



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB1388

Introduced 1/31/2023, by Rep. Jackie Haas

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-6.1	from Ch. 38, par. 110-6.1
725 ILCS 5/111-2.5 new	
725 ILCS 5/114-7	from Ch. 38, par. 114-7
730 ILCS 5/5-4.5-95	

Amends the Code of Criminal Procedure of 1963. Provides that, if a person has 3 or more pending charges for misdemeanor domestic battery, battery, violation of an order of protection, or criminal damage to property when the property belongs to a family or household member as defined in the Illinois Domestic Violence Act of 1986, the defendant may be charged as a habitual misdemeanor offender. Provides that the 3 or more charges alleged do not have to be for the same offense. Provides that any offense that results from or is connected with the same transaction, or results from an offense committed at the same time, shall be counted for the purposes of this provision as one offense. Provides that: (1) the third offense must have occurred after the second offense; (2) the second offense must have occurred after the first offense; and (3) all of the charged offenses must be proved at trial in order for the person to be adjudged a habitual misdemeanor offender. Provides that, once a person has been adjudged a habitual misdemeanor offender, any of the following charges for domestic battery, battery, violation of an order of protection, or criminal damage to property in which the property belongs to a family or household member as defined in the Illinois Domestic Violence Act of 1986 shall be charged as a Class 4 felony. Provides that a habitual misdemeanor offender shall be sentenced as a Class 4 felony offender for which the person shall be sentenced to a term of imprisonment of not less than one year and not more than 3 years. Provides that the court may deny pretrial release to a person charged as a habitual misdemeanor offender. Amends the Unified Code of Corrections to make conforming changes.

LRB103 05218 RJT 50234 b

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 Code of Criminal Procedure of 1963 is  
5 amended by changing Sections 110-6.1 and 114-7 and by adding  
6 Section 111-2.5 as follows:

7 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

8 Sec. 110-6.1. Denial of pretrial release.

9 (a) Upon verified petition by the State, the court shall  
10 hold a hearing and may deny a defendant pretrial release only  
11 if:

12 (1) the defendant is charged with a felony offense  
13 other than a forcible felony for which, based on the  
14 charge or the defendant's criminal history, a sentence of  
15 imprisonment, without probation, periodic imprisonment or  
16 conditional discharge, is required by law upon conviction,  
17 and it is alleged that the defendant's pretrial release  
18 poses a real and present threat to the safety of any person  
19 or persons or the community, based on the specific  
20 articulable facts of the case;

21 (1.5) the defendant's pretrial release poses a real  
22 and present threat to the safety of any person or persons  
23 or the community, based on the specific articulable facts

1 of the case, and the defendant is charged with a forcible  
2 felony, which as used in this Section, means treason,  
3 first degree murder, second degree murder, predatory  
4 criminal sexual assault of a child, aggravated criminal  
5 sexual assault, criminal sexual assault, armed robbery,  
6 aggravated robbery, robbery, burglary where there is use  
7 of force against another person, residential burglary,  
8 home invasion, vehicular invasion, aggravated arson,  
9 arson, aggravated kidnaping, kidnaping, aggravated battery  
10 resulting in great bodily harm or permanent disability or  
11 disfigurement or any other felony which involves the  
12 threat of or infliction of great bodily harm or permanent  
13 disability or disfigurement;

14 (2) the defendant is charged with stalking or  
15 aggravated stalking, and it is alleged that the  
16 defendant's pre-trial release poses a real and present  
17 threat to the safety of a victim of the alleged offense,  
18 and denial of release is necessary to prevent fulfillment  
19 of the threat upon which the charge is based;

20 (3) the defendant is charged with a violation of an  
21 order of protection issued under Section 112A-14 of this  
22 Code or Section 214 of the Illinois Domestic Violence Act  
23 of 1986, a stalking no contact order under Section 80 of  
24 the Stalking No Contact Order Act, or of a civil no contact  
25 order under Section 213 of the Civil No Contact Order Act,  
26 and it is alleged that the defendant's pretrial release

1 poses a real and present threat to the safety of any person  
2 or persons or the community, based on the specific  
3 articulable facts of the case;

4 (4) the defendant is charged with domestic battery or  
5 aggravated domestic battery under Section 12-3.2 or 12-3.3  
6 of the Criminal Code of 2012 and it is alleged that the  
7 defendant's pretrial release poses a real and present  
8 threat to the safety of any person or persons or the  
9 community, based on the specific articulable facts of the  
10 case;

11 (5) the defendant is charged with any offense under  
12 Article 11 of the Criminal Code of 2012, except for  
13 Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35,  
14 11-40, and 11-45 of the Criminal Code of 2012, or similar  
15 provisions of the Criminal Code of 1961 and it is alleged  
16 that the defendant's pretrial release poses a real and  
17 present threat to the safety of any person or persons or  
18 the community, based on the specific articulable facts of  
19 the case;

20 (6) the defendant is charged with any of the following  
21 offenses under the Criminal Code of 2012, and it is  
22 alleged that the defendant's pretrial release poses a real  
23 and present threat to the safety of any person or persons  
24 or the community, based on the specific articulable facts  
25 of the case:

26 (A) Section 24-1.2 (aggravated discharge of a

1 firearm);

2 (B) Section 24-2.5 (aggravated discharge of a  
3 machine gun or a firearm equipped with a device  
4 designed or use for silencing the report of a  
5 firearm);

6 (C) Section 24-1.5 (reckless discharge of a  
7 firearm);

8 (D) Section 24-1.7 (armed habitual criminal);

9 (E) Section 24-2.2 (manufacture, sale or transfer  
10 of bullets or shells represented to be armor piercing  
11 bullets, dragon's breath shotgun shells, bolo shells,  
12 or flechette shells);

13 (F) Section 24-3 (unlawful sale or delivery of  
14 firearms);

15 (G) Section 24-3.3 (unlawful sale or delivery of  
16 firearms on the premises of any school);

17 (H) Section 24-34 (unlawful sale of firearms by  
18 liquor license);

19 (I) Section 24-3.5 (unlawful purchase of a  
20 firearm);

21 (J) Section 24-3A (gunrunning);

22 (K) Section 24-3B (firearms trafficking);

23 (L) Section 10-9 (b) (involuntary servitude);

24 (M) Section 10-9 (c) (involuntary sexual servitude  
25 of a minor);

26 (N) Section 10-9(d) (trafficking in persons);

1 (O) Non-probationable violations: (i) unlawful use  
2 or possession of weapons by felons or persons in the  
3 Custody of the Department of Corrections facilities  
4 (Section 24-1.1), (ii) aggravated unlawful use of a  
5 weapon (Section 24-1.6), or (iii) aggravated  
6 possession of a stolen firearm (Section 24-3.9);

7 (P) Section 9-3 (reckless homicide and involuntary  
8 manslaughter);

9 (Q) Section 19-3 (residential burglary);

10 (R) Section 10-5 (child abduction);

11 (S) Felony violations of Section 12C-5 (child  
12 endangerment);

13 (T) Section 12-7.1 (hate crime);

14 (U) Section 10-3.1 (aggravated unlawful  
15 restraint);

16 (V) Section 12-9 (threatening a public official);

17 (W) Subdivision (f)(1) of Section 12-3.05  
18 (aggravated battery with a deadly weapon other than by  
19 discharge of a firearm);

20 (6.5) the defendant is charged with any of the  
21 following offenses, and it is alleged that the defendant's  
22 pretrial release poses a real and present threat to the  
23 safety of any person or persons or the community, based on  
24 the specific articulable facts of the case:

25 (A) Felony violations of Sections 3.01, 3.02, or  
26 3.03 of the Humane Care for Animals Act (cruel

1 treatment, aggravated cruelty, and animal torture);

2 (B) Subdivision (d) (1) (B) of Section 11-501 of the  
3 Illinois Vehicle Code (aggravated driving under the  
4 influence while operating a school bus with  
5 passengers);

6 (C) Subdivision (d) (1) (C) of Section 11-501 of the  
7 Illinois Vehicle Code (aggravated driving under the  
8 influence causing great bodily harm);

9 (D) Subdivision (d) (1) (D) of Section 11-501 of the  
10 Illinois Vehicle Code (aggravated driving under the  
11 influence after a previous reckless homicide  
12 conviction);

13 (E) Subdivision (d) (1) (F) of Section 11-501 of the  
14 Illinois Vehicle Code (aggravated driving under the  
15 influence leading to death); or

16 (F) Subdivision (d) (1) (J) of Section 11-501 of the  
17 Illinois Vehicle Code (aggravated driving under the  
18 influence that resulted in bodily harm to a child  
19 under the age of 16);

20 (7) the defendant is charged with an attempt to commit  
21 any charge listed in paragraphs (1) through (6.5), and it  
22 is alleged that the defendant's pretrial release poses a  
23 real and present threat to the safety of any person or  
24 persons or the community, based on the specific  
25 articulable facts of the case; ~~or~~

26 (8) the person has a high likelihood of willful flight

1 to avoid prosecution and is charged with:

2 (A) Any felony described in subdivisions (a)(1)  
3 through (a)(7) of this Section; or

4 (B) A felony offense other than a Class 4 offense;  
5 or -

6 (9) the defendant is charged as a habitual  
7 misdemeanant offender.

8 (b) If the charged offense is a felony, as part of the  
9 detention hearing, the court shall determine whether there is  
10 probable cause the defendant has committed an offense, unless  
11 a hearing pursuant to Section 109-3 of this Code has already  
12 been held or a grand jury has returned a true bill of  
13 indictment against the defendant. If there is a finding of no  
14 probable cause, the defendant shall be released. No such  
15 finding is necessary if the defendant is charged with a  
16 misdemeanor.

17 (c) Timing of petition.

18 (1) A petition may be filed without prior notice to  
19 the defendant at the first appearance before a judge, or  
20 within the 21 calendar days, except as provided in Section  
21 110-6, after arrest and release of the defendant upon  
22 reasonable notice to defendant; provided that while such  
23 petition is pending before the court, the defendant if  
24 previously released shall not be detained.

25 (2) Upon filing, the court shall immediately hold a  
26 hearing on the petition unless a continuance is requested.



1 If a continuance is requested and granted, the hearing  
2 shall be held within 48 hours of the defendant's first  
3 appearance if the defendant is charged with first degree  
4 murder or a Class X, Class 1, Class 2, or Class 3 felony,  
5 and within 24 hours if the defendant is charged with a  
6 Class 4 or misdemeanor offense. The Court may deny or  
7 grant the request for continuance. If the court decides to  
8 grant the continuance, the Court retains the discretion to  
9 detain or release the defendant in the time between the  
10 filing of the petition and the hearing.

11 (d) Contents of petition.

12 (1) The petition shall be verified by the State and  
13 shall state the grounds upon which it contends the  
14 defendant should be denied pretrial release, including the  
15 real and present threat to the safety of any person or  
16 persons or the community, based on the specific  
17 articulable facts or flight risk, as appropriate.

18 (2) If the State seeks to file a second or subsequent  
19 petition under this Section, the State shall be required  
20 to present a verified application setting forth in detail  
21 any new facts not known or obtainable at the time of the  
22 filing of the previous petition.

23 (e) Eligibility: All defendants shall be presumed eligible  
24 for pretrial release, and the State shall bear the burden of  
25 proving by clear and convincing evidence that:

26 (1) the proof is evident or the presumption great that

1 the defendant has committed an offense listed in  
2 subsection (a), and

3 (2) for offenses listed in paragraphs (1) through (7)  
4 of subsection (a), the defendant poses a real and present  
5 threat to the safety of any person or persons or the  
6 community, based on the specific articulable facts of the  
7 case, by conduct which may include, but is not limited to,  
8 a forcible felony, the obstruction of justice,  
9 intimidation, injury, or abuse as defined by paragraph (1)  
10 of Section 103 of the Illinois Domestic Violence Act of  
11 1986, and

12 (3) no condition or combination of conditions set  
13 forth in subsection (b) of Section 110-10 of this Article  
14 can mitigate (i) the real and present threat to the safety  
15 of any person or persons or the community, based on the  
16 specific articulable facts of the case, for offenses  
17 listed in paragraphs (1) through (7) of subsection (a), or  
18 (ii) the defendant's willful flight for offenses listed in  
19 paragraph (8) of subsection (a), and

20 (4) for offenses under subsection (b) of Section 407  
21 of the Illinois Controlled Substances Act that are subject  
22 to paragraph (1) of subsection (a), no condition or  
23 combination of conditions set forth in subsection (b) of  
24 Section 110-10 of this Article can mitigate the real and  
25 present threat to the safety of any person or persons or  
26 the community, based on the specific articulable facts of

1 the case, and the defendant poses a serious risk to not  
2 appear in court as required.

3 (f) Conduct of the hearings.

4 (1) Prior to the hearing, the State shall tender to  
5 the defendant copies of the defendant's criminal history  
6 available, any written or recorded statements, and the  
7 substance of any oral statements made by any person, if  
8 relied upon by the State in its petition, and any police  
9 reports in the prosecutor's possession at the time of the  
10 hearing.

11 (2) The State or defendant may present evidence at the  
12 hearing by way of proffer based upon reliable information.

13 (3) The defendant has the right to be represented by  
14 counsel, and if he or she is indigent, to have counsel  
15 appointed for him or her. The defendant shall have the  
16 opportunity to testify, to present witnesses on his or her  
17 own behalf, and to cross-examine any witnesses that are  
18 called by the State. Defense counsel shall be given  
19 adequate opportunity to confer with the defendant before  
20 any hearing at which conditions of release or the  
21 detention of the defendant are to be considered, with an  
22 accommodation for a physical condition made to facilitate  
23 attorney/client consultation. If defense counsel needs to  
24 confer or consult with the defendant during any hearing  
25 conducted via a two-way audio-visual communication system,  
26 such consultation shall not be recorded and shall be

1           undertaken consistent with constitutional protections.

2           (3.5) A hearing at which pretrial release may be  
3           denied must be conducted in person (and not by way of  
4           two-way audio visual communication) unless the accused  
5           waives the right to be present physically in court, the  
6           court determines that the physical health and safety of  
7           any person necessary to the proceedings would be  
8           endangered by appearing in court, or the chief judge of  
9           the circuit orders use of that system due to operational  
10          challenges in conducting the hearing in person. Such  
11          operational challenges must be documented and approved by  
12          the chief judge of the circuit, and a plan to address the  
13          challenges through reasonable efforts must be presented  
14          and approved by the Administrative Office of the Illinois  
15          Courts every 6 months.

16          (4) If the defense seeks to compel the complaining  
17          witness to testify as a witness in its favor, it shall  
18          petition the court for permission. When the ends of  
19          justice so require, the court may exercise its discretion  
20          and compel the appearance of a complaining witness. The  
21          court shall state on the record reasons for granting a  
22          defense request to compel the presence of a complaining  
23          witness only on the issue of the defendant's pretrial  
24          detention. In making a determination under this Section,  
25          the court shall state on the record the reason for  
26          granting a defense request to compel the presence of a

1           complaining witness, and only grant the request if the  
2           court finds by clear and convincing evidence that the  
3           defendant will be materially prejudiced if the complaining  
4           witness does not appear. Cross-examination of a  
5           complaining witness at the pretrial detention hearing for  
6           the purpose of impeaching the witness' credibility is  
7           insufficient reason to compel the presence of the witness.  
8           In deciding whether to compel the appearance of a  
9           complaining witness, the court shall be considerate of the  
10          emotional and physical well-being of the witness. The  
11          pre-trial detention hearing is not to be used for purposes  
12          of discovery, and the post arraignment rules of discovery  
13          do not apply. The State shall tender to the defendant,  
14          prior to the hearing, copies, if any, of the defendant's  
15          criminal history, if available, and any written or  
16          recorded statements and the substance of any oral  
17          statements made by any person, if in the State's  
18          Attorney's possession at the time of the hearing.

19           (5) The rules concerning the admissibility of evidence  
20          in criminal trials do not apply to the presentation and  
21          consideration of information at the hearing. At the trial  
22          concerning the offense for which the hearing was conducted  
23          neither the finding of the court nor any transcript or  
24          other record of the hearing shall be admissible in the  
25          State's case-in-chief, but shall be admissible for  
26          impeachment, or as provided in Section 115-10.1 of this

1 Code, or in a perjury proceeding.

2 (6) The defendant may not move to suppress evidence or  
3 a confession, however, evidence that proof of the charged  
4 crime may have been the result of an unlawful search or  
5 seizure, or both, or through improper interrogation, is  
6 relevant in assessing the weight of the evidence against  
7 the defendant.

8 (7) Decisions regarding release, conditions of  
9 release, and detention prior to trial must be  
10 individualized, and no single factor or standard may be  
11 used exclusively to order detention. Risk assessment tools  
12 may not be used as the sole basis to deny pretrial release.

13 (g) Factors to be considered in making a determination of  
14 dangerousness. The court may, in determining whether the  
15 defendant poses a real and present threat to the safety of any  
16 person or persons or the community, based on the specific  
17 articulable facts of the case, consider, but shall not be  
18 limited to, evidence or testimony concerning:

19 (1) The nature and circumstances of any offense  
20 charged, including whether the offense is a crime of  
21 violence, involving a weapon, or a sex offense.

22 (2) The history and characteristics of the defendant  
23 including:

24 (A) Any evidence of the defendant's prior criminal  
25 history indicative of violent, abusive or assaultive  
26 behavior, or lack of such behavior. Such evidence may

1 include testimony or documents received in juvenile  
2 proceedings, criminal, quasi-criminal, civil  
3 commitment, domestic relations, or other proceedings.

4 (B) Any evidence of the defendant's psychological,  
5 psychiatric or other similar social history which  
6 tends to indicate a violent, abusive, or assaultive  
7 nature, or lack of any such history.

8 (3) The identity of any person or persons to whose  
9 safety the defendant is believed to pose a threat, and the  
10 nature of the threat.

11 (4) Any statements made by, or attributed to the  
12 defendant, together with the circumstances surrounding  
13 them.

14 (5) The age and physical condition of the defendant.

15 (6) The age and physical condition of any victim or  
16 complaining witness.

17 (7) Whether the defendant is known to possess or have  
18 access to any weapon or weapons.

19 (8) Whether, at the time of the current offense or any  
20 other offense or arrest, the defendant was on probation,  
21 parole, aftercare release, mandatory supervised release or  
22 other release from custody pending trial, sentencing,  
23 appeal or completion of sentence for an offense under  
24 federal or state law.

25 (9) Any other factors, including those listed in  
26 Section 110-5 of this Article deemed by the court to have a

1 reasonable bearing upon the defendant's propensity or  
2 reputation for violent, abusive, or assaultive behavior,  
3 or lack of such behavior.

4 (h) Detention order. The court shall, in any order for  
5 detention:

6 (1) make a written finding summarizing the court's  
7 reasons for concluding that the defendant should be denied  
8 pretrial release, including why less restrictive  
9 conditions would not avoid a real and present threat to  
10 the safety of any person or persons or the community,  
11 based on the specific articulable facts of the case, or  
12 prevent the defendant's willful flight from prosecution;

13 (2) direct that the defendant be committed to the  
14 custody of the sheriff for confinement in the county jail  
15 pending trial;

16 (3) direct that the defendant be given a reasonable  
17 opportunity for private consultation with counsel, and for  
18 communication with others of his or her choice by  
19 visitation, mail and telephone; and

20 (4) direct that the sheriff deliver the defendant as  
21 required for appearances in connection with court  
22 proceedings.

23 (i) Detention. If the court enters an order for the  
24 detention of the defendant pursuant to subsection (e) of this  
25 Section, the defendant shall be brought to trial on the  
26 offense for which he is detained within 90 days after the date



1 on which the order for detention was entered. If the defendant  
2 is not brought to trial within the 90-day period required by  
3 the preceding sentence, he shall not be denied pretrial  
4 release. In computing the 90-day period, the court shall omit  
5 any period of delay resulting from a continuance granted at  
6 the request of the defendant and any period of delay resulting  
7 from a continuance granted at the request of the State with  
8 good cause shown pursuant to Section 103-5.

9 (i-5) At each subsequent appearance of the defendant  
10 before the court, the judge must find that continued detention  
11 is necessary to avoid a real and present threat to the safety  
12 of any person or persons or the community, based on the  
13 specific articulable facts of the case, or to prevent the  
14 defendant's willful flight from prosecution.

15 (j) Rights of the defendant. The defendant shall be  
16 entitled to appeal any order entered under this Section  
17 denying his or her pretrial release.

18 (k) Appeal. The State may appeal any order entered under  
19 this Section denying any motion for denial of pretrial  
20 release.

21 (l) Presumption of innocence. Nothing in this Section  
22 shall be construed as modifying or limiting in any way the  
23 defendant's presumption of innocence in further criminal  
24 proceedings.

25 (m) Interest of victims.

26 (1) Crime victims shall be given notice by the State's

1 Attorney's office of this hearing as required in paragraph (1)  
2 of subsection (b) of Section 4.5 of the Rights of Crime Victims  
3 and Witnesses Act and shall be informed of their opportunity  
4 at this hearing to obtain a protective order.

5 (2) If the defendant is denied pretrial release, the court  
6 may impose a no contact provision with the victim or other  
7 interested party that shall be enforced while the defendant  
8 remains in custody.

9 (Source: P.A. 101-652, eff. 1-1-23; 102-1104, eff. 1-1-23.)

10 (725 ILCS 5/111-2.5 new)

11 Sec. 111-2.5. Habitual misdemeanor offender; charges.

12 (a) If a person has 3 or more pending charges for  
13 misdemeanor domestic battery, battery, violation of an order  
14 of protection, or criminal damage to property when the  
15 property belongs to a family or household member as defined in  
16 Section 103 of the Illinois Domestic Violence Act of 1986, the  
17 defendant may be charged as a habitual misdemeanor offender.

18 (b) The 3 or more charges alleged do not have to be for the  
19 same offense. Any offense that results from or is connected  
20 with the same transaction, or results from an offense  
21 committed at the same time, shall be counted for the purposes  
22 of this Section as one offense.

23 (c) This Section does not apply unless each of the  
24 following requirements are satisfied:

25 (1) The third offense occurred after the second

1 offense.

2 (2) The second offense occurred after the first  
3 offense.

4 (3) All of the charged offenses must be proved at  
5 trial in order for the person to be adjudged a habitual  
6 misdemeanant offender.

7 (d) Once a person has been adjudged a habitual  
8 misdemeanant offender any of the following charges for  
9 domestic battery, battery, violation of an order of  
10 protection, or criminal damage to property in which the  
11 property belongs to a family or household member as defined in  
12 Section 103 of the Illinois Domestic Violence Act of 1986  
13 shall be charged as a Class 4 felony.

14 (e) All of the charged offenses must be proved at trial in  
15 order for the person to be adjudged a habitual misdemeanor  
16 offender.

17 (f) Sentence. A habitual misdemeanor offender shall be  
18 sentenced as a Class 4 felony offender for which the person  
19 shall be sentenced to a term of imprisonment of not less than  
20 one year and not more than 3 years.

21 (725 ILCS 5/114-7) (from Ch. 38, par. 114-7)

22 Sec. 114-7. Joinder of related prosecutions.

23 The court may order 2 or more charges to be tried together  
24 if the offenses and the defendants could have been joined in a  
25 single charge. If a person is charged as a habitual

1 misdemeanant offender, all charges needed to adjudicate the  
2 defendant as a habitual misdemeanant offender shall be tried  
3 together. The procedure shall be the same as if the  
4 prosecution were under a single charge.

5 (Source: Laws 1963, p. 2836.)

6 Section 10. The Unified Code of Corrections is amended by  
7 changing Section 5-4.5-95 as follows:

8 (730 ILCS 5/5-4.5-95)

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

10 (a) HABITUAL CRIMINALS.

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

20 (2) The 2 prior convictions need not have been for the  
21 same offense.

22 (3) Any convictions that result from or are connected  
23 with the same transaction, or result from offenses  
24 committed at the same time, shall be counted for the

1 purposes of this Section as one conviction.

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

4 (A) The third offense was committed after July 3,  
5 1980.

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

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

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

14 (E) The first offense was committed when the  
15 person was 21 years of age or older.

16 (5) Anyone who is adjudged an habitual criminal shall  
17 be sentenced to a term of natural life imprisonment.

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

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

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

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

1 exceptions described in this Section.

2 (9) If the person so convicted shows to the  
3 satisfaction of the court before whom that conviction was  
4 had that he or she was released from imprisonment, upon  
5 either of the sentences upon a pardon granted for the  
6 reason that he or she was innocent, that conviction and  
7 sentence shall not be considered under this Section.

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

18 (1) the first forcible felony was committed after  
19 February 1, 1978 (the effective date of Public Act  
20 80-1099);

21 (2) the second forcible felony was committed after  
22 conviction on the first;

23 (3) the third forcible felony was committed after  
24 conviction on the second; and

25 (4) the first offense was committed when the person  
26 was 21 years of age or older.

1 (c) (Blank).

2 A person sentenced as a Class X offender under this  
3 subsection (b) is not eligible to apply for treatment as a  
4 condition of probation as provided by Section 40-10 of the  
5 Substance Use Disorder Act (20 ILCS 301/40-10).

6 (d) A habitual misdemeanant offender as described in  
7 Section 111-2.5 of the Code of Criminal Procedure of 1963  
8 shall be sentenced as a Class 4 felony offender for which the  
9 person shall be sentenced to a term of imprisonment of not less  
10 than one year and not more than 3 years.

11

12 (Source: P.A. 100-3, eff. 1-1-18; 100-759, eff. 1-1-19;  
13 101-652, eff. 7-1-21.)