Article to replace the current international terrorism provision and covers the commission of a terrorist act, making a terrorist threat, falsely communicating a terrorist threat, soliciting or providing support to a terrorist act, and hindering prosecution of terrorism.

The bill also defines a terrorist act, creates a Class X felony with mandatory imprisonment of 20 years to natural life and adds a death penalty qualifier for first degree murder resulting from a terrorist act. Furthermore, House Bill 2299 raises the penalty for boarding or attempting to board a commercial or charter aircraft with a firearm, explosive or other dangerous weapon from a Class A misdemeanor to a Class 4 felony.

This bill additionally allows for freezing assets, seizure and forfeiture of property connected with terrorism violations and expands consensual eavesdropping without a court order, nonconsensual wiretap and Statewide grand jury statutes to include investigation of terrorism offenses. A sunset provision for the eavesdropping, wiretap and search warrant changes takes effect on January 1, 2005. Finally, House Bill 2299 allows the Attorney General to take action against a charitable organization that acts to further terrorist activities, directly or indirectly, or uses charitable assets in support of terrorist acts.

However, as I told members of the General Assembly and the people of Illinois in a special preparedness briefing on October 11, 2001, "to simply act symbolically and overreach our authority is both irresponsible and detrimental to the federal government's efforts."

I maintain that position with respect to House Bill 2299. There are provisions in this legislation that would not significantly enhance the State's efforts and powers to battle acts of terrorism and other language that could erode protections on individual liberties that have been the law of the land in Illinois for many years.

With that said, I believe it is helpful to review my Administration's record on combating the threat of terrorism. Since 1999, we, as a State, have worked hard to address issues surrounding terrorism and domestic preparedness. Our efforts began long before the terrorist attacks on New York City and Washington D.C. of September 11th, 2001.

In order to bolster our existing emergency response infrastructure, in May of 2000 I appointed the first Statewide Terrorism Task Force in Illinois' history. The purpose of this task force was to identify strengths and

weaknesses in our response plans, especially in regard to biological or chemical terrorism, to improve our emergency programs and to coordinate needed training at the local level.

The 33 member organizations of this task force include our Emergency Management Agency, the State Police, State Fire Marshal, Department of Military Affairs, Department of Public Health, Department of Nuclear Safety, Environmental Protection Agency, the American Red Cross, local emergency response teams, the Illinois Association of Chiefs of Police and the FBI, among others.

As a result:

* The task force has created several response teams in every area of the State. These teams would be called on quickly when they are needed to deal with an emergency situation.
* In January of 2001, the task force set up the first-ever Statewide mutual aid system to deal quickly and effectively with a release of hazardous material anywhere in Illinois. Under this agreement fire departments throughout the State have agreed to pool and share resources in the event of a terrorist attack or natural disaster.
* The State also created more than 64 separate special response teams throughout the State that are equipped and trained to respond to any specialized emergencies. We now have 32 "haz mat" teams prepared to deal with biological, chemical or nuclear incidents.
* The task force created, at the State level, three State inter-agency teams to respond to emergencies and any kind in Northern, Central and Southern Illinois. These teams are designed to bring State resources and expertise to the local level for emergencies of any kind. These emergencies can involve dangerous chemicals, radiation leaks and large fires, as well as the lingering after affects of a disaster that face a community.
* In August of 2001, Illinois became only one of ten states in the nation to have trained and equipped certified Civil Support Team within the National Guard that is capable of responding to events that include nuclear, biological and chemical weapons. The Illinois CST consists of experts in biological and chemical warfare and is supplied with state-of-the-art detection and decontamination equipment.
* The task force has coordinated and implemented an anti-terrorism training program for police officers, firefighters and emergency personnel through the State. In the last 17 months, the State has trained more than 19,000 emergency personnel from across Illinois in dealing with a possible terrorist attack. In all, these emergency personnel have completed more than 184,000 hours of training - almost 10 hours of special training per person. This training includes dealing with weapons of mass destruction, hazardous materials and chemical agents.

The work of the Terrorism Task Force supplements our State's already strong network of emergency programs.

* We conduct disaster exercises every other year at each of the State's nuclear power plants, which means that we conduct three disaster readiness drills annually. In cooperation with the Nuclear Regulatory Commission, federal and State agencies and our nuclear operators, we have changed procedures and significantly enhanced security in recognition of the new potential threats to these facilities.
* Throughout the State, local emergency and disaster teams regularly train and hold exercises to prepare for the needs of a large-scale emergency. And throughout the course of every year, various State agencies coordinate training and inspect the assets we have within communities to deal with emergencies.
* In 2000, the Illinois Emergency Management Agency handled more than 1,200 hazardous material incidents, 80 search and rescue missions, 100 railroad incidents and trained 800 people in emergency management procedures.
* The Department of Public Health coordinated more than 100 hospital inspections and found 96 percent in substantial compliance with all regulations.

* Since 1999, Public Health has trained 1,000 physicians and emergency room personnel in treating victims of potential terrorist incident involving toxic gases, bacteria or viruses.
* The State Fire Marshal last year handled more than 3,500 emergency situations and follow-up investigations at fire scenes.
* The Illinois State Police started work on the StarCom 21 system, a state-of-the-art radio network that will replace 1960's technology for providing radio communications. This Statewide radio network will finally ensure that different agencies and emergency responders can communicate with earth other and it will provide an essential and independent mechanism for communication if telephone networks are disabled.
* The General Assembly and I have used the Illinois FIRST program to beef up equipment, training and facilities for the State Police, local law enforcement, fire departments and emergency medical teams. To date, we've approved more than $137 million for new fire trucks, breathing equipment, thermal imaging cameras, bullet-proof vests, communications systems, new "jaws of life" equipment, fire-proof uniforms, "haz mat" response supplies, police stations, fire houses, ambulances, cars, trucks, axes, ladders, computers and other emergency equipment.

And since the tragic events of September 11th and the ensuing War on Terrorism, we have stepped up these efforts. In the wake of these terrorist acts, my Administration did a thorough review of how the State of Illinois would and could respond in the event such attacks were perpetrated in Illinois. Resources and assets to deal with terrorism were identified and emergency plans expanded. I appointed a Director of Homeland Security and have directed a full effort to improving our State's security and our coordination with both the federal and local governments. Since international terrorism cuts across national as well as state boundaries, I believe that the investigation and prevention of terrorism in the United States is unquestionably the primary responsibility of the federal government. State government should be poised to assist as needed and to fill in any gaps in our developing security network. Towards this end, it is appropriate for State criminal laws to be reviewed and revised as needed.

Illinois already has a significant number of laws on the books that are available today to investigate, prosecute and punish terrorist acts. Currently in Illinois law:

* The International Terrorism Act makes it a Class 1 felony to solicit or provide material support or resources to support international terrorism.
* The current causing a catastrophe provision is a Class X felony and covers explosion, fire, flood, collapse of a building, release of poison, radioactive material, bacteria, virus, or other dangerous substance, that results in injury to 5 or more persons, substantial damage to 5 or more buildings, or substantial damage to vital public facility. If a death or deaths occur as a result, murder can also currently be charged.
* The death penalty or natural life in prison can be imposed for the murder of two or more persons; a murder committed during the hijacking of a plane, train, bus or other public conveyance; the murder of a policeman, fireman or paramedic; or a cold, calculated premeditated murder committed pursuant to a plan or scheme which would cover murder by anthrax, bomb or other biological/chemical means.
* Illinois law enforcement officers can currently obtain a court order for a wiretap to investigate murder, conspiracy to commit murder, money laundering, conspiracy to commit money laundering, the unlawful sale of firearms, hostage taking, and occupation by force of any premises, place, vehicle, vessel or aircraft.
* Illinois law enforcement officers can currently conduct one-party consent to eavesdropping in emergency situations necessary to protect law enforcement officers or in a situation involving a clear and present danger of imminent death or great bodily harm to persons from a hostage taking or occupation by force of any premises, place, vehicle, vessel or aircraft.

I am in agreement with some of the provisions in House Bill 2299. However, given the scope and complexity of House Bill 2299, the few short weeks of the fall veto session may not have provided a sufficient amount of time for the careful scrutiny and debate that would likely have occurred in the regular legislative session on some of the more controversial provisions of this bill.

I certainly understand the General Assembly's desire to take swift action to address this issue of great public concern. However, the fact that the issue of terrorism is an issue of such great public concern and grave importance means that there is all the more reason to diligently scrutinize and carefully consider all aspects of this bill so that we can fulfill our responsibility to enact the best law that we can. House Bill 2299 contains several technical problems and raises certain constitutional issues, which I believe should be addressed.

While the death penalty does seem to be a proportionate penalty for terrorist murderers given our State's current system of capital punishment, the addition of yet another factor in aggravation for applying the death penalty is premature in light of the fact that my Commission on Capital Punishment has yet to report. Furthermore, as previously noted, current Illinois death penalty provisions already address murder committed by terrorist and adding more factors to our existing statute only increases the potential that our existing law will be found unconstitutionally over broad.

In fact, it would be difficult to imagine a scenario under which a terrorist act resulting in death would not already qualify for capital punishment under our current statute. Moreover, terrorism is currently a death eligible offense under federal law, making this provision of the bill redundant in yet another way. Therefore, I believe the death penalty provision should be removed from this bill.

The seizure and forfeiture of property of suspected terrorists is also appropriate. However, unlike other criminal forfeiture laws House Bill 2299 does not contain sufficient protection for innocent property owners and lienholders, who did not know about or participate in the terrorism offense.

Also, the bill does not clearly state a time frame in which a forfeiture action must be brought before the court after seizing the property of a person who has not been charged with a terrorist offense. With the unlimited statute of limitations in which to bring a terrorist prosecution, this creates a legal limbo where property of an uncharged person could be held indefinitely. I suggest language to cure these problems.

Additionally, concerns regarding the proposed new Section 16.5 that would be added to both the Solicitation for Charity Act and Charitable Trust Act have been brought to my attention. As passed, House Bill 2299 allows the Attorney General to freeze the assets of an individual suspected of violating this act. However, charities suspected of directly or indirectly supporting terrorism would be subject to having all their assets seized even before a hearing date is set. While I agree that the Attorney General should be able to seize any books or records necessary for his investigation, seizure of a charity's assets before a hearing or any due process would not appear necessary to accomplish the purposes of this bill and may prove to be problematic for innocent charities.

I do believe that a charity directly or even indirectly involved in supporting terrorism should be subject to the same strict penalties outlined for individuals or organizations that actually commit terrorist acts, but I do not believe that such charities ought to be subjected to different and more severe penalties. I have suggested changes that will provide charities with protections that are more in line with those proposed for individuals who violate this act.

House Bill 2299 allows untrained persons to conduct wiretap intercepts. Under current law any person who conducts a wiretap must be a trained electronic criminal surveillance officer. When the State wiretap law was enacted, it was agreed that only trained law enforcement personnel would carry out these intercepts. Such training is essential not only to minimize the intrusive nature on such electronic

surveillance, but also to guarantee conformity with the court order authorizing the wiretap.

House Bill 2299 creates a huge exception to this provision and will allow any untrained person approved by the court to conduct a wiretap interception. This new exception is not limited to terrorism offenses as are the other changes to the wiretap law, and will apply to any offense for which a wiretap order can currently be obtained. This new provision also is not affected by the sunset provision for the terrorism measurers, so it will remain in the law. Because it is not limited to terrorist offenses, this exception could become the most used provision in the whole bill.

I find little justification for allowing untrained persons to conduct wiretaps since training is readily available for law enforcement personnel. Not only does the scope of this provision reach far beyond Illinois laws governing terrorism without any justification whatsoever, but it may actually prove to make prosecution of terrorist acts more difficult by disqualifying important evidence due to mistakes made by untrained personnel carrying out complicated electronic surveillance. I believe this provision should be removed.

House Bill 2299 requires a physician who is treating a condition the physician suspects is the result of the patient engaging in terrorist activity to report this to law enforcement. Failure to so report even by a physician who is otherwise without knowledge or involvement in the terrorist activity is a criminal offense. This mandated reporting is a violation of doctor-patient privilege and the medical confidentiality provisions.

Accordingly, the medical confidentiality statute should be amended, as it has for certain other criminal offenses, to allow the mandated reporting without violating the confidentiality provisions.

There are also certain other technical problems with the bill for which I propose changes. Therefore, I make the following specific recommendations for change:

on page 1, line 22, by deleting "and assets"; and

on page 1, line 24, by inserting "and freezing of all assets" after "Police"; and

on page 2, line 17, by replacing "Section" with "Sections 4 and"; and

on page 2, by inserting between lines 17 and 18 the following:

"(430 ILCS 65/4)

Section 4. (a) Each applicant for a Firearm Owner's Identification Card must: (1) Make application on blank forms prepared and furnished at convenient locations throughout the State by the Department of State Police; and

(2) Submit evidence under penalty of perjury to the Department of State Police that: (i) He or she is 21 years of age or over, or if he or she is under 21 years of age that he or she has the written consent of his or her parent or legal guardian to possess and acquire firearms and firearm ammunition and that he or she has never been convicted of a misdemeanor other than a traffic offense or adjudged delinquent, provided, however, that such parent or legal guardian is not an individual prohibited from having a Firearm Owner's Identification Card and files an affidavit with the Department as prescribed by the Department stating that he or she is not an individual prohibited from having a Card;

(ii) He or she has not been convicted of a felony under the laws of this or any other jurisdiction;

(iii) He or she is not addicted to narcotics;

(iv) He or she has not been a patient in a mental institution with the past 5 years.

(v) He or she is not mentally retarded;

(vi) He or she is not an alien who is unlawfully present in the United States under the laws of the United States;

(vii) He or she is not subject to an existing order of protection prohibiting him or her from possessing a firearm.

(viii) He or she has not been convicted within the past 5 years of battery, assault, aggravated assault, violation of an order of protection, or a substantially similar offense in another jurisdiction, in which a firearm was used or possessed;

(ix) He or she has not been convicted of domestic battery

or a substantially similar offense in another jurisdiction committed on or after the effective date of this amendatory Act of 1997; and

(x)He or she has not been convicted within the past 5 years of domestic battery or a substantially similar offense in another jurisdiction committed before the effective date of this amendatory Act of 1997; and

(xi)He or she is not an alien who has been admitted to the United States under a non-immigrant visa (as the term is defined in Section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)26))), or that he or she is an alien who has been lawfully admitted to the United States under a non-immigrant visa if that alien is:

(1) admitted to the United States for lawful hunting or sporting purposes;

(2) an official representative of a foreign government who is:

(A) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States: or

(B) en route to or from another country to which that alien is accredited;

(3) an official of a foreign government or distinguished foreign visitor who has been so designated by the Department of State;

(4) a foreign law enforcement officer of a friendly foreign government entering the United State on official business; or

(5) one who has received a waiver from the Attorney General of the United States pursuant to 18 U.S.C. 922 (y)(3); and

(3) Upon request by the Department of State Police, sign a release on a form prescribed by the Department of State Police waiving any right to confidentiality and requesting the disclosure to the Department of State Police of limited mental health institution admission information from another state, the District of Columbia, any other territory of the United States, or a foreign nation concerning the applicant for the sole purpose of determining whether the applicant is or was a patient in a mental health institution and disqualified because of that status from receiving a Firearm Owner's Identification Card. No metal health care or treatment records may be requested. The information received shall be destroyed within one year of receipt.

(b) Each application form shall include the following statement printed in bold type: "Warning: False statements of the applicant shall result in prosecution for perjury in accordance with Section 32-2 of the Criminal Code of 1961.".

(c) Upon such written consent, pursuant to Section 4, paragraph (a) (2) (i), the parent or legal guardian giving the consent shall be liable for any damages resulting from the applicant's use of firearms or firearm ammunition."; and

on page 4, line 28, by replacing "9-1, 14-3," with "14-3"; and

on page 4, by deleting lines 30 through 32; and

by deleting pages 5 through 12; and

on page 13, by deleting lines 1 through 29; and

on page 22, line 32, by replacing "agriculture" with "or in connection with agricultural production"; and

on page 30, line 19, by inserting "or any person claiming an interest in the property" after "person"; and

on page 32, line 12, by inserting "within 60 days" after "Article"; and

on page 32, line 16, by inserting "immediately" after "shall; and

on page 36, by inserting after line 23 the following:

(c) Exemptions from forfeiture. A property interest is exempt from forfeiture under this Section if its owner or interest holder establishes by a preponderance of evidence that the owner or interest holder:

(A)(i) in the case of personal property, is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur, or

(ii) in the case of real property, is not legally accountable for the conduct giving rise to the forfeiture, or

did not solicit, conspire, or attempt to commit the conduct giving rise to the forfeiture; and

(B) had not acquired and did not stand to acquire substantial proceeds from the conduct giving rise to its forfeiture other than as an interest holder in an arms length commercial transaction; and

(C) with respect to conveyances, did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture; and

(D) does not hold the property for the benefit of or as nominee for any person whose conduct gave rise to its forfeiture, and, if the owner or interest holder acquired the interest through any such person, the owner or interest holder acquired it as a bona fide purchaser for value without knowingly taking part in the conduct giving rise to the forfeiture; and

(E) that the owner or interest holder acquired the interest:

(i) before the commencement of the conduct giving rise to its forfeiture and the person whose conduct gave rise to its forfeiture did not have the authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(ii) after the commencement of the conduct giving rise to its forfeiture, and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lien holder, or bona fide purchaser for value without knowledge of the conduct which gave rise to the forfeiture; and

(a) in the case of personal property, without knowledge of the seizure of the property for forfeiture; or

(b) in the case of real estate, before the filing in the office of the Recorder of Deeds of the county in which the real estate is located of a notice of seizure for forfeiture or a lis pendens notice."; and

on page 56, line 22, by deleting "or court approved designee"; and

on page 84, line 8, by deleting "and assets"; and

on page 84, line 10, by inserting "and freezing of all assets" after "Police"; and

on page 84, by inserting after line 32 the following:

Section 40. The Code of Civil Procedure is amended by changing Section 8-802 as follows:

(735 ILCS 5/8-802)

Section 8-802. Healthcare practitioner and patient. No physician, surgeon, psychologist, nurse, mental health worker, therapist, or other healing art practitioner (referred to in this Section as "healthcare practitioner") shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except only (1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide, (2) in actions, civil or criminal, against the healthcare practitioner for malpractice (in which instance the patient shall be deemed to waived all privileges relating to physical or mental condition), (3) with the expressed consent of the patient, or in case of his or her death or disability, of his of her personal representative or other person authorized to sue for personal injury or of the beneficiary of an insurance policy on his or her life, health, or physical condition, (4) in all actions brought by the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue (in which instance the patient shall be deemed to have waived all privileges relating to physical or mental condition), (4.1) in all actions brought against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue, (5) upon an issue as to the validity of a document as a will of the patient, (6) in any criminal action where the charge is either first degree murder by abortion, attempted abortion or abortion, (7) in actions, civil or criminal, arising from the filing of a report in compliance with the Abused and Neglected Child Reporting Act, (8) to any department, agency,

institution or facility which has custody of the patient pursuant to State statute or any court order of commitment, (9) in prosecutions where written results blood alcohol tests are admissible pursuant to Section 11-501.4 of the Illinois Vehicle Code or (10) in prosecutions where written results of blood alcohol tests are admissible under Section 5-11a of the Boat Registration and Safety Act or (11) in criminal actions arising from the filing of a report of suspected terrorist offense in compliance with Section 29D-10(p)(7) of the Criminal Code of 1961.

In all instances where a patient or the patient's representative seeks damages for personal injury, death, pain and suffering, or mental or emotional injury and where a written request pursuant to Section 2-1003 has been made, then (1) the healthcare practitioner is authorized to provide information regarding the patient to attorneys for any of the parties in pending civil, criminal, or administrative proceedings in written or verbal form as described in Section 2-1003 and (2) any attorney for any party in any civil, criminal, or administrative action brought by or against a patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue may obtain in written or verbal from as described in Section 2-1003 any information that any healthcare practitioner has acquired in attending to the patient in a professional character. Nothing in this Section shall preclude or limit any formal discovery.

A health care practitioner, as defined in Section 2-1003, shall have the right to (1) communicate at any time and in any fashion with his or her own counsel and professional liability insurer concerning any care or treatment he or she provided, or assisted in providing, to any patient and (2) communicate at any time and in any fashion with his or her present or former employer, principal, partner, professional corporation, professional liability insurer, or counsel for the same, concerning care or treatment he or she provided or assisted in providing, to any patient during the pendency and within the scope of his or her employment or affiliation with the employer, principal, partner, or professional corporation.

In the event of a conflict between the application of this Section and the Mental Health and Developmental Disabilities Confidentiality Act to a specific situation, the provisions of the Mental Health and Developmental Disabilities Confidentiality Act shall control.

This amendatory Act of 1995 applies to causes of action filed on or after its effective date."

With these specific recommendation for change, House Bill 2299 will have my approval. I respectfully request your concurrence.

Sincerely,
s/GEORGE H. RYAN
Governor