

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 17-0603.01 Richard Sweetman x4333

**SENATE BILL 17-010**

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**SENATE SPONSORSHIP**

**Kagan,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**  
Judiciary

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE IDENTIFICATION OF HABITUAL CRIMINALS FOR**  
102      **SENTENCING PURPOSES.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

Current law provides that, with certain exceptions, every person convicted of any class 1, 2, 3, 4, or 5 felony or level 1, 2, or 3 drug felony who, within 10 years of the date of the commission of the felony, has been twice previously convicted of a felony or a crime which, if committed within this state, would be a felony is an habitual criminal and shall receive an aggravated sentence. The bill states that:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

- ! A conviction for any class 4, 5, or 6 felony may not be used for the purpose of adjudicating a person as an habitual criminal unless the conviction was for a crime of violence; and
- ! A conviction for any level 2, 3, or 4 drug felony may not be used for the purpose of adjudicating a person as an habitual criminal.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** In Colorado Revised Statutes, 18-1.3-801, **amend**  
3 (1.5) introductory portion and (2)(a)(I) introductory portion; **repeal**  
4 (2)(b); and **add** (6) and (7) as follows:

5           **18-1.3-801. Punishment for habitual criminals.** (1.5) Except as  
6 otherwise provided in ~~subsection (5)~~ SUBSECTIONS (5), (6), AND (7) of this  
7 section, every person convicted in this state of any class ~~1, 2, 3, 4, or 5~~ 1,  
8 2, OR 3 felony; ANY CLASS 4 OR 5 FELONY THAT IS A CRIME OF VIOLENCE,  
9 AS DEFINED IN SECTION 18-1.3-406 (2); or ANY level 1 ~~2, or 3~~ drug felony  
10 who, within ten years of the date of the commission of the said offense,  
11 has been twice previously convicted upon charges separately brought and  
12 tried, and arising out of separate and distinct criminal episodes, either in  
13 this state or elsewhere, of a felony or, under the laws of any other state,  
14 the United States, or any territory subject to the jurisdiction of the United  
15 States, of a crime which, if committed within this state, would be a felony  
16 ~~shall be adjudged~~ IS an habitual criminal and shall be punished:

17           (2) (a) (I) Except as otherwise provided in ~~paragraph (b) of this~~  
18 ~~subsection (2) and in subsection (5)~~ SUBSECTIONS (5), (6), AND (7) of this  
19 section, every person convicted in this state of any CLASS 1, 2, OR 3  
20 felony; ANY CLASS 4 OR 5 FELONY THAT IS A CRIME OF VIOLENCE, AS  
21 DEFINED IN SECTION 18-1.3-406 (2); OR ANY LEVEL 1 DRUG FELONY who  
22 has been three times previously convicted, upon charges separately

1 brought and tried, and arising out of separate and distinct criminal  
2 episodes, either in this state or elsewhere, of a felony or, under the laws  
3 of any other state, the United States, or any territory subject to the  
4 jurisdiction of the United States, of a crime which, if committed within  
5 this state, would be THE EQUIVALENT OF a CLASS 1, 2, OR 3 felony; ~~shall~~  
6 ~~be adjudged~~ A CLASS 4 OR 5 FELONY THAT IS A CRIME OF VIOLENCE, AS  
7 DEFINED IN SECTION 18-1.3-406 (2); OR A LEVEL 1 DRUG FELONY, IS an  
8 habitual criminal and shall be punished:

9 (b) ~~The provisions of paragraph (a) of this subsection (2) shall not~~  
10 ~~apply to a conviction for a level 4 drug felony pursuant to section~~  
11 ~~18-18-403.5 (2), or a conviction for a level 4 drug felony for attempt or~~  
12 ~~conspiracy to commit unlawful possession of a controlled substance, as~~  
13 ~~described in section 18-18-403.5 (2), if the amount of the schedule I or~~  
14 ~~schedule II controlled substance possessed is not more than four grams~~  
15 ~~or not more than two grams of methamphetamine, heroin, cathinones, or~~  
16 ~~ketamine or not more than four milligrams of flunitrazepam, even if the~~  
17 ~~person has been previously convicted of three or more qualifying felony~~  
18 ~~convictions.~~

19 (6) A CONVICTION FOR ANY CLASS 4, 5, OR 6 FELONY MAY NOT BE  
20 USED FOR THE PURPOSE OF ADJUDICATING A PERSON AS AN HABITUAL  
21 CRIMINAL UNLESS THE CONVICTION WAS FOR A CRIME OF VIOLENCE, AS  
22 DEFINED IN SECTION 18-1.3-406 (2).

23 (7) A CONVICTION FOR ANY LEVEL 2, 3, OR 4 DRUG FELONY MAY  
24 NOT BE USED FOR THE PURPOSE OF ADJUDICATING A PERSON AS AN  
25 HABITUAL CRIMINAL.

26 **SECTION 2. Act subject to petition - effective date.** This act  
27 takes effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly (August  
2 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a  
3 referendum petition is filed pursuant to section 1 (3) of article V of the  
4 state constitution against this act or an item, section, or part of this act  
5 within such period, then the act, item, section, or part will not take effect  
6 unless approved by the people at the general election to be held in  
7 November 2018 and, in such case, will take effect on the date of the  
8 official declaration of the vote thereon by the governor.