

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 25-0484.01 Conrad Imel x2313

SENATE BILL 25-189

SENATE SPONSORSHIP

Liston and Snyder,

HOUSE SPONSORSHIP

Soper and Espenoza,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIRING A JURY TO DETERMINE WHETHER A**
102 **DEFENDANT HAS PRIOR QUALIFYING CONVICTIONS.**

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>.)

Under existing law, a person convicted of certain prior offenses may be adjudged a habitual criminal and subject to enhanced sentencing. A jury determines whether the defendant committed the substantive offense charged, and the trial judge determines whether the defendant has been previously convicted as alleged. The bill requires a jury to determine whether the defendant has been previously convicted as alleged for the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

purpose of determining whether the defendant is a habitual criminal.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.3-803, **amend**
3 (1), (4) introductory portion, (4)(b), and (5)(b); and repeal (6) as follows:

4 **18-1.3-803. Verdict of jury.** (1) If the allegation of previous
5 convictions of other felony offenses is included in an indictment or
6 information and if a verdict of guilty of the substantive offense with
7 which the defendant is charged is returned, the court shall conduct a
8 separate sentencing hearing HABITUAL PROCEEDING FOR A JURY to
9 determine whether or not the defendant has suffered ~~such~~ THE ALLEGED
10 previous felony convictions. ~~As soon as practicable, the hearing shall be~~
11 ~~conducted by the judge who presided at trial or before whom the guilty~~
12 ~~plea was entered or a replacement for said judge in the event he or she~~
13 ~~dies, resigns, is incapacitated, or is otherwise disqualified as provided in~~
14 ~~section 16-6-201, C.R.S. WHETHER THE CONVICTIONS WERE SEPARATELY~~
15 ~~BROUGHT AND TRIED, AND WHETHER THE CONVICTIONS AROSE OUT OF~~
16 ~~SEPARATE AND DISTINCT CRIMINAL EPISODES. THE HABITUAL PROCEEDING~~
17 ~~MUST BE CONDUCTED BEFORE THE SAME JURY IMPANELED TO TRY THE~~
18 ~~SUBSTANTIVE OFFENSE; EXCEPT THAT, WHEN NECESSARY AND AS~~
19 ~~CONSTITUTIONALLY PERMISSIBLE, A NEW JURY MAY BE IMPANELED. IF A~~
20 ~~NEW JURY IS IMPANELED THE COURT SHALL HOLD THE HABITUAL~~
21 ~~PROCEEDING AS SOON AS PRACTICABLE.~~

22 (4) If the defendant denies that ~~he or she has~~ THEY HAVE been
23 previously convicted as alleged in any count of an information or
24 indictment, ~~the trial judge, or a replacement judge as provided in~~
25 ~~subsection (1) of this section,~~ A JURY shall determine by separate hearing

1 HABITUAL PROCEEDING and verdict whether the defendant has been
2 convicted as alleged, WHETHER THE CONVICTIONS WERE SEPARATELY
3 BROUGHT AND TRIED, AND WHETHER THE CONVICTIONS AROSE OUT OF
4 SEPARATE AND DISTINCT CRIMINAL EPISODES. The procedure ~~in any case~~
5 ~~in which the defendant does not become a witness in his or her own~~
6 ~~behalf upon the trial of the substantive offense shall be~~ IS as follows:

7 (b) If the verdict is that the defendant is guilty of the substantive
8 offense charged, ~~the trial judge, or a replacement judge as provided in~~
9 ~~subsection (1) of this section, shall proceed to try~~ A JURY SHALL TRY the
10 issues of whether the defendant has been previously convicted as alleged.
11 The prosecuting attorney has the burden of proving beyond a reasonable
12 doubt that the defendant has been previously convicted as alleged, THE
13 CONVICTIONS WERE SEPARATELY BROUGHT AND TRIED, AND THE
14 CONVICTIONS AROSE OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES.

15 (5) (b) If, upon the trial of the issues upon the substantive offense
16 charged, ~~the defendant testifies in his or her own defense and, after~~
17 ~~having denied the previous conviction under subsection (3) of this~~
18 ~~section,~~ THE PROSECUTING ATTORNEY PRESENTS REBUTTAL EVIDENCE
19 PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION OR THE DEFENDANT
20 admits that ~~he or she~~ THE DEFENDANT has been previously convicted as
21 alleged, ~~the trial judge, or a replacement judge as provided in subsection~~
22 ~~(1) of this section, shall, in any sentencing hearing, consider any~~
23 ~~admissions of prior convictions elicited from the defendant in connection~~
24 ~~with his or her testimony on the substantive offense only as they affect the~~
25 ~~defendant's credibility. In any sentencing hearing, the prosecution shall~~
26 ~~be required to meet its burden of proving beyond a reasonable doubt the~~
27 ~~defendant's prior convictions by evidence independent of the defendant's~~

1 ~~testimony~~ THE PRESENTATION OR ADMISSION DOES NOT RELIEVE THE
2 PROSECUTING ATTORNEY OF THE BURDEN TO PROVE BEYOND A
3 REASONABLE DOUBT THAT THE DEFENDANT HAS BEEN PREVIOUSLY
4 CONVICTED AS ALLEGED, THE CONVICTIONS WERE SEPARATELY BROUGHT
5 AND TRIED, AND THE CONVICTIONS AROSE OUT OF SEPARATE AND DISTINCT
6 CRIMINAL EPISODES. IF, DURING THE TRIAL ON THE SUBSTANTIVE OFFENSE,
7 THE JURY HAS HEARD THE DEFENDANT ADMIT A PREVIOUS CONVICTION, ==
8 == THE COURT SHALL INSTRUCT THE JURY THAT IT MAY CONSIDER THE
9 ADMISSION ONLY AS IT AFFECTS THE DEFENDANT'S CREDIBILITY AND THAT
10 THE PROSECUTING ATTORNEY MUST PROVE BEYOND A REASONABLE DOUBT
11 THE DEFENDANT'S PRIOR CONVICTIONS BY EVIDENCE INDEPENDENT OF THE
12 ADMISSION.

13 (6) If the prosecuting attorney does not have any information
14 indicating that the defendant has been previously convicted of a felony
15 prior to the time a verdict of guilty is rendered on a felony charge and if
16 thereafter the prosecuting attorney learns of the felony conviction prior
17 to the time that sentence is pronounced by the court, he or she may file a
18 new information in which it shall be alleged in separate counts that the
19 defendant has been convicted of the particular offense upon which
20 judgment has not been entered and that prior thereto at a specified date
21 and place the defendant has been convicted of a felony warranting
22 application of increased penalties authorized in this section and sections
23 18-1.3-801 and 18-1.3-802. The defendant shall be arraigned upon the
24 new information, and, if the defendant denies the previous conviction, the
25 trial judge, or a replacement judge as provided in subsection (1) of this
26 section, shall try the issue prior to imposition of sentence.

27 **SECTION 2. Applicability.** This act applies to habitual

1 proceedings on or after the effective date of this act.

2 **SECTION 3. Safety clause.** The general assembly finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, or safety or for appropriations for
5 the support and maintenance of the departments of the state and state
6 institutions.