

State of Illinois  
OFFICE OF THE GOVERNOR  
Springfield, Illinois 62706

George H. Ryan  
GOVERNOR

July 18, 2001

To the Honorable Members of  
The Illinois Senate  
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 Senate Bill 175, entitled "AN ACT in relation to criminal law," with my specific recommendations for change.

Senate Bill 175 amends the Criminal Code of 1961. The bill makes a misdemeanor battery a felony aggravated battery, if committed in any building or other structure used to provide shelter or services to victims of domestic violence or committed within 500 feet while going to or from such a building or other structure.

Senate Bill 175 is a well-intentioned bill. I have always been supportive of laws and programs designed to protect persons who are subject to physical abuse within their household or relationship. However, I am concerned that Senate Bill 175 has not been well thought through.

First, the bill states that it covers "any building or other structure used to provide shelter or other services to victims of domestic violence as defined in Section 103 of the Illinois Domestic Violence Act...." The definition in the Domestic Violence Act only defines "domestic violence," so it is unclear if the bill is limited to a formal domestic violence shelter or applies to any place a victim may have gone to seek shelter from an abuser, such as a parent's home, a motel room or other place. In reviewing the debate in the House Judiciary II committee, the sponsor stated the bill was meant to cover "domestic violence shelters" and the debate went on to discuss whether a domestic violence shelter fits within the current public property aggravated battery provision. The bill's vague language on this point may cause problems. There is a definition for domestic violence shelter in the Domestic Violence Shelters Act. 20 ILCS 1310/1(c).

Second, the phrase, "or to the dependent children of victims of domestic violence" is awkwardly placed in the bill in a manner that makes it unclear if this is merely part of the reference to the Domestic Violence Act definition, or is a separate aggravated battery provision to cover the dependent child of a victim. If part of the Section 103 reference, the phrase should read: "any building or other structure used to provide shelter or other services to victims or to the dependent children of victims of domestic violence...." This change would eliminate any confusion.

I am proposing changes on the above-described issues.

The location of a domestic violence shelter is usually confidential information and generally not publicly disclosed. The Domestic Violence Act prohibits the court from compelling disclosure of the location of a domestic violence shelter in a criminal proceeding, unless the court finds there is an imminent risk of harm to a domestic violence victim or other person. However, the allegation that a battery was committed in or within 500 feet of a domestic violence shelter now makes the location an element of the crime, the presence of which makes a misdemeanor into a felony. The defendant may base part of his or her defense on the fact that the building at "225 Elm Street in AnyTown, Illinois" is not a domestic violence shelter or the alleged act did not occur within 500 feet of a domestic violence

shelter. To refute this, it would appear that the prosecution would have to prove in open court and state in publicly accessible documents filed with the court that "225 Elm Street" is a domestic violence shelter. While this information may already be otherwise known in some communities and it is unlikely that persons will search through court filings to learn the location of a domestic violence shelter; nonetheless, I believe we should be sensitive to public disclosure of this information and ask the General Assembly to study that issue.

Finally, there is an aggravated battery provision in current law that would likely apply to a battery committed within 500 feet of domestic violence shelter, which does not require disclosure of the shelter location. A battery committed on the way to or from a shelter is most likely committed on a street, sidewalk, parking lot or other public way. The current aggravated battery law covers any battery committed on or about a public way or public property. 720 ILCS 5/12-4(b)(8). Public way includes streets, sidewalks and parking lots (even private parking lots). People v. Pennington, 172 Ill.App.3d 641, 527 N.E.2d 76 (1988) and People v. Pugh, 162 Ill.App.3d 1030, 516 N.E.2d 396 (1987). Therefore, I question the necessity of including the 500 feet provision in Senate Bill 175; however, I am not proposing any changes with respect to that.

For these reasons, I return Senate Bill 175 with the following recommendations for change:

On page 3, line 34, by inserting "or to the dependent children of victims" after "victims"; and

On page 3, line 34, by replacing "as defined in" with "pursuant to"; and

On page 4, line 1, by deleting "Section 103 of"; and

On page 4, line 2, by replacing "to the dependent children of victims of domestic" with "the Domestic Violence Shelter Act"; and

On page 4, line 3, by deleting "violence"; and

On page 4, line 3, by inserting "of such a building or other structure"; and

On page 4, line 4, by inserting "Domestic violence" has the meaning ascribed to it in Section 103 of the Illinois Domestic Violence Act of 1986. "Building or other structure used to provide shelter" has the meaning ascribed to "shelter" in Section 1310 of the Domestic Violence Shelters Act." after the period.

With these specific recommendations for change, Senate Bill 175 will have my approval. I respectfully request your concurrence.

Sincerely,  
George H. Ryan  
GOVERNOR