



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5362

by Rep. Lamont J. Robinson, Jr.

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4.5-95

Amends the Unified Code of Corrections. Provides that the habitual criminal statute does not apply unless the first offense was committed when the person was 21 years of age or older. Provides that the third time offender provision concerning being sentenced as a Class X offender does not apply unless all 3 offenses were forcible felonies and the first offense was committed when the person was 21 years of age or older.

LRB101 18464 RLC 67912 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 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 (E) The first offense was committed when the person
14 was 21 years of age or older.

15 (5) Anyone who, ~~having attained the age of 18 at the~~
16 ~~time of the third offense,~~ is adjudged an habitual criminal
17 shall 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 in
23 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 sentence
11 and impose a new sentence in accordance with this Section.

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

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

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

7 (b) When a defendant, over the age of 21 years, is
8 convicted of a Class 1 or Class 2 forcible felony, ~~except for~~
9 ~~an offense listed in subsection (c) of this Section,~~ after
10 having 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, ~~except for an offense listed in subsection (c) of this~~
15 ~~Section,~~ and those charges are separately brought and tried and
16 arise out of different series of acts, that defendant shall be
17 sentenced as a Class X offender. This subsection does not apply
18 unless:

19 (1) the first forcible felony was committed after
20 February 1, 1978 (the effective date of Public Act
21 80-1099);

22 (2) the second forcible felony was committed after
23 conviction on the first; ~~and~~

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

26 (4) the first offense was committed when the person was

1 21 years of age or older.

2 (c) (Blank). ~~Subsection (b) of this Section does not apply~~
3 ~~to Class 1 or Class 2 felony convictions for a violation of~~
4 ~~Section 16-1 of the Criminal Code of 2012.~~

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

9 (Source: P.A. 99-69, eff. 1-1-16; 100-3, eff. 1-1-18; 100-759,
10 eff. 1-1-19.)