

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 16-0075.02 Michael Dohr x4347

HOUSE BILL 16-1066

HOUSE SPONSORSHIP

Roupe, Carver, Lundeen

SENATE SPONSORSHIP

Newell,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AN HABITUAL DOMESTIC VIOLENCE OFFENDER.**

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://www.leg.state.co.us/billsummaries>.)

Under current law, a person who is convicted of a misdemeanor involving an underlying factual basis of domestic violence and who has 3 prior convictions that include an act of domestic violence can be convicted of a class 5 felony as an habitual domestic violence offender. The bill maintains this sentencing provision and describes the procedures that a court would use to determine whether the defendant has been convicted of 3 previous offenses that include an act of domestic violence.

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.*

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-6-801, **amend** (7)
3 as follows:

4 **18-6-801. Domestic violence - sentencing.** (7) (a) ~~In the event~~
5 ~~a person is convicted in this state on or after July 1, 2000, of any offense~~
6 ~~which would otherwise be a misdemeanor, the underlying factual basis of~~
7 ~~which has been found by the court on the record to include an act of~~
8 ~~domestic violence as defined in section 18-6-800.3 (1), and that person~~
9 ~~has been three times previously convicted, upon charges separately~~
10 ~~brought and tried and arising out of separate and distinct criminal~~
11 ~~episodes, of a felony or misdemeanor or municipal ordinance violation,~~
12 ~~the underlying factual basis of which was found by the court on the record~~
13 ~~to include an act of domestic violence, the prosecuting attorney may~~
14 ~~petition the court to adjudge the person an habitual domestic violence~~
15 ~~offender, and such person shall be convicted of a class 5 felony. If the~~
16 ~~person is adjudged an habitual domestic violence offender, the court shall~~
17 ~~sentence the person pursuant to the presumptive range set forth in section~~
18 ~~18-1.3-401 for a class 5 felony. The former convictions and judgments~~
19 ~~shall be set forth in apt words in the indictment or information~~ ANY
20 MISDEMEANOR OFFENSE THAT INCLUDES AN ACT OF DOMESTIC VIOLENCE
21 IS A CLASS 5 FELONY IF THE DEFENDANT AT THE TIME OF SENTENCING HAS
22 BEEN PREVIOUSLY CONVICTED OF THREE OR MORE PRIOR OFFENSES THAT
23 INCLUDED AN ACT OF DOMESTIC VIOLENCE AND THAT WERE SEPARATELY
24 BROUGHT AND TRIED AND ARISING OUT OF SEPARATE CRIMINAL EPISODES.

25 (b) THE PRIOR CONVICTIONS MUST BE SET FORTH IN APT WORDS IN
26 THE INDICTMENT OR INFORMATION. FOR THE PURPOSES OF THIS SECTION,

1 "CONVICTION" INCLUDES ANY FEDERAL, STATE, OR MUNICIPAL
2 CONVICTION FOR A FELONY, MISDEMEANOR, OR MUNICIPAL ORDINANCE
3 VIOLATION.

4 (c) TRIALS IN CASES ALLEGING THAT THE DEFENDANT IS AN
5 HABITUAL DOMESTIC VIOLENCE OFFENDER PURSUANT TO THIS SUBSECTION
6 (7) MUST BE CONDUCTED IN ACCORDANCE WITH THE RULES OF CRIMINAL
7 PROCEDURE FOR FELONIES. THE TRIER OF FACT SHALL DETERMINE
8 WHETHER AN OFFENSE CHARGED INCLUDES AN ACT OF DOMESTIC
9 VIOLENCE.

10 (d) FOLLOWING A CONVICTION FOR AN OFFENSE WHICH
11 UNDERLYING FACTUAL BASIS INCLUDES AN ACT OF DOMESTIC VIOLENCE:

12 (I) IF ANY PRIOR CONVICTION INCLUDED A DETERMINATION BY A
13 JURY OR WAS ADMITTED BY THE DEFENDANT THAT THE OFFENSE INCLUDED
14 AN ACT OF DOMESTIC VIOLENCE, THE COURT SHALL PROCEED TO
15 SENTENCING WITHOUT FURTHER FINDINGS AS TO THAT PRIOR CONVICTION
16 BY THE JURY OR BY THE COURT, IF NO JURY TRIAL IS HAD;

17 (II) FOR ANY PRIOR CONVICTION IN WHICH THE FACTUAL BASIS
18 WAS FOUND BY THE COURT TO INCLUDE AN ACT OF DOMESTIC VIOLENCE,
19 BUT DID NOT INCLUDE A FINDING OF DOMESTIC VIOLENCE BY A JURY OR
20 THAT WAS NOT ADMITTED BY THE DEFENDANT, THE TRIAL COURT SHALL
21 PROCEED TO A SENTENCING STAGE OF THE PROCEEDINGS. THE
22 PROSECUTION SHALL PRESENT EVIDENCE TO THE TRIER OF FACT THAT THE
23 PRIOR CONVICTION INCLUDED AN ACT OF DOMESTIC VIOLENCE. THE
24 PROSECUTION HAS THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT.

25 (III) AT THE SENTENCING STAGE, THE FOLLOWING APPLIES:

26 (A) A FINDING OF DOMESTIC VIOLENCE MADE BY A COURT AT THE
27 TIME OF THE PRIOR CONVICTION CONSTITUTES PRIMA FACIE EVIDENCE

1 THAT THE CRIME INVOLVED DOMESTIC VIOLENCE;

2 (B) EVIDENCE OF THE PRIOR CONVICTION IS ADMISSIBLE THROUGH
3 THE USE OF CERTIFIED DOCUMENTS UNDER SEAL, OR THE COURT MAY TAKE
4 JUDICIAL NOTICE OF A PRIOR CONVICTION;

5

6 (C) EVIDENCE ADMITTED IN THE GUILT STAGE OF THE TRIAL,
7 INCLUDING TESTIMONY OF THE DEFENDANT AND OTHER ACTS ADMITTED
8 PURSUANT TO SECTION 18-6-801.5, MAY BE CONSIDERED BY THE FINDER
9 OF FACT.

10

11 **SECTION 2. Effective date - applicability.** This act takes effect
12 July 1, 2016, and applies to offenses committed on or after said date.

13 **SECTION 3. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.