

SB3304



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3304

Introduced 2/9/2010, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

725 ILCS 5/111-3

from Ch. 38, par. 111-3

Amends the Code of Criminal Procedure of 1963. Provides that when a peace officer discovers the commission of a misdemeanor and is the complaining witness, the signing of the complaint by the peace officer is sufficient to charge the defendant with the commission of the offense without the need for the complaint to be sworn to. Provides that the peace officer signing the complaint is subject to the penalty for perjury for false certification.

LRB096 15676 RLC 30912 b

A BILL FOR

1 AN ACT in relation to 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 Section 111-3 as follows:

6 (725 ILCS 5/111-3) (from Ch. 38, par. 111-3)

7 (Text of Section after amendment by P.A. 95-1052)

8 Sec. 111-3. Form of charge.

9 (a) A charge shall be in writing and allege the commission
10 of an offense by:

11 (1) Stating the name of the offense;

12 (2) Citing the statutory provision alleged to have been
13 violated;

14 (3) Setting forth the nature and elements of the
15 offense charged;

16 (4) Stating the date and county of the offense as
17 definitely as can be done; and

18 (5) Stating the name of the accused, if known, and if
19 not known, designate the accused by any name or description
20 by which he can be identified with reasonable certainty.

21 (b) An indictment shall be signed by the foreman of the
22 Grand Jury and an information shall be signed by the State's
23 Attorney and sworn to by him or another. A complaint shall be

1 sworn to and signed by the complainant; provided, that when a
2 peace officer observes the commission of a misdemeanor and is
3 the complaining witness, the signing of the complaint by the
4 peace officer is sufficient to charge the defendant with the
5 commission of the offense, and the complaint need not be sworn
6 to if the officer signing the complaint certifies that the
7 statements set forth in the complaint are true and correct and
8 are subject to the penalties provided by law for false
9 certification under Section 1-109 of the Code of Civil
10 Procedure and perjury under Section 32-2 of the Criminal Code
11 of 1961; and further provided ~~Provided~~, however, that when a
12 citation is issued on a Uniform Traffic Ticket or Uniform
13 Conservation Ticket (in a form prescribed by the Conference of
14 Chief Circuit Judges and filed with the Supreme Court), the
15 copy of such Uniform Ticket which is filed with the circuit
16 court constitutes a complaint to which the defendant may plead,
17 unless he specifically requests that a verified complaint be
18 filed.

19 (c) When the State seeks an enhanced sentence because of a
20 prior conviction, the charge shall also state the intention to
21 seek an enhanced sentence and shall state such prior conviction
22 so as to give notice to the defendant. However, the fact of
23 such prior conviction and the State's intention to seek an
24 enhanced sentence are not elements of the offense and may not
25 be disclosed to the jury during trial unless otherwise
26 permitted by issues properly raised during such trial. For the

1 purposes of this Section, "enhanced sentence" means a sentence
2 which is increased by a prior conviction from one
3 classification of offense to another higher level
4 classification of offense set forth in Section 5-4.5-10 of the
5 Unified Code of Corrections (730 ILCS 5/5-4.5-10); it does not
6 include an increase in the sentence applied within the same
7 level of classification of offense.

8 (c-5) Notwithstanding any other provision of law, in all
9 cases in which the imposition of the death penalty is not a
10 possibility, if an alleged fact (other than the fact of a prior
11 conviction) is not an element of an offense but is sought to be
12 used to increase the range of penalties for the offense beyond
13 the statutory maximum that could otherwise be imposed for the
14 offense, the alleged fact must be included in the charging
15 instrument or otherwise provided to the defendant through a
16 written notification before trial, submitted to a trier of fact
17 as an aggravating factor, and proved beyond a reasonable doubt.
18 Failure to prove the fact beyond a reasonable doubt is not a
19 bar to a conviction for commission of the offense, but is a bar
20 to increasing, based on that fact, the range of penalties for
21 the offense beyond the statutory maximum that could otherwise
22 be imposed for that offense. Nothing in this subsection (c-5)
23 requires the imposition of a sentence that increases the range
24 of penalties for the offense beyond the statutory maximum that
25 could otherwise be imposed for the offense if the imposition of
26 that sentence is not required by law.

1 (d) At any time prior to trial, the State on motion shall
2 be permitted to amend the charge, whether brought by
3 indictment, information or complaint, to make the charge comply
4 with subsection (c) or (c-5) of this Section. Nothing in
5 Section 103-5 of this Code precludes such an amendment or a
6 written notification made in accordance with subsection (c-5)
7 of this Section.

8 (e) The provisions of subsection (a) of Section 5-4.5-95 of
9 the Unified Code of Corrections (730 ILCS 5/5-4.5-95) shall not
10 be affected by this Section.

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