

SB3492



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3492

Introduced 2/10/2010, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4.5-95

Provides that every person who has been twice convicted in any state or federal court of a felony offense that contains the same element of the intentional or knowing infliction of great bodily harm, permanent disability or permanent disfigurement as the felony offense for which the person is now to be sentenced and the current offense was committed after the 2 prior convictions, shall be adjudged an habitual violent offender. Provides that, except when the death penalty is imposed, anyone adjudged a habitual violent offender shall be sentenced to a term of natural life imprisonment.

LRB096 19832 RLC 36162 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Unified Code of Corrections is amended by
5 changing Section 5-4.5-95 as follows:

6 (730 ILCS 5/5-4.5-95)

7 Sec. 5-4.5-95. GENERAL RECIDIVISM PROVISIONS.

8 (a) HABITUAL CRIMINALS.

9 (1) Every person who has been twice convicted in any
10 state or federal court of an offense that contains the same
11 elements as an offense now (the date of the offense
12 committed after the 2 prior convictions) classified in
13 Illinois as a Class X felony, criminal sexual assault,
14 aggravated kidnapping, or first degree murder, and who is
15 thereafter convicted of a Class X felony, criminal sexual
16 assault, or first degree murder, committed after the 2
17 prior convictions, shall be adjudged an habitual criminal.

18 (2) The 2 prior convictions need not have been for the
19 same offense.

20 (3) Any convictions that result from or are connected
21 with the same transaction, or result from offenses
22 committed at the same time, shall be counted for the
23 purposes of this Section as one conviction.

1 (4) This Section does not apply unless each of the
2 following requirements are satisfied:

3 (A) The third offense was committed after July 3,
4 1980.

5 (B) The third offense was committed within 20 years
6 of the date that judgment was entered on the first
7 conviction; provided, however, that time spent in
8 custody shall not be counted.

9 (C) The third offense was committed after
10 conviction on the second offense.

11 (D) The second offense was committed after
12 conviction on the first offense.

13 (5) Except when the death penalty is imposed, anyone
14 adjudged an habitual criminal shall be sentenced to a term
15 of natural life imprisonment.

16 (6) A prior conviction shall not be alleged in the
17 indictment, and no evidence or other disclosure of that
18 conviction shall be presented to the court or the jury
19 during the trial of an offense set forth in this Section
20 unless otherwise permitted by the issues properly raised in
21 that trial. After a plea or verdict or finding of guilty
22 and before sentence is imposed, the prosecutor may file
23 with the court a verified written statement signed by the
24 State's Attorney concerning any former conviction of an
25 offense set forth in this Section rendered against the
26 defendant. The court shall then cause the defendant to be

1 brought before it; shall inform the defendant of the
2 allegations of the statement so filed, and of his or her
3 right to a hearing before the court on the issue of that
4 former conviction and of his or her right to counsel at
5 that hearing; and unless the defendant admits such
6 conviction, shall hear and determine the issue, and shall
7 make a written finding thereon. If a sentence has
8 previously been imposed, the court may vacate that sentence
9 and impose a new sentence in accordance with this Section.

10 (7) A duly authenticated copy of the record of any
11 alleged former conviction of an offense set forth in this
12 Section shall be prima facie evidence of that former
13 conviction; and a duly authenticated copy of the record of
14 the defendant's final release or discharge from probation
15 granted, or from sentence and parole supervision (if any)
16 imposed pursuant to that former conviction, shall be prima
17 facie evidence of that release or discharge.

18 (8) Any claim that a previous conviction offered by the
19 prosecution is not a former conviction of an offense set
20 forth in this Section because of the existence of any
21 exceptions described in this Section, is waived unless duly
22 raised at the hearing on that conviction, or unless the
23 prosecution's proof shows the existence of the exceptions
24 described in this Section.

25 (9) If the person so convicted shows to the
26 satisfaction of the court before whom that conviction was

1 had that he or she was released from imprisonment, upon
2 either of the sentences upon a pardon granted for the
3 reason that he or she was innocent, that conviction and
4 sentence shall not be considered under this Section.

5 (a-5) HABITUAL VIOLENT OFFENDER.

6 (1) Every person who has been twice convicted in any
7 state or federal court of a felony offense that contains
8 the same element of the intentional or knowing infliction
9 of great bodily harm, permanent disability or permanent
10 disfigurement as the felony offense for which the person is
11 now to be sentenced and the current offense was committed
12 after the 2 prior convictions, shall be adjudged an
13 habitual violent offender.

14 (2) The 2 prior convictions need not have been for the
15 same offense.

16 (3) Any convictions that result from or are connected
17 with the same transaction, or result from offenses
18 committed at the same time, shall be counted for the
19 purposes of this subsection as one conviction.

20 (4) This subsection does not apply unless each of the
21 following requirements are satisfied:

22 (A) The person was sentenced to a term of
23 imprisonment on the first and second offenses.

24 (B) The third offense was committed after December
25 31, 2010.

26 (C) The third offense was committed within 20 years

1 of the date that judgment was entered on the first
2 conviction; provided, however, that time spent in
3 custody shall not be counted.

4 (D) The third offense was committed after
5 conviction on the second offense.

6 (E) The second offense was committed after
7 conviction on the first offense.

8 (5) Except when the death penalty is imposed, anyone
9 adjudged a habitual violent offender shall be sentenced to
10 a term of natural life imprisonment.

11 (6) A prior conviction shall not be alleged in the
12 indictment, and no evidence or other disclosure of that
13 conviction shall be presented to the court or the jury
14 during the trial of an offense set forth in this subsection
15 unless otherwise permitted by the issues properly raised in
16 that trial. After a plea or verdict or finding of guilty
17 and before sentence is imposed, the prosecutor may file
18 with the court a verified written statement signed by the
19 State's Attorney concerning any former conviction of an
20 offense set forth in this subsection rendered against the
21 defendant. The court shall then cause the defendant to be
22 brought before it; shall inform the defendant of the
23 allegations of the statement so filed, and of his or her
24 right to a hearing before the court on the issue of that
25 former conviction and of his or her right to counsel at
26 that hearing; and unless the defendant admits such

1 conviction, shall hear and determine the issue, and shall
2 make a written finding thereon. If a sentence has
3 previously been imposed, the court may vacate that sentence
4 and impose a new sentence in accordance with this
5 subsection.

6 (7) A duly authenticated copy of the record of any
7 alleged former conviction of an offense set forth in this
8 subsection shall be prima facie evidence of that former
9 conviction; and a duly authenticated copy of the record of
10 the defendant's final release or discharge from probation
11 granted, and from sentence and parole supervision imposed
12 pursuant to that former conviction, shall be prima facie
13 evidence of that release and discharge.

14 (8) Any claim that a previous conviction offered by the
15 prosecution is not a former conviction of an offense set
16 forth in this subsection because of the existence of any
17 exceptions described in this subsection, is waived unless
18 duly raised at the hearing on that conviction, or unless
19 the prosecution's proof shows the existence of the
20 exceptions described in this subsection.

21 (9) If the person so convicted shows to the
22 satisfaction of the court before whom that conviction was
23 had that he or she was released from imprisonment, upon
24 either of the sentences upon a pardon granted for the
25 reason that he or she was innocent, that conviction and
26 sentence shall not be considered under this subsection.

1 (b) When a defendant, over the age of 21 years, is
2 convicted of a Class 1 or Class 2 felony, after having twice
3 been convicted in any state or federal court of an offense that
4 contains the same elements as an offense now (the date the
5 Class 1 or Class 2 felony was committed) classified in Illinois
6 as a Class 2 or greater Class felony and those charges are
7 separately brought and tried and arise out of different series
8 of acts, that defendant shall be sentenced as a Class X
9 offender. This subsection does not apply unless:

10 (1) the first felony was committed after February 1,
11 1978 (the effective date of Public Act 80-1099);

12 (2) the second felony was committed after conviction on
13 the first; and

14 (3) the third felony was committed after conviction on
15 the second.

16 A person sentenced as a Class X offender under this
17 subsection (b) is not eligible to apply for treatment as a
18 condition of probation as provided by Section 40-10 of the
19 Alcoholism and Other Drug Abuse and Dependency Act (20 ILCS
20 301/40-10).

21 (Source: P.A. 95-1052, eff. 7-1-09.)