

**SB3347**



**97TH GENERAL ASSEMBLY**

**State of Illinois**

**2011 and 2012**

**SB3347**

Introduced 2/7/2012, 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 an habitual violent offender shall be sentenced to a term of natural life imprisonment.

LRB097 19726 RLC 64985 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 (the date of the sentence for the offense committed  
12 after the 2 prior convictions) to be sentenced and the  
13 current offense was committed after the 2 prior  
14 convictions, shall be adjudged an habitual violent  
15 offender.

16 (2) The 2 prior convictions need not have been for the  
17 same offense.

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

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

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

26 (B) The third offense was committed after December

1           31, 2012.

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

6           (D) The third offense was committed after  
7           conviction on the second offense.

8           (E) The second offense was committed after  
9           conviction on the first offense.

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

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

1 former conviction and of his or her right to counsel at  
2 that hearing; and unless the defendant admits that  
3 conviction, shall hear and determine the issue, and shall  
4 make a written finding thereon. If a sentence has  
5 previously been imposed, the court may vacate that sentence  
6 and impose a new sentence in accordance with this  
7 subsection.

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

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

23 (9) If the person so convicted shows to the  
24 satisfaction of the court before whom that conviction was  
25 had that he or she was released from imprisonment, upon  
26 either of the sentences upon a pardon granted for the

1 reason that he or she was innocent, that conviction and  
2 sentence shall not be considered under this subsection.

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

12 (1) the first felony was committed after February 1,  
13 1978 (the effective date of Public Act 80-1099);

14 (2) the second felony was committed after conviction on  
15 the first; and

16 (3) the third felony was committed after conviction on  
17 the second.

18 A person sentenced as a Class X offender under this  
19 subsection (b) is not eligible to apply for treatment as a  
20 condition of probation as provided by Section 40-10 of the  
21 Alcoholism and Other Drug Abuse and Dependency Act (20 ILCS  
22 301/40-10).

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